

1 HOUSE BILL NO. 790

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on General Laws

4 on _____)

5 (Patron Prior to Substitute--Delegate Hope)

6 A BILL to amend and reenact §§ 18.2-246.8, 18.2-371.2, 22.1-79.5, 22.1-206, 22.1-279.6, 58.1-1021.01,
7 58.1-1021.02, 58.1-1021.04:1, 58.1-1021.04:5, 59.1-293.10, and 59.1-293.11 of the Code of
8 Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 10 of Title 58.1
9 sections numbered 58.1-1021.06 through 58.1-1021.09 and by adding in Chapter 23.2 of Title 59.1
10 sections numbered 59.1-293.12, 59.1-293.13, and 59.1-293.14, relating to purchase, possession,
11 and sale of retail tobacco products; retail tobacco products and liquid nicotine tax; penalties.

12 **Be it enacted by the General Assembly of Virginia:**

13 **1. That §§ 18.2-246.8, 18.2-371.2, 22.1-79.5, 22.1-206, 22.1-279.6, 58.1-1021.01, 58.1-1021.02, 58.1-**
14 **1021.04:1, 58.1-1021.04:5, 59.1-293.10, and 59.1-293.11 of the Code of Virginia are amended and**
15 **reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 10 of Title**
16 **58.1 sections numbered 58.1-1021.06 through 58.1-1021.09 and by adding in Chapter 23.2 of Title**
17 **59.1 sections numbered 59.1-293.12, 59.1-293.13, and 59.1-293.14 as follows:**

18 **§ 18.2-246.8. Age verification requirements.**

19 A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale
20 unless prior to the first delivery sale to a consumer such person:

21 1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation
22 that the consumer is at least the legal minimum purchase age; and (ii) a statement signed by the prospective
23 consumer in writing that certifies the prospective consumer's address and that the consumer is at least 21
24 years of age. Such statement shall also confirm (a) that the prospective consumer understands that signing
25 another person's name to such certification is illegal, (b) that the sale of cigarettes to individuals under the

26 legal minimum purchase age is illegal, and (c) that the purchase of cigarettes by individuals under the
27 legal minimum purchase age is illegal under the laws of the Commonwealth;

28 2. Makes a good faith effort to verify the information contained in the certification provided by
29 the prospective consumer pursuant to ~~subsection A~~ subdivision 1 against a commercially available
30 database of valid, government-issued identification that contains the date of birth or age of the individual
31 placing the order, or obtains a photocopy or other image of the valid, government-issued identification
32 stating the date of birth or age of the individual placing the order;

33 3. Provides to the prospective consumer, via ~~e-mail~~ email or other means, a notice that meets the
34 requirements of § 18.2-246.9; and

35 4. Receives payment for the delivery sale from the prospective consumer by a credit or debit card
36 that has been issued in such consumer's name or by a check drawn on the consumer's account.

37 B. 1. Except as provided in § 58.1-1021.06, if a purchase order for a liquid nicotine or nicotine
38 vapor product, as defined in § 58.1-1030.1, is made via the Internet, no person shall make a delivery for
39 such order unless the delivery is to a permit holder, as defined in § 58.1-1030.1.

40 2. Persons accepting purchase orders made via the Internet for delivery sales may request that
41 prospective consumers provide their ~~e-mail~~ email addresses.

42 **§ 18.2-371.2. Prohibiting purchase or possession of retail tobacco products and hemp**
43 **products intended for smoking by a person under 21 years of age or sale of retail tobacco products**
44 **and hemp products intended for smoking to persons under 21 years of age; civil penalties.**

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

49 ~~Tobacco products, nicotine vapor products, alternative nicotine products, and~~ No person shall sell
50 retail tobacco products or hemp products intended for smoking ~~may be sold~~ from a vending machine ~~only~~
51 ~~if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase~~
52 ~~or possession of such products by persons under 21 years of age is unlawful and (ii) located in a place that~~

53 ~~is not open to the general public and is not generally accessible to persons under 21 years of age. An~~
54 ~~establishment that prohibits the presence of persons under 21 years of age unless accompanied by a person~~
55 ~~21 years of age or older is not open to the general public.~~

56 ~~B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco~~
57 ~~product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking. The~~
58 ~~provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor~~
59 ~~products, alternative nicotine products, or hemp products intended for smoking by a person less than 21~~
60 ~~years of age (i) making a delivery of tobacco products, nicotine vapor products, alternative nicotine~~
61 ~~products, or hemp products intended for smoking in pursuance of his employment or (ii) as part of a~~
62 ~~scientific study being conducted by an organization for the purpose of medical research to further efforts~~
63 ~~in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such~~
64 ~~medical research has been approved by an institutional review board pursuant to applicable federal~~
65 ~~regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title~~
66 ~~32.1. This subsection shall not apply to purchase, attempt to purchase, or possession by a law enforcement~~
67 ~~officer or his agent when the same is necessary in the performance of his duties.~~

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

78 ~~Before a retail dealer may sell retail tobacco products, other than cigar and pipe tobacco products~~
79 ~~as defined in § 58.1-1021.01, to any consumer, the person selling, offering for sale, giving, or furnishing~~

80 the retail tobacco products shall verify that the consumer is of legal age by examining from any person
81 who appears to be under 30 years of age a government-issued photographic identification that establishes
82 that the person is of legal age and verifying the identification presented using identification fraud detection
83 software, technology, or a scanner that confirms the authenticity of such identification.

