

HOUSE BILL NO. 1509

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Seibold)

A BILL to amend and reenact §§ 18.2-371.2, 58.1-615, 58.1-1021.01, 59.1-293.10, and 59.1-293.11 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 23.2 of Title 59.1 a section numbered 59.1-293.12, relating to restrictions on the sale of nicotine vapor products containing liquid nicotine and hemp products intended for smoking; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-371.2, 58.1-615, 58.1-1021.01, 59.1-293.10, and 59.1-293.11 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 23.2 of Title 59.1 a section numbered 59.1-293.12 as follows:

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking by a person under 21 years of age or sale of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking to persons under 21 years of age; civil penalties.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 21 years of age, knowing or having reason to believe that such person is less than 21 years of age, any tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking.

Tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of such products by persons under 21 years of age is unlawful and (ii) located in a place that is not open to the general public and is

27 not generally accessible to persons under 21 years of age. An establishment that prohibits the presence of
28 persons under 21 years of age unless accompanied by a person 21 years of age or older is not open to the
29 general public.

30 B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco
31 product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking. The
32 provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor
33 products, alternative nicotine products, or hemp products intended for smoking by a person less than 21
34 years of age (i) making a delivery of tobacco products, nicotine vapor products, alternative nicotine
35 products, or hemp products intended for smoking in pursuance of his employment or (ii) as part of a
36 scientific study being conducted by an organization for the purpose of medical research to further efforts
37 in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such
38 medical research has been approved by an institutional review board pursuant to applicable federal
39 regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title
40 32.1. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement
41 officer or his agent when the same is necessary in the performance of his duties.

42 C. No person shall sell a tobacco product, nicotine vapor product, alternative nicotine product, or
43 hemp product intended for smoking to any individual who does not demonstrate, by producing a driver's
44 license or similar photo identification issued by a government agency, that the individual is at least 21
45 years of age. Such identification is not required from an individual whom the person has reason to believe
46 is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the person
47 demanded, was shown, and reasonably relied upon a photo identification stating that the individual was
48 at least 21 years of age shall be a defense to any action brought under this subsection. In determining
49 whether a person had reason to believe an individual is at least 21 years of age, the trier of fact may
50 consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner
51 of the individual.

52 This subsection shall not apply to mail order or Internet sales, provided that the person offering
53 the tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for

54 smoking for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine
55 vapor product, alternative nicotine product, or hemp product intended for smoking verifies that the
56 purchaser is at least 21 years of age through a commercially available database that is regularly used by
57 businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method
58 of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the
59 tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for
60 smoking will be released to the purchaser.

61 D. The provisions of subsections B and C shall not apply to the sale, giving, or furnishing of any
62 tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for
63 smoking to any active duty military personnel who are 18 years of age or older. An identification card
64 issued by the Armed Forces of the United States shall be accepted as proof of age for this purpose.

65 E. A violation of subsection A or C by an individual or by a separate retail establishment that
66 involves a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or
67 tobacco product other than a bidi is punishable by a civil penalty not to exceed \$100 for a first violation,
68 a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third
69 or subsequent violation. However, a violation of subsection A or C by an individual or by a separate retail
70 establishment that involves a nicotine vapor product or a hemp product intended for smoking shall not be
71 punishable under this section if such violation is punishable by a civil penalty pursuant to Chapter 23.2 (§
72 59.1-293.10 et seq.) of Title 59.1.

73 A violation of subsection A or C by an individual or by a separate retail establishment that involves
74 the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a first
75 violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount
76 of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it
77 has trained its employees concerning the requirements of this section, the court shall suspend all of the
78 penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so
79 train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties

80 imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative
81 nicotine product, hemp product intended for smoking, or tobacco product other than a bidi.

82 A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation
83 and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative
84 to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of
85 community service for a first violation of subsection B and up to 40 hours of community service for a
86 second or subsequent violation. If the defendant fails or refuses to complete the community service as
87 prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter
88 an order pursuant to subdivision A 9 of § 16.1-278.8.

89 Any attorney for the Commonwealth of the county or city in which an alleged violation occurred
90 may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-
91 enforcement officer may issue a summons for a violation of subsection A, B, or C.

