

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 18.2-246.8, 18.2-371.2, 22.1-79.5, 22.1-206, 22.1-279.6, 58.1-1021.01, 58.1-1021.02, 58.1-1021.04:1, 58.1-1021.04:5, 59.1-293.10, and 59.1-293.11 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 58.1-1021.09 and by adding in Chapter 23.2 of Title 59.1 sections numbered 59.1-293.12, 59.1-293.13, and 59.1-293.14, relating to purchase, possession, and sale of retail tobacco products; retail tobacco products and liquid nicotine tax; penalties.*

[H 790]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-246.8, 18.2-371.2, 22.1-79.5, 22.1-206, 22.1-279.6, 58.1-1021.01, 58.1-1021.02, 58.1-1021.04:1, 58.1-1021.04:5, 59.1-293.10, and 59.1-293.11 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 58.1-1021.09 and by adding in Chapter 23.2 of Title 59.1 sections numbered 59.1-293.12, 59.1-293.13, and 59.1-293.14 as follows:**

**§ 18.2-246.8. Age verification requirements.**

A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer such person:

1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal minimum purchase age; and (ii) a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least 21 years of age. Such statement shall also confirm (a) that the prospective consumer understands that signing another person's name to such certification is illegal, (b) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal, and (c) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the Commonwealth;

2. Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to ~~subsection A~~ *subdivision 1* against a commercially available database of valid, government-issued identification that contains the date of birth or age of the individual placing the order, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

3. Provides to the prospective consumer, via ~~e-mail~~ *email* or other means, a notice that meets the requirements of § 18.2-246.9; and

4. Receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name or by a check drawn on the consumer's account.

B. *1. Except as provided in § 58.1-1021.06, if a purchase order for a liquid nicotine or nicotine vapor product, as defined in § 58.1-1021.01, is made via the Internet, no person shall make a delivery for such order unless the delivery is to a retail dealer, as defined in § 58.1-1021.01.*

2. Persons accepting purchase orders made via the Internet for delivery sales may request that prospective consumers provide their ~~e-mail~~ *email* addresses.

**§ 18.2-371.2. Prohibiting purchase or possession of retail tobacco products and hemp products intended for smoking by a person under 21 years of age or sale of retail tobacco products and hemp products intended for smoking to persons under 21 years of age; civil penalties.**

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

~~Tobacco products, nicotine vapor products, alternative nicotine products, and No person shall sell retail tobacco products or 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 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, 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

REENROLLED

HB790ER2

vapor products, alternative nicotine products, or hemp products intended for smoking by a person less than 21 years of age (i) making a delivery of tobacco products, nicotine vapor products, alternative nicotine products, or hemp products intended for smoking in pursuance of his employment or (ii) as part of a scientific study being conducted by an organization for the purpose of medical research to further efforts in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such medical research has been approved by an institutional review board pursuant to applicable federal regulations or by a research review committee pursuant to Chapter 5-1 (§ 32.1-162.16 et seq.) of Title 32.1. 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 *retail* tobacco product, nicotine vapor product, 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.

*Before a retail dealer may sell retail tobacco products, other than cigar and pipe tobacco products as defined in § 58.1-1021.01, to any consumer, the person selling, offering for sale, giving, or furnishing the retail tobacco products shall verify that the consumer is of legal age by examining from any person who appears to be under 30 years of age a government-issued photographic identification that establishes that the person is of legal age or, if required pursuant to subdivision C 4 b of § 58.1-1021.04:1 or subdivision B 2 b of § 59.1-293.12, verifying the identification presented using identification fraud detection software, technology, or a scanner that confirms the authenticity of such identification.*

This subsection shall not apply to mail order or Internet sales, provided that the person offering the *retail* tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking for sale through mail order or the Internet (i) prior to the sale of the *retail* tobacco product, nicotine vapor product, 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 *retail* tobacco product, nicotine vapor product, 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, 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 \$500 for a third or subsequent violation.

