

Journal of the Senate

TUESDAY, MARCH 28, 2023

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Joan Javier-Duval of Montpelier.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Joint Senate Resolution Adopted on the Part of the Senate

J.R.S. 21.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Baruth,

J.R.S. 21. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 31, 2023, it be to meet again no later than Tuesday, April 4, 2023.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 178.

An act relating to commissioning Department of Corrections personnel as notaries public.

To the Committee on Government Operations.

H. 230.

An act relating to implementing mechanisms to reduce suicide.

To the Committee on Judiciary.

H. 288.

An act relating to liability for the sale of alcoholic beverages.

To the Committee on Judiciary.

H. 473.

An act relating to radiologist assistants.

To the Committee on Health and Welfare.

H. 476.

An act relating to miscellaneous changes to law enforcement officer training laws.

To the Committee on Government Operations.

Bill Amended; Third Reading Ordered**S. 138.**

Senate committee bill entitled:

An act relating to school safety.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and, pending the question, Shall the bill be read a third time?, Senator Hashim moved that the bill be amended in Sec. 3, 16 V.S.A. § 1484, access control and visitor management policy, in subsection (a), by striking out "agricultural or recreational purposes" and inserting in lieu thereof agricultural, recreational, or other reasonably practical purposes directly related to a school's mission or curriculum

Which was agreed to, and third reading of the bill was ordered.

Bill Passed**S. 33.**

Senate bill of the following title was read the third time and passed:

An act relating to miscellaneous judiciary procedures.

Bill Amended; Third Reading Ordered**S. 133.**

Senate committee bill entitled:

An act relating to miscellaneous changes to education law.

Having appeared on the Calendar for notice for one day, was taken up.

Senator Baruth, for the Committee on Appropriations, to which the bill was referred reported that the bill be amended as follows:

First: By striking out Sec. 1, curriculum audit; report, in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. [Deleted.]

Second: By striking out Sec. 3, Vermont postsecondary school marketing, in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. [Deleted.]

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Appropriations was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Campion moved that the bill be amended as follows:

First: In Sec. 4, 2021 Acts and Resolves No. 66, Sec. 1, in subsection (h), by striking out “December 20, 2023” and inserting in lieu thereof ~~November 1, 2023~~ December 20, 2023

Second: In Sec. 4, 2021 Acts and Resolves No. 66, Sec. 1, in subsection (i), by striking out “January 20, 2024” and inserting in lieu thereof ~~December 1, 2023~~ January 20, 2024

Thereupon, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Third Reading Ordered

S. 137.

Senate committee bill entitled:

An act relating to energy efficiency modernization.

Having appeared on the Calendar for notice for one day, was taken up.

Senator Starr, for the Committee on Appropriations, to which was referred, reported the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered**S. 4.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to reducing crimes of violence associated with juveniles and dangerous weapons.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court if the child had attained 16 years of age but not 19 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)-(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as defined in 13 V.S.A. § 2311;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c);

(13) carrying a firearm while committing a felony in violation of 13 V.S.A. § 4005;

(14) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1;

(15) human trafficking or aggravated human trafficking in violation of 13 V.S.A. § 2652 or 2653;

(16) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3);

(17) an attempt to commit any of the offenses listed in this subsection;
or

(18) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for any of the offenses listed in this subsection or for any other offense that was transferred from the Family Division pursuant to this section, unless the proceeding is the subject of a final order accepting the case for youthful offender treatment pursuant to subsection 5281(d) of this title.

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) the maturity of the child as determined by consideration of the child's age, home, and environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(2) the extent and nature of the child's prior record of delinquency;

(3) the nature of past treatment efforts and the nature of the child's response to them, including the child's mental health treatment and substance abuse treatment and needs;

(4) the nature and circumstances of the alleged offense, including whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(6) the prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings;

(7) whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court;

(8) the youth's residential housing status;

(9) the youth's employment and educational situation;

(10) whether the youth has complied with conditions of release;

(11) the youth's criminal record and whether the youth has engaged in subsequent criminal or delinquent behavior since the original charge;

(12) whether the youth has connections to the community; and

(13) the youth's history of violence and history of illegal or violent conduct involving firearms.

(e) A transfer under this section shall terminate the jurisdiction of the Family Division of the Superior Court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The Family Division, following completion of the transfer hearing, shall make findings and, if the court orders transfer of jurisdiction from the Family Division, shall state the reasons for that order. If the Family Division orders transfer of jurisdiction, the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the Family Division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the Criminal Division and the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(3) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to convert the juvenile proceeding to a youthful offender proceeding under chapter 52A of this title. If the parties stipulate to convert the proceeding pursuant to this subdivision, the court may proceed immediately to a youthful offender consideration hearing under section 5283 of this title. The Court shall request that the Department complete a youthful offender consideration report under section 5282 of this title before accepting a case for youthful offender treatment pursuant to this subdivision.