92 F. 1. Cigarettes and hemp products intended for smoking shall be sold only in sealed packages
93 provided by the manufacturer, with the required health warning. The proprietor of every retail
94 establishment that offers for sale any tobacco product, nicotine vapor product, alternative nicotine product,
95 or hemp product intended for smoking shall post in a conspicuous manner and place a sign or signs
96 indicating that the sale of tobacco products, nicotine vapor products, alternative nicotine products, or hemp
97 products intended for smoking to any person under 21 years of age is prohibited by law. Any attorney for
98 the county, city, or town in which an alleged violation of this subsection occurred may enforce this
99 subsection by civil action to recover a civil penalty not to exceed \$500. The civil penalty shall be paid into
100 the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which
101 instituted the action.

102 2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health
103 Services Administration published at 61 Federal Register 1492, the Department of Agriculture and
104 Consumer Services may promulgate regulations which allow the Department to undertake the activities
105 necessary to comply with such regulations.

106 3. Any attorney for the county, city, or town in which an alleged violation of this subsection
107 occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$500. The
108 civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the
109 county, city, or town which instituted the action.

110 G. Nothing in this section shall be construed to create a private cause of action.

111 H. Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105
112 may issue a summons for any violation of this section.

113 I. As used in this section:

114 "Alternative nicotine product" means any noncombustible product containing nicotine that is
115 intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

116 "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product
117 regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21
118 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

119 "Bidi" means a product containing tobacco that is wrapped in temburni leaf (diospyros
120 melanoxylon) or tendu leaf (diospyros exculpra), or any other product that is offered to, or purchased by,
121 consumers as a bidi or beedie.

122 "Hemp product" ~~means and "hemp product intended for smoking" mean~~ the same as ~~that term is~~
123 those terms are defined in § 3.2-4112.

124 "Nicotine vapor product" ~~means any noncombustible product containing nicotine that employs a~~
125 ~~heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,~~
126 ~~regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form.~~

127 "Nicotine vapor product" ~~includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic~~
128 ~~pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other~~
129 ~~form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,~~
130 ~~electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product~~
131 ~~regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic~~
132 Act the same as that term is defined in § 58.1-1021.01.

133 "Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless
134 tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor
135 product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C.
136 § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

137 "Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for
138 smoking in a manner similar to a cigarette or cigar.

139 **§ 58.1-615. Returns by dealers.**

140 A. 1. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth
141 day of the month following the month in which the tax shall become effective, transmit to the Tax
142 Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising
143 from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like
144 return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the
145 twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping
146 books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner
147 may make rules and regulations for reporting consistent with such accounting period.

148 Notwithstanding any other provision of this chapter, a dealer may be required by the Tax
149 Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in
150 the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be
151 enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the
152 twentieth day of the month following the close of the period. Each such return shall contain all information
153 required for monthly returns.

154 A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable
155 to remit to the Tax Commissioner any tax for the period covered by the return.

156 The Tax Commissioner shall not require that more than one sales and use tax return per month be
157 filed with the Department by any remote seller or any software provider on behalf of such remote seller.

158 2. For purposes of compliance with the provisions of subdivision B 1 e of § 59.1-293.12, any dealer
159 required to file a sales or use tax return pursuant to subdivision 1 that offers for retail sale nicotine vapor

160 products containing liquid nicotine or hemp products intended for smoking, as such terms are defined in
161 § 59.1-293.10, shall be required to also include in such return (i) the aggregate retail sales of all products
162 for the period covered by the return and (ii) the aggregate retail sales of all nicotine vapor products
163 containing liquid nicotine or hemp products intended for smoking for the period covered by the return.
164 The Tax Commissioner shall notify the Virginia Alcoholic Beverage Control Authority and its agents
165 designated pursuant to § 4.1-105 or the Department of Agriculture and Consumer Services, as applicable,
166 if such aggregate retail sales would render such dealer a vape shop for purposes of subdivision B 1 e of §
167 59.1-293.12.

168 B. [Expired.]

169 C. Any return required to be filed with the Tax Commissioner under this section shall be deemed
170 to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the
171 commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is
172 acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the
173 treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later
174 than the following business day. The commissioner of the revenue or the treasurer may collect from the
175 dealer the cost of postage for such mailing.

176 D. Every dealer that elects to file a consolidated sales tax return for any taxable period and that is
177 required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning
178 on and after July 1, 2010, shall file its monthly return using an electronic medium prescribed by the Tax
179 Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it
180 creates an unreasonable burden on the dealer.

181 **§ 58.1-1021.01. Definitions.**

182 As used in this article, unless the context requires a different meaning:

183 "Actual cost" means the actual price paid by a remote retail seller for each individual stock keeping
184 unit or SKU.

