

1 HOUSE BILL NO. 308
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the Senate Committee on Rehabilitation and Social Services
 4 on _____)
 5 (Patron Prior to Substitute—Delegate Hope)

6 *A BILL to amend and reenact §§ 4.1-103, 4.1-229, 18.2-371.2, 18.2-391, 58.1-1021.04:2, 58.1-1021.06,*
 7 *58.1-1021.07, 59.1-293.10, 59.1-293.12, 59.1-293.13, 59.1-391.15 through 59.1-293.18, 59.1-293.20, and*
 8 *59.1-293.21 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 2 of Title 4.1 an*
 9 *article numbered 4, consisting of sections numbered 4.1-241 through 4.1-246; and to repeal §*
 10 *58.1-1021.04:1 of the Code of Virginia, relating to Virginia Alcoholic Beverage Control Authority;*
 11 *licensing of retail tobacco product retailers; purchase, possession, and sale of retail tobacco products;*
 12 *penalties; report.*

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

14 **1. That §§ 4.1-103, 4.1-229, 18.2-371.2, 18.2-391, 58.1-1021.04:2, 58.1-1021.06, 58.1-1021.07,**
 15 **59.1-293.10, 59.1-293.12, 59.1-293.13, 59.1-391.15 through 59.1-293.18, 59.1-293.20, and 59.1-293.21 of**
 16 **the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding**
 17 **in Chapter 2 of Title 4.1 an article numbered 4, consisting of sections numbered 4.1-241 through**
 18 **4.1-246, as follows:**

19 **§ 4.1-103. General powers of Board.**

20 The Board shall have the power to:

- 21 1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;
- 22 2. Adopt, use, and alter at will a common seal;
- 23 3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of
- 24 products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose
- 25 of providing for the payment of the expenses of the Authority;
- 26 4. Make and enter into all contracts and agreements necessary or incidental to the performance of its
- 27 duties, the furtherance of its purposes, and the execution of its powers under this subtitle, including
- 28 agreements with any person or federal agency;
- 29 5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts,
- 30 investment bankers, superintendents, managers, and such other employees and special agents as may be
- 31 necessary and fix their compensation to be payable from funds made available to the Authority. Legal

32 services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500
33 et seq.) of Title 2.2;

34 6. Receive and accept from any federal or private agency, foundation, corporation, association, or person
35 grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept
36 from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or
37 from any other source aid or contributions of either money, property, or other things of value, to be held,
38 used, and applied only for the purposes for which such grants and contributions may be made. All federal
39 moneys accepted under this section shall be accepted and expended by the Authority upon such terms and
40 conditions as are prescribed by the United States and as are consistent with state law, and all state moneys
41 accepted under this section shall be expended by the Authority upon such terms and conditions as are
42 prescribed by the Commonwealth;

43 7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall
44 be transacted and the manner in which the powers of the Authority shall be exercised and its duties
45 performed. The Board may delegate or assign any duty or task to be performed by the Authority to any
46 officer or employee of the Authority. The Board shall remain responsible for the performance of any such
47 duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by
48 written guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines shall
49 require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve the
50 Board of the responsibility to ensure faithful performance of the duties and tasks;

51 8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's
52 purposes or necessary or convenient to exercise its powers;

53 9. Develop policies and procedures generally applicable to the procurement of goods, services, and
54 construction, based upon competitive principles;

55 10. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title
56 2.2;

57 11. Buy, import, and sell alcoholic beverages other than beer and wine not produced by farm wineries,
58 and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for
59 sale;

60 12. Buy and sell any mixers;

61 13. Buy and sell products licensed by the Virginia Tourism Corporation that are within international
62 trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass), and 25
63 (clothing);

64 14. Control the possession, sale, transportation, and delivery of alcoholic beverages;

65 15. Determine, subject to § 4.1-121, the localities within which government stores shall be established or
66 operated and the location of such stores;

67 16. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic
68 beverages to and from such warehouses;

69 17. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed,
70 tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the
71 Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein,
72 at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to
73 any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time
74 acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms
75 and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or
76 mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such
77 terms and conditions as may be determined by the Board; and occupy and improve any land or building
78 required for the purposes of this subtitle;

79 18. Purchase, lease, or acquire the use of, by any manner, any plant or equipment that may be considered
80 necessary or useful in carrying into effect the purposes of this subtitle, including rectifying, blending, and
81 processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic
82 beverages;

83 19. Determine the nature, form, and capacity of all containers used for holding alcoholic beverages to be
84 kept or sold under this subtitle, and prescribe the form and content of all labels and seals to be placed thereon;
85 however, no container sold in or shipped into the Commonwealth shall include powdered or crystalline
86 alcohol;

87 20. Appoint every agent and employee required for its operations; require any or all of them to give bonds
88 payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of
89 experts and professionals;

90 21. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production
91 of records, memoranda, papers, and other documents before the Board or any agent of the Board; and
92 administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the
93 Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and
94 decide cases, subject to final decision by the Board, on application of any party aggrieved. The Board may
95 enter into consent agreements and may request and accept from any applicant or licensee a consent agreement
96 in lieu of proceedings on (i) objections to the issuance of a license or (ii) disciplinary action. Any such
97 consent agreement shall include findings of fact and may include an admission or a finding of a violation. A
98 consent agreement shall not be considered a case decision of the Board and shall not be subject to judicial
99 review under the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), but may be considered by
100 the Board in future disciplinary proceedings;

101 22. Make a reasonable charge for preparing and furnishing statistical information and compilations to
102 persons other than (i) officials, including court and police officials, of the Commonwealth and of its
103 subdivisions if the information requested is for official use and (ii) persons who have a personal or legal
104 interest in obtaining the information requested if such information is not to be used for commercial or trade
105 purposes;

106 23. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and
107 § 4.1-111;

108 24. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale
109 of alcoholic beverages;

110 *25. Grant, suspend, and revoke retail tobacco licenses for the sale of retail tobacco products;*

111 26. Assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations;

112 ~~26.~~ 27. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

113 ~~27.~~ 28. Establish minimum food sale requirements for all retail licensees;

114 ~~28.~~ 29. Review and approve any proposed legislative or regulatory changes suggested by the Chief
115 Executive Officer as the Board deems appropriate;

116 ~~29.~~ 30. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement
117 activities undertaken to enforce the provisions of this subtitle;

118 ~~30.~~ 31. Establish and collect fees for all permits set forth in this subtitle, including fees associated with
119 applications for such permits;

120 ~~31.~~ 32. Impose a requirement that a mixed beverage casino licensee pursuant to subdivision A 14 of

121 § 4.1-206.3 pay for any cost incurred by the Board to enforce such license in excess of the applicable state
122 license fee; and

123 ~~32.~~ 33. Do all acts necessary or advisable to carry out the purposes of this subtitle.

