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HOUSE BILL NO. 1946

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 24, 2025)

(Patron Prior to Substitute—Delegate Hope)

A *BILL to amend and reenact §§ 15.2-912.4 and 59.1-293.12 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-371.2:1, relating to possession, etc., of retail tobacco products, hemp products, and nicotine vapor products containing liquid nicotine intended for smoking by a person younger than 21 years of age; prohibitions; enforcement.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-912.4 and 59.1-293.12 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-371.2:1 as follows:

§ 15.2-912.4. Regulation of tobacco and hemp product retail sale locations.

Any locality may by ordinance regulate the retail sale locations of *retail tobacco products, ~~nicotine vapor products, alternative nicotine products,~~* as such ~~terms are~~ *term is* defined in § 18.2-371.2, or hemp products intended for smoking, as such term is defined in § 3.2-4112, for any such retail sale location and may prohibit a retail sale location on property within 1,000 linear feet of a child day center as defined in § 22.1-289.02 or a public, private, or parochial school. An ordinance adopted pursuant to this section shall not affect (i) a licensee holding a valid license under § 4.1-206.3 or (ii) any retail sale location of *retail tobacco products, ~~nicotine vapor products, alternative nicotine products,~~* or hemp products intended for smoking operating before July 1, 2024.

§ 18.2-371.2:1. Prohibiting possession of retail tobacco products and hemp products intended for smoking by a person younger than 21 years of age; seizure.

A. *No person younger than 21 years of age shall possess any retail tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2. The provisions of this section shall not be applicable to the possession of retail tobacco products or hemp products intended for smoking by a person younger than 21 years of age (i) making a delivery of retail tobacco 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 the possession of any retail tobacco product or hemp product intended for smoking by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.*

B. *Any retail tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, possessed in violation of this section shall be deemed contraband and may be seized by a law-enforcement officer. Any such product, the lawful possession of which is not established, seized by such officer shall be forfeited and disposed of according to the process described in subdivision A 2 of § 19.2-386.23.*

C. *The seizure of contraband pursuant to subsection B shall be the sole penalty for a violation of this section.*

D. *The provisions of this section shall not preclude prosecution under any other statute.*

§ 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 or is notified by the Virginia Alcoholic Beverage Control Authority, the Department of Behavioral Health and Developmental Services, local law enforcement, or any other agency or political subdivision of the Commonwealth charged with the enforcement of the provisions of this chapter 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~~ *Notwithstanding the provisions of § 58.1-3, the Department shall disclose, upon request by the Virginia Alcoholic Beverage Control Authority, the Department of Behavioral Health and Developmental Services, local law enforcement, or any other agency or political subdivision of the Commonwealth charged with the enforcement of the provisions of this chapter, each place of business that has received a retail dealer's liquid nicotine and nicotine vapor products license and any other information necessary to conduct an unannounced investigation for each retail dealer 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, the Virginia Alcoholic Beverage Control Authority, the Department of Behavioral Health and*

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60 *Developmental Services, local law enforcement, or any other agency or political subdivision of the*
61 *Commonwealth charged with the enforcement of the provisions of this chapter* determines that the retail
62 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
63 any other state or local law related to the sale of retail tobacco products *over which it has enforcement*
64 *authority*, it shall conduct an unannounced investigation of the retail dealer within six months of such
65 violation.

66 2. If the Department determines *or is notified by the Virginia Alcoholic Beverage Control Authority, the*
67 *Department of Behavioral Health and Developmental Services, local law enforcement, or any other agency*
68 *or political subdivision of the Commonwealth charged with the enforcement of the provisions of this chapter*
69 that a retail dealer, or a retail dealer's agent or employee, sold a retail tobacco product to a person under 21
70 years of age or violated subsection A or B of § 18.2-371.2, the Department shall impose and the retail dealer
71 shall be subject to:

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

73 b. For a second violation in a 36-month period, a penalty of no less than \$5,000. Any retail dealer found to
74 be in violation of this subdivision 2 b shall be required to verify that any consumer who appears to be under
75 30 years of age is of legal age by verifying such consumer's government-issued photographic identification
76 using fraud detection software, technology, or a scanner that confirms the authenticity of such identification;
77 and

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

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

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

87 C. The Department shall collaborate with the Virginia Alcoholic Beverage Control Authority ~~and~~, *the*
88 *Department of Behavioral Health and Developmental Services, local law enforcement, and any other agency*
89 *or political subdivision of the Commonwealth charged with the enforcement of the provisions of this chapter*
90 to the extent possible to enforce the provisions of this section and § 4.1-103.01.