C. A violation of subsection A or C B by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a ~~third~~ *second* or subsequent violation *within a three-year period*. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or tobacco product other than a bidi *If applicable, upon a second or subsequent violation within a three-year period, the Department of Taxation may suspend or revoke any approved license, permit, or registration issued pursuant to subsection C of § 58.1-1021.04:1.*

A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community

service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8. *For any violation of this section by an employee of a retail establishment, (i) such penalty shall be assessed against the establishment and (ii) an additional penalty of \$100 shall be assessed against the employee.*

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

F. D. 1. Cigarettes and hemp products intended for smoking shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment that offers for sale any *retail* tobacco product, ~~nicotine vapor product, alternative nicotine product,~~ or hemp product intended for smoking shall post in a conspicuous manner and place a sign or signs indicating that the sale of *retail* tobacco products, ~~nicotine vapor products, alternative nicotine products,~~ or hemp products intended for smoking to any person under 21 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$500. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

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

3. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$500. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

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

H. F. Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105 may issue a summons for any violation of this section. *Additionally, any retailer selling retail tobacco products shall be subject to the enforcement and compliance provisions of Chapter 23.2 (§ 59.1-293.10 et seq.) of Title 59.1.*

I. G. As used in this section:

"Alternative nicotine product" means any noncombustible product containing nicotine that 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, tobacco product, or 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.

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

"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. "Electronic smoking device" does not include any (i) battery or battery charger when sold separately or (ii) device used for heated tobacco products. "Electronic smoking device" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

"Hemp product" means and "hemp product intended for smoking" mean the same as that term is those terms are defined in § 3.2-4112.

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

"~~Tobacco~~ Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, a heated tobacco product, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. "Retail tobacco product" includes any nicotine vapor product as that term is defined in § 58.1-1021.01. "~~Tobacco~~ Retail tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

**§ 22.1-79.5. Policy regarding retail tobacco products and hemp products intended for smoking.**

Each school board shall develop and implement a policy to prohibit, at any time, the use and distribution of any retail tobacco product or nicotine vapor product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

Such policy shall include (i) provisions for its enforcement among students, employees, and visitors, including the enumeration of possible sanctions or disciplinary action consistent with state or federal law, and (ii) referrals to resources to help staff and students overcome tobacco addiction.

Each school board shall work to ensure adequate notice of this policy.

**§ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, retail tobacco products, hemp products intended for smoking, and gambling.**

A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed by the Board of Education.

B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking, and drunk driving shall be provided in the public schools. The Virginia Alcoholic Beverage Control Authority shall provide educational materials to the Department of Education. The Department of Education shall review and shall distribute such materials as are approved to the public schools.

C. The Virginia Foundation for Healthy Youth shall develop and the Department of Education shall distribute to each local school division educational materials concerning the health and safety risks of using retail tobacco products, nicotine vapor products, and alternative nicotine products and hemp products intended for smoking, as such terms are defined in § 18.2-371.2. Instruction concerning the health and safety risks of using tobacco products, nicotine vapor products, and alternative nicotine products and hemp products intended for smoking, as such terms are defined in § 18.2-371.2, shall be provided in each public elementary and secondary school in the Commonwealth, consistent with such educational materials.

D. C. Instruction concerning gambling and the addictive potential thereof shall be provided by the public schools as prescribed by the Board.

**§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct; school board regulations.**

A. The Board of Education shall establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies shall include (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and, expulsion, and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal, and case laws, for school board policies on alcohol and drugs, gang-related activity, hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others, self-defense, bullying, the use of electronic means for purposes of bullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and school personnel; (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies; (iv) standards for dress or grooming codes; and (v) standards for reducing bias and harassment in the enforcement of any code of student conduct.

In accordance with the most recent enunciation of constitutional principles by the Supreme Court of

the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.

In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.

B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the requirements of this section, regulations on codes of student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include in the regulations on codes of student conduct procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.

C. Each school board shall include in its code of student conduct prohibitions against hazing and profane or obscene language or conduct. School boards shall also cite in their codes of student conduct the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor penalty for violations, that is, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

D. Each school board shall include in its code of student conduct policies and procedures that include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the standards for school board policies on bullying and the use of electronic means for purposes of bullying developed by the Board pursuant to subsection A and (ii) direct the principal or his designee to notify the parent of any student involved in an alleged incident of bullying within 24 hours of learning of the allegation of bullying.

Such policies and procedures shall not be interpreted to infringe upon the First Amendment rights of students and are not intended to prohibit expression of religious, philosophical, or political views, provided that such expression does not cause an actual, material disruption of the work of the school.

E. A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

F. Nothing in this section shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by § 22.1-279.7.

G. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with § 22.1-277.07.

This subsection shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

H. Each school board shall include in its code of student conduct a prohibition on possessing any *retail tobacco product or ~~nicotine vapor product~~ hemp product intended for smoking*, as those terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

I. Any school board may include in its code of student conduct a dress or grooming code. Any dress or grooming code included in a school board's code of student conduct or otherwise adopted by a school board shall (i) permit any student to wear any religiously and ethnically specific or significant head covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and cornrows; (ii) maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender; (iii) not have a disparate impact on students of a particular gender; (iv) be clear, specific, and objective in defining terms, if used; (v) prohibit any school board employee from enforcing the dress or grooming code by direct physical contact with a student or a student's attire; and (vi) prohibit any school board employee from requiring a student to undress in front of any other individual, including the enforcing school board employee, to comply with the dress or grooming code.

