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SENATE BILL NO. 1146

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 18.2-371.2 of the Code of Virginia, relating to juvenile possession of tobacco products on school grounds, etc.; civil penalties.

Patron—French

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-371.2 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-371.2. Prohibiting sale or distribution, etc. of retail tobacco products and hemp products intended for smoking by 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 younger than 21 years of age, knowing or having reason to believe that such person is younger than 21 years of age, any retail tobacco product or hemp product intended for smoking.

No person shall sell retail tobacco products or hemp products intended for smoking from a vending machine.

B. No person shall sell a retail tobacco 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.

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 or hemp product intended for smoking for sale through mail order or the Internet (i) prior to the sale of the retail tobacco 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 or hemp product intended for smoking will be released to the purchaser.

C. A violation of subsection A or B by an individual or by a separate retail establishment is punishable by a civil penalty in the amount of \$500 for a first violation and a civil penalty in the amount of \$2,500 for a second or subsequent violation within a three-year period. 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.

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.

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 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 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.

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

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

64 F. Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105 may
65 issue a summons for any violation of this section. Additionally, any retailer selling retail tobacco products
66 shall be subject to the enforcement and compliance provisions of Chapter 23.2 (§ 59.1-293.10 et seq.) of Title
67 59.1.

68 *G. Possession of a retail tobacco product on a school bus, on school property, or at a school-sponsored*
69 *activity by any person under 21 years of age is punishable by a civil penalty of \$25 for a first violation. Upon*
70 *each subsequent violation by such person within a single school year, \$100 shall be added to the amount of*
71 *the civil penalty; however, such amount shall return to \$25 at the beginning of each school year. In addition,*
72 *upon a second or subsequent violation, such person shall also complete a plan of community service work.*
73 *The civil penalty shall be paid in person at the courthouse for the locality by such person accompanied by a*
74 *parent or legal guardian. The civil penalty shall be paid into the local treasury.*

75 H. As used in this section:

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

85 "Hemp product" and "hemp product intended for smoking" mean the same as those terms are defined in §
86 3.2-4112.

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

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

100 **2. That the Board of Education and each local school board shall update any policies affected by the**
101 **provisions of this act by July 1, 2026.**