185 "Alternative nicotine product" means any noncombustible product containing nicotine that is not
186 made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or

187 ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product
188 or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under
189 Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

190 "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco,
191 other than any roll of tobacco that is a cigarette as such term is defined in § 58.1-1000.

192 "Closed system" means any nicotine vapor product capable of utilizing a disposable container that
193 is (i) prefilled with liquid nicotine and sealed by the manufacturer, (ii) not easily refillable or intended or
194 designed to be refillable, and (iii) intended or used to dispense liquid nicotine for use in a nicotine vapor
195 product that is intended or designed for reuse. "Closed system" does not include any open system.

196 "Consumer" means the person who is the end or final user of tobacco products or liquid nicotine.

197 "Distributor" means (i) any person engaged in the business of selling tobacco products in the
198 Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the
199 Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or
200 stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in
201 the business of selling tobacco products outside the Commonwealth who ships or transports tobacco
202 products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail
203 dealer in possession of untaxed tobacco products in the Commonwealth.

204 "Heated tobacco product" means a product containing tobacco that produces an inhalable aerosol
205 (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by
206 heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

207 "Liquid nicotine" means a liquid or other substance containing nicotine in ~~any~~ a concentration that
208 is sold, marketed, ~~or~~ and intended for use in a nicotine vapor product.

209 "Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but ~~shall~~ does not
210 include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

211 1. "Loose leaf tobacco half pound-unit" means a ~~consumer-sized~~ consumer-sized unit, pouch, or
212 package containing at least ~~4~~ four ounces but not more than ~~8~~ eight ounces of loose leaf tobacco, by net

213 weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be
214 divided or sold separately and containing one individual package.

215 2. "Loose leaf tobacco pound-unit" means a ~~consumer-sized~~ consumer-sized unit, pouch, or
216 package containing more than ~~8~~ eight ounces of loose leaf tobacco, by net weight, produced by the
217 manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately
218 and containing one individual package.

219 3. "Loose leaf tobacco single-unit" means a ~~consumer-sized~~ consumer-sized unit, pouch, or
220 package containing less than ~~4~~ four ounces of loose leaf tobacco, by net weight, produced by the
221 manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately
222 and containing one individual package.

223 "Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco
224 products to a distributor.

225 "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute
226 the manufacturer's tobacco products.

227 "Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's
228 representative, or any other person sells tobacco products to an unaffiliated distributor.

229 "Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that
230 is not intended to be smoked but ~~shall~~ does not include any finely cut, ground, or powdered tobacco that
231 is intended to be placed in the nasal cavity.

232 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
233 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
234 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form,
235 including liquid nicotine. "Nicotine vapor product" includes any electronic cigarette, electronic cigar,
236 electronic cigarillo, electronic pipe, closed system, open system, or similar product or device and any
237 cartridge or other container of nicotine in a solution or other form, including liquid nicotine, that is
238 intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe,

239 or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA
240 under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

241 "Open system" means a nicotine vapor product designed and intended by the manufacturer to be
242 reusable and refilled with liquid nicotine of the end user's choice. "Open system" does not include any
243 closed system.

244 "Person" means any individual, corporation, partnership, association, company, business, trust,
245 joint venture, or other legal entity.

246 "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is
247 suitable for use and likely to be offered or purchased by consumers as tobacco to be smoked in a pipe.

248 "Remote retail sale" means any sale of cigars or pipe tobacco to a consumer in the Commonwealth
249 when (i) the consumer submits the order for the sale by means of a telephone or other method of voice
250 transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical
251 presence of the consumer when the request for the purchase or order is made, or (ii) the cigars or pipe
252 tobacco are delivered to the consumer by common carrier, private delivery service, or other method of
253 remote delivery, or the seller is not in the physical presence of the consumer when the buyer obtains
254 possession of the cigars or pipe tobacco.

255 "Remote retail seller" means a person located within or outside of ~~this state~~ the Commonwealth
256 that makes remote retail sales of cigars or pipe tobacco.

257 "Retail dealer" means every person who sells or offers for sale any tobacco product to consumers
258 at retail in a transaction other than a remote retail sale.

259 "SKU" means an individual stock keeping unit identifier used for tracking inventory.

260 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal
261 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of
262 the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in §
263 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall
264 also include loose leaf tobacco.

