

Senate Calendar

TUESDAY, MARCH 14, 2023

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ACTION CALENDAR

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 14.

An act relating to Justice Reinvestment II reporting requirements.

Reported favorably with recommendation of amendment by Senator Vyhovsky for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 125 is amended to read:

§ 125. ~~JUSTICE REINVESTMENT II INITIATIVES~~ CRIMINAL JUSTICE INVESTMENTS AND TRENDS; REPORT

(a) Definitions. As used in this section:

(1) “Arrest” means when a person is seized by law enforcement, charged with the commission of an offense, and referred for prosecution.

(2) “Clearance” means the process by which a law enforcement agency closes an offense by arrest or exceptional means in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

(3) “Desistance” means the process by which criminality, or the individual risk for antisocial conduct, declines over the life-course of the individual, generally after adolescence.

(4) “Exceptional means” means the death of the offender, the victim’s refusal to cooperate with the prosecution after the offender is identified, the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense, or other circumstance in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

(5) “Recidivism” has the same meaning as in section 4 of this title.

(b) Report.

(1) ~~On or before January~~ November 15 each year, 2024 and every three years thereafter, the ~~Commissioner of Corrections~~ Vermont Statistical Analysis

Center (SAC), in consultation with the Commissioners of Corrections, of Health, of Mental Health, of Public Safety, of Labor, and for Children and Families and; the Attorney General; the Chief Superior Judge of the Superior Court; the Division of Racial Justice Statistics; and the Parole Board Director, shall submit a report to the House Committees on Appropriations and on Corrections and Institutions and, the Senate Committees on Appropriations and on Judiciary detailing the expenditures on Justice Reinvestment II and the following related initiatives:

~~(1) funding for domestic violence intervention programming in the Department of Corrections;~~

~~(2) funding for offender transitional housing capacity with the Department of Corrections and other departments;~~

~~(3) funding for the Department of Correction's data collection Offender Management System;~~

~~(4) funding for community-based mental health and substance use services for individuals under Department of Corrections supervision;~~

~~(5) funding provided for diversion and restorative justice programs including community justice centers, court diversion, and balanced and restorative justice (BARJ); and~~

~~(6) funding and a description of any other General Fund expenditures for Justice Reinvestment II initiatives., the Joint Legislative Justice Oversight Committee, and the Executive Director of the Office of Racial Equity examining the trends associated with Vermont's criminal justice-related investments and expenditures since the last report was submitted pursuant to this section.~~

(2) The report required pursuant to subdivision (1) of this section shall include data showing:

(A) recidivism rates;

(B) clearance rates;

(C) evidence of desistance, including successful completion of community supervision;

(D) returns to incarceration from community supervision with the following relevant data points:

(i) community supervision type, classified by probation, parole, and furlough;

(ii) an indication if a return was for a violation or a new charge, including the crime type;

(iii) an indication if a violation was classified as “significant/not violent” or “significant and violent” for any applicable statuses; and

(iv) all available demographic information.

(E) bail rates, including detainees held without bail, detainees held with bail and the associated monetary amounts, and bailees who post bail and are released;

(F) pretrial detainees held in Vermont correctional facilities, including the crime type and jurisdiction for which they are held;

(G) the funding for, and utilization of, substance use, mental health, educational, and vocational initiatives for incarcerated individuals; and

(H) the funding for, and utilization by, individuals served through Justice Reinvestment II and related initiatives, including:

(i) domestic violence intervention programming in the Department of Corrections, including the results from the evaluation framework between the Vermont Network Against Domestic and Sexual Violence and the University of Nebraska;

(ii) offender transitional housing capacity with the Department of Corrections and other departments;

(iii) advancements to the Department of Corrections’ data collection Offender Management System;

(iv) agencies, departments, municipalities, programs, and services employing restorative justice principles, including community justice centers;

(v) other General Fund expenditures for Justice Reinvestment II initiatives;

(vi) the Department of Corrections’ out-of-state beds contracted by the Department and the average cost per bed in fiscal year 2019 and for each fiscal year thereafter; and

(vii) the Department of Corrections’ in-state beds, separated by gender, including specialty units and units closed or unavailable in fiscal year 2019 and for each fiscal year thereafter.

