

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 15.2-912.4 and 58.1-1021.04:1 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 of retail tobacco products and hemp products intended for smoking by a person younger than 21 years of age; liquid nicotine and nicotine vapor products license; prohibitions; enforcement.

[H 1946]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-912.4 and 58.1-1021.04:1 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.

§ 58.1-1021.04:1. Distributor's or remote retail seller's license; liquid nicotine and nicotine vapor products license; penalties.

A. 1. No person shall engage in the business of selling or dealing in tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a distributor's license shall be accompanied by a fee to be prescribed by the Department. Every application for such license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

a. The name and address of the applicant. If the applicant is a firm, partnership, or association, the name and address of each of its members shall be provided. If the applicant is a corporation, the name and address of each of its principal officers shall be provided;

b. The address of the applicant's principal place of business;

c. The place or places where the business to be licensed is to be conducted; and

d. Such other information as the Department may require for the purpose of the administration of this article.

2. A person outside the Commonwealth who ships or transports tobacco products to retailers in the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be granted

such a license by the Department, and thereafter be subject to all the provisions of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed distributor and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et seq.), 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 14 (§ 13.1-1200 et seq.) of Title 13.1 or Chapter 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, shall be deemed to have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of service of process relating to any matter or issue involving the person and arising under the provisions of this article.

The Department shall conduct a background investigation, to include a Virginia criminal history records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a national criminal records search necessary, on applicants for licensure as tobacco products distributors. The Department may refuse to issue a distributor's license or may suspend, revoke, or refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability company, or business trust if it determines that the principals, managers, and other persons engaged in handling tobacco products at the licensable location of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application for a distributor's license to the Department, is guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative and other costs of processing distributor's license applications, conducting background investigations, and issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even-numbered years shall be reported to the State Treasurer and deposited into the state treasury.

3. No person inside or outside the Commonwealth shall make a remote retail sale of cigars or pipe tobacco to consumers in the Commonwealth without (i) completing an application for and being granted a license as a remote retail seller; (ii) determining whether economic nexus activity thresholds have been met to register for a dealer's certificate under § 58.1-613; (iii) if economic nexus thresholds are met, collecting and remitting the excise tax pursuant to subsection A of § 58.1-1021.02; (iv) providing for age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that is regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is of age; and (v) if economic nexus thresholds are met and excise tax is being remitted using the actual cost list method to calculate the excise tax, providing the remote retail seller's certified actual cost list to the Department for each SKU to be offered for remote retail sale in the subsequent calendar year. The actual cost list shall be updated quarterly as new SKUs are added to a remote retail seller's inventory. New SKUs will be added using the actual cost first paid for the SKU.

B. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall permit the licensee to engage in business as a distributor at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor's licenses issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department may at any time revoke the license issued to any distributor who is found guilty of violating or noncompliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter. The Department shall suspend or revoke the license issued to any distributor who is found guilty of a second or subsequent violation of subsection A or B of § 18.2-371.2.

C. 1. No person shall engage in the business of selling or dealing liquid nicotine or nicotine vapor products or ~~who ships shipping or transports transporting~~ liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or retail dealer in the Commonwealth without first having received a separate license from the Department for each location or place of business, *and any person who violates such prohibition shall be subject to a penalty of \$400 in addition to any other applicable taxes or fees.* Each application for a manufacturer's, distributor's, or retail dealer's liquid nicotine and nicotine vapor products license shall be accompanied by a fee to be prescribed by the Department. Any retail dealer who holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products (OTP) Distributor's License issued by the Department shall not be required to obtain a license under this subsection. Every application for such liquid nicotine and nicotine vapor products license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

a. The name and address of the applicant. If the applicant is a firm, partnership, or association, the name and address of each of its members shall be provided. If the applicant is a corporation, the name and address

of each of its principal officers shall be provided;

- b. The address of the applicant's principal place of business;
- c. The place or places where the business to be licensed is to be conducted; and
- d. Such other information as the Department may require for the purpose of the administration of this article.

2. The Department shall conduct a background investigation, to include a Virginia criminal history records search of the applicant, or the responsible principals and managers of liquid nicotine and nicotine vapor products at the licensable locations that shall be submitted to the Federal Bureau of Investigation if the Department deems a national criminal records search necessary, on applicants for licensure as a liquid nicotine and nicotine vapor products manufacturer, distributor, or retailer, as applicable. The Department may refuse to issue a license or may suspend, revoke, or refuse to renew a license issued to any person, partnership, corporation, limited liability company, or business trust if it determines that the principals and managers at the licensable location of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, tax evasion, or racketeering; or (iii) convicted of a felony within the last five years. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application for a license to the Department is guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee to be retained by the Department to be applied to the administrative and other costs of processing license applications, conducting background investigations, and issuing licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even-numbered years shall be reported to the State Treasurer and deposited into the state treasury.

3. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this article, issue to the applicant a liquid nicotine and nicotine vapor products license, which shall permit the licensee to engage in business as a manufacturer, distributor, or retail dealer at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person, partnership, corporation, limited liability company, or business trust; however, the Department may grant a temporary license to any applicant that has purchased the business of any manufacturer, distributor, or retail dealer licensed pursuant to this section while such applicant's application for licensure is pending. Licenses, other than temporary licenses, issued pursuant to this section shall be valid for two years from the date of issue unless revoked by the Department in the manner provided in this section. The Department may at any time suspend or revoke the approved license, permit, or registration issued in accordance with this subsection to any person who is found guilty of violating or noncompliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter. Any person authorized to sell liquid nicotine or nicotine vapor products pursuant to this subsection shall, as a condition of renewing or extending an approved license, permit, or registration, be required to submit to the Department an accurate record of any taxes paid on liquid nicotine pursuant to § 58.1-1021.02.

4. No person shall make a sale of liquid nicotine or nicotine vapor products (i) to any person who has not attained the legal age for purchasing liquid nicotine or nicotine vapor products and (ii) without a valid liquid nicotine and nicotine vapor products license issued pursuant to this subsection. Any person who is found guilty of violating or noncompliance with this subdivision shall be subject to the following penalties:

- 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 a 30-day suspension of the liquid nicotine and nicotine vapor products license. If the person is found to be in violation of clause (i) of this subdivision 4, such person shall be required to verify that any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's government-issued photographic identification using fraud detection software, technology, or a scanner that confirms the authenticity of such identification; and
- c. For a third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the liquid nicotine and nicotine vapor products license, and ineligibility to possess a liquid nicotine and nicotine vapor products license for a period of three years from the date of the most recent violation.

5. No person inside or outside the Commonwealth shall make a retail sale of liquid nicotine and nicotine vapor products without verifying 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 providing for age verification through an independent age verification service that compares information available from a commercially available database, or aggregate of databases, that is regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is of age.

6. For any transaction between a distributor and a retail dealer involving liquid nicotine or nicotine vapor products, both the distributor and the retail dealer shall maintain and retain records of any invoice or sales receipt involved that shall include itemized lists of the types of products included in such transaction, the tax

181 due on each product pursuant to subsection B of § 58.1-1021.02, and the total amount of taxes paid. Such
182 records shall be produced and provided to the Department as necessary for auditing, compliance, and
183 enforcement purposes.

184 D. The Department shall compile and maintain a current list of licensed distributors and remote retail
185 sellers of tobacco products and of manufacturers, distributors, and retail dealers of liquid nicotine and
186 nicotine vapor products. The list shall be updated on a monthly basis and published on the Department's
187 website, available to any interested party.

188 **2. That, notwithstanding any other provision of the Code of Virginia or this act to the contrary, the**
189 **Department of Taxation (the Department) shall not be required to comply with the provisions of**
190 **subdivision B 1 of § 59.1-293.12 of the Code of Virginia that require the Department to conduct an**
191 **unannounced investigation at least once every 24 months to verify that a retail dealer is not selling**
192 **retail tobacco products to persons under 21 years of age.**

193 **3. That the Department of Taxation (the Department) shall convene a work group consisting of**
194 **representatives of the Alcoholic Beverage Control Authority, the Office of the Attorney General, the**
195 **Virginia State Police, and the Department of Behavioral Health and Developmental Services to develop**
196 **an enforcement program to address the sale of retail tobacco products or hemp products intended for**
197 **smoking to individuals younger than 21 years of age. The work group shall consider and report on the**
198 **following factors: (i) the frequency of licensee inspections in Virginia and other states, (ii) licensee**
199 **compliance rates with underage enforcement in Virginia and other states, (iii) one-time and ongoing**
200 **costs of any enforcement program recommendations, and (iv) potential sources of revenue to support**
201 **such enforcement program. The Department shall report the findings and recommendations of the**
202 **work group to the Chairs of the House Committees on General Laws and Appropriations and the**
203 **Senate Committees on Rehabilitation and Social Services and Finance and Appropriations no later**
204 **than November 1, 2025.**