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HOUSE BILL NO. 1372

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend the Code of Virginia by adding sections numbered 58.1-1021.04:6 and 58.1-1021.04:7, relating to licensing of retailers of vapor products; penalty.

Patron—Leftwich

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 58.1-1021.04:6 and 58.1-1021.04:7 as follows:

§ 58.1-1021.04:6. Licensing of retail dealers of vapor products; penalty.

A. No person shall engage in the business of selling at retail heated tobacco products, liquid nicotine, or nicotine vapor products as a retail dealer in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each 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 address of 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 section.

B. The Department shall establish an application and renewal fee to be retained by the Department. The fee amount shall, according to a reasonable estimate calculated by the Department, not exceed its costs related to enforcement, personnel, providing related information to retail dealers, processing applications, conducting background investigations, and issuing licenses pursuant to this section and § 58.1-1021.04:7. 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. The Department shall conduct a background investigation, to include a Virginia criminal history record information check and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a national criminal record information check necessary, on applicants for licensure as retail dealers. The Department may refuse to issue a license or may suspend, revoke, or refuse to renew a retail dealer's license issued to any person, partnership, corporation, limited liability company, or business trust if it determines that the principal, manager, or other person engaged in handling products at the licensable location of the applicant has been (i) found guilty of any fraud or misrepresentation in connection with such business; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of any other 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 retail dealer's license to the Department shall be guilty of a Class 1 misdemeanor.

D. 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 permitting the licensee to engage in business as a retail dealer at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed in the place of business covered by the license. No license shall be transferable to any other person. Retail dealer's licenses issued pursuant to this section shall be valid for a period of five years from the date of issue unless revoked by the Department in the manner provided in this section. The Department may at any time revoke the license issued to any retail dealer 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 the authority of this chapter.

E. Unless an applicant or retail dealer 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 retail

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59 dealer shall be deemed to have appointed the Clerk of the State Corporation Commission as the
60 applicant's or retail dealer's agent for the purpose of service of process relating to any matter or issue
61 involving the applicant or retail dealer and arising under the provisions of this article.

62 F. The Department shall compile and maintain a current list of licensed retail dealers. The list shall
63 be updated on a semiannual basis and published on the Department's website.

64 G. The Department of Taxation shall promulgate guidelines regarding this section and §
65 58.1-1021.04:7. Such guidelines shall be exempt from the provisions of the Administrative Process Act
66 (§ 2.2-4000 et seq.).

67 **§ 58.1-1021.04:7. Certain records required of retail dealer; access to premises.**

68 A. Each retail dealer licensed pursuant to § 58.1-1021.04:6 shall keep in each licensed place of
69 business complete and accurate records for that place of business, including itemized invoices of (i)
70 products held and purchased, (ii) all sales of products, and (iii) any records required by the
71 Department.

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

76 B. At any time during usual business hours, duly authorized agents or employees of the Department
77 may enter any place of business of a retail dealer and inspect the premises, the records required to be
78 kept under this section, and the products contained therein to determine whether all the provisions of
79 this article are being complied with fully. Refusal to permit such inspection by a duly authorized agent
80 or employee of the Department shall be grounds for revocation of the retail dealer's license.

81 C. Each retail dealer who sells products to persons other than an ultimate consumer shall render
82 with each sale itemized invoices showing the seller's name and address, the purchaser's name and
83 address, the date of sale, and all prices. Such persons shall preserve legible copies of all such invoices
84 for three years after the date of sale.

85 D. Any violation of § 58.1-1021.04:6 or this section shall be grounds for revocation of the retail
86 dealer's license.