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HOUSE BILL NO. 1119

Offered January 8, 2020
Prefiled January 7, 2020

A BILL to amend and reenact § 58.1-1011 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 12 of Title 18.2 a section numbered 18.2-511.2, relating to flavored tobacco products; sale prohibited; civil penalty.

Patrons—Hope and Hayes

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1011 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 12 of Title 18.2 a section numbered 18.2-511.2 as follows:

§ 18.2-511.2. Sale of flavored tobacco products prohibited; civil penalty.

A. As used in this section:

"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" also means any component, part, or accessory of such device and any substance intended to be aerosolized or vaporized during the use of such device, whether or not the substance contains nicotine. "Electronic smoking device" does not include drugs, devices, or combinations thereof authorized for sale by the U.S. Food and Drug Administration, as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 321 et seq.).

"Flavored tobacco product" means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product including any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, fruit, dessert, alcoholic beverage, herb, or spice.

"Tobacco product" means (i) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including any cigarette, cigar or pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substance that may be aerosolized or vaporized by an electronic smoking device, whether or not the substance contains nicotine; and (iii) any component, part, or accessory of a product or substance described in subdivisions (i) and (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not include drugs, devices, or combinations thereof authorized for sale by the U.S. Food and Drug Administration, as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 321 et seq.).

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

"Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation that owns, operates, or manages any tobacco retail establishment. "Tobacco retailer" does not include an employee of a tobacco retailer who is not in a management position.

B. No person, tobacco retail establishment, or manufacturer shall sell, distribute, offer to sell or distribute, or cause to be sold or distributed in any tobacco retail establishment, online, or through other means to any consumer in the Commonwealth any flavored tobacco product. No person, tobacco retail establishment, or manufacturer shall market or advertise a proposed sale or distribution prohibited by this subsection.

There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retail establishment, manufacturer, or any employee or agent of a tobacco retail establishment or manufacturer (i) makes a public statement or claim that tobacco product imparts a taste or smell other than the taste or smell of tobacco, or (ii) uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than the taste or smell of tobacco.

C. A violation of subsection B is punishable by a civil penalty not to exceed $500 for the first violation, a civil penalty not to exceed $1000 for a second violation, a civil penalty not to exceed $1500 for a third violation, and a civil penalty not to exceed $2000 for a fourth or subsequent violation.

D. In addition to the civil penalties specified in subsection C, a third violation of subsection B is punishable by suspension of a permit as a stamping agent for a period of 15 days, in accordance with the provisions of § 58.1-1011, and a fourth or subsequent violation of subsection B is publishable by revocation of a permit as a stamping agent, in accordance with the provisions of § 58.1-1011.

§ 58.1-1011. Qualification for permit to affix Virginia revenue stamps; penalty.

A. Only manufacturers, wholesale dealers and retail dealers may be permitted as stamping agents. It shall be unlawful for any person to purchase, possess or affix Virginia revenue stamps without first obtaining a permit to do so from the Department. Every manufacturer, wholesale dealer or retail dealer who desires to qualify as a stamping agent with the Department shall make application to the Department on forms prescribed for this purpose, which shall be supplied upon request. The application forms will require such information relative to the nature of business engaged in by the applicant as the Department deems necessary to the qualifying of the applicant as a stamping agent. The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in handling and stamping cigarettes at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department determines a National Criminal Records search is necessary, on applicants for licensure as cigarette tax stamping agents. The Department may refuse to issue a stamping permit or may suspend, revoke or refuse to renew a stamping permit issued to any person, partnership, corporation, limited liability company or business trust, if it determines that any principal, manager, or other persons engaged in handling and stamping cigarettes at the licensable location of the applicant has been (i) found guilty of any fraud or misrepresentation in any connection, (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering, or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for a stamping permit to the Department is guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed $750 to be retained by the Department to be applied to the administrative and other costs of processing stamping agent applications, conducting background investigations and issuing stamping permits. Any application or renewal fees collected pursuant to this section in excess of such costs as of June 30 in even-numbered years shall be reported to the State Treasurer and deposited into the state treasury. If the Department after review of his application believes the manufacturer, wholesale dealer or retail dealer is qualified, the Department shall issue to the applicant a permit qualifying him as a stamping agent, as defined in this chapter, and he shall be allowed the discount on purchases of Virginia revenue stamps as set out herein for stamping agents purchasing stamps for their individual use. Such stamping agent shall be authorized to affix Virginia revenue stamps, and in addition, if the applicant qualifies as a wholesale dealer, that shall be so noted on the permit issued by the Department. Permits issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department shall not sell Virginia revenue stamps to any person or entity unless and until the Department has issued that person or entity a permit to affix Virginia revenue stamps. The Department may promulgate regulations governing the issuance, suspension and revocation of stamping agent permits. The Department may at any time revoke the permit issued to any stamping agent as herein provided who is not in compliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter.

B. *The Department shall suspend a permit issued to any stamping agent pursuant to this section for a period of 15 days for a third or subsequent violation of § 18.2-511.2, and shall revoke a permit issued to a stamping agent pursuant to this section for a fourth or subsequent violation of § 18.2-511.2. A manufacturer, wholesale distributor, or retail dealer whose permit is revoked pursuant to this subsection shall be prohibited from applying for permit as a stamping agent for a period of three years from the date of such revocation.*

C. The Department shall compile and maintain a list of licensed cigarette stamping agents. The list shall be updated monthly and shall be available upon request to any federal, state, or local law-enforcement agency.