* * *

Sec. 2. 18 V.S.A. § 4252 is amended to read:

§ 4252. PENALTIES FOR DISPENSING OR SELLING KNOWINGLY OR RECKLESSLY PERMITTING SALE OR DISPENSING OF REGULATED DRUGS IN A DWELLING

(a) No person shall knowingly or recklessly permit a dwelling, building, or structure owned by or under the control of the person to be used for the purpose of illegally dispensing or selling a regulated drug.

~~(b) A landlord shall be in violation of subsection (a) of this section only if the landlord knew at the time he or she signed the lease agreement that the tenant intended to use the dwelling, building, or structure for the purpose of illegally dispensing or selling a regulated drug. [Repealed.]~~

(c) A person who violates this section shall be imprisoned not more than ~~two~~ five years or fined not more than ~~\$1,000.00~~ \$15,000.00, or both.

(d) It shall not be a violation of this section if the person who owns or controls the dwelling, building, or structure takes action to address the unlawful activity, including reporting the unlawful activity to law enforcement or initiating eviction proceedings.

(e) As used in this section, "recklessly" means consciously disregarding a substantial and unjustifiable risk.

Sec. 3. 13 V.S.A. chapter 60, subchapter 1, is amended to read:

Subchapter 1. Criminal Acts

* * *

§ 2659. KNOWINGLY OR RECKLESSLY PERMITTING HUMAN
TRAFFICKING IN A DWELLING

(a) No person shall knowingly or recklessly permit a dwelling, building, or structure owned by or under the control of the person to be used for the purpose of human trafficking or aggravated human trafficking in violation of section 2652 or 2653 of this title.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than \$15,000.00, or both.

(c) It shall not be a violation of this section if the person who owns or controls the dwelling, building, or structure takes action to address the unlawful activity, including reporting the unlawful activity to law enforcement or initiating eviction proceedings.

(d) As used in this section, “recklessly” means consciously disregarding a substantial and unjustifiable risk.

Sec. 4. 13 V.S.A. § 4024 is added to read:

§ 4024. DEFACING OF FIREARM’S SERIAL NUMBER

(a) A person shall not knowingly possess a firearm that has had the importer’s or manufacturer’s serial number removed, obliterated, or altered.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than \$50,000.00, or both.

(c) As used in this section:

(1) “Firearm” has the same meaning as in section 4017 of this title.

(2) “Importer” means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.

(3) “Manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution.

(d) Conduct constituting the offense of defacing a firearm’s serial number may be considered a violent act for the purposes of determining whether a person is eligible for bail under section 7553a of this title.

Sec. 5. 13 V.S.A. § 4025 is added to read:

§ 4025. STRAW PURCHASING OF FIREARMS

(a) A person shall not purchase a firearm for, on behalf of, or at the request of another person if the purchaser knows or reasonably should know that the other person:

(1) is prohibited by state or federal law from possessing a firearm;

(2) intends to carry the firearm while committing a felony; or

(3) intends to transfer the firearm to another person who:

(A) is prohibited by state or federal law from possessing a firearm; or

(B) intends to carry the firearm while committing a felony.

(b) It shall not be a violation of this section if the person purchased the firearm as a result of threats or coercion by another person.

(c) A person who violates this section shall be imprisoned not more than five years or fined not more than \$50,000.00, or both.

(d) As used in this section, "firearm" has the same meaning as in section 4017 of this title.

(e) Conduct constituting the offense of straw purchasing of firearms may be considered a violent act for the purposes of determining whether a person is eligible for bail under section 7553a of this title.

Sec. 6. 13 V.S.A. § 4017a is added to read:

§ 4017a. FUGITIVES FROM JUSTICE; PERSONS SUBJECT TO FINAL RELIEF FROM ABUSE OR STALKING ORDER; PERSONS CHARGED WITH CERTAIN OFFENSES; PROHIBITION ON POSSESSION OF FIREARMS

(a) A person shall not possess a firearm if the person:

(1) is a fugitive from justice;

(2) is the subject of a final relief from abuse order issued pursuant to 15 V.S.A. § 1104;

(3) is the subject of a final order against stalking issued pursuant to 12 V.S.A. § 5133; or

(4) against whom charges are pending for:

(A) carrying a dangerous weapon while committing a felony in violation of section 4005 of this title;

(B) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1; or

(C) human trafficking or aggravated human trafficking in violation of section 2652 or 2653 of this title.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(c) As used in this section:

(1) "Firearm" has the same meaning as in section 4017 of this title.

