

Virginia State Crime Commission

Illegal Cigarette Trafficking Update

2014

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Executive Summary

During the 2012 Regular Session of the Virginia General Assembly, Senate Joint Resolution 21 was enacted, which directed the Crime Commission to study and report on a number of topics involving the subject of illegal cigarette trafficking. At the conclusion of the study, the Commission recommended a number of statutory changes, including increasing the penalties for cigarette trafficking. Concurrently, the Commission unanimously agreed to continue the study for an additional year, both to monitor the ongoing trafficking situation in Virginia, and to see what impact the proposed statutory changes would have.

In December of 2013, the Crime Commission reviewed the most recent data on cigarette trafficking, and learned of various difficulties certain prosecutors had encountered while trying cigarette traffickers for violations of Va. Code § 58.1-1017.1. Based upon these reported incidents, the Crime Commission made a number of recommendations to modify existing statutes, in order to help Commonwealth's Attorneys with their prosecutions. Most of these recommendations dealt with evidentiary or procedural issues; none of them involved increasing criminal penalties. The Commission also requested that the issue of cigarette trafficking continue to be studied in 2014, particularly in regards to whether the statutory changes that had been made could be seen as having an impact on cigarette trafficking in the state, and what else could be done to combat this growing crime.

As was reported last year, Virginia appears to have continuing problems with cigarette trafficking. This was detailed in a number of newspaper reports throughout the year, typically involving the arrests of various traffickers. Such issues were independently confirmed by confidential briefings provided by various law enforcement agencies involved in active, on-going investigations. Different law enforcement agencies in disparate parts of the state all reported that they continued to observe large, fraudulent retail operations—stores that did not exist (their business address was either fictitious or belonged to a location that was clearly not a retail establishment, such as a rental storage locker), yet were identified by industry as purchasing extremely large volumes of cigarettes. In some situations, the trafficking operation did have a valid retail store, but the quantities of cigarettes purchased were excessively high, and the persons working at the business had been observed engaging in behavior that was inconsistent with regular retail sales; e.g., helping to load dozens of cases of cigarettes into cars at night, after the store was closed. The total quantities of cigarettes sold by all stores in a few counties, as calculated by industry, were so enormous, that they equaled every resident of the county, both children and adults, purchasing a pack of cigarettes or more every day. Sales volumes this high are clear indications of out-of-state cigarette trafficking.

During the fall of 2014, the Crime Commission organized a private, invitation-only summit to select members of the legislature and state government, in collaboration with key members of industry. At the summit, specific details of current local, state, and federal law enforcement investigations were presented. An overview of the general observations and findings provided by members of law enforcement at the summit were presented at the November and December meetings of the Crime Commission, as well as possible recommendations to help address what appears to be a continuing,

if not burgeoning, criminal problem for the Commonwealth. At its December meeting, the Crime Commission endorsed the following legislative recommendations:

Recommendation 1: Require anyone who wants to sell tobacco products to the general public or at the wholesale level in Virginia to obtain a tobacco retail license. Designate the Virginia Department of Alcoholic Beverage Control to manage the tobacco retailing permit system and enforce laws prohibiting the trafficking of cigarettes.

Recommendation 2: Lower the felony threshold level for trafficking cigarettes, in violation of Va. Code § 58.1-1017.1, from 500 cartons to 200 cartons.

Recommendation 3: Create a new statute to make it a criminal offense to purchase cigarettes from a wholesaler using a forged business license, or a forged or invalid sales and use tax exemption certificate. An offense involving 25 cartons or fewer would be a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. An offense involving more than 25 cartons would be a Class 6 felony for a first offense, and a Class 5 felony for a second or subsequent offense.

Recommendation 4: The definition of an “authorized holder” in Va. Code § 58.1-1000 should be modified, so as to exclude anyone who has been convicted of a cigarette trafficking offense in any locality, state, or the United States, from being able to claim exemption from Virginia’s cigarette trafficking statutes. Under the current definition, only convictions under Va. Code §§ 58.1-1017 and 58.1-1017.1 operate as a bar to being an “authorized holder.”

Recommendation 5: A list of persons who, due to criminal convictions, are ineligible to be “authorized holders” in Virginia should be developed and maintained by the Office of the Attorney General of Virginia. This list should be easily accessible to wholesalers, to aid them in identifying persons to whom large quantities of cigarettes should not be sold.

Recommendation 6: Amend Va. Code § 58.1-1007 to allow, in addition to the Virginia Department of Taxation, the Office of the Attorney General of Virginia, local tax administrators, and the Virginia Department of Alcoholic Beverage Control access to records involving the purchases and sales of cigarettes.

Recommendation 1 was endorsed by the Crime Commission, though not unanimously. Recommendations 2 through 6 were endorsed unanimously by the Commission. All of the recommendations were introduced during the Regular Session of the 2015 General Assembly of Virginia. Recommendation 1 was introduced by Senator Bryce Reeves as Senate Bill 1230 during the Regular Session of the 2015 Virginia General Assembly. It passed the Senate, but was left in the General Laws Committee of the House of Delegates

Recommendations 2 and 3 were patroned by Senators Bryce Reeves and Janet Howell as Senate Bill 1231, and were patroned by Delegate Charniele Herring as House Bill 1807, during the Regular Session of the 2015 Virginia General Assembly. Both bills passed the General Assembly and were signed into law by the Governor on March 17, 2015.

Recommendations 4, 5 and 6 were patroned by Senators Bryce Reeves and Janet Howell as Senate Bill 1232, and were introduced by Delegate Jennifer McClellan as House Bill 1955, during the Regular Session of the 2015 Virginia General Assembly. Both bills passed the General Assembly,

and after technical amendments recommended by the Governor were accepted by the General Assembly, became law on April 15, 2015.

Background

2012 Activities

During the 2012 Regular Session of the Virginia General Assembly, Senate Joint Resolution (SJR) 21 was passed, which directed the Crime Commission to study and report on a number of topics involving illegal cigarette trafficking, including a focus on the prevalence of this crime in Virginia and how it can be combatted.¹ At the conclusion of the study, a final report was published that examined cigarette trafficking both broadly and in the context of Virginia's role as a source state for black market cigarettes. This published report should be referred to for a comprehensive overview of the topic.² Based upon its findings, the Commission recommended a number of statutory changes, including increasing the penalties for cigarette trafficking.³ At the time, the Commission unanimously voted to extend the study for an additional year, for the purpose of monitoring the ongoing trafficking situation in Virginia, and to see what impact any proposed statutory changes might have.

All of the Commission's recommended statutory changes from 2012 were enacted into law during the 2013 Regular Session of the Virginia General Assembly, becoming effective on July 1, 2013, to include:

- The penalties for trafficking tax-paid cigarettes were increased. Previously, the penalty for trafficking more than 25 cartons was a Class 2 misdemeanor, and a second or subsequent offense was a Class 1 misdemeanor.⁴ The penalties were increased as follows:
 - Trafficking more than 25 cartons, but less than 500 cartons, was made a Class 1 misdemeanor, and a second or subsequent offense was made a Class 6 felony; and,
 - Trafficking 500 cartons or more was made a Class 6 felony for a first offense, and a Class 5 felony for a second or subsequent offense.⁵
- The penalties for trafficking unstamped cigarettes, i.e., cigarettes for which the state excise tax has not been paid, were similarly increased. Previously, the penalty for trafficking unstamped cigarettes was a Class 2 misdemeanor, for quantities up to 3,000 packs, and a Class 6 felony if the quantity was 3,000 packs or greater.⁶ The penalties were increased as follows:
 - The qualifying threshold for this offense was lowered to 500 packs; trafficking less than 500 packs was made a Class 1 misdemeanor, and a second or subsequent offense was made a Class 6 felony; and,
 - Trafficking 500 or more packs was made a Class 6 felony, with a second or subsequent offense at that quantity level being made a Class 5 felony.⁷
- Trafficking stamped cigarettes was added to the qualifying offenses for Virginia's RICO statute.⁸
- Virginia Code § 19.2-386.21, which permitted law enforcement officers to seize and forfeit all "fixtures, equipment, materials, and personal property" used in connection with the sale

or possession of counterfeit cigarettes, was expanded to also include non-counterfeit, trafficked cigarettes.⁹