124 **§ 4.1-229. Suspension or revocation of permits or licenses; grounds; notice and hearing; exception.**

125 A. The Board may suspend or revoke any permit. The suspension or revocation of any permit shall be in
126 accordance with §§ 4.1-225 and 4.1-227.

127 B. This section shall not apply to (i) temporary permits granted under § 4.1-212, which may be revoked
128 summarily in the same manner as a temporary license may be revoked under § 4.1-211, or (ii) *retail tobacco*
129 *licenses, which may be suspended or revoked in accordance with Article 4 (§ 4.1-241 et seq.).*

130 *Article 4.*

131 *Retail Tobacco Licenses.*

132 **§ 4.1-241. Definitions.**

133 *As used in this article, unless the context requires a different meaning:*

134 *"Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.*

135 *"Electronic smoking device" means the same as that term is defined in § 18.2-371.2.*

136 *"Licensed location" means the individual location or place of business licensed as a retail tobacco*
137 *establishment by a licensee.*

138 *"Licensee" means any tobacco retailer to whom a retail tobacco license has been issued by the Board.*

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

140 *"Liquid nicotine container" means the same as that term is defined in § 59.1-293.10.*

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

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

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

151 *"Retail tobacco license" means a license issued by the Board to a tobacco retailer that authorizes such*

152 retailer to sell retail tobacco products at a retail tobacco establishment owned by such licensee.

153 "Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or that
154 contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked,
155 heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, heated
156 tobacco product, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that
157 may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any
158 component, part, or accessory of a product described in clause (i) or (ii), whether or not such component,
159 part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and
160 glass pipes. "Retail tobacco product" includes any liquid nicotine or nicotine vapor product, or drugs or
161 devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21
162 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and
163 Drug Administration. "Retail tobacco product" does not include any cigar or pipe tobacco as defined in
164 § 58.1-1021.01.

165 "Tobacco product" means the same as that term is defined in § 58.1-1021.01.

166 "Tobacco retailer" means the same as that term is defined in § 59.1-293.10.

167 **§ 4.1-242. Retail tobacco license; application; fee.**

168 A. No person shall engage in the business of selling or dealing in retail tobacco products as a tobacco
169 retailer in the Commonwealth without first having received a separate license from the Board for each
170 individual licensable location where such retail sales will occur. Each application for a retail tobacco license
171 shall be accompanied by a fee of \$750 and shall be made on a form prescribed by the Board. Such
172 application shall include the following information:

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

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

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

178 4. Such other information as the Board may require for the purpose of the administration of this article.

179 B. The application or renewal fee of \$750 shall be retained by the Board to be applied to the
180 administrative and other costs of processing retail tobacco license applications, conducting background
181 investigations, and issuing retail tobacco licenses. Any amount collected pursuant to this section in excess of
182 such costs as of June 30 in even-numbered years shall be divided as follows: (i) 75 percent to the Board for

183 *underage enforcement of the provisions of this article and (ii) 25 percent to the Office of the Attorney*
184 *General for purposes of enforcement of the provisions of §§ 59.1-293.15 through 59.1-293.21.*

185 *C. A person outside the Commonwealth who ships or transports retail tobacco products to tobacco*
186 *retailers in the Commonwealth, to be sold by such retailers, may make application for a retail tobacco*
187 *license as a distributor, be granted such a license by the Board, and thereafter be subject to all the provisions*
188 *of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a*
189 *licensed distributor and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601*
190 *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*
191 *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*
192 *the State Corporation Commission as the person's agent for the purpose of service of process relating to any*
193 *matter or issue involving the person and arising under the provisions of this article.*

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

208 *E. Upon receipt of an application in proper form and payment of the required license fee, the Board shall,*
209 *unless otherwise provided by this article, issue to the applicant a license, which shall permit the licensee to*
210 *engage in business as a distributor at the location or place of business shown on the license. Each license, or*
211 *a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be*
212 *transferable to any other person.*

213 *F. Retail tobacco licenses issued pursuant to this section shall be valid for a period of three years from*

214 *the date of issue unless revoked by the Board in the manner provided in this article.*

215 *G. The Board may at any time revoke the license issued for any licensee at a licensable location that is*
216 *found guilty of violating or noncompliance with any of the provisions of this article. The Board shall suspend*
217 *or revoke the retail tobacco license issued to any licensee who is found guilty of a second or subsequent*
218 *violation of subsection B or C of § 18.2-371.2.*

219 *H. The Board shall compile and maintain a current list of all licensees. The list shall be updated on a*
220 *monthly basis and published on the Board's website, available to any interested party.*

221 **§ 4.1-243. Background investigation required; penalties.**

222 *A. The Board shall conduct a background investigation, to include a Virginia criminal history records*
223 *search, and fingerprints of each applicant for a retail tobacco license, or the responsible principals,*
224 *managers, and other persons engaged in handling retail tobacco products at the licensable location, that*
225 *shall be submitted to the Federal Bureau of Investigation if the Board deems a national criminal records*
226 *search necessary. The Board may refuse to issue a retail tobacco license or may suspend, revoke, or refuse to*
227 *renew a retail tobacco license issued to any person, partnership, corporation, limited liability company, or*
228 *business trust if it determines that the principals, managers, and other persons engaged in handling retail*
229 *tobacco products at the licensable location of the applicant have been (i) found guilty of any fraud or*
230 *misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement,*
231 *fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of a felony.*

232 *B. Any person that knowingly and willfully falsifies, conceals, or misrepresents a material fact or*
233 *knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application*
234 *for a retail tobacco license to the Board, is guilty of a Class 1 misdemeanor.*

235 **§ 4.1-244. Liquid nicotine or nicotine vapor products; penalties.**

236 *A. In addition to the requirements of Chapter 23.2 (§ 59.1-293.10 et seq.) of Title 59.1, no person shall*
237 *engage in the business of selling or dealing liquid nicotine or nicotine vapor products or shipping or*
238 *transporting liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be sold by those*
239 *retailers, as a manufacturer, distributor, or retail dealer in the Commonwealth without first having received*
240 *a separate retail tobacco license pursuant to this article from the Board for each location or place of*
241 *business. Any person who violates such prohibition shall be subject to a penalty of \$400 in addition to any*
242 *other applicable taxes or fees.*

