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HOUSE BILL NO. 1283

Offered January 8, 2020

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A *BILL to amend and reenact §§ 18.2-246.8, 18.2-371.2, 18.2-391, 22.1-79.5, 22.1-206, 22.1-279.6, 58.1-1021.04:1, and 59.1-293.10 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10 of Title 58.1 an article numbered 4, consisting of sections numbered 58.1-1030.1 through 58.1-1030.6, relating to registration of tobacco products retailers; purchase, possession, and sale of tobacco products; penalties.*

Patron—Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-246.8, 18.2-371.2, 18.2-391, 22.1-79.5, 22.1-206, 22.1-279.6, 58.1-1021.04:1, and 59.1-293.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 10 of Title 58.1 an article numbered 4, consisting of sections numbered 58.1-1030.1 through 58.1-1030.6, 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 21 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. *1. If a purchase order for a tobacco product, as defined in § 58.1-1030.1, is made via the Internet, no person shall make a delivery for such order unless the delivery is to a permit holder, as defined in § 58.1-1030.1.*

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

§ 18.2-371.2. Prohibiting sale or distribution of tobacco products to persons under 21 years of age; penalty.

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 *No person shall sell tobacco products* 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

INTRODUCED

HB1283

59 apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when
60 the same is necessary in the performance of his duties.

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

70 This subsection shall not apply to mail order or Internet sales, provided that the person offering the
71 tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or
72 the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine
73 product verifies that the purchaser is at least 21 years of age through a commercially available database
74 that is regularly used by businesses or governmental entities for the purpose of age and identity
75 verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a
76 person at least 21 years of age before the tobacco product, nicotine vapor product, or alternative nicotine
77 product will be released to the purchaser.

78 D. The provisions of subsections B and C shall not apply to the sale, giving, or furnishing of any
79 tobacco product, nicotine vapor product, or alternative nicotine product to any active duty military
80 personnel who are 18 years of age or older. An identification card issued by the Armed Forces of the
81 United States shall be accepted as proof of age for this purpose.

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

86 C. A violation of subsection A or C B by an individual or by a separate retail establishment that
87 involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of
88 \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil
89 penalty in the amount of \$2,500 for a third or subsequent violation. *If applicable, upon a third or*
90 *subsequent violation, the Department of Taxation shall suspend or revoke any distributor's license*
91 *pursuant to subsection C of § 58.1-1021.04:1 and suspend or revoke any tobacco retailer's permit*
92 *pursuant to subsection B of § 58.1-1030.5.*

93 Where a defendant retail establishment offers proof that it has trained its employees concerning the
94 requirements of this section, the court shall suspend all of the penalties imposed hereunder. However,
95 where the court finds that a retail establishment has failed to so train its employees, the court may
96 impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of
97 subsection A or C involving a nicotine vapor product, alternative nicotine product, or tobacco product
98 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 *For any violation of this section*
106 *by an employee of a retail establishment, such civil penalty shall be assessed against the establishment*
107 *only but not the employee.*

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

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

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

H. F. Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105 may issue a summons for any violation of this section. *Such agents shall conduct a minimum number of two compliance checks each year on any retailer selling tobacco products, utilizing a person under 21 years of age as an agent in order to ensure compliance with the provisions of this section.*

I. G. 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.

"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.

"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, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. "Electronic smoking device" does not include any battery or battery charger when sold separately. "Electronic smoking device" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

"Tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. "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 drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

§ 18.2-391. Unlawful acts; penalties.

A. It shall be unlawful for any person to sell, rent or loan to a juvenile, knowing or having reason to know that such person is a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

1. Any picture, photography, drawing, sculpture, motion picture in any format or medium, video or computer game, electronic file or message containing an image, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or

182 sadomasochistic abuse and which is harmful to juveniles; or

183 2. Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message
184 containing words, or sound recording which contains any matter enumerated in subdivision 1 of this
185 subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual
186 conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

187 However, if a person uses services of an Internet service provider or an electronic mail service
188 provider in committing acts prohibited under this subsection, such Internet service provider or electronic
189 mail service provider shall not be held responsible for violating this subsection.

190 B. It shall be unlawful for any person knowingly to sell to a juvenile an admission ticket or pass, or
191 knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other
192 presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or
193 sadomasochistic abuse and which is harmful to juveniles or to exhibit any such motion picture at any
194 such premises which are not designed to prevent viewing from any public way of such motion picture
195 by juveniles not admitted to any such premises.

196 C. It shall be unlawful for any juvenile falsely to represent to any person mentioned in subsection A
197 or subsection B hereof, or to his agent, that such juvenile is 18 years of age or older, with the intent to
198 procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to
199 any motion picture, show or other presentation, as set forth in subsection B.