- The knowing distribution or possession with the intent to distribute counterfeit cigarettes was made a criminal offense; prior to this change, the distribution of counterfeit cigarettes only carried a civil penalty.¹⁰ The penalties were established as follows:
 - If the quantities involved are less than 10 cartons, the offense is a Class 1 misdemeanor;
 - If 10 or more cartons are involved, the offense is a Class 6 felony;¹¹ and,
 - Any subsequent offense, regardless of the number of cartons involved, is a Class 6 felony.¹²
- The Virginia Department of Taxation, and the Office of the Attorney General of Virginia were authorized, though not mandated, to accept the electronic receipt of reporting forms from tobacco manufacturers and wholesalers.¹³
- The Virginia Department of Taxation was authorized to accept electronic payments for tax stamps.¹⁴

2013 Activities

To comply with the directive to continue the cigarette trafficking study, numerous meetings and interviews were held in 2013 with representatives from cigarette manufacturers, wholesalers, retailers, local and state law enforcement, the Northern Virginia Cigarette Tax Board (NVCTB), the Tobacco Enforcement Unit of the Office of the Attorney General of Virginia, the Virginia Department of Taxation, the Virginia Department of Alcoholic Beverage Control (ABC), and the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Crime Commission also participated on the Virginia Department of Criminal Justice Service's Tobacco Trafficking Task Force during the year. Previous data sources, such as the Virginia Department of Taxation and the Virginia Criminal Sentencing Commission (VCSC), were contacted for updated figures. Additionally, assistance was provided to the Virginia Department of Criminal Justice Services (DCJS) in creating a training curriculum for law enforcement officers on the topic of cigarette trafficking. Staff also provided a number of trainings to law enforcement, Commonwealth's Attorneys, the Virginia Wholesalers and Distributors Association, and the Virginia Municipal League.

In December of 2013, the Crime Commission reviewed the most recent data on cigarette trafficking, and learned of various difficulties certain prosecutors had encountered while trying cigarette traffickers for violations of Va. Code § 58.1-1017.1. Based upon these reported incidents, the Crime Commission made a number of recommendations to modify existing statutes, in order to help Commonwealth's Attorneys with their prosecutions. Most of these recommendations dealt with evidentiary or procedural issues; none of them involved increasing criminal penalties. The Commission also requested that the issue of cigarette trafficking continue to be studied, particularly in regards to whether the statutory changes that had been made could be seen as having an impact on the rates of cigarette trafficking in the state. Lastly, the Commission recommended that staff investigate the details of how a state-wide, centralized law enforcement unit dedicated to cigarette trafficking could be organized or created in the Commonwealth.

All of the Commission's recommended statutory changes from 2013 were enacted into law during the 2014 Regular Session of the Virginia General Assembly, becoming effective on July 1, 2014, to include:

- A statutory prima facie presumption was created that the contents of an unopened pack of cigarettes meet the legal definition of a "cigarette," as provided in Va. Code § 58.1-1000. This was done to eliminate the possible need to call an expert witness, during a criminal trial on a charge of trafficking cigarettes, to testify that a particular brand of cigarettes does, in fact, contain nicotine, and therefore satisfies the definition of a "cigarette."
- The trafficking statute, Va. Code § 58.1-1017.1, was rewritten, to make clear that a prosecutor does not have to prove as an element of the offense that a defendant is not an "authorized holder." Attempting to prove a negative in court is difficult and time-consuming, and is not required in comparable criminal statutes, such as drug possession.
- The forfeiture statute that applies to counterfeit and trafficked cigarettes, Va. Code § 19.2-386.21, was amended, so that law enforcement officers can now make use of forfeited cigarettes for legitimate, undercover operations, instead of simply destroying them.
- The required civil penalties which accompany a conviction for cigarette trafficking under Va. Code § 58.1-1017.1 were greatly increased:
 - No less than \$5,000 for a first offense;
 - No less than \$10,000 for a second offense within 36 months; and,
 - No less than \$50,000 for a third or subsequent offense within 36 months.
- A statutory prohibition was put in place, preventing anyone convicted of trafficking cigarettes in violation of Va. Code §§ 58.1-1017 or 58.1-1017.1 from ever again qualifying as an "authorized holder." This prevents a convicted trafficker from opening up a fraudulent retail business and continuing to traffic cigarettes under the guise of being a legitimate wholesaler or retailer.
- Cigarette trafficking was added to the list of crimes which can be investigated by a multi-jurisdictional grand jury.

2014 Activities

Staff continued to meet with representatives from cigarette manufacturers, cigarette wholesalers, retailers, local and state law enforcement, the NVCTB, the Tobacco Enforcement Unit of the Office of the Attorney General of Virginia, the Virginia Department of Taxation, ABC, ATF, the IRS, and Commonwealth's Attorneys. Particular focus was paid to the observations and trends noted by local law enforcement. In addition, staff provided a number of trainings to law enforcement, Commonwealth's Attorneys, the Virginia Wholesalers and Distributors Association, and to circuit court and district court judges at each of their respective Judicial Conferences. Staff was also invited to participate on a national conference panel to discuss strategies to combat cigarette trafficking. After continuing to hear from law enforcement that large criminal operations were being discovered in Virginia, but specific details could not be released publically, due to ongoing, active investigations, it was decided that a closed, invitation-only summit should be held for members of the General Assembly and invited representatives from Virginia wholesalers and retailers,

manufacturers, legislative staff, and various state agencies. At this summit, candid descriptions of the current methods used by traffickers in Virginia were presented to attendees.

Update: Trends in Cigarette Trafficking

The fact that Virginia has the second lowest cigarette excise tax rate in the country, while the mid-Atlantic and New England states directly north of Virginia have some of the highest tax rates in the country, continues to provide a powerful incentive for cigarette traffickers to obtain cigarettes cheaply in Virginia, and then sell them illegally up north. Table 1 illustrates the different cigarette excise taxes throughout the United States:

Table 1: Enacted Cigarette Excise Tax Rates per 20 Pack (in \$) by State or Territory

Alabama	0.425	Montana	1.70
Alaska	2.00	Nebraska	0.64
Arizona	2.00	Nevada	0.80
Arkansas	1.15	New Hampshire	1.78
California	0.87	New Jersey	2.70
Colorado	0.84	New Mexico	1.66
Connecticut	3.40	New York	4.35
Delaware	1.60	North Carolina	0.45
District of Columbia	2.90	North Dakota	0.44
Florida	1.339	N. Marianas Islands	1.75
Georgia	0.37	Ohio	1.25
Guam	3.00	Oklahoma	1.03
Hawaii	3.20	Oregon	1.31
Idaho	0.57	Pennsylvania	1.60
Illinois	1.98	Puerto Rico	2.23
Indiana	0.995	Rhode Island	3.50
Iowa	1.36	South Carolina	0.57
Kansas	0.79	South Dakota	1.53
Kentucky	0.60	Tennessee	0.62
Louisiana	0.36	Texas	1.41
Maine	2.00	Utah	1.70
Maryland	2.00	Vermont	2.75
Massachusetts	3.51	Virginia	0.30
Michigan	2.00	Washington	3.025
Minnesota	3.426	West Virginia	0.55
Mississippi	0.68	Wisconsin	2.52
Missouri	0.17	Wyoming	0.60

Source: The Tax Burden on Tobacco: Historical Compilation Volume 49, 2014, Table 6 on pages 10 and 11. All rates current as of January 1, 2015.¹⁵

Although a comparison of the actual costs of the excise tax in Virginia versus other states, such as New York or Rhode Island, appears small at a “per pack” level, the differences become considerable when cartons or cases of cigarettes are involved.

