

Appendix I: Suggested revisions to 2025 Senate Bill 1060 S-2 with annotations by the Tobacco Enforcement Section of the Office of the Attorney General

2025 SESSION

SENATE SUBSTITUTE

25106141D

SENATE BILL NO. 1060

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on January 29, 2025)

(Patron Prior to Substitute—Senator Ebbin)

A BILL to amend and reenact §§ 4.1-100, 4.1-103, 4.1-103.01, 4.1-229, 15.2-912.4, 18.2-246.8, 18.2-371.2, 58.1-1021.04:1, 59.1-293.14, 59.1-293.15, 59.1-293.18, and 59.1-293.20 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 2 of Title 4.1 an article numbered 4, consisting of sections numbered 4.1-241 through 4.1-255, by adding in Chapter 3 of Title 4.1 an article numbered 4, consisting of sections numbered 4.1-355 through 4.1-359, and by adding a section numbered 18.2-371.2:1; and to repeal §§ 58.1-1021.06 through 58.1-1021.09, 59.1-293.12, and 59.1-293.13 of the Code of Virginia, relating to permitting of tobacco products retailers; purchase, possession, and sale of retail tobacco products; Virginia Alcoholic Beverage Control Authority; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-103, 4.1-103.01, 4.1-229, 15.2-912.4, 18.2-246.8, 18.2-371.2, 58.1-1021.04:1, 59.1-293.14, 59.1-293.15, 59.1-293.18, and 59.1-293.20 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 4.1 an article numbered 4, consisting of sections numbered 4.1-241 through 4.1-255, by adding in Chapter 3 of Title 4.1 an

article numbered 4, consisting of sections numbered 4.1-355 through 4.1-359, and by adding a section numbered 18.2-371.2:1 as follows:

§ 4.1-100. Definitions.

As used in this subtitle unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, powder or crystal, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this subtitle.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided. For purposes of the licensing requirements of this subtitle, "bed and breakfast establishment" includes any property offered to the public for short-term rental, as that term is defined in § 15.2-983, other than a hotel as defined in this section, regardless of whether a meal is offered to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

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

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Bus" means a motor vehicle that (i) is operated by a common carrier licensed under Chapter 20 (§ 46.2-2000 et seq.) of Title 46.2 to transport passengers for compensation over the highways of the Commonwealth on regular or irregular routes of not less than 100 miles, (ii) seats no more than 24 passengers, (iii) is 40 feet in length or longer, (iv) offers wireless Internet services, (v) is equipped with charging stations at every seat for cellular phones or other portable devices, and (vi) during the transportation of passengers, is staffed by an attendant who has satisfied all training requirements set forth in this subtitle or Board regulation.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Commercial lifestyle center" means a mixed-use commercial development covering a minimum of 10 acres of land and having at least 100,000 square feet of retail space featuring national specialty chain stores and a combination of dining, entertainment, office, residential, or hotel establishments located in a physically integrated outdoor setting that is pedestrian friendly and that is governed by a commercial owners' association that is responsible for the management, maintenance, and operation of the common areas thereof.

"Container" means any barrel, bottle, carton, keg, vessel, or other receptacle used for holding alcoholic beverages.

"Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains grapes, fruits, and other agricultural products from a person holding a winery or farm winery license and crushes, processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with the winery or farm winery licensee. For all purposes of this subtitle, wine produced by a contract winemaking facility for a winery or farm winery shall be considered to be wine owned and produced by the winery or farm winery that supplied the grapes, fruits, or other agricultural products used in the production of the wine. The contract winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have not been fulfilled in accordance with the contract. The contract winemaking facility may charge the winery or farm winery for its services. A winery licensee may utilize contract winemaking services only for the manufacture or processing of wine of which no less than 90 percent of the grapes, fruits, and other agricultural products used to make such wine are grown in the Commonwealth.

"Convenience grocery store" means an establishment that (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

"Culinary lodging resort" means a facility (i) having not less than 13 overnight guest rooms in a building that has at least 20,000 square feet of indoor floor space; (ii) located on a farm in the Commonwealth with at least 1,000 acres of land zoned agricultural; (iii) equipped with a full-service kitchen; and (iv) offering to the public, for compensation, at least one meal per day, lodging, and recreational and educational activities related to farming, livestock, and other rural activities.

"Delicatessen" means an establishment that sells a variety of prepared foods or foods requiring little preparation, such as cheeses, salads, cooked meats, and related condiments.

"Designated area" means a room or area approved by the Board for on-premises licensees.

"Dining area" means a public room or area in which meals are regularly served.

