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SENATE BILL NO. 1147

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 20, 2025)

(Patron Prior to Substitute—Senator French)

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.*

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~~ *shall* suspend ~~or 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, the Department of Taxation shall suspend for one year any approved license, permit, or registration issued pursuant to subsection C of § 58.1-1021.04:1 upon a third violation within a three-year period and permanently revoke such license, permit, or registration upon a 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.

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

SENATE SUBSTITUTE

SB1147S1

60 may promulgate regulations which allow the Department to undertake the activities necessary to comply with
61 such regulations.

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

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

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

71 G. As used in this section:

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

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

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

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

96 **§ 59.1-293.12. Restrictions on the sale of retail tobacco products to minors; penalties.**

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

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

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

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

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

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

120 d. For a fourth violation in a 36-month period, *permanent* revocation of the retail dealer's Retail Sales and

121 Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or OTP Distributor's License,
122 and ineligibility to possess any such certificate or license for a period of three years from the date of the most
123 recent violation.

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

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