#### **§ 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 in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products 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~~ a concentration that is sold, marketed, ~~or~~ and intended for use in a nicotine vapor product.

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but ~~shall~~ does 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~~ consumer-sized unit, pouch, or package containing at least 4 *four* ounces but not more than 8 *eight* 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~~ consumer-sized unit, pouch, or package containing more than 8 *eight* 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.

3. "Loose leaf tobacco single-unit" means a ~~consumer sized~~ consumer-sized unit, pouch, or package containing less than 4 *four* 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.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

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

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

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

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

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

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

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

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

"Retail dealer" means every person ~~who~~ that sells or offers for sale any tobacco product or liquid nicotine to consumers at retail in a transaction other than a remote retail sale and includes any person that holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products Distributor's License issued by the Department of Taxation.

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

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

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

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

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

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

- a. \$0.21 for each loose leaf tobacco single-unit;
- b. \$0.40 for each loose leaf tobacco half pound-unit;
- c. \$0.70 for each loose leaf tobacco pound-unit; and
- 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 ~~four~~ 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~~ Except as otherwise provided, 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.

4. a. 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:

(1) Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter beginning July 1, 2024, for taxable sales or purchases occurring on and after such date.

(2) Upon liquid nicotine in open systems at the rate of 10 percent of the wholesale price beginning July 1, 2024, for taxable sales or purchases occurring on and after such date.

b. 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. In every instance, a distributor shall be responsible for paying the tax on liquid nicotine pursuant to this subdivision 4 at the time of sale to a retail dealer. 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.

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~~ Except as otherwise provided, 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. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing power of the Commonwealth under the Commerce Clause of the United States Constitution.

C. 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 and nicotine vapor products license; penalties.**

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

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

B. 2. A person outside the Commonwealth who ships or transports tobacco products to retailers in the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the Department, and thereafter be subject to all the provisions of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed distributor and, unless such person 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, shall be deemed to have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of service of process relating to any matter or issue involving the person and arising under the provisions of this article.

The Department shall conduct a background investigation, to include a Virginia ~~Criminal History~~ ~~Records~~ criminal history records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a ~~National Criminal~~ ~~Records~~ national criminal records search necessary, on applicants for licensure as tobacco products distributors. The Department may refuse to issue a distributor's license or may suspend, revoke, or refuse to renew a distributor's 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 tobacco 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, or racketeering; or (iii) convicted of a 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 distributor's license to the Department, ~~shall be~~ is guilty of a

Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative and other costs of processing distributor's license applications, conducting background investigations, and issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in ~~even numbered~~ *even-numbered* years shall be reported to the State Treasurer and deposited into the state treasury.

3. No person inside or outside the Commonwealth shall make a remote retail sale of cigars or pipe tobacco to consumers in the Commonwealth without (i) completing an application for and being granted a license as a remote retail seller; (ii) determining whether economic nexus activity thresholds have been met to register for a dealer's certificate under § 58.1-613; (iii) if economic nexus thresholds are met, collecting and remitting the excise tax pursuant to subsection A of § 58.1-1021.02; (iv) 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; and (v) if economic nexus thresholds are met, and excise tax is being remitted using the actual cost list method to calculate the excise tax, providing the remote retail seller's certified actual cost list to the Department for each SKU to be offered for remote retail sale in the subsequent calendar year. The actual cost list shall be updated quarterly as new SKUs are added to a remote retail seller's inventory. New SKUs will be added using the actual cost first paid for the SKU.

B. 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, which shall permit the licensee to engage in business as a distributor 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. Distributor's licenses issued pursuant to this section shall be valid for a period of three years 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 distributor 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. *The Department shall suspend or revoke the license issued to any distributor who is found guilty of a second or subsequent violation of subsection A or B of § 18.2-371.2.*

