

## SENATE BILL NO. 620

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services

on \_\_\_\_\_)

(Patron Prior to Substitute—Senator Ebbin)

*A BILL to amend and reenact §§ 15.2-912.4, 18.2-246.8, 18.2-371.2, 18.2-371.2:1, 18.2-391, 58.1-1021.04:1, 58.1-1021.07, 59.1-293.10, 59.1-293.11, 59.1-293.12, 59.1-293.18, and 59.1-293.20 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 59.1-293.10:1 through 59.1-293.10:10 and by adding in Chapter 23.2 of Title 59.1 an article numbered 2, consisting of sections numbered 59.1-293.10:11 through 59.1-293.10:15, relating to permitting of retail tobacco product retailers; purchase, possession, and sale of retail tobacco products; penalties.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-912.4, 18.2-246.8, 18.2-371.2, 18.2-371.2:1, 18.2-391, 58.1-1021.04:1, 58.1-1021.07, 59.1-293.10, 59.1-293.11, 59.1-293.12, 59.1-293.18, and 59.1-293.20 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 59.1-293.10:1 through 59.1-293.10:10 and by adding in Chapter 23.2 of Title 59.1 an article numbered 2, consisting of sections numbered 59.1-293.10:11 through 59.1-293.10:15, as follows:**

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

Any locality may, by ordinance, regulate ~~the a retail sale locations of retail tobacco products establishment~~, as such term is defined in § ~~18.2-371.2~~ 59.1-293.10, or retail sale location of 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 such establishment or 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 establishment or the retail sale location of~~ hemp products intended for smoking operating before July 1, 2024.

**§ 18.2-246.8. Age verification requirements.**

A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer such person:

1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal minimum purchase age and (ii) a statement signed by the prospective consumer

in writing that certifies the prospective consumer's address and that the consumer is at least 21 years of age. Such statement shall also confirm (a) that the prospective consumer understands that signing another person's name to such certification is illegal, (b) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal, and (c) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the Commonwealth;

2. Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to subdivision 1 against a commercially available database of valid, government-issued identification that contains the date of birth or age of the individual placing the order, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

3. Provides to the prospective consumer, via email or other means, a notice that meets the requirements of § 18.2-246.9; and

4. Receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name or by a check drawn on the consumer's account.

B. 1. ~~Except as provided in § 58.1-1021.06, if~~ If a purchase order for a liquid nicotine or nicotine vapor product, as defined in § 58.1-1021.01, is made via the ~~Internet~~ internet, no person shall make a delivery for such order unless the delivery is to a retail dealer, as defined in § 58.1-1021.01.

2. Persons accepting purchase orders made via the ~~Internet~~ internet for delivery sales may request that prospective consumers provide their email addresses.

**§ 18.2-371.2. Prohibiting sale or distribution, etc. of hemp products intended for smoking by persons under 21 years of age; civil penalties.**

A. As used in this section, "hemp product" and "hemp product intended for smoking" mean the same as those terms are defined in § 3.2-4112.

B. 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. C.~~ C. 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~~ 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~~ 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. D.~~ A violation of subsection ~~A B~~ or ~~B C~~ 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~~ locality 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 B~~ or ~~B C~~.

~~D. E.~~ 1. Cigarettes and hemp 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 locality 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 locality 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.

3. Any attorney for the county, city, or town locality 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 locality which instituted the action.

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

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

G. As used in this section:

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

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

"Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked,

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

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

**§ 18.2-371.2:1. Prohibiting possession of 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~~ *that term* is defined in § ~~18.2-371.2 3.2-4112~~. 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~~ *that term* is defined in § ~~18.2-371.2 3.2-4112~~, 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.

**§ 18.2-391. Unlawful acts; penalties.**

A. It ~~shall be~~ *is* unlawful for any person to sell, rent, or loan to a juvenile, knowing or having reason to know that such person is a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

1. Any picture, photography, drawing, sculpture, motion picture in any format or medium, video or computer game, electronic file or message containing an image, or similar visual representation or image of a person or portion of the human body ~~which that~~ depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and ~~which that~~ is harmful to juveniles, or

2. Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message containing words, or sound recording ~~which that~~ contains any matter enumerated in subdivision 1 ~~of this subsection~~, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and ~~which that~~, taken as a whole, is harmful to juveniles.

However, if a person uses services of an ~~Internet~~ *internet* service provider or an electronic mail service provider in committing acts prohibited under this subsection, such ~~Internet~~ *internet* service provider or electronic mail service provider shall not be held responsible for violating this subsection.

B. It ~~shall be~~ *is* unlawful for any person knowingly to sell to a juvenile an admission ticket or pass, or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show, or other presentation ~~which that~~, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and ~~which that~~ is harmful to juveniles or to exhibit any such motion picture at any such premises ~~which that~~ are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises.

C. It ~~shall be~~ *is* unlawful for any juvenile falsely to represent to any person mentioned in subsection A or ~~subsection B hereof~~, or to his agent, that such juvenile is 18 years of age or older, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show, or other presentation, as set forth in subsection B.

D. It ~~shall be~~ *is* unlawful for any person knowingly to make a false representation to any person mentioned in subsection A or ~~subsection B hereof~~ or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is 18 years of age, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show, or other presentation, as set forth in subsection B.

E. No person shall sell, rent, or loan any item described in subdivision A 1 or A 2 to any individual who does not demonstrate his age in accordance with the provisions of subsection ~~B~~ C of § 18.2-371.2.

