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HOUSE BILL NO. 2296

Offered January 11, 2023

A *BILL to amend and reenact §§ 58.1-1021.01, 58.1-1021.02, 58.1-1021.04:1, 58.1-1021.04:2, 58.1-1021.04:5, and 58.1-1021.05 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 10 of Title 58.1 sections numbered 58.1-1021.06 through 58.1-1021.010, relating to tobacco products tax; liquid nicotine.*

Patrons—Hope and Taylor

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01, 58.1-1021.02, 58.1-1021.02:2, 58.1-1021.04:1, and 58.1-1021.04:2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 10 of Title 58.1 sections numbered 58.1-1021.06 through 58.1-1021.010 as follows:

§ 58.1-1021.01. Definitions.

As used in this article, unless the context requires a different meaning:

"Actual cost" means the actual price paid by a remote retail seller for each individual stock keeping unit or SKU.

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

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as such term is defined in § 58.1-1000.

"Closed system" means any nicotine vapor product capable of utilizing a disposable container that is (i) prefilled with liquid nicotine and sealed by the manufacturer, (ii) not easily refillable or intended or designed to be refillable, and (iii) intended or used to dispense liquid nicotine for use in a nicotine vapor product that is intended or designed for reuse. "Closed system" does not include any open system.

"Consumer" means the person who is the end or final user of tobacco products or liquid nicotine.

"Delivery sale" means a sale of liquid nicotine or nicotine vapor products to a consumer in the Commonwealth in which the consumer submits the order for the sale by telephone, over the Internet, or through the mail or another delivery system, and where the liquid nicotine or nicotine vapor products are shipped through a delivery service. "Delivery sale" does not include a sale of liquid nicotine or nicotine vapor products not for personal consumption to a person who is a manufacturer, distributor, or retail dealer.

"Distributor" means (i) any person engaged in the business of selling tobacco products or liquid nicotine in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products or liquid nicotine for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products or liquid nicotine in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products or liquid nicotine outside the Commonwealth who ships or transports tobacco products or liquid nicotine to any person in the business of selling tobacco products or liquid nicotine in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products or liquid nicotine in the Commonwealth.

"Heated tobacco product" means a product containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

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

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer sized unit, pouch, or package containing at least 4 ounces but not more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

2. "Loose leaf tobacco pound-unit" means a consumer sized unit, pouch, or package containing more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to

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59 consumers as a single unit and not produced to be divided or sold separately and containing one
60 individual package.

61 3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less
62 than 4 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to
63 consumers as a single unit and not produced to be divided or sold separately and containing one
64 individual package.

65 "Manufacturer" means a person who manufactures or produces tobacco products *or liquid nicotine*
66 and sells tobacco products *or liquid nicotine* to a distributor.

67 "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the
68 manufacturer's tobacco products *or liquid nicotine*.

69 "Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's
70 representative, or any other person sells tobacco products *or liquid nicotine* to an unaffiliated distributor.

71 "Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is
72 not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is
73 intended to be placed in the nasal cavity.

74 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
75 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
76 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form,
77 *including liquid nicotine*. "Nicotine vapor product" includes any electronic cigarette, electronic cigar,
78 electronic cigarillo, electronic pipe, *closed system, open system*, or similar product or device and any
79 cartridge or other container of nicotine in a solution or other form, *including liquid nicotine*, that is
80 intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic
81 pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by
82 the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

83 "*Open system*" means a nicotine vapor product designed and intended by the manufacturer to be
84 reusable and refilled with liquid nicotine of the end user's choice. "*Open system*" does not include any
85 closed system.

86 "Person" means any individual, corporation, partnership, association, company, business, trust, joint
87 venture, or other legal entity.

88 "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is
89 suitable for use and likely to be offered or purchased by consumers as tobacco to be smoked in a pipe.

