H.71

Introduced by Representatives Frank of Underhill and Krowinski of Burlington

Referred to Committee on

Date:

Subject: Health; tobacco products

Statement of purpose of bill as introduced: This bill proposes to make miscellaneous changes to the laws regarding tobacco products.

An act relating to tobacco products

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 7 V.S.A. § 1001 is amended to read:

§ 1001. DEFINITIONS

As used in this chapter:

* * *

(3) "Tobacco products" ~~mean cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut, and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner suitable for chewing or smoking in a pipe or otherwise, or both for~~

~~chewing and smoking, or for delivery into the body through inhaling heated vapor or in any other manner~~ 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.

* * *

Sec. 2. 7 V.S.A. § 1002 is amended to read:

§ 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

(a) No person shall engage in the retail sale of tobacco products, tobacco substitutes, or tobacco paraphernalia or provide a vending machine for their sale in his or her place of business without a tobacco license obtained from the ~~department of liquor control~~ Department of Liquor Control. Tobacco licenses shall expire midnight, April 30, of each year.

* * *

(e) A person who sells tobacco products, tobacco substitutes, or tobacco paraphernalia without obtaining a tobacco license 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 the age of 16 may sell tobacco products, tobacco substitutes, or tobacco paraphernalia.

(g) No person shall engage in the retail sale of tobacco products 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 from a licensed wholesale dealer.

Sec. 3. 7 V.S.A. § 1003 is amended to read:

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

* * *

(b) Beginning August 28, 1997, vending machines selling tobacco products, tobacco substitutes, or tobacco paraphernalia are prohibited. This subsection shall not apply to a vending machine that is located in a commercial establishment in which by law no person younger than 18 years of age is permitted to enter at any time. A single vending machine may not be used to sell other commodities in combination with tobacco products, tobacco substitutes, or tobacco paraphernalia. A violation of this subsection shall result in the seizure of the vending machine.

* * *

Sec. 4. 7 V.S.A. § 1004 is amended to read:

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

(a) A person shall exhibit proper proof of his or her 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 such proof of age, the licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes, or tobacco paraphernalia to the person. The sale or furnishing of tobacco products, tobacco substitutes, or tobacco paraphernalia to a person exhibiting proper proof shall be prima facie evidence of a licensee's compliance with section 1007 of this title.

* * *

Sec. 5. 7 V.S.A. § 1005 is amended to read:

§ 1005. PERSONS UNDER THE AGE OF 18; POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING AGE OR PURCHASING TOBACCO PRODUCTS; PENALTY

(a) A person ~~less than~~ under 18 years of age shall not ~~possess or purchase~~ possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, 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, or tobacco paraphernalia to effect a sale in the course of

employment. A person ~~less than~~ under 18 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of $25.00. In the case of failure to pay a penalty, the ~~judicial bureau~~ Judicial Bureau shall mail a notice to the person at the address in the complaint notifying the person that failure to pay the penalty within 60 days of the notice will result in either the suspension of the person's operator's license for a period of not more than 90 days or the delay of the initial licensing of the person for a period of not more than one year. A copy of the notice shall be sent to the ~~commissioner of motor vehicles, who~~ Commissioner of Motor Vehicles, who, after expiration of 60 days from the date of notice and unless notified by the ~~judicial bureau~~ Judicial Bureau that the penalty has been paid~~,~~ shall either suspend the person's operator's license or cause initial licensing of the person to be delayed for the periods set forth in this subsection and the rules. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24 ~~of Title 23~~. The ~~commissioner of motor vehicles~~ Commissioner of Motor Vehicles shall adopt rules in accordance with the provisions of 3 V.S.A. chapter 25 ~~of Title 3~~ to

implement the provisions of this subsection, which may provide for incremental suspension or delays not exceeding cumulatively the maximum periods established by this subsection.

(b) A person ~~less than~~ under 18 years of age who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than $50.00 or provide up to 10 hours of community service, or both.

Sec. 6. 7 V.S.A. § 1007 is amended to read:

§ 1007. FURNISHING TOBACCO TO PERSONS UNDER EIGHTEEN

An individual who sells or furnishes tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under 18 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 ~~of Title 23~~ and shall be brought within 24 hours of the occurrence of the alleged violation.