243 *B. Notwithstanding the provisions of subsection F of § 4.1-242, licenses, other than temporary licenses,*
244 *issued to a retailer engaged in the business of selling or dealing liquid nicotine or nicotine vapor products or*

245 *shipping or transporting liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be*
246 *sold by those retailers, as a manufacturer, distributor, or retail dealer in the Commonwealth shall be valid*
247 *for two years from the date of issue unless revoked by the Board. The Board may at any time suspend or*
248 *revoke the approved retail tobacco license issued in accordance with this section to any person who is found*
249 *guilty of violating or noncompliance with any of the provisions of this article or any of the rules of the Board*
250 *adopted and promulgated under authority of this article. Any person licensed to sell liquid nicotine or*
251 *nicotine vapor products pursuant to this article shall, as a condition of renewing or extending an approved*
252 *retail tobacco license be required to submit to the Board an accurate record of any taxes paid on liquid*
253 *nicotine pursuant to § 58.1-1021.02.*

254 *C. No person shall make a sale of liquid nicotine or nicotine vapor products (i) to any person who has not*
255 *attained the legal age for purchasing liquid nicotine or nicotine vapor products and (ii) without a valid retail*
256 *tobacco license issued pursuant to this article.*

257 *D. 1. For each retail dealer, the Board shall conduct an unannounced investigation of licensed locations*
258 *at least once every 24 months to verify that no person at such licensed location is selling liquid nicotine or*
259 *nicotine vapor products to persons younger than 21 years of age. If the Board determines that the retail*
260 *dealer for a licensed location has violated any provision of this article, or any other state or local law related*
261 *to the sale of retail tobacco products, it shall conduct an unannounced investigation of the licensed location*
262 *within six months of such violation.*

263 *2. Any person who is found guilty of violating or noncompliance with this section shall be subject to the*
264 *following penalties for the licensed location:*

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

266 *b. For a second violation in a 36-month period, a penalty of no less than \$5,000 and a 30-day suspension*
267 *of the retail tobacco license. If the person is found to be in violation of clause (i) of subsection C, such person*
268 *shall be required to verify that any consumer who appears to be younger than 30 years of age is of legal age*
269 *by verifying such consumer's government-issued photographic identification using fraud detection software,*
270 *technology, or a scanner that confirms the authenticity of such identification; and*

271 *c. For a third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the retail*
272 *tobacco license, and ineligibility to possess a retail tobacco license for liquid nicotine and nicotine vapor*
273 *products for a period of three years from the date of the most recent violation.*

274 **§ 4.1-245. Liquid nicotine or nicotine vapor products; age verification required.**

275 *A. No person inside or outside the Commonwealth shall make a retail sale of liquid nicotine and nicotine*

276 vapor products without verifying that the consumer is of legal age by examining from any person who
277 appears to be younger than 30 years of age a government-issued photographic identification that establishes
278 that the person is of legal age or providing for age verification through an independent age verification
279 service that compares information available from a commercially available database, or aggregate of
280 databases, that is regularly used by government agencies and businesses for the purpose of age and identity
281 verification to the personal information entered by the individual during the ordering process that establishes
282 that the individual is of age.

283 **§ 4.1-246. Liquid nicotine or nicotine vapor products; certain records required.**

284 *For any transaction between a distributor and a retail dealer involving liquid nicotine or nicotine vapor*
285 *products, both the distributor and the retail dealer shall maintain and retain records of any invoice or sales*
286 *receipt involved that shall include itemized lists of the types of products included in such transaction, the tax*
287 *due on each product pursuant to subsection B of § 58.1-1021.02, and the total amount of taxes paid. Such*
288 *records shall be produced and provided to the Board as necessary for auditing, compliance, and enforcement*
289 *purposes.*

290 **§ 18.2-371.2. Prohibiting purchase or possession of retail tobacco products and hemp products**
291 **intended for smoking by a person under 21 years of age or sale of retail tobacco products and hemp**
292 **products intended for smoking to persons under 21 years of age; civil penalties.**

293 *A. As used in this section,*

294 *"Authority" means the Virginia Alcoholic Beverage Control Authority.*

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

304 *"Hemp product" and "hemp product intended for smoking" mean the same as those terms are defined in*
305 *§ 3.2-4112.*

306 *"Retail tobacco product" means (i) any product containing, made of, or derived from tobacco or that*

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

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

319 *B. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person*
320 *younger than 21 years of age, knowing or having reason to believe that such person is younger than 21 years*
321 *of age, any retail tobacco product or hemp product intended for smoking.*

322 *No person shall sell retail tobacco products or hemp products intended for smoking from a vending*
323 *machine.*

324 ~~B.~~ *C. No person shall sell a retail tobacco product or hemp product intended for smoking to any individual*
325 *who does not demonstrate, by producing a driver's license or similar photo identification issued by a*
326 *government agency, that the individual is at least 21 years of age.*

327 *Before a retail dealer may sell retail tobacco products, other than cigar and pipe tobacco products as*
328 *defined in § 58.1-1021.01, to any consumer, the person selling, offering for sale, giving, or furnishing the*
329 *retail tobacco products shall verify that the consumer is of legal age by examining from any person who*
330 *appears to be under 30 years of age a government-issued photographic identification that establishes that the*
331 *person is of legal age or, if required pursuant to ~~subdivision C 4 b of § 58.1-1021.04-1~~ § 4.1-242 or 4.1-244*
332 *or subdivision B 2 b of § 59.1-293.12, verifying the identification presented using identification fraud*
333 *detection software, technology, or a scanner that confirms the authenticity of such identification.*

334 *This subsection shall not apply to mail order or ~~Internet~~ internet sales, provided that the person offering*
335 *the retail tobacco product or hemp product intended for smoking for sale through mail order or the ~~Internet~~*
336 *internet (i) prior to the sale of the retail tobacco product or hemp product intended for smoking verifies that*
337 *the purchaser is at least 21 years of age through a commercially available database that is regularly used by*

338 businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of
339 mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the retail
340 tobacco product or hemp product intended for smoking will be released to the purchaser.