"Drugstore" means an establishment that sells medicines prepared by a licensed pharmacist pursuant to a prescription and other medicines and items for home and general use.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Farm winery" means (i) an establishment or cooperative located in the Commonwealth on land zoned agricultural that has (a) a vineyard, orchard, or similar growing area that produces fruits or other agricultural products used to manufacture the wine of such farm winery, subject to the requirements set forth in § 4.1-219, and (b) facilities for fermenting and bottling wine on the premises where such farm winery manufactures wine that contains not more than 21 percent alcohol by volume or (ii) an accredited public or private institution of higher education, provided that (a) no wine manufactured by the institution shall be sold, (b) the wine manufactured by the institution shall be used solely for research and educational purposes, (c) the wine manufactured by the institution shall be stored on the premises of such farm winery that shall be separate and apart from all other facilities of the institution, and (d) such farm winery is operated in strict conformance with the requirements of this clause (ii) and Board regulations. As used in this definition, the term "cooperative" means a cooperative formed by an association of individuals for the purpose of manufacturing wine. In determining whether a cooperative licensed as a farm winery has met the requirements set forth in clause (i), the Board shall consider all land in the Commonwealth that is owned or leased by a member of the cooperative. For purposes of this definition, "land zoned agricultural" means (1) land zoned as an agricultural district or classification or (2) land otherwise permitted by a locality for farm winery use. For purposes of this definition, "land zoned agricultural" does not include land zoned "residential conservation." Except for the limitation on land zoned "residential conservation," nothing in the definition of "land zoned agricultural" shall otherwise limit or affect local zoning authority.

"Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty items relating to history, original and handmade arts and products,

collectibles, crafts, and floral arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer. Such shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum. The Board shall consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be considered a gift shop.

"Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such persons facilities for manufacturing, fermenting and bottling such wine or beer.

"Gourmet oyster house" means an establishment that (i) is located on the premises of a commercial marina, (ii) is permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, and (iii) offers to the public events for the purpose of featuring and educating the consuming public about local oysters and other seafood products.

"Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products such as cheeses and gourmet foods are habitually furnished to persons.

"Government store" means a store established by the Authority for the sale of alcoholic beverages.

"Grocery store" means an establishment that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals.

"Historic cinema house" means a nonprofit establishment exempt from taxation under § 501(c)(3) of the Internal Revenue Code that was built prior to 1970 and that exists for the primary purpose of showing motion pictures to the public.

"Hotel" means any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to persons, and which has four or more bedrooms. It shall also mean the person who operates such hotel.

"Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order pursuant to this subtitle.

"Internet wine and beer retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, Internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance, or behavior.

"Licensed" means the holding of a valid license granted by the Authority.

"Licensee" means any person to whom a license has been granted by the Authority.

"Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol content of 25 percent by volume.

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this subtitle, except that low alcohol beverage coolers may be manufactured by a licensed distiller or a distiller located outside the Commonwealth.

"Marina store" means an establishment that is located on the same premises as a marina, is operated by the owner of such marina, and sells food and nautical and fishing supplies.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times

the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Municipal golf course" means any golf course that is owned by any town incorporated in 1849 and which is the county seat of Smyth County.

"Performing arts facility" means an indoor or outdoor amphitheater, arena, multipurpose theater, or similar facility at which live musical, dance, theatre, or similar performances, the types of which are approved by the Authority, are performed, provided that the facility has stationary stadium or similar seating for more than 500 persons.

"Permittee" means any person to whom a permit has been issued by the Authority.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

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

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the equity ownership of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such equity ownership. "Principal stockholder" does not include a broker-dealer registered under the Securities

Exchange Act of 1934, as amended, that holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

"Public place" does not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Authority in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property; (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski, and other recreational facilities both to its members and to the general public; or (iii) operated by a corporation that operates as a management company which, as its primary function, makes available (a) vacation accommodations, guest rooms, or dwelling units and (b) golf, ski, and other recreational facilities to members of the managed entities and the general public. The hotel or corporation shall have or manage a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres, whether or not contiguous to the licensed premises; if the guest rooms or dwelling units are located on property that is not contiguous to the licensed premises, such guest rooms and dwelling units shall be located within the same locality. The Authority may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the Virginia Alcoholic Beverage Control Authority whom the Board has designated as a law-enforcement officer pursuant to § 4.1-105.

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage that contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients, but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Sports facility" means a coliseum, stadium, racetrack, or similar facility at which professional sports, as defined in § 58.1-4030, or similar events, the types of which are approved by the Authority, are conducted.

"Tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, a heated tobacco product, chewing

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

"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, retail tobacco product shop, kiosk, convenience store, gasoline service station, **facility from which cigarette "delivery sales" are made (as defined in VA Code § 18.2-246.6)** (EXPLANATION – cigarette delivery sales facilities operate as tobacco product retailers and need to be subject to the same permit requirements as other tobacco retailers), bar, or restaurant where tobacco products are available for sale to the general public. For purposes of this subtitle, "tobacco retail establishment" shall not include an establishment that does not sell tobacco products other than cigar and pipe tobacco products as defined in § 58.1-1021.01.

"Wine" means any alcoholic beverage, including cider, obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. "Wine" includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of 21 percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented

fruit juice beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § 4.1-206.3, or the monthly food sale requirement established by Board regulation, is met by such retail licensee.

§ 4.1-103. General powers of Board.

The Board shall have the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;
4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this subtitle, including agreements with any person or federal agency;
5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and special agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of Title 2.2;
6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be

expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

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

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

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

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

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

12. Buy and sell any mixers;

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

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

15. Determine, subject to § [4.1-121](#), the localities within which government stores shall be established or operated and the location of such stores;

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

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

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

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

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

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

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

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

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

25. Grant, suspend, and revoke permits for the sale of tobacco products;

~~25.~~ 26. Assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations;

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

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

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

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

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

~~31.~~ 32. Impose a requirement that a mixed beverage casino licensee pursuant to subdivision A 14 of § 4.1-206.3 pay for any cost incurred by the Board to enforce such license in excess of the applicable state license fee; and

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

§ 4.1-103.01. Additional powers; access to certain tobacco sales records; inspections; penalty.

