

987358112

HOUSE BILL NO. 1368

Offered January 26, 1998

A BILL to amend and reenact § 4.1-103 of the Code of Virginia; to amend the Code of Virginia by adding in Title 4.1 a chapter numbered 6, consisting of sections numbered 4.1-600 through 4.1-611; and to repeal § 18.2-371.2 of the Code of Virginia, relating to the Prevention of Youth Access to Tobacco Act; penalties.

Patrons—Almand, Brink, Darner, Moran, Plum and Watts; Senator: Gartlan

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-103 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 4.1 a chapter numbered 6, consisting of sections numbered 4.1-600 through 4.1-611, as follows:

§ 4.1-103. General powers of Board.

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;

2. Buy and sell any mixers;

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4. Determine, subject to § 4.1-121, the localities within which government stores shall be established or operated and the location of such stores;

5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;

6. Lease, occupy and improve any land or building required for the purposes of this title;

7. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;

10. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

12. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

13. Promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and § 4.1-111 of this chapter;

14. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

15. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

16. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

17. Establish minimum food sale requirements for all retail licensees; and

18. Administer and enforce the provisions of the Prevention of Youth Access to Tobacco Act

INTRODUCED

HB1368

60 (§ 4.1-600 et seq.); and

61 19. Do all acts necessary or advisable to carry out the purposes of this title.

62 CHAPTER 6.

63 PREVENTION OF YOUTH ACCESS TO TOBACCO ACT.

64 § 4.1-600. Definitions.

65 As used in this chapter, unless the context requires otherwise:

66 "Board" means the Virginia Alcoholic Beverage Control Board.

67 "Distribute" means to sell, furnish, give or provide tobacco products to the ultimate consumer.

68 "Employee" means any person who is employed by or who receives any compensation from a
69 licensee, and includes any agent of the licensee.

70 "Licensee" means any person holding or applying for a license required by this chapter.

71 "Person" means an individual, partnership, copartnership, firm, company, public or private
72 corporation, association, limited liability company, joint stock company, trust, estate, political
73 subdivision of the Commonwealth, any agency, board, department or bureau of the state or federal
74 government, or any other legal entity which is recognized by law as the subject of rights and duties.

75 "Proof of age" means a driver's license or similar photo identification issued by a government
76 agency, or other documentary or written evidence that purports to establish that a person is eighteen
77 years of age or older.

78 "Tobacco product" means any product which contains tobacco and is intended for human
79 consumption.

80 "Vending machine" means any mechanical, electric or electronic self-service device which, upon
81 insertion of money, tokens or any other form of payment, automatically dispenses tobacco products.

82 § 4.1-601. License required; duration; renewal; penalty for violation.

83 A. No person shall engage in the retail sale of tobacco products over the counter or through any
84 vending machine on or after January 1, 2000, unless such person has obtained a license in accordance
85 with this chapter, or is an employee or agent of the holder of such license. For the purpose of this
86 chapter, a person engaged in the retail sale of tobacco products through a vending machine shall be
87 deemed to be the owner of the business establishment in which the vending machine is located.

88 B. Every application for a license required under this chapter shall be made upon forms as
89 determined by the Board and shall be accompanied by a license fee as follows:

90 1. Ten dollars for each place of business where tobacco products are sold over the counter at retail.
91 A separate license shall be required for each such place of business; and

92 2. Five dollars for each vending machine selling tobacco products, not to exceed \$100 for all such
93 machines operated by the licensee.

94 The application shall contain (i) the name under which the applicant transacts or intends to transact
95 business, (ii) the location of the place of business or vending machine where the applicant transacts or
96 intends to transact business, (iii) a certification by the applicant of compliance with the restrictions
97 imposed by § 4.1-602, and (iv) any other information required by the Board.

98 C. Every license issued under this chapter shall be valid for one year from the date of issuance and
99 shall be renewable, upon application, by the licensee.

100 D. The Board shall issue or renew a license within thirty days of receiving an application in the
101 proper form and upon payment of the appropriate fee. A license or the renewal thereof shall not be
102 denied except as provided in § 4.1-608. No license shall be issued for the sale of tobacco products
103 through a vending machine that dispenses any product in addition to tobacco products.

104 E. A license issued pursuant to this chapter shall be nontransferable and shall be valid only for the
105 person in whose name it is issued and for the place of business or vending machine specified in the
106 license. Upon notification of a change of business address, a license shall be reissued for the new
107 address without the filing of a new application or payment of a fee.

108 F. On or before January 1, 2000, the Board shall notify every person in Virginia who engages in the
109 retail sale of tobacco products, including such sales through vending machines, of the license
110 requirements imposed by this chapter.

111 G. Any person who violates the provisions of subsections A or E, or who engages in the retail sale
112 of tobacco products after his license has been suspended or revoked, shall be subject to a civil penalty
113 of \$50 for the first violation and \$100 for a second or subsequent violation. No person shall be liable
114 for more than one violation per day.

115 § 4.1-602. Limitation on vending machine sales; penalty.