341 ~~C~~. D. A violation of subsection ~~A B~~ or ~~B C~~ by an individual or by a separate retail establishment is
342 punishable by a civil penalty in the amount of \$500 for a first violation and a civil penalty in the amount of
343 \$2,500 for a second or subsequent violation within a three-year period. If applicable, upon a second or
344 subsequent violation within a three-year period, the ~~Department of Taxation Authority~~ may suspend or revoke
345 any approved license, permit, or registration issued pursuant to ~~subsection C of § 58.1-1021.04:1~~ § 4.1-242.

346 For any violation of this section by an employee of a retail establishment, (i) such penalty shall be
347 assessed against the establishment and (ii) an additional penalty of \$100 shall be assessed against the
348 employee.

349 Any attorney for the Commonwealth of the ~~county or city~~ locality in which an alleged violation occurred
350 may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any
351 law-enforcement officer may issue a summons for a violation of subsection ~~A B~~ or ~~B C~~.

352 ~~D~~. E. 1. Cigarettes and hemp products intended for smoking shall be sold only in sealed packages
353 provided by the manufacturer, with the required health warning. The proprietor of every retail establishment
354 that offers for sale any retail tobacco product or hemp product intended for smoking shall post in a
355 conspicuous manner and place a sign or signs indicating that the sale of retail tobacco products or hemp
356 products intended for smoking to any person under 21 years of age is prohibited by law. Any attorney for the
357 ~~county, city, or town~~ locality in which an alleged violation of this subsection occurred may enforce this
358 subsection by civil action to recover a civil penalty not to exceed \$500. The civil penalty shall be paid into
359 the local treasury. No filing fee or other fee or cost shall be charged to the ~~county, city, or town~~ locality
360 which instituted the action.

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

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

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

370 ~~F. G.~~ Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105 may
371 issue a summons for any violation of this section. Additionally, any retailer selling retail tobacco products
372 shall be subject to the enforcement and compliance provisions of *Article 4 (§ 4.1-241 et seq.) of Chapter 2 of*
373 *Title 4.1 and Chapter 23.2 (§ 59.1-293.10 et seq.) of Title 59.1.*

374 ~~G.~~ As used in this section:

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

384 "Hemp product" and "hemp product intended for smoking" mean the same as those terms are defined in
385 § 3.2-4112.

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

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

399 **§ 18.2-391. Unlawful acts; penalties.**

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

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

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

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

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

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

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

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

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

435 **§ 58.1-623.2. Cigarette exemption certificate.**

436 A. 1. Notwithstanding any other provision of law, all sales of cigarettes, as defined in § 58.1-1031,
437 bearing Virginia revenue stamps in the Commonwealth shall be subject to the tax until the contrary is
438 established. The burden of proving that a sale is not taxable is upon the dealer unless he takes from the
439 taxpayer a cigarette exemption certificate issued by the Department to the taxpayer to the effect that the
440 cigarettes are exempt under this chapter for the purposes of resale in the Commonwealth.

441 2. The cigarette exemption certificate mentioned in this section shall relieve the person who takes such
442 certificate from any liability for the payment or collection of the tax on the sale of cigarettes, except upon
443 notice from the Tax Commissioner or the taxpayer that such certificate is no longer acceptable.

444 3. If a taxpayer who gives a cigarette exemption certificate under this section makes any use of the
445 property other than an exempt use or retention, demonstration, or display while holding the property for
446 resale or distribution in the regular course of business, such use shall be deemed a taxable sale by the
447 taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be
448 deemed the sales price of such retail sale.

449 B. 1. Prior to issuing a cigarette exemption certificate under this section, the Department shall conduct a
450 background investigation on the taxpayer for the certificate. The Department shall not issue a cigarette
451 exemption certificate until at least 30 days have passed from the receipt of the application, unless the
452 taxpayer qualifies for the expedited process set forth in subdivision 3, or any other expedited process set forth
453 in guidelines issued pursuant to subsection L. If the taxpayer does not qualify for the expedited process, the
454 Department shall inspect each location listed in the application and verify that any location that resells
455 cigarettes meets the requirements prescribed in subsection E.

456 2. A taxpayer shall be required to pay an application fee, not to exceed \$50, to the Department for a
457 cigarette exemption certificate.

458 3. A taxpayer shall be eligible for an expedited process to receive a cigarette exemption certificate if the
459 taxpayer possesses, at the time of filing an application for a cigarette exemption certificate, (i) an active
460 license, in good standing, issued by the Department of Alcoholic Beverage Control pursuant to Title 4.1, as

461 verified by electronic or other means by the Department, or (ii) an active *retail* tobacco ~~products tax~~
462 ~~distributor's~~ license, in good standing, issued by the Department pursuant to ~~§ 58.1-1021.04:1~~ *Article 4*
463 *(§ 4.1-241 et seq.) of Chapter 2 of Title 4.1.* The Department may identify other categories of taxpayers who
464 qualify for an expedited process through guidelines issued pursuant to subsection L. Taxpayers that qualify
465 for an expedited process shall not be subject to the background check or the waiting period set forth in
466 subdivision 1, nor shall such taxpayers be required to pay the application fee set forth in subdivision 2.

467 4. If a taxpayer has been denied a cigarette exemption certificate, or has been issued a cigarette exemption
468 certificate that has subsequently been suspended or revoked, the Department shall not consider an application
469 from the taxpayer for a new cigarette exemption certificate for six months from the date of the denial,
470 suspension, or revocation.

471 C. The Department shall deny an application for a cigarette exemption certificate, or suspend or revoke a
472 cigarette exemption certificate previously issued to a taxpayer, if the Department determines that:

473 1. The taxpayer is a person who is not 18 years of age or older;

474 2. The taxpayer is a person who is physically unable to carry on the business for which the application for
475 a cigarette exemption certificate is filed, or has been adjudicated incapacitated;

476 3. The taxpayer has not resided in the Commonwealth for at least one year immediately preceding the
477 application, unless in the opinion of the Department, good cause exists for the taxpayer to have not resided in
478 the Commonwealth for the immediately preceding year;

479 4. The taxpayer has not established a physical place of business in the Commonwealth, as described in
480 subsection E;

481 5. A court or administrative body having jurisdiction has found that the physical place of business
482 occupied by the taxpayer, as described in subsection E, does not conform to the sanitation, health,
483 construction, or equipment requirements of the governing body of the county, city, or town in which such
484 physical place is located, or to similar requirements established pursuant to the laws of the Commonwealth;

