

## **Appendix B: 2021 Virginia Tax Study Report**



# COMMONWEALTH of VIRGINIA

## Department of Taxation

December 1, 2021

The Honorable Luke E. Torian  
Chairman, House Appropriations Committee  
4222 Fortuna Plaza, Suite 659  
Dumfries, VA 22025

Dear Chairman Torian:

House Bill 2164 of the 2021 General Assembly would have prohibited any person from selling any tobacco product at retail without first obtaining a license from the Virginia Alcoholic Beverage Control Authority. The House Appropriations Subcommittee on Transportation and Public Safety voted to table the bill. The Subcommittee also supported a request for the Department of Taxation to conduct a study to assess the feasibility and costs associated with the creation of licensure for tobacco retailers to prevent the selling of tobacco products to underage individuals. By letter, you requested that the Department conduct such a study.

Attached is the report summarizing the findings of the Department of Taxation regarding 2021 House Bill 2164. As this proposal would not have an impact on the administration of taxes, the Department of Behavioral Health and Developmental Services (DBHDS) and the Virginia Alcoholic Beverage Control Authority (ABC) assisted in the study by providing information regarding the scope and potential costs associated with implementation of such a process.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig M. Burns".

Craig M. Burns  
Tax Commissioner

c: The Honorable Patrick A. Hope  
The Honorable K. Joseph Flores, Secretary of Finance  
David Reynolds, House Appropriations Committee Staff



**Report on Retail Tobacco Licensing**

**Pursuant to a Request from the Chairman of the House Committee on  
Appropriations Regarding 2021 House Bill 2164**

**Final Report**

**Department of Taxation**

**December 1, 2021**

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## **Executive Summary**

2021 House Bill 2164 would have prohibited any person from selling any tobacco product at retail without first obtaining a license from the Virginia Alcoholic Beverage Control Authority (“ABC”). See Appendix A for the text of 2021 House Bill 2164 and Appendix K for the Fiscal Impact Statement for 2021 House Bill 2164. The House Appropriations Subcommittee on Transportation and Public Safety voted to table the bill. In doing so, the Subcommittee also supported a request for the Department of Taxation (“the Department”) to conduct a study to assess the feasibility and costs associated with the creation of licensure for tobacco retailers to prevent the selling of tobacco products to underage individuals. By letter, the Chairman of the House Committee on Appropriations requested that the Department conduct such a study. See Appendix B.

The Department conducted research on retail tobacco licensing and reached out to stakeholders to solicit their input on the issues involved. Their comments and input were the focus of this study. This report summarizes the comments provided by stakeholders, information obtained from the Virginia Department of Behavioral Health and Developmental Services (“DBHDS”) related to federal funding for tobacco licensing and retail inspections, updated information from ABC related to potential costs associated with implementing a retail licensing program, and the tax-related rules that currently apply to retailers of cigarettes and other tobacco products. Following a summary of this background information, this report provides a summary of findings to assist the General Assembly in considering future action, including information regarding the costs associated with the creation of a licensure program for tobacco retailers based on the assumptions provided by DBHDS and the estimated resource needs provided by ABC.

## **Study Mandate**

2021 House Bill 2164 (Appendix A) would have prohibited any person from selling any tobacco product at retail without first obtaining a license from the Alcoholic Beverage Control Authority (ABC). The House Appropriations Subcommittee on Transportation and Public Safety voted to table the bill. In doing so, the Subcommittee also supported a request for the Department of Taxation (“the Department”) to conduct a study to assess the feasibility and costs associated with the creation of licensure for tobacco retailers to prevent the selling of tobacco products to underage individuals. By letter, Chairman Torian requested that the Department conduct such a study. See Appendix B.

The Department reached out to stakeholders to solicit their input on the issues involved in the licensing of retail tobacco sales. Their comments and input were the focus of the study. This is the final report of the Department.

## **Background on Retail Tobacco Licensing**

### **Limitations on Sales of Tobacco Products to Youths**

*Virginia Code* § 18.2-371.2 prohibits sales of tobacco products to customers under twenty-one years of age. It provides that a violation by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or tobacco product is punishable by 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. This law is referred to as “Tobacco 21” or “T21.”

In addition to state-level efforts to limit sales of tobacco products to persons twenty-one years of age and older, federal law also establishes twenty-one as the age to legally buy tobacco products.

### **Retail Licensing**

According to the Virginia Department of Behavioral Health and Development Services (DBHDS), Virginia is one of eight states in the nation that does not require retailers to obtain a license to sell tobacco products. See Appendix C.

Additionally, there is currently no comprehensive list of tobacco and nicotine retailers in Virginia. Since 2016, DBHDS has been collaborating with the Community Services Boards (“CSBs”) to compile a comprehensive list of all tobacco/nicotine retailers. This initially began with staff physically locating each retailer. The list is updated every two years when the CSBs conduct merchant education and store assessment to every identified retailer. New retailers are added to the list, and any changes to existing retailers are noted in the database. The most recent coverage study, conducted in 2018, showed the list accuracy was 87.9 percent. This means DBHDS is missing an estimated 1,000 retailers who are not factored into compliance efforts. DBHDS estimates that currently there are between 7,500 and 8,000 tobacco retailers in Virginia, and that their current list accuracy has decreased to approximately 82 percent. See Appendix C.

## Enforcement of Laws Restricting the Sale of Tobacco Products to Youths

There are two federal programs to compensate states for retail tobacco licensing and inspections. The first is the Food and Drug Administration (“FDA”) inspection contracts, which are issued to states to assist with compliance checks. In the past, the Virginia Alcoholic Beverage Control Authority (“ABC”) held the FDA contract for Virginia but Virginia’s last FDA contract with ABC expired in May 2018. Currently, the Commonwealth, like several other states, does not have a contract with the FDA. In such cases the FDA enters into contracts with third parties for inspections in these states. Computer Evidence Specialists, LLC currently holds a contract with the FDA for compliance inspections in Virginia.

Jurisdiction	Contractor	Date of Initial Award	Most Recent Contract Start Date	Most Recent Award Amount	Total Awarded To Date
Virginia	Computer Evidence Specialists, LLC	9/26/2019	9/30/2020	\$806,103	\$1,159,351
Virginia	Virginia Department of Alcoholic Beverage Control (ended 5/31/2018)	8/10/2011	3/1/2017	\$1,152,090	\$7,609,742

Source: [fda.gov](http://fda.gov)

DBHDS provided additional data regarding FDA inspections in Virginia. They noted that most violations discovered during these inspections involved cigars and Electronic Nicotine Delivery Systems (“ENDS”). Since the passing of the Federal Tobacco 21 law on December 20, 2019 (through August 30, 2021), there have been 376 total inspections, 111 inspections involving a minor, and 20 violations involving a minor. No inspections were conducted between the expiration of the ABC contract with the FDA and the beginning of the third party contract with the FDA. See chart for more details by reporting period.

Period	Total Inspections	Inspections Involving a Minor	Violations Involving a Minor
7/1/17 - 6/30/18	3,035	2,506	389
7/1/18 - 6/30/19*	0	0	0
7/1/19 - 6/30/20	219	171	21
7/1/20 – 6/30/21	214	4	0
7/1/21 – 8/30/21	19	12	1

The other source of federal funding comes from the Federal Substance Abuse Prevention and Treatment Block Grants, which are provided to states to plan, implement, and evaluate activities that prevent and treat substance abuse. The federal Synar Program requires states, territories,



and the District of Columbia to enact and enforce laws prohibiting the sale or distribution of tobacco products to individuals under age 21 years. To determine compliance with the legislation, the program requires each state to conduct annual, random, unannounced inspections of retail tobacco outlets and to report the findings to the Secretary of the Department of Health and Human Services (DHHS). States that do not comply with the requirements are subject to a penalty of up to 10 percent of their Federal Substance Abuse Prevention and Treatment Block Grants. Since these inspections must be specific to the Synar Program, other inspections, such as the FDA inspections, do not count toward Synar compliance.

For Synar specific inspections, under contract with DBHDS, Virginia ABC conducts underage verification checks on tobacco retailers throughout the Commonwealth to verify compliance with the state age requirements. Special agents, who are sworn officers from Virginia ABC's Bureau of Law Enforcement, accompany underage operatives during attempts to purchase cigarettes at grocery stores, convenience stores, restaurants and other businesses. Virginia ABC selects operatives who look their age, making it easier for clerks and servers to request ID and avoid the sale. Operatives are instructed not to alter their appearance or mannerisms or mislead clerks in any way while attempting to make a purchase. Operatives carry their own valid identification. If the store clerk asks for ID, the operative presents his or her own valid identification. Virginia ABC special agents throughout the state complete approximately 600 Synar tobacco checks a year for DBHDS.

According to DBHDS, inspection levels have decreased since the time when ABC held the FDA contract. During that time, between FDA and Synar checks, approximately 50 percent of retailers were inspected annually. Currently, approximately 10 percent of tobacco products retailers are inspected annually.

DBHDS also indicated that, in Virginia, Synar Retailer Violation Rates (RVRs) have been increasing, from 9.5 percent in 2016 to 16.8 percent in 2019. DBHDS notes that the 2019 compliance checks for Synar were completed prior to Tobacco 21 taking effect. Had they been completed after the change, DBHDS estimates that RVR would likely have been higher.

Synar compliance checks were not conducted in 2020 due to COVID-19. Given that pause, it has been two years since the passage of Tobacco 21 without significant enforcement efforts. Based on the lack of enforcement, DBHDS states that RVR could potentially pass the 20 percent threshold - putting the state at risk of losing SABG money. See Appendix C for additional information from DBHDS related to the enforcement of laws restricting the sale of tobacco products for youths.

### **Department of Taxation's Role with Tobacco Products**

In Virginia, cigarettes are subject to a state cigarette tax administered by the Department. The state tax is paid by wholesalers who are licensed as stamping agents by the Department. Wholesalers pay the tax by purchasing rolls of state revenue stamps from the Department and recover the cost of the stamps when they sell the cigarettes to retailers. The stamps must be affixed to each pack of cigarettes and serve as proof that the tax has been paid. As part of its administration of the tax, the Department's auditors visit cigarette retailers to make sure that the cigarettes in their inventories bear the state revenue stamp. However, as the Department deals

mainly with cigarette distributors and wholesalers, it does not have a comprehensive list of cigarette retailers in Virginia. The Department plays no role in the enforcement of state and federal laws banning the sale of cigarettes to youths.

Additionally, there is a state tax levied upon the privilege of selling or dealing in tobacco products in the Commonwealth. Generally, the tax is imposed at the rate of 10% of the manufacturer's sales price, which is paid by distributors when the products are sold to retailers. There are also rates that apply to specific products based on weight including cigars, smokeless tobacco, snuff, and chewing tobacco. Further, there is a \$0.066 per milliliter wholesale tax on liquid nicotine. As with cigarettes, the Department plays no role in the enforcement of state and federal laws banning the sale of tobacco products to youths.

Retail sales of cigarettes are generally subject to the Retail Sales and Use Tax. In general however, any retail merchant is allowed to purchase items that it intends to resell to its customers exempt from the tax because it will collect the tax from its customers at the time of sale. This general resale exemption does not currently apply to cigarettes because, during the 2017 General Assembly session, legislation was enacted to address the growing loss of sales tax revenues caused by cigarette smugglers posing as legitimate retail merchants in order to purchase large quantities of cigarettes without paying sales tax.

