

HOUSE BILL NO. 790

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on February 27, 2024)

(Patron Prior to Substitute--Delegate Hope)

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, 59.1-293.10, and 59.1-293.11 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, 59.1-293.13, and 59.1-293.14, relating to purchase, possession, and sale of retail tobacco products; retail tobacco products and liquid nicotine; penalties; reports.

Be it enacted by the General Assembly of Virginia:

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, 59.1-293.10, and 59.1-293.11 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 23.2 of Title 59.1 sections numbered 59.1-293.12, 59.1-293.13, and 59.1-293.14 as follows:

§ 18.2-246.8. Age verification requirements.

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

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

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

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

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

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

37 **§ 18.2-371.2. Prohibiting purchase or possession of retail tobacco products and hemp**
 38 **products intended for smoking by a person under 21 years of age or sale of retail tobacco products**
 39 **and hemp products intended for smoking to persons under 21 years of age; civil penalties.**

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

44 ~~Tobacco products, nicotine vapor products, alternative nicotine products, and~~ No person shall sell
 45 retail tobacco products or hemp products intended for smoking ~~may be sold~~ from a vending machine ~~only~~
 46 ~~if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase~~
 47 ~~or possession of such products by persons under 21 years of age is unlawful and (ii) located in a place that~~
 48 ~~is not open to the general public and is not generally accessible to persons under 21 years of age. An~~
 49 ~~establishment that prohibits the presence of persons under 21 years of age unless accompanied by a person~~
 50 ~~21 years of age or older is not open to the general public.~~

51 B. ~~No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco~~
 52 ~~product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking. The~~

53 provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor
54 products, alternative nicotine products, or hemp products intended for smoking by a person less than 21
55 years of age (i) making a delivery of tobacco products, nicotine vapor products, alternative nicotine
56 products, or hemp products intended for smoking in pursuance of his employment or (ii) as part of a
57 scientific study being conducted by an organization for the purpose of medical research to further efforts
58 in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such
59 medical research has been approved by an institutional review board pursuant to applicable federal
60 regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title
61 32.1. This subsection shall not apply to purchase, attempt to purchase, or possession by a law enforcement
62 officer or his agent when the same is necessary in the performance of his duties.

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

73 Before a retail dealer may sell retail tobacco products, other than cigar and pipe tobacco products
74 as defined in § 58.1-1021.01, to any consumer, the person selling, offering for sale, giving, or furnishing
75 the retail tobacco products shall verify that the consumer is of legal age by examining from any person
76 who appears to be under 30 years of age a government-issued photographic identification that establishes
77 that the person is of legal age and verifying the identification presented using identification fraud detection
78 software, technology, or a scanner that confirms the authenticity of such identification.

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

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

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

98 C. A violation of subsection A or ~~C~~ B by an individual or by a separate retail establishment ~~that~~
99 ~~involves the sale, distribution, or purchase of a bidi~~ is punishable by a civil penalty in the amount of \$500
100 for a first violation, ~~a civil penalty in the amount of \$1,000 for a second violation,~~ and a civil penalty in
101 the amount of \$2,500 for a ~~third~~ second or subsequent violation. ~~Where a defendant retail establishment~~
102 ~~offers proof that it has trained its employees concerning the requirements of this section, the court shall~~
103 ~~suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment~~
104 ~~has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of~~
105 ~~any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product,~~

106 ~~alternative nicotine product, hemp product intended for smoking, or tobacco product other than a bidi~~ If
107 applicable, upon a second or subsequent violation, the Virginia Alcoholic Beverage Control Authority or
108 the Virginia Department of Agriculture and Consumer Services, as applicable, shall report such violation
109 to the Department of Taxation who shall suspend or revoke any approved license, permit, or registration
110 issued pursuant to subsection C of § 58.1-1021.04:1.

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

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

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

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

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

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

142 ~~H-F.~~ Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-
143 105 may issue a summons for any violation of this section.

