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HOUSE BILL NO. 685

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 4.1-116, 18.2-371.2, 18.2-391, 22.1-79.5, 22.1-206, 22.1-279.6, and 59.1-293.10 of the Code of Virginia and to amend the Code of Virginia by adding in Title 4.1 a chapter numbered 5.1, consisting of sections numbered 4.1-550 through 4.1-555, relating to tobacco retail licensing; penalties.*

 Patron—Hope

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-116, 18.2-371.2, 18.2-391, 22.1-79.5, 22.1-206, 22.1-279.6, and 59.1-293.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 4.1 a chapter numbered 5.1, consisting of sections numbered 4.1-550 through 4.1-555, as follows:

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

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

2. All moneys so paid into the state treasury, less the net profits determined pursuant to subsection C, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and; (ii) all costs and expenses incurred in establishing and maintaining government stores and in the administration of the provisions of this title, including the purchasing, building, leasing and operation of distilleries and the manufacture of alcoholic beverages; and (iii) all direct and indirect costs and expenses incurred in the administration of licenses and enforcement of laws under Chapter 5.1 (§ 4.1-550 et seq.), which shall be accounted for from the Tobacco Retail Administration Subfund as provided in subdivision 3.

3. There is hereby created in the state treasury, as a subfund of the Enterprise Fund, a special nonreverting fund to be known as the Tobacco Retail Administration Subfund, referred to in this section as "the Subfund." The Subfund shall be established on the books of the Comptroller. The Subfund shall consist of all funds appropriated to it pursuant to subdivision 2. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes of funding the Department's direct and indirect costs of the administration of licenses and enforcement of laws under Chapter 5.1 (§ 4.1-550 et seq.), including the administrative costs of reviewing applications, issuing licenses, education and training, and any other requirements of Chapter 5.1. Expenditures and disbursements from the Subfund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Executive Officer of the Authority.

B. The net profits derived under the provisions of this title shall be transferred by the Comptroller to the general fund of the state treasury quarterly, within fifty days after the close of each quarter or as otherwise provided in the appropriation act. As allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration of this title and to provide for the depreciation on the buildings, plants and equipment owned, held, or operated by the Board.

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

CHAPTER 5.1.**REGISTRATION AND RESTRICTIONS FOR TOBACCO RETAILERS.****§ 4.1-550. Definitions.**

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

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

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

"Person" means any natural person.

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

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

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

68 **§ 4.1-551. Disposition of moneys collected by the Authority.**

69 All moneys collected by the Authority pursuant to this chapter shall be paid into the state treasury
70 according to the provisions of §§ 4.1-101.06 and 4.1-116.

71 **§ 4.1-552. License required for sale of tobacco products at retail; civil penalties.**

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

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

80 **§ 4.1-553. Application for license; penalty.**

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

85 1. The name and address of the applicant; if the applicant is a firm, partnership, or association, the
86 name and address of each of its members; if the applicant is a corporation, the name and address of
87 each of its principal officers;

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

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

90 4. Any other information as the Authority may require for the purpose of the administration of this
91 chapter.

92 B. The application process shall require an applicant to participate in, and provide for its
93 employees, education related to tobacco products as provided in § 4.1-555.

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

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

101 D. Unless an applicant or licensee maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et
102 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
103 Chapter 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, the applicant or licensee shall be
104 deemed to have appointed the clerk of the State Corporation Commission as the applicant's or licensee's
105 agent for the purpose of service of process relating to any matter or issue involving the applicant or
106 licensee and arising under the provisions of this chapter.

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

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

112 **§ 4.1-554. Revocation of licenses; restrictions on the sale of tobacco products to persons under 21
113 years of age; penalties.**

114 A. A licensee shall be required to comply with the provisions of this chapter; §§ 18.2-246.8,
115 18.2-246.10, and 18.2-371.2; and any other federal, state, or local law related to the sale of tobacco
116 products. If the Authority determines that a licensee has violated any such provision of law, the
117 Authority may revoke its license.

118 B. 1. If the Authority determines that a licensee violated § 18.2-371.2, the Authority shall impose and
119 the licensee shall be subject to (i) a civil penalty of \$500 for a first offense, (ii) a civil penalty of
120 \$1,000 for a second offense within 36 months, (iii) a civil penalty of \$1,500 and a suspension of the

licensee's license for 15 days for a third offense within 36 months, and (iv) a civil penalty of \$2,000, a revocation of the licensee's license, and a prohibition imposed on such person from applying for a license pursuant to this chapter for a period of three years for a fourth or subsequent offense within 36 months.

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

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

§ 4.1-555. Required education for licensees and employees.