F. A violation of subsection A, B, C, or D is a Class 1 misdemeanor. A person or separate retail establishment who violates subsection E shall be liable for a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

**§ 58.1-1021.04:1. Distributor's or remote retail seller's 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

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

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

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

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

**§ 58.1-1021.07. Retail sales of liquid nicotine and nicotine vapor products; identification and use by minors.**

Before a retail dealer may sell liquid nicotine or nicotine vapor products to any consumer, the person selling, offering for sale, giving, or furnishing the liquid nicotine or nicotine vapor product shall verify that the consumer is of legal age by:

1. For any retail sale by a retail dealer, examining from any person who appears to be under 30 years of age a government-issued photographic identification that establishes 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 scanner that confirms the authenticity of such identification; or

2. For any delivery sale by a retail dealer to a consumer in the Commonwealth, performing an age verification through an independent, age verification software, service, or technology that compares information available from public records to the personal information entered by the purchaser during the ordering process that establishes that the purchaser is of legal age or older.

*Article 1.*

*Permitting and Restrictions for Tobacco Retailers.*

**§ 59.1-293.10. Definitions.**

As used in this chapter, unless the context requires another meaning:

"Child-resistant packaging" means packaging that is designed or constructed to meet the child-resistant effectiveness standards set forth in 16 C.F.R. § 1700.15(b)(1) when tested in accordance with the protocols described in 16 C.F.R. § 1700.20 as in effect on July 1, 2015.

"Department" means the Department of Taxation.

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

369 *products are authorized for sale by the U.S. Food and Drug Administration.*

370 *"Liquid nicotine" means the same as that term is defined in § 58.1-1021.01.*

371 *"Liquid nicotine container" means a bottle or other container holding liquid nicotine in any concentration*  
372 *but does not include a cartridge containing liquid nicotine if such cartridge is prefilled and sealed by the*  
373 *manufacturer of such cartridge and is not intended to be opened by the consumer.*

374 *"Nicotine vapor product" means the same as that term is defined in § 58.1-1021.01 and includes liquid*  
375 *nicotine containers.*

376 *"Permittee" means any tobacco retailer to whom a retail tobacco permit has been issued by the*  
377 *Department.*

378 *"Place or premises" means the real estate, together with any buildings or other improvement thereon,*  
379 *designated in the application for a retail tobacco permit as the place at which the sale of retail tobacco*  
380 *products is performed, except that portion of any such building or other improvement actually and*  
381 *exclusively used as a private residence.*

382 *"Retail dealer" means the same as that term is defined in § 58.1-1021.01.*

383 *"Retail tobacco establishment" means any place of business owned by a permittee or tobacco retailer*  
384 *where retail tobacco products are available for sale to the general public, including any grocery store, retail*  
385 *tobacco product shop, kiosk, convenience store, gasoline service station, bar, or restaurant where retail*  
386 *tobacco products are available for sale to the general public. "Retail tobacco establishment" includes any*  
387 *facility from which cigarette delivery sales, as that term is defined in § 18.2-246.6, are made. "Retail tobacco*  
388 *establishment" does not include an establishment that does not sell retail tobacco products other than cigars*  
389 *and pipe tobacco as those terms are defined in § 58.1-1021.01.*

390 *"Retail tobacco permit" means a permit issued by the Department to a tobacco retailer that authorizes*  
391 *such retailer to sell retail tobacco products at a retail tobacco establishment owned by such retailer or*  
392 *permittee.*

393 *"Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or that*  
394 *contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked,*  
395 *heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, a heated*  
396 *tobacco product, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that*  
397 *may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any*  
398 *component, part, or accessory of a product described in clause (i) or (ii), whether or not such component,*  
399 *part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and*

400 glass pipes. "Retail tobacco product" includes any nicotine vapor product. "Retail tobacco product" does not  
401 include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term  
402 is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S.  
403 Food and Drug Administration. "Retail tobacco product" does not include any cigar or pipe tobacco as  
404 defined in § 58.1-1021.01.

405 "Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust, association,  
406 organization, or corporation that owns, operates, or manages any tobacco retail establishment. "Tobacco  
407 retailer" does not include nonmanagement employees of a tobacco retail establishment.

408 ~~"Tobacco retail establishment" means any place of business where retail tobacco products are available~~  
409 ~~for sale to the general public, including any grocery store, retail tobacco product shop, kiosk, convenience~~  
410 ~~store, gasoline service station, bar, or restaurant where retail tobacco products are available for sale to the~~  
411 ~~general public.~~

412 **§ 59.1-293.10:1. Retail tobacco permits; privileges; liabilities.**

413 *The Department may grant a retail tobacco permit to a tobacco retailer that shall authorize the permittee*  
414 *to sell retail tobacco products in a retail tobacco establishment. The privilege of any permittee to sell retail*  
415 *tobacco products shall extend to such permittee and to all agents or employees of such permittee for the*  
416 *purpose of selling retail tobacco products under such permit. Such permittee may be held liable for any*  
417 *violation of this article or any Department regulation committed by his agents or employees in connection*  
418 *with their employment. For purposes of this article, "retail tobacco product" includes any liquid nicotine or*  
419 *nicotine vapor product as those terms are defined in § 58.1-1021.01.*

420 **§ 59.1-293.10:2. Separate retail tobacco permit for each place of business; transfer or amendment;**  
421 **posting; expiration; carriers.**

422 *A. Each retail tobacco permit issued pursuant to § 59.1-293.10:1 shall designate the place where such*  
423 *retail sales will be located. A separate retail tobacco permit shall be required for each separate place of*  
424 *business. Each retail tobacco permit shall be posted in a location conspicuous to the public at the place*  
425 *where such retail sales will be located.*

426 *B. No retail tobacco permit shall be transferable from one tobacco retailer to another, or from one place*  
427 *to another.*

428 *C. The privileges conferred by any retail tobacco permit issued pursuant to § 59.1-293.10:1 shall*  
429 *continue until the last day of the twelfth month next ensuing, except the retail tobacco permit may be sooner*  
430 *terminated for any cause for which the Department would be entitled to refuse to grant a retail tobacco*

permit, by operation of law, voluntary surrender, or order of the Department.