265 Chapter 23.2.

266 Liquid-Nicotine Vapor Products Containing Liquid Nicotine and Hemp Products.

267 **§ 59.1-293.10. Definitions.**

268 As used in this chapter, unless the context requires another meaning:

269 "~~Child-resistant packaging~~" means ~~packaging that is designed or constructed to meet the child-~~
270 ~~resistant effectiveness standards set forth in 16 C.F.R. § 1700.15(b)(1) when tested in accordance with the~~
271 ~~protocols described in 16 C.F.R. § 1700.20 as in effect on July 1, 2015.~~

272 "Hemp product" and "hemp product intended for smoking" mean the same as those terms are
273 defined in § 3.2-4112.

274 "~~Liquid nicotine~~" ~~means a liquid or other substance containing nicotine in any concentration that~~
275 ~~is sold, marketed, or intended for use in a nicotine vapor product~~ means the same as that term is defined
276 in § 58.1-1021.01.

277 "Liquid nicotine container" means a bottle or other container holding liquid nicotine in any
278 concentration but does not include a cartridge containing liquid nicotine if such cartridge is prefilled and
279 sealed by the manufacturer of such cartridge and is not intended to be opened by the consumer.

280 "Nicotine vapor product" ~~has~~ means the same meaning as that term is defined in § 18.2-371.2 58.1-
281 1021.01 and includes liquid nicotine containers.

282 "Vape shop" means any business (i) that is required to file a return to the Tax Commissioner for
283 retail sales and use taxes as a dealer pursuant to § 58.1-615, (ii) whose product line for retail sale includes
284 nicotine vapor products containing liquid nicotine or hemp products intended for smoking, and (iii) whose
285 aggregate sales of nicotine vapor products containing liquid nicotine or hemp products intended for
286 smoking, combined, exceed 35 percent of the aggregate retail sales of the shop, as determined by
287 averaging sales from the prior three accounting periods for which a return subject to the requirements of
288 subdivision A 2 of § 58.1-615 is filed.

289 "Youth-oriented facility" means a child day center as defined in § 22.1-289.02, elementary school,
290 middle school, high school, or public park or any establishment that advertises in a manner that identifies
291 the establishment as catering to or providing services primarily intended for minors.

292 **§ 59.1-293.11. Sale or distribution of liquid nicotine container; prohibition; penalty.**

293 A. No person shall sell or distribute at retail or offer for retail sale or distribution a liquid nicotine
294 container in the Commonwealth on or after October 1, 2015, unless such liquid nicotine container meets
295 child-resistant packaging standards.

296 B. The requirements of subsection A shall not prohibit a wholesaler or retailer from selling its
297 existing inventory of liquid nicotine until January 1, 2016, if the wholesaler or retailer can establish that
298 the inventory was purchased prior to October 1, 2015, in a quantity comparable to that of the inventory
299 purchased during the same period of the prior year.

300 C. Any person who sells or distributes at retail or offers for retail sale or distribution a liquid
301 nicotine container in the Commonwealth on or after October 1, 2015, that he knows or has reason to know
302 does not satisfy the child-resistant packaging standards required by this section is guilty of a Class 4
303 misdemeanor. However, no person shall be guilty of a violation of this section who relies in good faith on
304 any information provided by the manufacturer of a liquid nicotine container that such container meets the
305 requirements of this section.

306 D. The provisions of this chapter do not apply to any manufacturer or wholesaler of liquid nicotine
307 containers who sells or distributes a liquid nicotine container, provided that any such liquid nicotine
308 container sold or distributed is intended for use outside of the Commonwealth.

309 E. The provisions of subsection A shall be null, void, and of no force and effect upon the effective
310 date of either enacted federal legislation or final regulations issued by the U.S. Food and Drug
311 Administration or by any other federal agency where such legislation or regulations mandate child-
312 resistant packaging for liquid nicotine containers.

313 F. For purposes of this section, "child-resistant packaging" means packaging that is designed or
314 constructed to meet the child-resistant effectiveness standards set forth in 16 C.F.R. § 1700.15(b)(1) when
315 tested in accordance with the protocols described in 16 C.F.R. § 1700.20 as in effect on July 1, 2015.

316 G. The provisions of this section with respect to retail sales, retail establishments, and offers for
317 retail sales, shall apply only to retail sales or offers at retail of liquid nicotine containers before July 1,
318 2024.

319 **§ 59.1-293.12. General requirements for the retail sale of nicotine vapor products containing**
320 **liquid nicotine and hemp products intended for smoking; prohibition; penalty.**

321 A. No person shall sell at retail or offer for retail sale more than two nicotine vapor products
322 containing liquid nicotine, five liquid nicotine containers, and two hemp products intended for smoking
323 in any one transaction to a consumer.