- The state excise tax rate for a carton of cigarettes (10 packs):
 - **Virginia:** **\$3.00**
 - Pennsylvania: \$16.00
 - New Jersey: \$27.00
 - Rhode Island: \$35.00
 - Massachusetts: \$35.10
 - New York: \$43.50
 - **New York City:** **\$58.50**

- The state excise tax rate for a case of cigarettes (60 cartons):
 - **Virginia:** **\$180.00**
 - Pennsylvania: \$960.00
 - New Jersey: \$1,620.00
 - Rhode Island: \$2,100.00
 - Massachusetts: \$2,106.00
 - New York: \$2,610.00
 - **New York City:** **\$3,510.00**

As quickly becomes apparent, with an excise tax difference of \$3,330 per case, the amount of illegal profit that can be made by trafficking cigarettes from Virginia to New York City runs into the tens of thousands, even when small quantities of six or seven cases are taken in a mid-sized automobile. If a van is used, 50 cases of cigarettes can be transported in one trip, with a total tax differential of \$166,500. And, if a U-Haul or moving truck is used, 200 cases of cigarettes can be transported at a time, resulting in a tax differential of \$666,000. While the amount of profit a trafficker will make from a trip is less than the total tax differential, due to costs and having to offer his cigarettes at a reduced price from the legal wholesale price in the area, staggeringly large amounts of money can be made illegally in a short period of time.

It was noted in 2013 that the recent trend for trafficking groups was to create false storefronts in Virginia. These fraudulent retail establishments, which frequently exist only on paper and have an actual physical address that is either non-existent or is a storage unit, provide a cover to purchase bulk quantities of cigarettes. They further allow the trafficker to minimize his costs by avoiding sales tax, as he claims to be purchasing them as a “retailer.” Ultimately, no sales tax is ever collected or paid on these cigarettes, as they are not sold in Virginia, but are instead transported out-of-state.¹⁶ Police intelligence reports indicate that this trend is continuing and becoming more widespread. A non-comprehensive review of known fraudulent retail businesses in the greater Richmond-metro area alone identified 61 separate businesses, of which 23 were started in 2014.¹⁷ Additional fraudulent businesses, throughout the state, have been uncovered in the first few months of 2015.¹⁸

Ancillary crimes connected with cigarette trafficking continue as well. Burglaries and robberies of convenience stores, where the primary items stolen are cigarettes, have been reported. Credit card fraud, money laundering, and armed robberies of known traffickers by competing criminal gangs, are also persistent trends. If cigarette traffickers continue to establish a more permanent presence in the state, as they are doing with the creation of so many fraudulent retail establishments, it is expected that these crime patterns will also continue, putting Virginians at risk.

Virginia Cigarette Data

The Crime Commission has gathered data from a number of enforcement agencies in previous years to ascertain the extent of criminal cigarette trafficking in the Commonwealth. These figures provide a different, though complimentary, perspective from the charge and conviction data obtained from Virginia's court system. Each of these agency sources was contacted for updated figures for 2014. The data, in general, indicates that cigarette trafficking is a continuing problem for Virginia. Comparing identically sourced data, the more recent figures generally indicate either an increase, or no change, from the figures received in earlier years.

The Virginia State Police was contacted to see if there had been any increase in the number of cigarettes seized by their Criminal Interdiction and Counter-terrorism Unit. From January 2014 through to October 2014, they reported seizing 2,195 cartons of cigarettes, along with \$105,129 in cash.¹⁹ By way of comparison, from January 2013 to October of 2013, the Virginia State Police seized approximately 6,775 cartons of cigarettes, along with \$45,749 in cash. And, from January 2012 to October of 2012, approximately 1,941 cartons of cigarettes were seized, along with \$226,360 in cash, during the course of normal drug interdiction efforts.²⁰ While the 2014 figures show a decrease in the number of cartons seized compared with the previous year, the increase in money seized is significant—indicating that more traffickers are being stopped before they have had a chance to purchase cigarettes.

The NVCTB was contacted regarding their continuing enforcement efforts against cigarette trafficking. In 2014, more precise figures were available than from earlier years. They conducted 2,141 inspections of retail establishments, and seized 41,009 packs of cigarettes for not being in compliance with local tax ordinances. Using their authority to sell seized packs, they earned \$327,000 in revenue. Based upon a review of their records, they reported having seized approximately 55,000 packs of cigarettes in 2012 and 2013 combined, and noted that from 2007 through to 2013, they had seized a combined estimate of 140,000 packs. These numbers illustrate that in 2014 alone, the NVCTB seized as many packs of cigarettes as in the previous two years, combined.

The Tobacco Enforcement Unit in the Office of the Attorney General of Virginia reported that in 2014, their enforcement efforts increased from previous years. They conducted 1,813 retail inspections and seized 20,736 packs of cigarettes. They also assisted the Virginia Department of Taxation with seven background investigations. This compares with the period of time of January 1, 2013, through November 6, 2013, when they conducted 159 inspections and seized 2,923 packs of cigarettes, and with 2012, when they reported conducting 145 retail inspections and seizing 14,569 packs of cigarettes for not being in compliance with Virginia law. Beginning in 2011, the Tobacco Enforcement Unit began to keep track of fictitious businesses involved with cigarette trafficking, and the rate of these identifications has been increasing. In 2011, the Unit identified five fictitious businesses; in 2012 they identified six such businesses; and as of November of 2013, they had identified 25 fictitious businesses. In 2014, they identified an additional 23 fictitious businesses operating in Virginia. At this point in time, the problem seems to be increasing exponentially. The Unit has already identified an additional 43 businesses through May 29, 2015.

The Virginia Department of Taxation reported that in 2014, there were 189 cases in which civil penalties were assessed to retailers for compliance issues involving cigarettes, and an additional 23 cases involving other tobacco products. The total amount collected by the Department was \$220,004. This compares with 2012 and 2013, when the Department reported 177 assessments for non-compliance were issued, with \$142,374 in civil penalties being collected.

The Virginia Department of Alcoholic Beverage Control does have some involvement with cigarettes. A large majority of the establishments that have a license to sell alcohol also sell cigarettes, and technically, ABC enforcement agents may enforce all of the laws of the Commonwealth, not just those that involve alcohol. In addition, ABC agents conduct underage buyer tobacco checks, as well as check advertising and labeling compliance for tobacco products pursuant to a federal FDA program. In FY14, ABC conducted 1,491 checks for advertising and labeling compliance, and 1,835 underage buyer checks. They also conducted an additional 1,258 underage buyer checks pursuant to the federal Synar program. They reported making 74 total arrests for various tobacco related offenses, including two arrests for cigarette trafficking. This compares with FY13, when they conducted 586 checks for compliance with advertising and label compliance, and 1,884 underage buyer checks for tobacco products, with an additional 1,206 underage buyer checks for tobacco products pursuant to the Synar program. In FY13, ABC reported making 71 arrests for various tobacco related offenses, including one arrest for the possession of untaxed cigarettes.