~~(b) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.~~

(c) Informational availability.

(1) The information required pursuant to subsection (b) of this section shall include race, gender, age, and other demographic variables whenever possible.

(2) The report required pursuant to subsection (b) of this section shall explain any obstacles or impediments to the availability and collectability of data required pursuant to this section, including whether collecting certain data would put particular populations at risk, along with the substance use and mental health needs and educational and vocational status of justice-involved individuals.

(d) Data sharing. Notwithstanding any provision of law to the contrary, all State and local agencies and departments that possess the data necessary to compile the report required pursuant to this section shall, upon request, provide SAC with any data that it determines is relevant to the report. The obligation to disclose shall supersede any other legal obligation with respect to the data required pursuant to this section, and a department, agency, or other entity shall not decline to disclose data required based on any other purported legal obligation.

(e) Confidentiality. Any data or records transmitted to or obtained by SAC are exempt from public inspection and copying under the Public Records Act and shall be confidential to the extent required by law unless and until the data or records are included in the report required by this section. A State or local agency or department that transmits data or records to SAC shall be the sole records custodian for purposes of responding to requests for the data or records. SAC may direct any request for these data or records to the transmitting agency or department for response.

Sec. 2. SUNSET OF REPORT

28 V.S.A. § 125 is repealed on July 1, 2028.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to a report on criminal justice-related investments and trends.

(Committee vote: 5-0-0)

S. 95.

An act relating to banking and insurance.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended as follows:

First: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4173, in subsection (b), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) This chapter shall provide coverage to a person specified in subsection (a) of this section for a policy or contract of direct, nongroup life insurance, health insurance, which for purposes of this chapter includes health maintenance organization subscriber contracts and certificates, an annuity, or a certificate under a direct group policy or contract, and supplemental policies or contracts to any of these, and for an unallocated annuity contract, in each case, issued by a member insurer, except as limited by this chapter. An annuity contract or certificate under a group annuity contract includes a guaranteed investment contract, guaranteed interest contract, guaranteed accumulation contract, deposit administration contract, unallocated funding agreement, allocated funding agreement, structured settlement annuity, annuity issued to or in connection with a government lottery, and any immediate or deferred annuity contract.

Second: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4173, in subdivision (b)(2)(K), by striking out the words “an affiliated member insurer” and inserting in lieu thereof the words an affiliate of a member insurer

Third: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4176, in subsection (b), in the second sentence, by striking out the word “or” and inserting in lieu thereof the word of

Fourth: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4178, in subdivision (n)(1)(C)(i), in the second sentence, by striking out the word “receiver” and inserting in lieu thereof the word liquidator

Fifth: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4184, in subdivision (e)(1), in the second sentence, by striking out the word “policyholders” and inserting in lieu thereof the word policyowners

Sixth: By adding a new Sec. 10 and Secs. 11 and 12 to read as follows:

Sec. 10. 8 V.S.A. § 7033 is amended to read:

§ 7033. INJUNCTIONS AND ORDERS

(a) A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining

orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (1) the transaction of further business;
- (2) the transfer of property;
- (3) interference with the receiver or with a proceeding under this chapter;
- (4) waste of the insurer's assets;
- (5) dissipation and transfer of bank accounts;
- (6) the institution or further prosecution of any actions or proceedings;
- (7) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;
- (8) the levying of execution against the insurer, its assets or its policyholders;
- (9) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (10) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
- (11) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(b) The receiver may apply to a court outside the State for the relief described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, subsection 7054(a) of this title, or any other provision of this chapter to the contrary, no person, for more than 10 days, shall be restrained, stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action under any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank is a party.

