

15103426D

SENATE BILL NO. 1068

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact § 18.2-371.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-371.2:1, relating to purchase, etc., of vapor products by minors; sale or distribution of vapor products or liquid nicotine.

Patron—Miller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-371.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-371.2:1, as follows:

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, vapor products, and alternative nicotine products by minors or sale of tobacco products, vapor products, and alternative nicotine products to minors.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, ~~nicotine~~ vapor product, or alternative nicotine product.

Tobacco 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 minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 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 18 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 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 18 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 18 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 18 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 purchaser's signature before the tobacco product, ~~nicotine~~ vapor product, or alternative nicotine product will be released to the purchaser.

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

A violation of subsection A or C by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail

INTRODUCED

SB1068

59 establishment has failed to so train its employees, the court may impose a civil penalty not to exceed
60 \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a
61 ~~nicotine~~ vapor product, alternative nicotine product, or tobacco product other than a bidi.

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

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

72 E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the
73 required health warning. The proprietor of every retail establishment that offers for sale any tobacco
74 product, ~~nicotine~~ vapor product, or alternative nicotine product shall post in a conspicuous manner and
75 place a sign or signs indicating that the sale of tobacco products, ~~nicotine~~ vapor products, or alternative
76 nicotine products to any person under 18 years of age is prohibited by law. Any attorney for the county,
77 city, or town in which an alleged violation of this subsection occurred may enforce this subsection by
78 civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local
79 treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted
80 the action.

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

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

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

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

92 H. As used in this section:

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

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

101 "*Tobacco product*" means any product made of tobacco and includes cigarettes, cigars, smokeless
102 tobacco, pipe tobacco, bidis, and wrappings. "*Tobacco product*" does not include any vapor product,
103 alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351
104 et seq.) of the Federal Food, Drug, and Cosmetic Act.

105 "~~Nicotine vapor~~ Vapor product" means any noncombustible product ~~containing~~, which may or may
106 not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic,
107 chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from
108 ~~nicotine~~ a substance in a solution or other form. "~~Nicotine vapor~~ Vapor product" includes any electronic
109 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any
110 cartridge or other container of ~~nicotine~~ a substance in a solution or other form that is intended to be
111 used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar
112 product or device. "~~Nicotine vapor~~ Vapor product" does not include any product regulated by the FDA
113 under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

114 "~~Tobacco product~~" means any product made of ~~tobacco~~ and includes cigarettes, cigars, smokeless
115 ~~tobacco~~, pipe ~~tobacco~~, bidis, and wrappings. "~~Tobacco product~~" does not include any nicotine vapor
116 product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21
117 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

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

120 § 18.2-371.2:1. Sale or distribution of liquid nicotine and vapor products.

121 A. For purposes of this section:

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

124 "Liquid nicotine container" means a container holding liquid nicotine in any concentration that is
125 sold, marketed, or intended for use in a vapor product, but does not include a cartridge containing
126 liquid nicotine if such cartridge is prefilled and sealed by the manufacturer of such cartridge and is not
127 intended to be opened by the consumer.

128 "Vapor product" has the same meaning as in § 18.2-371.2.

129 "Vapor product solution" means a liquid or other substance that is sold, marketed, or intended for
130 use in a vapor product.

131 B. No person shall:

132 1. Sell or distribute or offer for sale or distribution liquid nicotine in a liquid nicotine container;

133 2. Sell or distribute or offer for sale or distribution liquid nicotine, a vapor product, or a vapor
134 product solution within 1,000 feet of the premises of any place he knows or has a reason to know is a
135 child day center as defined in § 63.2-100 or a primary, secondary, or high school;

136 3. Sell or distribute or offer for sale or distribution liquid nicotine or a vapor product solution that
137 contains as an additive or constituent part any artificial or natural flavor that imparts a characterizing
138 flavor other than the flavor of tobacco. Any public statement or claim made or disseminated by the
139 manufacturer of the liquid nicotine or vapor product solution that such liquid nicotine or vapor product
140 solution has or produces a characterizing flavor other than the flavor of tobacco shall constitute prima
141 facie evidence that the liquid nicotine or vapor product solution contains such artificial or natural
142 flavor; or

143 4. Distribute or offer for distribution any free samples of liquid nicotine, vapor products, or vapor
144 product solutions.

145 C. Any person who violates subsection B is subject to a civil penalty in the amount of \$500 for a
146 first violation, \$1,000 for a second violation, and \$2,500 for a third or subsequent violation.

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