~~Sec. 7. 7 V.S.A. § 1010 is amended to read:~~

~~§ 1010. INTERNET SALES~~

~~(a) As used in this section:~~

~~* * *~~

~~(2) "Distributor" has the same definition as that found at 32 V.S.A. § 7702(4).~~

Sec. 7. 7 V.S.A. § 1010 is amended to read:

§ 1010. INTERNET SALES

(a) As used in this section:

* * *

(2) ~~"Distributor" has the same definition as that found at 32 V.S.A. § 7702(4).~~

* * *

(b) No person shall cause cigarettes, roll-your-own tobacco, little cigars, or snuff, 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~~, distributor,~~ or retail dealer in this ~~state~~ State.

* * *

Sec. 8. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

~~(4) "Distributor" means any person who imports, or causes to be imported, into this state any tobacco product for sale or who manufactures any tobacco product in this state, and any person within or without the state who is authorized by the commissioner to make returns and pay the tax on tobacco products sold, shipped, or delivered by him or her to any person in the state.~~

* * *

(7) "Manufacturer" means a person who manufactures and sells cigarettes, little cigars, roll-your-own tobacco, snuff, new smokeless tobacco, and other tobacco products.

* * *

(10) "Retail dealer" shall mean a person ~~who sells or furnishes cigarettes or tobacco products, or both, in small quantities to consumers only, but not for the purpose of resale~~ licensed pursuant to 7 V.S.A. § 1002.

* * *

(15) ~~"Tobacco products"~~ "Other tobacco products" means any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall

not include cigarettes, little cigars, roll-your-own tobacco, ~~moist~~ snuff, or new smokeless tobacco as defined in this section.

(16) "Wholesale dealer" ~~shall mean~~ means a person who imports or causes to be imported into the state any cigarettes, little cigars, roll-your-own tobacco, snuff, new smokeless tobacco, or other tobacco product for sale or who sells or furnishes ~~cigarettes or tobacco products, or both,~~ any of these products to other wholesale dealers or retail dealers for the purpose of resale, but not by the small quantity or parcel to consumers thereof.

* * *

(18) "Wholesale outlet" shall mean any premises where cigarettes, little cigars, roll-your-own tobacco, snuff, new smokeless tobacco or other tobacco products~~, or both,~~ are sold, transferred, displayed, or held for sale by a wholesale dealer.

(19) "Wholesale price" means the price at which a ~~distributor~~ licensed wholesale dealer sells or furnishes cigarettes, little cigars, roll-your-own tobacco, snuff, new smokeless tobacco, or other tobacco products to any retail dealer.

* * *

Sec. 9. 32 V.S.A. § 7731 is amended to read:

§ 7731. LICENSE REQUIRED

Each wholesale dealer ~~and distributor~~ shall secure a license from the ~~commissioner of taxes~~ Commissioner of Taxes before engaging in the business of selling cigarettes, roll-your-own tobacco, little cigars, snuff, new smokeless tobacco, or other tobacco products in this ~~state~~ State. Licensed wholesale dealers shall sell these products only to other Vermont licensed wholesale dealers or to retailers licensed pursuant to 7 V.S.A. § 1002.

Sec. 10. 32 V.S.A. § 7732 is amended to read:

§ 7732. APPLICATION FOR AND ISSUANCE OF LICENSE

(a) A separate application and license shall be required for each wholesale outlet when a wholesale dealer ~~or distributor~~ shall own or control more than one such outlet.

* * *

Sec. 11. 32 V.S.A. § 7734 is amended to read:

§ 7734. PENALTIES FOR SALES WITHOUT LICENSE

Any wholesale dealer ~~or distributor~~ who shall sell, offer for sale or possess with intent to sell, any cigarettes or tobacco products, or both, without having first obtained a license as provided in this subchapter shall be fined not more than $25.00 for the first offense and not more than $200.00 nor less than $25.00 for each subsequent offense.

Sec. 12. 32 V.S.A. § 7736 is amended to read:

§ 7736. REVOCATION AND SUSPENSION OF LICENSES

The ~~commissioner~~ Commissioner may revoke or suspend the license of any licensed wholesale dealer ~~or distributor~~ for failure to comply with any provision of this chapter, for failure to comply with the provisions of 11 V.S.A. chapter 15 ~~of Title 11~~, or for failure to comply with the provisions of 33 V.S.A. chapter 19, subchapter 1B ~~of chapter 19 of Title 33~~. Any person aggrieved by such revocation or suspension may apply to the ~~commissioner~~ Commissioner for a hearing as provided in section 7782 of this title and may further appeal to the courts as provided in section 7783 of this title.