(d) A federal home loan bank exercising its rights regarding collateral pledged by an insurer-member shall, within seven days after receiving a redemption request made by the insurer-member, repurchase any of the insurer-member's outstanding capital stock in excess of the amount the insurer-member must hold as a minimum investment. The federal home loan

bank shall repurchase the excess outstanding capital stock only to the extent that it determines in good faith that the repurchase is both of the following:

(1) permissible under federal laws and regulations and the federal home loan bank's capital plan; and

(2) consistent with the capital stock practices currently applicable to the federal home loan bank's entire membership.

(e) Not later than 10 days after the date of appointment of a receiver in a proceeding under this chapter involving an insurer-member of a federal home loan bank, the federal home loan bank shall provide to the receiver a process and timeline for the following:

(1) the release of any collateral held by the federal home loan bank that exceeds the amount that is required to support the secured obligations of the insurer-member and that is remaining after any repayment of loans, as determined under the applicable agreements between the federal home loan bank and the insurer-member;

(2) the release of any collateral of the insurer-member remaining in the federal home loan bank's possession following repayment in full of all outstanding secured obligations of the insurer-member;

(3) the payment of fees owed by the insurer-member and the operation, maintenance, closure, or disposition of deposits and other accounts of the insurer-member, as mutually agreed upon by the receiver and the federal home loan bank; and

(4) any redemption or repurchase of federal home loan bank stock or excess stock of any class that the insurer-member is required to own under agreements between the federal home loan bank and the insurer-member.

(f) Upon the request of a receiver appointed in a proceeding under this chapter involving a federal home loan bank insurer-member, the federal home loan bank shall provide to the receiver any available options for the insurer-member to renew or restructure a loan. In determining which options are available, the federal home loan bank may consider market conditions, the terms of any loans outstanding to the insurer-member, the applicable policies of the federal home loan bank, and the federal laws and regulations applicable to federal home loan banks.

(g) As used in this section, "federal home loan bank" means an institution chartered under the "Federal Home Loan Bank Act of 1932," 12 U.S.C. 1421, et seq. and "insurer-member" means a member of the federal home loan bank in question that is an insurer.

Sec. 11. 8 V.S.A. § 7065 is amended to read:

§ 7065. FRAUDULENT TRANSFERS PRIOR TO PETITION

(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and except that a purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The Court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

* * *

(e) Notwithstanding subsection (a) of this section, section 7066 of this title, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party, that is made, incurred, or assumed prior to or after the filing of a successful petition for rehabilitation or liquidation under this chapter, or otherwise would be subject to avoidance under this section or section 7066 of this title; provided, however, that a transfer may be avoided under this section or section 7066 of this title if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Sec. 12. 8 V.S.A. § 7067 is amended to read:

§ 7067. VOIDABLE PREFERENCES AND LIENS

(a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable

the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if:

(A) the insurer was insolvent at the time of the transfer of property;

(B) the transfer of property was made within four months before the filing of the petition;

(C) the creditor receiving it or to be benefited by it or the creditor's agent acting with reference to it had, at the time when the transfer of property was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) the creditor receiving transferred property was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position, or any shareholder holding directly or indirectly more than five per centum of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, ~~he or she~~ the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by ~~him or her~~ the purchaser or lienor. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(4) Notwithstanding subdivision (2) of this section, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any preference arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party.

* * *

And by renumbering the remaining section to be numerically correct.

(Committee vote: 6-0-1)

NOTICE CALENDAR

Committee Bill for Second Reading

Favorable

S. 99.

An act relating to miscellaneous changes to laws related to vehicles.

By the Committee on Transportation. (Sen. Chittenden for the Committee.)

Reported favorably by Senator Chittenden for the Committee on Finance.

(Committee vote: 6-0-1)

Second Reading

Favorable with Recommendation of Amendment

S. 18.

An act relating to banning flavored tobacco products and e-liquids.

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Tobacco use is costly. Vermont spends more than \$400 million annually to treat tobacco-caused illnesses, including more than \$90 million each year in Medicaid expenses. This translates into a tax burden each year of over \$1,000 per Vermont household. Smoking-related productivity losses add another \$576 million in additional costs each year.

