

SENATE BILL NO. 550

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Senator Deeds)

A BILL to amend and reenact §§ 59.1-200 and 59.1-293.10 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 23.2 of Title 59.1 sections numbered 59.1-293.12 through 59.1-293.19, relating to liquid nicotine and nicotine vapor products; certification and directory; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-200 and 59.1-293.10 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 sections numbered 59.1-293.12 through 59.1-293.19 as follows:

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

- 1. Misrepresenting goods or services as those of another;
- 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
- 4. Misrepresenting geographic origin in connection with goods or services;
- 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

26 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
27 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"
28 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
29 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
30 imperfects or "not first class";

31 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
32 at the price or upon the terms advertised.

33 In any action brought under this subdivision, the refusal by any person, or any employee, agent,
34 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
35 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall
36 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods
37 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount
38 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer
39 did in fact have or reasonably expected to have at least such quantity or amount for sale;

40 9. Making false or misleading statements of fact concerning the reasons for, existence of, or
41 amounts of price reductions;

42 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or
43 parts installed;

44 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
45 or bill for merchandise or services previously ordered;

46 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
47 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's
48 business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the
49 goods or services advertised or offered for sale;

50 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
51 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,

52 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or
53 under federal statutes or regulations;

54 13a. Failing to provide to a consumer, or failing to use or include in any written document or
55 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
56 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
57 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
58 with the consumer transaction;

59 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in
60 connection with a consumer transaction;

61 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
62 3.2-6516, or 3.2-6519 is a violation of this chapter;

63 16. Failing to disclose all conditions, charges, or fees relating to:

64 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
65 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
66 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
67 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
68 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
69 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for
70 the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the
71 case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund
72 may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not
73 apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for
74 clearance; nor does this subdivision apply to special order purchases where the purchaser has requested
75 the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the
76 store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or
77 lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

78 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the
79 time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
80 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of
81 sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the
82 agreement;

83 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
84 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
85 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
86 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
87 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
88 required;

89 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
90 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
91 agreement;

92 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

93 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1
94 et seq.);

95 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1
96 et seq.);

97 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
98 207.17 et seq.);

99 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

100 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
101 424 et seq.);

102 24. Violating any provision of § 54.1-1505;

103 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
104 Chapter 17.6 (§ 59.1-207.34 et seq.);

- 105 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 106 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 107 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 108 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
- 109 seq.);
- 110 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
- 111 et seq.);
- 112 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 113 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 114 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 115 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 116 35. Using the consumer's social security number as the consumer's account number with the
- 117 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
- 118 with the consumer's social security number;
- 119 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 120 37. Violating any provision of § 8.01-40.2;
- 121 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 122 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 123 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 124 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
- 125 59.1-525 et seq.);
- 126 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 127 43. Violating any provision of § 59.1-443.2;
- 128 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 129 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 130 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 131 47. Violating any provision of § 18.2-239;

- 132 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 133 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
- 134 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 135 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
- 136 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
- 137 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
- 138 products that are used, secondhand or "seconds";
- 139 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 140 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 141 52. Violating any provision of § 8.2-317.1;
- 142 53. Violating subsection A of § 9.1-149.1;
- 143 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
- 144 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
- 145 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
- 146 which defective drywall has been permanently installed or affixed;
- 147 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
- 148 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-
- 149 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
- 150 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
- 151 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 152 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 153 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 154 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 155 59. Violating any provision of subsection E of § 32.1-126;
- 156 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession
- 157 licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 158 61. Violating any provision of § 2.2-2001.5;

- 159 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
- 160 63. Violating any provision of § 6.2-312;
- 161 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- 162 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 163 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 164 67. Knowingly violating any provision of § 8.01-27.5;
- 165 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option
- 166 to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30
- 167 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period
- 168 to avoid an obligation to pay for the goods or services;
- 169 69. Selling or offering for sale any substance intended for human consumption, orally or by
- 170 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
- 171 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
- 172 to turn a compound into a different compound by adding or subtracting molecules to or from the original
- 173 compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S.
- 174 Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be
- 175 construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 176 70. Selling or offering for sale to a person younger than 21 years of age any substance intended
- 177 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
- 178 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
- 179 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
- 180 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 181 71. Selling or offering for sale any substance intended for human consumption, orally or by
- 182 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
- 183 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
- 184 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
- 185 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such

186 substance that constitutes a single serving, and (d) the total percentage and milligrams of
187 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
188 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
189 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
190 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
191 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
192 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
193 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
194 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