200 D. It shall be unlawful for any person knowingly to make a false representation to any person
201 mentioned in subsection A or subsection B hereof or to his agent, that he is the parent or guardian of
202 any juvenile, or that any juvenile is 18 years of age, with the intent to procure any material set forth in
203 subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or
204 other presentation, as set forth in subsection B.

205 E. No person shall sell, rent, or loan any item described in subdivision A 1 or A 2 to any individual
206 who does not demonstrate his age in accordance with the provisions of subsection C of § 18.2-371.2.

207 F. A violation of subsection A, B, C, or D is a Class 1 misdemeanor. A person or separate retail
208 establishment who violates subsection E shall be liable for a civil penalty not to exceed \$100 for a first
209 violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed
210 \$500 for a third or subsequent violation.

211 **§ 22.1-79.5. Policy regarding tobacco products.**

212 Each school board shall develop and implement a policy to prohibit, at any time, the use and
213 distribution of any tobacco product or ~~nicotine vapor product~~, as those terms are defined in §
214 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

215 Such policy shall include (i) provisions for its enforcement among students, employees, and visitors,
216 including the enumeration of possible sanctions or disciplinary action consistent with state or federal
217 law, and (ii) referrals to resources to help staff and students overcome tobacco addiction.

218 Each school board shall work to ensure adequate notice of this policy.

219 **§ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, and tobacco and nicotine**
220 **products.**

221 A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed
222 by the Board of Education.

223 B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking,
224 and drunk driving shall be provided in the public schools. The Virginia Alcoholic Beverage Control
225 Authority shall provide educational materials to the Department of Education. The Department of
226 Education shall review and shall distribute such materials as are approved to the public schools.

227 C. The Virginia Foundation for Healthy Youth shall develop and the Department of Education shall
228 distribute to each local school division educational materials concerning the health and safety risks of
229 using tobacco products; ~~nicotine vapor products; and alternative nicotine products~~, as such terms are
230 defined in § 18.2-371.2. Instruction concerning the health and safety risks of using tobacco products;
231 ~~nicotine vapor products; and alternative nicotine products~~, as such terms are defined in § 18.2-371.2,
232 shall be provided in each public elementary and secondary school in the Commonwealth, consistent with
233 such educational materials.

234 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct;**
235 **school board regulations.**

236 A. The Board of Education shall establish guidelines and develop model policies for codes of student
237 conduct to aid local school boards in the implementation of such policies. The guidelines and model
238 policies shall include, but not be limited to, (i) criteria for the removal of a student from a class, the use
239 of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and
240 expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for
241 such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards,
242 consistent with state, federal and case laws, for school board policies on alcohol and drugs, gang-related
243 activity, hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with

disabilities, intentional injury of others, self-defense, bullying, the use of electronic means for purposes of bullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies.

In accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including, but not limited to, which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.

In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.

B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the requirements of this section, regulations on codes of student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include, in the regulations on codes of student conduct, procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.

C. Each school board shall include in its code of student conduct prohibitions against hazing and profane or obscene language or conduct. School boards shall also cite in their codes of student conduct the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor penalty for violations, that is, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

D. Each school board shall include in its code of student conduct policies and procedures that include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the standards for school board policies on bullying and the use of electronic means for purposes of bullying developed by the Board pursuant to subsection A and (ii) direct the principal to notify the parent of any student involved in an alleged incident of bullying of the status of any investigation within five school days of the allegation of bullying.

Such policies and procedures shall not be interpreted to infringe upon the First Amendment rights of students and are not intended to prohibit expression of religious, philosophical, or political views, provided that such expression does not cause an actual, material disruption of the work of the school.

E. A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

F. Nothing in this section shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by § 22.1-279.7.

G. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with § 22.1-277.07.

This subsection shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

H. Each school board shall include in its code of student conduct a prohibition on possessing any tobacco product or ~~nicotine vapor product~~, as ~~those terms are~~ defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

§ 58.1-1021.04:1. Distributor's license; penalty.

A. No person shall engage in the business of selling or dealing in tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a distributor's license shall be accompanied by a fee to be prescribed by the Department. Every application for such license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

1. The name and address of the applicant. If the applicant is a firm, partnership or association, the name and address of each of its members shall be provided. If the applicant is a corporation, the name and address of each of its principal officers shall be provided;

2. The address of the applicant's principal place of business;

3. The place or places where the business to be licensed is to be conducted; and

4. Such other information as the Department may require for the purpose of the administration of this article.

B. A person outside the Commonwealth who ships or transports tobacco products to retailers in the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the Department, and thereafter be subject to all the provisions of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed distributor and, unless such person maintains a registered agent pursuant to Chapter 9, 10, 12 or 14 of Title 13.1 or Chapter 2.1 or 2.2 of Title 50, shall be deemed to have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of service of process relating to any matter or issue involving the person and arising under the provisions of this article.