Conversations with local law enforcement in different parts of the state, as well as with the NVCTB, indicate that cigarette trafficking is continuing to be a common occurrence in the Commonwealth. Having previously ascertained that Virginia appears to be the largest single source for black market cigarettes in New York City,²¹ the Office of the Sheriff of New York City was contacted for updated figures on their cigarette seizures. From April 1, 2014, to April 1, 2015, they reported seizing 2,410 cartons of cigarettes, of which 1,509 cartons (62%) involved Virginia cigarettes. During that time frame, they reported that out of the 216 retail inspections in which unlawful cigarettes were seized, 131 of those inspections (61%) involved Virginia cigarettes.²² This roughly compares with the time period of April 1, 2013, to April 1, 2014, in which they seized 3,971 cartons, of which 1,536 cartons (39%) were identified as coming from Virginia. During that time frame, they reported that out of the 401 retail inspections in which unlawful cigarettes were seized, 206 of those inspections (51%) involved Virginia cigarettes.²³ From August 3, 2012, to October 7, 2013, the Sheriff's Office seized approximately 4,222 cartons of contraband cigarettes, of which 2,142 cartons (51%) were identified as coming from Virginia.²⁴ And, from August 1, 2011, to August 2, 2012, the Tobacco Task Force of the New York City Sheriff's Office seized 4,982 cartons of contraband cigarettes, of which 2,053 (41%) were identified as coming from Virginia.²⁵ Looking at the collected data, it becomes apparent that Virginia is the largest single source of illicit cigarettes that the New York City Sheriff's Office identifies, year after year, since the latter half of 2011, when this data first became available. Additionally, the number of seized cartons coming from Virginia does not appear to be decreasing.

Other information has confirmed that Virginia is the largest single source for black market cigarettes in New York City. A recent internal study conducted by Altria indicates that this trend continues. An analysis of discarded cigarette packs in New York City found that 71% of all recovered packs did not have a proper New York City tax stamp, and 41% of all recovered packs had a tax stamp from another state. A total of 23% of all packs analyzed had a Virginia tax stamp, indicating that Virginia is the supply state for over 55% of all black market cigarettes that are clearly known to have been obtained from other states.²⁶ Separate findings by the Mackinac Center for Public Policy confirm these large numbers. Their recent statistical analysis, using data from 2013, indicated that 22.6% of all cigarettes sold in Virginia end up trafficked or transported to other states.²⁷

Recent Press Articles

The complex nature of large cigarette trafficking conspiracies, especially those which involve numerous participants and inter-state coordination between affiliated criminal groups, frequently means that a thorough law enforcement investigation takes time. Surveillance must be carried out, cooperation sought from law enforcement departments in other states, and financial records must be examined. Virginia's law enforcement efforts are continuing to uncover various trafficking rings, a number of which have been reported in recent press articles.²⁸ Details of collateral crimes, such as armed robberies, are also gaining attention in the press.²⁹

In September of 2014, Mohamed Seid Ahmed Mohamed of Chesterfield, Virginia, pled guilty in federal court to conspiring to traffic contraband cigarettes. Mohammed used his role as owner of the City Cigarettes store in Richmond to purchase 440,000 cartons of cigarettes between 2011 and 2014, and then sold them to traffickers. The U.S. Attorney involved with the case estimated that \$1,009,046 of sales tax was lost to Virginia.³⁰

On November 5, 2014, Michael Zekry was arrested in Staten Island, with more than 2,000 cartons of cigarettes found in his van. An additional 551 cartons of cigarettes was recovered from his home, along with \$40,000 in cash and an electronic money counter.³¹ Zekry pled guilty and paid restitution and forfeiture totaling \$215,471, prior to his sentencing on July 14, 2015, when it is expected he will receive 60 days in jail and five years' probation.³²

On February 23, 2015, Min Jie Zhu and two co-defendants pled guilty to trafficking cigarettes in Chesterfield Circuit Court. Over a nine month period, they purchased between \$3.6 million to \$5 million worth of cigarettes, using "Chinatown" commercial buses to send them to New York. The cigarettes were purchased from wholesalers, and no sales tax was remitted to Virginia. When police raided Zhu's home, they seized \$100,000 in cash, hundreds of cartons of cigarettes and a collection of empty cigarette cases. Zhu had been previously convicted of cigarette trafficking in April of 2014.³³

A news article dated March 14, 2015, mentions fax machine orders being received at the Sam's Club store near Potomac Mills for cigarettes, coming from "10 Northern Virginia stores that exist only on paper." The same story reveals that a series of 17 surprise inspections of Brooklyn stores carried out on November 21, 2014, by a tobacco team task force from the New York City's Sheriff's Office, netted almost 200 cartons of contraband cigarettes, most of them from Virginia.³⁴

On April 26, 2015, Karon Grant pled guilty in federal court to charges stemming from a series of recent robberies and carjackings of cigarette distributors carried out by a gang of four individuals. "The robberies began Nov. 11, when a van carrying \$31,000 worth of cigarettes was hijacked in Richmond. On Nov. 25, a man had just bought \$100,000 worth of cigarettes from a store in Chesterfield when his van was hijacked at gunpoint from the store's loading dock. On Jan. 7, two men transferring cigarettes to a van from a Glen Allen rental storage unit were interrupted by robbers who stole the van, \$90,000 worth of cigarettes and \$25,000 in cash. The final robbery was Feb. 9 at a storage facility in Henrico County."³⁵ Ultimately, all four men would plead guilty.³⁶ In a final twist, one of the victims of the November 25 robbery, Maher Mustafa, was later charged in federal court with failing to report cash transactions of \$10,000 or more; in a six month period of time, he made over 90 such deposits, totaling over \$14 million, money he made from trafficking cigarettes.³⁷ It is believed that Mustafa once did business with one of the robbery teams.³⁸ When Mustafa was formally indicted on May 6, the amount of the cash transactions made in violation of federal reporting laws was given as \$23,412,844.³⁹

An undercover review carried out by the News-4 I-Team in March and April of 2014, with the assistance of the NVCTB, found a number of suspicious purchases of large quantities of cigarettes from big box stores. “One northern Virginia man, who has purchased \$10 million in cigarettes over six months, listed at least four business addresses when registering with Virginia’s tax agency. The I-Team found those addresses included an empty lot, a family home in a Fredericksburg subdivision and a small, unmarked office in a remote business park.”⁴⁰

Fattoh Ghaleb was charged in April of 2015, in Henrico County, Virginia, with two felony cigarette trafficking offenses. Sales records indicate that he had purchased \$1 million worth of cigarettes in the five months prior to mid-March of 2015.⁴¹ The same news article reveals that five of Virginia’s ten largest cigarette buyers are in the Richmond area. All five buyers claim addresses that do not correspond to a legitimate business address. Together these five buyers purchased more than 322,000 cartons of cigarettes, worth \$15 million to \$17 million, in the thirteen weeks that ended on February 28, 2015.⁴²

On January 2, 2015, Hatim Mohamed of Richmond, Virginia, was arrested in New Jersey near the New York border. He was transporting 250 cartons of cigarettes at the time of his arrest. He was formally indicted by a New Jersey grand jury on April 30, 2015.⁴³ Also arrested in New Jersey, in an unrelated case, was Gamal Alkatteeb, also of Richmond, Virginia. At the time of his arrest on March 18, 2015, he was in possession of more than 450 cartons of cigarettes in his vehicle.⁴⁴

And, on May 10, 2015, three men were arrested in Loudon County, Virginia, on charges related to credit card fraud. Numerous credit cards and gift cards were discovered in their vehicle. Two of the men, Jason H. Alexander and Koye R. Wilson, are from New York; the third man, Sean D. Butler, is from Virginia. Also discovered in their vehicle was a large number of cigarette cartons.⁴⁵

All of these examples illustrate what had been previously predicted—the illegal profits from cigarette trafficking would almost certainly result in a continuing growth of this type of criminal activity in Virginia, and the large amounts of profits to be made would then result in collateral crimes following shortly thereafter.⁴⁶

Virginia Criminal Sentencing Commission Data

The Virginia Criminal Sentencing Commission was contacted for updated figures on the number of charges and convictions in Virginia courts for various cigarette offenses related to tax avoidance, improper record keeping, cigarette trafficking, and possession of counterfeit or illegal cigarettes.⁴⁷ Table 2 illustrates the number of charges filed in general district courts for misdemeanor cigarette-related offenses. It appears that the number of misdemeanor charges relating to possession of stamped cigarettes for purposes of trafficking has remained steady. Conviction data for these offenses in the general district courts for FY13-FY14 is provided in Table 3. Tables 4 and 5 illustrate circuit court charges and convictions for cigarette-related offenses. Similar to previous years, the data from the circuit courts indicates that few charges are filed, and few convictions are obtained, for these types of cigarette offenses.

