CHAPTER 812

An Act to amend and reenact §§ 4.1-105 and 18.2-371.2 of the Code of Virginia, relating to enforcement of tobacco laws by special agents of the Alcoholic Beverage Control Board.

[S 1162]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-105 and 18.2-371.2 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-105. Police power of members, agents and employees of Board.

Members of the Board are vested, and such agents and employees of the Board designated by it shall be vested, with like power to enforce the provisions of *(i)* this title and the criminal laws of the Commonwealth as is vested in the chief law-enforcement officer of a county, city, or town *and (ii) § 18.2-371.2*.

§ 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. No tobacco product may be sold from a vending machine (i) except in compliance with subsection E and (ii) unless notice 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. No person shall sell a tobacco 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 eighteen years of age. Such identification is not required from an individual whom the person has reason to believe is at least eighteen years of age or whom the person knows is at least eighteen years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least eighteen 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 eighteen 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 sales.

D. A violation of subsection A~~, B,~~ or C by an individual or by a separate retail establishment shall be punishable by a civil penalty not to exceed ~~fifty dollars~~ *$100* for a first violation and a civil penalty not to exceed ~~$100~~ *$200* for a second violation. However, a third or subsequent violation of subsection A shall be punishable by a civil penalty not to exceed ~~$250~~ *$500*. A ~~third or subsequent~~ violation of subsection B shall be punishable by a civil penalty not to exceed ~~$100,~~ *$50 for a first violation* and *a civil penalty not to exceed $100 for a second or subsequent violation. Upon a third or subsequent violation of subsection B,* 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, B, or C.

E. 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 dispenses 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, or 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 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.

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.

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

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

2. That the Virginia Alcoholic Beverage Control Board shall report any additional fiscal and manpower needs necessary to comply with the provisions of this section to the Governor and the General Assembly in December 1997 and December 1998.

3. That an emergency exists and this act is in force from its passage.