90 "Remote retail sale" means any sale of cigars or pipe tobacco to a consumer in the Commonwealth
91 when (i) the consumer submits the order for the sale by means of a telephone or other method of voice
92 transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the
93 physical presence of the consumer when the request for the purchase or order is made, or (ii) the cigars
94 or pipe tobacco are delivered to the consumer by common carrier, private delivery service, or other
95 method of remote delivery, or the seller is not in the physical presence of the consumer when the buyer
96 obtains possession of the cigars or pipe tobacco.

97 "Remote retail seller" means a person located within or outside of this state that makes remote retail
98 sales of cigars or pipe tobacco.

99 "Retail dealer" means every person who sells or offers for sale any tobacco product *or liquid nicotine*
100 to consumers at retail in a transaction other than a remote retail sale.

101 "SKU" means an individual stock keeping unit identifier used for tracking inventory.

102 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal
103 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m)
104 of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in
105 § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall
106 also include loose leaf tobacco.

107 **§ 58.1-1021.02. Tax on tobacco products and liquid nicotine.**

108 A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the
109 privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in
110 business as a distributor or remote retail seller thereof, at the following rates:

111 1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the
112 same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as
113 listed by the manufacturer on the package in accordance with federal law.

114 2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf
115 tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax
116 shall be imposed ~~on~~ upon the distributor for loose leaf tobacco as follows:

117 a. \$0.21 for each loose leaf tobacco single-unit;

118 b. \$0.40 for each loose leaf tobacco half pound-unit;

119 c. \$0.70 for each loose leaf tobacco pound-unit; and

120 d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and

shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of 4 ounces or portion thereof that the loose leaf tobacco exceeds 16 ounces.

The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the provisions of subdivisions a- through d- only and regardless of sales price.

3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of 10 percent of the manufacturer's sales price of such tobacco products.

Upon cigars and pipe tobacco products sold by remote retail sellers, the tax rates delineated in this subdivision shall apply to:

- (a) a. The actual cost; or
- (b) b. If the actual cost is not available, the average of the actual cost over the 12 calendar months before January 1 of the year in which the sale occurs.

Such tax shall be imposed at the time the remote retail seller located within or outside the Commonwealth makes a remote retail sale to a consumer within the Commonwealth. It is the intent and purpose of this subdivision that the remote retail seller be liable for the tax. It is further the intent and purpose of this article to impose the tax once; and only once on all tobacco products, including cigars and pipe tobacco sold in the Commonwealth.

Such tax shall be imposed on tobacco products (i) at the time of retail sale by a retail dealer or distributor; (ii) at the time the distributor makes, manufactures, or fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) at the time the distributor ships or transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the intent and purpose of this article that the distributor who first possesses the tobacco product subject to this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article to impose the tax once; and only once on all tobacco products for sale in the Commonwealth.

B. 1. *In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the privilege of selling or dealing in liquid nicotine in the Commonwealth by any person engaged in business as a distributor of liquid nicotine, at the following rates:*

a. *Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter beginning July 1, 2023, for taxable sales or purchases occurring on and after such date.*

b. *Upon liquid nicotine in open systems at the rate of 20 percent of the wholesale price beginning July 1, 2023, for taxable sales or purchases occurring on and after such date.*

2. *Such tax shall be imposed on such liquid nicotine (i) at the time of retail sale by a retail dealer or distributor; (ii) at the time the distributor makes, manufactures, or fabricates liquid nicotine in the Commonwealth for sale in the Commonwealth; or (iii) at the time the distributor ships or transports liquid nicotine to retail dealers in the Commonwealth to be sold by those retailers. For any transaction involving liquid nicotine between a distributor and a retail dealer, both the distributor and the retail dealer shall maintain and retain records of any invoice or sales receipt that shall include itemized lists of the types of products included in such transaction, the tax due on each product pursuant to this subsection, and the total amount of taxes paid. It is the intent and purpose of this article that the distributor that first possesses the liquid nicotine subject to this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article to impose the tax once and only once on all liquid nicotine for sale in the Commonwealth. Such taxes shall apply only to liquid nicotine and not to any batteries, filters, or other mechanical or aesthetic components of liquid nicotine in a closed system or an open system.*

C. No tax shall be imposed pursuant to this section upon tobacco products or liquid nicotine not within the taxing power of the Commonwealth under the Commerce Clause of the United States Constitution.

D. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

§ 58.1-1021.04:1. Distributor's or remote retail seller's license; liquid nicotine licensing; penalty.

A. 1. No person shall engage in the business of selling or dealing in tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a distributor's license shall be accompanied by a fee to be prescribed by the Department. Every 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- a. 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- b. The address of the applicant's principal place of business;

3- c. The place or places where the business to be licensed is to be conducted; and

182 4. *d.* Such other information as the Department may require for the purpose of the administration of
183 this article.

184 ~~B.~~ 2. A person outside the Commonwealth who ships or transports tobacco products to retailers in
185 the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be
186 granted such a license by the Department, and thereafter be subject to all the provisions of this article.
187 Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed
188 distributor and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 *et*
189 *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
190 Chapter 2.1 (§ 50-73.1 *et seq.*) or 2.2 (§ 50-73.79 *et seq.*) of Title 50, shall be deemed to have appointed
191 the Clerk of the State Corporation Commission as the person's agent for the purpose of service of
192 process relating to any matter or issue involving the person and arising under the provisions of this
193 article.

194 The Department shall conduct a background investigation, to include a Virginia Criminal History
195 Records search, and fingerprints of the applicant, or the responsible principals, managers, and other
196 persons engaged in handling tobacco products at the licensable locations, that shall be submitted to the
197 Federal Bureau of Investigation if the Department deems a National Criminal Records search necessary,
198 on applicants for licensure as tobacco products distributors. The Department may refuse to issue a
199 distributor's license or may suspend, revoke, or refuse to renew a distributor's license issued to any
200 person, partnership, corporation, limited liability company, or business trust, if it determines that the
201 principals, managers, and other persons engaged in handling tobacco products at the licensable location
202 of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii)
203 convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling,
204 perjury, bribery, treason, or racketeering; or (iii) convicted of a felony. Anyone who knowingly and
205 willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false,
206 fictitious, or fraudulent statement or representation in any application for a distributor's license to the
207 Department, ~~shall be~~ *is* guilty of a Class 1 misdemeanor. The Department may establish an application
208 or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative
209 and other costs of processing distributor's license applications, conducting background investigations, and
210 issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of
211 June 30 in ~~even numbered~~ *even-numbered* years shall be reported to the State Treasurer and deposited
212 into the state treasury.

213 ~~C.~~ 3. No person inside or outside the Commonwealth shall make a remote retail sale of cigars or
214 pipe tobacco to consumers in the Commonwealth without (i) completing an application for and being
215 granted a license as a remote retail seller; (ii) determining whether economic nexus activity thresholds
216 have been met to register for a dealer's certificate under § 58.1-613; (iii) if economic nexus thresholds
217 are met, collecting and remitting the excise tax pursuant to subsection A of § 58.1-1021.02; (iv)
218 providing for age verification through an independent, third-party age verification service that compares
219 information available from a commercially available database, or aggregate of databases, that is regularly
220 used by government agencies and businesses for the purpose of age and identity verification to the
221 personal information entered by the individual during the ordering process that establishes that the
222 individual is of age; and (v) if economic nexus thresholds are met, and excise tax is being remitted
223 using the actual cost list method to calculate the excise tax, providing the remote retail seller's certified
224 actual cost list to the Department for each SKU to be offered for remote retail sale in the subsequent
225 calendar year. The actual cost list shall be updated quarterly as new SKUs are added to a remote retail
226 seller's inventory. New SKUs will be added using the actual cost first paid for the SKU.

227 ~~D.~~ *B.* Upon receipt of an application in proper form and payment of the required license fee, the
228 Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall
229 permit the licensee to engage in business as a distributor at the place of business shown on the license.
230 Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license.
231 No license shall be transferable to any other person. Distributor's licenses issued pursuant to this section
232 shall be valid for a period of three years from the date of issue unless revoked by the Department in the
233 manner provided herein. The Department may at any time revoke the license issued to any distributor
234 who is found guilty of violating or noncompliance with any of the provisions of this chapter, or any of
235 the rules of the Department adopted and promulgated under authority of this chapter.