84 This subsection shall not apply to mail order or Internet sales, provided that the person offering
85 the retail tobacco product, ~~nicotine vapor product, alternative nicotine product,~~ or hemp product intended
86 for smoking for sale through mail order or the Internet (i) prior to the sale of the retail tobacco product,
87 ~~nicotine vapor product, alternative nicotine product,~~ or hemp product intended for smoking verifies that
88 the purchaser is at least 21 years of age through a commercially available database that is regularly used
89 by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a
90 method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age
91 before the retail tobacco product, ~~nicotine vapor product, alternative nicotine product,~~ or hemp product
92 intended for smoking will be released to the purchaser.

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

97 ~~E. A violation of subsection A or C by an individual or by a separate retail establishment that~~
98 ~~involves a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or~~
99 ~~tobacco product other than a bidi is punishable by a civil penalty not to exceed \$100 for a first violation,~~
100 ~~a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third~~
101 ~~or subsequent violation.~~

102 C. A violation of subsection A or ~~C~~ B by an individual or by a separate retail establishment ~~that~~
103 ~~involves the sale, distribution, or purchase of a bidi~~ is punishable by a civil penalty in the amount of \$500
104 for a first violation, ~~a civil penalty in the amount of \$1,000 for a second violation,~~ and a civil penalty in
105 the amount of \$2,500 for a ~~third~~ second or subsequent violation. ~~Where a defendant retail establishment~~
106 ~~offers proof that it has trained its employees concerning the requirements of this section, the court shall~~

107 ~~suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment~~
108 ~~has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of~~
109 ~~any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product,~~
110 ~~alternative nicotine product, hemp product intended for smoking, or tobacco product other than a bidi. If~~
111 ~~applicable, upon a second or subsequent violation, the Department of Taxation shall suspend or revoke~~
112 ~~any approved license, permit, or registration issued pursuant to subsection C of § 58.1-1021.04:1.~~

113 ~~A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation~~
114 ~~and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative~~
115 ~~to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of~~
116 ~~community service for a first violation of subsection B and up to 40 hours of community service for a~~
117 ~~second or subsequent violation. If the defendant fails or refuses to complete the community service as~~
118 ~~prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter~~
119 ~~an order pursuant to subdivision A 9 of § 16.1-278.8. For any violation of this section by an employee of~~
120 ~~a retail establishment, (i) such penalty shall be assessed against the establishment and (ii) an additional~~
121 ~~penalty of \$100 shall be assessed against the employee.~~

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

125 ~~F.~~ D. 1. Cigarettes and hemp products intended for smoking shall be sold only in sealed packages
126 provided by the manufacturer, with the required health warning. The proprietor of every retail
127 establishment that offers for sale any retail tobacco product, ~~nicotine vapor product, alternative nicotine~~
128 ~~product,~~ or hemp product intended for smoking shall post in a conspicuous manner and place a sign or
129 signs indicating that the sale of retail tobacco products, ~~nicotine vapor products, alternative nicotine~~
130 ~~products,~~ or hemp products intended for smoking to any person under 21 years of age is prohibited by
131 law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred
132 may enforce this subsection by civil action to recover a civil penalty not to exceed \$500. The civil penalty

133 shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city,
134 or town which instituted the action.

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

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

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

144 ~~H. F.~~ Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-
145 105 may issue a summons for any violation of this section. Additionally, any retailer selling retail tobacco
146 products shall be subject to the enforcement and compliance provisions of § 58.1-1030.5.

147 ~~I. G.~~ As used in this section:

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

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

153 ~~"Bidi" means a product containing tobacco that is wrapped in temburni leaf (diospyros~~
154 ~~melanoxyton) or tendu leaf (diospyros exculpra), or any other product that is offered to, or purchased by,~~
155 ~~consumers as a bidi or beedie.~~

156 "Electronic smoking device" means any device that may be used to deliver any aerosolized or
157 vaporized substance to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, vape
158 pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device,
159 whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized

160 during the use of the device, whether or not the substance contains nicotine. "Electronic smoking device"
161 does not include any (i) battery or battery charger when sold separately or (ii) device used for heated
162 tobacco products. "Electronic smoking device" does not include drugs or devices, as such terms are
163 defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such
164 drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

167 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
168 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
169 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form.
170 "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic
171 pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other
172 form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,
173 electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product
174 regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic
175 Act.

176 "~~Tobacco~~ Retail tobacco product" means (i) any product containing, made of, or derived from
177 tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed,
178 whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a
179 cigarette, a heated tobacco product, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any
180 electronic smoking device and any substances that may be aerosolized or vaporized by such device,
181 whether or not the substance contains nicotine; and ~~includes cigarettes, cigars, smokeless tobacco, pipe~~
182 ~~tobacco, bidis, and wrappings~~ (iii) any component, part, or accessory of a product described in clause (i)
183 or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters,
184 rolling papers, blunt or hemp wraps, and pipes. "Retail tobacco product" includes any nicotine vapor
185 product as that term is defined in § 58.1-1021.01. "~~Tobacco~~ Retail tobacco product" does not include any
186 nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter

187 ~~V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act~~ drugs or devices, as such terms
188 are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such
189 drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

192 **§ 22.1-79.5. Policy regarding retail tobacco products and hemp products intended for**
193 **smoking.**

194 Each school board shall develop and implement a policy to prohibit, at any time, the use and
195 distribution of any retail tobacco product or nicotine vapor product or hemp product intended for smoking,
196 as those terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site
197 school-sponsored activity.

198 Such policy shall include (i) provisions for its enforcement among students, employees, and
199 visitors, including the enumeration of possible sanctions or disciplinary action consistent with state or
200 federal law, and (ii) referrals to resources to help staff and students overcome tobacco addiction.