485 6. The physical place of business occupied by the taxpayer, as described in subsection E, is not
486 constructed, arranged, or illuminated so as to allow access to and reasonable observation of, any room or area
487 in which cigarettes are to be sold;

488 7. The taxpayer is not an authorized representative of the business;

489 8. The taxpayer made a material misstatement or material omission in the application;

490 9. The taxpayer has defrauded, or attempted to defraud, the Department, or any federal, state, or local
491 government or governmental agency or authority, by making or filing any report, document, or tax return
492 required by statute or regulation that is fraudulent or contains a false representation of material fact, or the
493 taxpayer has willfully deceived or attempted to deceive the Department, or any federal, state, or local
494 government or governmental agency or authority, by making or maintaining business records required by
495 statute or regulation that are false or fraudulent;

496 10. The Tax Commissioner has determined that the taxpayer has misused the certificate;

497 11. The taxpayer has knowingly and willfully allowed any individual, other than an authorized
498 representative, to use the certificate;

499 12. The taxpayer has failed to comply with or has been convicted under any of the provisions of this
500 chapter or Chapter 10 (§ 58.1-1000 et seq.) or any of the rules of the Department adopted or promulgated
501 under the authority of this chapter or Chapter 10; however, no certificate shall be denied, suspended, or
502 revoked on the basis of a failure to file a retail sales and use tax return or remit retail sales and use tax unless
503 the taxpayer is more than 30 days delinquent in any filing or payment and has not entered into an installment
504 agreement pursuant to § 58.1-1817; or

505 13. The taxpayer has been convicted under the laws of any state or of the United States of (i) any robbery,
506 extortion, burglary, larceny, embezzlement, gambling, perjury, bribery, treason, racketeering, money
507 laundering, other crime involving fraud under Chapter 6 (§ 18.2-168 et seq.) of Title 18.2, or crime that has
508 the same elements of the offenses set forth in § 58.1-1017 or 58.1-1017.1, or (ii) a felony.

509 D. The provisions of § 58.1-623.1 shall apply to the suspension and revocation of exemption certificates
510 issued pursuant to this section, mutatis mutandis.

511 E. A cigarette exemption certificate shall only be issued to a taxpayer who:

512 1. Has a physical place of business in the Commonwealth, owned or leased by him, where a substantial
513 portion of the sales activity of the retail cigarette sales activity of the business is routinely conducted and that
514 (i) satisfies all local zoning regulations; (ii) has sales and office space of at least 250 square feet in a
515 permanent, enclosed building not used as a house, apartment, storage unit, garage, or other building other
516 than a building zoned for retail business; (iii) houses all records required to be maintained pursuant to
517 § 58.1-1007; (iv) is equipped with office equipment, including but not limited to, a desk, a chair, a Point of
518 Sale System, filing space, a working telephone listed in the name of the taxpayer or his business, working
519 utilities, including electricity and provisions for space heating, and an Internet connection and email address;

520 (v) displays a sign and business hours and is open to the public during the listed business hours; and (vi) does
521 not occupy the same physical place of business of any other taxpayer who has been issued a cigarette
522 exemption certificate;

523 2. Possesses a copy of the (i) corporate charter and articles of incorporation in the case of a corporation,
524 (ii) partnership agreement in the case of a partnership, or (iii) organizational registration from the Virginia
525 State Corporation Commission in the case of an LLC; and

526 3. Possesses a local business license, if such local business license is required by the locality where the
527 taxpayer's physical place of business is located.

528 F. A taxpayer with more than one physical place of business shall be required to complete only one
529 application for a cigarette exemption certificate but shall list on the application every physical place of
530 business in the Commonwealth where cigarettes are purchased, stored, or resold by the taxpayer or his
531 affiliate. Upon approval of the application, the Department shall issue a cigarette exemption certificate to the
532 taxpayer. The taxpayer shall be authorized to resell cigarettes only at the locations listed on the application.
533 No cigarette exemption certificate shall be transferrable. For purposes of this subsection, a taxpayer shall be
534 considered to have more than one physical place of business if the taxpayer owns or leases two or more
535 physical locations in the Commonwealth where cigarettes are purchased, stored, or resold.

536 G. A cigarette exemption certificate issued to a taxpayer shall bear the address of the physical place of
537 business occupied or to be occupied by the taxpayer in conducting the business of purchasing cigarettes in the
538 Commonwealth. In the event that a taxpayer intends to move the physical place of business listed on a
539 certificate to a new location, he shall provide written notice to the Department at least 30 days in advance of
540 the move. A successful inspection of the new physical place of business shall be required by the Department
541 prior to the issuance of a new cigarette exemption certificate bearing the updated address. If the taxpayer
542 intends to change any of the required information relating to the physical places of business contained in the
543 application for the cigarette exemption certificate submitted pursuant to subsection F, the taxpayer shall file
544 an amendment to the application at least 30 days in advance of such change. The certificate with the original
545 address shall become invalid upon the issuance of the new certificate, or 30 days after notice of the move is
546 provided to the Department, whichever occurs sooner. A taxpayer shall not be required to pay a fee to the
547 Department for the issuance of a new cigarette exemption certificate pursuant to this subsection.

548 H. The privilege of a taxpayer issued a cigarette exemption certificate to purchase cigarettes shall extend

549 to any authorized representative of such taxpayer. The taxpayer issued a cigarette exemption certificate may
550 be held liable for any violation of this chapter, Chapter 10 (§ 58.1-1000 et seq.), Chapter 10.1 (§ 58.1-1031 et
551 seq.), or any related Department guidelines by such authorized representative.

552 I. A taxpayer issued a cigarette exemption certificate shall comply with the recordkeeping requirements
553 prescribed in § 58.1-1007 and shall make such records available for audit and inspection as provided therein.
554 A taxpayer issued a cigarette exemption certificate who fails to comply with such requirements shall be
555 subject to the penalties provided in § 58.1-1007.

556 J. A cigarette exemption certificate granted by the Department shall be valid for five years from the date
557 of issuance. At the end of the five-year period, the cigarette exemption certificate of a taxpayer who qualifies
558 for the expedited application process set forth in subdivision B 3 shall be automatically renewed and no fee
559 shall be required. If a taxpayer does not qualify for the expedited application process, then such taxpayer shall
560 apply to the Department to renew the new cigarette exemption certificate as set forth in subdivision B 1 and
561 shall pay an application fee not to exceed \$50 as set forth in subdivision B 2; however, the 30-day waiting
562 period set forth in subdivision B 1 shall not apply.