Sec. 13. 32 V.S.A. § 7737 is amended to read:

§ 7737. BONDING

When the ~~commissioner~~ Commissioner, in his or her discretion, deems it necessary to protect the revenues to be obtained under this chapter, he or she may require any licensed wholesale dealer ~~or distributor~~ to file with him or her a bond, issued by a surety company authorized to transact business in this ~~state~~ State, and approved by the ~~commissioner of financial regulation~~ Commissioner of Financial Regulation of this ~~state~~ State as to its solvency and responsibility, in an amount fixed by the ~~commissioner~~ Commissioner, to secure the payment of any tax or penalties or interest due or which may become due from that licensed wholesale dealer ~~or distributor~~ under this chapter. In the event that the ~~commissioner~~ Commissioner determines that a licensed wholesale dealer ~~or distributor~~ is to file a bond, he or she shall give notice to him or her to that

effect, specifying the amount of the bond required. The licensed wholesale dealer ~~or distributor~~ shall file the bond within 15 days after the giving of the notice unless within those 15 days he or she shall request in writing a hearing before the ~~commissioner~~ Commissioner at which the necessity, propriety, and amount of the bond shall be determined by the ~~commissioner~~ Commissioner. The determination shall be final and shall be complied with within 15 days after the giving of notice thereof. In lieu of a bond, securities approved by the ~~commissioner~~ Commissioner or cash in such amount as he or she may prescribe may be deposited, which shall be kept in the custody of the ~~state treasurer~~ State Treasurer, who may, at any time, upon instruction from the ~~commissioner~~ Commissioner without notice to the depositor, apply them to any tax or interest or penalties due, and for that purpose the securities may be sold by him or her at public or private sale without notice to the depositor thereof. In determining whether a person should be required to obtain a bond, the ~~commissioner~~ Commissioner is specifically authorized to consider the filing and payment history, with respect to any tax administered by the ~~commissioner~~ Commissioner, of the person or any individual, corporation, partnership, or other legal entity with which the person is or was associated as principal, partner, officer, director, employee, ~~agent ,or~~ agent, or incorporator.

Sec. 14. 32 V.S.A. § 7773 is amended to read:

§ 7773. USE AND REDEMPTION OF STAMPS

No licensed wholesale dealer or retail dealer shall sell or transfer any stamps issued under the provisions of this chapter. The ~~commissioner~~ Commissioner shall redeem at the amount paid therefor by the licensed wholesale or retail dealer any unused stamps issued under the provisions of this chapter, which are presented to him or her at his or her office in Montpelier.

Sec. 15. 32 V.S.A. § 7774 is amended to read:

§ 7774. AFFIXING STAMPS

Each licensed wholesale dealer shall affix or cause to be affixed to each individual package of cigarettes sold or distributed by him or her stamps of the proper denomination as required by section 7771 of this title and in such manner as the ~~commissioner~~ Commissioner may specify in regulations issued pursuant to this chapter. ~~Such~~ The stamps may be affixed by a licensed wholesale dealer at any time before the cigarettes are transferred out of his or her possession.

Sec. 16. 32 V.S.A. § 7776 is amended to read:

§ 7776. COLLECTION OF CIGARETTE TAX THROUGH NONRESIDENT ~~WHOLESALERS~~ LICENSED WHOLESALE DEALERS

(a) When the ~~commissioner of taxes~~ Commissioner of Taxes shall find that the collection of the tax imposed by this chapter would be facilitated thereby,

he or she may, in his or her discretion, authorize any person resident or located outside this ~~state~~ State engaged in the business of manufacturing cigarettes~~,~~ or any person resident or located outside this ~~state~~ State who ships cigarettes into this ~~state~~ State for sale to retail dealers in this ~~state~~ State as defined in section 7702 of this title~~,~~ and who qualifies as a licensed wholesale dealer as defined in section 7702 of this title, but need not have a place of business in this ~~state~~ State, upon complying with the requirements of the ~~commissioner~~ Commissioner to affix~~,~~ or cause to be affixed~~,~~ the stamps required by this chapter on behalf of the purchasers of such cigarettes who would otherwise be taxable therefor, and the ~~commissioner~~ Commissioner may sell such stamps to such person as provided in section 7772 of this title.

* * *

Sec. 17. 32 V.S.A. § 7777 is amended to read:

§ 7777. RECORDS REQUIRED; INSPECTION AND EXAMINATION; ASSESSMENT OF TAX DEFICIENCY

(a) Each licensed wholesale dealer and each retail dealer shall keep complete and accurate records of all cigarettes, little cigars, and roll-your-own tobacco manufactured, produced, purchased, transferred, and sold by the dealer. ~~Such~~ The records shall be of such kind and in such form as the ~~commissioner~~ Commissioner may prescribe and shall be safely preserved for six years in such manner as to insure permanency and accessibility for

~~inspection by the commissioner and authorized agents. The commissioner~~ Commissioner or authorized agents of the Commissioner may enter in or upon any premises where the ~~commissioner~~ Commissioner or they have reason to believe that cigarettes are possessed, stored, or sold, for the purpose of determining whether the provisions of this chapter or subchapter 1A or 1B of chapter 19 of Title 33 are being obeyed and may examine and copy the books, papers, records, and cigarette stock of any licensed wholesale dealer or retail dealer, for the purpose of determining whether the tax imposed by this chapter has been fully paid.