201 Each school board shall work to ensure adequate notice of this policy.

202 **§ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, retail tobacco products,**
203 **hemp products intended for smoking, and gambling.**

204 A. Instruction concerning drugs and drug abuse shall be provided by the public schools as
205 prescribed by the Board of Education.

206 B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage
207 drinking, and drunk driving shall be provided in the public schools. The Virginia Alcoholic Beverage
208 Control Authority shall provide educational materials to the Department of Education. The Department of
209 Education shall review and shall distribute such materials as are approved to the public schools.

210 ~~C.~~ The Virginia Foundation for Healthy Youth shall develop and the Department of Education
211 shall distribute to each local school division educational materials concerning the health and safety risks
212 of using retail tobacco products, nicotine vapor products, and alternative nicotine products and hemp
213 products intended for smoking, as such terms are defined in § 18.2-371.2. Instruction concerning the health

214 and safety risks of using tobacco products, ~~nicotine vapor products, and alternative nicotine products~~ and
215 hemp products intended for smoking, as such terms are defined in § 18.2-371.2, shall be provided in each
216 public elementary and secondary school in the Commonwealth, consistent with such educational
217 materials.

218 ~~D.C.~~ Instruction concerning gambling and the addictive potential thereof shall be provided by the
219 public schools as prescribed by the Board.

220 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct;**
221 **school board regulations.**

222 A. The Board of Education shall establish guidelines and develop model policies for codes of
223 student conduct to aid local school boards in the implementation of such policies. The guidelines and
224 model policies shall include (i) criteria for the removal of a student from a class, the use of suspension,
225 expulsion, and exclusion as disciplinary measures, the grounds for suspension~~and~~₂ expulsion₂ and
226 exclusion, and the procedures to be followed in such cases, including proceedings for such suspension,
227 expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with
228 state, federal₂ and case laws, for school board policies on alcohol and drugs, gang-related activity, hazing,
229 vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional
230 injury of others, self-defense, bullying, the use of electronic means for purposes of bullying, harassment,
231 and intimidation, and dissemination of such policies to students, their parents, and school personnel; (iii)
232 standards for in-service training of school personnel in and examples of the appropriate management of
233 student conduct and student offenses in violation of school board policies; (iv) standards for dress or
234 grooming codes; and (v) standards for reducing bias and harassment in the enforcement of any code of
235 student conduct.

236 In accordance with the most recent enunciation of constitutional principles by the Supreme Court
237 of the United States of America, the Board's standards for school board policies on alcohol and drugs and
238 search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing
239 in schools, including which groups may be tested, use of test results, confidentiality of test information,

240 privacy considerations, consent to the testing, need to know, and release of the test results to the
241 appropriate school authority.

242 In the case of suspension and expulsion, the procedures set forth in this article shall be the
243 minimum procedures that the school board may prescribe.

244 B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with
245 the requirements of this section, regulations on codes of student conduct that are consistent with, but may
246 be more stringent than, the guidelines of the Board. School boards shall include in the regulations on codes
247 of student conduct procedures for suspension, expulsion, and exclusion decisions and shall biennially
248 review the model student conduct code to incorporate discipline options and alternatives to preserve a
249 safe, nondisruptive environment for effective teaching and learning.

250 C. Each school board shall include in its code of student conduct prohibitions against hazing and
251 profane or obscene language or conduct. School boards shall also cite in their codes of student conduct
252 the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor
253 penalty for violations, that is, confinement in jail for not more than 12 months and a fine of not more than
254 \$2,500, either or both.

255 D. Each school board shall include in its code of student conduct policies and procedures that
256 include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the
257 standards for school board policies on bullying and the use of electronic means for purposes of bullying
258 developed by the Board pursuant to subsection A and (ii) direct the principal or his designee to notify the
259 parent of any student involved in an alleged incident of bullying within 24 hours of learning of the
260 allegation of bullying.

261 Such policies and procedures shall not be interpreted to infringe upon the First Amendment rights
262 of students and are not intended to prohibit expression of religious, philosophical, or political views,
263 provided that such expression does not cause an actual, material disruption of the work of the school.

264 E. A school board may regulate the use or possession of beepers or other portable communications
265 devices and laser pointers by students on school property or attending school functions or activities and

266 establish disciplinary procedures pursuant to this article to which students violating such regulations will
267 be subject.

268 F. Nothing in this section shall be construed to require any school board to adopt policies requiring
269 or encouraging any drug testing in schools. However, a school board may, in its discretion, require or
270 encourage drug testing in accordance with the Board of Education's guidelines and model student conduct
271 policies required by subsection A and the Board's guidelines for student searches required by § 22.1-279.7.

272 G. The Board of Education shall establish standards to ensure compliance with the federal
273 Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in
274 accordance with § 22.1-277.07.

275 This subsection shall not be construed to diminish the authority of the Board of Education or to
276 diminish the Governor's authority to coordinate and provide policy direction on official communications
277 between the Commonwealth and the United States government.

278 H. Each school board shall include in its code of student conduct a prohibition on possessing any
279 retail tobacco product or ~~nicotine vapor product~~ hemp product intended for smoking, as those terms are
280 defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored
281 activity.

282 I. Any school board may include in its code of student conduct a dress or grooming code. Any
283 dress or grooming code included in a school board's code of student conduct or otherwise adopted by a
284 school board shall (i) permit any student to wear any religiously and ethnically specific or significant head
285 covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and cornrows; (ii) maintain
286 gender neutrality by subjecting any student to the same set of rules and standards regardless of gender;
287 (iii) not have a disparate impact on students of a particular gender; (iv) be clear, specific, and objective in
288 defining terms, if used; (v) prohibit any school board employee from enforcing the dress or grooming code
289 by direct physical contact with a student or a student's attire; and (vi) prohibit any school board employee
290 from requiring a student to undress in front of any other individual, including the enforcing school board
291 employee, to comply with the dress or grooming code.