Under current law, retailers purchasing cigarettes for resale are required to pay sales tax unless they have been issued a Form ST-10C Cigarette Retail Sales and Use Tax Exemption Certificate by the Department. See Appendix J for a copy of Form ST-10C. When the Department receives an application for a Form ST-10C Exemption Certificate, staff complete a criminal history background check on the owner, a tax compliance check, and finally a retail site inspection. Compliance audits are conducted both at the stamping agent or wholesale level and at the retail level. As part of a wholesale or stamping agent audit, the Department will verify that the stamping agent is making tax exempt sales only to holders of a valid sales tax exemption certificate. The stamping agent is assessed sales tax if tax exempt sales of cigarettes have been made to a retail dealer that does not hold a Form ST-10C exemption certificate issued by the Department.

Any list of retailers based on Form ST-10C filings is incomplete because it lacks retailers who did not apply for an exemption certificate. Also, the exemption is limited to cigarette retailers and does not cover sellers of other tobacco products, like cigar, pipe and vape shops, that do not also sell cigarettes. The Department may have information about some, but not all, of these retailers, because in some cases they are also considered distributors. A retailer who makes all of its purchases of tobacco products from distributors is not required to register with the Department.

Further, the Form ST-10C exemption certificate process is not retail licensing. It simply allows retailers to purchase cigarettes exempt from sales tax. It does not give them authorization to sell cigarettes. Any person can purchase and sell cigarettes without an exemption certificate. As noted above, the Department plays no role in the enforcement of state and federal laws banning the sale of tobacco products to youths.

### Estimated Cost of Inspections

As a part of this study, the Department reached out to ABC for information about their current inspection program and how it would need to change if retail tobacco licensing, as proposed in House Bill 2164, were established. Currently, for purposes of verifying compliance with alcohol laws, ABC does inspections of retailers to verify that they have a manager on duty, that the ownership of the business is correct, and that they have inventory to support their license. These are relatively routine inspections. ABC also conducts a limited number inspections involving underage buyer checks for tobacco, which are more involved and cost between \$140 and \$160 per check. DBHDS reimburses ABC for these age verification checks, which ABC is able to perform with its current resources. ABC indicated, however, that it could not do the 4,000 to 8,000 inspections per year proposed by DBHDS with its current resources. Further, retail stores that sell nicotine vapor products and some tobacco stores that sell tobacco and not alcohol are not currently licensed by ABC, so these stores would need to be identified and inspected.

ABC provided the Department with an updated estimate of costs based on information regarding the number of tobacco products retailers in Virginia provided by DBHDS. These costs are an update to the costs reflected in the Fiscal Impact Statement for 2021 House Bill 2164 (see Appendix K). ABC projects that, if the proposed retail licensing program is implemented in Fiscal Year 2023, ABC would incur costs of \$2,838,833 in Fiscal Year 2023 and \$1,979,433 annually in Fiscal Year 2024 and thereafter. These costs include the staffing costs of hiring an additional 7 license record technicians (\$501,725 annually) and 12 special agents (initial cost of \$1,962,108 in FY 2023 with an ongoing cost of \$1,377,708 annually thereafter). The initial cost for special agents in FY 2023 includes equipment and training costs of \$584,400. In addition, these cost estimates include an initial technology cost of \$375,000 in FY 2023 and ongoing technology costs of \$100,000 annually in FY 2024 and thereafter. See the table below for a summary of these costs.

	FY 2023	FY 2024 (and After)
Special Agents (\$114,809 x 12 Positions)	\$ 1,377,708	\$ 1,377,708
License Records Techs (\$71,675 x 7 Positions)	\$ 501,725	\$ 501,725
Special Agent Training and Equipment (\$48,700 x 12 Positions)	\$ 584,400	-
Technology Costs (\$375,000 Start-up; \$100,000 Ongoing)	\$ 375,000	\$ 100,000
<b>Total</b>	<b>\$ 2,838,833</b>	<b>\$ 1,979,433</b>

## **Stakeholder Perspectives**

This study focused on comments and insights from parties interested in retail tobacco licensing in Virginia. Comments were solicited from stakeholders. Those comments and input, along with research conducted by Department, form the basis of this report. Following is a summary of interested parties' comments.

### **Position of Organizations that Focus on the Prevention of Underage Smoking and Tobacco Use**

Comments for this study were submitted jointly by the American Cancer Society, the American Lung Association, Preventing Tobacco Addiction Foundation/Tobacco 21, the American Heart Association, the Medical Society of Virginia, and Tobacco Free Alliance of Virginia (TFAV). See Appendix F. From their perspective, Tobacco Retail Licensing ("TRL") enables states to monitor tobacco sales, fund compliance efforts, and create effective penalty structures for sales violations. They assert that TRL protects retailers who obey the law by identifying and penalizing those who do not.

These stakeholders stated that a licensing program can fund enforcement through annual license fees that are paid by the retailer. Virginia is one of eight states that does not require tobacco retailers to obtain any form of TRL. As a consequence of this, Virginia risks losing more than \$4 million per year in federal block grants because the federal Synar Amendment requires states to demonstrate a Retailer Violation Rate (RVR) of no higher than 20 percent or risk losing federal funding. In Virginia, there is no required number of inspections in the current law. Further, these organizations expressed that TRL can reduce youth initiation to tobacco, including e-cigarettes, by improving compliance. They stated that 80% of Virginia adults surveyed believe stores should be licensed to sell tobacco, including e-cigarette products.

### **Convenience Retailers' Position**

The Convenience and Petroleum Marketers Association believes that a licensure program would place additional and unnecessary administrative burdens on small businesses that are trying to recover from the COVID-19 pandemic. See Appendix D. Likewise, the Virginia Asian American Store Owners Association (VAASOA), a trade association representing over 8,300 convenience store owners and gas station operators across Virginia posits that Virginia already has penalties and deterrents to prevent tobacco from being sold to minors. VAASOA also asserts that the proposed tobacco license is duplicative of Virginia's ST-10C Cigarette Resale Exemption Certificate process. They believe the process for applying for an ST-10C exemption certificate is thorough and well-monitored because Virginia's current cigarette sales tax exemption process includes submitting detailed information to the state, and the state can revoke the exemption for failing to comply with the law. The VAASOA is also concerned that the proposed 2021 legislation did not consider the transfer of licenses, which could affect the sale of businesses between parties. The VAASOA suggested that other aspects, including how fines are administered and the degree to which retailers should be held responsible for the illegal activities of others, should be further explored and well-defined. See Appendix E.

Retailers contend that the General Assembly has considered retail tobacco licensing proposals on multiple occasions and has declined to take action on this issue. Data on the most recent round of ABC inspections is incomplete because inspections were paused in 2020 due to the COVID-19 pandemic. Convenience retailers stated that the best way to stop underage sales is to restart inspections to find violators and bring them into compliance. See Appendix D.

### **Vapor Products Retailers' Position**

Retailers of vapor products would prefer that, rather than implementing an additional and potentially costly licensing requirement on tobacco retailers, the focus should be on strengthening the Tobacco 21 legislation by increasing the penalties imposed for every violation. In addition, the Virginia Smoke Free Association (VSFA) is concerned about the cost of implementing retail licensing as envisioned in House Bill 2164. During public hearings on the bill, it was suggested that the cost to ABC may exceed \$8 million. VSFA stated that these funds could be used for other priorities. Furthermore, retail vapor products stores indicated that they are still adjusting to the \$0.066/ml wholesale tax on liquid nicotine, which became effective July 1, 2020. See Appendix G.

### **Findings**

After conducting research and reaching out to parties interested in the licensing of tobacco retailers, the Department makes the following findings:

1. Virginia is one of eight states that does not require a license in order to sell cigarettes at retail.
2. Virginia ABC last had a contract with the FDA to conduct tobacco age verification compliance audits in 2018. The FDA contract is now being fulfilled by Computer Evidence Specialists, LLC.
3. Under contract with Virginia DBHDS, Virginia ABC conducts Synar underage compliance checks of tobacco retailers throughout the Commonwealth.
4. Failure to maintain a noncompliance rate for tobacco retailers of less than twenty percent jeopardizes ten percent of the annual Substance Abuse Block Grants. In Virginia, this equates to over \$4 million. Synar Retailer Violation Rates (RVRs) have been increasing recently, from 9.5 percent in 2016 to 16.8 percent in 2019. According to DBHDS, the 2019 compliance checks for Synar were completed prior to Tobacco 21 taking effect. Had they been completed after, the RVR would likely have been higher. Synar compliance checks were not conducted in 2020 due to COVID-19, meaning that two years have passed since the passage of Tobacco 21 without significant enforcement. Given the lack of enforcement, DBHDS states that it is likely the RVR will pass the 20 percent threshold, thereby putting the state at risk of losing SABG money.
5. ABC provided the Department with an updated estimate of costs based on information provided by DBHDS. ABC projects that, if the proposed retail licensing program is implemented in Fiscal Year 2023, ABC would incur costs of \$2,838,833 in Fiscal Year

2023 and \$1,979,433 annually in Fiscal Year 2024 and thereafter. These costs include the staffing costs of hiring an additional 7 license record technicians and 12 special agents, as well as equipment, training, and technology costs.

6. The Department of Taxation audits retailers with regard to their compliance with applicable cigarette tax laws, but not regarding youth tobacco laws.
7. During the application process for a sales and use tax exemption, retailers are subject to a criminal history background check, a tax compliance check, and a retail site inspection. Retailers are not required to obtain an exemption but must pay sales and use tax if not exempt, so not all retailers go through this application process.
8. The Form ST-10C Retail Sales and Use Tax exemption administered by the Department allows retailers to purchase cigarettes exempt from sales tax. It does not give them authorization to sell cigarettes, neither does it restrict retail sales of cigarettes if a retailer does not have an exemption.

## Appendix A

# 2021 SESSION

### HOUSE BILL NO. 2164

Offered January 13, 2021

Prefiled January 12, 2021

*A BILL to amend and reenact § 4.1-116, 18.2-371.2, 18.2-391, 22.1-79.5, 22.1-206, 22.1-279.6, and 59.1-293.10 of the Code of Virginia and to amend the Code of Virginia by adding in Title 4.1 a chapter numbered 6, consisting of sections numbered 4.1-600 through 4.1-605, relating to tobacco retail licensing; penalties.*

Patrons-- Hope, Kory and Willett; Senator: Hashmi

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-116, 18.2-371.2, 18.2-391, 22.1-79.5, 22.1-206, 22.1-279.6, and 59.1-293.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 4.1 a chapter numbered 6, consisting of sections numbered 4.1-600 through 4.1-605, as follows:

¶ 4.1-116. Disposition of moneys collected by Board; creation of Enterprise Fund and Tobacco Retail Administration Subfund; reserve fund.

A. 1. All moneys collected by the Board shall be paid directly and promptly into the state treasury, or shall be deposited to the credit of the State Treasurer in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description whatever, as required by § 2.2-1802.