195 72. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as
196 defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
197 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;

198 73. Selling or offering for sale any substance intended for human consumption, orally or by
199 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a container
200 or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined
201 in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a
202 manufacturer, processor, packer, or distributor of a product intended for human consumption other than
203 the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or
204 distribute such substance;

205 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not
206 include a label stating that the product is not intended for human consumption. This subdivision shall not
207 (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
208 scheduled in the Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct permitted
209 under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were
210 manufactured prior to July 1, 2023, provided that the person provides documentation of the date of
211 manufacture if requested;

212 75. Violating any provision of § 59.1-466.8;

213 76. Violating subsection F of § 36-96.3:1;

214 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
215 (ii) any kratom product that does not include a label listing all ingredients and with the following guidance:
216 "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to
217 diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the
218 leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

219 78. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45,
220 to a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale
221 of any such good or provision of any such continuous service; and

222 79. Any violation of the provisions of Chapter 23.2 (§ 59.1-293.10 et seq.).

223 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
224 lease solely by reason of the failure of such contract or lease to comply with any other law of the
225 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
226 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
227 contract or lease.

228 **§ 59.1-293.10. Definitions.**

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

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

233 "Liquid nicotine" ~~means a liquid or other substance containing nicotine in any concentration that~~
234 ~~is sold, marketed, or intended for use in a nicotine vapor product~~ has the same meaning as provided in §
235 58.1-1021.01.

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

239 "Nicotine vapor product" has the same meaning as provided in § 18.2-371.2 § 58.1-1021.01.

240 **§ 59.1-293.12. Liquid nicotine and nicotine vapor product; directory.**

241 The Attorney General shall establish and maintain a directory that lists all liquid nicotine or
242 nicotine vapor product manufacturers and liquid nicotine and nicotine vapor products for which current
243 and accurate certification forms have been submitted in accordance with the provisions of § 59.1-293.13.
244 The Attorney General shall make the directory available for public inspection on its website. The Attorney
245 General shall update the directory as necessary. The Attorney General shall adopt rules as necessary and
246 appropriate for the implementation and enforcement of this chapter.

247 **§ 59.1-293.13. Liquid nicotine and nicotine vapor product; certification; penalty.**

248 A. By December 31, 2024, and annually thereafter, every manufacturer of liquid nicotine or
249 nicotine vapor products that are sold in the Commonwealth, whether directly or through a wholesaler,
250 distributor, retailer, or similar intermediary, shall certify in a form and manner as prescribed by the
251 Attorney General that the manufacturer agrees to comply with the provisions of this chapter and that:

252 1. The manufacturer has received a marketing authorization or similar order for the liquid nicotine
253 or nicotine vapor product from the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j; or

254 2. The liquid nicotine or nicotine vapor product was marketed in the United States as of August 8,
255 2016, or the manufacturer submitted a premarket tobacco product application for the liquid nicotine or
256 nicotine vapor product to the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j on or
257 before September 9, 2020, and the application either remains under review by the U.S. Food and Drug
258 Administration or a final decision on the application has not otherwise taken effect.

259 B. A manufacturer of liquid nicotine or nicotine vapor products shall submit a certification form
260 for each liquid nicotine and nicotine vapor product that such manufacturer sells in the Commonwealth.

261 C. Each certification form shall be accompanied by:

262 1. A copy of the marketing authorization or other order for each liquid nicotine or nicotine vapor
263 product issued by the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j, or evidence that
264 the premarket tobacco product application for the liquid nicotine or nicotine vapor product was submitted
265 to the U.S. Food and Drug Administration and a final authorization or order has not yet taken effect; and

266 2. A fee of \$2,000 for each liquid nicotine and nicotine vapor product for the first time a
267 manufacturer submits a certification form and a \$500 fee annually for each liquid nicotine and nicotine
268 vapor product thereafter. For the purposes of this subdivision, each individual stock keeping unit is
269 considered a separate product.

270 D. A manufacturer required to submit a certification pursuant to this section shall notify the
271 Attorney General within 30 days of any material change to the certification form, including the issuance
272 or denial of a marketing authorization or other order or action by the U.S. Food and Drug Administration
273 pursuant to 21 U.S.C. § 387j, or any other order or action by the U.S. Food and Drug Administration that
274 affects the ability of the liquid nicotine or nicotine vapor product to be introduced or delivered into
275 interstate commerce for commercial distribution in the United States.

276 E. Any manufacturer that falsely represents any of the information required by this section is guilty
277 of a Class 3 misdemeanor for each false representation. Venue for prosecution of a violation of this
278 subsection shall be proper in the Circuit Court for the City of Richmond.