236 *C. 1. No person shall engage in the business of selling or dealing liquid nicotine and nicotine vapor*
237 *products or who ships or transports liquid nicotine or nicotine vapor products to retailers in the*
238 *Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or retail dealer in the*
239 *Commonwealth without first having received a separate license from the Department for each location*
240 *or place of business. Each application for a manufacturer's, distributor's, or retail dealer's liquid*
241 *nicotine and vapor products license shall be accompanied by a fee to be prescribed by the Department.*
242 *Every application for such liquid nicotine and vapor products license shall be made on a form*
243 *prescribed by the Department and the following information shall be provided on the application:*

a. 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;

b. The address of the applicant's principal place of business;

c. The place or places where the business to be licensed is to be conducted; and

d. Such other information as the Department may require for the purpose of the administration of this article.

2. The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling liquid nicotine and nicotine vapor products at the licensable locations that shall be submitted to the Federal Bureau of Investigation if the Department deems a National Criminal Records search necessary, on applicants for licensure as a liquid nicotine and nicotine vapor products manufacturer, distributor, or retailer, as applicable. The Department may refuse to issue a license or may suspend, revoke, or refuse to renew a license issued to any person, partnership, corporation, limited liability company, or business trust if it determines that the principals, managers, and other persons engaged in handling liquid nicotine and nicotine vapor products at the licensable location of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, tax evasion, or racketeering; or (iii) convicted of a felony within the last five years. 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 license to the Department is guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee to be retained by the Department to be applied to the administrative and other costs of processing license applications, conducting background investigations, and issuing licenses. 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.

3. 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 liquid nicotine and nicotine vapor products license, which shall permit the licensee to engage in business as a manufacturer, distributor, or retail dealer at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Licenses issued pursuant to this section shall be valid for one year from the date of issue unless revoked by the Department in the manner provided herein. The Department may at any time revoke the license issued to any person 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 authority of this chapter. Any distributor or retail dealer granted a liquid nicotine and nicotine vapor products license pursuant to this section shall, as a condition of renewal, be required to submit to the Department an accurate record of any taxes paid on liquid nicotine pursuant to § 58.1-1021.02.

4. No person shall make a sale of liquid nicotine or nicotine vapor products (i) to any person who has not attained the legal age for purchasing liquid nicotine or nicotine vapor products and (ii) without a valid liquid nicotine and nicotine vapor products license issued pursuant to this subsection. Any person who is found guilty of violating or noncompliance with this subdivision 4 shall be subject to the following penalties:

a. For the first violation in a 36-month period, a penalty of no less than \$1,000;

b. For a second violation in a 36-month period, a penalty of no less than \$5,000 and a seven-day suspension of the liquid nicotine and vapor products license; and

c. For a third violation in a 36-month period, a penalty of no less than \$10,000 and revocation of the liquid nicotine and vapor products license.

5. No person inside or outside the Commonwealth shall make a retail sale of liquid nicotine and nicotine vapor products without providing for age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that is regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is of age.

6. For any transaction between a distributor and a retail dealer involving liquid nicotine, both the distributor and the retail dealer shall maintain and retain records of any invoice or sales receipt involved that shall include itemized lists of the types of products included in such transaction, the tax due on each product pursuant to subsection B of § 58.1-1021.02, and the total amount of taxes paid. Such records shall be produced and provided to the Department as necessary for auditing, compliance, and enforcement purposes.

E. D. The Department shall compile and maintain a current list of licensed distributors and remote retail sellers of tobacco products and of manufacturers, distributors, and retail dealers of liquid nicotine and nicotine vapor products. The list shall be updated on a monthly basis, and published on the Department's official Internet website, available to any interested party.

§ 58.1-1021.04:5. Tax Commissioner to establish guidelines and rules.