(2) "Fugitive from justice" means a person who has fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding.

Sec. 7. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A ~~CRIME~~ FELONY

(a) Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony shall be imprisoned not more than five years or fined not more than \$500.00, or both.

(b)(1) Carrying a firearm while committing a felony in violation of this section may be considered a violent act for the purposes of determining whether a person is eligible for bail under section 7553a of this title.

(2) An offense that is a felony rather than a misdemeanor solely because of the monetary value of the property involved shall not be considered a violent act under this subsection.

Sec. 8. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

* * *

(d) Such records and files shall be available to:

(1) State's Attorneys and all other law enforcement officers in connection with record checks and other legal purposes; and

(2) the National Instant Criminal Background Check System in connection with a background check conducted on a person under 21 years of age pursuant to 18 U.S.C. § 922(t)(1)(C) and 34 U.S.C. § 40901(l).

* * *

Sec. 9. 18 V.S.A. § 13 is added to read:

§ 13. COMMUNITY VIOLENCE PREVENTION PROGRAM

(a) There is established the Community Violence Prevention Program to be administered by the Department of Health in consultation with the Department of Public Safety, the Director of Violence Prevention, and the Executive Director of Racial Equity. The Program shall work with communities to implement innovative, evidence-based, and evidence-informed programs addressing causes of youth and community violence. Grants awarded pursuant to this section shall be at the discretion of the Commissioner of Health.

(b)(1) A Vermont municipality or nonprofit organization may submit an application for a Community Violence Prevention Program grant to the Commissioner of Health. Grants awarded under this section shall be for the purpose of funding innovative, evidence-based, or evidence-informed approaches to reducing violence and associated community harm.

(2) The Commissioner of Health, in consultation with the Department of Public Safety and the Executive Director of Racial Equity, shall develop and publish guidelines, for the award of Community Violence Prevention grants. The guidelines shall include a focus on increasing community capacity to implement approaches for human services, public health, and public safety collaboration to address root causes of community violence and substance use through data-driven projects.

(c) The Community Violence Prevention Program shall collect data to monitor youth and community violence and its related risk and protective factors and to evaluate the impact of prevention efforts and shall use the data to plan and implement programs. The Program shall use monitoring and evaluation data to track the impact of interventions.

(d) Statewide strategies organized by the Department of Health may include technical assistance contracts, statewide evaluation of the Program, or other strategies that would benefit grantees and enhance the effectiveness of the Program.

Sec. 10. APPROPRIATION

(a) The sum of \$10,000,000.00 is appropriated from the General Fund to the Department of Health in fiscal year 2024 for the purpose of supporting the Community Violence Prevention Program established by 18 V.S.A. § 13. Unexpended appropriations shall carry forward into the subsequent fiscal year and remain available for use for this purpose.

(b) The Department of Health is authorized to seek and accept grant funding for the purpose of supporting the Community Violence Prevention Program to supplement State appropriations.

(c) If funding is available for the Community Violence Prevention Program from federal grants or legal settlements related to drug use or criminal activity:

(1) such federal or settlement funds shall be utilized first for the Program; and

(2) an amount of the General Fund appropriation made under subsection (a) of this section equal to the total amount of federal grants or legal settlements received by the Program shall be reverted to the General Fund.

Sec. 11. 2018 Acts and Resolves No. 201, Sec. 21, as amended by 2022 Acts and Resolves No. 160, Sec. 1, is further amended to read:

Sec. 21. EFFECTIVE DATES

* * *

(d) Secs. 17–19 shall take effect on July 1, ~~2023~~ 2024.

Sec. 12. 2020 Acts and Resolves No. 124, Sec. 12, as amended by 2022 Acts and Resolves No. 160, Sec. 2, is further amended to read:

Sec. 12. EFFECTIVE DATES

(a) Secs. 3 (33 V.S.A. § 5103(c)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, ~~2023~~ 2024.

* * *

Sec. 13. PLAN FOR SECURE PLACEMENTS

On or before September 1, 2023 and December 1, 2023, the Department for Children and Families shall file a status report to the Joint Legislative Justice Oversight Committee and the Senate and House Committees on Judiciary describing the progress made toward implementing the requirement of Secs. 11 and 12 of this act that the Raise the Age initiative take effect on July 1, 2024.