(2) Youth tobacco use is growing due to e-cigarettes. Seven percent of Vermont high school students smoke, but if e-cigarette use is included, 28 percent of Vermont youths use some form of tobacco product. More than one in four Vermont high school students now uses e-cigarettes. Use more than doubled among this age group, from 12 percent to 26 percent, between 2017 and 2019.

(3) More students report frequent use of e-cigarettes, which indicates possible nicotine addiction. According to the 2019 Vermont Youth Risk Behavior Survey, 31 percent of Vermont high school e-cigarette users used e-cigarettes daily, up from 15 percent in 2017.

(4) Flavored products are fueling the epidemic. Ninety-seven percent of youth e-cigarette users nationally reported in 2019 that they had used a flavored tobacco product in the last month, and 70 percent cited flavors as the reason for their use. E-cigarette and e-liquid manufacturers have marketed their products in youth-friendly flavors, such as gummy bear, birthday cake, candy cane menthol, and bubble gum.

(5) Mint- and menthol-flavored e-cigarettes are increasing in popularity among youths. Over the past few years, mint and menthol went from being some of the least popular to being some of the most popular e-cigarette flavors among high school students. Evidence indicates that if any e-cigarette flavors remain on the market, youths will shift from one flavor to another. For example, after Juul restricted the availability of fruit, candy, and other e-cigarette flavors in retail stores in November 2018, use of mint and menthol e-cigarettes by high school users increased sharply, from 42.3 percent reportedly using mint and menthol e-cigarettes in 2017 to 63.9 percent using them in 2019.

(6) It is essential that menthol cigarettes are included in a ban on flavored tobacco products, flavored e-liquids, and flavored e-cigarettes to prevent youths who became addicted to nicotine through vaping from transitioning to traditional cigarettes. Menthol creates a cooling and numbing effect that reduces the harshness of cigarette smoke and suppresses the cough reflex. Those effects make menthol cigarettes more appealing to young, inexperienced smokers, and research shows that menthol cigarettes are more likely to addict youths.

(7) Youth smokers are the age group most likely to use menthol cigarettes but are also likely to quit if menthol cigarettes are no longer available. Fifty-four percent of youths 12–17 years of age nationwide who smoke use menthol cigarettes. Nearly 65 percent of young menthol smokers say they would quit smoking if menthol cigarettes were banned.

(8) Eliminating the sale of menthol tobacco products promotes health equity. Menthol cigarette use is more prevalent among persons of color who smoke than among white persons who smoke and is more common among lesbian, gay, bisexual, and transgender smokers than among heterosexual smokers. Eighty-five percent of African-American adult smokers use menthol cigarettes, and of black youths 12–17 years of age who smoke, seven out of 10

use menthol cigarettes. Tobacco industry documents show a concerted effort to target African-Americans through specific advertising efforts.

(9) The U.S. Food and Drug Administration (FDA) took action on flavored e-cigarettes in 2020, but that action only addresses flavored pod-based e-cigarettes, leaving open tank e-cigarettes, the e-liquids used to fill them, and flavored disposable e-cigarettes available for sale.

(10) The FDA agrees that menthol cigarettes harm the public health. In 2013, the FDA published a report concluding that removal of menthol cigarettes from the market would improve public health. In May 2022, the FDA published a proposed rule establishing a tobacco product standard that would prohibit menthol as a characterizing flavor in cigarettes, but the rule has not been finalized and it is unclear when a final rule will be published or take effect.

Sec. 2. 7 V.S.A. chapter 40 is amended to read:

CHAPTER 40. TOBACCO PRODUCTS

§ 1001. DEFINITIONS

As used in this chapter:

* * *

(3) “Tobacco products” means cigarettes, little cigars, roll-your-own tobacco, snuff, cigars, new smokeless tobacco, and ~~other tobacco products as defined in 32 V.S.A. § 7702~~ any other product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, by chewing, or in any other manner.

* * *

(8)(A) “Tobacco substitute” means ~~products~~ any product, including an electronic ~~eigarettes~~ cigarette or other electronic or battery-powered ~~devices~~ device, or any component, part, or accessory thereof, that ~~contain or are~~ contains or is designed to deliver nicotine or other substances into the body through the inhalation or other absorption of aerosol, vapor, or other emission and that ~~have~~ has not been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes. Products that have been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes shall not be considered to be tobacco substitutes.