The Tax Commissioner shall establish guidelines and rules, including record keeping requirements, for implementation of the tax on tobacco products and liquid nicotine under Article 2-1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia this article. The establishment of the guidelines and rules by the Tax Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-1021.05. Use of revenues.

The revenues generated by the taxes imposed under this article shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366. However, revenues generated by the taxes imposed under subsection B of § 58.1-1021.02 shall be collected by the Department and deposited into the Virginia Liquid Nicotine and Vapor Products Compliance Fund established pursuant to § 58.1-1021.010.

§ 58.1-1021.06. Delivery sales of liquid nicotine.

A. A retail dealer shall not make a delivery sale of liquid nicotine or nicotine vapor products without a license issued pursuant to § 58.1-1021.04:1. Such delivery sales and any shipment shall be made only to a legal consumer.

B. A retail dealer may not ship for delivery sale any liquid nicotine or nicotine vapor products without first making a good faith effort to verify the age of the purchaser of the liquid nicotine or nicotine vapor products through an independent, third-party age verification software, service, or technology that compares information available from public records to the personal information entered by the purchaser during the ordering process that establishes the purchaser is of legal age or older.

C. Prior to shipment of liquid nicotine or nicotine vapor products for a delivery sale, a retail dealer shall be fully paid for the purchase and shall accept payment from the consumer by a check drawn on an account in the consumer's name, by a credit card issued in the consumer's name, or by a debit card issued in the consumer's name. A retail dealer taking a delivery sale may request the electronic mail address of the consumer as a condition of completing such delivery sale.

§ 58.1-1021.07. Retail sales of liquid nicotine; identification and use by minors.

A. Before a retail dealer may sell liquid nicotine or nicotine vapor product to any consumer, the person selling, offering for sale, giving, or furnishing the liquid nicotine or nicotine vapor product shall verify that the consumer is of legal age by:

1. For any retail sale by a retail dealer, examining from any person that appears to be under 27 years of age a government-issued photographic identification that establishes the person is of legal age and verifying the identification presented using third-party identification fraud detection software, technology, or scanner that confirms the authenticity of such identification; or

2. For any delivery sale by a retail dealer to a consumer in the Commonwealth, performing an age verification through an independent, third-party age verification software, service, or technology that compares information available from public records to the personal information entered by the purchaser during the ordering process that establishes the purchaser is of legal age or older.

B. 1. No person that has not attained legal age shall neither possess a liquid nicotine or nicotine vapor product nor purchase liquid nicotine or nicotine vapor products and shall not present to any retail dealer or any other person any form of identification that falsely represents the minor's appearance, identity, or age.

2. A person that has not attained legal age and who violates subdivision 1 is guilty of a civil offense and the court may impose a sentence of:

a. For the first violation, a penalty of no less than \$50 and 25 hours of community service;

b. For a second violation within 12 months of the first violation, a penalty of no less than \$75 and 50 hours of community service; and

c. For a third violation within 12 months of the first violation or subsequent violations, a penalty of no less than \$500, 50 hours of community service, and the suspension such person's driver's license for a period of no more than six months.

§ 58.1-1021.08. General requirements for liquid nicotine sales and resale.

A. A retail dealer shall procure liquid nicotine and nicotine vapor products only from distributors duly permitted to operate in the Commonwealth of Virginia pursuant to this article.

B. A retail dealer shall sell liquid nicotine and nicotine vapor products only to consumers and is prohibited from selling to manufacturers, distributors, other retailer dealers, or any other commercial entities.

C. A retail dealer shall not sell more than two nicotine vapor products or five bottles or packages of liquid nicotine in any one transaction to a consumer.

D. In every instance, a distributor shall be responsible for paying the tax on liquid nicotine pursuant to § 58.1-1021.02 at the time of sale to a retail dealer.

E. A manufacturer may use as an ingredient in liquid nicotine and a distributor or retail dealer may sell liquid nicotine containing a flavoring or food grade additive or synthetic flavoring substance that is used to add flavor and that is not prohibited by the federal Food and Drug Administration as an additive in nicotine vapor products.