2. All moneys so paid into the state treasury, less the net profits determined pursuant to subsection C, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and; (ii) all costs and expenses incurred in establishing and maintaining government stores and in the administration of the provisions of this title, including the purchasing, building, leasing and operation of distilleries and the manufacture of alcoholic beverages; and (iii) all direct and indirect costs and expenses incurred in the administration of licenses and enforcement of laws under Chapter 6 (§ 4.1-600 et seq.), which shall be accounted for from the Tobacco Retail Administration Subfund as provided in subdivision 3.

3. There is hereby created in the state treasury, as a subfund of the Enterprise Fund, a special nonreverting fund to be known as the Tobacco Retail Administration Subfund, referred to in this section as "the Subfund." The Subfund shall be established on the books of the Comptroller. The Subfund shall consist of all funds appropriated to it pursuant to subdivision 2. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes of funding the Department's direct and indirect costs of the administration of licenses and enforcement of laws under Chapter 6 (§ 4.1-600 et seq.), including the administrative costs of reviewing applications, issuing licenses, education and training, and any other requirements of Chapter 6. Expenditures and disbursements from the Subfund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Executive Officer of the Authority.

B. The net profits derived under the provisions of this title shall be transferred by the Comptroller to the general fund of the state treasury quarterly, within fifty days after the close of each quarter or as otherwise provided in the appropriation act. As

allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration of this title and to provide for the depreciation on the buildings, plants and equipment owned, held or operated by the Board.

C. The term "net profits" as used in this section means the total of all moneys collected by the Board less all costs, expenses and charges authorized by this section.

**CHAPTER 6.  
REGISTRATION AND RESTRICTIONS FOR TOBACCO RETAILERS.**

∫ **4.1-600.** *Definitions.*

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

*"Electronic smoking device" means the same as such term is defined in ∫ **18.2-371.2.***

*"Licensee" means a person who has obtained a license from the Authority pursuant to the provisions of this chapter.*

*"Person" means any natural person.*

*"Tobacco product" means the same as such term is defined in ∫ **18.2-371.2.***

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

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

∫ **4.1-601.** *Disposition of moneys collected by the Authority.*

*All moneys collected by the Authority under this chapter shall be paid into the state treasury according to the provisions of ∫ **4.1-101.06** and **4.1-116.***

∫ **4.1-602.** *License required for sale of tobacco products at retail; civil penalties.*

*A. No tobacco retailer shall operate a tobacco retail establishment, conduct business as a tobacco retailer, or otherwise sell or offer to sell tobacco products at retail unless such tobacco retailer has obtained a license from the Authority pursuant to this chapter.*

*B. Any tobacco retailer that violates this section shall be subject to a civil penalty, to be assessed and collected by the Authority, for each violation of \$500 for a first offense and \$1,000 for a second or subsequent offense within a 36-month period. Any tobacco retailer that violates this section shall be ineligible to obtain a license from the Authority pursuant to this chapter for a period of three years from the date of such tobacco retailer's most recent violation.*

∫ **4.1-603.** *Application for license; penalty.*



**A. Any tobacco retailer may apply for a license to operate a tobacco retail establishment and conduct business as a licensee according to forms and procedures prescribed by the Authority. The Authority shall require a separate license for each location or place of business. The application forms shall require the following information:**

- 1. 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; if the applicant is a corporation, the name and address of each of its principal officers;**
- 2. The address of the applicant's principal place of business;**
- 3. The address of the place or places where the business to be licensed is to be conducted; and**
- 4. Any other information as the Authority may require for the purpose of the administration of this chapter.**

**B. The application process shall require an applicant to participate in, and provide for its employees, education related to tobacco products as provided in § 4.1-605.**

**C. 1. Upon receipt of an application in proper form, the Authority shall, unless otherwise provided by this chapter, issue to the applicant a license authorizing the licensee to sell and offer to sell tobacco products at retail. Each license, or a copy thereof, shall be prominently displayed in the place of business covered by the license. No license shall be transferable to any other person.**

**2. The Authority may deny an application for a license if it determines the applicant has, within five years of its date of application, violated a federal, state, or local law related to the sale of tobacco products.**

**D. Unless an applicant or licensee 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, the applicant or licensee shall be deemed to have appointed the clerk of the State Corporation Commission as the applicant's or licensee's agent for the purpose of service of process relating to any matter or issue involving the applicant or licensee and arising under the provisions of this chapter.**

**E. Licenses issued pursuant to this section shall be valid for one year from the date of issue unless revoked by the Authority. The Authority may revoke a license if a licensee fails to pay a penalty due under the provisions of this chapter or a tax due under the provisions of Title 58.1.**

**F. The Authority shall compile and maintain a current list of licensees. The list shall be updated on a semiannual basis and published on the Authority's website.**

**§ 4.1-604. Revocation of licenses; restrictions on the sale of tobacco products to persons under 21 years of age; penalties.**

**A. A licensee shall be required to comply with the provisions of this chapter; § 18.2-246.8, 18.2-246.10, and 18.2-371.2; and any other federal, state, or local law related to the sale of tobacco products. If the Authority determines that a licensee has violated any such provision of law, the Authority may revoke its license.**

**B. 1. If the Authority determines that a licensee violated § 18.2-371.2, the Authority shall impose and the licensee shall be subject to (i) a civil penalty of \$500 for a first offense, (ii) a civil penalty of \$1,000 for a second offense within 36 months, (iii) a civil penalty of \$1,500 and a suspension of the licensee's license for 15 days for a third offense within 36 months, and (iv) a**

*civil penalty of \$2,000, a revocation of the licensee's license, and a prohibition imposed on such person from applying for a license pursuant to this chapter for a period of three years for a fourth or subsequent offense within 36 months.*

*2. If the Authority determines that a licensee's agent or employee acting in his capacity as such licensee's agent or employee violated § 18.2-371.2, the Authority shall impose and such agent or employee shall be subject to a civil penalty of \$50 for each offense.*

*C. Any person on whom the Authority imposes a penalty pursuant to this section shall not be subject to penalty for the same offense under § 18.2-371.2 if such person is a licensee or a licensee's agent or employee acting in his capacity as such licensee's agent or employee.*

*§ 4.1-605. Required education for licensees and employees.*

*Any tobacco retailer that applies for a license and any licensee shall be required to attest that it has conducted education and training for its employees related to:*

*1. The provisions of this chapter;*

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

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

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

*§ 18.2-371.2. Prohibiting sale or distribution of tobacco products and hemp products intended for smoking to persons under 21 years of age; penalty.*

*A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 21 years of age, knowing or having reason to believe that such person is less than 21 years of age, any tobacco product, ~~nicotine vapor product, alternative nicotine product,~~ or hemp product intended for smoking.*

~~Tobacco products, nicotine vapor products, alternative nicotine products, and hemp products intended for smoking may be sold. No person shall sell tobacco products or hemp products intended for smoking from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of such products by persons under 21 years of age is unlawful and (ii) located in a place that is not open to the general public and is not generally accessible to persons under 21 years of age. An establishment that prohibits the presence of persons under 21 years of age unless accompanied by a person 21 years of age or older is not open to the general public.~~

~~B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, alternative nicotine products, or hemp products intended for smoking by a person less than 21 years of age (i) making a delivery of tobacco products, nicotine vapor products, alternative nicotine 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 purchase, attempt to purchase, or possession by a law enforcement officer or his agent when the same is necessary in the performance of his duties.~~

~~C. B. No person shall sell a tobacco product, nicotine vapor product, alternative nicotine 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. Such identification is not required from an individual whom the person has reason to believe is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 24 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 21 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual. No such verification shall be required if such individual is at least 30 years of age. It shall not be a defense to a violation of this subsection that a purchaser appeared to be at least 30 years of age. If a buyer misrepresents his age through use of false identification, a licensee, as defined in 4.1-600, or such licensee's agent or employee acting in his capacity as such licensee's agent or employee, may assert as an affirmative defense to a violation of this section that such licensee, agent, or employee reasonably relied on such proof of age, provided that such licensee, agent, or employee carefully checked a driver's license, a passport, or an identification card issued by the Commonwealth or any state of the United States, and such licensee, agent, or employee acted in good faith and in reliance upon the representation that the buyer was at least 21 years of age.~~

~~This subsection shall not apply to mail order or Internet sales, provided that the person offering the tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, alternative nicotine 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 tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking will be released to the purchaser.~~

~~D. The provisions of subsections B and C shall not apply to the sale, giving, or furnishing of any tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking to any active duty military personnel who are 18 years of age or older. An identification card issued by the Armed Forces of the United States shall be accepted as proof of age for this purpose.~~

~~E. A violation of subsection A or C by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or tobacco product other than a bidi is punishable by 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.~~

~~C. A violation of subsection A or C B by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative nicotine product, hemp product intended for smoking, or tobacco product other than a bidi.~~

~~A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the~~

~~defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter an order pursuant to subdivision A 9 of 16.1-278.8.~~

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

~~F. D.~~ 1. Cigarettes and hemp products intended for smoking shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment that offers for sale any tobacco product, ~~nicotine vapor product, alternative nicotine product,~~ or hemp product intended for smoking shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products, ~~nicotine vapor products, alternative nicotine products,~~ or hemp products intended for smoking to any person under 21 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services 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 in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

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

~~H. F.~~ Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to ~~1~~ 4.1-105 may issue a summons for any violation of this section.

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

~~"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.~~

~~"Bidi" means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tondu leaf (diospyros exculpra), or any other product that is offered to, or purchased by, consumers as a bidi or beedie.~~

~~"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 battery or battery charger when sold separately. "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" means the same as that term is defined in § 3.2-4112.

~~"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.~~

"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 any other means, including a cigarette, 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 includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings (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. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act 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 papers~~ materials made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar.

§ 18.2-391. Unlawful acts; penalties.

A. It shall be 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 depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles; or
2. Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message containing words, or sound recording which 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, taken as a whole, is harmful to juveniles.

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

B. It shall be 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, in whole or in part, depicts

sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles or to exhibit any such motion picture at any such premises which 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 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 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 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.

¶ 22.1-79.5. Policy regarding tobacco products.

Each school board shall develop and implement a policy to prohibit, at any time, the use and distribution of any tobacco product ~~or nicotine vapor product, as these terms are defined in~~ 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

Such policy shall include (i) provisions for its enforcement among students, employees, and visitors, including the enumeration of possible sanctions or disciplinary action consistent with state or federal law, and (ii) referrals to resources to help staff and students overcome tobacco addiction.

Each school board shall work to ensure adequate notice of this policy.

¶ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, and tobacco products.

A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed by the Board of Education.

B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking, and drunk driving shall be provided in the public schools. The Virginia Alcoholic Beverage Control Authority shall provide educational materials to the Department of Education. The Department of Education shall review and shall distribute such materials as are approved to the public schools.

C. The Virginia Foundation for Healthy Youth shall develop and the Department of Education shall distribute to each local school division educational materials concerning the health and safety risks of using tobacco products, ~~nicotine vapor products, and alternative nicotine products, as such terms are defined in~~ 18.2-371.2. Instruction concerning the health and safety risks of using tobacco products, ~~nicotine vapor products, and alternative nicotine products, as such terms are defined in~~

¶ 18.2-371.2, shall be provided in each public elementary and secondary school in the Commonwealth, consistent with such educational materials.