279 **§ 59.1-293.14. Removal or exclusion from directory.**

280 A. The Attorney General shall, in accordance with the provisions of this section, remove or exclude
281 from the directory any liquid nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine
282 vapor product that the Attorney General determines is not in compliance with the provisions of this
283 chapter.

284 B. If the Attorney General determines to remove or exclude a liquid nicotine or nicotine vapor
285 product manufacturer or a liquid nicotine or nicotine vapor product from the directory, the Attorney
286 General shall notify by electronic or other practicable means the manufacturer's registered agent in the
287 Commonwealth of such determination. The liquid nicotine or nicotine vapor product manufacturer shall
288 have 10 business days from receipt of such notice to establish that the liquid nicotine or nicotine vapor
289 product manufacturer or liquid nicotine or nicotine vapor product meets the requirements to be included
290 in the directory. If the liquid nicotine or nicotine vapor product manufacturer fails to establish compliance
291 within the 10-business-day period, the Attorney General shall remove or exclude from the directory the
292 liquid nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine vapor product.

293 C. Any determination by the Attorney General to remove or exclude from the directory a
294 manufacturer or a product shall be subject to review by the filing of a civil action for prospective
295 declaratory or injunctive relief in the Circuit Court for the City of Richmond.

296 D. If a liquid nicotine or nicotine vapor product is removed from the directory:

297 1. Such product shall not be sold in the Commonwealth and each retailer, distributor, and
298 wholesaler shall have 21 days to remove the product from its inventory.

299 2. Each manufacturer, wholesaler, or retail dealer selling the product shall notify each purchaser
300 of the product that it has been removed from the directory at the time of delivery of such product. Unless
301 otherwise provided by contract or purchase agreement, the manufacture, wholesaler, or retail dealer shall
302 provide the purchaser a refund of the purchase price of the removed product. If a manufacturer, wholesaler,
303 or retail dealer fails to provide such refund, the purchaser may bring an action against the manufacturer,
304 wholesaler, or retail dealer in a court of competent jurisdiction to recover the purchase price and
305 reasonable attorney fees and costs.

306 **§ 59.1-293.15. Agent for service of process.**

307 A. Any nonresident manufacturer of liquid nicotine or nicotine vapor products that has not
308 registered to do business in the Commonwealth as a foreign corporation or business entity shall, as a
309 condition precedent to being included in the directory established by the Attorney General pursuant to §
310 59.1-293.12, appoint and continually engage without interruption the services of an agent in the
311 Commonwealth to act as agent for the service of process in any action or proceeding against such
312 nonresident manufacturer concerning or arising out of the enforcement of this section, and such
313 nonresident manufacturer may be served in any manner authorized by law. Such service shall constitute
314 legal and valid service of process on the nonresident manufacturer. The manufacturer shall provide the
315 name, address, telephone number, and proof of the appointment and availability of such agent to the
316 Attorney General.

317 B. The manufacturer shall provide notice to the Attorney General 30 calendar days prior to
318 termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney
319 General of the appointment of a new agent no less than five calendar days prior to the termination of an

320 existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer
321 shall notify the Attorney General of the termination within five calendar days and shall include proof to
322 the satisfaction of the Attorney General of the appointment of a new agent.

323 C. Any manufacturer whose liquid nicotine or nicotine vapor products are sold in the
324 Commonwealth who has not appointed and engaged the services of an agent as required by this section
325 shall be deemed to have appointed the Secretary of the Commonwealth as its agent for service of process.
326 The appointment of the Secretary of the Commonwealth as agent shall not satisfy the condition precedent
327 required in subsection A to be included in the directory.

328 **§ 59.1-293.16. Recordkeeping; audits, inspections, and investigations; penalties.**

329 A. Any person that receives, stores, sells, handles, or transports liquid nicotine or nicotine vapor
330 products shall preserve all invoices, books, papers, canceled checks, or other documents relating to the
331 purchase, sale, exchange, receipt, or transportation of all liquid nicotine or nicotine vapor products for a
332 period of three years. All such invoices, books, papers, canceled checks, or other documents shall be
333 subject to audit or inspection at any time by any duly authorized representative of the Attorney General.

334 B. Any person who violates the provisions of subsection A is guilty of a Class 2 misdemeanor.

335 C. The Department of Taxation shall impose a penalty of \$1,000 for each day that a person fails
336 or refuses to allow or cooperate with an audit, inspection, or investigation of such records. Such penalty
337 shall be collected as other taxes are collected. Upon a person's refusal to cooperate with an audit,
338 inspection, or investigation, the Attorney General may apply to the Circuit Court for the City of Richmond
339 for injunctive relief.