Sec. 14. SENTENCING COMMISSION REPORT

On or before December 15, 2023, the Vermont Sentencing Commission shall report to the Joint Legislative Justice Oversight Committee and the

Senate and House Committees on Judiciary on whether the offenses for which transfer from the Family Division to the Criminal Division is permitted under 33 V.S.A. § 5204(a) should be expanded to include:

(1) first degree arson as defined in 13 V.S.A. § 502 or second degree arson as defined in 13 V.S.A. § 503;

(2) stalking as defined in 13 V.S.A. § 1062;

(3) domestic assault as defined in 13 V.S.A. § 1042, first degree aggravated domestic assault as defined in 13 V.S.A. § 1043, and second degree aggravated domestic assault as defined in 13 V.S.A. § 1044;

(4) selling or dispensing a regulated drug with death resulting as defined in 18 V.S.A. § 4250;

(5) using a firearm while selling or dispensing a drug as defined in 18 V.S.A. § 4253;

(6) carrying a dangerous or deadly weapon while committing a felony as defined in 13 V.S.A. § 4005;

(7) lewd or lascivious conduct as defined in 13 V.S.A. § 2601 or lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(8) eluding a police officer with serious bodily injury or death resulting as defined in 23 V.S.A. § 1133(b);

(9) willful and malicious injuries caused by explosives as defined in 13 V.S.A. § 1601, injuries caused by destructive devices as defined in 13 V.S.A. § 1605, or injuries caused by explosives as defined in 13 V.S.A. § 1608;

(10) grand larceny as defined in 13 V.S.A. § 2501 or larceny from the person as defined in 13 V.S.A. § 2503;

(11) operating vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(12) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(13) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);

(14) a hate-motivated crime as defined in 13 V.S.A. § 1455;

(15) conspiracy as defined in 13 V.S.A. § 1404; or

(16) a violation of an abuse prevention order as defined in 13 V.S.A. § 1030 or violation of an order against stalking or sexual assault as defined in 12 V.S.A. § 5138.

Sec. 15. SEVERABILITY

As set forth in 1 V.S.A. § 215, the provisions of this act are severable, and if a court finds any provision of this act to be invalid, or if any application of this act to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the report of the Committee on Judiciary be amended as follows:

First: In Sec. 9, 18 V.S.A. § 13, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) There is established the Community Violence Prevention Program to be administered by the Department of Health in consultation and collaboration with the Chief Prevention Officer, the Department of Public Safety, the Director of Violence Prevention, and the Executive Director of Racial Equity. The Program shall work with communities to implement innovative, evidence-based, and evidence-informed programs addressing causes of youth and community violence. Grants awarded pursuant to this section shall be at the discretion of the Commissioner of Health and shall build on and complement existing programs addressing the causes of youth and community violence.

Second: In Sec. 9, 18 V.S.A. § 13, by striking out subsection (d) in its entirety

Third: In Sec. 10 (appropriation), by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Grants awarded from State funds to the Community Violence Prevention Program established by 18 V.S.A. § 13 shall be dependent upon the amount of the appropriation.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Judiciary was amended

as recommended by the Committee on Appropriations.

Thereupon, the bill was amended as recommended by the Committee on Judiciary, as amended.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative on a roll call, Yeas 28, Nays 2.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Brock, Champion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Ingalls, Kitchel, Lyons, MacDonald, Mazza, McCormack, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Weeks, Westman, White, Wrenner.

Those Senators who voted in the negative were: Norris, Williams.

Bill Amended; Third Reading Ordered

S. 17.

Senator Hardy, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to sheriff reforms.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Unprofessional Conduct of Law Enforcement Officers Reviewable by the Vermont Criminal Justice Council * * *

Sec. 1. 20 V.S.A. § 2401 is amended to read:

§ 2401. DEFINITIONS

As used in this subchapter:

* * *

(2) “Category B conduct” means gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency’s policy or, if not defined by the agency’s policy, then as defined by Council policy, and shall include:

(A) sexual harassment involving physical contact or misuse of

position;

(B) misuse of official position for personal or economic gain;

(C) excessive use of force under authority of the State, first offense;

(D) biased enforcement;

(E) use of electronic criminal records database for personal, political, or economic gain;

(F) placing a person in a chokehold;

(G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a chokehold or using excessive force;

(H) gross negligence or willful misconduct in the performance of duties; and

(I) abuse of the powers granted through law enforcement officer certification pursuant to section 2358 of this title.

