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SENATE BILL NO. 17

Offered January 8, 2014

Prefiled December 5, 2013

A *BILL to amend and reenact § 18.2-371.2 of the Code of Virginia, relating to electronic cigarettes; minors.*

Patrons—Miller; Delegate: Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-371.2 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products or electronic cigarettes by minors or sale of tobacco products or electronic cigarettes to minors.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including but not limited to cigarettes, cigars, bidis, and wrappings, or any electronic cigarette.

Tobacco products or electronic cigarettes may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products or electronic cigarettes by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 years of age shall attempt to purchase, purchase, or possess any tobacco product, including but not limited to cigarettes, cigars, bidis, and wrappings, or any electronic cigarette. The provisions of this subsection shall not be applicable to the possession of tobacco products, including wrappings, or electronic cigarettes by a person less than 18 years of age making a delivery of tobacco products, including wrappings, or electronic cigarettes in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

C. No person shall sell a tobacco product, including but not limited to cigarettes, cigars, bidis, and wrappings, or an electronic cigarette to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 18 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 18 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior and manner of the individual.

This subsection shall not apply to mail order sales.

D. A violation of subsection A or C by an individual or by a separate retail establishment that involves a tobacco product, other than a bidi, or an electronic cigarette shall be punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

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

A violation of subsection B shall be punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community

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59 service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the
60 judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8.

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

64 E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the
65 required health warning. The proprietor of every retail establishment which offers for sale any tobacco
66 product, including but not limited to cigarettes, cigars, and bidis, *or any electronic cigarette* shall post in
67 a conspicuous manner and place a sign or signs indicating that the sale of tobacco products, including
68 wrappings, *or electronic cigarettes* to any person under 18 years of age is prohibited by law. Any
69 attorney for the county, city or town in which an alleged violation of this subsection occurred may
70 enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty
71 shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county,
72 city or town which instituted the action.

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

77 3. Any attorney for the county, city or town in which an alleged violation of this subsection occurred
78 may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil
79 penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the
80 county, city or town which instituted the action.

81 F. Nothing in this section shall be construed to create a private cause of action.

82 G. Agents of the Virginia Alcoholic Beverage Control Board designated pursuant to § 4.1-105 may
83 issue a summons for any violation of this section.

84 H. As used in this section:

85 "Bidi" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*)
86 or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as
87 a bidi or beedie; ~~and~~.

88 "*Electronic cigarette*" means any electronic device that can provide an inhaled dose of nicotine to
89 the individual inhaling from the device and the components of such device, including liquid nicotine.

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