292 **§ 58.1-1021.01. Definitions.**

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

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

296 "Alternative nicotine product" means any noncombustible product containing nicotine that is not
297 made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or
298 ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product
299 or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under
300 Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

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

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

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

308 "Delivery sale" means a sale of liquid nicotine or nicotine vapor products to a consumer in the
309 Commonwealth in which the consumer submits the order for the sale by telephone, over the Internet, or
310 through the mail or another delivery system, and where the liquid nicotine or nicotine vapor products are
311 shipped through a delivery service. "Delivery sale" does not include a sale of liquid nicotine or nicotine
312 vapor products not for personal consumption to a person who is a manufacturer, distributor, or retail
313 dealer.

314 "Distributor" means (i) any person engaged in the business of selling tobacco products in the
315 Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the
316 Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or
317 stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in
318 the business of selling tobacco products outside the Commonwealth who ships or transports tobacco

319 products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail
320 dealer in possession of untaxed tobacco products in the Commonwealth.

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

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

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

328 1. "Loose leaf tobacco half pound-unit" means a ~~consumer-sized~~ consumer-sized unit, pouch, or
329 package containing at least ~~4~~ four ounces but not more than ~~8~~ eight ounces of loose leaf tobacco, by net
330 weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be
331 divided or sold separately and containing one individual package.

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

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

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

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

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

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

349 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
350 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
351 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form,
352 including liquid nicotine. "Nicotine vapor product" includes any electronic cigarette, electronic cigar,
353 electronic cigarillo, electronic pipe, closed system, open system, or similar product or device and any
354 cartridge or other container of nicotine in a solution or other form, including liquid nicotine, that is
355 intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe,
356 or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA
357 under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

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

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

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

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

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

374 "Retail dealer" means every person ~~who~~ that sells or offers for sale any tobacco product or liquid
375 nicotine to consumers at retail in a transaction other than a remote retail sale and includes any person that
376 holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for
377 Resale or an Other Tobacco Products Distributor's License issued by the Department of Taxation..

378 "Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or
379 that contains nicotine that is intended for human consumption or is likely to be consumed, whether
380 smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette,
381 a heated tobacco product, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any
382 substances that may be aerosolized or vaporized by such device, whether or not the substance contains
383 nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or
384 not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt
385 or hemp wraps, and glass pipes. "Retail tobacco product" includes any nicotine vapor product. "Retail
386 tobacco product" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or
387 combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination
388 products are authorized for sale by the U.S. Food and Drug Administration. "Retail tobacco product" does
389 not include any cigar or pipe tobacco as defined in § 58.1-1021.01.

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

391 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal
392 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of
393 the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in §
394 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall
395 also include loose leaf tobacco.

396 **§ 58.1-1021.02. Tax on tobacco products and liquid nicotine.**

397 A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the
398 privilege of selling or dealing in tobacco products and liquid nicotine in the Commonwealth by any person
399 engaged in business as a distributor or remote retail seller thereof, at the following rates:

400 1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the
401 same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed
402 by the manufacturer on the package in accordance with federal law.

403 2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf
404 tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax
405 shall be imposed ~~on~~ upon the distributor for loose leaf tobacco as follows:

406 a. \$0.21 for each loose leaf tobacco single-unit;

407 b. \$0.40 for each loose leaf tobacco half pound-unit;

408 c. \$0.70 for each loose leaf tobacco pound-unit; and

409 d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and
410 shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of ~~4~~ four ounces or portion thereof
411 that the loose leaf tobacco exceeds 16 ounces.

412 The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the
413 provisions of subdivisions a- through d- only and regardless of sales price.

414 3. ~~Upon~~ Except as otherwise provided, upon tobacco products other than moist snuff or loose leaf
415 tobacco, at the rate of 10 percent of the manufacturer's sales price of such tobacco products.

416 Upon cigars and pipe tobacco products sold by remote retail sellers, the tax rates delineated in this
417 subdivision shall apply to:

418 ~~(a)~~ a. The actual cost; or

419 ~~(b)~~ b. If the actual cost is not available, the average of the actual cost over the 12 calendar months
420 before January 1 of the year in which the sale occurs.

421 4. a. Upon the privilege of selling or dealing in liquid nicotine in the Commonwealth by any person
422 engaged in business as a distributor of liquid nicotine, at the following rates:

423 (1) Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter beginning July 1,
424 2024, for taxable sales or purchases occurring on and after such date.

425 (2) Upon liquid nicotine in open systems at the rate of 10 percent of the wholesale price beginning
426 July 1, 2024, for taxable sales or purchases occurring on and after such date.

427 b. For any transaction involving liquid nicotine between a distributor and a retail dealer, both the
428 distributor and the retail dealer shall maintain and retain records of any invoice or sales receipt that shall
429 include itemized lists of the types of products included in such transaction, the tax due on each product
430 pursuant to this subsection, and the total amount of taxes paid. In every instance, a distributor shall be
431 responsible for paying the tax on liquid nicotine pursuant to this subdivision 4 at the time of sale to a retail
432 dealer. Such taxes shall apply only to liquid nicotine and not to any batteries, filters, or other mechanical
433 or aesthetic components of liquid nicotine in a closed system or an open system.

434 Such tax shall be imposed at the time the remote retail seller located within or outside the
435 Commonwealth makes a remote retail sale to a consumer within the Commonwealth. It is the intent and
436 purpose of this subdivision that the remote retail seller be liable for the tax. It is further the intent and
437 purpose of this article to impose the tax once, and only once on all tobacco products, including cigars and
438 pipe tobacco sold in the Commonwealth.