* * *

* * * Audits * * *

Sec. 2. 24 V.S.A. § 290 is amended to read:

§ 290. COUNTY SHERIFF'S DEPARTMENT

* * *

(b) Full-time State deputy sheriffs whose primary responsibility is transportation of prisoners and persons with a mental condition or psychiatric disability shall be paid by the State of Vermont. The positions and their funding shall be assigned to the Department of State's Attorneys and Sheriffs. The Executive Director shall have the authority to determine job duties for the position, assignment of positions to county, regular and temporary work locations, assistance to other State agencies and departments, timesheet systems, daily work logs, and to have final approval of personnel matters, including, but not limited to, approval for hiring, paygrade assignment, hiring rate, discipline, and termination. ~~The sheriffs shall have an Executive Committee of not more than five current sheriffs, elected for a two-year term by a vote of the sheriffs held not later than January 15, for a term starting February 1. The Executive Committee shall have a Chair, Vice-Chair, Secretary-Treasurer, and two members at large. The Executive Committee shall meet at least quarterly to provide input to the Department of State's Attorneys and sheriffs regarding budget, legislation, personnel and policies, and the assignment of positions, when vacancies arise, for efficient use of~~

resources.

* * *

(d) Upon the election of a sheriff-elect who is not the incumbent sheriff, ~~or upon notice of the resignation of the sheriff,~~ an announcement that the incumbent sheriff will not seek re-election or an announcement that the incumbent sheriff intends to resign, whichever occurs earliest, all financial disbursements from the accounts of the department, including the transfer of real or personal property, or other assets, of the department, shall be co-signed by the sheriff and the assistant judges. A report of all financial disbursements or transfers made pursuant to this subsection shall be forwarded by the assistant judges to the Auditor of Accounts within 15 days ~~of completion of the out-going sheriff's duties~~ following the sheriff leaving office.

Sec. 3. 24 V.S.A. § 290b is amended to read:

§ 290b. AUDITS

* * *

(b) The Auditor of Accounts shall adopt and sheriffs shall comply with a uniform system of accounts, controls, and procedures for the sheriff's department, which accurately reflects the receipt and disbursement of all funds by the department, the sheriff, and all employees of the department. The uniform system shall include:

* * *

(8) procedures and controls ~~which~~ that identify revenues received from public entities through appropriations or grants from the federal, State, or local governments from revenues received through contracts with private entities; ~~and~~

(9) procedures to notify the Auditor of Accounts and the Department of State's Attorneys and Sheriffs of the establishment and activities of any nonpublic organization of which the sheriff or any employee of the sheriff is a director and that has a mission or purpose of supplementing the efforts of the sheriff's department; and

(10) other procedures and requirements as the Auditor of Accounts deems necessary.

(c) The Auditor of Accounts and ~~his or her~~ the Auditor's designee may at any time examine the records, accounts, books, papers, contracts, reports, and other materials of the county sheriff departments as they pertain to the financial transactions, obligations, assets, and receipts of that department. ~~The Auditor or his or her designee shall conduct an audit of the accounts for a~~

~~sheriff's department whenever the incumbent sheriff leaves office, and the auditor shall charge for the any associated costs of the report pursuant to in the same manner described in 32 V.S.A. § 168(b).~~

* * *

Sec. 4. 24 V.S.A. § 314 is added to read:

§ 314. CONFLICT OF INTEREST; APPEARANCE OF CONFLICT OF INTEREST

(a) As used in this section, "conflict of interest" means an interest of a sheriff or deputy sheriff that is in conflict with the proper discharge of the sheriff's or deputy sheriff's official duties due to a significant personal or financial interest of the sheriff or deputy sheriff, of a person within the sheriff's or deputy sheriff's immediate family, of the sheriff's or deputy sheriff's business associate, or of an organization of which the sheriff or deputy sheriff is affiliated. "Conflict of interest" does not include any interest that is not greater than that of any other persons generally affected by the outcome of a matter.

(b) A sheriff or deputy sheriff shall avoid any conflict of interest or the appearance of a conflict of interest. Except as otherwise provided in subsections (c) of this section, when confronted with a conflict of interest or an appearance of a conflict of interest, a sheriff or deputy sheriff shall disclose the conflict of interest to the Sheriff's Executive Committee, recuse themselves from the matter, and not take further action on the matter.

(c) A conflict of interest may be approved by the majority vote of the Sheriff's Executive Committee only if the material facts of the conflict of interest are disclosed or known to the Sheriff's Executive Committee. If a conflict of interest is approved, the sheriff or deputy sheriff may then act on the matter at issue.

(d) A standard operating procedures manual or policy manual created by the Department of State's Attorneys and Sheriffs may impose additional requirements relating to conflicts of interest on sheriffs and deputy sheriffs.