324 B. 1. Any person selling nicotine vapor products containing liquid nicotine or hemp products
325 intended for smoking to a consumer shall comply with the following requirements:

326 a. Any nicotine vapor product containing liquid nicotine shall use a child-resistant cap that has the
327 child-resistant effectiveness set forth in the poison prevention packaging standards under 16 C.F.R. §
328 1700.15(b)(1);

329 b. Any nicotine vapor product containing liquid nicotine or hemp product intended for smoking
330 shall use a tamper-evident package feature that is designed to remain intact and that does remain intact
331 when handled in a reasonable manner during the manufacture, distribution, and retail display of such
332 nicotine vapor product or hemp product intended for smoking;

333 c. Any label on a nicotine vapor product containing liquid nicotine shall meet the nicotine
334 addictiveness warning statement requirements under 21 C.F.R. § 1143.3; and

335 d. Any person selling nicotine vapor products containing liquid nicotine or hemp products intended
336 for smoking shall also be required to display signage clearly indicating "unaccompanied minors are not
337 allowed on the premises," "products are not for sale to minors," or "underage sales prohibited" and to
338 display nicotine vapor products containing liquid nicotine or hemp products intended for smoking behind
339 a counter or in an enclosed display that is inaccessible without the assistance of a sales representative at a
340 retail establishment.

341 e. No vape shop shall be located within 1,000 feet of a child day center as defined in § 22.1-289.02,
342 schools offering instruction to children in kindergarten through grade 12, a playground, youth center, or
343 any other youth-oriented facility. The provisions of this subdivision e shall not apply to a vape shop that
344 (i) was operating as a vape shop before July 1, 2024, or (ii) begins operating as a vape shop on or after

345 July 1, 2024, provided that at the time such vape shop begins operation such vape shop is not located
346 within 1,000 feet of a youth-oriented facility.

347 2. No person may sell, offer for sale, or otherwise distribute any nicotine vapor product containing
348 liquid nicotine with labeling or packaging that is not in compliance with 21 C.F.R. § 1143.3 and no person
349 may sell, offer for sale, or otherwise distribute any nicotine vapor product containing liquid nicotine or
350 hemp product intended for smoking with labeling or packaging that:

351 a. Imitates or mimics a trademark, of any kind, or trade dress of food products, including candy,
352 cookies, cereal, juice boxes, or soft drinks, that are or have primarily been marketed to minors;

353 b. Depicts images or references to video games, movies, videos, or animated television shows
354 known to appeal to minors;

355 c. Depicts the actual consumption of nicotine vapor products containing liquid nicotine or hemp
356 products intended for smoking or a minor using nicotine vapor products containing liquid nicotine or hemp
357 products intended for smoking;

358 d. Makes any health, medicinal, or therapeutic claims about nicotine vapor products containing
359 liquid nicotine or hemp products intended for smoking; or

360 e. Otherwise promotes overconsumption of nicotine vapor products containing liquid nicotine or
361 hemp products intended for smoking.

362 C. Any person selling nicotine vapor products containing liquid nicotine or hemp products
363 intended for smoking to a consumer shall advertise or market any nicotine vapor products containing
364 liquid nicotine or hemp products intended for smoking only where consistent with the following
365 requirements:

366 1. All advertisements and marketing shall accurately and legibly identify the person responsible
367 for its content, shall be truthful and appropriately substantiated, and shall not be presented in a manner
368 that is materially false or untrue and shall not be presented in a manner that imitates or mimics a trademark,
369 of any kind, or trade dress of any food products, including candy, cookies, cereal, juice boxes, or soft
370 drinks, that are or have primarily been marketed to minors;

371 2. Any advertising or marketing in broadcast, cable, radio, print, and digital communications or
372 any event marketing or sponsorships shall be made only where at least 85 percent of the audience is
373 reasonably expected to be at least 21 years of age, as determined by reliable, up-to-date audience
374 composition data;

375 3. No advertising or marketing may contain any statement concerning a brand or product that is
376 inconsistent with any statement or images on its labeling;