439 ~~Such~~ Except as otherwise provided, such tax shall be imposed on tobacco products (i) at the time
440 of retail sale by a retail dealer or distributor; (ii) at the time the distributor makes, manufactures, or
441 fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) at the time the
442 distributor ships or transports tobacco products to retailers in the Commonwealth to be sold by those
443 retailers. It is the intent and purpose of this article that the distributor who first possesses the tobacco
444 product subject to this tax in the Commonwealth shall be the distributor liable for the tax. It is further the
445 intent and purpose of this article to impose the tax once, and only once on all tobacco products for sale in
446 the Commonwealth.

447 B. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing
448 power of the Commonwealth under the Commerce Clause of the United States Constitution.

449 C. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith
450 reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall
451 not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination
452 that such weight information was incorrect.

453 **§ 58.1-1021.04:1. Distributor's or remote retail seller's license; liquid nicotine and nicotine**
454 **vapor products license; penalties.**

455 A. 1. No person shall engage in the business of selling or dealing in tobacco products as a
456 distributor in the Commonwealth without first having received a separate license from the Department for
457 each location or place of business. Each application for a distributor's license shall be accompanied by a
458 fee to be prescribed by the Department. Every application for such license shall be made on a form
459 prescribed by the Department and the following information shall be provided on the application:

460 ~~1-a.~~ The name and address of the applicant. If the applicant is a firm, partnership, or association,
461 the name and address of each of its members shall be provided. If the applicant is a corporation, the name
462 and address of each of its principal officers shall be provided;

463 ~~2-b.~~ The address of the applicant's principal place of business;

464 ~~3-c.~~ The place or places where the business to be licensed is to be conducted; and

465 ~~4-d.~~ Such other information as the Department may require for the purpose of the administration
466 of this article.

467 ~~B-2.~~ A person outside the Commonwealth who ships or transports tobacco products to retailers in
468 the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be
469 granted such a license by the Department, and thereafter be subject to all the provisions of this article.
470 Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed
471 distributor and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et seq.),
472 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 14 (§ 13.1-1200 et seq.) of Title 13.1 or Chapter 2.1
473 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, shall be deemed to have appointed the Clerk of
474 the State Corporation Commission as the person's agent for the purpose of service of process relating to
475 any matter or issue involving the person and arising under the provisions of this article.

476 The Department shall conduct a background investigation, to include a Virginia ~~Criminal History~~
477 ~~Records~~ criminal history records search, and fingerprints of the applicant, or the responsible principals,
478 managers, and other persons engaged in handling tobacco products at the licensable locations, that shall
479 be submitted to the Federal Bureau of Investigation if the Department deems a ~~National Criminal Records~~
480 national criminal records search necessary, on applicants for licensure as tobacco products distributors.
481 The Department may refuse to issue a distributor's license or may suspend, revoke, or refuse to renew a
482 distributor's license issued to any person, partnership, corporation, limited liability company, or business
483 trust, if it determines that the principals, managers, and other persons engaged in handling tobacco
484 products at the licensable location of the applicant have been (i) found guilty of any fraud or
485 misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny,
486 embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii)
487 convicted of a felony. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material
488 fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any
489 application for a distributor's license to the Department, ~~shall be~~ is guilty of a Class 1 misdemeanor. The
490 Department may establish an application or renewal fee not to exceed \$750 to be retained by the
491 Department to be applied to the administrative and other costs of processing distributor's license
492 applications, conducting background investigations, and issuing distributor's licenses. Any amount
493 collected pursuant to this section in excess of such costs as of June 30 in ~~even-numbered~~ even-numbered
494 years shall be reported to the State Treasurer and deposited into the state treasury.

495 ~~€-3.~~ No person inside or outside the Commonwealth shall make a remote retail sale of cigars or
496 pipe tobacco to consumers in the Commonwealth without (i) completing an application for and being
497 granted a license as a remote retail seller; (ii) determining whether economic nexus activity thresholds
498 have been met to register for a dealer's certificate under § 58.1-613; (iii) if economic nexus thresholds are
499 met, collecting and remitting the excise tax pursuant to subsection A of § 58.1-1021.02; (iv) providing for
500 age verification through an independent, third-party age verification service that compares information
501 available from a commercially available database, or aggregate of databases, that is regularly used by
502 government agencies and businesses for the purpose of age and identity verification to the personal

503 information entered by the individual during the ordering process that establishes that the individual is of
504 age; and (v) if economic nexus thresholds are met, and excise tax is being remitted using the actual cost
505 list method to calculate the excise tax, providing the remote retail seller's certified actual cost list to the
506 Department for each SKU to be offered for remote retail sale in the subsequent calendar year. The actual
507 cost list shall be updated quarterly as new SKUs are added to a remote retail seller's inventory. New SKUs
508 will be added using the actual cost first paid for the SKU.

509 ~~D.~~B. Upon receipt of an application in proper form and payment of the required license fee, the
510 Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall
511 permit the licensee to engage in business as a distributor at the place of business shown on the license.
512 Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license.
513 No license shall be transferable to any other person. Distributor's licenses issued pursuant to this section
514 shall be valid for a period of three years from the date of issue unless revoked by the Department in the
515 manner provided herein. The Department may at any time revoke the license issued to any distributor who
516 is found guilty of violating or noncompliance with any of the provisions of this chapter, or any of the rules
517 of the Department adopted and promulgated under authority of this chapter. The Department shall suspend
518 or revoke the license issued to any distributor who is found guilty of a second or subsequent violation of
519 subsection A or B of § 18.2-371.2.

