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SENATE BILL NO. 966

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 9, 2020)

(Patrons Prior to Substitute—Senators Ebbin and Hashmi)

A BILL to amend and reenact §§ 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 a section numbered 59.1-293.12, relating to the sale or distribution of flavored nicotine vapor product; prohibition; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 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 a section numbered 59.1-293.12 as follows:

§ 59.1-293.10. Definitions.

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

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

"Flavored nicotine vapor product" means any nicotine vapor product that contains a taste or smell, other than the taste or smell of tobacco or menthol, that is distinguishable by an ordinary consumer either prior to or during the consumption of the nicotine vapor product.

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

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

"Nicotine vapor product" has the same meaning as in § 18.2-371.2.

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

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

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

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

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

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

§ 59.1-293.12. Sale or distribution of flavored nicotine vapor product; prohibition; penalty.

A. No person shall sell or distribute at retail or offer for retail sale or distribution a flavored nicotine vapor product in the Commonwealth.

B. Any person who sells or distributes at retail or offers for retail sale or distribution a flavored nicotine vapor product in the Commonwealth is guilty of a Class 4 misdemeanor.

C. This section shall not apply to flavored nicotine vapor products that are the subject of a tobacco product clearance order from the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j.