C. 1. *No person shall engage in the business of selling or dealing liquid nicotine or nicotine vapor products or who ships or transports liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or 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 a manufacturer's, distributor's, or retail dealer's liquid nicotine and nicotine vapor products license shall be accompanied by a fee to be prescribed by the Department. Any retail dealer who holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products (OTP) Distributor's License issued by the Department shall not be required to obtain a license under this subsection. Every application for such liquid nicotine and nicotine vapor products license shall be made on a form 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 of the applicant, or the responsible principals and managers of 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 and managers 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, partnership, corporation, limited liability company, or business trust; however, the Department may grant a temporary license to any applicant that has purchased the business of any manufacturer, distributor, or retail dealer licensed pursuant to this section while such applicant's application for licensure is pending. Licenses, other than temporary licenses, issued pursuant to this section shall be valid for two years from the date of issue unless revoked by the Department in the manner provided in this section. The Department may at any time suspend or revoke the approved license, permit, or registration issued in accordance with subsection C of § 58.1-1021.04:1 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 person authorized to sell liquid nicotine or nicotine vapor products pursuant to subsection C of § 58.1-1021.04:1 shall, as a condition of renewing or extending an approved license, permit, or registration, 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 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 30-day suspension of the liquid nicotine and nicotine vapor products license. If the person is found to be in violation of clause (i) of this subdivision 4, such person shall be required to verify that any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's government-issued photographic identification using fraud detection software, technology, or a scanner that confirms the authenticity of such identification; and

c. For a third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the liquid nicotine and nicotine vapor products license, and ineligibility to possess a liquid nicotine and nicotine vapor products license for a period of three years from the date of the most recent violation.

5. No person inside or outside the Commonwealth shall make a retail sale of liquid nicotine and nicotine vapor products without verifying that the consumer is of legal age by examining from any person who appears to be under 30 years of age a government-issued photographic identification that establishes that the person is of legal age or providing for age verification through an independent 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 or nicotine vapor products, 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 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.).

**§ 58.1-1021.06. Delivery sales of liquid nicotine and nicotine vapor products.**

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 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 and nicotine vapor products; identification and use by minors.**

Before a retail dealer may sell liquid nicotine or nicotine vapor products 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 who appears to be under 30 years of age a government-issued photographic identification that establishes the person is of legal age or, if required pursuant to subdivision C 4 b of § 58.1-1021.04:1 or subdivision B 2 b of § 59.1-293.12, verifying the identification presented using 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, 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 that the purchaser is of legal age or older.

**§ 58.1-1021.08. General requirements for liquid nicotine and nicotine vapor products 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 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, and any other commercial entities.

C. A retail dealer shall not sell more than two packages of nicotine vapor products and 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 and nicotine vapor products.**

A. 1. Any retail dealer shall comply with the following requirements:

a. Any liquid nicotine 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 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 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 "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 of any kind or trade dress of any 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, celebrity endorsements, 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, shall not be presented in a manner that is materially false or untrue, and shall not be presented in a manner that imitates or mimics a trademark of any kind or trade dress of any food products, including candy, cookies, cereal, juice boxes, or soft drinks, that are or have primarily been marketed to minors;

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; and

4. 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.

#### CHAPTER 23.2.

#### RETAIL TOBACCO PRODUCTS AND NICOTINE VAPOR PRODUCTS CONTAINING LIQUID NICOTINE.

##### § 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.

"Department" means the Department of Taxation.

"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 the same as that term is defined 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 means the same meaning as that term is defined in § 48.2-371.2 58.1-1021.01 and includes liquid nicotine containers.

"Retail dealer" means the same as that term is defined in § 58.1-1021.01.

"Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, a heated tobacco product, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and glass pipes. "Retail tobacco product" includes any nicotine vapor product. "Retail tobacco product" does not include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration. "Retail tobacco product" does not include any cigar or pipe tobacco as defined in § 58.1-1021.01.

"Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation that owns, operates, or manages any tobacco retail establishment. "Tobacco retailer" does not include nonmanagement employees of a tobacco retail establishment.

"Tobacco retail establishment" means any place of business where retail tobacco products are available for sale to the general public, including any grocery store, retail tobacco product shop, kiosk, convenience store, gasoline service station, bar, or restaurant where retail tobacco products are

available for sale to the general public.

**§ 59.1-293.11. Sale or distribution of liquid nicotine container; prohibition; penalty.**

A. No person shall sell or distribute at retail or offer for retail sale or distribution a liquid nicotine container in the Commonwealth on or after October 1, 2015, unless such liquid nicotine container meets child-resistant packaging standards.

B. The requirements of subsection A shall not prohibit a wholesaler or retailer from selling its existing inventory of liquid nicotine until January 1, 2016, if the wholesaler or retailer can establish that the inventory was purchased prior to October 1, 2015, in a quantity comparable to that of the inventory purchased during the same period of the prior year.