520 C. 1. No person shall engage in the business of selling or dealing liquid nicotine or nicotine vapor
521 products or who ships or transports liquid nicotine or nicotine vapor products to retailers in the
522 Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or retail dealer in the
523 Commonwealth without first having received a separate license from the Department for each location or
524 place of business. Each application for a manufacturer's, distributor's, or retail dealer's liquid nicotine and
525 nicotine vapor products license shall be accompanied by a fee to be prescribed by the Department. Any
526 retail dealer who holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped
527 Cigarettes Purchased for Resale or an Other Tobacco Products (OTP) Distributor's License issued by the
528 Department shall not be required to obtain a license under this subsection. Every application for such

529 liquid nicotine and nicotine vapor products license shall be made on a form prescribed by the Department
530 and the following information shall be provided on the application:

531 a. The name and address of the applicant. If the applicant is a firm, partnership, or association, the
532 name and address of each of its members shall be provided. If the applicant is a corporation, the name and
533 address of each of its principal officers shall be provided;

534 b. The address of the applicant's principal place of business;

535 c. The place or places where the business to be licensed is to be conducted; and

536 d. Such other information as the Department may require for the purpose of the administration of
537 this article.

538 2. The Department shall conduct a background investigation, to include a Virginia criminal history
539 records search of the applicant, or the responsible principals and managers of liquid nicotine and nicotine
540 vapor products at the licensable locations that shall be submitted to the Federal Bureau of Investigation if
541 the Department deems a national criminal records search necessary, on applicants for licensure as a liquid
542 nicotine and nicotine vapor products manufacturer, distributor, or retailer, as applicable. The Department
543 may refuse to issue a license or may suspend, revoke, or refuse to renew a license issued to any person,
544 partnership, corporation, limited liability company, or business trust if it determines that the principals,
545 and managers at the licensable location of the applicant have been (i) found guilty of any fraud or
546 misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny,
547 embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, tax evasion, or racketeering; or
548 (iii) convicted of a felony within the last five years. Anyone who knowingly and willfully falsifies,
549 conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent
550 statement or representation in any application for a license to the Department is guilty of a Class 1
551 misdemeanor. The Department may establish an application or renewal fee to be retained by the
552 Department to be applied to the administrative and other costs of processing license applications,
553 conducting background investigations, and issuing licenses. Any amount collected pursuant to this section
554 in excess of such costs as of June 30 in even-numbered years shall be reported to the State Treasurer and
555 deposited into the state treasury.

556 3. Upon receipt of an application in proper form and payment of the required license fee, the
557 Department shall, unless otherwise provided by this article, issue to the applicant a liquid nicotine and
558 nicotine vapor products license, which shall permit the licensee to engage in business as a manufacturer,
559 distributor, or retail dealer at the place of business shown on the license. Each license, or a copy thereof,
560 shall be prominently displayed on the premises covered by the license. No license shall be transferable to
561 any other person, partnership, corporation, limited liability company, or business trust; however, the
562 Department may grant a temporary license to any applicant that has purchased the business of any
563 manufacturer, distributor, or retail dealer licensed pursuant to this section while such applicant's
564 application for licensure is pending. Licenses, other than temporary licenses, issued pursuant to this
565 section shall be valid for two years from the date of issue unless revoked by the Department in the manner
566 provided in this section. The Department may at any time suspend or revoke the approved license, permit,
567 or registration issued in accordance with subsection C of § 58.1-1021.04:1 to any person who is found
568 guilty of violating or noncompliance with any of the provisions of this chapter or any of the rules of the
569 Department adopted and promulgated under authority of this chapter. Any person authorized to sell liquid
570 nicotine or nicotine vapor products pursuant to subsection C of § 58.1-1021.04:1 shall, as a condition of
571 renewing or extending an approved license, permit, or registration, be required to submit to the Department
572 an accurate record of any taxes paid on liquid nicotine pursuant to § 58.1-1021.02.

573 4. No person shall make a sale of liquid nicotine or nicotine vapor products (i) to any person who
574 has not attained the legal age for purchasing liquid nicotine or nicotine vapor products and (ii) without a
575 valid liquid nicotine and nicotine vapor products license issued pursuant to this subsection. Any person
576 who is found guilty of violating or noncompliance with this subdivision shall be subject to the following
577 penalties:

578 a. For the first violation in a 36-month period, a penalty of no less than \$1,000;

579 b. For a second violation in a 36-month period, a penalty of no less than \$5,000 and a 30-day
580 suspension of the liquid nicotine and nicotine vapor products license; and

581 c. For a third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the
582 liquid nicotine and nicotine vapor products license, and ineligibility to possess a liquid nicotine and
583 nicotine vapor products license for a period of three years from the date of the most recent violation.

584 5. No person inside or outside the Commonwealth shall make a retail sale of liquid nicotine and
585 nicotine vapor products without providing for age verification through an independent age verification
586 service that compares information available from a commercially available database, or aggregate of
587 databases, that is regularly used by government agencies and businesses for the purpose of age and identity
588 verification to the personal information entered by the individual during the ordering process that
589 establishes that the individual is of age.

590 6. For any transaction between a distributor and a retail dealer involving liquid nicotine or nicotine
591 vapor products, both the distributor and the retail dealer shall maintain and retain records of any invoice
592 or sales receipt involved that shall include itemized lists of the types of products included in such
593 transaction, the tax due on each product pursuant to subsection B of § 58.1-1021.02, and the total amount
594 of taxes paid. Such records shall be produced and provided to the Department as necessary for auditing,
595 compliance, and enforcement purposes.