¶ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct; school board regulations.

A. The Board of Education shall establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies shall include (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, gang-related activity, hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others, self-defense, bullying, the use of electronic means for purposes of bullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and school personnel; (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies; (iv) standards for dress or grooming codes; and (v) standards for reducing bias and harassment in the enforcement of any code of student conduct.

In accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.

In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.

B. School boards shall adopt and revise, as required by ¶ 22.1-253.13:7 and in accordance with the requirements of this section, regulations on codes of student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include in the regulations on codes of student conduct procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.

C. Each school board shall include in its code of student conduct prohibitions against hazing and profane or obscene language or conduct. School boards shall also cite in their codes of student conduct the provisions of ¶ 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor penalty for violations, that is, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

D. Each school board shall include in its code of student conduct policies and procedures that include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the standards for school board policies on bullying and the use of electronic means for purposes of bullying developed by the Board pursuant to subsection A and (ii) direct the principal to notify the parent of any student involved in an alleged incident of bullying of the status of any investigation within five school days of the allegation of bullying.

Such policies and procedures shall not be interpreted to infringe upon the First Amendment rights of students and are not intended to prohibit expression of religious, philosophical, or political views, provided that such expression does not cause an actual, material disruption of the work of the school.

E. A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

F. Nothing in this section shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by § 22.1-279.7.

G. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with § 22.1-277.07.

This subsection shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

H. Each school board shall include in its code of student conduct a prohibition on possessing any tobacco product ~~or nicotine vapor product~~, as these terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

I. Any school board may include in its code of student conduct a dress or grooming code. Any dress or grooming code included in a school board's code of student conduct or otherwise adopted by a school board shall (i) permit any student to wear any religiously and ethnically specific or significant head covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and comrows; (ii) maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender; (iii) not have a disparate impact on students of a particular gender; (iv) be clear, specific, and objective in defining terms, if used; (v) prohibit any school board employee from enforcing the dress or grooming code by direct physical contact with a student or a student's attire; and (vi) prohibit any school board employee from requiring a student to undress in front of any other individual, including the enforcing school board employee, to comply with the dress or grooming code.

§ 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.

"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.

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

"Nicotine vapor product" has the same meaning as in § 18.2-371.2 58.1-1021.01.



## Appendix B



APPROPRIATIONS COMMITTEE  
13<sup>TH</sup> FLOOR, POCAHONTAS BUILDING  
CAPITOL SQUARE  
POST OFFICE 406  
RICHMOND, VIRGINIA 23218  
804-698-1590

COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

LUKE E. TORIAN, CHAIRMAN  
ANNE E. OMAN, STAFF DIRECTOR

March 8, 2021

Dear Commissioner Burns:

During the 2021 Session of the General Assembly, the House Committee on Appropriations Subcommittee on Transportation and Public Safety voted to table:

- **HB 2164 (Hope) Tobacco**; prohibits person from selling product at retail without license from ABC Authority.

In doing so, the Subcommittee also supported a request that you study the issues raised by the bill in order to assess the feasibility and costs associated with the creation of licensure for tobacco retailers to prevent the selling of tobacco products to underage individuals.

In conducting the study, the Subcommittee and patron would request that you consult representatives of the Virginia Alcoholic Beverage Control Authority; Virginia Petroleum and Convenience Marketers Association; the Cigar Association of Virginia; Virginia Smoke Free Association; Tobacco 21; American Cancer Society; and, other appropriate stakeholders you may identify.

As Chairman of the House Committee on Appropriations, I am writing to so request.

Sincerely,

A handwritten signature in black ink that reads "Luke E. Torian".

The Honorable Luke E. Torian

CC:  
The Honorable Patrick A. Hope  
The Honorable Paul E. Krizek

## Appendix C



# COMMONWEALTH of VIRGINIA

ALISON G. LAND, FACHE  
COMMISSIONER

DEPARTMENT OF  
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Post Office Box 1797  
Richmond, Virginia 23218-1797

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June 29, 2021

TO: Virginia Department of Taxation, Office of Tax Policy

FROM: Alison Land, FACHE - Commissioner, Department of Behavioral Health and Developmental Services

RE: 2021 House Bill 2164 - Retail Tobacco Licensing

### Summary of Comments

- Compliance with tobacco laws restricting the sale of tobacco to individuals under 21 is critical to Virginia's receipt of Substance Abuse Block Grant dollars. In Virginia, this equates to over \$4 million in federal funds going to essential community substance use services.
- Currently, there is no comprehensive list of tobacco retailers in Virginia, nor is there enforcement of tobacco regulations. This puts federal substance use dollars in jeopardy.
- A tobacco retail license law, such as HB2164, paired with funding for enforcement of tobacco laws, is critical to maintaining these federal substance use dollars.

### Background

In 1992, the Federal Government passed the "Synar Amendment", which requires states to enact and enforce laws prohibiting any manufacturer, retailer, or distributor of tobacco products from selling or distributing such products to any individual younger than age 18.

- With the passing of the both the State and Federal "Tobacco 21" laws, the age of compliance has been increased to 21.
- States must conduct annual, unannounced inspections that provide a valid probability sample of tobacco sales outlets accessible to minors and achieve a noncompliance rate (RVR) of no more than 20%.

- ***Failure to maintain an RVR of less than twenty percent jeopardizes 10% of the annual Substance Abuse Block Grants (SABG) through SAMHSA. In Virginia, this equates to over \$4 million.***

In Virginia, Synar Retailer Violation Rates (RVRs) have been on the increase since 2016 going from 9.5% to 16.8% in 2019.

- It is important to note that the 2019 compliance checks for Synar were completed prior to Tobacco 21 taking effect. Had they been completed after, the RVR would likely have been higher.
- Synar compliance checks, along with FDA, were not conducted in 2020 due to COVID-19 meaning it's been two years since the passage of Tobacco 21 without any enforcement. Given the lack of enforcement, in addition to the economic stressors COVID-19 has placed on retailers, it is likely the RVR will pass the 20% threshold therefore putting the state at risk of losing SABG money.

Virginia is one of only eight states in the nation that does not require retailers to obtain a tobacco retail license, and there is currently no comprehensive list of tobacco and nicotine retailers in Virginia.

- Since 2016, DBHDS has been collaborating with the Community Services Boards (CSBs) to compile a comprehensive list of all tobacco/nicotine retailers. This initially began with staff driving every primary and secondary road in each catchment area to identify every retailer. The process was expensive and time-consuming, not to mention not sustainable on an ongoing basis.
- This list is updated over the course of every two years when the CSBs conduct merchant education and store assessment to every identified retailer. New retailers are added to the list, and any changes to existing retailers are noted in the database.
- Unfortunately, in our last coverage study, conducted in 2018, our list accuracy was only 87.9 percent. This means DBHDS is missing nearly 1,000 retailers who are not factored into compliance efforts.

### **Potential Impact of HB2164**

Comprehensive tobacco retail licensing laws, such as HB2164, are an effective strategy to decrease youth retail access to tobacco and nicotine products and reduce youth initiation of use.

- Evidence shows that strong tobacco retail licensing laws can help reduce sales to underage youth. Across 33 California communities, sales to underage youth dropped by an average of 26 percent after implementation of a strong tobacco retailer licensing law.<sup>1</sup> In Minnesota, a study found that daily smoking among young adolescents dropped by 28 percent in 14 communities

<sup>1</sup> California Department of Health Services Food and Drug Branch Compliance Checks. (2003)

that implemented comprehensive tobacco retailer licensing ordinances, and successful youth purchases dropped from 39 percent to 5 percent.<sup>2</sup>

- In states with strong tobacco retailer licenses, youth are also less likely to initiate use. In California, for example, youth were 33 percent less likely to have initiated cigarette use and 26 percent less likely to initiate e-cigarette use over the course of 1.5 years compared to localities that had no licensing law or could not cover the costs of enforcement.<sup>3</sup> Another study found that in Pennsylvania, youth e-cigarette use dropped significantly following the implementation of licensing for e-cigarette retailers.<sup>4</sup>

Raising the legal age of purchase does not reduce tobacco sales or youth use on its own. They must be enforced in order to be effective. Currently in Virginia, there is no state enforcement program, and federal enforcement does not inspect every retailer.

- With active Synar and FDA programs, roughly 50% of retailers were inspected annually. However, Virginia has not had a comprehensive FDA inspection program since May 2018, and Synar inspections only cover approximately 10 percent of retailers.
- Not every retailer currently receives a compliance check, and many retailers don't get checked for several years, if at all. This makes it difficult to know for certain who is complying with age-of-sale laws and who isn't.

Tobacco retail licensing is recognized as a foundational, comprehensive, regulatory tool that enables states and localities to monitor tobacco sales, fund compliance efforts, and creates effective penalty and suspension structures for repeat violations.

- Most tobacco retail licensing laws include a yearly fee, which generates revenue to help the locality cover the costs of inspection and enforcement of minimum age laws, tax laws, and compliance with the Family Smoking Prevention and Tobacco Control Act.<sup>5</sup>
- They also include stipulations that require adherence to all tobacco laws. And requiring a cost in order to obtain a license can help ensure that monitoring and enforcement costs are sufficiently covered.

---

<sup>2</sup> Forster, et al. The effects of community policies to reduce youth access to tobacco. (1998)

<sup>3</sup> Astor, et al. Tobacco Retail Licensing and Youth Product Use. (2019)

<sup>4</sup> Azagba, et al. E-cigarette Retail Licensing Policy and E-cigarette Use Among Adolescents. (2020)

<sup>5</sup> An overview of the act is available here: <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview>



# COMMONWEALTH of VIRGINIA

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COMMISSIONER

DEPARTMENT OF  
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September 1, 2021

TO: Virginia Department of Taxation, Office of Tax Policy

FROM: Colleen Hughes, Synar Coordinator, Department of Behavioral Health and Developmental Services

RE: 2021 House Bill 2164 - Retail Tobacco Licensing

## **FDA Information:**

**Background:** The FDA contract had historically been held by Virginia ABC until May 2018 when the decision was made not to renew it. The contract went unawarded for at least a year before it was awarded to a third party, Computer Evidence Specialists, LLC (CES), in, I believe, late 2019. Since then, the number of inspections have been minimal. When ABC held the contact, we inspected roughly 50% of retailers between FDA and Synar checks. We currently inspect about 10%of tobacco/nicotine retailers.