**§ 59.1-293.10:3. Applications for retail tobacco permits; fees.**

A. Every person intending to apply for a retail tobacco permit issued pursuant to § 59.1-293.10:1 shall file with the Department an application to sell retail tobacco products on a form prescribed by the Department and a statement in writing by the applicant swearing and affirming that all of the information contained therein is true.

B. The provisions of subsection A shall not apply to the continuance of retail tobacco permits granted under this article; however, such permittees shall file and maintain with the Department a current, accurate record of the information required by the Department pursuant to subsection A and notify the Department of any changes to such information in accordance with Department regulations.

C. Nothing in this article shall exempt any permittee from any other tax or fee imposed by this article, state merchants' license, state restaurant license, or any other state tax. Every permittee, in addition to the taxes imposed by this article, shall be liable to state merchants' license taxation, state restaurant license taxation, and other state or local taxation applicable to retail tobacco products.

**§ 59.1-293.10:4. Conditions under which Department may refuse to grant retail tobacco permits.**

The Department may refuse to grant any retail tobacco permit if it has reasonable cause to believe that:

1. The applicant, or if the applicant is a partnership, any general partner thereof, or if the applicant is an association, any member thereof, or any limited partner of 10 percent or more with voting rights, or if the applicant is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the applicant is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

a. Is not 21 years of age or older;

b. Has been convicted in any court of a felony or any crime or offense involving moral turpitude under the laws of the Commonwealth;

c. Has been convicted, within the five years immediately preceding the date of the application for such retail tobacco permit, of a violation of any law of the Commonwealth applicable to the manufacture, transportation, possession, use, or sale of retail tobacco products;

d. Is not a person of good moral character and repute;

e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business that have not been disclosed;

f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business

462 *proposed to be permitted;*

463 *g. Has demonstrated, either by his police record or by his record as a former licensee or permittee of the*  
464 *Department, a lack of respect for law and order;*

465 *h. Has misrepresented a material fact in applying to the Department for a retail tobacco permit;*

466 *i. Has defrauded or attempted to defraud the Department or any federal, state, or local government or*  
467 *governmental agency or authority by making or filing any report, document, or tax return required by statute*  
468 *or regulation that is fraudulent or contains a false representation of a material fact, or has willfully deceived*  
469 *or attempted to deceive the Department or any federal, state, or local government or governmental agency or*  
470 *authority by making or maintaining business records required by statute or regulation that are false and*  
471 *fraudulent;*

472 *j. Has violated or allowed the violation of any provision of this article or Article 2 (§ 59.1-293.10:11 et*  
473 *seq.) in his establishment in the one year prior to application for a retail tobacco permit or while his*  
474 *application for a retail tobacco permit is pending;*

475 *k. Is a police officer with police authority in the political subdivision within which the establishment*  
476 *designated in the application is located;*

477 *l. Is physically unable to carry on the business for which the application for a retail tobacco permit is*  
478 *filed or has been adjudicated incapacitated; or*

479 *m. Is a member, agent, or employee of the Department.*

480 *2. The place to be occupied by the applicant does not conform to the requirements of the governing body*  
481 *of the locality in which such place is located with respect to sanitation, health, construction, or equipment, or*  
482 *to any similar requirements established by the laws of the Commonwealth or by Department regulation.*

483 *3. There exists any law, ordinance, or regulation of the United States, the Commonwealth, or any political*  
484 *subdivision thereof that warrants refusal by the Department to grant a retail tobacco permit.*

485 *4. The Department is not authorized under this article to grant such retail tobacco permit.*

486 *5. The Department or investigators with the Office of the Attorney General have found that the applicant*  
487 *exceeded the legal volume limits set by § 58.1-1017.1 during the prior year.*

488 *6. Investigators with the Office of the Attorney General seized cigarette inventory, as authorized by*  
489 *§ 2.2-509.1, from the applicant during the prior year.*

490 **§ 59.1-293.10:5. Notice and hearings for refusal to grant retail tobacco permits; Administrative Process**  
491 **Act; exceptions.**

492 *A. The action of the Department in granting or refusing to grant any retail tobacco permit shall be subject*



to review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), except as provided in subsections B and C. Review shall be limited to the evidential record of the proceedings provided by the Department. Both the petitioner and the Department shall have the right to appeal to the Court of Appeals from any order of the court.

