

24107170D

HOUSE BILL NO. 1069**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on General Laws)

(Patron Prior to Substitute—Delegate Willett)

House Amendments in [] - February 12, 2024

A BILL to amend and reenact §§ 59.1-200 and 59.1-293.10 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 23.2 of Title 59.1 sections numbered 59.1-293.12 through 59.1-293.19, relating to liquid nicotine and nicotine vapor products; certification and directory; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-200 and 59.1-293.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 23.2 of Title 59.1 sections numbered 59.1-293.12 through 59.1-293.19 as follows:

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

ENGROSSED

HB1069EH1

15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515, 3.2-6516, or 3.2-6519 is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.);

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.);

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.);

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.);

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.);

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.);

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.);

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.);
42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
43. Violating any provision of § 59.1-443.2;
44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
47. Violating any provision of § 18.2-239;
48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";
50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
52. Violating any provision of § 8.2-317.1;
53. Violating subsection A of § 9.1-149.1;
54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;
55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
59. Violating any provision of subsection E of § 32.1-126;
60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
61. Violating any provision of § 2.2-2001.5;
62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
63. Violating any provision of § 6.2-312;
64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
67. Knowingly violating any provision of § 8.01-27.5;
68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period to avoid an obligation to pay for the goods or services;
69. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision, "synthetic derivative" means a chemical compound produced by man through a chemical transformation to turn a compound into a different compound by adding or subtracting molecules to or from the original compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
70. Selling or offering for sale to a person younger than 21 years of age any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
71. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less

than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such substance that constitutes a single serving, and (d) the total percentage and milligrams of tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the substance originates. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

72. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;

73. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor of a product intended for human consumption other than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or distribute such substance;

74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not include a label stating that the product is not intended for human consumption. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were manufactured prior to July 1, 2023, provided that the person provides documentation of the date of manufacture if requested;

75. Violating any provision of § 59.1-466.8;

76. Violating subsection F of § 36-96.3:1;

77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or (ii) any kratom product that does not include a label listing all ingredients and with the following guidance: "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

78. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45, to a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale of any such good or provision of any such continuous service; *and*

79. *Any violation of the provisions of Chapter 23.2 (§ 59.1-293.10 et seq.).*

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

§ 59.1-293.10. Definitions.

As used in this chapter, unless the context requires another meaning:

"Child-resistant packaging" means packaging that is designed or constructed to meet the child-resistant effectiveness standards set forth in 16 C.F.R. § 1700.15(b)(1) when tested in accordance with the protocols described in 16 C.F.R. § 1700.20 as in effect on July 1, 2015.

"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~~ *has the same meaning as provided in § 58.1-1021.01.*

"Liquid nicotine container" means a bottle or other container holding liquid nicotine in any concentration but does not include a cartridge containing liquid nicotine if such cartridge is prefilled and sealed by the manufacturer of such cartridge and is not intended to be opened by the consumer.

"Nicotine vapor product" ~~has the same meaning as provided in § 18.2-371.2~~ *§ 58.1-1021.01.*

§ 59.1-293.12. Liquid nicotine and nicotine vapor product; directory.

The Attorney General shall establish and maintain a directory that lists all liquid nicotine or nicotine vapor product manufacturers and liquid nicotine and nicotine vapor products for which current and accurate certification forms have been submitted in accordance with the provisions of § 59.1-293.13. The Attorney General shall make the directory available for public inspection on its website. The Attorney General shall update the directory as necessary.

§ 59.1-293.13. Liquid nicotine and nicotine vapor product; certification; penalty.

A. By December 31, 2024, and annually thereafter, every manufacturer of liquid nicotine or nicotine vapor products that are sold for retail sale in the Commonwealth, whether directly or through a wholesaler, distributor, retailer, or similar intermediary, shall certify in a form and manner as prescribed by the Attorney General that the manufacturer agrees to comply with the provisions of this chapter and that:

1. The manufacturer has received a marketing authorization or similar order for the liquid nicotine or nicotine vapor product from the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j; or

2. The liquid nicotine or nicotine vapor product was marketed in the United States as of August 8, 2016, or the manufacturer submitted a premarket tobacco product application for the liquid nicotine or nicotine vapor product to the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j on or before September 9, 2020, and the application either remains under review by the U.S. Food and Drug Administration or a final decision on the application has not otherwise taken effect.