(B) As used in subdivision (A) of this subdivision (8), “other substances” does not include cannabis and cannabis products that are offered

by a cannabis establishment licensed pursuant to chapter 33 of this title or by a medical cannabis dispensary licensed pursuant to chapter 37 of this title.

(9) “E-liquid” means the solution, substance, or other material used in or with a tobacco substitute that is heated or otherwise acted upon to produce an aerosol, vapor, or other emission to be inhaled or otherwise absorbed by the user, regardless of whether the solution, substance, or other material contains nicotine. The term does not include cannabis and cannabis products that are offered by a cannabis establishment licensed pursuant to chapter 33 of this title or by a medical cannabis dispensary licensed pursuant to chapter 37 of this title.

§ 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

(a)(1) No person shall engage in the retail sale of tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia in ~~his or her~~ the person’s place of business without a tobacco license obtained from the Division of Liquor Control.

* * *

(e) A person who sells tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia without obtaining a tobacco license and a tobacco substitute endorsement, as applicable, in violation of this section shall be guilty of a misdemeanor and fined not more than \$200.00 for the first offense and not more than \$500.00 for each subsequent offense.

(f) No individual under 16 years of age may sell tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia.

(g) No person shall engage in the retail sale of tobacco products, tobacco substitutes, ~~substances containing nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia in the State unless the person is a licensed wholesale dealer as defined in 32 V.S.A. § 7702 or has purchased the tobacco products, tobacco substitutes, ~~substances containing nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia from a licensed wholesale dealer.

* * *

§ 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
TOBACCO PARAPHERNALIA; REQUIREMENTS;
PROHIBITIONS

(a) A person shall not sell or provide tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to any person under 21 years of age.

(b) All vending machines selling tobacco products are prohibited.

(c)(1) Persons holding a tobacco license may only display or store tobacco products ~~or~~, tobacco substitutes, and e-liquids:

(A) behind a sales counter or in any other area of the establishment that is inaccessible to the public; or

(B) in a locked container.

(2) This subsection shall not apply to the following:

(A) a display of tobacco products, tobacco substitutes, or e-liquids that is located in a commercial establishment in which by law no person under 21 years of age is permitted to enter at any time;

(B) cigarettes in unopened cartons and smokeless tobacco in unopened multipack containers of 10 or more packages, any of which shall be displayed in plain view and under the control of a responsible employee so that removal of the cartons or multipacks from the display can be readily observed by that employee; or

(C) cigars and pipe tobacco stored in a humidor on the sales counter in plain view and under the control of a responsible employee so that the removal of these products from the humidor can be readily observed by that employee.

(d) The sale and the purchase of bidis is prohibited. A person who holds a tobacco license who sells bidis as prohibited by this subsection shall be fined not more than \$500.00. A person who purchases bidis from any source shall be fined not more than \$250.00.

(e) No person holding a tobacco license shall sell cigarettes or little cigars individually or in packs that contain fewer than 20 cigarettes or little cigars.

(f) As used in this section, "little cigars" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco, other than any roll of tobacco that is a cigarette within the meaning of 32 V.S.A. § 7702(1), and as to which 1,000 units weigh not more than three pounds.

§ 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;
TOBACCO SUBSTITUTES; E-LIQUIDS; TOBACCO
PARAPHERNALIA

(a) A person shall exhibit proper proof of ~~his or her~~ the person's age upon demand of a person licensed under this chapter, an employee of a licensee, or a law enforcement officer. If the person fails to provide proper proof of age, the licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to the person. The sale or furnishing of tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to a

person exhibiting proper proof of age shall be prima facie evidence of a licensee's compliance with section 1007 of this title.

(b) As used in this section, "proper proof of age" means a valid authorized form of identification as defined in section 589 of this title.