B. The Department may refuse a hearing on any application for the granting of any retail tobacco permit, provided that the:

1. Permit for the applicant was refused or revoked within a period of 12 months;
2. Permit for any premises was refused or revoked at such premises within a period of 12 months;
3. Applicant, within the immediately preceding 12 months, has allowed his retail tobacco permit to expire and, at the time of the expiration of such permit, there was a pending and unadjudicated charge, either before the Department or in any court, against the permittee alleging a violation of this article; or
4. Applicant received a temporary retail tobacco permit pursuant to § 59.1-293.10:10 and reapplies for a retail tobacco permit at the same location within 12 months of the date of the issuance of the temporary retail tobacco permit.

C. If an applicant has permitted a retail tobacco permit to expire and at the time of expiration there remained unexecuted any period of suspension imposed upon the permittee by the Department, the Department may refuse a hearing on an application for a new retail tobacco permit until after the date on which the suspension period would have been executed had the retail tobacco permit not have been permitted to expire.

**§ 59.1-293.10:6. Grounds for which Department may suspend or revoke retail tobacco permits.**

The Department may suspend or revoke any retail tobacco permit if it has reasonable cause to believe that:

1. The permittee, or if the permittee is a partnership, any general partner thereof, or if the permittee is an association, any member thereof, or any limited partner of 10 percent or more with voting rights, or if the permittee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the permittee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

- a. Has misrepresented a material fact in applying to the Department for such retail tobacco permit;
- b. Within the five years immediately preceding the date of the hearing held in accordance with § 59.1-293.10:8, has (i) been convicted of a violation of any law, ordinance, or regulation of the Commonwealth applicable to the manufacture, transportation, possession, use, or sale of retail tobacco

524 products; (ii) violated any provision of this article; (iii) violated or failed or refused to comply with any  
525 regulation, rule, or order of the Department; (iv) failed or refused to comply with any of the conditions or  
526 restrictions of the retail tobacco permit issued pursuant to § 59.1-293.10:1; or (v) violated, failed, or refused  
527 to comply with Article 2 (§ 59.1-293.10:11 et seq.);

528 c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under  
529 the laws of the Commonwealth;

530 d. Is not the legitimate owner of the business conducted under the retail tobacco permit issued pursuant to  
531 § 59.1-293.10:1, or other persons have ownership interests in the business that have not been disclosed;

532 e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business  
533 conducted under the retail tobacco permit issued pursuant to § 59.1-293.10:1;

534 f. Has been intoxicated or under the influence of some self-administered drug while upon the permitted  
535 premises;

536 g. Subsequent to the granting of his original retail tobacco permit, has demonstrated by his police record  
537 a lack of respect for law and order;

538 h. Is physically unable to carry on the business conducted under such retail tobacco permit or has been  
539 adjudicated incapacitated;

540 i. Has possessed any illegal gambling device, as defined in § 18.2-325, upon the permitted premises;

541 j. Has upon the permitted premises (i) illegally possessed, distributed, sold, or used or has knowingly  
542 allowed any employee or agent, or any other person, to illegally possess, distribute, sell, or use marijuana,  
543 controlled substances, imitation controlled substances, drug paraphernalia, or controlled paraphernalia as  
544 those terms are defined in Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title  
545 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or  
546 (iii) conspired to commit any drug-related offense in violation of Article 1 or 1.1 of Chapter 7 of Title 18.2 or  
547 the Drug Control Act. The provisions of this subdivision shall also apply to any conduct related to the  
548 operation of the permitted business that facilitates the commission of any of the offenses set forth herein;

549 k. Has failed to take reasonable measures to prevent (i) the permitted premises, (ii) any premises  
550 immediately adjacent to the permitted premises that are owned or leased by the permittee, or (iii) any portion  
551 of public property immediately adjacent to the permitted premises from becoming a place where patrons of  
552 the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1  
553 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.),  
554 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of

Chapter 7 of Title 18.2; Article 3 (§ 18.2-346 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2, and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to public safety; or

1. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, from occurring on (i) the permitted premises, (ii) any premises immediately adjacent to the permitted premises that is owned or leased by the permittee, or (iii) any portion of public property immediately adjacent to the permitted premises.

2. The place occupied by the permittee:

a. Does not conform to the requirements of the governing body of the locality in which such establishment is located with respect to sanitation, health, construction, or equipment or to any similar requirements established by the laws of the Commonwealth or by Department regulations;

b. Has been adjudicated a common nuisance under the provisions of this subtitle or § 18.2-258; or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers, or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Department may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The permittee or any employee of the permittee discriminated against any member of the Armed Forces of the United States by prices charged or otherwise.

4. Any cause exists for which the Department would have been entitled to refuse to grant such retail tobacco permit had the facts been known.

5. The permittee is delinquent for a period of 90 days or more in the payment of any taxes, or any related penalties or interest, lawfully imposed by the locality where the permitted business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the permittee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the permittee has entered into a payment plan approved by the same locality to settle the outstanding liability.

6. The Department or investigators with the Office of the Attorney General found that the permittee exceeded the legal volume limits set by § 58.1-1017.1 during the prior year.

7. Investigators with the Office of the Attorney General seized cigarette inventory pursuant to § 2.2-509.1 from the permittee during the prior year.

8. Any other cause authorized by this article.

**§ 59.1-293.10:7. Grounds for which Department shall suspend or revoke retail tobacco permits.**

The Department shall suspend or revoke any retail tobacco permit if it finds that:

1. A permittee has violated or permitted the violation of § 18.2-331, relating to the illegal possession of a gambling device, upon the premises for which the Department has granted a retail tobacco permit for the sale of retail tobacco products to the public.