## **FDA Inspection Data:**

July 1, 2017 – June 30, 2018

3035 total inspections

2506 inspections involving a minor

389 violations involving a minor

July 1, 2018 – June 30, 2019

0 inspections

July 1, 2019 – June 30, 2020

219 total inspections  
171 inspections involving a minor  
21 violations involving a minor

July 1, 2020 – June 30, 2021

214 total inspections  
4 inspections involving a minor  
0 violations involving a minor

July 1, 2021 – August 30, 2021

19 total inspections  
12 inspections involving a minor  
1 violation involving a minor

Since the passing of the Federal Tobacco 21 law on December 20, 2019 (through August 30, 2021)

376 total inspections  
111 inspections involving a minor  
20 violations involving a minor  
=18% Retailer Violation Rate

\*Important to note that the vast majority of violations were for cigars and ENDS

**Additional Synar Information:**

**Synar Sample** - The Synar sample is a simple, statewide, random sample. Some of the variables used to determine the number of retailers to be inspected are the current number of retailers, the previous year's retailer violation rate, and the list accuracy rate based on the most recent coverage study. The sample size for this year's sample was 838 and was based off an outlet frame size of 7520 retailers. The outlet frame size was based off of what we currently have in our Counter Tools database. However, because of a pause in our merchant education/store assessment work, due to a delay in new materials and then COVID, we have not been able to keep our database as current as we would like. We surmise that there are more tobacco/nicotine retailers than what currently reflect in our database. This has unofficially been confirmed based off our most recent coverage study.

**Coverage Study** – We are required by SAMHSA to conduct a list coverage study on a regular basis to ensure that our retailer list is accurate. The last study, conducted in 2018, revealed an accuracy rate of 87.9%, down from 91.6% in 2013. Because this is below 90%, we are required to conduct this study every 3 years, rather than every 5. This year's (2021) has been conducted and we are awaiting the final calculations. Based on a rudimentary estimate, it looks like the state's list accuracy rate has decreased even further to roughly 82%. It is important to note that if the state's accuracy drops below 80%, we will have to write a corrective action plan.

**Retail Violation Rate** – As mentioned previously, the current Retailer Violation Rate is 16.8%. This is based on inspections conducted in 2019, prior to the State's Tobacco 21 law taking effect. Once this rate goes above 20%, the state will incur a penalty of 10% of the total Block Grant (~\$4million). This money will be taken away at the same 80/20 split that it is currently given out. 80% will come from treatment money and 20% will come from prevention money. This is money that the State will be required to replace, so somewhere, the state will need to come up with ~\$4million.

**Enforcement** – As our state's plan is written, Synar inspections must be separate from all other enforcement activities. This means that FDA inspections cannot be used as compliance checks for Synar and cannot be used to determine the Retailer Violation Rate. If we were to implement an additional enforcement strategy, those inspections would also not be able to be counted toward Synar. However, the more enforcement/compliance checks there are, the lower the Retailer Violation Rate will be because we know that if you are more likely to get caught, you're more likely to obey the law.

## Appendix D



### Virginia Petroleum and Convenience Marketers Association

7275 Glen Forest Drive, Suite 204, Richmond, VA 23226  
(804) 282-7534 www.vpcma.com

#### BOARD OF DIRECTORS

W. Corey Russell  
*Chairman of the Board  
Supreme Petroleum, Suffolk*

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*First Vice Chairman  
Anderson Oil, Fredericksburg*

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*Frederick Northup, Warsaw*

Michael J. O'Connor  
*President*

July 2, 2021

Stephen Klos  
Virginia Department of Taxation  
Richmond VA 23217  
Via electronic mail

Dear Mr. Klos:

Thank you for the opportunity to comment on House bill 2164, legislation considered during the 2021 General Assembly session. Virginia Petroleum and Convenience Marketers Association is a statewide trade association formed in 1948, and is governed by a 13-member Board of Directors, all of whom are Virginia residents.

The Virginia General Assembly has considered and rejected the issue of tobacco licensing on many occasions. In 2020, Virginia considered a bill by Delegate Hope that could have placed untrained individuals in charge of policing tobacco sales in Virginia. We worked with the delegate over the interim to refine the legislation to accomplish his objective of stepped-up inspections conducted by experienced professionals, without the registration fees and other punitive measures contained in the bill.

The advocates for licensing make a strong argument that without oversight and underage buyer programs federal funding for such programs is in jeopardy. They neglect to point out, however, that COVID stopped all in-store inspections. Further, they neglect to state that for the latest round of inspections where we do have data, Virginia's percentage of underaged sales was well below the criteria for continued federal funding.

The proponents also fail to acknowledge that since 2019, the world of tobacco retailing in Virginia has changed forever. With the passage of Tobacco 21 legislation that year, the legal age for purchase of tobacco and associated products increased from 18 to 21. VPCMA was pleased to support this legislation. We know from direct conversations with our members and other stakeholders that this legislation has helped lessen the sale of underage sales particularly since persons over 21 have far less interaction with high and middle schoolers.

**From the proponents: "VDH, along with American Heart, American Lung, and American Cancer Associations, with support from some**

*Virginia Neighbors Serving Neighbors*



legislators, will be putting in legislation to clean up last year's T21 bill. Included in this cleanup bill are retailer licensing, removal of the military exemption, removal of PUP fine, increase in retailer fines, increase in tobacco tax, and required merchant education and enforcement. T-21 Clean up bill? Hardly."

We also strongly supported bi-partisan legislation in the 2017 session that required all sellers of tobacco products to obtain a tobacco exemption certificate and be subject to regulation by the Virginia Department of Taxation. This legislation, now Chapter 58.1-623.2, requires all members to hold a certificate issued by the department and is in fact licensure of all tobacco sellers in Virginia. Instead of recreating a new redundant regulatory mandate and financial burden on our sellers we should all be focused on determining if cigarette exemption certificates are working as envisioned.

We look forward to working with all parties to evaluate the next round of Synar inspections now that the COVID restrictions have been lifted, making locations accessible once again. We believe that those numbers will decrease significantly with the onset of Tobacco 21 in Virginia. If they do not, we would urge continued inspections of violators to assure that they come into compliance. The convenience store industry shares the goal of completely eliminating underage sales. We believe the best avenue to do so is through re-starting compliance checks at the earliest opportunity and then targeting those shown to have made underage sales for further inspection.

Sincerely,



Michael J. O'Connor

## Appendix E



July 2, 2021

Commissioner Craig Burns  
Virginia Department of Taxation  
Post Office Box 27185  
Richmond, Virginia 23261-7185

Dear Commissioner Burns,

We are writing in response to a request for comments as part of the stakeholder group to study the feasibility of a licensure program for tobacco retailers. On behalf of our members and small businesses across the Commonwealth, we respectfully oppose the creation of a tobacco license through the Virginia Alcohol Beverage Control Authority.

We are the Virginia Asian American Store Owners Association (VAASOA), a trade association representing over 8,300 convenience store owners and gas station operators across Virginia. We strive to be active members of our community, provide critical services to our customers, and improve our business practices for all who walk through our doors.

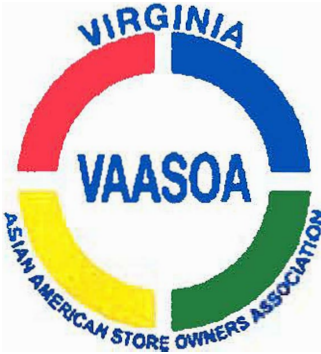
We respectfully oppose the creation of a tobacco license program through ABC. A licensure program would place additional unnecessary administrative burdens on small businesses that are already trying desperately to recover from the challenges of the COVID-19 pandemic.

Virginia already has penalties and deterrents to prevent tobacco from being sold to minors, and we do not believe that a tobacco license will necessarily reduce the risk of unintended sales to minors.

VAASOA's convenience store owners are good actors that do not want to sell to minors and are conscious of the risks associated with tobacco products. Stronger penalties, which are included in the legislation, can be added without adding an additional licensure requirement.

VAASOA also believes the proposed tobacco license is duplicative of Virginia's Cigarette Resale Exemption Certificate (ST-10c). The process for applying for an ST-10c exemption certificate is thorough and well monitored. Virginia's current process for obtaining a sales tax exemption for tobacco products includes submitting detailed information to the state, which the state can revoke for failing to comply with the law.

There are a number of issues within the current bill that need to be addressed. For example, the current legislation does not consider the transfer of licenses. This could affect the sale of businesses between parties. Other aspects, including how fines are administered and the degree retailers should be held responsible for the illegal activities of others must be discussed.



If Virginia is going to proceed with consideration of a licensure process, we need a more deliberative stakeholder process that includes in person or virtual discussion and an opportunity to review the bill in detail.

VAASOA looks forwards to contributing to the discussion and reviewing the draft report of the Tax Department.

Sincerely,

Virginia Asian America Store Owners Association

## Appendix F

**To: Steve Klos  
Office of Tax Policy, Policy Development Division  
Virginia Department of Taxation  
Richmond, Virginia**

**RE: H. 2164 and Tobacco Retail Licensing in Virginia**

**June 17, 2021** - The undersigned organizations support comprehensive Tobacco Retail Licensing for Virginia and worked with Delegate Patrick Hope on H. 2164 (2021). This information is submitted on behalf of these organizations.

*American Cancer Society American Lung Association Preventing Tobacco Addiction Foundation/Tobacco 21*

*American Heart Association Medical Society of Virginia  
Tobacco Free Alliance of Virginia (TFAV)*

### **Tobacco Retail Licensing**

Tobacco Retail Licensing (“TRL”) is a vital tool that enables states to monitor tobacco sales, fund compliance efforts, and create effective penalty structures for sales violations. Comprehensive TRL laws can reduce youth tobacco initiation and use and ensure all tobacco retailers follow all local, state and federal tobacco laws.<sup>1</sup>

The goal of H. 2164 was to establish a Tobacco Retail Licensing program for Virginia that would become the framework for effective enforcement of state and federal age-of-sale (“Tobacco21”) laws, and to enhance retailer penalties to incentivize compliance. Though not specifically addressed in H. 2164, a licensing program can also fund enforcement through annual license fees that are paid by the retailer.

Virginia is one of only eight states that does not require tobacco retailers to obtain any form of Tobacco Retail License.<sup>2</sup> Without a licensing program, there is no current or comprehensive list of tobacco sellers, including those that sell electronic cigarettes (“e- cigarettes”), making it almost impossible for the Commonwealth to effectively enforce tobacco laws in the retail environment.

### **Background**

Despite progress in reducing tobacco use over the past several decades, 10,300 Virginia adults still die every year from tobacco-related diseases, and 28 percent of cancer deaths in the state are attributable to smoking. Almost 1 in 5 Virginia high school students use e-cigarettes, and 2,300 Virginia kids under 18 become new, daily smokers each year. Annual healthcare costs in Virginia (including Medicaid) are \$3.1 billion.