563 K. No taxpayer issued a cigarette exemption certificate shall display the certificate, or a copy thereof, in
564 the physical place of business where a substantial portion of the retail cigarette sales activity of the business
565 is routinely conducted.

566 L. The Tax Commissioner shall develop guidelines implementing the provisions of this section, including
567 but not limited to (i) defining categories of taxpayers who qualify for the expedited process, (ii) prescribing
568 the form of the application for the cigarette exemption certificate, (iii) prescribing the form of the application
569 for the expedited cigarette exemption certificate, (iv) establishing procedures for suspending and revoking the
570 cigarette exemption certificate, and (v) establishing procedures for renewing the cigarette exemption
571 certificate. Such guidelines shall be exempt from the provisions of the Administrative Process Act
572 (§ 2.2-4000 et seq.).

573 M. For the purposes of this section:

574 "Authorized representative" means an individual who has an ownership interest in or is a current
575 employee of the taxpayer who possesses a valid cigarette exemption certificate pursuant to this section.

576 **§ 58.1-1021.04:2. Certain records required of distributor; access to premises.**

577 A. Each distributor or remote retail seller shall keep in each licensed place of business complete and
578 accurate records for that place of business, including itemized invoices of: (i) tobacco products held,

579 purchased, manufactured, brought in or caused to be brought in from outside the Commonwealth, or shipped
580 or transported to retailers in the Commonwealth; (ii) all sales of tobacco products made; (iii) all tobacco
581 products, including cigars and pipe tobacco, transferred to other retail outlets owned or controlled by that
582 licensed distributor or remote retail seller; and (iv) any records required by the Department.

583 All books, records and other papers and documents required by this subsection to be kept shall be
584 preserved, in a form prescribed by the Department, for a period of at least three years after the date of the
585 documents or the date of the entries thereof appearing in the records, unless the Department authorizes, in
586 writing, their destruction or disposal at an earlier date.

587 B. At any time during usual business hours, duly authorized agents or employees of the Department may
588 enter any place of business of a distributor and inspect the premises, the records required to be kept under this
589 article and the tobacco products contained therein, to determine whether all the provisions of this article are
590 being complied with fully. Refusal to permit such inspection by a duly authorized agent or employee of the
591 Department shall be grounds for revocation of the license.

592 C. Each person who sells tobacco products to persons other than an ultimate consumer shall render with
593 each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date
594 of sale and all prices. Such person shall preserve legible copies of all such invoices for three years after the
595 date of sale.

596 D. Each distributor or remote retail seller shall procure itemized invoices of all tobacco products
597 purchased. The invoices shall show the name and address of the seller and the date of purchase. The
598 distributor or remote retail seller shall preserve a legible copy of each invoice for three years after the date of
599 purchase. Invoices shall be available for inspection by authorized agents or employees of the Department at
600 the distributor's place of business or remote retail seller's place of business. If the remote retail seller cannot
601 produce the required invoice information and the excise tax is being remitted using the actual cost list method
602 to calculate the excise tax, the remote retail seller shall provide the remote retail seller's certified actual cost
603 list to the Department for each SKU to be offered for remote retail sale in the subsequent calendar year. The
604 actual cost list shall be updated quarterly as new SKUs are added to a remote retail seller's inventory. New
605 SKUs will be added using the actual cost first paid for the SKU. This method shall not be used unless the
606 actual cost list has been filed with the Department for the previous calendar year.

607 E. Any violation of *Article 4 (§ 4.1-241 et seq.) of Chapter 2 of Title 4.1 or § ~~58.1-1021.04:1,~~*

608 58.1-1021.04:2, 58.1-1021.04:3, or 58.1-1021.04:4 of this article shall be grounds for revocation of the
609 license.

610 **§ 58.1-1021.06. Delivery sales of liquid nicotine and nicotine vapor products.**

611 A. A retail dealer shall not make a delivery sale of liquid nicotine or nicotine vapor products without a
612 license issued pursuant to ~~§ 58.1-1021.04:1~~ *Article 4 (§ 4.1-241 et seq.) of Chapter 2 of Title 4.1*. Such
613 delivery sales and any shipment shall be made only to a legal consumer.

614 B. A retail dealer may not ship for delivery sale any liquid nicotine or nicotine vapor products without
615 first making a good faith effort to verify the age of the purchaser of the liquid nicotine or nicotine vapor
616 products through an independent age verification software, service, or technology that compares information
617 available from public records to the personal information entered by the purchaser during the ordering
618 process that establishes the purchaser is of legal age or older.

619 C. Prior to shipment of liquid nicotine or nicotine vapor products for a delivery sale, a retail dealer shall
620 be fully paid for the purchase and shall accept payment from the consumer by a check drawn on an account in
621 the consumer's name, by a credit card issued in the consumer's name, or by a debit card issued in the
622 consumer's name. A retail dealer taking a delivery sale may request the electronic mail address of the
623 consumer as a condition of completing such delivery sale.

624 **§ 58.1-1021.07. Retail sales of liquid nicotine and nicotine vapor products; identification and use by**
625 **minors.**

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

629 1. For any retail sale by a retail dealer, examining from any person who appears to be under 30 years of
630 age a government-issued photographic identification that establishes the person is of legal age or, if required
631 pursuant to ~~subdivision C 4 b of § 58.1-1021.04:1~~ § 4.1-245 or subdivision B 2 b of § 59.1-293.12, verifying
632 the identification presented using identification fraud detection software, technology, or scanner that confirms
633 the authenticity of such identification; or

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

638 § 59.1-293.10. Definitions.

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

640 "Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

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

644 "Department" means the Department of Taxation.

645 "Licensed location" means the same as that term is defined in § 4.1-241.

646 "Licensee" means the same as that term is defined in § 4.1-241.

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

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

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

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

654 "Retail tobacco product" means ~~(i) any product containing, made of, or derived from tobacco or that~~
655 ~~contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked,~~
656 ~~heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, a heated~~
657 ~~tobacco product, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that~~
658 ~~may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any~~
659 ~~component, part, or accessory of a product described in clause (i) or (ii); whether or not such component,~~
660 ~~part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and~~
661 ~~glass pipes. "Retail tobacco product" includes any nicotine vapor product. "Retail tobacco product" does not~~
662 ~~include drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term~~
663 ~~is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S.~~
664 ~~Food and Drug Administration. "Retail tobacco product" does not include any cigar or pipe tobacco as~~
665 ~~defined in § 58.1-1021.01 the same as that term is defined in § 4.1-241.~~

666 "Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust, association,
667 organization, or corporation that owns, operates, or manages any tobacco retail establishment. "Tobacco

668 retailer" does not include nonmanagement employees of a tobacco retail establishment.