The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a National Criminal Records search necessary, on applicants for licensure as tobacco products distributors. The Department may refuse to issue a distributor's license or may suspend, revoke or refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability company or business trust, if it determines that the principals, managers, and other persons engaged in handling tobacco products at the licensable location of the applicant have 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 distributor's license to the Department, shall be 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 distributor's license applications, conducting background investigations and issuing distributor's licenses. Any amount 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.

C. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall permit the licensee to engage in business as a distributor at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor's licenses 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 may at any time revoke the license issued to any distributor who is found guilty of violating or noncompliance with any of the provisions of this chapter, or any of the rules of the Department adopted and promulgated under authority of this chapter. *The Department shall suspend or revoke the license issued to any distributor who is found guilty of a third or subsequent violation of subsection A or B of § 18.2-371.2.*

D. The Department shall compile and maintain a current list of licensed distributors. The list shall be updated on a monthly basis, and published on the Department's official Internet website, available to any interested party.

Article 4.

Registration and Restrictions for Tobacco Retailers.

§ 58.1-1030.1. Definitions.

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

"Electronic smoking device" means the same as such term is defined in § 18.2-371.2.

"Permit holder" means a person that has obtained a permit from the Department pursuant to the provisions of § 58.1-1030.3.

"Person" means any natural person.

"Tobacco product" means the same as such term is defined in § 18.2-371.2.

"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 nonmanagement employees of a tobacco retail establishment.

"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, bar, or restaurant where tobacco products are available for sale to the general public.

"Youth-oriented facility" means a child care center, elementary school, middle school, junior high

school, high school, and public park and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors.

§ 58.1-1030.2. Permit required for sale of tobacco products at retail; civil penalties.

A. No tobacco retailer shall operate a tobacco retail establishment, conduct business as a tobacco retailer, or otherwise sell or offer to sell tobacco products at retail unless such tobacco retailer has obtained a permit from the Department pursuant to § 58.1-1030.3.

B. No tobacco retailer shall operate a tobacco retail establishment, conduct business as a tobacco retailer, or otherwise sell or offer to sell tobacco products at retail at a location within 1,000 feet of a youth-oriented facility.

C. Any tobacco retailer who violates this section shall be subject to a civil penalty, to be assessed and collected by the Department, for each violation of \$500 for a first offense and \$1,000 for a second or subsequent offense within a 36-month period. Any tobacco retailer who violates this section shall be ineligible to obtain a permit from the Department pursuant to § 58.1-1030.3 for a period of three years from the date of such tobacco retailer's most recent violation. All penalties assessed pursuant to this section shall accrue to the general fund.

§ 58.1-1030.3. Application for permit; penalty.

A. Any person may apply for a permit to operate a tobacco retail establishment or conduct business as a registered tobacco retailer according to forms and procedures prescribed by the Department. The Department shall require a separate permit for each location or place of business. The application forms shall require the following information:

1. The name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its principal officers;

2. The address of the applicant's principal place of business;

3. The address of the place or places where the business to be permitted is to be conducted; and

4. Any other information as the Department may require for the purpose of the administration of this section.

B. 1. The application process shall require an applicant to participate in, and provide for its employees, education related to tobacco products as provided in § 58.1-1030.6. 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 working for the applicant's business, which shall be submitted to the Federal Bureau of Investigation if the Department determines that a National Criminal Records search is necessary on permit applicants.

2. As applicable, the Department shall refuse to issue a permit and shall suspend, revoke, or refuse to renew a permit issued to any person, partnership, corporation, limited liability company, or business trust if it determines that any principal, manager, or other person working for the person's business 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. Any person that 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 is guilty of a Class 1 misdemeanor.

C. Upon receipt of an application in proper form and payment of any required fees, the Department shall, unless otherwise provided by this article, issue to the applicant a permit authorizing the permit holder to sell and offer to sell tobacco products at retail. Each permit, or a copy thereof, shall be prominently displayed in the place of business covered by the permit. No permit shall be transferable to any other person.

D. Unless an applicant or permit holder maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et seq.), 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 14 (§ 13.1-1200 et seq.) of Title 13.1 or Chapter 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, the applicant or permit holder shall be deemed to have appointed the clerk of the State Corporation Commission as the applicant's or permit holder's agent for the purpose of service of process relating to any matter or issue involving the applicant or permit holder and arising under the provisions of this article.

