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SENATE BILL NO. 1727

Offered January 16, 2019

A *BILL to amend and reenact §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2 of the Code of Virginia, relating to purchase, possession, and sale of tobacco products, nicotine vapor products, and alternative nicotine products; minimum age requirements; penalties.*

Patrons—Norment, Dunnavant, Ebbin, Reeves and Saslaw

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2 of the Code of Virginia are amended and reenacted 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 18 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;

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

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

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

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

§ 18.2-246.10. Shipping requirements.

Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

1. Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "Cigarettes: Virginia Law Prohibits Shipping to Individuals Under 18 21, and Requires the Payment of all Applicable Taxes";

2. Shall use a method of mailing, shipping, or delivery that obligates the delivery service or any party making delivery to require (i) the consumer placing the purchase order for the delivery sale, or an adult of legal minimum purchase age, to sign to accept delivery of the shipping container, and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that he is either the addressee who is of legal minimum purchase age or another adult of legal minimum purchase age. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under 27 years of age; and

3. Shall provide to the delivery service retained for such delivery sale evidence of full compliance with § 18.2-246.12.

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products by a person under 21 years of age or sale of tobacco products, nicotine vapor products, and alternative nicotine products to persons under 21 years of age.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 21 years of age, knowing or having reason to believe that such person is less than 18 21 years of age, any tobacco product, nicotine vapor product, or alternative nicotine product.

Tobacco products, *nicotine vapor products, and alternative nicotine products* 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 by ~~minors~~ *persons under 21 years of age* is unlawful and (ii) located in a place ~~which~~ *that* is not open to the general public and is not generally

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59 accessible to ~~minors~~ *persons under 21 years of age*. An establishment ~~which~~ *that* prohibits the presence
60 of ~~minors~~ *persons under 21 years of age* unless accompanied by ~~an adult~~ *a person 21 years of age or*
61 *older* is not open to the general public.

62 B. No person less than ~~18~~ *21* years of age shall attempt to purchase, purchase, or possess any
63 tobacco product, nicotine vapor product, or alternative nicotine product. The provisions of this
64 subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, or
65 alternative nicotine products by a person less than 18 years of age making a delivery of tobacco
66 products, nicotine vapor products, or alternative nicotine products in pursuance of his employment. This
67 subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer
68 or his agent when the same is necessary in the performance of his duties.

69 C. No person shall sell a tobacco product, nicotine vapor product, or alternative nicotine product to
70 any individual who does not demonstrate, by producing a driver's license or similar photo identification
71 issued by a government agency, that the individual is at least ~~18~~ *21* years of age. Such identification is
72 not required from an individual whom the person has reason to believe is at least ~~18~~ *21* years of age or
73 who the person knows is at least ~~18~~ *21* years of age. Proof that the person demanded, was shown, and
74 reasonably relied upon a photo identification stating that the individual was at least ~~18~~ *21* years of age
75 shall be a defense to any action brought under this subsection. In determining whether a person had
76 reason to believe an individual is at least ~~18~~ *21* years of age, the trier of fact may consider, but is not
77 limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual.

78 This subsection shall not apply to mail order or Internet sales, provided that the person offering the
79 tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or
80 the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine
81 product verifies that the purchaser is at least ~~18~~ *21* years of age through a commercially available
82 database that is regularly used by businesses or governmental entities for the purpose of age and identity
83 verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a
84 person at least ~~18~~ *21* years of age before the tobacco product, nicotine vapor product, or alternative
85 nicotine product will be released to the purchaser.

86 D. A violation of subsection A or C by an individual or by a separate retail establishment that
87 involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is
88 punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200
89 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

90 A violation of subsection A or C by an individual or by a separate retail establishment that involves
91 the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a
92 first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the
93 amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers
94 proof that it has trained its employees concerning the requirements of this section, the court shall
95 suspend all of the penalties imposed hereunder. However, where the court finds that a retail
96 establishment has failed to so train its employees, the court may impose a civil penalty not to exceed
97 \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a
98 nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

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

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

109 E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the
110 required health warning. The proprietor of every retail establishment that offers for sale any tobacco
111 product, nicotine vapor product, or alternative nicotine product shall post in a conspicuous manner and
112 place a sign or signs indicating that the sale of tobacco products, nicotine vapor products, or alternative
113 nicotine products to any person under ~~18~~ *21* years of age is prohibited by law. Any attorney for the
114 county, city, or town in which an alleged violation of this subsection occurred may enforce this
115 subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid
116 into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town
117 which instituted the action.

118 2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health
119 Services Administration published at 61 Federal Register 1492, the Department of Agriculture and
120 Consumer Services may promulgate regulations which allow the Department to undertake the activities

121 necessary to comply with such regulations.

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

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

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

129 H. As used in this section:

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

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

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

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

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