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HOUSE BILL NO. 980**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 10, 2006)

(Patron Prior to Substitute—Delegate Hogan)

A *BILL to amend and reenact §§ 3.1-336.3, 3.1-336.8, and 3.1-336.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.1-336.9:1, relating to escrow fund payments by nonparticipating tobacco product manufacturers.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-336.3, 3.1-336.8, and 3.1-336.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.1-336.9:1 as follows:

§ 3.1-336.3. Definitions.

As used in this article:

"Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

"Commissioner" means the Tax Commissioner of the Department of Taxation.

"Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

"Participating manufacturer" shall have the meaning provided in section II (jj) of the Master Settlement Agreement.

"Stamping agent" means (i) a person who is authorized by the Tax Commissioner pursuant to § 58.1-1011 to affix Virginia tax stamps to packages, packs, cartons, or other containers of cigarettes; or (ii) any person who is required to pay the excise tax imposed on cigarettes pursuant to § 58.1-1001.

Terms defined in § 3.1-336.1 shall have the same meaning when used in this article.

§ 3.1-336.8. Reporting of information.

A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Commissioner, each stamping agent shall submit to the Commissioner such information as the Commissioner and Attorney General require to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the Commissioner and Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Commissioner and Attorney General for a period of five years.

B. In addition to the information required to be submitted pursuant to subsection A or any other provision of law, the Commissioner or Attorney General may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this article.

C. On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the Attorney General pursuant to subsection A, provided that such information provided by the stamping agent to a tobacco manufacturer shall be limited to the brand families of that manufacturer as listed in the Directory established pursuant to § 3.1-336.5. A stamping agent receiving a request pursuant to this subsection shall provide the requested information within 30 days from receipt of the request.

§ 3.1-336.9:1. Quarterly escrow payments by certain nonparticipating manufacturers.

A. Notwithstanding the provisions of § 3.1-336.2, on and after January 1, 2007, the Attorney General may require a nonparticipating manufacturer that is a new market entrant to make the escrow payments required by § 3.1-336.2 on a quarterly, rather than annual basis. For the purposes of this section, a "new market entrant" shall mean a tobacco product manufacturer that first seeks certification pursuant to § 3.1-336.4 on or after January 1, 2007.

B. A nonparticipating manufacturer required to make quarterly payments pursuant to this section shall place into a qualified escrow account the amounts required pursuant to subdivision A 2 of § 3.1-336.2 by the fifteenth of the second month following the end of each calendar quarter, except the payment for the last quarter of a calendar year shall be made by April 15 of the year following the year

60 *in question. Any adjustments for inflation to the amounts placed into a qualified escrow pursuant to this*
61 *section shall be reflected in the payments for the last quarter of a calendar year.*

62 *C. A nonparticipating manufacturer required to make payments pursuant to this section shall also*
63 *provide the certification required by subsection C of § 3.1-336.2 on a quarterly basis. Any such*
64 *nonparticipating manufacturer that fails in any quarter to place into escrow the funds required under*
65 *this section shall be subject to the penalty provisions of § 3.1-336.2.*

66 *D. The Attorney General is authorized to create any forms and require any nonparticipating*
67 *manufacturer required to make quarterly payments pursuant to this section to submit any additional*
68 *information as is necessary to enable the Attorney General to determine whether the nonparticipating*
69 *manufacturer is in compliance with the provisions of this section. At the time the nonparticipating*
70 *manufacturer is first certified by the Attorney General pursuant to § 3.1-336.4, the Attorney General will*
71 *notify the nonparticipating manufacturer as to whether it will be required to make quarterly payments*
72 *pursuant to this section. The Attorney General may seek an injunction to compel compliance with the*
73 *reporting requirements. In any action brought pursuant to this subsection in which the Commonwealth*
74 *prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of*
75 *the action, and reasonable attorney fees.*

76 *E. A nonparticipating manufacturer required to make quarterly payments pursuant to this section*
77 *who fails to properly do so shall be deemed to have failed to make required payments pursuant to*
78 *§ 3.1-336.2 and shall be subject to all enforcement actions available for a violation of § 3.1-336.2.*

79 *F. A nonparticipating manufacturer required to make quarterly payments pursuant to this section*
80 *who, to the satisfaction of the Attorney General, has complied with the provisions of Article 5*
81 *(§ 3.1-336.1 et seq.) of this chapter and the provisions of this article for a period of at least three*
82 *calendar years may, upon request and upon the concurrence of the Attorney General, be permitted to*
83 *make annual payments pursuant to Article 5 (§ 3.1-336.1 et seq.) of this chapter and be relieved of*
84 *further obligation to make quarterly payments.*

85 *§ 3.1-336.10. Penalties and other remedies.*

86 *A. In addition to any other civil or criminal penalty or remedy provided by law, upon a*
87 *determination that any person has violated § 3.1-336.6 or any regulation adopted pursuant thereto, the*
88 *Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted*
89 *rate. Each stamp affixed and each offer to sell cigarettes in violation of § 3.1-336.6 shall constitute a*
90 *separate violation. Upon a determination of a violation of § 3.1-336.6 or any regulations adopted*
91 *pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the*
92 *greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.*

93 *B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth,*
94 *or imported for personal consumption in the Commonwealth, in violation of § 3.1-336.6, shall be*
95 *deemed contraband and may not be sold or offered for sale unless such cigarettes are listed in the*
96 *Directory. Any such cigarettes that are sold or offered for sale when not included in the Directory shall*
97 *be subject to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the*
98 *procedures contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes so*
99 *confiscated and forfeited shall be destroyed and not resold.*

100 *C. The Attorney General, on behalf of the Commissioner, may seek an injunction to restrain a*
101 *threatened or actual violation of § 3.1-336.6, subsection A of § 3.1-336.8 or, subsection B of*
102 *§ 3.1-336.8, or subsection C of § 3.1-336.8 by a stamping agent and to compel the stamping agent to*
103 *comply with such provisions. In any action brought pursuant to this subsection in which the*
104 *Commonwealth prevails, the Commonwealth shall be entitled to recover the reasonable costs of*
105 *investigation, costs of the action and reasonable attorneys' fees.*

106 *D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own,*
107 *possess, transport, import, or cause to be imported cigarettes that the person knows or should know are*
108 *intended for distribution or sale in the Commonwealth in violation of § 3.1-336.6. A violation of this*
109 *section is a Class 2 misdemeanor.*