(b) If the ~~commissioner~~ Commissioner determines that a licensed wholesale dealer has not purchased sufficient stamps to cover sales of cigarettes and little cigars, or that a retail dealer has made sales of unstamped cigarettes or little cigars or untaxed roll-your-own tobacco, the ~~commissioner~~ Commissioner shall thereupon assess the deficiency in tax plus interest and penalties as provided in section 3202 of this title.

(c) In any case ~~where~~ in which a licensed wholesale dealer cannot produce evidence of sufficient stamp purchases to cover the dealer's receipts and sales or other disposition of cigarettes or little cigars, it shall be presumed that ~~such~~ the cigarettes or little cigars were sold without having the proper stamps affixed. In any case in which a licensed wholesale dealer cannot produce proper evidence of payment of the tax on roll-your-own tobacco to cover the

~~dealer's receipts and sales or other disposition of roll-your-own tobacco, it~~ shall be presumed that the roll-your-own tobacco was sold without the proper tax having been paid.

(d) If a ~~wholesale~~ licensed wholesale dealer or retail dealer has failed to timely pay for stamps obtained for payment within 10 days or to pay the tax imposed on roll-your-own tobacco, the dealer shall be subject to assessment, collection, and enforcement in the same manner as provided under subchapter 4 of this chapter.

* * *

Sec. 17. 32 V.S.A. § 7777 is amended to read:

§ 7777. RECORDS REQUIRED; INSPECTION AND EXAMINATION; ASSESSMENT OF TAX DEFICIENCY

(a) Each licensed wholesale dealer and each retail dealer shall keep complete and accurate records of all cigarettes, little cigars, and roll-your-own tobacco manufactured, produced, purchased, transferred, and sold by the dealer. ~~Such~~ The records shall be of such kind and in such form as the ~~commissioner~~ Commissioner may prescribe and shall be safely preserved for six years in such manner as to insure permanency and accessibility for inspection by the commissioner and authorized agents. The ~~commissioner~~ Commissioner or authorized agents of the Commissioner may enter in or upon any premises where the ~~commissioner~~ Commissioner or they have reason to

believe that cigarettes, little cigars, or roll-your-own tobacco are possessed, stored, or sold, for the purpose of determining whether the provisions of this chapter or 33 V.S.A. chapter 19, subchapter 1A or 1B ~~of chapter 19 of Title 33~~ are being obeyed and may examine and copy the books, papers, records, and ~~cigarette~~ the stock of any licensed wholesale dealer or retail dealer, for the purpose of determining whether the tax imposed by this chapter has been fully paid.

(b) If the ~~commissioner~~ Commissioner determines that a licensed wholesale dealer has not purchased sufficient stamps to cover sales of cigarettes and little cigars, or that a retail dealer has made sales of unstamped cigarettes or little cigars or untaxed roll-your-own tobacco, the ~~commissioner~~ Commissioner shall thereupon assess the deficiency in tax plus interest and penalties as provided in section 3202 of this title.

(c) In any case ~~where~~ in which a licensed wholesale dealer cannot produce evidence of sufficient stamp purchases to cover the dealer's receipts and sales or other disposition of cigarettes or little cigars, it shall be presumed that ~~such~~ the cigarettes or little cigars were sold without having the proper stamps affixed. In any case in which a licensed wholesale dealer cannot produce proper evidence of payment of the tax on roll-your-own tobacco to cover the dealer's receipts and sales or other disposition of roll-your-own tobacco, it

shall be presumed that the roll-your-own tobacco was sold without the proper tax having been paid.

(d) If a ~~wholesale~~ licensed wholesale dealer or retail dealer has failed to timely pay for stamps obtained for payment within 10 days or to pay the tax imposed on roll-your-own tobacco, the dealer shall be subject to assessment, collection, and enforcement in the same manner as provided under subchapter 4 of this chapter.