§ 1005. PERSONS UNDER 21 YEARS OF AGE; POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING AGE ~~OR FOR~~ PURCHASING TOBACCO PRODUCTS; PENALTY

(a)(1) A person under 21 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to effect a sale in the course of employment.

(2) A person under 21 years of age shall not misrepresent ~~his or her~~ the person's age to purchase or attempt to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia.

(b) A person who possesses tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia in violation of subsection (a) of this section shall be subject to having the tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24.

(c) A person under 21 years of age who misrepresents ~~his or her~~ the person's age by presenting false identification to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.

§ 1006. POSTING OF SIGNS

(a) A person licensed under this chapter shall post in a conspicuous place on the premises identified in the tobacco license a warning sign stating that the sale of tobacco products, tobacco substitutes, e-liquids, and tobacco paraphernalia to persons under 21 years of age is prohibited. The Board shall prepare the sign and make it available with the license forms issued under this chapter. The sign may include information about the health effects of tobacco and tobacco cessation services. The Board, in consultation with a representative of the licensees when appropriate, is authorized to change the design of the sign as needed to maintain its effectiveness.

(b) A person violating this section shall be guilty of a misdemeanor and fined not more than \$100.00.

§ 1007. FURNISHING TOBACCO TO PERSONS UNDER 21 YEARS OF AGE; REPORT

(a) A person that sells or furnishes tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to a person under 21 years of age shall be subject to a civil penalty of not more than \$100.00 for the first offense and not more than \$500.00 for any subsequent offense. An action under this section shall be brought in the same manner as for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of the alleged violation.

(b)(1) The Division of Liquor Control shall conduct or contract for compliance tests of tobacco licensees as frequently and as comprehensively as necessary to ensure consistent statewide compliance with the prohibition on sales to persons under 21 years of age of at least 90 percent for buyers who are between 17 and 20 years of age. An individual under 21 years of age participating in a compliance test shall not be in violation of section 1005 of this title.

(2) Any violation by a tobacco licensee of subsection 1003(a) of this title and this section after a sale violation or during a compliance test conducted within six months of a previous violation shall be considered a multiple violation and shall result in the minimum license suspension in addition to any other penalties available under this title. Minimum license suspensions for multiple violations shall be assessed as follows:

- | | |
|----------------------|----------------------|
| (A) Two violations | two weekdays; |
| (B) Three violations | 15-day suspension; |
| (C) Four violations | 90-day suspension; |
| (D) Five violations | one-year suspension. |

(3) The Division shall report to the House Committee on General, Housing, and Military Affairs, the Senate Committee on Economic Development, Housing and General Affairs, and the ~~Tobacco Evaluation and Review Board~~ Substance Misuse Prevention Oversight and Advisory Council annually, on or before January 15, the methodology and results of compliance tests conducted during the previous year. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the required report to be made under this subdivision.

* * *

§ 1009. CONTRABAND AND SEIZURE

(a) Any cigarettes or other tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia that have been sold, offered for sale, or possessed for sale in violation of section 1003, 1010, or 1013 of this title, 20 V.S.A. § 2757, 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial cigarette rolling machines possessed or utilized in violation of section 1011 of this title, shall be deemed contraband and shall be subject to seizure by the Commissioner, the Commissioner's agents or employees, the Commissioner of Taxes or any agent or employee of the Commissioner of Taxes, or by any law enforcement officer of this State when directed to do so by the Commissioner. ~~All e-cigarettes or other tobacco products~~ items seized under this subsection shall be destroyed.

* * *

§ 1010. INTERNET SALES

(a) As used in this section:

(1) "Cigarette" has the same meaning as in 32 V.S.A. § 7702(1).

(2) [Repealed.]

(3) "Licensed wholesale dealer" has the same meaning as in 32 V.S.A. § 7702(5).

(4) "Little cigars" has the same meaning as in 32 V.S.A. § 7702(6).

(5) "Retail dealer" has the same meaning as in 32 V.S.A. § 7702(10).

(6) "Roll-your-own tobacco" has the same meaning as in 32 V.S.A. § 7702(11).