2. A permittee has defrauded or attempted to defraud the Department or any federal, state, or local government or governmental agency or authority by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a willfully or knowingly false representation of a material fact or has willfully deceived or attempted to deceive the Department, or any federal, state, or local government or governmental agency or authority by making or maintaining business records required by statute or regulation that are false or fraudulent.

**§ 59.1-293.10:8. Suspension or revocation of retail tobacco permits; notice and hearings; imposition of penalties.**

A. 1. Except for temporary retail tobacco permits issued pursuant to § 59.1-293.10:10, before the Department may impose a civil penalty or suspend or revoke any retail tobacco permit, reasonable notice of such proposed or contemplated action shall be given to the permittee in accordance with the provisions of § 2.2-4020.

2. Notwithstanding the provisions of § 2.2-4022, the Department shall, upon written request by the permittee, permit the permittee to inspect and copy or photograph all (i) written or recorded statements made by the permittee or copies thereof or the substance of any oral statements made by the permittee or a previous or present employee of the permittee to any law-enforcement officer, the existence of which is known by the Department and upon which the Department intends to rely as evidence in any adversarial proceeding under this article against the permittee and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Department and upon which the Department intends to rely as evidence in any adversarial proceeding under this article against the permittee. In addition, any subpoena for the production of documents issued to any person at the request of the permittee or the Department shall provide for the production of the documents sought within 10 working days.

3. If the Department fails to provide for inspection or copying under this section for the permittee after a written request, the Department shall be prohibited from introducing into evidence any items the permittee

would have lawfully been entitled to inspect or copy under this section.

4. The action of the Department in suspending or revoking any retail tobacco permit or in imposing a civil penalty shall be subject to judicial review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such review shall extend to the entire evidential record of the proceedings provided by the Department in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed, or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. 1. In suspending any retail tobacco permit, the Department may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the permittee pay the cost incurred by the Department in investigating the permittee and in holding the proceeding resulting in such suspension, or it may impose and collect such civil penalties as it deems appropriate. In no event shall the Department impose a civil penalty exceeding \$1,000 for the first violation occurring within the five years immediately preceding the date of the violation, \$5,000 for the second violation occurring within the five years immediately preceding the date of the second violation, or \$10,000 for the third violation occurring within the five years immediately preceding the date of the third violation.

2. However, if the violation involved selling retail tobacco products to a person prohibited from purchasing such products, the Department may impose a civil penalty not to exceed (i) \$1,000 for the first violation occurring within the five years immediately preceding the date of the violation; (ii) \$5,000 for the second violation occurring within the five years immediately preceding the date of the second violation and such retail dealer found to be in violation of this subdivision 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; or (iii) \$10,000 for the third violation occurring within the five years immediately preceding the date of the third violation, in lieu of such suspension or any portion thereof, or both. The Department may also impose a requirement that the permittee pay for the cost incurred by the Department, not to exceed \$25,000, in investigating the permittee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.

C. Following notice to (i) the permittee of a hearing that may result in the suspension or revocation of the retail tobacco permit or (ii) the applicant of a hearing to resolve a contested application, the Department may accept a consent agreement. The notice shall advise the permittee or applicant of the option to (a) admit

648 *the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the*  
649 *Administrative Process Act (§ 2.2-4000 et seq.); and (c) (1) accept the proposed restrictions for operating*  
650 *under the retail tobacco permit, (2) accept the period of suspension of the permitted privileges within the*  
651 *Department's parameters, (3) pay a civil penalty in lieu of the period of suspension or any portion of the*  
652 *suspension as applicable, or (4) proceed to a hearing.*

653 *D. The Department may, by regulation or written order:*

654 *1. Designate those (i) objections to an application or (ii) alleged violations that will proceed to an initial*  
655 *hearing;*

656 *2. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of*  
657 *suspension may be accepted for a first offense occurring within three years immediately preceding the date of*  
658 *the violation;*

659 *3. Establish a schedule of penalties for such offenses that prescribes the appropriate suspension of a retail*  
660 *tobacco permit and the civil charge acceptable in lieu of such suspension; and*

661 *4. Establish a schedule of offenses for which any penalty may be waived upon a showing that the*  
662 *permittee has had no prior violations within five years immediately preceding the date of the violation. No*  
663 *waiver shall be granted by the Department, however, for a permittee's willful and knowing violation of this*  
664 *article or Department regulations.*

665 ***§ 59.1-293.10:9. Suspension or revocation; disposition of retail tobacco products; termination.***

666 *A. Retail tobacco products owned by or in possession of, or for sale by, any permittee at the time the retail*  
667 *tobacco permit of such permittee is suspended or revoked may be disposed of as follows:*

668 *1. Sold by such permittee to the Department at prices and terms agreed upon by the Department and such*  
669 *permittee;*

670 *2. Sold to persons in the Commonwealth who are permitted to sell such retail tobacco products; or*

671 *3. Upon retail tobacco permits issued pursuant to § 59.1-293.10:1 and conditions specified by the*  
672 *Department, sold to persons outside the Commonwealth for resale outside the Commonwealth upon such*  
673 *retail tobacco permits.*

674 *B. Upon retail tobacco permits issued pursuant to § 59.1-293.10:1 and upon payment of any excise tax*  
675 *due thereon, retail tobacco products owned and in possession of, or either, or for sale by, any permittee at*  
676 *the time the retail tobacco permit of such permittee is suspended or revoked may be sold to any person*  
677 *authorized to purchase the same for resale.*

678 *C. All retail tobacco products owned by or in possession of any permittee whose retail tobacco permit is*

suspended or revoked shall be disposed of by such permittee in accordance with the provisions of this section within 60 days from the date of such suspension or revocation.