§ 58.1-1021.09. Safety requirements for liquid nicotine.

A. 1. Any person applying for a liquid nicotine and nicotine vapor products license or issued such a valid license under this article shall comply with the following requirements:

a. Any liquid nicotine or nicotine vapor product container shall use a child-resistant cap that has the child-resistant effectiveness set forth in the poison prevention packaging standards under 16 C.F.R. § 1700.15(b)(1);

b. Any liquid nicotine or nicotine vapor product container shall use a tamper-evident package feature that is designed to remain intact and that does remain intact when handled in a reasonable manner during the manufacture, distribution, and retail display of such liquid nicotine or nicotine vapor product container; and

c. Any label on a liquid nicotine or nicotine vapor product container shall meet the nicotine addictiveness warning statement requirements under 21 C.F.R. § 1143.3.

2. Any retail dealer selling liquid nicotine or nicotine vapor products shall also be required to display signage clearly indicating "unaccompanied minors are not allowed on the premises," "products are not for sale to minors," or "underage sales prohibited" and to display vapor products behind a counter or in an enclosed display that is inaccessible without the assistance of a sales representative of the retailer.

B. No person may sell, offer for sale, or otherwise distribute any liquid nicotine or nicotine vapor product with labeling or packaging that is not in compliance with 21 C.F.R. § 1143.3 or that:

1. Imitates or mimics a trademark or trade dress of food products, including candy, cookies, cereal, juice boxes, or soft drinks that are or have primarily been marketed to minors;

2. Depicts images or references to video games, movies, videos, or animated television shows known to appeal to minors;

3. Depicts the actual consumption of liquid nicotine or nicotine vapor products or a minor using liquid nicotine or nicotine vapor products;

4. Makes any health, medicinal, or therapeutic claims about liquid nicotine or nicotine vapor products; or

5. Otherwise promotes overconsumption of liquid nicotine or nicotine vapor products.

C. Any person shall advertise or market any liquid nicotine or nicotine vapor products only where consistent with the following requirements:

1. All advertisements and marketing shall accurately and legibly identify the person responsible for its content, shall be truthful and appropriately substantiated, and shall not be presented in a manner that is materially false or untrue;

2. Any advertising or marketing in broadcast, cable, radio, print, and digital communications or any event marketing or sponsorships shall be made only where at least 85 percent of the audience is reasonably expected to be at least 21 years of age, as determined by reliable, up-to-date audience composition data;

3. No advertising or marketing may contain any statement concerning a brand or product that is inconsistent with any statement or images on its labeling;

4. No advertising or marketing of liquid nicotine or nicotine vapor products shall be conducted on a sign within 1,000 feet of a child day center as defined in § 22.1-289.02, schools offering instruction to children in kindergarten through grade 12, a playground, or a youth center. However, placement of advertising or marketing signs inside a licensed premises that are not readable by normal, unassisted vision from a public place or public right-of-way is allowable, provided that such advertising signs do not advertise liquid nicotine or nicotine vapor products in a manner intended to encourage minors to consume liquid nicotine or nicotine vapor products; and

5. No advertising or marketing may contain any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the health benefits of consumption of liquid nicotine or nicotine vapor products.

§ 58.1-1021.010. Virginia Liquid Nicotine and Nicotine Vapor Products Compliance Fund; uses.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Liquid Nicotine and Nicotine Vapor Products Compliance Fund, referred to in this section as the "Fund." The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813,

428 *however, all deposits to and disbursements from the Fund shall be accounted for as part of the general*
429 *fund of the state treasury. All revenue received by the Commonwealth pursuant to the provisions of*
430 *subsection B of § 58.1-1021.02 shall be paid into the state treasury and deposited to the Fund.*
431 *B. Moneys deposited to the Fund shall be used solely by the Department to enforce and administer*
432 *the provisions of this article related to liquid nicotine and nicotine vapor products.*