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SENATE BILL NO. 582

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations)

(Patron Prior to Substitute—Senator Ebbin)

Senate Amendments in [] - February 12, 2024

A *BILL 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, 59.1-293.10, and 59.1-293.11 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, 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; penalties; reports.*

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, 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 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. 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 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

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60 federal regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of
61 Title 32.1. This subsection shall not apply to purchase, attempt to purchase, or possession by a
62 law-enforcement officer or his agent when the same is necessary in the performance of his duties.

63 C. No person shall sell a *retail tobacco product, nicotine vapor product, alternative nicotine product,*
64 *or hemp product intended for smoking* to any individual who does not demonstrate, by producing a
65 driver's license or similar photo identification issued by a government agency, that the individual is at
66 least 21 years of age. Such identification is not required from an individual whom the person has reason
67 to believe is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the
68 person demanded, was shown, and reasonably relied upon a photo identification stating that the
69 individual was at least 21 years of age shall be a defense to any action brought under this subsection. In
70 determining whether a person had reason to believe an individual is at least 21 years of age, the trier of
71 fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior,
72 and manner of the individual.

73 *Before a retail dealer may sell retail tobacco products, other than cigar and pipe tobacco products*
74 *as defined in § 58.1-1021.01, to any consumer, the person selling, offering for sale, giving, or furnishing*
75 *the retail tobacco products shall verify that the consumer is of legal age by examining from any person*
76 *who appears to be under 30 years of age a government-issued photographic identification that*
77 *establishes that the person is of legal age and verifying the identification presented using identification*
78 *fraud detection software, technology, or a scanner that confirms the authenticity of such identification.*

79 This subsection shall not apply to mail order or Internet sales, provided that the person offering the
80 *retail tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for*
81 *smoking for sale through mail order or the Internet (i) prior to the sale of the retail tobacco product,*
82 *nicotine vapor product, alternative nicotine product, or hemp product intended for smoking verifies that*
83 *the purchaser is at least 21 years of age through a commercially available database that is regularly used*
84 *by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a*
85 *method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age*
86 *before the retail tobacco product, nicotine vapor product, alternative nicotine product, or hemp product*
87 *intended for smoking will be released to the purchaser.*

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

96 E. A violation of subsection A or C by an individual or by a separate retail establishment that
97 involves a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or
98 tobacco product other than a bidi is punishable by a civil penalty not to exceed \$100 for a first
99 violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed
100 \$500 for a third or subsequent violation.

101 C. A violation of subsection A or C B by an individual or by a separate retail establishment that
102 involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of
103 \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil
104 penalty in the amount of \$2,500 for a third second or subsequent violation. Where a defendant retail
105 establishment offers proof that it has trained its employees concerning the requirements of this section,
106 the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a
107 retail establishment has failed to so train its employees, the court may impose a civil penalty not to
108 exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving
109 a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or tobacco
110 product other than a bidi *If applicable, upon a second or subsequent violation, the Virginia Alcoholic*
111 *Beverage Control Authority or the Virginia Department of Agriculture and Consumer Services, as*
112 *applicable, shall report such violation to the Department of Taxation who shall suspend or revoke any*
113 *approved license, permit, or registration issued pursuant to subsection C of § 58.1-1021.04:1.*

114 A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation
115 and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an
116 alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20
117 hours of community service for a first violation of subsection B and up to 40 hours of community
118 service for a second or subsequent violation. If the defendant fails or refuses to complete the community
119 service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the
120 judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8. *For any violation of this section*
121 *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.

E. 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.

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

183 tobacco, bidis, and wrappings (iii) any component, part, or accessory of a product described in clause
184 (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including
185 filters, rolling papers, blunt or hemp wraps, and pipes. "Retail tobacco product" includes any nicotine
186 vapor product as that term is defined in § 58.1-1021.01. ~~"Tobacco Retail tobacco product"~~ does not
187 include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA
188 under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act drugs or
189 devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in
190 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S.
191 Food and Drug Administration.

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

194 **§ 22.1-79.5. Policy regarding retail tobacco products and hemp products intended for smoking.**

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

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

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

203 **§ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, retail tobacco products,**
204 **hemp products intended for smoking, and gambling.**

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

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

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

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

221 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct;**
222 **school board regulations.**

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

237 In accordance with the most recent enunciation of constitutional principles by the Supreme Court of
238 the United States of America, the Board's standards for school board policies on alcohol and drugs and
239 search and seizure shall include guidance for procedures relating to voluntary and mandatory drug
240 testing in schools, including which groups may be tested, use of test results, confidentiality of test
241 information, privacy considerations, consent to the testing, need to know, and release of the test results
242 to the appropriate school authority.

243 In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum
244 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.

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

"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, 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.

"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.

"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.

"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.

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:

"Authority" means the Virginia Alcoholic Beverage Control Authority.

"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 § 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 the same as that term is 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 January 1, 2025.

§ 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 federal, state, or local law related to the sale of retail tobacco products. If the Authority determines that a retail dealer has violated any such provision of law, the Authority shall communicate such violation to the Department who 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 Authority 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 Authority 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 federal, 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 Authority 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 Authority 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 and the Department shall issue 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; and

c. For a third violation in a 36-month period, a penalty of no less than \$10,000, and the Department shall revoke the retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or OTP Distributor's License, and such retail dealer shall be ineligible 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 Permit Fund, established pursuant to § 59.1-293.14.

C. The Authority shall collaborate with the Department 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;

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

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

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

§ 59.1-293.14. Tobacco Retail Enforcement Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco Retail Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues accruing to the Fund pursuant to this article, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of funding the Authority's and the Department's direct and indirect costs of administering the provisions of §§ 59.1-293.12 and 59.1-293.13. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Executive Officer of the Authority.

2. That the Virginia Alcoholic Beverage Control Authority, the Virginia Department of Agriculture and Consumer Services, and the Department of Taxation shall collaborate on the development of an implementation plan and recommendations related to the administration of the provisions of the first enactment of this act. Such plan and recommendations shall be reported to the General

491 Assembly no later than November 1, 2024.

492 3. That the Department of Taxation shall evaluate the prospective taxing of liquid nicotine in the
493 Commonwealth on the basis of its placement in closed and open systems and report to the General
494 Assembly no later than November 1, 2024, on (i) whether and how other states tax liquid nicotine
495 and (ii) options for tax rates on such products.

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