E. The Department shall annually determine and publish a fee for applications and renewals of permits in an amount reasonably estimated to pay, but not exceed, the Department's administrative and other costs of processing applications, conducting background investigations, and issuing permits pursuant to the provisions of this article. Any application or renewal fees collected pursuant to this subsection 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.

F. Permits issued pursuant to this section shall be valid for one year from the date of issue unless revoked by the Department. The Department may revoke a permit if a permit holder fails to pay a tax due under the provisions of this title. The Department may revoke a permit pursuant to any other

428 provision of this article that provides such authority.

429 G. The Department shall compile and maintain a current list of permit holders. The list shall be
430 updated on a semiannual basis and published on the Department's website.

431 H. Any monetary penalty collected pursuant to the provisions of this section shall be reported to the
432 State Treasurer and deposited into the state treasury.

433 **§ 58.1-1030.4. Certain records required of permit holder; access to premises.**

434 A. 1. Each permit holder permitted pursuant to § 58.1-1030.3 shall keep in each permitted place of
435 business complete and accurate records for that place of business, including itemized invoices of (i)
436 products held and purchased, (ii) all sales of products, and (iii) any records required by the
437 Department.

438 2. All books, records, and other papers and documents required by this subsection shall be
439 preserved, in a form prescribed by the Department, for a period of at least three years after the date of
440 the documents or the date of the entries thereof appearing in the records, unless the Department
441 authorizes, in writing, destruction or disposal of such documents at an earlier date.

442 B. At any time during usual business hours, duly authorized agents or employees of the Department
443 may enter any place of business of a permit holder and inspect the premises, the records required to be
444 kept under this section, and the products contained therein to determine whether the permit holder is in
445 compliance with the provisions of this article. Refusal to allow such inspection by a duly authorized
446 agent or employee of the Department shall be grounds for revocation of the permit holder's permit.

447 C. Each permit holder that sells products to persons other than an ultimate consumer shall render
448 with each sale itemized invoices showing the seller's name and address, the purchaser's name and
449 address, the date of sale, and all prices. Such persons shall preserve legible copies of all such invoices
450 for three years after the date of sale.

451 **§ 58.1-1030.5. Restrictions on the sale of tobacco products to minors; penalties.**

452 A. A permit holder shall be required to comply with the provisions of this article, §§ 18.2-246.8,
453 18.2-246.10, and 18.2-371.2, and any other federal, state, or local law related to the sale of tobacco
454 products. If the Department determines that a permit holder has violated any such provision of law, the
455 Department may revoke its permit.

456 B. 1. For each permit holder, the Department shall conduct two unannounced investigations per year
457 to verify that the permit holder is not selling tobacco products to persons under 21 years of age. If the
458 Department determines that the permit holder has violated any provision of this article, § 18.2-246.8,
459 18.2-246.10, or 18.2-371.2, or any other federal, state, or local law related to the sale of tobacco
460 products, it shall conduct four unannounced investigations of the permit holder per year at intervals not
461 to exceed three months.

462 2. If the Department determines that a permit holder sold a tobacco product to a person under 21
463 years of age or violated subsection A or B of § 18.2-371.2, the Department shall (i) impose a civil
464 penalty of \$500 for a first offense, (ii) impose a civil penalty of \$1,000 for a second offense, (iii) impose
465 a civil penalty of \$1,500 and suspend the permit holder's permit for 15 days for a third offense, and (iv)
466 impose a civil penalty of \$2,000, revoke the permit holder's permit, and restrict such person from
467 applying for a permit pursuant to the provisions of subsection C of § 58.1-1030.2 for a period of three
468 years for a fourth offense.

469 C. The Department shall collaborate with the Virginia Alcoholic Beverage Control Authority to the
470 extent possible to enforce the provisions of this article and § 4.1-103.01.

471 **§ 58.1-1030.6. Required education for permit holders and employees.**

472 Any person that applies for a permit pursuant to § 58.1-1030.3 and any permit holder shall be
473 required to attest that it has conducted education and training for its employees related to:

474 1. The provisions of this article;

475 2. The prohibitions on the sale of tobacco products to persons under age 21 and other restrictions
476 prescribed by §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2;

477 3. Forms of identification that are acceptable as proof of age; and

478 4. The legal penalties that may be incurred for violation of the provisions of law identified in
479 subdivisions 1 and 2.

480 **§ 59.1-293.10. Definitions.**

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

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

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

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

490 "Nicotine vapor product" has the same meaning as in § ~~18.2-371.2~~ 58.1-1021.01.

491 **2. That the Department of Taxation shall develop guidelines implementing the provisions of this**
492 **act. Such guidelines shall be exempt from the provisions of the Administrative Process Act**
493 **(§ 2.2-4000 et seq. of the Code of Virginia).**

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