

20107862D

## HOUSE BILL NO. 1185

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on February 5, 2020)

(Patron Prior to Substitute—Delegate Lopez)

A BILL to amend and reenact § 18.2-371.2 of the Code of Virginia, relating to sale of nicotine vapor products; penalties.

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, 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; penalties.

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.

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

B. No person less than 21 years of age shall attempt to purchase, ~~purchase~~, or possess any tobacco product, nicotine vapor product, or alternative nicotine product. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, or alternative nicotine products by a person less than 21 years of age making a delivery of tobacco products, nicotine vapor products, or alternative nicotine products 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, nicotine vapor product, or alternative nicotine product 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 21 years of age. ~~Such identification is not required from an individual whom the person has reason to believe is at least 21 years of age or who the person knows is at least 21 years of age.~~ Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 21 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 21 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 or Internet sales, provided that the person offering the tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine product verifies that the purchaser is at least 21 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the tobacco product, nicotine vapor product, or alternative nicotine product will be released to the purchaser.

D. *The sale of (i) flavored nicotine vapor products, other than menthol or tobacco flavors, and (ii) high-nicotine vapor products above 30 mg/ml strength shall be limited to retail establishments that sell such products to persons 21 years of age or older and have proven age restriction processes. Such establishments shall prove that valid identification checks are in place upon entry and again before any transaction is processed. This subsection shall not apply to any flavored nicotine vapor products that have obtained a tobacco product clearance order from the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387(j).*

E. *The sale of nicotine vapor products with the following additives other than traditional e-liquid ingredients (e.g., propylene glycol, vegetable glycerin, flavoring) that alter the performance characteristics of nicotine (e.g., benzoic acid) is prohibited: vitamins, caffeine, taurine, diacetyl, 2,3-pentanedione, diethylene glycol, benzoic acid, and additives that have carcinogenic, mutagenic, or reprotoxic properties in unburnt form.*

F. The provisions of subsections B and C shall not apply to the sale, giving, or furnishing of any

60 tobacco product, nicotine vapor product, or alternative nicotine product to any active duty military  
61 personnel who are 18 years of age or older. An identification card issued by the Armed Forces of the  
62 United States shall be accepted as proof of age for this purpose.

63 E. G. A violation of subsection A ~~or~~, C, D, or E by an individual or by a separate retail  
64 establishment that involves a nicotine vapor product, alternative nicotine product, or tobacco product  
65 other than a bidi is punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty  
66 not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or  
67 subsequent violation.

68 A violation of subsection A ~~or~~, C, D, or E by an individual or by a separate retail establishment that  
69 involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of  
70 \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil  
71 penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail  
72 establishment offers proof that it has trained its employees concerning the requirements of this section,  
73 the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a  
74 retail establishment has failed to so train its employees, the court may impose a civil penalty not to  
75 exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A ~~or~~, C, D, or E  
76 involving a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

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

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

87 F. I. H. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the  
88 required health warning. The proprietor of every retail establishment that offers for sale any tobacco  
89 product, nicotine vapor product, or alternative nicotine product shall post in a conspicuous manner and  
90 place a sign or signs indicating that the sale of tobacco products, nicotine vapor products, or alternative  
91 nicotine products to any person under 21 years of age is prohibited by law. Any attorney for the county,  
92 city, or town in which an alleged violation of this subsection occurred may enforce this subsection by  
93 civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local  
94 treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted  
95 the action.

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

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

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

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

107 I. K. As used in this section:

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

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

116 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a  
117 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,  
118 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form.  
119 "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic  
120 pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other  
121 form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,

122 electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product  
123 regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and  
124 Cosmetic Act.  
125 "Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless  
126 tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor  
127 product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21  
128 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.  
129 "Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for  
130 smoking in a manner similar to a cigarette or cigar.