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HOUSE BILL NO. 962

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 2020)

(Patron Prior to Substitute—Delegate Marshall)

A BILL to amend and reenact § 18.2-371.2 of the Code of Virginia, relating to hemp products intended for smoking.

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, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking by a person under 21 years of age or sale of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking to persons under 21 years of age.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 21 years of age, knowing or having reason to believe that such person is less than 21 years of age, any tobacco product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking*.

Tobacco products, nicotine vapor products, ~~and~~ alternative nicotine products, *and hemp products intended for smoking* 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~~ such products by persons under 21 years of age is unlawful and (ii) located in a place that is not open to the general public and is not generally accessible to persons under 21 years of age. An establishment that prohibits the presence of persons under 21 years of age unless accompanied by a person 21 years of age or older is not open to the general public.

B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking*. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, ~~or~~ alternative nicotine products, *or hemp products intended for smoking* by a person less than 21 years of age making a delivery of tobacco products, nicotine vapor products, ~~or~~ alternative nicotine products, *or hemp products intended for smoking* 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, *or hemp product intended for smoking* 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 21 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 21 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 21 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, *or hemp product intended for smoking* for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking* verifies that the purchaser is at least 21 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 signature of a person at least 21 years of age before the tobacco product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking* will be released to the purchaser.

D. The provisions of subsections B and C shall not apply to the sale, giving, or furnishing of any tobacco product, nicotine vapor product, ~~or~~ alternative nicotine product, *or hemp product intended for smoking* to any active duty military personnel who are 18 years of age or older. An identification card issued by the Armed Forces of the United States shall be accepted as proof of age for this purpose.

E. 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, *hemp product intended for smoking*, 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

60 \$500 for a third or subsequent violation.

61 A violation of subsection A or C by an individual or by a separate retail establishment that involves
62 the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a
63 first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the
64 amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers
65 proof that it has trained its employees concerning the requirements of this section, the court shall
66 suspend all of the penalties imposed hereunder. However, where the court finds that a retail
67 establishment has failed to so train its employees, the court may impose a civil penalty not to exceed
68 \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a
69 nicotine vapor product, alternative nicotine product, *hemp product intended for smoking*, or tobacco
70 product other than a bidi.

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

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

81 F. 1. Cigarettes and hemp products intended for smoking shall be sold only in sealed packages
82 provided by the manufacturer, with the required health warning. The proprietor of every retail
83 establishment that offers for sale any tobacco product, nicotine vapor product, ~~or~~ alternative nicotine
84 product, *or hemp product intended for smoking* shall post in a conspicuous manner and place a sign or
85 signs indicating that the sale of tobacco products, nicotine vapor products, ~~or~~ alternative nicotine
86 products, *or hemp products intended for smoking* to any person under 21 years of age is prohibited by
87 law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred
88 may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil
89 penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the
90 county, city, or town which instituted the action.

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

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

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

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

102 I. As used in this section:

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

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

111 "*Hemp product*" means the same as that term is defined in § 3.2-4112.

112 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
113 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
114 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form.
115 "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic
116 pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other
117 form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,
118 electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product
119 regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and
120 Cosmetic Act.

121 "Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless

122 tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor
123 product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21
124 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.
125 "Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for
126 smoking in a manner similar to a cigarette or cigar.