144 ~~I-G.~~ As used in this section:

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

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

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

153 "Electronic smoking device" means any device that may be used to deliver any aerosolized or
154 vaporized substance to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, vape
155 pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device,
156 whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized
157 during the use of the device, whether or not the substance contains nicotine. "Electronic smoking device"
158 does not include any (i) battery or battery charger when sold separately or (ii) device used for heated
159 tobacco products. "Electronic smoking device" does not include drugs or devices, as such terms are

160 defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such
161 drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

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

167 "~~Nicotine vapor product~~" ~~includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic~~
168 ~~pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other~~
169 ~~form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,~~
170 ~~electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product~~
171 ~~regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic~~
172 ~~Act.~~

173 "~~Tobacco~~-Retail tobacco product" means (i) any product containing, made of, or derived from
174 tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed,
175 whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a
176 cigarette, a heated tobacco product, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any
177 electronic smoking device and any substances that may be aerosolized or vaporized by such device,
178 whether or not the substance contains nicotine; and ~~includes cigarettes, cigars, smokeless tobacco, pipe~~
179 ~~tobacco, bidis, and wrappings~~ (iii) any component, part, or accessory of a product described in clause (i)
180 or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters,
181 rolling papers, blunt or hemp wraps, and pipes. "Retail tobacco product" includes any nicotine vapor
182 product as that term is defined in § 58.1-1021.01. "~~Tobacco~~-Retail tobacco product" does not include any
183 nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter
184 V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act drugs or devices, as such terms
185 are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such
186 drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

189 **§ 22.1-79.5. Policy regarding retail tobacco products and hemp products intended for**
190 **smoking.**

191 Each school board shall develop and implement a policy to prohibit, at any time, the use and
192 distribution of any retail tobacco product ~~or nicotine vapor product~~ or hemp product intended for smoking,
193 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
194 school-sponsored activity.

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

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

199 **§ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, retail tobacco products,**
200 **hemp products intended for smoking, and gambling.**

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

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

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

213 public elementary and secondary school in the Commonwealth, consistent with such educational
214 materials.

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

217 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct;**
218 **school board regulations.**

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

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

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

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

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

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

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

261 E. A school board may regulate the use or possession of beepers or other portable communications
262 devices and laser pointers by students on school property or attending school functions or activities and
263 establish disciplinary procedures pursuant to this article to which students violating such regulations will
264 be subject.

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

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

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

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

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

289 **§ 58.1-1021.01. Definitions.**

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

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

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

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

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

301 "Distributor" means (i) any person engaged in the business of selling tobacco products in the
302 Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the
303 Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or
304 stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in
305 the business of selling tobacco products outside the Commonwealth who ships or transports tobacco
306 products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail
307 dealer in possession of untaxed tobacco products in the Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

336 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
337 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
338 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form,
339 including liquid nicotine. "Nicotine vapor product" includes any electronic cigarette, electronic cigar,
340 electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of
341 nicotine in a solution or other form, including liquid nicotine, that is intended to be used with or in an
342 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

343 "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C.
344 § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

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

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

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

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

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

362 "Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or
363 that contains nicotine that is intended for human consumption or is likely to be consumed, whether
364 smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette,
365 a heated tobacco product, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any
366 substances that may be aerosolized or vaporized by such device, whether or not the substance contains
367 nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or
368 not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt
369 or hemp wraps, and glass pipes. "Retail tobacco product" includes any nicotine vapor product. "Retail

370 tobacco product" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or
371 combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination
372 products are authorized for sale by the U.S. Food and Drug Administration. "Retail tobacco product" does
373 not include any cigar or pipe tobacco.

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

375 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal
376 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of
377 the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in §
378 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall
379 also include loose leaf tobacco.

380 CHAPTER 23.2.

381 RETAIL TOBACCO PRODUCTS AND NICOTINE VAPOR PRODUCTS CONTAINING LIQUID

382 NICOTINE.

383 **§ 59.1-293.10. Definitions.**

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

385 "Authority" means the Virginia Alcoholic Beverage Control Authority.