C. Any person who sells or distributes at retail or offers for retail sale or distribution a liquid nicotine container in the Commonwealth on or after October 1, 2015, that he knows or has reason to know does not satisfy the child-resistant packaging standards required by this section is guilty of a Class 4 misdemeanor. However, no person shall be guilty of a violation of this section who relies in good faith on any information provided by the manufacturer of a liquid nicotine container that such container meets the requirements of this section.

D. The provisions of this chapter do not apply to any manufacturer or wholesaler of liquid nicotine containers who sells or distributes a liquid nicotine container, provided that any such liquid nicotine container sold or distributed is intended for use outside of the Commonwealth.

E. The provisions of subsection A shall be null, void, and of no force and effect upon the effective date of either enacted federal legislation or final regulations issued by the U.S. Food and Drug Administration or by any other federal agency where such legislation or regulations mandate child-resistant packaging for liquid nicotine containers.

F. The provisions of this section with respect to retail sales, retail establishments, and offers for retail sales shall only apply to retail sales or offers at retail of liquid nicotine containers before July 1, 2024.

**§ 59.1-293.12. Restrictions on the sale of retail tobacco products to minors; penalties.**

A. A retail dealer shall comply with the provisions of this section, §§ 18.2-246.8, 18.2-246.10, 18.2-371.2, and 59.1-293.13, and any other state or local law related to the sale of retail tobacco products. If the Department determines that a retail dealer has violated any such provision of law, the Department may suspend or revoke such retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or Other Tobacco Products (OTP) Distributor's License.

B. 1. For each retail dealer, the Department shall conduct an unannounced investigation at least once every 24 months to verify that the retail dealer is not selling retail tobacco products to persons under 21 years of age. If the Department determines that the retail dealer has violated any provision of this section, § 18.2-246.8, 18.2-246.10, 18.2-371.2, or 59.1-293.13, or any other state or local law related to the sale of retail tobacco products, it shall conduct an unannounced investigation of the retail dealer within six months of such violation.

2. If the Department determines that a retail dealer, or a retail dealer's agent or employee, sold a retail tobacco product to a person under 21 years of age or violated subsection A or B of § 18.2-371.2, the Department shall impose and the retail dealer shall be subject to:

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. Any retail dealer found to be in violation of this subdivision 2 b shall be required to verify that any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's government-issued photographic identification using fraud detection software, technology, or a scanner that confirms the authenticity of such identification; and

c. For a third violation in a 36-month period, a penalty of no less than \$10,000 and a 30-day suspension of the retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or OTP Distributor's License.

d. For a fourth violation in a 36-month period, revocation of the retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or OTP Distributor's License, and ineligibility to possess any such certificate or license for a period of three years from the date of the most recent violation.

3. Any civil penalties assessed pursuant to this section shall be paid into the Tobacco Retail Enforcement Fund, established pursuant to § 59.1-293.14.

C. The Department shall collaborate with the Virginia Alcoholic Beverage Control Authority and local law enforcement to the extent possible to enforce the provisions of this section and § 4.1-103.01.

**§ 59.1-293.13. Required education for retail dealers and employees.**

Any retail dealer shall be required to attest that it has conducted education and training for its employees related to:

1. The provisions of § 59.1-293.12;

789 2. The prohibitions on the sale of retail tobacco products to persons under age 21 and other  
790 restrictions prescribed by §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2;

791 3. Forms of identification that are acceptable as proof of age; and

792 4. The legal penalties that may be incurred for violation of the provisions of law identified in  
793 subdivisions 1 and 2.

794 **§ 59.1-293.14. Tobacco Retail Enforcement Fund.**

795 There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco  
796 Retail Enforcement Fund, referred to in this section as "the Fund." The Fund shall be established on the  
797 books of the Comptroller. All revenues accruing to the Fund pursuant to this article, all funds  
798 appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on  
799 its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in  
800 the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including  
801 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in  
802 the Fund. Moneys in the Fund shall be used solely for the purposes of funding the Department of  
803 Taxation's direct and indirect costs of the license administration and enforcement program administered  
804 pursuant to Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 and the administrative costs  
805 of education and training, retail inspections, and unannounced compliance checks in accordance with  
806 the provisions of §§ 59.1-293.12 and 59.1-293.13. Expenditures and disbursements from the Fund shall  
807 be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by  
808 the Tax Commissioner.

809 2. That the Department of Taxation shall develop guidelines implementing the provisions of this  
810 act. Such guidelines shall be exempt from the provisions of the Administrative Process Act  
811 (§ 2.2-4000 et seq. of the Code of Virginia).

812 3. That the Department of Taxation shall develop or revise the forms and applications necessary to  
813 implement the provisions of this act.