340 D. The Department of Taxation, the Department of Agriculture and Consumer Services, the
341 Attorney General, any other law-enforcement agency of the Commonwealth, or any federal law-
342 enforcement agency conducting a criminal investigation involving the trafficking of liquid nicotine or
343 nicotine vapor products may access at any time the records required to be preserved by this section. Copies
344 of such records shall be provided to such officials or agencies upon request. Any court, investigatory grand
345 jury, or special grand jury that has been impaneled in accordance with the provisions of Chapter 13 (§
346 19.2-191 et seq.) of Title 19.2 may access such records if relevant to any proceedings therein. Such records

347 shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).
348 Investigators of the Attorney General may accompany and participate with other law-enforcement
349 officials engaging in enforcement action relating to such trafficking.

350 **§ 59.1-293.17. Sale or distribution prohibited.**

351 A. Beginning December 31, 2024, no person shall sell, distribute or import for resale, or offer for
352 sale a liquid nicotine or nicotine vapor product in the Commonwealth unless such liquid nicotine or
353 nicotine vapor product is included in the directory established by the Attorney General pursuant to § 59.1-
354 293.12.

355 B. Beginning December 31, 2024, no liquid nicotine or nicotine vapor product manufacturer shall
356 sell, either directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries,
357 a liquid nicotine or nicotine vapor product in the Commonwealth unless such liquid nicotine or nicotine
358 vapor product is included in the directory established by the Attorney General pursuant to § 59.1-293.12.

359 C. Any person that violates the provisions of subsection A is subject to a fine of \$1,000 per day
360 for each product offered for sale in violation until the offending product is removed from the market or
361 until the offending product is properly listed on the directory.

362 D. A liquid nicotine or nicotine vapor product manufacturer that violates the provisions of
363 subsection B is subject to a fine of \$1,000 per day for each product offered for sale in violation until the
364 offending product is removed from the market or until the offending product is properly listed on the
365 directory.

366 E. The Department of Agriculture and Consumer Services shall be responsible for investigations
367 for violations of this article under the direction and guidance from the Office of the Attorney General.

368 F. In an action brought under this section, the Attorney General may recover reasonable costs of
369 investigation on behalf of the agency, the costs of the action, and attorney fees.

370 G. All fees and penalties collected by the Attorney General pursuant to this section shall be used
371 for the administration and enforcement of this chapter.

372 **§ 59.1-293.18. Enforcement; inspection.**

373 A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney
374 for the Commonwealth, or the attorney for any county, city, or town may cause an action to be brought in
375 the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin
376 any violation of this chapter. The circuit court having jurisdiction may enjoin such violations
377 notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not
378 be necessary that damages be proved.

379 B. The circuit courts are authorized to (i) issue temporary or permanent injunctions to restrain and
380 prevent violations of this chapter and (ii) order forfeiture on any property seized for a violation of this
381 chapter.

382 C. Whenever the Attorney General has reasonable cause to believe that any person has engaged
383 in, is engaging in, or is about to engage in, any violation of this chapter, the Attorney General is
384 empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis
385 mutandis to civil investigative demands issued pursuant to this section.

386 D. Each violation of this chapter shall constitute a separate violation and shall be subject to any
387 penalties imposed under this chapter.

388 E. Any retailer or wholesaler that sells or distributes any liquid nicotine or nicotine vapor product
389 in the Commonwealth shall be subject to scheduled or unscheduled compliance checks for the purposes
390 of enforcing the provisions of this chapter. The Department of Agriculture and Consumer Services shall
391 be authorized to perform such compliance checks at each retail facility where liquid nicotine or nicotine
392 vapor products are sold. Such compliance checks shall be conducted at any time during ordinary business
393 hours and may involve inspection of the premises and all desks, safes, vaults, and other fixtures and
394 furniture contained in or upon the premises for the purpose of ascertaining whether liquid nicotine or
395 nicotine vapor products are sold in violation of this chapter.

396 **§ 59.1-293.19. Liquid nicotine and nicotine vapor product; report.**

397 The Attorney General shall provide an annual report on or before January 31 to the General
398 Assembly regarding the status of the directory, manufacturers and products included in the directory.

399 revenues and expenditures related to the administration of this chapter, and enforcement activities
400 undertaken pursuant to this chapter.

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