(e) Nothing in this section shall require a sheriff or deputy sheriff to disclose confidential information or information that is otherwise privileged under law.

* * * Sheriff Contracts * * *

Sec. 5. 24 V.S.A. § 291a is amended to read:

§ 291a. CONTRACTS

* * *

(b) A contract made with a town, city, village, or county to provide law enforcement or related services shall contain provisions governing the following subjects as best suit the needs of the parties:

* * *

(4) the type, frequency, and information to be contained in reports submitted by the sheriff's department to the town, city, village, or county;

* * *

~~(c) A contract under this section may contain provisions for compensation to the sheriff for administration of the contract and related services. No compensation may be paid to a sheriff for administration of the contract or related services unless the contract sets forth in writing the rate or method of calculation for the compensation and a schedule of payment; provided that a sheriff's compensation for administration shall not exceed five percent of the contract. A sheriff's rate of compensation shall be at a rate equivalent to other employees of the department who provide similar services under the contract. Compensation to the sheriff shall be made in accordance with the schedule set forth in the contract but in no event may a sheriff be compensated for administration of the contract and related services unless the compensation is made in the same calendar year in which the revenue was received by the department under the contract.~~ A contract under this section may contain provisions for an administrative overhead fee at a rate not to exceed five percent of the contract. Funds derived from contract administrative overhead fees shall be kept in a separate account held by the sheriff's department and used by the sheriff's department only for the costs of necessary departmental expenses not covered by State or county funds, including the cost of vehicles, uniforms, equipment, training, and professional services. Funds derived from contract administrative overhead fees shall not be used for sheriff, sheriff deputy, or other departmental employee compensation, bonuses, salary supplements, retirement contributions, or employment benefits.

* * *

(f) An agreement or contract for sheriff's departments to provide law enforcement or security services to county and State courthouses shall be subject to a single, statewide contracted rate of pay for such services over all county and State courthouses. The rate of pay shall be \$51.00 per hour beginning on July 1, 2023. The contract amount that was in effect for the immediately preceding year shall be increased by the unadjusted percentage change in the CPI figure from the last reporting date available next prior to the beginning month of the next fiscal year for which the adjustment is made. Should the percentage change be negative, the State reserves the right to adjust

the yearly contract amount accordingly. As used in this subsection, "CPI" means the Consumer Price Index for all urban consumers, designated as "CPI-U," in the northeast region, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

* * * Sheriff Duties * * *

Sec. 6. 24 V.S.A. § 293 is amended to read:

§ 293. DUTIES

(a) A sheriff so commissioned and sworn shall serve and execute lawful writs, warrants, and processes directed to ~~him or her~~ the sheriff, according to the precept thereof, and do all other things pertaining to the office of sheriff.

(b) A sheriff shall maintain a detailed record of the sheriff's work schedule, including work days, leave taken, and any remote work performed outside the sheriff's district for a period of more than three days.

(c) Each sheriff's department shall comply with the provisions of the standard operating procedures manuals and policy manuals created and maintained by the Department of State's Attorneys and Sheriffs.

(d) Sheriff's departments providing law enforcement services in the county in which an individual who has a relief from abuse order pursuant to 15 V.S.A. § 1103 resides shall have a duty to assist in the retrieval of personal belongings of the individual and that individual's dependents from the individual's residence. A sheriff's department shall not seek a fee from the individual being assisted in the retrieval of personal belongings from the residence or any representative of that individual.

Sec. 7. 24 V.S.A. § 293(e) is added to read:

(e) A sheriff shall provide a minimum of one deputy sheriff, certified as a law enforcement officer in accordance with 20 V.S.A. § 2358, for law enforcement and security services for each county and State courthouse within the sheriff's county of jurisdiction in accordance with section 291a of this title.

Sec. 8. 24 V.S.A. § 299 is amended to read:

§ 299. DUTIES AS PEACE OFFICER

A sheriff shall preserve the peace, and suppress, with force and strong hand, if necessary, unlawful disorder using force only as permitted pursuant to 20 V.S.A. chapter 151. He or she A sheriff may apprehend, without warrant, persons individuals assembled in disturbance of the peace, and bring them before a the Criminal Division of the Superior Court, which shall proceed with such person individuals as with persons individuals brought before it by process issued by such the court.

* * * Repeal of Penalty for Refusal to Assist a Sheriff * * *

Sec. 10. REPEAL OF PENALTY FOR REFUSAL TO ASSIST A SHERIFF

24 V.S.A. § 301 (penalty for refusal to assist) is repealed.

* * * Sheriff's Departments Oversight Task Force and Report * * *

Sec. 11. SHERIFF'S DEPARTMENTS OVERSIGHT TASK FORCE;
REPORT

(a) Creation. There is created the Sheriff's Departments Oversight Task Force to examine issues in implementing reforms and accountability across Vermont Sheriff's Department.