669 "Tobacco retail establishment" means any place of business where retail tobacco products are available
670 for sale to the general public, including any grocery store, retail tobacco product shop, kiosk, convenience
671 store, gasoline service station, bar, or restaurant where retail tobacco products are available for sale to the
672 general public.

673 **§ 59.1-293.13. Required education for retail dealers and employees.**

674 Any retail dealer shall be required to attest that it has conducted education and training for its employees
675 related to:

676 1. The provisions of § §§ 4.1-244, 4.1-245, and 59.1-293.12;

677 2. The prohibitions on the sale of retail tobacco products to persons under age 21 and other restrictions
678 prescribed by §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2;

679 3. Forms of identification that are acceptable as proof of age; and

680 4. The legal penalties that may be incurred for violation of the provisions of law identified in subdivisions
681 1 and 2.

682 **§ 59.1-293.15. Liquid nicotine and nicotine vapor product; directory.**

683 The Attorney General shall establish and maintain a directory that lists all liquid nicotine or nicotine vapor
684 product manufacturers and liquid nicotine and nicotine vapor products for which current and accurate
685 certification forms have been submitted in accordance with the provisions of § ~~59.1-293.13~~ 59.1-293.16. The
686 Attorney General shall make the directory available for public inspection on its website. The Attorney
687 General shall update the directory as necessary.

688 **§ 59.1-293.16. Liquid nicotine and nicotine vapor product; certification; penalty.**

689 A. By December 31, 2025, and annually thereafter, every manufacturer of liquid nicotine or nicotine
690 vapor products that are sold for retail sale in the Commonwealth, whether directly or through a wholesaler,
691 distributor, retailer, or similar intermediary, shall certify in a form and manner as prescribed by the Attorney
692 General that the manufacturer agrees to comply with the provisions of this chapter and that:

693 1. The manufacturer has received a marketing authorization or similar order for the liquid nicotine or
694 nicotine vapor product from the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j; or

695 2. The liquid nicotine or nicotine vapor product was marketed in the United States as of August 8, 2016,
696 or the manufacturer submitted a premarket tobacco product application for the liquid nicotine or nicotine
697 vapor product to the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j on or before

698 September 9, 2020, and the application either remains under review by the U.S. Food and Drug
699 Administration or a final decision on the application has not otherwise taken effect.

700 B. A manufacturer of liquid nicotine or nicotine vapor products shall submit a certification *or*
701 *recertification* form for each liquid nicotine and nicotine vapor product that such manufacturer sells for retail
702 sale in the Commonwealth.

703 C. Each certification *or recertification* form shall be accompanied by:

704 ~~1. A~~ a copy of the marketing authorization or other order for each liquid nicotine or nicotine vapor
705 product issued by the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 387j, or evidence that the
706 premarket tobacco product application for the liquid nicotine or nicotine vapor product was submitted to the
707 U.S. Food and Drug Administration and a final authorization or order has not yet taken effect; *and*:

708 ~~2. A~~ 1. An initial certification fee of ~~\$2,000~~ \$5,000 for each liquid nicotine and nicotine vapor product; to
709 be remitted with the manufacturer's first certification submission that identifies any such product and with
710 any resubmission of a certification for any such product following any period of noncertified status; ~~and~~ *or*

711 ~~3. A~~ 2. An annual *recertification* fee of ~~\$500 to be submitted annually~~ \$2,500 for each liquid nicotine and
712 nicotine vapor product to be remitted with the manufacturer's annual recertification submission identifying
713 any ~~liquid nicotine or nicotine vapor~~ *such* product, where such recertification does not follow any period of
714 noncertified status.

715 D. A manufacturer required to submit a certification pursuant to this section shall notify the Attorney
716 General within 30 days of any material change to the certification form, including the issuance or denial of a
717 marketing authorization or other order or action by the U.S. Food and Drug Administration pursuant to 21
718 U.S.C. § 387j, or any other order or action by the U.S. Food and Drug Administration that affects the ability
719 of the liquid nicotine or nicotine vapor product to be introduced or delivered into interstate commerce for
720 commercial distribution in the United States.

721 E. Any manufacturer that falsely represents any of the information required by this section is guilty of a
722 Class 3 misdemeanor for each false representation. *Notwithstanding the provisions of § 2.2-511, the Attorney*
723 *General may institute or conduct a prosecution for a violation of this subsection.* Venue for prosecution of a
724 *such violation of this subsection* shall be proper in the Circuit Court for the City of Richmond.

725 **§ 59.1-293.17. Removal or exclusion from directory.**

726 A. The Attorney General shall, in accordance with the provisions of this section, remove or exclude from
727 the directory any liquid nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine vapor

728 product that the Attorney General determines is not in compliance with the provisions of this chapter.

729 B. If the Attorney General determines to remove or exclude from the directory a liquid nicotine or
730 nicotine vapor product manufacturer or a liquid nicotine or nicotine vapor product in the directory, the
731 Attorney General shall notify by electronic or other practicable means the manufacturer's registered agent in
732 the Commonwealth of such determination. The liquid nicotine or nicotine vapor product manufacturer shall
733 have 10 business days from receipt of such notice to establish that the liquid nicotine or nicotine vapor
734 product manufacturer or liquid nicotine or nicotine vapor product meets the requirements to be included in
735 the directory. If the liquid nicotine or nicotine vapor product manufacturer fails to establish compliance
736 within the 10-business-day period, the Attorney General shall remove or exclude from the directory the liquid
737 nicotine or nicotine vapor product manufacturer or liquid nicotine or nicotine vapor product.

738 C. Any determination by the Attorney General to remove or exclude from the directory a manufacturer or
739 a product shall be subject to review by the filing of a civil action for prospective declaratory or injunctive
740 relief in the Circuit Court for the City of Richmond.