116 A. No person shall sell tobacco products through a vending machine unless the vending machine is
117 located in:

118 1. Areas of factories, businesses, offices or other places of employment that are not open to the
119 general public;

120 2. Places of employment which have an insignificant portion of its regular workforce comprised of
121 persons under the age of eighteen years, and only in such locations as are not accessible to the general

public;

3. Places that are open to the general public but to which persons under the age of eighteen years are denied access; or

4. Other places, provided the vending machine is inside the establishment, is not located in the vestibule area and is operated only by the activation of an electronic switch by the licensee or his employee prior to each purchase or by the use of tokens provided by the licensee or his employee prior to each purchase.

B. In any place where supervision of a vending machine, activation of an electronic switch, or sale of a token is required by subsection A, the licensee or his employee shall demand photographic proof of age from a prospective purchaser if the licensee or his employee has reason to believe that the purchaser is under eighteen years of age. Such proof of age shall not be required from a purchaser whom the licensee or his employee has reason to believe is at least twenty-seven years of age; however, such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to a person under the age of eighteen years.

C. Any person who violates the provisions of this section shall be subject to a civil penalty of \$50 for the first violation and \$100 for any subsequent violation.

§ 4.1-603. Purchasing or possessing tobacco products by minors prohibited; penalty; forfeiture.

A. No person under the age of eighteen years shall purchase or possess, or attempt to purchase or possess, any tobacco product, except (i) where possession of the tobacco product by a person under the age of eighteen years is due to such person's making a delivery of tobacco products in pursuance of his employment or an order of his parent; or (ii) by any state, federal, or local law-enforcement officer when possession of a tobacco product is necessary in the performance of his duties.

B. No person under the age of eighteen years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle; (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card; or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to purchase or attempt to purchase a tobacco product.

C. Any person who violates the provisions of this section shall be subject to a civil penalty of \$50 for the first violation and \$100 for any subsequent violation. However, a third or subsequent violation shall be punishable by a civil penalty not to exceed \$250.

D. Any tobacco product purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth.

E. Any licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from the civil penalty for a violation of § 4.1-605.

§ 4.1-604. Purchasing tobacco products for one to whom they may not be sold; penalty; forfeiture.

A. If any person purchases tobacco products for another person, and at the time of such purchase knows or has reason to believe that the person for whom the tobacco products were purchased was less than eighteen years of age, he shall be subject to a civil penalty of \$50 for the first violation and \$100 for any subsequent violation. However, a third or subsequent violation shall be punishable by a civil penalty not to exceed \$250.

B. Any tobacco products purchased in violation of this section shall be deemed contraband and forfeited to the Commonwealth.

§ 4.1-605. Sale of tobacco products to minors prohibited; proof of age required; liability of employees; penalty; defense.

A. No licensee or his employee shall sell tobacco products to any person under the age of eighteen years.

B. A licensee or his employee shall demand photographic proof of age from a prospective purchaser if the licensee or his employee has reason to believe that the purchaser is under eighteen years of age. Such proof of age shall not be required from a purchaser whom the licensee or his employee has reason to believe is at least twenty-seven years of age; however, such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to a person under the age of eighteen years.

C. Any person who violates the provisions of this section shall be subject to a civil penalty of \$50 for the first violation and \$100 for any subsequent violation. However, a third or subsequent violation of subsection A shall be punishable by a civil penalty not to exceed \$250.

If a sale is made in violation of this section by an employee of the licensee, the employee shall be guilty of the violation and subject to the civil penalty.

D. Proof that the licensee or his employee demanded, was shown and reasonably relied upon the proof of age shall be a defense to any action brought under this chapter.

E. For purposes of determining the liability of a person controlling franchises or business operations

183 in multiple locations for a second or subsequent violation of this section, each individual franchise or
184 business location shall be deemed a separate entity.

185 § 4.1-606. Posting required; penalty.

186 A. Effective January 1, 2000, every person who sells tobacco products at retail over the counter
187 shall post a sign in a conspicuous location at his place of business. Such sign shall be no smaller than
188 ninety-three and one-half square inches, so as to ensure that it is likely to be read at each point of sale,
189 stating the following: "STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO PRODUCTS TO
190 PERSONS UNDER THE AGE OF 18. PHOTOGRAPHIC PROOF OF AGE MAY BE REQUIRED."

191 No notice regarding tobacco products, other than the notice required by this section shall be
192 required to be posted or maintained in any store which sells tobacco products at retail.

193 B. Failure to post the sign required by this section shall be punishable by a civil penalty of
194 twenty-five dollars for the first offense within a two-year period and seventy-five dollars for each
195 succeeding offense within a two-year period.

196 § 4.1-607. Notice to employees required; penalty.

197 A. Every licensee shall notify each individual employed by the licensee as a retail sales clerk that
198 state law (i) prohibits the sale or distribution of tobacco products to any person under eighteen years of
199 age and (ii) requires photographic proof of age be demanded from a prospective purchaser if the
200 employee has reason to believe that such purchaser is under eighteen years of age.

201 The requirements of this section shall be communicated to an employee before such employee begins
202 work as a retail sales clerk or, if the employee was employed before January 1, 2000, within thirty days
203 of such employment.