(7) "Snuff" has the same meaning as in 32 V.S.A. § 7702(13).

(b) No person shall cause cigarettes, roll-your-own tobacco, little cigars, snuff, tobacco substitutes, ~~substances containing nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer or retail dealer in this State.

(c) No person shall, with knowledge or reason to know of the violation, provide substantial assistance to a person in violation of this section.

(d) A violation of this section is punishable as follows:

(1) A knowing or intentional violation of this section shall be punishable by imprisonment for not more than five years or a fine of not more than \$5,000.00, or both.

(2) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a person has violated this section, the Attorney General may impose a civil penalty in an amount not to exceed \$5,000.00 for each violation. For purposes of this subsection, each shipment or transport of cigarettes, roll-your-own tobacco, little cigars, ~~or snuff,~~ tobacco substitutes, e-liquids, or tobacco paraphernalia shall constitute a separate violation.

* * *

§ 1012. LIQUID NICOTINE E-LIQUIDS CONTAINING NICOTINE;
PACKAGING

(a) Unless specifically preempted by federal law, no person shall manufacture, regardless of location, for sale in; offer for sale in; sell in or into the stream of commerce in; or otherwise introduce into the stream of commerce in Vermont:

(1) any ~~liquid or gel substance~~ e-liquid containing nicotine unless that product is contained in child-resistant packaging; or

(2) any ~~nicotine liquid~~ e-liquid container unless that container constitutes child-resistant packaging.

(b) As used in this section:

(1) “Child-resistant packaging” means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance in the container within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging that all children under five years of age cannot open or obtain a toxic or harmful amount of the substance in the container within a reasonable time.

(2) “~~Nicotine liquid~~ E-liquid container” means a bottle or other container of a ~~nicotine liquid or other substance~~ an e-liquid containing nicotine that is sold, marketed, or intended for use in a tobacco substitute. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco substitute if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

§ 1013. FLAVORED TOBACCO PRODUCTS, FLAVORED TOBACCO
SUBSTITUTES, AND FLAVORED E-LIQUIDS PROHIBITED

(a) As used in this section:

(1) “Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or tobacco substitute, or a component part or byproduct of a tobacco product or tobacco substitute. The term includes tastes or aromas relating to any fruit, chocolate, vanilla, honey, maple, candy, cocoa, dessert, alcoholic beverage, mint, menthol, wintergreen, herb or spice, or other food or drink, or to any conceptual flavor that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor. The term also includes induced sensations, such as those produced by synthetic cooling agents, regardless of whether the agent itself imparts any taste or aroma.

(2) “Flavored e-liquid” means any e-liquid with a characterizing flavor. An e-liquid shall be presumed to be a flavored e-liquid if a licensee, a manufacturer, or a licensee’s or manufacturer’s agent or employee has made a statement or claim directed to consumers or the public, whether express or implied, that the product has a distinguishable taste or aroma other than the taste or aroma of tobacco.

(3) “Flavored tobacco product” means any tobacco product with a characterizing flavor. A tobacco product shall be presumed to be a flavored tobacco product if a licensee, a manufacturer, or a licensee’s or manufacturer’s agent or employee has made a statement or claim directed to consumers or the public, whether express or implied, that the product has a distinguishable taste or aroma other than the taste or aroma of tobacco.

(4) “Flavored tobacco substitute” means any tobacco substitute with a characterizing flavor. A tobacco substitute shall be presumed to be a flavored tobacco substitute if a licensee, a manufacturer, or a licensee’s or manufacturer’s agent or employee has made a statement or claim directed to consumers or the public, whether express or implied, that the product has a distinguishable taste or aroma other than the taste or aroma of tobacco.

(5) “Tobacco retailer” means any individual, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any retail establishment that has a tobacco license from the Division of Liquor Control.

(b) No person shall engage in the retail sale of any flavored tobacco product, flavored e-liquid, or flavored tobacco substitute.

(c) If a tobacco retailer or a tobacco retailer’s agent or employee violates this section, the tobacco retailer shall be subject to a civil penalty of not more than \$100.00 for a first offense and not more than \$500.00 for any subsequent offense. An action under this section shall be brought in the same manner as

for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought within 24 hours after the occurrence of the alleged violation.