A. Notwithstanding the provisions of § 58.1-3 or any other provision of law, the Tax Commissioner shall provide to the Board the name, address, and other identifying information within his possession of all ~~wholesale cigarette dealers~~ *tobacco retailers*.

B. All invoices, books, papers or other memoranda and records concerning the sale of ~~cigarettes maintained by wholesale cigarette dealers pursuant to § 58.1-1007 tobacco products by a tobacco retailer~~ shall be subject to inspection during normal business hours by special agents of the Board. *Additionally, all invoices, books, papers or other memoranda and records concerning the sale of cigarettes specifically shall be subject to inspection during normal business hours by representatives of the Attorney General in the conduct of audits and investigations per VA Code § 3.2-4215.1. (EXPLANATION – OAG cigarette audit/investigation information should be available to the Board as described in C. below.)* Any person who, upon request by a special agent, unreasonably fails or refuses to allow an inspection of the records authorized by this subsection shall be guilty of a Class 2 misdemeanor.

C. The Board may use the information obtained from the Tax Commissioner or by the inspections authorized by subsection B only for the purpose of creating and maintaining a list of retail dealers to facilitate enforcement of the laws governing the sale of tobacco products to minors. Neither the Board nor any special agent shall divulge any information provided by the Tax Commissioner or obtained in the performance of the inspections authorized by subsection B to anyone other than to another special agent. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

D. Nothing contained in this section shall prohibit the use or release of such information or documents by the Board to any governmental or law-enforcement agency, or when considering the granting, denial, revocation, or suspension of a license or permit, or the assessment of any penalty against a licensee or permittee.

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

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

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

Article 4.

Permitting and Restrictions for Tobacco Retailers.

§ 4.1-241. Tobacco retail permits.

The Board may grant permits to tobacco retailers who operate a tobacco retail establishment. Such permit shall authorize the permittee to sell tobacco products at retail on the permitted premises.

§ 4.1-242. To whom privileges conferred by tobacco retail permits extend; liability for violations of law.

The privilege of any permittee to sell tobacco products at retail shall extend to such permittee and to all agents or employees of such permittee for the purpose of selling tobacco products at retail under such permit. The permittee may be held liable for any violation of this subtitle or any Board regulation committed by such agents or employees in connection with their employment.

§ 4.1-243. Separate tobacco retail permit for each place of business; transfer or amendment; posting; expiration; carriers; civil penalties.

A. Each tobacco retail permit granted by the Board shall designate the place where the business of the permittee will be carried on. A separate permit shall be required for each separate place of business.

B. No permit shall be transferable from one person to another, or from one location to another.

C. Each permit shall be posted in a location conspicuous to the public at the place where the permittee carries on the business for which the permit is granted.

D. The privileges conferred by any tobacco retail permit granted by the Board shall continue until the last day of the twelfth month next ensuing, except the permit may be sooner terminated for any cause for which the Board would be entitled to refuse to grant a tobacco retail permit, by operation of law, voluntary surrender, or order of the Board.

The Board may permit a tobacco retail permittee who fails to pay:

1. The required permit fee covering the continuation or reissuance of its permit by midnight of the fifteenth day of the twelfth month, to pay the tax in lieu of reapplying, provided payment of the tax is made within 30 days following that date and is accompanied by a civil penalty of \$25 or 10 percent of such tax, whichever is greater; and

2. The tax and civil penalty pursuant to subdivision 1 to pay the tax in lieu of reapplying, provided payment of the tax is made within 45 days following the 30 days

specified in subdivision 1 and is accompanied by a civil penalty of \$100 or 25 percent of such tax, whichever is greater.

Such civil penalties collected by the Board shall be deposited in accordance with § 4.1-116.

§ 4.1-244. Applications for tobacco retail permits; fees.

A. Every person intending to apply for a tobacco retail permit shall file with the Board an application on forms provided by the Board and a statement in writing by the applicant swearing and affirming that all of the information contained therein is true.

B. Each applicant shall pay the required application fee at the time the application is filed. Each tobacco retail permit application fee shall be \$100. (NOTE – Should the fee be “graduated,” based upon the prior year’s reported tobacco product sales? i.e. - If a small retailer, a relatively low fee. If a large retailer, a proportionally greater application fee. Would provide revenue proportionate to the requirements of regulating retailers of very different sales volume / sizes.) Application fees shall be in addition to the state permit fee required pursuant to § 4.1-245 and shall not be refunded.

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

§ 4.1-245. Fees on tobacco retail permits.

A. The annual fees on tobacco retail permits shall be as follows:

1. For tobacco retail permittees holding an Other Tobacco Products (OTP) Distributor's License from the Department of Taxation, (NOTE – Recommend removal of the following sentence, as leaving this in would effectively take most cigarette retailers out of the pool:) ~~Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale from the Department of Taxation~~, Cigarette Stamping Agent License from the Department of Taxation, or any license at the permitted premises issued pursuant to this subtitle, \$0.