D. Retail tobacco products owned by, or in possession of, or for sale by any permittee whose retail tobacco permit has been terminated other than by suspension or revocation may be disposed of in accordance with subsection A or B within such time as the Department deems proper. Such period shall not be less than 60 days.

E. All retail tobacco products owned by or remaining in the possession of any permittee described in subsection A, B, or D after the expiration of such period shall be deemed contraband and forfeited to the Commonwealth in accordance with the provisions of § 4.1-338.

**§ 59.1-293.10:10. Continuation of permittee operations in certain instances; temporary retail tobacco permits.**

A. The Department may grant the following temporary permits which shall authorize:

1. Any person who (i) purchases at a foreclosure, secured creditor's, or judicial auction sale the premises or property of a permittee or (ii) has become lawfully entitled to the possession of the permitted premises to continue to operate the retail tobacco establishment to the same extent as a permittee for a period not to exceed 60 days or for such longer period as determined by the Department. Such retail tobacco permit shall be temporary and shall confer the privileges of any retail tobacco permits held by the previous owner to the extent determined by the Department. Such temporary retail tobacco permit may be issued in advance, conditioned on the above requirements.

2. Any person who, through contract, lease, concession, license, management or similar agreement (collectively, the contract), becomes lawfully entitled to the use and control of the premises of a permittee to continue to operate the retail tobacco establishment to the same extent as a permittee, provided such person has made application to the Department for a retail tobacco permit at the same premises. The temporary retail tobacco permit shall (i) confer the privileges of any retail tobacco permits held by the previous owner to the extent determined by the Department and (ii) be valid for a period of 120 days or for such longer period as may be necessary as determined by the Department pending the completion of the processing of the temporary permittee's retail tobacco permit application. No temporary retail tobacco permit shall be issued without the written consent of the previous permittee. No temporary retail tobacco permit shall be issued under the provisions of this subdivision if the previous permittee owes any state or local taxes, or has any pending charges for violation of this article or any Department regulation, unless the temporary permittee agrees to assume the liability of the previous permittee for the taxes or any penalty for the pending charges.

710 *An application for a temporary retail tobacco permit may be filed prior to the effective date of the contract,*  
711 *in which case the temporary retail tobacco permit, when issued, shall become effective on the effective date of*  
712 *the contract. Upon the effective date of the temporary retail tobacco permit, (a) the temporary permittee shall*  
713 *be responsible for compliance with the provisions of this article and any Department regulation and (b) the*  
714 *previous permittee shall not be held liable for any violation of this article or any Department regulation*  
715 *committed by, or any errors or omissions of, the temporary permittee.*

716 *B. Every application for a temporary retail tobacco permit granted pursuant to this section shall be on a*  
717 *form prescribed by the Department. The fee for a temporary retail tobacco permit shall be one-twelfth of the*  
718 *retail tobacco permit application fee computed to the nearest cent and multiplied by the number of months for*  
719 *which the temporary retail tobacco permit is granted.*

720 *C. The decision to refuse to grant a temporary retail tobacco permit shall not be subject to a hearing. A*  
721 *temporary retail tobacco permit may be revoked summarily by the Department for any cause set forth in §*  
722 *59.1-293.10:6 without complying with subsection A of § 59.1-293.10:8. Revocation of a temporary retail*  
723 *tobacco permit shall be effective upon service of the order of revocation upon the temporary permittee or*  
724 *upon the expiration of three business days after the order of the revocation has been mailed to the temporary*  
725 *permittee at either his residence or the address given for the business in the application. No further notice*  
726 *shall be required.*

727 *Article 2.*

728 *Retail Tobacco Products.*

729 ***§ 59.1-293.10:11. Illegal sale of retail tobacco products in general; penalty.***

730 *For purposes of this article, "retail tobacco product" does not include any nicotine vapor product. Any*  
731 *person who is not a permittee who sells any retail tobacco product except as permitted by this chapter or, for*  
732 *manufacturers or distributors licensed by the Department, purchases such products for resale pursuant to*  
733 *Title 58.1, is guilty of a Class 1 misdemeanor.*

734 ***§ 59.1-293.10:12. Packaging of certain tobacco products; civil penalty.***

735 *A. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health*  
736 *warning. The proprietor of every retail tobacco establishment that offers for sale any retail tobacco product*  
737 *shall post in a conspicuous manner and place a sign or signs indicating that the sale of retail tobacco*  
738 *products to any person under 21 years of age is prohibited by law.*

739 *B. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services*  
740 *Administration published as 61 Federal Register 1492, the Department may promulgate regulations that*



allow the Department to undertake the activities necessary to comply with such regulations.

C. Agents of the Authority may issue a summons for any violation of this section. Any attorney for the locality in which an alleged violation of this section occurred may enforce this section 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 locality which instituted the action.

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

**§ 59.1-293.10:13. Persons to whom retail tobacco products may not be sold; proof of legal age; civil penalty.**

A. No person shall sell to 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 products. No person shall sell retail tobacco products from a vending machine.

B. 1. No person shall sell a retail tobacco product 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.

2. Before a permittee 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 such 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 verifying the identification presented using identification fraud detection software, technology, or a scanner that confirms the authenticity of such identification.

