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## HOUSE BILL NO. 962

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 3.2-4112 and 18.2-371.2 of the Code of Virginia, relating to hemp products intended for smoking.*

Patrons—Marshall and Edmunds

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-4112 and 18.2-371.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 3.2-4112. Definitions.**

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

"Cannabis sativa product" means a product made from any part of the plant *Cannabis sativa*, including seeds thereof and any derivative, extract, cannabinoid, isomer, acid, salt, or salt of an isomer, whether growing or not, with a concentration of tetrahydrocannabinol that is greater than that allowed by federal law.

"Deal" means to buy industrial hemp grown in compliance with state or federal law and to sell such industrial hemp to a person who (i) processes industrial hemp in compliance with state or federal law or (ii) sells industrial hemp to a person who processes industrial hemp in compliance with state or federal law.

"Dealer" means any person who is registered pursuant to subsection A of § 3.2-4115 to deal in industrial hemp. "Dealer" does not include (i) a grower, (ii) a processor, or (iii) any person who buys industrial hemp for personal use or retail sale in Virginia.

"Dealership" means the location at which a dealer stores or intends to store the industrial hemp in which he deals.

"Grow" means to plant, cultivate, or harvest a plant or crop.

"Grower" means any person registered pursuant to subsection A of § 3.2-4115 to grow industrial hemp.

"Hemp product" means any finished product that is otherwise lawful and that contains industrial hemp, including rope, building materials, automobile parts, animal bedding, animal feed, cosmetics, oil containing an industrial hemp extract, or food or food additives for human consumption. *"Hemp product" includes a product intended for smoking.*

"Industrial hemp" means any part of the plant *Cannabis sativa*, including seeds thereof and any derivative, extract, cannabinoid, isomer, acid, salt, or salt of an isomer, whether growing or not, with a concentration of tetrahydrocannabinol that is no greater than that allowed by federal law.

"Process" means to convert industrial hemp into a hemp product. *"Process" includes to press, cook, dry, cure, extrude, extract, roll, cut, blend, treat, combine with natural or man-made substances or compounds, or otherwise alter a hemp plant from its growing condition.*

"Processor" means a person registered pursuant to subsection A of § 3.2-4115 to process industrial hemp.

"Process site" means the location at which a processor processes or intends to process industrial hemp.

"Production field" means the land or area on which a grower is growing or intends to grow industrial hemp.

**§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking by a person under 21 years of age or sale of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking 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 21 years of age, knowing or having reason to believe that such person is less than 21 years of age, any tobacco product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking.*

Tobacco products, nicotine vapor products, ~~and~~ alternative nicotine products, *and hemp products intended for smoking* 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~~ such products by persons under 21 years of age is unlawful and (ii) located in a place that is not open to the general public and is not generally accessible to persons under 21 years of age. An establishment that

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59 prohibits the presence of persons under 21 years of age unless accompanied by a person 21 years of age  
60 or older is not open to the general public.

61 B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco  
62 product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking*.  
63 The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine  
64 vapor products, ~~or~~ alternative nicotine products, *or hemp products intended for smoking* by a person less  
65 than 21 years of age making a delivery of tobacco products, nicotine vapor products, ~~or~~ alternative  
66 nicotine products, *or hemp products intended for smoking* 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, *or*  
70 *hemp product intended for smoking* to any individual who does not demonstrate, by producing a driver's  
71 license or similar photo identification issued by a government agency, that the individual is at least 21  
72 years of age. Such identification is not required from an individual whom the person has reason to  
73 believe is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the  
74 person demanded, was shown, and reasonably relied upon a photo identification stating that the  
75 individual was at least 21 years of age shall be a defense to any action brought under this subsection. In  
76 determining whether a person had reason to believe an individual is at least 21 years of age, the trier of  
77 fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior,  
78 and manner of the individual.

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

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

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

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

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

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

117 F. 1. Cigarettes and *hemp products intended for smoking* shall be sold only in sealed packages  
118 provided by the manufacturer, with the required health warning. The proprietor of every retail  
119 establishment that offers for sale any tobacco product, nicotine vapor product, ~~or~~ alternative nicotine  
120 product, *or hemp product intended for smoking* shall post in a conspicuous manner and place a sign or

signs indicating that the sale of tobacco products, nicotine vapor products, ~~or~~ alternative nicotine products, *or hemp products intended for smoking* to any person under 21 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

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

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

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

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

I. As used in this section:

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

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

"*Hemp product intended for smoking*" means a hemp product, as defined in § 3.2-4112, that is intended for smoking.

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

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

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

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