(b) Membership. The Sheriff's Departments Oversight Task Force shall be composed of the following members:

(1) one member appointed by the Department of State's Attorneys and Sheriffs;

(2) one member appointed by the Department of Human Resources;

(3) one member appointed by the Attorney General's Office;

(4) one member appointed by the Vermont Sheriffs' Association;

(5) one member appointed by the State Auditor;

(6) one member appointed by the Vermont Criminal Justice Council;

(7) one member appointed by the Vermont Association of County Judges;

(8) one member of an organization focused on law enforcement reform, who shall be appointed by the Speaker of the House; and

(9) one member of a different organization focused on law enforcement reform, who shall be appointed by the Senate Committee on Committees.

(c) Powers and duties. The Sheriff's Departments Oversight Task Force shall consider issues relating to oversight of sheriffs' departments, including the following:

(1) creating and maintaining policies and best practices to be included in standard operating procedures manuals and policy manuals;

(2) increasing efficiency and equity in the delivery of public safety services by sheriff's departments;

(3) the compensation structure and levels of sheriffs, deputies, and departmental staff, including salaries, overtime, retirement, benefits, and bonuses;

(4) the duties of sheriffs, as related to both law enforcement and administration of sheriff's departments;

(5) oversight of sheriffs, as related to both conduct and administration of sheriff's departments;

(6) creating a sustainable funding model for sheriff's departments that is not based on contracts for services; and

(7) reorganizing the Department of State's Attorneys and Sheriffs to better provide oversight and support for state's attorneys and sheriffs.

(d) Assistance. The Sheriff's Departments Oversight Task Force shall have the administrative, technical, and legal assistance of the Department of State's Attorneys and Sheriffs.

(e) Report. On or before November 15, 2023, the Sheriff's Departments Oversight Task Force shall report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The member of the Sheriff's Departments Oversight Task Force designated by the Department of State's Attorneys and Sheriffs shall call the first meeting of the Sheriff's Departments Oversight Task Force to occur on or before July 1, 2023.

(2) The Sheriff's Departments Oversight Task Force shall select a chair from among its members at the first meeting.

(3) A majority of the members of the Sheriff's Departments Oversight Task Force shall constitute a quorum.

(4) The Sheriff's Departments Oversight Task Force shall cease to exist on July 1, 2024.

(g) Compensation and reimbursement.

The members of the public Sheriff's Departments Oversight Task Force who are appointed from an organization focused on law enforcement reform shall be entitled to per diem compensation as permitted under 32 V.S.A. § 1010 for not more than five meetings, provided that those members are not paid for their services by the organization for which the member is representing on the Sheriff's Departments Oversight Task Force. These payments shall be made from monies appropriated to the Department of State's Attorneys and Sheriffs.

(h) Appropriation. The sum of \$1,000.00 is appropriated to the

Department of State's Attorneys and Sheriffs from the General Fund in fiscal year 2024 for per diem compensation for members of the Committee.

* * * Effective Dates * * *

Sec. 12. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 7 (adding 24 V.S.A. § 293(e)) shall take effect on July 1, 2024.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 5, 24 V.S.A. § 291a, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) An agreement or contract for sheriff's departments to provide law enforcement or security services to county and State courthouses shall be subject to a single, statewide contracted rate of pay for such services over all county and State courthouses.

Second: By adding one new section to be Sec. 5a to read as follows:

Sec. 5a. USE OF ADMINISTRATIVE OVERHEAD FUNDS IN 2023
AND 2024

Notwithstanding 24 V.S.A. § 291a(c), in calendar years 2023 and 2024, a sheriff's department may use funds derived from contract administrative overhead fees to make supplemental salary payments to a sheriff of not more than 50 percent of the annual compensation for a sheriff, provided that the sheriff has been in office at least two years, and to any employee of a sheriff's department or a sheriff that has been in office less than two years of not more than 10 percent of the annual compensation for the employee. Funds derived from contract administrative overhead fees shall not be used for any other bonus or supplemental employment benefit payment.