Every household in Virginia pays \$931 each year for smoking-caused government expenditures.<sup>3</sup> Youth who use e-cigarettes (“vape”) are more likely to migrate to traditional (combustible) tobacco and become cigarette smokers or dual users

In an effort to address the youth vaping epidemic and reduce youth use of tobacco, the Virginia General Assembly in January of 2019 passed a Tobacco 21 law. Properly enforced, Tobacco 21 laws can significantly reduce youth tobacco use, resulting in lower healthcare costs and overall incidence of tobacco-related illness and death.<sup>3</sup>

In December 2019, Congress passed, and President Trump signed, federal legislation raising the minimum legal sales age nationwide for all tobacco products, including e-cigarettes, to 21. With enforcement through the U.S. Food and Drug Administration (FDA), the federal law went into effect immediately.<sup>6</sup>

## **Current Landscape in Virginia and Tobacco 21**

- Virginia must begin enforcing the federal tobacco sales age of 21 and risks losing more than \$4 million per year in federal block grants if it does not. The federal legislation retained and revised the 1992 “Synar Amendment,” which requires states to demonstrate a Retailer Violation Rate (RVR) of no higher than 20 percent or they could lose 10 percent (more than \$4 million in Virginia) of annual Substance Abuse Block Grants through the Substance Abuse and Mental Health Services Administration (SAMHSA).<sup>7</sup>
- Virginia’s statewide Tobacco 21 law has not been adequately enforced, and sales to underage youth are unacceptably high. The current RVR in Virginia was almost 17% for the last year data was available in 2019,<sup>8</sup> and is likely higher now, since retailers are currently not undergoing state (Synar) or federal (FDA) compliance checks in part due to the pandemic.
- Virginia has approximately 8,400 tobacco retailers, which the Virginia Alcoholic Beverage Control Authority (ABC) is authorized to inspect; it issues Class 2 misdemeanor citations for code violations. In 2018, the ABC and FDA were unable to reach consensus on the terms of the Tobacco Retail Compliance Inspection contract. As a result, the ABC did not enter into a contract with the FDA and stopped conducting Synar enforcement inspections. The RVR then rose by 66 percent from 10.1 to 16.8.
- Statewide, there are no required number of inspections in the current law, and since there is no tobacco retail license required, there is no comprehensive or current database of who is selling tobacco and nicotine products at retail.

## Quick Facts: Tobacco Retail Licensing

- Minimum legal sales age (MLSA) laws must be accompanied by effective enforcement in order to reduce youth tobacco use. Current enforcement activities in Virginia are inadequate to prevent youth from using tobacco products.<sup>9</sup>
- Best practices for enforcement include conducting unannounced, annual compliance checks for every retailer with follow-up checks for those found in violation.<sup>10</sup>
- Tobacco retail licensing fees, paid by the retailer and renewed annually, would provide the resources needed to reduce unlawful sales and drive down youth tobacco use.<sup>11</sup>
- With the passage of comprehensive tobacco retail licensing laws in New Mexico and Colorado in 2020, Virginia is now one of only eight states in the U.S. without any form of TRL.<sup>12</sup>
- A Tobacco Retail License is a privilege license and is different from the business license or tobacco tax permit that is required in Virginia. A TRL is tied to retailer compliance with all applicable sales, marketing, and display laws and can be suspended or revoked for repeated violations.<sup>13</sup>
- TRL can reduce youth initiation to tobacco, including e-cigarettes, by improving compliance with state and federal MLSA laws and other important tobacco sales regulations.<sup>14</sup>
- If Virginia fails to establish a licensing program and begin conducting compliance checks as soon as possible, it risks increasingly higher retailer violation rates.
- TRL protects retailers who obey the law by identifying and penalizing those who do not.
- 80% of Virginia adults surveyed believe stores should be licensed to sell tobacco, including e-cigarette products.<sup>15</sup>

### As filed, H.B. 2164:

- Required all retailers of tobacco, including e-cigarette products, to obtain a Tobacco Retail License through the Virginia Alcoholic Beverage Control Authority and renew it annually.

- Established a comprehensive list of all tobacco retailers in the state which will streamline enforcement efforts and provide needed data on who is selling tobacco products at retail.
- Established enhanced civil monetary penalties and outlined license suspension and revocation provisions for selling without a license and for violations of MLSA laws by licensees.
- Established a dedicated Tobacco Retail Administration “Sub-fund” into which all fines and fees would be deposited and used for license administration and enforcement. (a)
- Comprehensively defined tobacco products to include e-cigarettes and electronic smoking devices to align with federal definitions.
- Prohibited sales of tobacco products from vending machines.
- Repealed an exemption for members of the military who are under 21 to align with the federal Tobacco 21 law which does not allow this exemption.
- Repealed ineffective and potentially unjust penalties to youth for purchase, use, or possession of tobacco products.<sup>16</sup>

*a) H. 2164 did not mandate a retail license fee in order to accommodate the General Assembly’s request that legislators file pared-down bills for the 2021 session due to the pandemic. Best practices for funding a Tobacco Retail License program require that retailers pay an annual fee high enough to cover the cost of the program and enforcement. It may be necessary to consider additional options for initial funding of a TRL program that could supplement a retailer fee.*

## Sources:

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- <sup>2, 12</sup> *The following are the (8) states without any form of Tobacco Retail Licensing: Michigan, Arizona, Kentucky, South Carolina, Oregon, Tennessee, Virginia, and Wyoming. See also: University of Maryland Francis King Carey School of Law Legal Resource Center for Public Health Policy – 50 State Survey of Tobacco Licensing Requirements, January 2020.* [https://www.law.umaryland.edu/media/SOL/pdfs/Programs/Public-Health-Law/50%20State%20Survey%20of%20Tobacco%20Licensing%20Requirements%20FINAL%20\(January%202020\).pdf](https://www.law.umaryland.edu/media/SOL/pdfs/Programs/Public-Health-Law/50%20State%20Survey%20of%20Tobacco%20Licensing%20Requirements%20FINAL%20(January%202020).pdf)
- <sup>3</sup> *Campaign for Tobacco-Free Kids Toll of Tobacco in Virginia* <https://www.tobaccofreekids.org/problem/toll-us/virginia>
- <sup>4</sup> *Association between e-cigarette use and future combustible cigarette use: Evidence from a prospective cohort of youth and young adults, 2017–2019* <https://pubmed.ncbi.nlm.nih.gov/32927247/>
- <sup>5</sup> *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products.* Editors: Richard J. Bonnie, Kathleen Stratton, and Leslie Y. Kwan. Authors: Committee on the Public Health Implications of Raising the Minimum Age for Purchasing Tobacco Products; Board on Population Health and Public Health Practice; Institute of Medicine, Washington (DC); National Academies Press (US); 2015 Jul 23. ISBN-13: 978-0-309-31624-8 ISBN-10: 0-309-31624-3
- <sup>6</sup> *U.S Food and Drug Administration - Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21* <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21#:~:text=On%20Dec.,cigarettes%E2%80%94to%20anyone%20under%2021.>
- <sup>7</sup> *Substance Abuse and Mental Health Administration, U.S. Department of Health and Human Services. Programmatic Requirements for the Synar Program:* <https://www.samhsa.gov/synar/requirements>. See also: <https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf>
- <sup>8, 9, 11</sup> *Licensing Retail Tobacco Outlets to Reduce Youth Access to Tobacco Products in Virginia. Research conducted by Virginia Commonwealth University, Department of Psychology and George Mason University, Department of Health Administration and Policy, August 2020.*
- <sup>10, 13</sup> *Tobacco Retail Licensing: An Essential Tool to Reduce Youth Usage and Foster Health Equity* <https://tobacco21.org/new-guide-to-best-practices-in-trl/>
- <sup>15</sup> *Virginia Adult Tobacco Survey, Virginia Dept. of Health.* <https://www.vdh.virginia.gov/news/public-relations-contacts/archived-news-releases/2018-news-releases/virginia-health-officials-release-adult-tobacco-use-survey-results/>
- <sup>16</sup> *PUP in Smoke: Why Youth Tobacco Possession and Use Penalties are Ineffective and Inequitable.* <https://www.changelabsolutions.org/product/pup-smoke>



## Appendix G



# VIRGINIA SMOKE FREE ASSOCIATION

Est. 2015

July 2, 2021

Craig M. Burns, Tax Commissioner  
Department of Taxation  
Main Street Centre  
600 East Main Street, 23<sup>rd</sup> Floor  
Richmond, VA 23219

Re: **HB2164**

Dear Commissioner Burns:

(“VSFA”) represents Virginia’s vapor products manufacturers, distributors, and retailers. Consequently, VSFA appreciates the opportunity to provide written comments to help the Virginia Department of Taxation (“VA Tax”) study and “assess the feasibility and costs associated with the creation of individual licensure for tobacco retailers to prevent the selling of tobacco products to underage individuals,” pursuant to HB2164 and its corresponding Chairman’s letter.

To fully address the call of the study, we must first ask whether the creation of a licensure requirement for tobacco retailers is necessary to prevent the sale of tobacco products to underage buyers in the first place. While VSFA wholeheartedly agrees with the mission of keeping tobacco products out of the hands of underage persons, requiring tobacco retailers to obtain a license from the Virginia Alcoholic Beverage Control Authority (“ABC”) is unnecessary. Rather, Virginia’s T21 legislation and enforcement provisions, enacted July 1, 2019, are sufficient.<sup>1</sup>

Under Virginia’s T21 legislation, it is illegal for any person or retailer to sell a tobacco product to any person under the age of 21.<sup>2</sup> In fact, T21 requires that before the sale of any tobacco product, the seller must: (1) receive reliable confirmation that the prospective consumer is at least the minimum purchase age and (2) verify that information through a third-party, commercial database.<sup>3</sup> The T21 legislation clearly states any law enforcement officer, including ABC agents, may issue a summons for a violation of these provisions.<sup>4</sup> Hence, Virginia law already prohibits the sale of tobacco products to persons under the age of 21 *and* provides adequate an enforcement mechanism.

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<sup>1</sup> See, generally, [§81727 – 2019](#).

<sup>2</sup> VA Code [§18.2-371.2\(A\)](#).

<sup>3</sup> VA Code [§18.2-371.2\(C\)](#).

<sup>4</sup> VA Code [§18.2-371.2\(E\) and \(H\)](#).


Craig M. Burns, Tax Commissioner  
July 2, 2021  
Page 2

Rather than implementing an additional and potentially costly licensing requirement on tobacco products retailers, VSFA recommends putting some teeth in the T21 legislation by increasing the penalties imposed for every violation. Presently, T21 violations are punishable by a civil penalty not to exceed \$100 for a first violation, \$200 for a second, and \$500 for a third or subsequent violation.<sup>5</sup> VSFA suggests increasing the punishments imposed on retail establishments to \$1,000 for a first violation, \$2,500 for a second violation, and a \$5,000 civil penalty plus a one-year prohibition on selling tobacco products for a third or subsequent violation. VSFA also recommends that the civil penalties should be allocated to ABC for the enforcement of these T21 provisions rather than the state treasury.

In addition, VSFA is concerned about the cost of implementing HB2164. During public hearings on this bill, it was suggested that the cost to ABC may exceed \$8 million. A fiscal impact statement posted thereafter estimated that the upfront cost would exceed \$1.6 million and ongoing costs would exceed \$800,000/year. The total cost notwithstanding, VSFA is equally concerned about how these costs will be apportioned among the various tobacco products retailers. In the absence of this information, VSFA cannot support what amounts to writing a blank check.

Furthermore, vape shops are still reeling from an 11<sup>th</sup> hour budget amendment imposing a \$0.07/mL wholesale tax on liquid nicotine, which became effective July 1, 2020. This tax was imposed without a single public hearing, and vape shops were not given the opportunity to testify to its inequities nor the hardships it has caused Virginia's vapor industry.

Accordingly, despite VSFA's commitment to preventing the underage sale of tobacco products and support of T21, it cannot support HB2164. Thank you for your consideration in this regard.