2. For any other tobacco retail permittees, \$400. (NOTE – Recommend replacing this flat rate with a “graduated” set of rates based upon the prior year’s reported tobacco product sales. i.e. - If a small retailer, a relatively low fee (\$400). For larger

retailers, proportionally greater application fees (\$600 - \$1,000). Would provide revenue proportionate to the requirements of regulating retailers of very different sales volume / sizes.)

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

C. In addition to the fees set forth in this section, a fee of \$5 may be imposed on any tobacco retail permit purchased in person from the Board if such tobacco retail permit is available for purchase online.

§ 4.1-246. Records of tobacco retail permittees; inspection of records and place of business.

The Board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth and to the premises where tobacco products are offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices, and accounts therein.

For purposes of a Board inspection of the records of any tobacco retail permittee, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the tobacco retail permittee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the tobacco retail permittee is open to the public. At any other time of day, if the tobacco retail permittee's records are not available for inspection, the retailer shall provide the records to a special agent of the Board within 24 hours after a request is made to inspect the records.

§ 4.1-247. Conditions under which Board may refuse to grant tobacco retail permits.

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

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

- a. Is not 21 years of age or older;
- b. Has been convicted in any court of a felony or any crime or offense involving moral turpitude under the laws of any state or of the United States;
- c. Has been convicted, within the five years immediately preceding the date of the application for such license, of a violation of any law applicable to the manufacture, transportation, possession, use, or sale of tobacco products;
- d. Is not a person of good moral character and repute;
- e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business that have not been disclosed;
- f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business proposed to be permitted;
- g. Has demonstrated, either by his police record or by his record as a former licensee or permittee of the Board, a lack of respect for law and order;
- h. Has misrepresented a material fact in applying to the Board for a tobacco retail permit;
- i. Has defrauded or attempted to defraud the Board, or any federal, state, or local government or governmental agency or authority, by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of a material fact, or has willfully deceived or attempted to deceive the Board, or any federal, state, or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation that are false and fraudulent;
- j. Violates or allows the violation of any provision of this article or Article 4 (§ 4.1-355 et seq.) of Chapter 3 in his establishment in the one year prior to application for a retail tobacco permit or while his application for a retail tobacco permit is pending;
- k. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located;
- l. Is physically unable to carry on the business for which the application for a tobacco retail permit is filed or has been adjudicated incapacitated; or
- m. Is a member, agent, or employee of the Board.

2. The place to be occupied by the applicant:

a. Does not conform to the requirements of the governing body of the county, city, or town in which such place is located with respect to sanitation, health, construction, or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulation;

b. Is so located that granting a permit and operation thereunder by the applicant would result in violations of this subtitle, Board regulations, or violation of the laws of the Commonwealth or local ordinances relating to peace and good order;

c. Is so located with respect to any church; synagogue; hospital; public, private, or parochial school or an institution of higher education; public or private playground or other similar recreational facility; or any state, local, or federal government-operated facility that the operation of such place under such permit will adversely affect or interfere with the normal, orderly conduct of the affairs of such facilities or institutions;

*d. Is so located with respect to any residence or residential area that the operation of such place under such permit will adversely affect real property values or substantially interfere with the usual quietude and tranquility of such residence or residential area;
or*

e. Under a retail on-premises license is so constructed, arranged, or illuminated that law-enforcement officers and special agents of the Board are prevented from ready access to and reasonable observation of any room or area within which tobacco products are to be sold.

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

4. The Board is not authorized under this chapter to grant such permit.

5. The Applicant is found by the Board, VA Tax or Agents of the Attorney General's Office to have exceeded the legal volume limits provided in § 58.1-1017.1 during the prior year. (EXPLANATION – retailer and PACT Act Records clearly indicating large-volume purchases/possession without possessing an ST-10C should provide the Board with the option of refusing to grant a tobacco retail permit.)

6. The Applicant has had cigarette inventory seized by Investigators of the Attorney General per VA Code § 2.2-509.1 during the prior year. (EXPLANATION – retailers selling contraband cigarettes are subject to product seizure by OAG Investigators,

and this should be a basis for the Board having the option of refusing to grant a tobacco retail permit.)

7. The Applicant is found to have sold liquid nicotine or nicotine vapor product that has not been Certified as required under VA Code § 59.1-293.16 during the prior year. (EXPLANATION – the sale of contraband LN/NVP should be a basis for the Board having the option of refusing to grant a tobacco retail permit.)

§ 4.1-248. Conditions under which Board shall refuse to grant tobacco retail permits.

The Board shall refuse to grant any tobacco retail permit authorized by this chapter until the permit fee required by § 4.1-245 is paid to the Board.

§ 4.1-249. Notice and hearings for refusal to grant tobacco retail permits; Administrative Process Act; exceptions.

A. The action of the Board in granting or in refusing to grant any tobacco retail permit shall be subject to review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), except as provided in subsections B and C. Review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

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

- 1. Permit for the applicant has been refused or revoked within a period of 12 months;*
- 2. Permit for any premises has been refused or revoked at that location within a period of 12 months;*
- 3. Applicant, within a period of 12 months immediately preceding, has permitted a permit granted by the Board to expire for nonpayment of permit fee, and at the time of expiration of such permit, there was a pending and unadjudicated charge, either before the Board or in any court, against the permittee alleging a violation of this article; or*
- 4. Applicant has received a restricted permit and reapplies for a lesser-restricted permit at the same location within 12 months of the date of the issuance of the restricted permit.*

C. If an applicant has permitted a permit to expire for nonpayment of permit fee, and at the time of expiration there remained unexecuted any period of suspension imposed

upon the permittee by the Board, the Board may refuse a hearing on an application for a new permit until after the date on which the suspension period would have been executed had the permit not have been permitted to expire.