596 E-D. The Department shall compile and maintain a current list of licensed distributors and remote
597 retail sellers of tobacco products and of manufacturers, distributors, and retail dealers of liquid nicotine
598 and nicotine vapor products. The list shall be updated on a monthly basis, and published on the
599 Department's ~~official Internet~~ website, available to any interested party.

600 **§ 58.1-1021.04:5. Tax Commissioner to establish guidelines and rules.**

601 The Tax Commissioner shall establish guidelines and rules, including ~~record keeping~~
602 recordkeeping requirements, for implementation of the tax on tobacco products under ~~Article 2.1 (§ 58.1-~~
603 ~~1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia~~ this article. The establishment of the
604 guidelines and rules by the Tax Commissioner shall be exempt from the provisions of the Administrative
605 Process Act (§ 2.2-4000 et seq.).

606 **§ 58.1-1021.06. Delivery sales of liquid nicotine and nicotine vapor products.**

607 A. A retail dealer shall not make a delivery sale of liquid nicotine or nicotine vapor products
608 without a license issued pursuant to § 58.1-1021.04:1. Such delivery sales and any shipment shall be made
609 only to a legal consumer.

610 B. A retail dealer may not ship for delivery sale any liquid nicotine or nicotine vapor products
611 without first making a good faith effort to verify the age of the purchaser of the liquid nicotine or nicotine
612 vapor products through an independent age verification software, service, or technology that compares
613 information available from public records to the personal information entered by the purchaser during the
614 ordering process that establishes the purchaser is of legal age or older.

615 C. Prior to shipment of liquid nicotine or nicotine vapor products for a delivery sale, a retail dealer
616 shall be fully paid for the purchase and shall accept payment from the consumer by a check drawn on an
617 account in the consumer's name, by a credit card issued in the consumer's name, or by a debit card issued
618 in the consumer's name. A retail dealer taking a delivery sale may request the electronic mail address of
619 the consumer as a condition of completing such delivery sale.

620 **§ 58.1-1021.07. Retail sales of liquid nicotine and nicotine vapor products; identification and**
621 **use by minors.**

622 Before a retail dealer may sell liquid nicotine or nicotine vapor products to any consumer, the
623 person selling, offering for sale, giving, or furnishing the liquid nicotine or nicotine vapor product shall
624 verify that the consumer is of legal age by:

625 1. For any retail sale by a retail dealer, examining from any person who appears to be under 30
626 years of age a government-issued photographic identification that establishes the person is of legal age
627 and verifying the identification presented using identification fraud detection software, technology, or
628 scanner that confirms the authenticity of such identification; or

629 2. For any delivery sale by a retail dealer to a consumer in the Commonwealth, performing an age
630 verification through an independent, third-party age verification software, service, or technology that
631 compares information available from public records to the personal information entered by the purchaser
632 during the ordering process that establishes the purchaser is of legal age or older.

633 **§ 58.1-1021.08. General requirements for liquid nicotine and nicotine vapor products sales**
634 **and resale.**

635 A. A retail dealer shall procure liquid nicotine and nicotine vapor products only from distributors
636 duly permitted to operate in the Commonwealth pursuant to this article.

637 B. A retail dealer shall sell liquid nicotine and nicotine vapor products only to consumers and is
638 prohibited from selling to manufacturers, distributors, other retailer dealers, and any other commercial
639 entities.

640 C. A retail dealer shall not sell more than two nicotine vapor products and five bottles or packages
641 of liquid nicotine in any one transaction to a consumer.

642 D. In every instance, a distributor shall be responsible for paying the tax on liquid nicotine pursuant
643 to § 58.1-1021.02 at the time of sale to a retail dealer.

644 E. A manufacturer may use as an ingredient in liquid nicotine and a distributor or retail dealer may
645 sell liquid nicotine containing a flavoring or food grade additive or synthetic flavoring substance that is
646 used to add flavor and that is not prohibited by the federal Food and Drug Administration as an additive
647 in nicotine vapor products.

648 **§ 58.1-1021.09. Safety requirements for liquid nicotine and nicotine vapor products.**

649 A. 1. Any retail dealer shall comply with the following requirements:

650 a. Any liquid nicotine container shall use a child-resistant cap that has the child-resistant
651 effectiveness set forth in the poison prevention packaging standards under 16 C.F.R. § 1700.15(b)(1);

652 b. Any liquid nicotine container shall use a tamper-evident package feature that is designed to
653 remain intact and that does remain intact when handled in a reasonable manner during the manufacture,
654 distribution, and retail display of such liquid nicotine or nicotine vapor product container; and

655 c. Any label on a liquid nicotine container shall meet the nicotine addictiveness warning statement
656 requirements under 21 C.F.R. § 1143.3.

657 2. Any retail dealer selling liquid nicotine or nicotine vapor products shall also be required to
658 display signage clearly indicating "unaccompanied minors are not allowed on the premises," "products

659 are not for sale to minors," or "underage sales prohibited" and to display vapor products behind a counter
660 or in an enclosed display that is inaccessible without the assistance of a sales representative of the retailer.

661 B. No person may sell, offer for sale, or otherwise distribute any liquid nicotine or nicotine vapor
662 product with labeling or packaging that is not in compliance with 21 C.F.R. § 1143.3 or that:

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

665 2. Depicts images or references to video games, movies, videos, celebrity endorsements, or
666 animated television shows known to appeal to minors;

667 3. Depicts the actual consumption of liquid nicotine or nicotine vapor products or a minor using
668 liquid nicotine or nicotine vapor products;

669 4. Makes any health, medicinal, or therapeutic claims about liquid nicotine or nicotine vapor
670 products; or

671 5. Otherwise promotes overconsumption of liquid nicotine or nicotine vapor products.