Respectfully  
  
Dylan D. Bishop

cc: Stephen Klos, Policy Analyst  
Department of Taxation  
  
Maggie Gowen, President  
Virginia Smoke Free Association

<sup>5</sup> VA Code [18.2-371.2\(E\)](#)

## Appendix H

### Licensing Retail Tobacco Outlets to Reduce Youth Access to Tobacco Products in Virginia

Research conducted by Virginia Commonwealth University, Department of Psychology and George Mason University, Department of Health Administration and Policy, August 2020

Key Terms Defined: TRL: Tobacco Retail Licensing | MLA: Minimum Legal Age | RVR: Retailer Violation Rate

Despite significant decreases in cigarette smoking by youth over the past two decades, the percentage of Virginia high school youth who are current smokers remains unacceptably high (5.5%).<sup>1</sup> Perhaps more concerning is the dramatic increase in the percentage of youth who are using e-cigarettes; an increase of 69% among high school youth from 2017 to 2019 (11.8% and 19.9%, respectively).<sup>2</sup>



#### MLA laws must be combined with effective enforcement that drives down illegal sales to minors

While MLA laws are an important part of efforts to decrease youth tobacco use, past experience demonstrates “that the mere adoption of a law prohibiting the sale of tobacco products to minors is insufficient to prevent the [actual] sale of tobacco to children.”<sup>3</sup>

#### TRL is a Key Component of MLA Laws

- 1) licensing will produce a comprehensive list of retail tobacco outlets that can be used in vendor education and enforcement efforts,<sup>12</sup>
- 2) licensing fees can be used to generate the funds needed to support a comprehensive system of vendor education and enforcement, and
- 3) incremental monetary fines as well as license suspensions and revocations as penalties for selling tobacco products to minors are a significant deterrent to violating state MLA laws.<sup>12</sup>

#### Current enforcement activities in Virginia are inadequate to prevent youth from using tobacco products

Enforcement efforts related to sales to underage buyers have been severely reduced, resulting in an increased RVR to 16.8% in 2019<sup>21</sup>. In the most recent year for which data are available, compliance checks (i.e., “false buys” by underage buyers) were conducted for only 6.4% (less than 600) of retail tobacco outlets, compared to approximately 50% of retailers prior to the loss of the state-wide federal Food and Drug Administration contract in May 2018.<sup>13</sup>



If the RVR rises above 20%, the state risks losing approximately \$17 million of federal Substance Abuse Block Grant dollars.<sup>14</sup>

#### TRL in the U.S.

Currently, 40 states and Washington, DC require some form of license to sell one or more types of tobacco products. 78% of states that license retail tobacco outlets require that the license be renewed on an annual basis. The average annual license fee is \$74.63 and ranges from \$5 to \$300.<sup>17</sup> If Virginia were to implement a TRL with an annual licensing fee of \$75 (approximately the current nation-wide average), it would generate \$574,054 that could be used to enhance MLA enforcement and retailer education efforts.



#### TRL Best Practices

- 1) require a license to sell any tobacco product (including e-cigarettes and heated tobacco products) for all tobacco retailers,
- 2) assess a licensing fee to adequately fund implementation and enforcement of the law,
- 3) require a license to be renewed annually,
- 4) include a provision that any violation of local, state, or federal law is a violation of the license,
- 5) require retailers to train their employees on the requirements of the Commonwealth's MLA and TRL laws as a condition of receiving a license, and
- 6) include a graduated penalty system for violators, including monetary fines, license revocation, or suspension.<sup>8,9,11,18</sup>

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20. The annual average licensing fee was calculated based only on those states that have annual fixed licensing fee. That is, it excludes those states where the amount of the licensing fee is based on the size of the city in which the retailer is located or the type of municipality (e.g., city vs village).

## Appendix I



January 23, 2020

Chelsi Bennett, J.D.  
Virginia Government Relations Director  
American Heart Association  
4217 Park Place Ct | Glen Allen, VA 23060  
[Chelsi.Bennett@heart.org](mailto:Chelsi.Bennett@heart.org)

RE: Virginia's cigarette exemption certificate and tobacco retail licensing

Dear Chelsi,

Thank you for your request for legal technical assistance from the Public Health Law Center. As you know, the Center can provide you with this information based on our experience and understanding of commercial tobacco control law and policy across the country. We do not lobby, and we do not ask that any decisionmaker take any particular action based on the information we provide. We are also not licensed to practice law in Virginia, so if you need legal advice, we suggest you contact an attorney familiar with the laws of your jurisdiction. The Center provides information for your own evaluation and review, and we hope that this memorandum is useful to you. If you have any questions after reading it, please reach out to us to discuss it further.

### Question Presented

Is the cigarette exemption certificate system established by Va. Code § 58.1-623.2 a tobacco retail licensing regime that promotes public health and monitors tobacco retailer compliance with tobacco control laws?

### Short Answer

No. It appears that Va. Code § 58.1-623.2 is, above all else, a tax compliance scheme that has little to do with preventing violations of state or federal prohibitions on selling tobacco products to under-21 consumers. The law itself has no provisions that prevent such sales, nor does it incorporate such prohibitions in the Department of Taxation's (Department) enforcement regime. Even though the certificate can be denied or revoked for some reasons, these reasons have nothing to do with protecting youth from access to tobacco products and appear to be mostly concerned with assuring the regular collection of existing taxes. Additionally, there are no relevant inspections or regular compliance checks mandated by the law, and the certificate program doesn't even include all tobacco product sellers—applying only to certain businesses that sell *cigarettes* at wholesale or retail.

## Analysis

Generally speaking, tobacco retail licensing is a system under which jurisdictions (at the state, tribal, or local levels) require a business to obtain a license in order to legally sell tobacco products within the jurisdiction. Licensing is a tool that helps the effective enforcement of substantive laws, such as sales prohibitions of certain tobacco products or minimum legal sales ages. Normally, licensing regimes mandate regular inspections (e.g. to make sure retailers are not selling forbidden products) and age-of-sale compliance checks (e.g. having a 17-year-old purchaser supervised by a police officer attempt to purchase a pack of cigarettes). If a seller is found to be in violation of the jurisdiction's substantive provisions, that person could lose their license—and with it the ability to sell tobacco products—temporarily or permanently. Additionally, some jurisdictions make certain retailers ineligible to obtain a license, often because they are too close to a school or the owner has an established history of violating commercial tobacco control laws. Currently Virginia does not have this type of licensing regime.

In enacting Va. Code § 58.1-623.2, the Virginia General Assembly established a new system for cigarette distributors to avoid paying the taxes applicable to end consumers of cigarettes. The Tax Commissioner is required to establish implementing guidelines under the law,<sup>1</sup> and has done so, in guidelines that do not incorporate age-of-sale restrictions or other tobacco control law.<sup>2</sup>

Because this law was not designed to prevent illegal sales of tobacco products (so long as taxes were faithfully paid and recorded), the provisions of the law fall short of best practices for tobacco retail licensing. Here are some of the provisions in the statute that do not track with common [tobacco retail licensing](#) practices:

### Limited scope:

- This law applies only to *cigarette* sellers, leaving open the possibility that other tobacco product sellers will be unaffected by this regime and potentially unknown to the Tax Commissioner. For example, all cigar bars and vape shops would be outside the scope of this law unless they also sold cigarettes.

<sup>1</sup> Va. Code § 58.1-623.2 § 1, <https://law.lis.virginia.gov/vacode/58.1-623.2/>

<sup>2</sup> See generally, Tax Commissioner Craig M. Burns, Guidelines for the Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale (Aug. 21, 2017), <https://www.tax.virginia.gov/sites/default/files/inline-files/final-cigarette-exemption-guidelines.pdf>

- Nowhere on Va. Code § 58.1-623.2's face or in the legal authorities it cites does this law incorporate the prohibition of sales to underage people,<sup>3</sup> Va. Code § 18.2-371.2.<sup>4</sup>
- Nowhere in the law is a certificate-holder required to check ID for proof of age or post signs regarding the minimum legal sales age applicable to cigarettes.
- The law allows someone who is 18 or older to hold a certificate<sup>5</sup> and also allows the holder to allow any employee (of any age) to use the certificate,<sup>6</sup> so there is no effective age limit on employees who sell tobacco products, and the age limit on holders is three years younger than the legal age to purchase tobacco products.

#### Limited oversight:

- After a certificate is granted<sup>7</sup> the statute does not call for any further inspections for five years, and only some certificate-holders would be inspected at that future date.<sup>8</sup> These inspections only appear to be assessments of the physical characteristics of the site, not the holder's practices in selling cigarettes.<sup>9</sup>
- While the holder of the certificate must list its business addresses,<sup>10</sup> the law only requires a "substantial portion of the sales activity" to be conducted

<sup>3</sup> While Virginia's Tobacco 21 law included an exemption for active duty military 18 and older the federal update to the minimum legal sales age in December 2019 closed this loophole, and so for the sake of this memo all underage people would be those under 21. For more information on the change in federal law please consult the Center's recent blog on the topic <https://www.publichealthlawcenter.org/blogs/2020-01-07/new-federal-tobacco-21-law-what-it-means-state-local-and-tribal-governments>.

<sup>4</sup> Va. Code § 18.2-371.2, "Prohibiting purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products by a person under 21 years of age or sale of tobacco products, nicotine vapor products, and alternative nicotine products to persons under 21 years of age." <https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-371.2/>

<sup>5</sup> Va. Code § 58.1-623.2 § C(1).

<sup>6</sup> *Id.* §§ H & M.

<sup>7</sup> In the initial application for a certificate the Department does inspect the premises and does so if the address of a taxpayer's business changes. *See id.* B&G.

<sup>8</sup> "At the end of the five-year period, the cigarette exemption certificate of a taxpayer who qualifies for the expedited application process set forth in subdivision B 3 shall be automatically renewed and no fee shall be required." *Id.* § J.

<sup>9</sup> The Department must deny an application if "The physical place of business occupied by the taxpayer, as described in subsection E, is not constructed, arranged, or illuminated so as to allow access to and reasonable observation of, any room or area in which cigarettes are to be sold[.]" *Id.* § C(5).

<sup>10</sup> Instead of requiring a different certificate for each location the statute only requires each taxpayer to get one certificate and then use it for multiple locations if that is the taxpayer's business. *See id.* § (F).

there.<sup>11</sup> This seems to leave open the possibility that sales will be conducted offsite and potentially at locations that do not have a permanent address.

- Certificates cost only 50 dollars and last for five years.<sup>12</sup> The low fee and infrequent renewal or oversight suggest that this application fee doesn't pay for any administrative burden of ongoing inspection, or compliance checks to assess if there are violations of tobacco control laws.
- Contrary to ordinary practice with tobacco retailer licenses, the law forbids display of the certificate at the place where it is being used.<sup>13</sup>
- This law doesn't address delivery sales or internet sales of cigarettes or other tobacco products from out-of-state retailers or manufacturers to consumers.