Table 2: General District Court Charges for Cigarette-related Offenses, FY13-FY14*

Code Section	Description	FY13	FY14
§ 58.1-1007	Fail to keep records on purchase, sale of cigarettes (Excise Tax)	0	0
§ 58.1-1009	Cigarettes, unlawful sale of revenue stamps	1	0
§ 58.1-1009	Revenue stamps not purchased from Tax Dept.	0	0
§ 58.1-1017(B)	Cigarettes without stamp, sale, purchase, possess, <3000 pks (FY13); < 500 pkgs (FY14)	8	3
§ 58.1-1017(C)	Cigarettes without stamp, sale, purchase, possess, >3000 pks (FY13); > 500 pkgs (FY14)	12	12
§ 58.1-1021	Fail to keep records on purchase, sale of cigarettes (Use Tax)	1	0
§ 58.1-1033	Violation of restrictions	0	0
Local Cigarette Tax Ordinance	Local Cigarette Tax Ordinance Violation	7	14
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig.	102	106
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig., subseq.	2	8
§ 58.1-1017.1	Intent/distribute >=100,000 tax-paid cigarettes	---	14
§ 58.1-1017.1	Intent/distribute >=100,000 tax-paid cigarettes, subseq.	---	0

Source: Supreme Court of Virginia - General District Court Case Management System. *Fiscal year in which the charge was filed.

Table 3: General District Court Convictions for Cigarette-related Offenses, FY13-FY14*

Code	Description	FY13	FY14
§ 58.1-1007	Fail to keep records on purchase, sale of cigarettes (Excise Tax)	0	1
§ 58.1-1010	Illegal sale of unstamped cigarettes by wholesale dealers	1	0
§ 58.1-1017(B)	Cigarettes without stamp, sale, purchase, possess, <3000 pks (FY13); < 500 pkgs (FY14)	7	4
§ 58.1-1017(C)	Cigarettes without stamp, sale, purchase, possess, >3000 pks (FY13); > 500 pkgs (FY14)	0	0
§ 58.1-1021	Fail to keep records on purchase, sale of cigarettes (Use Tax)	1	0
Local Cigarette Tax Ordinance	Local Cigarette Tax Ordinance Violation	3	4
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig.	68	69
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig., subseq.	2	0

Source: Supreme Court of Virginia - General District Court Case Management System. *Fiscal year in which the charge was concluded (nolle prossed, dismissed, sentenced, etc.).

Table 4: Circuit Court Charges for Cigarette-related Offenses, FY13-FY14*

Code	Description	FY13	FY14
§ 58.1-1009	Cigarettes, unlawful sale of revenue stamps	0	0
§ 58.1-1009	Revenue stamps not purchased from Tax Dept.	2	0
§ 58.1-1017(B)	Cigarettes without stamp, sale, purchase, possess, <3000 pks (FY13); < 500 pkgs (FY14)	0	0
§ 58.1-1017(C)	Cigarettes without stamp, sale, purchase, possess, >3000 pks (FY13); > 500 pkgs (FY14)	9	0
§ 58.1-1017(C)	Cigarettes without stamp, sale, purchase, possess, > 500 pkgs., subseq.	0	5
§ 58.1-1033	Violation of restrictions	0	0
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig.	4†	7†
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig., subseq.	0	3
§ 58.1-1017.1	Intent/distribute >= 100,000 tax paid cigarettes	---	4

Source: Supreme Court of Virginia – Circuit Court Case Management System. *Fiscal year in which the charge was filed or concluded. † These charges were the result of appeals from General District Court. The Circuit Court Case Management System does not include cases from Alexandria, Fairfax, or Virginia Beach for these FYs.

Figure 5: Circuit Court Convictions for Cigarette-related Offenses, FY13-FY14*

Code	Description	FY13	FY14
§ 58.1-1009	Cigarettes, unlawful sale of revenue stamps	0	0
§ 58.1-1009	Revenue stamps not purchased from Tax Dept.	1	0
§ 58.1-1017(B)	Cigarettes without stamp, sale, purchase, possess, <3000 pks (FY13); < 500 pkgs (FY14)	5	3
§ 58.1-1017(C)	Cigarettes without stamp, sale, purchase, possess, >3000 pks (FY13); > 500 pkgs (FY14)	4	2
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig.	2†	3
§ 58.1-1017.1	Possession with intent to distribute tax-paid, contraband cig., subseq.	0	2
§ 58.1-1017.1	Intent/distribute >= 100,000 tax paid cigarettes	---	1

Source: Supreme Court of Virginia – Circuit Court Case Management System. *Fiscal year in which the charge was filed or concluded. † These convictions were the result of appeals from General District Court. The Circuit Court Case Management System does not include cases from Alexandria, Fairfax, or Virginia Beach for these FYs.

Continuing Vulnerabilities in Virginia

Numerous meetings with law enforcement and prosecutors revealed that while the changes to the law effective in 2014 have assisted in enforcement efforts against cigarette trafficking in Virginia, there remain a number of areas where improvements could be made. Law enforcement officers in particular commented on the difficulties they have in investigating and bringing cases against large scale, fraudulent retail operations. To be successful, not only is extensive surveillance required, but forensic accounting and a detailed review of financial forms and tax filings (if any) are also needed. This requires extensive work hours, and for the accounting portion of the investigation, specialized skills and training. From a larger perspective, there continue to be systemic weaknesses in Virginia due to multiple, uncoordinated investigations. A related vulnerability is that diverse sources of important information relevant to uncovering trafficking rings are not brought together in an organized manner.

Systemic Weaknesses in Combatting Cigarette Trafficking

The systemic weaknesses are created, in part, by Virginia's current system of multiple law enforcement agencies, each of which are autonomous, and which could theoretically become involved in investigating the same gang or group of conspirators, without knowing other investigations were simultaneously taking place. This inherent difficulty is aggravated by the nature of cigarette trafficking, which almost always involves the transportation of black market cigarettes through multiple jurisdictions before they are taken out of the state. Without a coordinated response between agencies, there is a risk that one law enforcement agency could inadvertently interfere with another agency's investigation or surveillance operation. Additionally, to effectively combat multi-state trafficking rings, coordination with other state agencies and federal authorities is necessary.