§ 4.1-250. Grounds for which Board may suspend or revoke tobacco retail permits.

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

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

a. Has misrepresented a material fact in applying to the Board for such permit;

b. Within the five years immediately preceding the date of the hearing held in accordance with § 4.1-252, has (i) been convicted of a violation of any law, ordinance, or regulation of the Commonwealth, of any county, city, or town in the Commonwealth, of any state, or of the United States, applicable to the manufacture, transportation, possession, use, or sale of tobacco products; (ii) violated any provision of this article; (iii) violated or failed or refused to comply with any regulation, rule, or order of the Board; (iv) failed or refused to comply with any of the conditions or restrictions of the tobacco retail permit granted by the Board; or (v) violated or failed or refused to comply with Article 4 (§ 4.1-355 et seq.) of Chapter 3;

c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state or of the United States;

d. Is not the legitimate owner of the business conducted under the permit granted by the Board, or other persons have ownership interests in the business that have not been disclosed;

e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the permit granted by the Board;

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

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

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

i. Has possessed any illegal gambling apparatus, machine, or device upon the permitted premises;

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

k. Has failed to take reasonable measures to prevent (i) the permitted premises, (ii) any premises immediately adjacent to the permitted premises that are owned or leased by the permittee, or (iii) any portion of public property immediately adjacent to the permitted premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-346 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety; or

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

2. The place occupied by the permittee:

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

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

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

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

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

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

6. Any other cause authorized by this article.

7. The permittee is found by the Board, VA Tax or Agents of the Attorney General's Office to have exceeded the legal volume limits provided in § 58.1-1017.1 during the prior year. (EXPLANATION – retailer and PACT Act Records clearly indicating large-volume purchases/possession without possessing an ST-10C should provide the Board with the option of suspending or revoking a tobacco retail permit.)

8. The permittee has had cigarette inventory seized by Investigators of the Attorney General per VA Code § 2.2-509.1 during the prior year. (EXPLANATION – retailers selling contraband cigarettes are subject to product seizure by OAG Investigators, and this should be a basis for the Board having the option of suspending or revoking a tobacco retail permit.)

9. The permittee is found to have sold liquid nicotine or nicotine vapor product that has not been Certified as required under VA Code § 59.1-293.16 during the prior year. (EXPLANATION – the sale of contraband LN/NVP should be a basis for the Board having the option of suspending or revoking a tobacco retail permit.)

§ 4.1-251. Grounds for which Board shall suspend or revoke tobacco retail permits.

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

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

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

§ 4.1-252. Suspension or revocation of tobacco retail permits; notice and hearings; imposition of penalties.

A. Except for temporary tobacco retail permits issued pursuant to § 4.1-254, before the Board may impose a civil penalty or suspend or revoke any tobacco retail permit, reasonable notice of such proposed or contemplated action shall be given to the permittee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the permittee, permit the permittee to inspect and copy or photograph all (i) written or recorded statements made by the permittee or copies thereof or the substance of any oral statements made by the permittee or a previous or present employee of the permittee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the permittee and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the permittee. In addition, any subpoena for the production of documents issued to any person at the request of the permittee or the Board pursuant to § 4.1-103 shall provide for the

production of the documents sought within 10 working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the permittee after a written request, the Board shall be prohibited from introducing into evidence any items the permittee would have lawfully been entitled to inspect or copy under this section.

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

B. In suspending any tobacco retail permit, the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the permittee pay the cost incurred by the Board in investigating the permittee and in holding the proceeding resulting in such suspension, or it may impose and collect such civil penalties as it deems appropriate. In no event shall the Board impose a civil penalty exceeding \$2,000 for the first violation occurring within five years immediately preceding the date of the violation or \$5,000 for the second violation occurring within five years immediately preceding the date of the second violation. However, if the violation involved selling tobacco products to a person prohibited from purchasing tobacco products, the Board may impose a civil penalty not to exceed \$3,000 for the first violation occurring within five years immediately preceding the date of the violation and \$6,000 for a second violation occurring within five years immediately preceding the date of the second violation in lieu of such suspension or any portion thereof, or both. The Board may also impose a requirement that the permittee pay for the cost incurred by the Board not exceeding \$25,000 in investigating the permittee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.

C. Following notice to (i) the permittee of a hearing that may result in the suspension or revocation of his permit or (ii) the applicant of a hearing to resolve a contested application, the Board may accept a consent agreement as authorized in subdivision 21 of § 4.1-103. The notice shall advise the permittee or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq.); and (c) (1) accept the proposed restrictions for operating under the permit, (2) accept the period

of suspension of the permitted privileges within the Board's parameters, (3) pay a civil penalty in lieu of the period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

D. The Board may, by regulation or written order:

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

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

3. Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and

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

E. Notwithstanding any provisions to the contrary in this section or in Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act, tobacco retail permittees shall be subject to the provisions of § 4.1-225.1.