3. This subsection shall not apply to mail order or internet sales, provided that the person offering the retail tobacco product for sale through mail order or the internet (i) prior to the sale of such product 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 such product is released to the purchaser.

C. A violation of subsection A or B by an individual is punishable by a civil penalty in the amount of \$1,000 for a first violation, a civil penalty in the amount of \$5,000 for a second violation within a three-year period, or a civil penalty in the amount of \$10,000 for a third or subsequent violation within a three-year period. Such civil penalty shall not preclude the Department from taking administrative action against a permittee for the conduct of his agent or employee who violates subsection A or B. If applicable, upon a third

772 *or subsequent violation within a three-year period, the Department may suspend or revoke any retail tobacco*  
773 *permit issued pursuant to this subtitle.*

774 **§ 59.1-293.10:14. Prohibiting possession of retail tobacco products by a person younger than 21 years**  
775 ***of age; seizure.***

776 *A. No person younger than 21 years of age shall possess any retail tobacco product. The provisions of this*  
777 *section shall not apply to the possession of retail tobacco products by a person younger than 21 years of age*  
778 *(i) making a delivery of such products in pursuance of his employment or (ii) as part of a scientific study*  
779 *being conducted by an organization for the purpose of medical research to further efforts in cigarette and*  
780 *tobacco use prevention and cessation and tobacco product regulation, provided that such medical research*  
781 *has been approved by an institutional review board pursuant to applicable federal regulations or by a*  
782 *research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. This subsection shall*  
783 *not apply to the possession of any retail tobacco product by a law-enforcement officer or his agent when the*  
784 *same is necessary in the performance of his duties.*

785 *B. Any retail tobacco product possessed in violation of this section shall be deemed contraband and may*  
786 *be seized by a law-enforcement officer. Any such product, the lawful possession of which is not established,*  
787 *seized by such officer shall be forfeited and disposed of according to the process described in subdivision A 2*  
788 *of § 19.2-386.23.*

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

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

792 **§ 59.1-293.10:15. Purchasing retail tobacco products for person to whom they may not be sold;**  
793 ***penalty; forfeiture.***

794 *A. Any person who purchases for, or otherwise gives, provides, or assists in the provision of retail*  
795 *tobacco products to another person, when he knows or has reason to know that such person is younger than*  
796 *21 years of age, except (i) where possession of such products by a person younger than 21 years of age is due*  
797 *to such person's making a delivery of such products in pursuance of his employment or (ii) as part of a*  
798 *scientific study being conducted by an organization for the purpose of medical research to further efforts in*  
799 *cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such*  
800 *medical research has been approved by an institutional review board pursuant to applicable federal*  
801 *regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1.*  
802 *This subsection shall not apply to the possession of any retail tobacco product by a law-enforcement officer*

or his agent when the same is necessary in the performance of his duties.

B. A violation of subsection A by an individual is punishable by a civil penalty in the amount of \$100. Such civil penalty shall not preclude the Department from taking administrative action against a permittee for the conduct of his agent or employee who violates subsection A.

C. Any retail tobacco products purchased or 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.

Article 3.

Liquid Nicotine or Nicotine Vapor Products.

**§ 59.1-293.11. Sale or distribution of liquid nicotine container; prohibition; penalty.**

A. No person shall sell or distribute at retail or offer for retail sale or distribution a liquid nicotine container in the Commonwealth on or after October 1, 2015, unless such liquid nicotine container meets child-resistant packaging standards.

B. The requirements of subsection A shall not prohibit a wholesaler or retailer from selling its existing inventory of liquid nicotine until January 1, 2016, if the wholesaler or retailer can establish that the inventory was purchased prior to October 1, 2015, in a quantity comparable to that of the inventory purchased during the same period of the prior year.

C. Any person who sells or distributes at retail or offers for retail sale or distribution a liquid nicotine container in the Commonwealth on or after October 1, 2015, that he knows or has reason to know does not satisfy the child-resistant packaging standards required by this section is guilty of a Class 4 misdemeanor. However, no person shall be guilty of a violation of this section who relies in good faith on any information provided by the manufacturer of a liquid nicotine container that such container meets the requirements of this section.

D. The provisions of this ~~chapter~~ article do not apply to any manufacturer or wholesaler of liquid nicotine containers who sells or distributes a liquid nicotine container, provided that any such liquid nicotine container sold or distributed is intended for use outside of the Commonwealth.

E. The provisions of subsection A shall be null, void, and of no force and effect upon the effective date of either enacted federal legislation or final regulations issued by the U.S. Food and Drug Administration or by any other federal agency where such legislation or regulations mandate child-resistant packaging for liquid

833 nicotine containers.

834 F. The provisions of this section with respect to retail sales, retail establishments, and offers for retail sales  
835 shall only apply to retail sales or offers at retail of liquid nicotine containers before July 1, 2024.

836 **§ 59.1-293.12. Restrictions on the sale of liquid nicotine or nicotine vapor products to minors;**  
837 **penalties.**

838 A. A retail dealer shall comply with the provisions of this section, §§ 18.2-246.8, 18.2-246.10, and  
839 18.2-371.2; ~~and 59.1-293.13~~, and any other state or local law related to the sale of ~~retail tobacco products~~  
840 *liquid nicotine or nicotine vapor products*. If the Department determines that a retail dealer has violated any  
841 such provision of law, the Department may suspend or revoke such retail dealer's Retail Sales and Use Tax  
842 Exemption Certificate for Stamped Cigarettes Purchased for Resale or Other Tobacco Products (OTP)  
843 Distributor's License.