As has been pointed out in previous years, there are many valuable sources of information that can help combat cigarette trafficking in Virginia that are not collated. The Virginia Department of Taxation, the State Corporation Commission, the Virginia State Police, and tobacco manufacturers and wholesalers each may possess valuable data, which, when evaluated in a comprehensive manner, could provide valuable leads for the investigation of cigarette trafficking gangs and their ongoing crimes. For example, the Virginia Department of Taxation may have information that a retail business has cancelled its "sales and use tax" certificate; if the business is still operating, not only is that a crime in and of itself, but it may be a sign that cigarette trafficking is occurring. They may also possess tax records which demonstrate the business is greatly under-reporting their expected income, based upon their cigarette sales volume. These records may assist local law enforcement agencies that may begin an investigation of a suspected cigarette trafficking operation, based upon observation of suspicious behavior, but later encounter difficulties handling the forensic accounting and tax record analyses that are needed to prepare the case for prosecution. At the same time, the State Corporation Commission may have information that the retail business has recently cancelled or failed to maintain its corporate status, another possible indication that trafficking is occurring. In other words, the ability to synthesize records can provide important leads that may uncover a trafficking ring.

Frequently, manufacturers and wholesalers will have information on suspicious levels of sales activity—amounts far too large for a given store, or even a geographic area. However, they have reported uncertainty as to which agency is the best one for them to report their findings: the State Police, the Office of the Attorney General, or local law enforcement? Because there is no central registry for wholesalers to easily verify the continued good standing of "sales and use tax"

certificates of retailers, wholesalers may inadvertently sell large quantities of cigarettes to traffickers who are operating a fictional storefront as a cover for their illegal operations.

Similarly, law enforcement does not have ready access to information on large purchases of cigarettes made to individuals at “cash and carry” wholesalers. And, while local law enforcement may gain valuable information during the course of an investigation on ancillary crimes committed by a trafficking gang, such as credit card fraud or money laundering, they may not have the critical criminal intelligence that the State Police may have that connects the conspirators in Virginia with known criminal groups in other states. Not only does that lack of criminal intelligence limit the scope of an investigation that a local law enforcement agency might be able to carry out, but even worse, it can lead to situations where two local agencies, independently of one another, investigate the same trafficking ring, and inadvertently interfere with each other’s work.

Lastly, in terms of the systemic difficulties that Virginia currently faces, there is no comprehensive list of all locations that sell cigarettes or tobacco products to the public. This makes the jobs of both law enforcement and the Department of Taxation much more difficult, as they simply are not aware of all retail locations, or purported retail locations, where cigarettes are sold. Auditing and enforcement efforts are made more difficult, and identification of trafficking rings becomes haphazard, when there are unknown numbers of retailers who sell tobacco products. It should be noted that Virginia is in the minority of states on this issue; 36 states require either a license or a permit to sell cigarettes to the general public.

The most direct way to address these systemic weaknesses, comprehensively, would be to designate an existing state-wide agency as one which would be responsible for focusing on cigarette trafficking. The responsibility would be in terms of agency focus; all law enforcement agencies, state and local, would still have the authority to investigate and make arrests in cigarette trafficking cases that occurred within their jurisdiction. To address the issue of the unknown numbers of retailers who sell cigarettes and other tobacco products to the public, Virginia could require that all such retailers be licensed. Not only would a licensure system help identify all locations where cigarettes are sold, but it would provide an incentive for retailers to follow applicable laws and regulations when it comes to the sale of tobacco products. Failure to do so, by selling tobacco products to minors, knowingly selling to traffickers, or misreporting sales or tax figures, would then carry the possible additional penalty of suspension or loss of license. By way of analogy, retailers and restaurants with ABC licenses have an incentive, beyond possible misdemeanor criminal charges, to follow the law. Violations usually result in a suspension of the holder’s license, which often has a direct and negative impact on a location’s revenues—something which business owners always seek to avoid.

Combining these two policy considerations—need for a centralized state agency that has a primary mission-focus of investigating cigarette trafficking, and the benefits of requiring a license in order to sell tobacco products in Virginia—results in a logical choice of having ABC assume both roles. As the state agency that is responsible for vetting, approving, and monitoring the licenses of businesses that sell alcohol, they have extensive experience with administering a state-wide retail licensure system. They are very familiar with the work that is necessary to thoroughly vet an individual’s or business’ license application. Their agents visit the physical location of all restaurants and other retail establishments for verification purposes—something which would, in the context of cigarette sales, help prevent the creation of fictitious “retail establishments” that are nothing more than the address of a storage unit or parking lot. The ABC estimates that there is an overlap of approximately 40% of businesses that sell both alcohol and tobacco products. They currently have the explicit authority, under Va. Code § 4.1-103.01(C), to enforce laws governing the sale of tobacco products to minors. Lastly, ABC has law enforcement authority and extensive

experience with reviewing financial records to determine if criminal fraud, unlawful purchases of alcohol products, or tax evasion has been committed. A practical knowledge of forensic auditing in the context of criminal investigations is exactly what is required in many tobacco trafficking cases.

Having ABC provide a centralized state unit generally dedicated to tobacco enforcement could provide many benefits to other law enforcement agencies, both local and state-wide. Deconfliction assistance could be extremely useful when multiple jurisdictions begin investigations that turn out to involve the same trafficking gang, or affiliated criminal groups. Forensic accounting assistance is often needed by local law enforcement agencies, as they do not typically have any trained auditors on their staffs. Serving as a well-known point of contact for “cigarette cases” would allow ABC to receive useful information from a variety of sources, and to communicate that information to the appropriate agencies. It would also allow them to better coordinate investigations that involve out-of-state locales and police departments, and investigations that require the help of federal agencies. The administrative hearings that ABC would conduct whenever licensees were believed to have broken state or local tobacco laws would also provide yet another avenue to stop the operations of those cigarette traffickers that have established themselves as either “wholesalers” or “retailers.”

If ABC were to assume a more prominent role in combating cigarette trafficking, the fees from licensure could offset the costs of hiring more enforcement agents, as well as licensing staff. Further consolidation could be achieved if the issuance of cigarette stamping agent permits and tobacco distributor licenses were transferred from the Virginia Department of Taxation to ABC.

Statutory Changes to Assist in Combatting Cigarette Trafficking

Law enforcement and prosecutors identified a number of specific areas in which Virginia’s laws could be strengthened to help combat cigarette trafficking more effectively, both in terms of heightening criminal penalties, and in making it more difficult for traffickers to purchase their cigarettes.

The current felony threshold for cigarette trafficking is 500 cartons or more.⁴⁸ Law enforcement has reported that fraudulent retail business owners will frequently purchase around 230 cartons of cigarettes at one time from box store wholesalers. The wholesale cost of this amount is just under \$10,000, and is chosen by traffickers in an attempt to circumvent the federal reporting requirements that exist for commercial transactions of \$10,000 or more.⁴⁹ Lowering the felony threshold to an amount lower than 230 cartons would allow for stronger criminal penalties against cigarette traffickers who do not have a prior criminal conviction in Virginia.

Similarly, in response to the rapid growth of fraudulent retail stores established by traffickers solely for the purpose of purchasing large quantities of cigarettes at wholesale prices, a new criminal offense could be enacted. By statute, a separate and distinct offense of purchasing cigarettes using a forged business license, or one obtained by false pretenses, or using a forged or invalid sales and use tax exemption certificate, or one obtained by false pretenses, could be created. A violation involving 25 cartons or fewer would be a Class 1 misdemeanor, and a second or subsequent offense would be a Class 6 felony; a violation involving more than 25 cartons would be a Class 6 felony, and a second or subsequent offense involving this amount would be a Class 5 felony. This new criminal offense would provide an additional tool which police and prosecutors could use against cigarette traffickers.