377 4. No advertising or marketing of nicotine vapor products containing liquid nicotine or hemp
378 products intended for smoking shall be conducted on a sign within 1,000 feet of a child day center as
379 defined in § 22.1-289.02, schools offering instruction to children in kindergarten through grade 12, a
380 playground, youth center, or any other youth-oriented facility. However, placement of advertising or
381 marketing signs inside a retail premises that are not readable by normal, unassisted vision from a public
382 place or public right-of-way is allowable, provided that such advertising signs do not advertise nicotine
383 vapor products containing liquid nicotine or hemp products intended for smoking in a manner intended to
384 encourage minors to consume nicotine vapor products containing liquid nicotine or hemp products
385 intended for smoking. The provisions of this subdivision shall not apply to a person that (i) was operating
386 as a retail establishment before July 1, 2024, or (ii) begins operating as a retail establishment on or after
387 July 1, 2024, provided that at the time such establishment begins operation such establishment is not
388 located within 1,000 feet of a youth-oriented facility; and

389 5. No advertising or marketing may contain any health-related statement that is untrue in any
390 particular manner or tends to create a misleading impression as to the health benefits of consumption of
391 nicotine vapor products containing liquid nicotine or hemp products intended for smoking.

392 D. Any person that sells nicotine vapor products containing liquid nicotine or hemp products
393 intended for smoking to a consumer shall be required to attest that it has conducted education and training
394 for its employees related to:

395 1. The provisions of this chapter and § 18.2-371.2;

396 2. The prohibitions on the sale of certain products to persons under age 21 and other restrictions
397 prescribed by this chapter and § 18.2-371.2;

398 3. Forms of identification that are acceptable as proof of age; and
399 4. The legal penalties that may be incurred for violation of the provisions of law identified in this
400 chapter and § 18.2-371.2.

401 E. No person shall sell nicotine vapor products containing liquid nicotine or hemp products
402 intended for smoking from a vending machine.

403 F. 1. Any person that sells nicotine vapor products containing liquid nicotine or hemp products
404 intended for smoking to a consumer may not ship for a delivery sale any nicotine vapor products
405 containing liquid nicotine or hemp products intended for smoking without first making a good faith effort
406 to verify the age of the purchaser of the nicotine vapor products containing liquid nicotine or hemp
407 products intended for smoking through an independent, third-party age verification software, service, or
408 technology that compares information available from public records to the personal information entered
409 by the purchaser during the ordering process that establishes the purchaser is of legal age or older.

410 2. Prior to shipment of nicotine vapor products containing liquid nicotine or hemp products
411 intended for smoking for a delivery sale, any person that sells nicotine vapor products containing liquid
412 nicotine or hemp products intended for smoking to a consumer shall be fully paid for the purchase and
413 shall accept payment from the consumer by a check drawn on an account in the consumer's name, by a
414 credit card issued in the consumer's name, or by a debit card issued in the consumer's name. A retail dealer
415 taking a delivery sale may request the electronic mail address of the consumer as a condition of completing
416 such delivery sale.

417 3. For purposes of this subsection, "delivery sale" means a sale of nicotine vapor products
418 containing liquid nicotine or hemp products intended for smoking to a consumer in the Commonwealth in
419 which the consumer submits the order for the sale by telephone, over the Internet, or through the mail or
420 another delivery system and where the nicotine vapor products containing liquid nicotine or hemp
421 products intended for smoking are shipped through a delivery service. "Delivery sale" does not include a
422 sale of nicotine vapor products containing liquid nicotine or hemp products intended for smoking that are
423 not for personal consumption to a person who is a manufacturer, distributor, or retail dealer.

424 G. If the Virginia Alcoholic Beverage Control Authority and the Virginia Department of
425 Agriculture and Consumer Services, as applicable, determine that a person, or such person's agent or
426 employee, violated subsection A, B, C, D, E, or F, it shall impose and the person shall be subject to:

- 427 1. For the first violation in a 36-month period, a penalty of no less than \$1,000;
428 2. For a second violation in a 36-month period, a penalty of no less than \$5,000; and
429 3. For a third violation in a 36-month period, a penalty of no less than \$10,000 and a prohibition
430 from selling nicotine vapor products containing liquid nicotine or hemp products intended for smoking
431 for a period of three years from the date of the most recent violation.

432 H. 1. Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-
433 105 or the Virginia Department of Agriculture and Consumer Services, as applicable, may issue a
434 summons for any violation of this chapter. The Virginia Alcoholic Beverage Control Authority and the
435 Virginia Department of Agriculture and Consumer Services, as applicable, shall collaborate with the
436 Department of Taxation and local law enforcement as necessary to enforce the provisions of this chapter
437 and §§ 4.1-103.01 and 18.2-371.2.

438 2. Any attorney for the county, city, or town in which an alleged violation of this chapter occurred
439 may enforce this chapter by civil action to recover a civil penalty not to exceed \$500. The civil penalty
440 shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city,
441 or town which instituted the action.

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