Sec. 3. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(31) Violations of 7 V.S.A. § 1013(b), relating to flavored tobacco products, flavored e-liquids, and flavored tobacco substitutes.

Sec. 4. 7 V.S.A. § 661(c) is amended to read:

(c) The provisions of subsection (b) of this section shall not apply to a violation of subsection 1005(a) of this title, relating to purchase of tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia by a person under 21 years of age.

Sec. 5. 16 V.S.A. § 140 is amended to read:

§ 140. TOBACCO USE PROHIBITED ON PUBLIC SCHOOL GROUNDS

No person shall be permitted to use tobacco products, e-liquids, or tobacco substitutes as defined in 7 V.S.A. § 1001 on public school grounds or at public school sponsored functions. Public school boards may adopt policies that include confiscation and appropriate referrals to law enforcement authorities.

Sec. 6. 18 V.S.A. § 4803(a) is amended to read:

(a) Creation. There is created the Substance Misuse Prevention Oversight and Advisory Council within the Department of Health to improve the health outcomes of all Vermonters through a consolidated and holistic approach to substance misuse prevention that addresses all categories of substances. The Council shall provide advice to the Governor and General Assembly for improving prevention policies and programming throughout the State and to ensure that population prevention measures are at the forefront of all policy determinations. The Advisory Council's prevention initiatives shall encompass all substances at risk of misuse, including:

(1) alcohol;

(2) cannabis;

(3) controlled substances, such as opioids, cocaine, and methamphetamines; and

(4) tobacco products and, tobacco substitutes, and e-liquids as defined in 7 V.S.A. § 1001 ~~and substances containing nicotine or that are otherwise intended for use with a tobacco substitute.~~

Sec. 7. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

As used in this chapter unless the context otherwise requires:

* * *

(15) “Other tobacco products” means any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, by chewing, or in any other manner, ~~including~~. The term also includes products sold as a tobacco substitute, as defined in 7 V.S.A. § 1001(8), and including any liquids, whether nicotine based or not, or; e-liquids, as defined in 7 V.S.A. § 1001(9); and delivery devices sold separately for use with a tobacco substitute or e-liquid, but shall not include cigarettes, little cigars, roll-your-own tobacco, snuff, or new smokeless tobacco as defined in this section.

* * *

Sec. 8. ELECTRONIC CIGARETTES AND OTHER VAPING-RELATED PRODUCTS; ADVERTISING RESTRICTIONS; REPORT

On or before December 1, 2023, the Office of the Attorney General shall report to the House Committees on Commerce and Economic Development and on Human Services and the Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare regarding whether and to what extent Vermont may legally restrict advertising and regulate the content of labels for electronic cigarettes and other vaping-related products in this State.

Sec. 9. EFFECTIVE DATE

This act shall take effect on September 1, 2023.

(Committee vote: 3-2-0)

Joint Resolution for Second Reading

Favorable

J.R.S. 17.

Joint resolution urging U.S. Citizenship and Immigration Services to comply with the expedited asylum hearing provisions of the Afghan Supplemental Appropriations Act of 2022.

Reported favorably by Senator Harrison for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

John Hollar of Montpelier – Member of the Capitol Complex Commission – By Senator Wrenner for the Committee on Institutions (2/21/23)

Mark Nicholson of West Danville – Member of the Transportation Board – By Senator Ingalls for the Committee on Transportation (2/24/23)

Owen Foster of Jericho – Chair, Green Mountain Care Board – By Senator Lyons for the Committee on Health and Welfare (3/15/23)

NOTICE OF JOINT ASSEMBLY

March 28, 2023 - 1:00 P.M. - House Chamber - Retention of a Chief Justice and four Associate Justices of the Supreme Court and eight Superior Court Judges.

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 17, 2023**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by **Friday, March 17, 2023**.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 24, 2023**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation Capital bill, the Capital Construction bill and the Fee/Revenue bills)