B. A manufacturer of liquid nicotine or nicotine vapor products shall submit a certification form for each liquid nicotine and nicotine vapor product that such manufacturer sells for retail sale in the Commonwealth.

C. Each certification form shall be accompanied by:

1. A copy of the marketing authorization or other order for each liquid nicotine or nicotine vapor product issued by the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j, or evidence that the premarket tobacco product application for the liquid nicotine or nicotine vapor product was submitted to the U.S. Food and Drug Administration and a final authorization or order has not yet taken effect;

2. A fee of \$2,000 for each liquid nicotine and nicotine vapor product, to be remitted with the manufacturer's first certification submission that identifies any such product and with any resubmission of a certification for any such product following any period of noncertified status; and

3. A fee of \$500 to be submitted annually for each liquid nicotine and nicotine vapor product to be remitted with the manufacturer's annual recertification submission identifying any liquid nicotine or nicotine vapor product, where such recertification does not follow any period of noncertified status.

D. A manufacturer required to submit a certification pursuant to this section shall notify the Attorney General within 30 days of any material change to the certification form, including the issuance or denial of a marketing authorization or other order or action by the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j, or any other order or action by the U.S. Food and Drug Administration that affects the ability of the liquid nicotine or nicotine vapor product to be introduced or delivered into interstate commerce for commercial distribution in the United States.

E. Any manufacturer that falsely represents any of the information required by this section is guilty of a Class 3 misdemeanor for each false representation. Venue for prosecution of a violation of this subsection shall be proper in the Circuit Court for the City of Richmond.

§ 59.1-293.14. Removal or exclusion from directory.

A. The Attorney General shall, in accordance with the provisions of this section, remove or exclude from the directory any liquid nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine vapor product that the Attorney General determines is not in compliance with the provisions of this chapter.

B. If the Attorney General determines to remove or exclude from the directory a liquid nicotine or nicotine vapor product manufacturer or a liquid nicotine or nicotine vapor product in the directory, the Attorney General shall notify by electronic or other practicable means the manufacturer's registered agent in the Commonwealth of such determination. The liquid nicotine or nicotine vapor product manufacturer shall have 10 business days from receipt of such notice to establish that the liquid nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine vapor product meets the requirements to be included in the directory. If the liquid nicotine or nicotine vapor product manufacturer fails to establish compliance within the 10-business-day period, the Attorney General shall remove or exclude from the directory the liquid nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine vapor product.

C. Any determination by the Attorney General to remove or exclude from the directory a manufacturer or a product shall be subject to review by the filing of a civil action for prospective declaratory or injunctive relief in the Circuit Court for the City of Richmond.

D. If a liquid nicotine or nicotine vapor product is removed from the directory:

1. Each retailer, distributor, and wholesaler shall have 30 days to sell the product or remove such product intended for retail sale in the Commonwealth from its inventory and return the product to the manufacturer for disposal. After 21 days following the removal from the directory, the liquid nicotine and nicotine vapor products removed from the directory shall be subject to seizure, forfeiture, and destruction and shall not be purchased or sold in the Commonwealth.

2. Each manufacturer, wholesaler, or retail dealer selling the product intended for retail sale in the Commonwealth shall notify each purchaser of the product that it has been removed from the directory at the time of delivery of such product. Unless otherwise provided by contract or purchase agreement, the manufacturer, wholesaler, or retail dealer shall provide the purchaser a refund of the purchase price of the removed product. If a manufacturer, wholesaler, or retail dealer fails to provide such refund, the purchaser may bring an action against the manufacturer, wholesaler, or retail dealer in a court of competent jurisdiction to recover the purchase price and reasonable attorney fees and costs.

§ 59.1-293.15. Agent for service of process.

A. Any nonresident manufacturer of liquid nicotine or nicotine vapor products that has not registered to do business in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to being included in the directory established by the Attorney General pursuant to § 59.1-293.12, appoint and continually engage without interruption the services of an agent in the Commonwealth to act as agent for the service of process in any action or proceeding against such nonresident manufacturer concerning or arising out of the enforcement of this section, and such nonresident manufacturer may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonresident manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Attorney General.

B. The manufacturer shall provide notice to the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer shall notify the Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

C. Any manufacturer whose liquid nicotine or nicotine vapor products are sold in the Commonwealth who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of the Commonwealth as its agent for service of process. The appointment of the Secretary of the Commonwealth as agent shall not satisfy the condition precedent required in subsection A to be included in the directory.