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

1. The provisions of this chapter;
2. The prohibitions on the sale of tobacco products to persons under age 21 and other restrictions prescribed by §§ 18.2-246.8, 18.2-246.10, and 18.2-371.2;
3. Forms of identification that are acceptable as proof of age; and
4. The legal penalties that may be incurred for violation of the provisions of law identified in subdivisions 1 and 2.

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

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

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

B. No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, alternative nicotine products, or hemp products intended for smoking by a person less than 21 years of age (i) making a delivery of tobacco products, nicotine vapor products, alternative nicotine products, or hemp products intended for smoking in pursuance of his employment or (ii) as part of a scientific study being conducted by an organization for the purpose of medical research to further efforts in cigarette and tobacco use prevention and cessation and tobacco product regulation, provided that such medical research has been approved by an institutional review board pursuant to applicable federal regulations or by a research review committee pursuant to Chapter 5-1 (§ 32.1-162.16 et seq.) of Title 32.1. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

C. No person shall sell a tobacco product, nicotine vapor product, alternative nicotine product, or hemp product intended for smoking to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 21 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 21 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 21 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual *No such verification shall be required if such individual is at least 30 years of age. It shall not be a defense to a violation of this subsection that a purchaser appeared to be at least 30 years of age. If a buyer misrepresents his age through use of false identification, a licensee, as defined in § 4.1-550, or such licensee's agent or employee acting in his capacity as such licensee's agent or employee, may assert as an affirmative defense to a violation of this section that such licensee, agent, or employee reasonably relied on such proof of age, provided that such licensee, agent, or employee carefully checked a driver's license, a passport, or an identification card issued by the Commonwealth or any state of the United States, and such licensee, agent, or employee acted in good*

182 *faith and in reliance upon the representation that the buyer was at least 21 years of age.*

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

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

196 E. A violation of subsection A or C by an individual or by a separate retail establishment that
197 involves a nicotine vapor product; ~~alternative nicotine product; hemp product intended for smoking; or~~
198 ~~tobacco product other than a bidi~~ is punishable by a civil penalty not to exceed \$100 for a first
199 violation; a civil penalty not to exceed \$200 for a second violation; and a civil penalty not to exceed
200 \$500 for a third or subsequent violation.

201 C. A violation of subsection A or ~~C~~ B by an individual or by a separate retail establishment that
202 involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of
203 \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil
204 penalty in the amount of \$2,500 for a third or subsequent violation. ~~Where a defendant retail~~
205 ~~establishment offers proof that it has trained its employees concerning the requirements of this section;~~
206 ~~the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a~~
207 ~~retail establishment has failed to so train its employees; the court may impose a civil penalty not to~~
208 ~~exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving~~
209 ~~a nicotine vapor product; alternative nicotine product; hemp product intended for smoking; or tobacco~~
210 ~~product other than a bidi.~~

211 A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation
212 and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an
213 alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20
214 hours of community service for a first violation of subsection B and up to 40 hours of community
215 service for a second or subsequent violation. If the defendant fails or refuses to complete the community
216 service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the
217 judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8.

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

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

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

235 3. Any attorney for the county, city, or town in which an alleged violation of this subsection
236 occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The
237 civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to
238 the county, city, or town which instituted the action.

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

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

242 I. G. As used in this section:

243 "Alternative nicotine product" means any noncombustible product containing nicotine that is intended

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

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

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

"Hemp product" means the same as that term is defined in § 3.2-4112.

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

"Tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

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

§ 18.2-391. Unlawful acts; penalties.

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

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

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

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

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

305 by juveniles not admitted to any such premises.

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

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

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

317 F. A violation of subsection A, B, C, or D is a Class 1 misdemeanor. A person or separate retail
318 establishment who violates subsection E shall be liable for a civil penalty not to exceed \$100 for a first
319 violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed
320 \$500 for a third or subsequent violation.

321 **§ 22.1-79.5. Policy regarding tobacco products.**

322 Each school board shall develop and implement a policy to prohibit, at any time, the use and
323 distribution of any tobacco product or ~~nicotine vapor product~~, as those terms are defined in §
324 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

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

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

329 **§ 22.1-206. Instruction concerning drugs, alcohol, substance abuse, and tobacco products.**

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

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

336 C. The Virginia Foundation for Healthy Youth shall develop and the Department of Education shall
337 distribute to each local school division educational materials concerning the health and safety risks of
338 using tobacco products; ~~nicotine vapor products~~, and ~~alternative nicotine products~~, as such terms are
339 defined in § 18.2-371.2. Instruction concerning the health and safety risks of using tobacco products;
340 ~~nicotine vapor products~~, and ~~alternative nicotine products~~, as such terms are defined in § 18.2-371.2,
341 shall be provided in each public elementary and secondary school in the Commonwealth, consistent with
342 such educational materials.

343 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct;**
344 **school board regulations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 59.1-293.10. Definitions.

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

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

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

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

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