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SENATE BILL NO. 1147

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 18.2-371.2 and 59.1-293.12 of the Code of Virginia, relating to prohibiting sale or distribution, etc., of retail tobacco products and hemp products intended for smoking by persons younger than 21 years of age; penalties.

Patrons—French, Boysko and Cifers

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-371.2 and 59.1-293.12 of the Code of Virginia are 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 younger than 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 \$1,000 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 Upon a second or subsequent violation within a three-year period, the Department of Taxation may shall suspend or revoke any approved license, permit, or registration issued pursuant to subsection C of § 58.1-1021.04:1. The Department of Taxation shall revoke any approved license, permit, or registration, issued pursuant to subsection C of § 58.1-1021.04:1, as provided in § 59.1-293.12 upon a third or fourth violation within a three-year period.

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.

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

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

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

68 F. Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105 may
69 issue a summons for any violation of this section. Additionally, any retailer selling retail tobacco products
70 shall be subject to the enforcement and compliance provisions of Chapter 23.2 (§ 59.1-293.10 et seq.) of Title
71 59.1.

72 G. As used in this section:

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

82 "Hemp product" and "hemp product intended for smoking" mean the same as those terms are defined in §
83 3.2-4112.

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

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

97 **§ 59.1-293.12. Restrictions on the sale of retail tobacco products to minors; penalties.**

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

103 B. 1. For each retail dealer, the Department shall conduct an unannounced investigation at least once
104 every 24 months to verify that the retail dealer is not selling retail tobacco products to persons under 21 years
105 of age. If the Department determines that the retail dealer has violated any provision of this section, §
106 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
107 tobacco products, it shall conduct an unannounced investigation of the retail dealer within six months of such
108 violation.

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

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

113 b. For a second violation in a 36-month period, a penalty of no less than \$5,000 *and a six-month*
114 *suspension*. Any retail dealer found to be in violation of this subdivision 2 b shall be required to verify that
115 any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's
116 government-issued photographic identification using fraud detection software, technology, or a scanner that
117 confirms the authenticity of such identification; and

118 c. For a third violation in a 36-month period, a penalty of no less than \$10,000 and a ~~30-day suspension~~
119 *one-year revocation* of the retail dealer's Retail Sales and Use Tax Exemption Certificate for Stamped

120 Cigarettes Purchased for Resale or OTP Distributor's License.
121 d. For a fourth violation in a 36-month period, revocation of the retail dealer's Retail Sales and Use Tax
122 Exemption Certificate for Stamped Cigarettes Purchased for Resale or OTP Distributor's License, and
123 ineligibility to possess any such certificate or license ~~for a period of three years from the date of the most~~
124 ~~recent violation.~~
125 3. Any civil penalties assessed pursuant to this section shall be paid into the Tobacco Retail Enforcement
126 Fund, established pursuant to § 59.1-293.14.
127 C. The Department shall collaborate with the Virginia Alcoholic Beverage Control Authority and local
128 law enforcement to the extent possible to enforce the provisions of this section and § 4.1-103.01.

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