Third: In Sec. 11, Sheriff's Departments Oversight Task Force; report, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Powers and duties. The Sheriff's Departments Oversight Task Force shall consider issues relating to oversight of sheriff's departments, including the following:

- (1) creating and maintaining policies and best practices to be included in standard operating procedures manuals and policy manuals;
- (2) increasing efficiency and equity in the delivery of public safety services by sheriff's departments;
- (3) the compensation structure and levels of sheriffs, deputies, and departmental staff, including salaries, overtime, retirement, benefits, and bonuses;
- (4) the duties of sheriffs, as related to both law enforcement and administration of sheriff's departments;
- (5) oversight of sheriffs, as related to both conduct and administration of sheriff's departments;
- (6) creating a sustainable funding model for sheriff's departments that is not based on contracts for services;
- (7) reorganizing the Department of State's Attorneys and Sheriffs to better provide oversight and support for State's Attorneys and sheriffs; and
- (8) determining the scope and timing of public sector management training that sheriffs should receive upon election and on a continuing basis to ensure departmental operations and management of public funds are consistent with generally accepted standards.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon Senators Hardy, Norris, Clarkson, Vyhovsky and Watson moved to amend the recommendation of the Committee on Government Operations, as amended, as follows:

First: By striking out Sec. 2, 24 V.S.A. § 290, in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 24 V.S.A. § 290 is amended to read:

§ 290. COUNTY SHERIFF'S DEPARTMENT

* * *

(d) Upon the election of a sheriff-elect who is not the incumbent sheriff, or upon notice of the resignation of the sheriff, an announcement that the incumbent sheriff will not seek reelection, or an announcement that the incumbent sheriff intends to resign, whichever occurs earliest, all financial

disbursements from the accounts of the department, including the transfer of real or personal property, or other assets, of the department, shall be co-signed by the sheriff and the assistant judges. A report of all financial disbursements or transfers made pursuant to this subsection shall be forwarded by the assistant judges to the Auditor of Accounts within 15 days of completion of the out-going sheriff's duties following the sheriff leaving office.

Second: In Sec. 11, Sheriff's Departments Oversight Task Force; report, by striking out subdivision (c)(3) in its entirety and inserting in lieu thereof a new subdivision (c)(3) to read as follows:

(3) the compensation structure and levels of sheriffs, deputies, and departmental staff, including salaries, overtime, retirement, benefits, and bonuses, and the appropriate employment status of courthouse security deputies;

Third: By renumbering Secs. 10–12 to be numerically correct.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations as amended? was agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative on a roll call, Yeas 23, Nays 7.

Senator Hardy having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Champion, Clarkson, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, Mazza, McCormack, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Westman, White, Wrenner.

Those Senators who voted in the negative were: Brock, *Chittenden, Collamore, Ingalls, Norris, Weeks, Williams.

*Senator Chittenden explained his vote as follows:

“I voted No today on S. 17 because of two open questions I have with the wording in the bill. It is unclear by what entity or person a conflict of interest can be deemed to warrant the review process by the Executive Council. In my years as an elected official, I have been accused of having a conflict of interest for owning land, having dogs, owning chickens and for serving on other boards. These accusations have been made by individuals in the political arena and are common for elected office holders but without clearer language in S.17

on who can trigger a conflict of interest consideration, this could be used to unduly thwart the functioning responsibilities of our sheriffs and unduly burden the office holder and supporting systems with unfounded accusations.

”The second concern I have related to the mandated timekeeping for elected sheriffs and if the failure to do maintain these records satisfactorily (in undefined terms or timelines) would be classified as ‘willful misconduct’. It is unclear to me who would be responsible for validating these ‘time cards’ and what the consequence would be for not having this information recorded by what time frame and to what detail.

“Without adequate consideration to these two concerns, I am not in support of this bill but am hopeful that an amendment or additional reporting clarification at third reading will mitigate my concerns and open questions.”

Bill Amended; Third Reading Ordered

S. 18.

Senator Gulick, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

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

Reported recommending 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 ~~cigarettes~~ 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 ~~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

And that when so amended the bill ought to pass.

Senator Chittenden, for the Committee on Finance, to which the bill was referred, reported recommending that the report of the Committee on Health and Welfare be amended by adding a new section to be Sec. 9 to read as follows:

Sec. 9. DEPARTMENT OF HEALTH; VERMONT YOUTH RISK BEHAVIOR SURVEY; REPORT

On or before March 1, 2027, the Department of Health shall provide to the House Committee on Human Services and the Senate Committee on Health and Welfare the results of the 2025 Vermont Youth Risk Behavior Survey that relate to youth use of tobacco products, tobacco substitutes, and e-liquids, along with a comparison of the rates of use from previous Vermont Youth Risk Behavior Surveys.

And by renumbering the remaining section to be Sec. 10

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Health and Welfare was amended as recommended by the Committee on Finance.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 29, 2023.