In 2014, the definition of an “authorized holder” under Va. Code § 58.1-1000 was changed, to specifically exclude anyone who had been “convicted of a violation of § 58.1-1017 or 58.1-1017.1 [cigarette trafficking].”⁵⁰ With this change in the law, it became illegal for any person who had

previously been convicted of a violation of Virginia’s cigarette trafficking statutes from going into business as a cigarette “retailer” or “wholesaler.” Law enforcement and prosecutors reported that although they frequently encountered defendants who had a lengthy history of cigarette trafficking, oftentimes their previous convictions were in other states. Therefore, they were not prohibited from establishing a “retail business” in Virginia and using such guise to purchase large quantities of cigarettes from wholesalers. To remedy this situation, the prohibition against becoming an “authorized holder” of cigarettes in Virginia should be expanded to include anyone who has been convicted of a cigarette trafficking offense in another state or the United States, or anyone who has been convicted of an offense involving tax fraud in connection with the sale of tobacco products.

To assist wholesalers in identifying cigarette traffickers, and those who are not permitted in Virginia to act as “authorized holders,” a list of persons known to have been convicted of cigarette trafficking should be developed and maintained. The Office of the Attorney General of Virginia could be given this responsibility, and could publish this list on their website. (Their Office already is responsible for publishing on their website a list of all approved tobacco manufacturers and brands that are authorized for sale in Virginia, per Va. Code § 3.2-4206). Having an easily accessible list of known traffickers would be yet another helpful tool that could assist wholesalers in knowing the identities of at least some individuals to whom it is illegal to sell large quantities of cigarettes at wholesale prices.

Lastly, in order to help with the forensic accounting side of cigarette trafficking investigations, Va. Code § 58.1-1007 could be amended to permit, not only the Virginia Department of Taxation, but also the Office of the Attorney General of Virginia, ABC, and local tax administrators, to have access to all records “relating to the purchase, sale, exchange, receipt or transportation of all cigarettes.” These state and local entities have specific responsibilities to ensure that Virginia’s laws and regulations regarding cigarettes and cigarette taxes are followed. Allowing them the same access to the types of business records that the Virginia Department of Taxation currently is authorized to review would assist them in identifying suspicious patterns of cigarette purchases or sales.

Summary and Recommendations

The Crime Commission reviewed the information on Virginia’s continuing problems with cigarette trafficking, as well as the vulnerabilities that were identified, at its November and December meetings. Staff provided several recommendations as a result of the study effort at the December meeting. All recommendations were endorsed by the Crime Commission; Recommendations 2 through 6 were endorsed unanimously.

Recommendation 1: Require anyone who wants to sell tobacco products to the general public or at the wholesale level in Virginia to obtain a tobacco retail license. Designate the Virginia Department of Alcoholic Beverage Control to manage the tobacco retailing permit system and enforce laws prohibiting the trafficking of cigarettes.

Recommendation 2: Lower the felony threshold level for trafficking cigarettes, in violation of Va. Code § 58.1-1017.1, from 500 cartons to 200 cartons.

Recommendation 3: Create a new statute to make it a criminal offense to purchase cigarettes from a wholesaler using a forged business license, or a forged or invalid sales and use tax exemption certificate. An offense involving 25 cartons or fewer would be a Class 1

misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. An offense involving more than 25 cartons would be a Class 6 felony for a first offense, and a Class 5 felony for a second or subsequent offense.

Recommendation 4: The definition of an “authorized holder” in Va. Code § 58.1-1000 should be modified, so as to exclude anyone who has been convicted of a cigarette trafficking offense in any locality, state, or the United States, from being able to claim exemption from Virginia’s cigarette trafficking statutes. Under the current definition, only convictions under Va. Code §§ 58.1-1017 and 58.1-1017.1 operate as a bar to being an “authorized holder.”

Recommendation 5: A list of persons who, due to criminal convictions, are ineligible to be “authorized holders” in Virginia should be developed and maintained by the Office of the Attorney General of Virginia. This list should be easily accessible to wholesalers, to aid them in identifying persons to whom large quantities of cigarettes should not be sold.

Recommendation 6: Amend Va. Code § 58.1-1007 to allow, in addition to the Virginia Department of Taxation, the Office of the Attorney General of Virginia, local tax administrators, and the Virginia Department of Alcoholic Beverage Control access to records involving the purchases and sales of cigarettes.

Senator Bryce Reeves introduced Recommendation 1 as Senate Bill 1230 during the Regular Session of the 2015 Virginia General Assembly. It passed the Senate, but was then left in the General Laws Committee of the House of Delegates.

Recommendation 2 and Recommendation 3 were introduced as Senate Bill 1231 by Senators Bryce Reeves and Janet Howell, and were introduced by Delegate Charniele Herring as House Bill 1807, during the Regular Session of the 2015 Virginia General Assembly. Both bills passed the General Assembly and were signed into law by the Governor on March 17, 2015.⁵¹

Recommendations 4, 5, and 6 were introduced as Senate Bill 1232 by Senators Bryce Reeves and Janet Howell, and were introduced by Delegate Jennifer McClellan as House Bill 1955, during the Regular Session of the 2015 Virginia General Assembly. Both bills passed the General Assembly, and after technical amendments recommended by the Governor were accepted by the General Assembly, became law on April 15, 2015.⁵²

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Lorillard

National White Collar Crime Center

Northern Virginia Cigarette Tax Board

Office of the Attorney General of Virginia-Tobacco Enforcement Unit

RAI/R. J. Reynolds

S&M Brands

Shenandoah County Sheriff's Office

The Smith Group

Virginia Criminal Sentencing Commission

Virginia Department of Taxation

Virginia State Police

Virginia Wholesalers and Distributors Association

¹ S.J.R. 21, 2012 Gen. Assemb., Reg. Sess. (Va. 2012).

² See Va. State Crime Comm'n, *Illegal Cigarette Trafficking*, S. Doc. 5, 2013 Gen. Assemb., Reg. Sess. (2013).

³ Id.

⁴ Va. Code § 58.1-1017.1 (2012).

⁵ 2013 Va. Acts chs. 567, 623.

⁶ Va. Code § 58.1-1017 (2012).

⁷ 2013 Va. Acts chs. 570, 624.

⁸ 2013 Va. Acts ch. 626. Trafficking unstamped cigarettes was already a RICO offense. VA. CODE § 18.2-513 (2012).

⁹ 2013 Va. Acts ch. 627.

¹⁰ Va. Code § 18.2-246.14 (2012).

¹¹ 2013 Va. Acts ch. 625.

¹² Id.

¹³ 2013 Va. Acts ch. 381.

¹⁴ Id.

¹⁵ Report retrieved from http://www.taxadmin.org/fta/tobacco/papers/tax_burden_2014.pdf. In addition, it should be noted that New York City has an additional tax of \$1.50 per pack. Information on the tax rates for Guam, Puerto Rico, and the Northern Marianas Islands comes from Campaign for Tobacco-Free Kids, updated and rates current as of January 1, 2015, retrieved from <http://www.tobaccofreekids.org/research/factsheets/pdf/0222.pdf> (last visited on May 5, 2015).

¹⁶ Informal estimates indicate that Virginia is losing several million dollars per year on sales tax that is not being paid on trafficked cigarettes that are illegally purchased at the wholesale level.

¹⁷ Some of the identified fraudulent businesses have since closed, for a variety of reasons; some of them are under current active investigation by law enforcement. Of course, what is unknown is the number of businesses that have not yet been identified, both in the Richmond area and elsewhere in the state.

¹⁸ In order to avoid compromising on-going investigations, specific details of cases are not discussed in this report, unless they have been reported by the press.

¹⁹ As noted in previous studies, the Criminal Interdiction and Counter-terrorism Unit of the Virginia State Police is not specifically tasked with investigating or interdicting cigarette traffickers. The amounts of cash and cigarettes seized were discovered by the Unit in the course of other operational duties. The time frame of January through October was specifically requested to ensure consistency, as this was the time frame provided in previous years. The reported cash seized was specifically in connection with cigarette trafficking, and does not represent cash seized in drug enforcement cases where there was no nexus with cigarettes.