§ 4.1-253. Suspension or revocation; disposition of tobacco products on hand; termination.

A. Tobacco products (NOTE – shouldn't "Tobacco products" in this sentence be changed to "Legal-for-sale tobacco products" or "Non-contraband tobacco products?" If not, we are authorizing the sale of illegal product here. Any such illegal product should be disposed of via seizure in accordance with VA Code § 19.2-386.23.) owned by or in possession of, or for sale by, any retail tobacco permittee at the time the retail tobacco permit of such person is suspended or revoked may be disposed of as follows:

1. Sold by such person to the Board at prices and terms agreed upon by the Board and such person;

2. Sold to persons in the Commonwealth permitted to sell such tobacco products; or

3. Upon permits granted by the Board and conditions specified by the Board, sold to persons outside the Commonwealth for resale outside the Commonwealth upon permits granted by the Board.

B. Upon permits granted by the Board and upon payment of any excise tax due thereon, tobacco products owned and in possession of, or either, or for sale by, any tobacco retail permittee at the time the license of such person is suspended or revoked may be sold to any person authorized to purchase the same for resale.

C. All tobacco products owned by or in possession of any person whose tobacco retail permit is suspended or revoked shall be disposed of by such person in accordance with the provisions of this section within 60 days from the date of such suspension or revocation.

D. Tobacco products owned by, or in possession of, or for sale by persons whose tobacco retail permits have been terminated other than by suspension or revocation may be disposed of in accordance with subsection A or B within such time as the Board deems proper. Such period shall not be less than 60 days.

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

§ 4.1-254. Continuation of tobacco retail permittee operations in certain instances; temporary permits.

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

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

2. Any person who, through contract, lease, concession, license, management or similar agreement (hereinafter referred to as the contract), becomes lawfully entitled to the use and control of the premises of a person permitted as a tobacco retailer by the

Board to continue to operate the establishment to the same extent as a person holding such tobacco retail permits, provided such person has made application to the Board for a tobacco retail permit at the same premises. The temporary permit shall (i) confer the privileges of any tobacco retail permits held by the previous owner to the extent determined by the Board and (ii) be valid for a period of 120 days or for such longer period as may be necessary as determined by the Board pending the completion of the processing of the temporary permittee's tobacco retail permit application. No temporary permit shall be issued without the written consent of the previous tobacco retail permittee. No temporary permit shall be issued under the provisions of this subdivision if the previous tobacco retail permittee owes any state or local taxes, or has any pending charges for violation of this subtitle or any Board regulation, unless the temporary permittee agrees to assume the liability of the previous tobacco retail permittee for the taxes or any penalty for the pending charges. An application for a temporary permit may be filed prior to the effective date of the contract, in which case the temporary permit when issued shall become effective on the effective date of the contract. Upon the effective date of the temporary permit, (a) the temporary permittee shall be responsible for compliance with the provisions of this subtitle and any Board regulation and (b) the previous tobacco retail permittee shall not be held liable for any violation of this subtitle or any Board regulation committed by, or any errors or omissions of, the temporary permittee.

B. Every application for a temporary permit granted pursuant to this section shall be on a form provided by the Board. The fee for a temporary permit shall be one-twelfth of the combined tobacco retail permit application fee and tobacco retail permit fee computed to the nearest cent and multiplied by the number of months for which the permit is granted.

C. The decision to refuse to grant a temporary permit shall not be subject to a hearing. A temporary permit may be revoked summarily by the Board for any cause set forth in § 4.1-250 without complying with subsection A of § 4.1-252. Revocation of a temporary permit shall be effective upon service of the order of revocation upon the permittee or upon the expiration of three business days after the order of the revocation has been mailed to the permittee at either his residence or the address given for the business in the license application. No further notice shall be required.

§ 4.1-255. Tobacco products underage decoy operations; frequency.

For each tobacco retail permittee, the Board shall conduct an unannounced underage decoy operation at least once every 24 months to verify that the tobacco retail permittee is not selling retail tobacco products to persons under 21 years of age. If the Board determines, subject to §§ 4.1-250 and 4.1-252, that the tobacco retail permittee has violated § 4.1-357, the Board shall conduct an additional underage decoy operation of

the tobacco retail permittee within six months of a board order substantiating such violation.

Article 4.

Tobacco Products.

§ 4.1-355. *Illegal sale of tobacco products in general; penalty.*

Any person who is not a tobacco retail permittee who sells any tobacco product except as permitted by this subtitle or, for manufacturers or distributors licensed by the Department of Taxation, sold for resale pursuant to Title 58.1, is guilty of a Class 1 misdemeanor.

§ 4.1-356. *Purchase of tobacco products from person not authorized to sell; penalty.*

Any person who buys tobacco products from any person other than a person authorized under this subtitle or Title 58.1 to sell tobacco products is guilty of a Class 1 misdemeanor.

§ 4.1-357. *Persons to whom tobacco products may not be sold; proof of legal age; civil penalty.*

A. No person shall sell any tobacco products to any individual when at the time of such sale the person knows or has reason to believe that the individual to whom the sale is made is younger than 21 years of age. No person shall sell tobacco products from a vending machine.