672 C. Any person shall advertise or market any liquid nicotine or nicotine vapor products only where
673 consistent with the following requirements:

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

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

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

685 4. No advertising or marketing may contain any health-related statement that is untrue in any
686 particular manner or tends to create a misleading impression as to the health benefits of consumption of
687 liquid nicotine or nicotine vapor products.

688 CHAPTER 23.2.

689 RETAIL TOBACCO PRODUCTS AND NICOTINE VAPOR PRODUCTS CONTAINING LIQUID
690 NICOTINE.

691 **§ 59.1-293.10. Definitions.**

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

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

696 "Department" means the Department of Taxation.

697 "Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that
698 is sold, marketed, or intended for use in a nicotine vapor product the same as that term is defined in §
699 58.1-1021.01.

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

703 "Nicotine vapor product" ~~has~~ means the same ~~meaning~~ as that term is defined in ~~§ 18.2-371.2~~ § 58.1-
704 1021.01 and includes liquid nicotine containers.

705 "Retail dealer" means the same as that term is defined in § 58.1-1021.01

706 "Retail tobacco product" means the same as that term is defined in § 58.1-1021.01.

707 "Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust,
708 association, organization, or corporation that owns, operates, or manages any tobacco retail establishment.

709 "Tobacco retailer" does not include nonmanagement employees of a tobacco retail establishment.

710 "Tobacco retail establishment" means any place of business where retail tobacco products are
711 available for sale to the general public, including any grocery store, retail tobacco product shop, kiosk,

712 convenience store, gasoline service station, bar, or restaurant where retail tobacco products are available
713 for sale to the general public.

714 **§ 59.1-293.11. Sale or distribution of liquid nicotine container; prohibition; penalty.**

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

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

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

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

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

735 F. The provisions of this section with respect to retail sales, retail establishments, and offers for
736 retail sales shall only apply to retail sales or offers at retail of liquid nicotine containers before July 1,
737 2024.

738 **§ 59.1-293.12. Restrictions on the sale of retail tobacco products to minors; penalties.**

739 A. A retail dealer shall comply with the provisions of this section, §§ 18.2-246.8, 18.2-246.10,
740 18.2-371.2, and 59.1-293.13, and any other federal, state, or local law related to the sale of retail tobacco
741 products. If the Department determines that a retail dealer has violated any such provision of law, the
742 Department may suspend or revoke such retail dealer's Retail Sales and Use Tax Exemption Certificate
743 for Stamped Cigarettes Purchased for Resale or Other Tobacco Products (OTP) Distributor's License.

744 B. 1. For each retail dealer, the Department shall conduct an unannounced investigation at least
745 once every 24 months to verify that the retail dealer is not selling retail tobacco products to persons under
746 21 years of age. If the Department determines that the retail dealer has violated any provision of this
747 section, § 18.2-246.8, 18.2-246.10, 18.2-371.2, or 59.1-293.13, or any other federal, state, or local law
748 related to the sale of retail tobacco products, it shall conduct an unannounced investigation of the retail
749 dealer within six months of such violation.

750 2. If the Department determines that a retail dealer, or a retail dealer's agent or employee, sold a
751 retail tobacco product to a person under 21 years of age or violated subsection A or B of § 18.2-371.2, the
752 Department shall impose and the retail holder shall be subject to:

753 a. For the first violation in a 36-month period, a penalty of no less than \$1,000;

754 b. For a second violation in a 36-month period, a penalty of no less than \$5,000 and a 30-day
755 suspension of the retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes
756 Purchased for Resale or OTP Distributor's License; and

757 c. For a third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the
758 retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for
759 Resale or OTP Distributor's License, and ineligibility to possess any such certificate or license for a period
760 of three years from the date of the most recent violation.

761 3. Any civil penalties assessed pursuant to this section shall be paid into the Tobacco Retail Permit
762 Fund, established pursuant to § 59.1-293.14.

763 C. The Department shall collaborate with the Virginia Alcoholic Beverage Control Authority and
764 local law enforcement to the extent possible to enforce the provisions of this section and § 4.1-103.01.

765 **§ 59.1-293.13. Required education for retail dealers and employees.**

766 Any retail dealer shall be required to attest that it has conducted education and training for its
767 employees related to:

768 1. The provisions of § 59.1-293.12;

769 2. The prohibitions on the sale of retail tobacco products to persons under age 21 and other
770 restrictions prescribed by §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2;

771 3. Forms of identification that are acceptable as proof of age; and

772 4. The legal penalties that may be incurred for violation of the provisions of law identified in
773 subdivisions 1 and 2.

774 **§ 59.1-293.14. Tobacco Retail Permit Fund.**

775 There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco
776 Retail Permit Fund, referred to in this section as "the Fund." The Fund shall be established on the books
777 of the Comptroller. All revenues accruing to the Fund pursuant to this article, all funds appropriated for
778 such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be
779 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain
780 in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end
781 of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund
782 shall be used solely for the purposes of funding the Department of Taxation's direct and indirect costs of
783 the license administration and enforcement program administered pursuant to Article 2.1 (§ 58.1-1021.01
784 et seq.) of Chapter 10 of Title 58.1 and the administrative costs of education and training, retail
785 inspections, and unannounced compliance checks in accordance with the provisions of §§ 59.1-293.12
786 and 59.1-293.13. Expenditures and disbursements from the Fund shall be made by the State Treasurer on
787 warrants issued by the Comptroller upon written request signed by the Tax Commissioner.

788 **2. That the Department of Taxation shall develop guidelines implementing the provisions of this act.**
789 **Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000**
790 **et seq. of the Code of Virginia).**

791 **3. That the Department of Taxation shall develop or revise the forms and applications necessary to**
792 **implement the provisions of this act.**

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