²⁰ *Supra* note 2, at 8-9.

²¹ Va. State Crime Comm'n, *Illegal Cigarette Trafficking*, S. Doc. 5, 2013 Gen. Assemb., Reg. Sess. at 8-9 (2013).

²² *Id.*

²³ Information provided by the New York City Sheriff's Office, e-mail correspondence, May 29, 2015.

²⁴ Information provided by the New York City Sheriff's Office, e-mail correspondence, Oct. 16, 2013.

²⁵ *Id.* at 9.

²⁶ A number of packs did not have any tax stamp on them, or had counterfeit stamps, or were non-domestic; therefore, it is unknown where they were originally obtained. Information provided by the Brand and Trade Channel Integrity department of Altria Client Services, Inc., e-mail correspondence, Nov. 7, 2014.

²⁷ Michael LaFaive, Todd Nesbit & Scott Drenkard, *Cigarette Smugglers Still Love New York and Michigan, but Illinois Closing In*, Mackinac Center for Public Policy, Feb. 2015, retrieved from <http://www.mackinac.org/20900>. Their study from the year before, using data from 2012, indicated that 21.1% of all cigarettes sold in Virginia were leaving the state; Michael LaFaive, Todd Newbit & Scott Drenkard, *Cigarette Smuggling Still Rampant in Michigan, Nation*, Mackinac Center for Public Policy, Feb. 2014, retrieved from <http://www.mackinac.org/19725>.

²⁸ At the end of 2014, and in the first few months of 2015, the existence of several large smuggling rings was revealed in newspaper articles. While the Crime Commission had been aware of a number of these, all mention of them was avoided during public meetings in 2014 and in previous reports, unless they had already received attention in the press. Details now provided are limited to those found in the news articles.

²⁹ The large Marcelino, Ramadan and Khalil trafficking cases were reported in the press in 2013 and 2014, and were included in the review of press articles on cigarette trafficking in the Crime Commission Annual Report for 2013. All press articles included here involve trafficking rings not previously mentioned in Crime Commission reports.

³⁰ *Chesterfield man faces prison time for crimes involving \$19.8 million worth of cigarettes*, WTVR.COM, Sep. 3, 2014, retrieved from <http://wtvr.com/2014/09/03/cigarette-conspiracy-crime/>.

³¹ Zak Koeske, *Big-time cigarette smuggler busted on Staten Island with half-million illegal smokes, DA says*, SILIVE.COM, Nov. 7, 2014, retrieved from http://www.silive.com/news/index.ssf/2014/11/staten_island_cigarette_smuggl.html.

³² Frank Donnelly, *Up in smoke: 'Big-time' cigarette smuggler admits guilt, faces jail*, SILIVE.COM, Apr. 23, 2015, retrieved from http://www.silive.com/westshore/index.ssf/2015/04/up_in_smoke_big-time_cigarette.html.

³³ Mark Bowes, *Trio pleads guilty to trafficking Va. cigarettes to NY on "Chinatown" buses*, RICHMOND TIMES-DISPATCH, Feb. 23, 2015, retrieved from http://www.richmond.com/news/local/central-virginia/article_7c57020a-87a6-525d-bd4d-e8996519e95b.html.

³⁴ Frank Green, *Efforts to curb illicit cigarettes sold widely in New York City*, RICHMOND TIMES-DISPATCH, Mar. 14, 2015, retrieved from http://www.richmond.com/news/article_1e46495b-1be8-54d4-b726-b93ad8886ce3.html.

⁴¹ Frank Green, *Second man pleads guilty in cigarette dealer robberies*, RICHMOND TIMES-DISPATCH, Apr. 6, 2015, retrieved from http://www.richmond.com/news/local/city-of-richmond/article_2b2b2148-2e0f-573e-9953-0464f52d933a.html. The other conspirators were Mickel Marzouk, Derrell Walker, and Mohamed El Shamy. Frank

Green, *Cigarette trafficking spawning other crimes*, RICHMOND TIMES-DISPATCH, Mar. 28, 2015, retrieved from http://www.richmond.com/news/local/crime/article_e101477f-1c3d-5117-bcce-f8839f52485c.html.

³⁶ Frank Green, *Fourth man convicted in series of robberies of area cigarette distributors*, RICHMOND TIMES-DISPATCH, Apr. 16, 2015, retrieved from http://www.richmond.com/news/local/crime/article_e2f46bf6-919a-50e3-bd86-5e7d8f8031a7.html. A fifth man, Dquan Lamar Thomas, has been charged with conspiracy in the case.

³⁷ Frank Green, *Robbery victim arrested, charged in cigarette trafficking*, RICHMOND TIMES-DISPATCH, Apr. 20, 2015, retrieved from http://www.richmond.com/news/local/crime/article_d0b7c28c-b7d7-513b-b55a-5bace65a6b3a.html.

³⁸ *Id.* See also, Frank Green, *Alleged cigarette trafficker had millions in sales each month, authorities say*, RICHMOND TIMES-DISPATCH, Apr. 22, 2015, retrieved from http://www.richmond.com/news/article_a315415d-36e6-5097-8b37-e4fdaa85d9df.html.

³⁹ Frank Green, *Henrico businessman accused of selling cigarettes to traffickers is indicted*, RICHMOND TIMES-DISPATCH, May 7, 2015, retrieved from http://www.richmond.com/news/local/henrico/article_72a82d05-4098-518b-b3f3-b8390ecfb0e6.html.

⁴⁰ Scott MacFarlane and Rick Yarborough, *Some Tobacco Shoppers at Va. Warehouse Stores Suspected of Cigarette Smuggling*, NBCWASHINGTON.COM, Apr. 10, 2015, retrieved from <http://www.nbcwashington.com/investigations/Tobacco-Shoppers-at-Va-Warehouse-Stores-Suspected-of-Cigarette-Smuggling-299278881.html>.

⁴¹ Frank Green, *Cigarette trafficking thriving in Richmond area*, RICHMOND TIMES-DISPATCH, May 2, 2015, retrieved from http://www.richmond.com/news/local/central-virginia/article_c1b62eb1-1c70-5753-826f-89d051340830.html.

⁴² *Id.*

⁴³ Jerry DeMarco, *Bergen authorities charge six in separate cases of shipping untaxed cigarettes north, payments south*, CLIFFVIEWPILOT.COM, May 1, 2015, retrieved from <http://cliffviewpilot.com/bergen-authorities-charge-six-in-separate-cases-of-shipping-untaxed-cigarettes-north-payments-south/>.

⁴⁴ *Id.*

⁴⁵ Chris Gaudet, *Trio Charged with Fraud, Larceny Involving Credit Cards*, ASHBURN PATCH, May 11, 2015, retrieved from <http://patch.com/virginia/ashburn/trio-charged-fraud-larceny-involving-credit-cards-0>.

⁴⁶ See, generally, *supra* note 2 at 56-73.

⁴⁷ As with the original study in 2012, data figures were not requested for offenses that involve the sale of cigarettes to minors, as these crimes were outside the scope of the study and its focus on illegal trafficking.

⁴⁸ VA. CODE § 58.1-1017.1 (2014). Less than 500 cartons, but more than 25 cartons is a Class 1 misdemeanor.

⁴⁹ See, generally, 31 U.S.C. 1051 *et seq.* (2014) (“The Bank Secrecy Act”).

⁵⁰ 2014 Va. Acts chs. 422, 457.

⁵¹ 2015 Va. Acts chs. 273, 290.

⁵² 2015 Va. Acts chs. 738, 754.