B. No person shall sell a tobacco product to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 21 years of age.

Before a tobacco retail permittee may sell tobacco products, other than cigar and pipe tobacco products as defined in § 58.1-1021.01, to any consumer, the person selling, offering for sale, giving, or furnishing the tobacco products shall verify that the consumer is of legal age by examining from any person who appears to be under 30 years of age a government-issued photographic identification that establishes that the person is of legal age or verifying the identification presented using identification fraud detection software, technology, or a scanner that confirms the authenticity of such identification.

This subsection shall not apply to mail order or Internet sales, provided that the person offering the retail tobacco product or hemp product intended for smoking for sale through mail order or the Internet (i) prior to the sale of the retail tobacco product or hemp product intended for smoking verifies that the purchaser is at least 21 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the retail tobacco product or hemp product intended for smoking will be released to the purchaser.

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

§ 4.1-358. Prohibiting possession of retail tobacco products and hemp products intended for smoking by a person younger than 21 years of age; seizure.

A. No person younger than 21 years of age shall possess any retail tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, except that, for purposes of this section, "retail tobacco product" includes 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. The provisions of this section shall not be applicable to the possession of retail tobacco products or hemp products intended for smoking by a person younger than 21 years of age (i) making a delivery of retail tobacco products or hemp products intended for smoking in pursuance of his employment or (ii) as part of a scientific study being conducted by an organization for the purpose of medical research to further efforts in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such medical research has been approved by an institutional review board pursuant to applicable federal regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. This subsection shall not apply to the possession of any retail tobacco product or hemp product intended for smoking by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

B. Any retail tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, possessed in violation of this section shall be deemed contraband and may be seized by a law-enforcement officer. Any such product, the lawful possession of which is not established, seized by such officer shall be forfeited and disposed of according to the process described in subdivision A 2 of § 19.2-386.23.

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

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

§ 4.1-359. Purchasing tobacco products for one to whom they may not be sold; penalty; forfeiture.

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

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

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

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

Any locality may by ordinance regulate the retail sale locations of **retail** tobacco products, **nicotine vapor products, alternative nicotine products,** as such **terms are** **is** defined in § 18.2-371.2, or hemp products intended for smoking, as such term is defined in § 3.2-4112, for any such retail sale location and may prohibit a retail sale location on property within 1,000 linear feet of a child day center as defined in § 22.1-289.02 or a public, private, or parochial school. An ordinance adopted pursuant

to this section shall not affect (i) a licensee holding a valid license under § 4.1-206.3 or (ii) any retail sale location of **retail** tobacco products, **nicotine vapor products, alternative nicotine products,** or hemp products intended for smoking operating before July 1, 2024.

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

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

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

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

Before a retail dealer may sell retail tobacco products, other than cigar and pipe tobacco products as defined in § 58.1-

1021.01; to any consumer, the person selling, offering for sale, giving, or furnishing the retail tobacco products shall verify that the consumer is of legal age by examining from any person who appears to be under 30 years of age a government-issued photographic identification that establishes that the person is of legal age or, if required pursuant to subdivision C 4 b of § 58.1-

1021.04:1 or subdivision B 2 b of § 59.1-

293.12; verifying the identification presented using identification fraud detection software, technology, or a scanner that confirms the authenticity of such identification.

This subsection shall not apply to mail order or Internet sales, provided that the person offering the **retail tobacco product or** hemp product intended for smoking for sale through mail order or the Internet (i) prior to the sale of the retail tobacco product or hemp product intended for smoking verifies that the purchaser is at least 21 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the **retail tobacco product or** hemp product intended for smoking will be released to the purchaser.

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

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

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

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

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services 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 \$500. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

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

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

retailer selling retail tobacco products shall be subject to the *permitting*, enforcement and compliance provisions of *Article 4 (§ 4.1-241 et seq.)* of Chapter *23-2 (§ 59.1-293.10 et seq.)* 2 of Title *59.1 4.1*.

G. As used in this section:

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

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

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

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

§ 18.2-371.2:1. Prohibiting possession of retail tobacco products and hemp products intended for smoking by a person younger than 21 years of age; seizure.

A. No person younger than 21 years of age shall possess any retail tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, except that, for purposes of this section, "retail tobacco product" includes 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. The provisions of this section shall not be applicable to the possession of retail tobacco products or hemp products intended for smoking by a person younger than 21 years of age (i) making a delivery of retail tobacco products or hemp products intended for smoking in pursuance of his employment or (ii) as part of a scientific study being conducted by an organization for the purpose of medical research to further efforts in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such medical research has been approved by an institutional review board pursuant to applicable federal regulations or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. This subsection shall not apply to the possession of any retail tobacco product or hemp product intended for smoking by a law enforcement officer or his agent when the same is necessary in the performance of his duties.

B. Any retail tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, possessed in violation of this section shall be deemed contraband and may be seized by a law-enforcement officer. Any such product, the lawful possession of which is not established, seized by such officer shall be forfeited and disposed of according to the process described in subdivision A 2 of § 19.2-386.23.

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

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

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

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

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

applicant is a corporation, the name and address of each of its principal officers shall be provided;

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

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

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

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

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

costs as of June 30 in even-numbered years shall be reported to the State Treasurer and deposited into the state treasury.