844 B. 1. For each retail dealer, the Department shall conduct an unannounced investigation at least once  
845 every 24 months to verify that the retail dealer is not selling ~~retail tobacco products~~ *liquid nicotine or nicotine*  
846 *vapor products* to persons under 21 years of age. If the Department determines that the retail dealer has  
847 violated any provision of this section, § 18.2-246.8, 18.2-246.10, *or* 18.2-371.2, ~~or 59.1-293.13~~, or any other  
848 state or local law related to the sale of ~~retail tobacco products~~ *liquid nicotine or nicotine vapor products*, it  
849 shall conduct an unannounced investigation of the retail dealer within six months of such violation.

850 2. If the Department determines that a retail dealer, or a retail dealer's agent or employee, sold a ~~retail~~  
851 ~~tobacco product~~ *liquid nicotine or nicotine vapor product* to a person ~~under~~ *younger than* 21 years of age or  
852 violated subsection A or B of § 18.2-371.2, the Department shall impose and the retail dealer shall be subject  
853 to:

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

855 b. For a second violation in a 36-month period, a penalty of no less than \$5,000. Any retail dealer found to  
856 be in violation of this subdivision 2 b shall be required to verify that any consumer who appears to be under  
857 30 years of age is of legal age by verifying such consumer's government-issued photographic identification  
858 using fraud detection software, technology, or a scanner that confirms the authenticity of such identification;  
859 and

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

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

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

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

**§ 59.1-293.18. Agent for service of process.**

A. Any nonresident manufacturer of liquid nicotine or nicotine vapor products that has not registered to do business in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to being included in the directory established by the Attorney General pursuant to § ~~59.1-293.12~~ 59.1-293.15, appoint and continually engage without interruption the services of an agent in the Commonwealth to act as agent for the service of process in any action or proceeding against such nonresident manufacturer concerning or arising out of the enforcement of this ~~chapter~~ article, and such nonresident manufacturer may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonresident manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Attorney General.

B. The manufacturer shall provide notice to the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer shall notify the Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

C. Any manufacturer whose liquid nicotine or nicotine vapor products are sold in the Commonwealth who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of the Commonwealth as its agent for service of process. The appointment of the Secretary of the Commonwealth as agent shall not satisfy the condition precedent required in subsection A to be included in the directory.

**§ 59.1-293.20. Sale or distribution prohibited.**

893 A. Beginning December 31, 2025, no person shall sell, distribute or import for resale, or offer for sale a  
894 liquid nicotine or nicotine vapor product for retail sale in the Commonwealth unless such liquid nicotine or  
895 nicotine vapor product is included in the directory established by the Attorney General pursuant to §  
896 ~~59.1-293.12~~ 59.1-293.15.

897 B. Beginning December 31, 2025, no liquid nicotine or nicotine vapor product manufacturer shall sell for  
898 retail sale, either directly or through a wholesaler, distributor, retailer, or similar intermediary or  
899 intermediaries, a liquid nicotine or nicotine vapor product in the Commonwealth unless such liquid nicotine  
900 or nicotine vapor product is included in the directory established by the Attorney General pursuant to §  
901 ~~59.1-293.12~~ 59.1-293.15.

902 C. Any person that violates the provisions of subsection A is subject to a fine of \$1,000 per day for each  
903 product offered for sale in violation until the offending product is removed from the market or until the  
904 offending product is properly listed on the directory.

905 D. A liquid nicotine or nicotine vapor product manufacturer that violates the provisions of subsection B is  
906 subject to a fine of \$1,000 per day for each product offered for sale in violation until the offending product is  
907 removed from the market or until the offending product is properly listed on the directory.

908 E. Each retailer shall have 60 days from the date that the Attorney General first makes the directory  
909 available for inspection on its public website to sell any products that were in its inventory and not included  
910 in the directory or to remove from inventory and return such products to the manufacturer for disposal.

911 F. Each distributor or wholesaler shall have 60 days from the date that the Attorney General first makes  
912 the directory available for inspection on its public website to remove any products intended for sale in the  
913 Commonwealth from its inventory and return such products to the manufacturer for disposal.

914 G. In an action brought under this section, the attorney for the Commonwealth or the attorney for the  
915 county, city, or town may recover reasonable costs of investigation, the costs of the action, and attorney fees.

916 H. Any civil penalties assessed under this section in an action brought in the name of a locality shall be  
917 paid into the general fund of the locality.

918 I. All fees collected by the Attorney General pursuant to this chapter shall be used for the administration  
919 and enforcement of this chapter.

920 **2. That the provisions of this act shall become effective on January 1, 2027.**

921 **3. That for each permittee licensed pursuant to § 59.1-293.10:1 of the Code of Virginia, as created by**  
922 **this act, the Office of the Attorney General shall use proceeds received by the Commonwealth from the**

923 Juul Labs, Inc., multistate settlement agreement to conduct an unannounced underage buyer operation  
924 at least once every 24 months to verify that the permittee is not selling retail tobacco products to  
925 persons younger than 21 years of age. If the Office of the Attorney General determines that the  
926 permittee has violated the provisions of § 59.1-293.10:13 of the Code of Virginia, as created by this act,  
927 the Office of the Attorney General shall conduct an additional underage buyer operation of the  
928 permittee within six months of the Office of the Attorney General substantiating such violation.