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

389 "Department" means the Department of Taxation.

390 ~~"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that~~
391 ~~is sold, marketed, or intended for use in a nicotine vapor product~~ the same as that term is defined in §
392 58.1-1021.01.

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

396 "Nicotine vapor product" ~~has~~ means the same meaning as that term is defined in § 18.2-371.2 58.1-
397 1021.01 and includes liquid nicotine containers.

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

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

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

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

403 "Tobacco retail establishment" means any place of business where retail tobacco products are
404 available for sale to the general public, including any grocery store, retail tobacco product shop, kiosk,
405 convenience store, gasoline service station, bar, or restaurant where retail tobacco products are available
406 for sale to the general public.

407 **§ 59.1-293.11. Sale or distribution of liquid nicotine container; prohibition; penalty.**

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

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

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

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

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

428 F. The provisions of this section with respect to retail sales, retail establishments, and offers for
429 retail sales shall only apply to retail sales or offers at retail of liquid nicotine containers before January 1,
430 2025.

431 **§ 59.1-293.12. Restrictions on the sale of retail tobacco products to minors; penalties.**

432 A. A retail dealer shall comply with the provisions of this section, §§ 18.2-246.8, 18.2-246.10,
433 18.2-371.2, and 59.1-293.13, and any other federal, state, or local law related to the sale of retail tobacco
434 products. If the Authority determines that a retail dealer has violated any such provision of law, the
435 Authority shall communicate such violation to the Department who may suspend or revoke such retail
436 dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or
437 Other Tobacco Products (OTP) Distributor's License.

438 B. 1. For each retail dealer, the Authority shall conduct an unannounced investigation at least once
439 every 24 months to verify that the retail dealer is not selling retail tobacco products to persons under 21
440 years of age. If the Authority determines that the retail dealer has violated any provision of this section, §
441 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 related to the
442 sale of retail tobacco products, it shall conduct an unannounced investigation of the retail dealer within
443 six months of such violation.

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

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

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

451 c. For a third violation in a 36-month period, a penalty of no less than \$10,000, and the Department
452 shall revoke the retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes
453 Purchased for Resale or OTP Distributor's License, and such retail dealer shall be ineligible to possess any
454 such certificate or license for a period of three years from the date of the most recent violation.

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

457 C. The Authority shall collaborate with the Department and local law enforcement to the extent
458 possible to enforce the provisions of this section and § 4.1-103.01.

459 **§ 59.1-293.13. Required education for retail dealers and employees.**

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

462 1. The provisions of § 59.1-293.12;

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

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

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

468 **§ 59.1-293.14. Tobacco Retail Enforcement Fund.**

469 There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco
470 Retail Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the
471 Comptroller. All revenues accruing to the Fund pursuant to this article, all funds appropriated for such
472 purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid
473 into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the
474 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of

475 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall
476 be used solely for the purposes of funding the Authority's and the Department's direct and indirect costs
477 of administering the provisions of §§ 59.1-293.12 and 59.1-293.13. Expenditures and disbursements from
478 the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request
479 signed by the Chief Executive Officer of the Authority.

480 **2. That the Virginia Alcoholic Beverage Control Authority, the Virginia Department of Agriculture**
481 **and Consumer Services, and the Department of Taxation shall collaborate on the development of**
482 **an implementation plan and recommendations related to the administration of the provisions of the**
483 **first enactment of this act. Such plan and recommendations shall be reported to the General**
484 **Assembly no later than November 1, 2024.**

485 **3. That the Department of Taxation shall evaluate the prospective taxing of liquid nicotine in the**
486 **Commonwealth on the basis of its placement in closed and open systems and report to the General**
487 **Assembly no later than November 1, 2024, on (i) whether and how other states tax liquid nicotine**
488 **and (ii) options for tax rates on such products.**

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