741 D. If a liquid nicotine or nicotine vapor product is removed from the directory:

742 1. Each retailer, distributor, and wholesaler shall have 30 days to sell the product or remove such product
743 intended for retail sale in the Commonwealth from its inventory and return the product to the manufacturer
744 for disposal. After ~~24~~ 30 days following the removal from the directory, the liquid nicotine and nicotine vapor
745 products removed from the directory shall be subject to seizure, forfeiture, and destruction *by the Attorney*
746 *General, the attorney for the Commonwealth, or the attorney for the county, city, or town or by local law*
747 *enforcement* and shall not be purchased or sold in the Commonwealth.

748 2. Each manufacturer, wholesaler, or retail dealer selling the product intended for retail sale in the
749 Commonwealth shall notify each purchaser of the product that it has been removed from the directory at the
750 time of delivery of such product. Unless otherwise provided by contract or purchase agreement, the
751 manufacturer, wholesaler, or retail dealer shall provide the purchaser a refund of the purchase price of the
752 removed product. If a manufacturer, wholesaler, or retail dealer fails to provide such refund, the purchaser
753 may bring an action against the manufacturer, wholesaler, or retail dealer in a court of competent jurisdiction
754 to recover the purchase price and reasonable attorney fees and costs.

755 **§ 59.1-293.18. Agent for service of process.**

756 A. Any nonresident manufacturer of liquid nicotine or nicotine vapor products that has not registered to
757 do business in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent

758 to being included in the directory established by the Attorney General pursuant to § ~~59.1-293.12~~ 59.1-293.15,
759 appoint and continually engage without interruption the services of an agent in the Commonwealth to act as
760 agent for the service of process in any action or proceeding against such nonresident manufacturer concerning
761 or arising out of the enforcement of this chapter, and such nonresident manufacturer may be served in any
762 manner authorized by law. Such service shall constitute legal and valid service of process on the nonresident
763 manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the
764 appointment and availability of such agent to the Attorney General.

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

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

776 **§ 59.1-293.20. Sale or distribution prohibited.**

777 A. Beginning December 31, 2025, no person shall sell, distribute, or import for resale, or offer for sale a
778 liquid nicotine or nicotine vapor product for retail sale in the Commonwealth unless such liquid nicotine or
779 nicotine vapor product is included in the directory established by the Attorney General pursuant to §
780 ~~59.1-293.12~~ 59.1-293.15.

781 B. Beginning December 31, 2025, no liquid nicotine or nicotine vapor product manufacturer shall sell for
782 retail sale, either directly or through a wholesaler, distributor, retailer, or similar intermediary or
783 intermediaries, a liquid nicotine or nicotine vapor product in the Commonwealth unless such liquid nicotine
784 or nicotine vapor product is included in the directory established by the Attorney General pursuant to §
785 ~~59.1-293.12~~ 59.1-293.15.

786 C. Any person that violates the provisions of subsection A *or* B is subject to a ~~fine of \$1,000 per day for~~
787 ~~each product offered for sale in violation until the offending product is removed from the market or until the~~

788 offending product is properly listed on the directory.

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

792 ~~E.~~ *the following civil penalties:*

793 *1. For the first violation, a penalty of no less than \$5,000 per liquid nicotine or nicotine vapor product*
794 *offered for sale;*

795 *2. For a second violation, a penalty of no less than \$10,000 per liquid nicotine or nicotine vapor product*
796 *offered for sale; and*

797 *3. For a third violation, a penalty of no less than \$15,000 per liquid nicotine or nicotine vapor product*
798 *offered for sale.*

799 *Such civil penalties shall only apply to the specific licensed location where the violation occurred.*

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

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

806 ~~G.~~ ~~F.~~ In an action brought under this section, *the Attorney General*, the attorney for the Commonwealth,
807 or the attorney for the county, city, or town may recover reasonable costs of investigation, the costs of the
808 action, and attorney fees *in addition to any civil penalties.*

809 ~~H.~~ ~~G.~~ Any civil penalties, *costs, and attorney fees* assessed under this section in an action brought in the
810 name of a locality shall be paid into the general fund of the locality.

811 ~~I.~~ ~~H.~~ All *civil penalties, costs, and attorney fees* assessed under this section in an action brought in the
812 *name of the Commonwealth by the Attorney General* and fees collected by the Attorney General pursuant to
813 ~~this chapter~~ § 59.1-293.15 shall be used for the administration and enforcement of this chapter.

814 **§ 59.1-293.21. Enforcement; inspection; forfeiture.**

815 A. Notwithstanding any other provisions of law to the contrary, *the Attorney General*, any attorney for the
816 Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the
817 appropriate circuit court in the name of the Commonwealth or of the county, city, or town to enjoin any
818 violation of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the

819 existence of an adequate remedy at law. In any action under this section, it shall not be necessary that
820 damages be proved.

821 B. The circuit courts are authorized to (i) issue temporary or permanent injunctions to restrain and prevent
822 violations of this chapter and (ii) order forfeiture of any property seized for a violation of this chapter.

823 C. Each violation of this chapter shall constitute a separate violation and shall be subject to any penalties
824 imposed under this chapter.

825 D. Any retailer or wholesaler that sells or distributes any liquid nicotine or nicotine vapor product in the
826 Commonwealth shall be subject to scheduled or unscheduled compliance checks carried out by the Attorney
827 General, or an agent thereof, for the purposes of enforcing the provisions of this chapter *and Article 4*
828 *(§ 4.1-241 et seq.) of Chapter 2 of Title 4.1.*

829 *E. Any liquid nicotine or nicotine vapor product that has been sold, offered for sale, or possessed for sale*
830 *in the Commonwealth, or imported for personal consumption in the Commonwealth, in violation of this*
831 *chapter shall be deemed contraband and may not be sold or offered for sale unless such liquid nicotine or*
832 *nicotine vapor product are listed in the directory. Any such liquid nicotine or nicotine vapor product that is*
833 *sold or offered for sale when not included in the directory shall be subject to confiscation and forfeiture. Any*
834 *such confiscation and forfeiture shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1*
835 *et seq.) of Title 19.2, which shall apply mutatis mutandis, except that all such liquid nicotine or nicotine*
836 *vapor product so confiscated and forfeited shall be destroyed and not resold.*

837 *F. Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200*
838 *and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-200 et seq.).*

839 **2. That § 58.1-1021.04:1 of the Code of Virginia is repealed.**

840 **3. That the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) shall**
841 **provide an annual report, beginning December 1, 2026, to the General Assembly on the efficacy of an**
842 **unannounced underage buyer operation to verify that each retail tobacco licensee is not selling retail**
843 **tobacco products to persons younger than 21 years of age.**