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HOUSE BILL NO. 1231

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 11, 1996)

(Patron Prior to Substitute—Delegate Connally)

*A BILL to amend and reenact § 18.2-371.2 of the Code of Virginia, relating to purchase or possession of tobacco products by minors; penalty.***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 by minors or sale of tobacco products to minors.

A. No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than eighteen years of age, knowing or having reason to believe that such person is less than eighteen years of age, any tobacco product, including but not limited to cigarettes and cigars. ~~Where any~~ *No tobacco product is may be sold from a vending machine (i) except in compliance with subsection D and (ii) unless notice shall also be is posted on the machine in a conspicuous manner and place indicating that the purchase or possession of tobacco products by minors is unlawful.*

B. No person less than eighteen years of age shall purchase or possess any tobacco product including but not limited to cigarettes and cigars. The provisions of this subsection shall not be applicable to the possession of tobacco products by a person less than eighteen years of age making a delivery of tobacco products in pursuance of his employment.

C. A violation of subsection A or B by an individual or by a separate retail establishment shall be punishable by a civil penalty not to exceed fifty dollars for a first violation and a civil penalty not to exceed \$100 for a second violation. However, a third or subsequent violation of subsection A shall be punishable by a civil penalty not to exceed \$250. A third or subsequent violation of subsection B shall be punishable by a civil penalty not to exceed \$100, *and the judge in his discretion may enter an order pursuant to subdivision 9 of § 16.1-278.8.* Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A or B.

D. *1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment which offers for sale any tobacco product, including but not limited to cigarettes and cigars, shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products to any person under eighteen 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 fifty dollars. 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. No person shall operate a vending machine which dispensed tobacco products unless such a machine is located in:

a. A place that is not open to the general public and is not generally accessible to minors or;

b. A place that is open to the general public. Such a vending machine shall be inside the establishment and unless the vending machine is at least ten feet from any public entrance to the establishment, and the sale of a token is required to operate such a machine, it shall be placed within the normal unobstructed line of sight of the proprietor or his employees.

3. For the purposes of enforcing the provisions of this section, the Board of Health shall promulgate regulations which allow the Department of Health to conduct random, unannounced inspections at locations where tobacco products are sold in a manner that ensures compliance with the requirements of this section.

4. 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.

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