204 B. An employee shall signify that he has received the notice required by this section by signing and
205 dating a form stating the following:

206 "I understand that state law prohibits the sale or distribution of tobacco products to persons under
207 eighteen years of age and requires that photographic proof of age be demanded from a prospective
208 purchaser if I have reason to believe that the prospective purchaser is under eighteen years of age. I
209 promise, as a condition of my employment, to observe this law."

210 C. The licensee shall retain the forms signed by each employee until 120 days after the employee is
211 no longer employed by the licensee.

212 D. A licensee violating the provisions of this section shall be subject to a civil penalty of \$50 for the
213 first violation and \$100 for any subsequent violation.

214 § 4.1-608. License suspension and revocation; nonrenewal; judicial review.

215 A. Upon a finding that, during a licensing term, a licensee or his employee has been found guilty by
216 a court of competent jurisdiction of three or more violations of this chapter involving the same place of
217 business or vending machine, the Board shall notify the licensee in writing that a subsequent violation
218 during the licensing term may result in the suspension of his license for a period not to exceed thirty
219 days.

220 B. Upon a finding that a further violation has occurred during the licensing term involving the same
221 place of business or vending machine, the Board may suspend such license, provided the Board gives
222 the licensee written notice and an opportunity to be heard within fourteen days after written notice is
223 sent.

224 C. The Board may revoke a license previously suspended under subsection B if, during the licensing
225 term, a fifth or subsequent violation of this chapter has occurred involving the same place of business
226 or vending machine, provided the Board gives the licensee written notice and an opportunity to be
227 heard within fourteen days after written notice is sent.

228 D. The Board may refuse to grant or renew a license to any person found guilty by a court of
229 competent jurisdiction of four or more violations of this chapter committed during the year immediately
230 preceding the date on which the license or renewal application is filed with the Board, provided the
231 licensee is given notice and an opportunity to be heard within fourteen days after written notice is sent.

232 E. Any person whose license has been suspended or revoked in accordance with this section, shall
233 pay a fee of fifty dollars to the Board for the subsequent reissuance of his license, except as provided in
234 subsection D. For purposes of a person controlling franchises or business operations in multiple
235 locations, each individual franchise or business location shall be deemed a separate entity.

236 F. A licensee aggrieved by a refusal of the Board to issue a license, or for the suspension or
237 revocation of a license, may, within thirty days of such action, appeal to the circuit court where the
238 licensee's place of business or vending machine is located. The substantial evidence standard of review
239 shall be applied in such appeal. The right to seek judicial review shall not be affected by the failure to
240 seek reconsideration by the Board.

241 G. Actions of the Board relating to the suspension, revocation, or nonrenewal of a license shall not
242 be subject to the Administrative Process Act (§ 9-6.14:1 et seq.).

243 § 4.1-609. Liability of licensee for acts of employee; exception.

244 A. A licensee shall not be liable for violations of this chapter committed by his employee if the

licensee affirmatively demonstrates that he (i) complied with § 4.1-607 and (ii) had taken reasonable steps prior to such violations to prevent their occurrence.

B. This section shall not apply in cases where the licensee has received four or more violations during the licensing term involving the same place of business or vending machine.

§ 4.1-610. Unannounced inspections; conditions under which inspections to be conducted.

A. The Board or its designee shall enforce the provisions of this chapter in a manner that can reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under the age of eighteen years. The Board or its special agents shall conduct random, unannounced inspections at locations where tobacco products are sold to ensure compliance with the requirements of this chapter.

B. Persons under eighteen years of age may be enlisted by the Board to test compliance with this chapter, provided such testing is conducted under the following conditions:

1. Prior to the use of any such person in a random, unannounced inspection, written consent shall be obtained from such person's parents or legal guardian;

2. The person shall act solely under the supervision and direction of the Board during any such inspection;

3. The person shall not be used in any such inspection at a store or similar retail outlet where tobacco products are sold in which he is a regular customer;

4. If during the course of an inspection, the person is questioned about his age, he shall state his correct age, and shall present a true and correct proof of age, if requested, any time during the inspection; and

5. The person shall not appear to be over eighteen years of age.

§ 4.1-611. Annual report by Board; fees to be used for enforcement of chapter; regulations.

A. The Board shall prepare for annual submission to the Secretary of the U.S. Department of Health and Human Services, the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. 300x-26) and shall be responsible for ensuring Virginia's compliance with the Public Health Service Act and any implementing regulations adopted by the U.S. Department of Health and Human Services.

B. License and related fees and moneys from the imposition of civil penalties collected by the Board under this chapter shall be set aside and constitute a Board fund for the administration and enforcement of this chapter.

C. The Board may adopt such regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and employ such persons as it deems appropriate to implement the provisions of this chapter.

2. That § 18.2-371.2 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2000.

4. That if federal funds are available for use to implement the licensing requirements of this act, such funds shall be used by the Alcoholic Beverage Control Board to reduce or eliminate the license fees charged by them pursuant to § 4.1-601.