§ 59.1-293.16. Recordkeeping; audits, inspections, and investigations; penalties.

A. Any person that receives, stores, sells, handles, or transports liquid nicotine or nicotine vapor products shall preserve all invoices, books, papers, canceled checks, or other documents relating to the purchase, sale, exchange, receipt, or transportation of all liquid nicotine or nicotine vapor products for a period of three years. All such invoices, books, papers, canceled checks, or other documents shall be subject to audit or inspection at any time by any duly authorized representative of the Attorney General.

B. Any person who violates the provisions of subsection A is guilty of a Class 2 misdemeanor.

C. The Department of Taxation shall impose a penalty of \$1,000 for each day that a person fails or refuses to allow or cooperate with an audit, inspection, or investigation of such records. Such penalty shall be collected as other taxes are collected. Upon a person's refusal to cooperate with an audit, inspection, or investigation, the Attorney General may apply to the Circuit Court for the City of Richmond for injunctive relief.

D. The Department of Taxation, the Attorney General, any other law-enforcement agency of the Commonwealth, or any federal law-enforcement agency conducting a criminal investigation involving the trafficking of liquid nicotine or nicotine vapor products may access at any time the records required to be preserved by this section. Copies of such records shall be provided to such officials or agencies upon request. Any court, investigatory grand jury, or special grand jury that has been impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2 may access such records if relevant to any proceedings therein. Such records shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Investigators of the Attorney General may accompany and participate with other law-enforcement officials engaging in enforcement action relating to such trafficking.

§ 59.1-293.17. Sale or distribution prohibited.

A. Beginning December 31, 2024, no person shall sell, distribute or import for resale, or offer for sale a liquid nicotine or nicotine vapor product for retail sale in the Commonwealth unless such liquid nicotine or nicotine vapor product is included in the directory established by the Attorney General pursuant to § 59.1-293.12.

B. Beginning December 31, 2024, no liquid nicotine or nicotine vapor product manufacturer shall sell for retail sale, either directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, a liquid nicotine or nicotine vapor product in the Commonwealth unless such liquid nicotine or nicotine vapor product is included in the directory established by the Attorney General pursuant to § 59.1-293.12.

C. Any person that violates the provisions of subsection A is subject to a fine of \$1,000 per day for

each product offered for sale in violation until the offending product is removed from the market or until the offending product is properly listed on the directory.

D. A liquid nicotine or nicotine vapor product manufacturer that violates the provisions of subsection B is subject to a fine of \$1,000 per day for each product offered for sale in violation until the offending product is removed from the market or until the offending product is properly listed on the directory.

E. Each retailer shall have 60 days from the date that the Attorney General first makes the directory available for inspection on its public website to sell any products that were in its inventory and not included in the directory or to remove from inventory and return such products to the manufacturer for disposal.

F. Each distributor or wholesaler shall have 60 days from the date that the Attorney General first makes the directory available for inspection on its public website to remove any products intended for sale in the Commonwealth from its inventory and return such products to the manufacturer for disposal.

G. In an action brought under this section, the Attorney General may recover reasonable costs of investigation, the costs of the action, and attorney fees.

H. All fees and penalties collected by the Attorney General pursuant to this section shall be used for the administration and enforcement of this chapter.

§ 59.1-293.18. Enforcement; inspection.

A. Notwithstanding any other provisions of law to the contrary, the Attorney General and, with the concurrence of the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin any violation of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be proved.

B. The circuit courts are authorized to (i) issue temporary or permanent injunctions to restrain and prevent violations of this chapter and (ii) order forfeiture on any property seized for a violation of this chapter.

C. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is engaging in, or is about to engage in, any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

D. Each violation of this chapter shall constitute a separate violation and shall be subject to any penalties imposed under this chapter.

E. Any retailer or wholesaler that sells or distributes any liquid nicotine or nicotine vapor product in the Commonwealth shall be subject to scheduled or unscheduled compliance checks carried out by the Attorney General, or an agent thereof, for the purposes of enforcing the provisions of this chapter.

§ 59.1-293.19. Liquid nicotine and nicotine vapor product; report.

The Attorney General shall provide an annual report on or before January 31 to the General Assembly regarding the status of the directory, manufacturers and products included in the directory, revenues and expenditures related to the administration of this chapter, and enforcement activities undertaken pursuant to this chapter.

[2. That the provisions of this act shall not become effective unless reenacted by the 2025 Session of the General Assembly.]