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

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

~~C. 1. No person shall engage in the business of selling or dealing liquid nicotine or nicotine vapor products or who ships or transports liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or retail dealer in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a manufacturer's, distributor's, or retail dealer's liquid nicotine and nicotine vapor pr~~

products license shall be accompanied by a fee to be prescribed by the Department. Any retail dealer who holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products (OTP) Distributor's License issued by the Department shall not be required to obtain a license under this subsection. Every application for such liquid nicotine and nicotine vapor products license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

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

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

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

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

2. The Department shall conduct a background investigation, to include a Virginia criminal history records search of the applicant, or the responsible principals and managers of liquid nicotine and nicotine vapor products at the licensable locations that shall be submitted to the Federal Bureau of Investigation if the Department deems a national criminal records search necessary, on applicants for licensure as a liquid nicotine and nicotine vapor products manufacturer, distributor, or retailer, as applicable. The Department may refuse to issue a license or may suspend, revoke, or refuse to renew a license issued to any person, partnership, corporation, limited liability company, or business trust if it determines that the principals and managers at the licensable location of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, tax evasion, or racketeering; or (iii) convicted of a felony within the last five years. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application for a license to the Department is guilty of a Class 4 misdemeanor. The Department may establish an application or renewal fee to be retained by the Department to be applied to the administrative and other costs of processing license applications, conducting background investigations, and issuing licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even-numbered years shall be reported to the State Treasurer and deposited into the state treasury.

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

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

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

b. For a second violation in a 36-month period, a penalty of no less than \$5,000 and a 30-day suspension of the liquid nicotine and nicotine vapor products license. If the person is found to be in violation of clause (i) of this subdivision 4, such person shall be required to verify that any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's government-issued photographic identification using fraud detection software, technology, or a scanner that confirms the authenticity of such identification; and

c. For a third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the liquid nicotine and nicotine vapor products license, and ineligibility to possess a liquid nicotine and nicotine

~~e vapor products license for a period of three years from the date of the most recent violation.~~

~~5. No person inside or outside the Commonwealth shall make a retail sale of liquid nicotine and nicotine vapor products without verifying that the consumer is of legal age by examining from any person who appears to be under 30 years of age a government-issued photographic identification that establishes that the person is of legal age or providing for age verification through an independent age verification service that compares information available from a commercially available database, or aggregate of databases, that is regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is of age.~~

~~6. For any transaction between a distributor and a retail dealer involving liquid nicotine or nicotine vapor products, both the distributor and the retail dealer shall maintain and retain records of any invoice or sales receipt involved that shall include itemized lists of the types of products included in such transaction; the tax due on each product pursuant to subsection B of § 58.1-1021.02; and the total amount of taxes paid. Such records shall be produced and provided to the Department as necessary for auditing, compliance, and enforcement purposes.~~

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

§ 59.1-293.14. Tobacco Retail Enforcement Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco Retail Enforcement Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues accruing to the Fund pursuant to this article, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of funding

~~the Department of Taxation's direct and indirect costs of the license administration and enforcement program administered pursuant to Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 and the administrative costs of education a~~

nd training, retail inspections, and unannounced compliance checks in accordance with the provisions of §§ 59.1-293.12 and 59.1-293.13 Virginia Alcoholic Beverage Control Authority's direct and indirect costs of tobacco retail permit administration; enforcement program, including unannounced compliance checks; and administrative costs pursuant to Article 4 (§ 4.1-241 et seq.) of Chapter 2 of Title 4.1. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by ~~the Tax Commissioner~~ the Virginia Alcoholic Beverage Control Authority's Chief Executive Officer.

2. That §§ 58.1-1021.06 through 58.1-1021.09, 59.1-293.12, and 59.1-293.13 of the Code of Virginia are repealed.

3. That any tobacco retailer holding a valid Department of Taxation retail dealer's liquid nicotine and nicotine vapor license shall be able to continue to sell tobacco products at retail without the payment of any additional application or permit fee until the last day of the twelfth month next ensuing from its date of license issuance, provided that the tobacco retailer files its initial application with the Virginia Alcoholic Beverage Control Authority for a tobacco retail permit prior to January 1, 2026. On January 1, 2026, such retail dealer's liquid nicotine and nicotine vapor license shall become a Virginia Alcoholic Beverage Control Authority tobacco retail permit subject to Article 4 (§ 4.1-241 et seq.) of Chapter 2 of Title 4.1 of the Code of Virginia, as created by this act. Such tobacco retailer, when renewing its tobacco retail permit, shall at that time be subject to the permit fee assessed by § 4.1-245 of the Code of Virginia, as created by this act.

4. The Department of Taxation shall provide to the Virginia Alcoholic Beverage Control Authority a complete list of each place of business that has received a retail dealer's liquid nicotine and nicotine vapor license and the date each such license was issued.

5. That the provisions of the first, second, and third enactments of this act shall become effective on January 1, 2026, except that the Virginia Alcoholic Beverage Control Authority is authorized to begin accepting applications for tobacco retail permits in accordance with the provisions of Article 4 (§ 4.1-241 et seq.) of Chapter 2 of Title 4.1 of the Code of Virginia, as created by this act, on October 1, 2025.

6. That the Virginia Alcoholic Beverage Control Authority (the Authority) may promulgate regulations implementing the provisions of this act. The Authority's initial adoption of such regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Authority shall provide an opportunity for public comment on the regulations prior to adoption.