**No effective punishment for violations of relevant law:**

- Grounds for denying issuance of a certificate do not include violations of commercial tobacco control laws. The crimes that could result in a denial appear to be on an exclusive list that includes: all types of fraud; "robbery, extortion, burglary, larceny, embezzlement, gambling, perjury, bribery, treason, racketeering, [and] money laundering;" violations of Virginia cigarette tax laws; and felonies.<sup>14</sup> This list might be appropriate to guard against tax evaders and dangerous individuals, but it leaves out any laws that apply to tobacco retailing.
- Even if a certificate is denied, suspended, or revoked for one of the thirteen grounds listed,<sup>15</sup> the only punishment laid out in the law is a 6 month suspension before the taxpayer can reapply.<sup>16</sup> Denial/suspension/revocation of a certificate is therefore only an effective punishment if the Department is actively vetting and denying new applications all the time, and there is no mention of denying an application with prejudice in the Department's guidance on the law.<sup>17</sup>
- Denying, suspending, or revoking a certificate does not stop an offender from selling cigarettes. It only means that the cigarette distributor must pay additional taxes in order to continue selling cigarettes.<sup>18</sup> Even the most odious offender could continue selling cigarettes indefinitely without a certificate if he were willing to pay the applicable taxes.

<sup>11</sup> *Id.* § E(1).

<sup>12</sup> *Id.* §§ B(2) & J.

<sup>13</sup> *Id.* § K.

<sup>14</sup> *Id.* § C (9)&(13).

<sup>15</sup> *See id.* § C.

<sup>16</sup> *Id.* § B (4).

<sup>17</sup> *See*, Tax Commissioner Craig M. Burns, Guidelines for the Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale at 7 (Aug. 21, 2017).

<https://www.tax.virginia.gov/sites/default/files/inline-files/final-cigarette-exemption-guidelines.pdf>

<sup>18</sup> *See* Va. Code § 58.1-623.2 § A.



### Conclusion

It is apparent that this statute was not designed to stop the sale of tobacco products to young people, nor to aid in the enforcement of any state or federal commercial tobacco control law other than applicable tax codes. It appears that this tax exception regime was not meant to comprehensively regulate retailers of tobacco products, nor to set out enforcement standards for the Department to follow. Since Virginia doesn't have a tobacco retail licensing statute, and this certificate is not a replacement for that type of regulation, there should be no concern that Va. Code § 58.1-623.2 or the Department's role granting the certificates would be changed by a tobacco retail licensing regime.

For more information on tobacco retail licensing best practices please feel free to consult the Center's [many resources on the topic](#). We would be happy to discuss the details of such a regime further with you if you have any questions.

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Appendix J

Form ST-10C  
Application

Commonwealth of Virginia  
Cigarette Resale  
Certificate of Exemption Application

For Office Use Only

DO NOT USE THIS FORM TO PURCHASE CIGARETTES TAX EXEMPT

Complete each line that applies to your business. Each location must submit a separate application. Include a \$50.00 non-refundable fee with each application, unless your business qualifies for the expedited process explained in the Filing Procedure on the back of this application.

NEW APPLICATION

RENEWAL

CHANGE

1. Federal Employer Identification No. (FEIN) \_\_\_\_\_

2. Sales Tax Account No. \_\_\_\_\_

3. Business Telephone No. \_\_\_\_\_ 4. Contact Phone No. \_\_\_\_\_

5. Business Name \_\_\_\_\_

6. Email Address \_\_\_\_\_

7. Store Location \_\_\_\_\_  
Number and Street or Rural Route City ZIP Code

8. Business Classification:  Wholesaler  Retailer

9. Ownership information (please attach):

**Corporations** - Name, title, home address, and Social Security Number of each officer

**Partnerships** - Name, home address, Social Security Number or FEIN of each partner, or tax identification number.

**Sole Proprietorships** - Name, home address, Social Security Number, or tax identification number.

**LLC** - Name, home address, and Social Security Number or FEIN of each member. Social Security Number or tax identification number is required for single member LLCs.

**LLP** - Name, home address, and Social Security Number or FEIN of each partner

10. How long has the owner been a resident of Virginia? \_\_\_\_\_

If less than 12 months, provide explanation \_\_\_\_\_

11. ABC License # (attach copy, if applicable) \_\_\_\_\_

12. Other Tobacco Products (OTP) Distributor's Permit # (attach copy, if applicable) \_\_\_\_\_

Owner Signature \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_ Date \_\_\_\_\_

Provide a list of cigarette and tobacco suppliers and supplier account numbers.

Upon verification (to include a site visit) and after a 30-day waiting period, we will issue a unique Form ST-10C to qualified retailers. You can then use Form ST-10C to purchase cigarettes tax exempt.

Va Dept. of Taxation 6201075 Rev 03/18

## Instructions for Form ST-10C Application

**General:** Beginning January 1, 2018, cigarette retailers are required to use Form ST-10C, Cigarette Resale Certificate of Exemption to purchase cigarettes tax exempt for resale in Virginia.

**Filing Procedure:** Cigarette retailers must be registered for Virginia Retail Sales and Use Tax.

Each location intending to purchase cigarettes tax exempt must complete Form ST-10C Application in its entirety. Call the tobacco unit for special instructions if you are applying for 10 or more locations. Enclose \$50.00 non-refundable fee. Make your check payable to the Virginia Department of Taxation and mail the application and payment to **TOBACCO TAX UNIT, Department of Taxation, P.O. Box 715, Richmond, Virginia 23218-0715**.

**Expedited Process:** Businesses with valid ABC licenses or Other Tobacco Product (OTP) Distributor's permits are exempt from the \$50.00 non-refundable fee. Issuance of exemption certificates to businesses with valid ABC licenses or OTP Distributor's permits will be expedited.

Upon verification (to include a site visit) and after a 30-day waiting period, we will issue a unique Form ST-10C to qualified retailers. You can then use Form ST-10C to purchase cigarettes tax exempt.

**Questions:** If you have any questions, please call (804) 371-0730 or visit our website at [www.tax.virginia.gov](http://www.tax.virginia.gov).

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### Penalty for fraudulent purchase of cigarettes

- Any person who purchases **5,000 (25 cartons) cigarettes or fewer** using a forged business license, a business license obtained under false pretenses, a forged or invalid Virginia sales and use tax exemption certificate, a forged or invalid Virginia cigarette exemption certificate, or a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense.
- Any person who purchases **more than 5,000 (25 cartons) cigarettes** using a forged business license, a business license obtained under false pretenses, a forged or invalid Virginia sales and use tax exemption certificate, a forged or invalid Virginia cigarette exemption certificate, or a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 6 felony for a first offense and a Class 5 felony for a second or subsequent offense.
- Any person who violates the provisions of Va. Code § 58.1-1017.3 will be assessed a civil penalty of (i) \$2.50 per pack, but no less than \$5,000, for a first offense, (ii) \$5 per pack, but no less than \$10,000, for a second offense committed within a 36-month period; and (iii) \$10 per pack, but no less than \$50,000, for a third or subsequent offense committed within a 36-month period. The civil penalties will be assessed and collected by the Department of Taxation as other taxes are collected.
- The provisions of Va. Code § 58.1-1017.3 will not preclude prosecution under any other statute.

### Sales or leases presumed subject to tax: exemption certificates

- All sales of cigarettes, bearing Virginia revenue stamps in the Commonwealth shall be subject to the tax until the contrary is established.
- The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter.

### Obtaining a cigarette exemption certificate

- A Cigarette Resale Certificate of Exemption relieves the person who accepts the certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such certificate is no longer acceptable. A valid Cigarette Resale Certificate of Exemption must be signed by and bear the name and address of the taxpayer, indicate the number of the certificate of registration, issued to the taxpayer, and be in the form the Tax Commissioner has prescribed.

### Maintaining records

- Every person receiving, storing, selling, handling or transporting cigarettes in any manner whatsoever, must save all invoices, books, papers, canceled checks, or other documents relating to the purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years. All invoices, books, papers, canceled checks or other memoranda and records will be subject to audit and inspection at all times by any duly authorized representative of the Department of Taxation. Any person who fails or refuses to keep and preserve the records as required in this section will be guilty of a Class 2 misdemeanor. The Department of Taxation may impose a penalty of \$1,000 for each day that the person fails or refuses to allow an audit or inspection of the records.

Appendix K

**Department of Planning and Budget**  
**2021 Fiscal Impact Statement**

**1. Bill Number:** HB2164

**House of Origin**     Introduced     Substitute     Engrossed

**Second House**     In Committee     Substitute     Enrolled

**2. Patron:** Hope

**3. Committee:** House Appropriations

**4. Title:** Tobacco retail licensing

**5. Summary:** The bill establishes a subfund of the Enterprise Fund, to be known as the Tobacco Retail Administration Subfund (Subfund).

The bill provides that all moneys deposited, less net profits, are subject to appropriation, for the payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and; (ii) all costs and expenses incurred in establishing and maintaining government stores and in the administration of the provisions of this title, including the purchasing, building, leasing and operation of distilleries and the manufacture of alcoholic beverages; and (iii) all direct and indirect costs and expenses incurred in the administration of licenses and enforcement of laws under the newly created §§4.1-600 through 4.1-605 (Registration and Restrictions for Tobacco Retailers), which shall be accounted for from the Subfund.

The bill establishes that no tobacco retailer can operate a tobacco retail establishment, conduct business as a tobacco retailer, or otherwise sell or offer to sell tobacco products at retail unless such tobacco retailer has obtained a license from the Authority. Violations may result in a civil penalty of \$500 for a first offense and \$1,000 for a second or subsequent offense within a 36 month period. Any tobacco retailer may apply for a license to operate a tobacco retail establishment and conduct business as a licensee according to forms and procedures prescribed by the Authority. Licensees must display their license in a prominent place within the licensed business.

The bill prohibits any person from selling tobacco products or hemp products intended for smoking from a vending machine. In addition, the bill requires age verification for purchasers less than 30 years of age.

The bill defines “electronic smoking device” and redefines “tobacco product”.

**6. Budget Amendment Necessary:** See Line 8. Nongeneral fund appropriation will be needed.

**7. Fiscal Impact Estimates:** Preliminary (see Line #8)

**8. Fiscal Implications:** According to the Virginia Alcoholic Beverage Control Authority (ABC), additional personnel will be needed to enforce the provisions of this bill. Data from ABC's Bureau of Law Enforcement suggest there may be as many as 4,000 new licenses requested from vape shops, tobacco shops and cigar shops as a result of this legislation.

ABC estimates an additional 7 license record technicians (\$342,363) and 12 special agents (initial cost of \$1,320,000, with an ongoing cost of \$819,289) will be required to meet the requirement of this bill. The initial cost for special agents includes equipment and training cost of \$500,711. In addition, information technology costs are expected to be incurred to create a tobacco license within the existing licensing system. Information technology costs are estimated to be \$225,000.

The bill provides that moneys in the Subfund, created by this bill, are to be used solely for the purpose of funding the Authority's direct and indirect costs of administration of licenses and enforcement of laws under Chapter 6 (Registration and Restrictions for Tobacco Retailers). Expenditures and disbursements from the Subfund can be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Executive Officer of the Authority. The Authority will likely incur expenses for personnel and other operating expenses prior to collecting tobacco license revenue. The bill is silent as to how these expenses are to be covered.

According to the State Corporation Commission, the bill is not expected to create a material fiscal impact on agency operations.

**9. Specific Agency or Political Subdivisions Affected:** Alcoholic Beverage Control Authority, and State Corporation Commission

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None