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Sec. 18. 32 V.S.A. § 7785 is amended to read:

§ 7785. MONTHLY REPORT

Each licensed wholesale dealer shall file with the ~~commissioner~~ Commissioner, on or before the 15th day of each month, a report for the calendar month immediately preceding, in a form prescribed by the ~~commissioner~~ Commissioner, showing the amount and source of cigarettes acquired, the amount of stamps purchased, a list identifying the brand families of a tobacco product manufacturer, as that term is defined in 33 V.S.A. chapter 19, subchapters 1A and 1B ~~of chapter 19 of Title 33~~, the total number of cigarettes upon which stamps were affixed or, in the case of roll-your-own tobacco, the equivalent stick count, as determined by the formula set forth in 33 V.S.A. chapter 19, subchapter 1A ~~of chapter 19 of Title 33~~, upon which the

applicable tax was paid, and such other information as the ~~commissioner~~ Commissioner may require.

Sec. 19. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all other tobacco products ~~except roll-your-own tobacco and little cigars taxed under section 7771 of this title~~, snuff, and new smokeless tobacco possessed in the ~~state~~ State of Vermont by any person for sale on and after July 1, 1959 which were imported into the ~~state~~ State or manufactured in the ~~state~~ State after ~~said~~ that date, except that no tax shall be imposed on tobacco products sold under such circumstances that this ~~state~~ State is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the ~~armed forces~~ Armed Forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. ~~Such~~ The tax is intended to be imposed only once upon the wholesale sale of any tobacco product, snuff, and new smokeless tobacco and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at $1.87 per ounce, or fractional part thereof, new smokeless tobacco, which shall be taxed at the greater of $1.87 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of

$2.24 per package, and cigars with a wholesale price greater than $2.17, which shall be taxed at the rate of $2.00 per cigar if the wholesale price of the cigar is greater than $2.17 and less than $10.00, and at the rate of $4.00 per cigar if the wholesale price of the cigar is $10.00 or more. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all other tobacco products, snuff, and new smokeless tobacco within the ~~state~~ State are subject to tax until the contrary is established and the burden of proof that any other tobacco products, snuff, and new smokeless tobacco are not taxable hereunder shall be upon the person in possession thereof. ~~Wholesalers~~ Licensed wholesalers of other tobacco products, snuff, and new smokeless tobacco shall state on the invoice whether the price includes the Vermont tobacco products ~~tax.~~

Sec. 19. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all other tobacco products ~~except roll-your-own tobacco and little cigars taxed under section 7771 of this title~~, snuff, and new smokeless tobacco possessed in the ~~state~~ State of Vermont by any person for sale on and after July 1, 1959 which were imported into the ~~state~~ State or manufactured in the ~~state~~ State after ~~said~~ that date, except that no tax shall be imposed on tobacco products sold under such

circumstances that this ~~state~~ State is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the ~~armed forces~~ Armed Forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. ~~Such~~ The tax is intended to be imposed only once upon the wholesale sale of any other tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at $1.87 per ounce, or fractional part thereof, new smokeless tobacco, which shall be taxed at the greater of $1.87 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of $2.24 per package, and cigars with a wholesale price greater than $2.17, which shall be taxed at the rate of $2.00 per cigar if the wholesale price of the cigar is greater than $2.17 and less than $10.00, and at the rate of $4.00 per cigar if the wholesale price of the cigar is $10.00 or more. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all other tobacco products, snuff, and new smokeless tobacco within the ~~state~~ State are subject to tax until the contrary is established and the burden of proof that any other tobacco products, snuff, and new smokeless tobacco are not taxable hereunder shall be upon the person in possession thereof. ~~Wholesalers~~ Licensed wholesalers of

other tobacco products, snuff, and new smokeless tobacco shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 20. 32 V.S.A. § 7815 is amended to read:

§ 7815. DISTRIBUTORS

All resident licensed wholesale dealers within the ~~state~~ State who are also distributors within the meaning of this chapter are authorized to act as such and are required to pay the tax on tobacco products for which they may be liable. A person without this ~~state~~ State who ships or transports tobacco products to retailers in this ~~state~~ State, to be sold by those retailers, may make application for license as a nonresident distributor, be granted such license by the ~~commissioner~~ Commissioner, and thereafter be subject to all the provisions of this chapter so far as the same pertain to tobacco products, and be entitled to act as a distributor, provided he or she files proof with his or her application that he or she has appointed the ~~secretary of state~~ Secretary of State as his or her agent for service of process relating to any matter or issue arising under this chapter. Such nonresident person shall also agree to submit his or her books, accounts, and records to examination during reasonable business hours by the ~~commissioner~~ Commissioner or his or her duly authorized agent.

Sec. 20. 32 V.S.A. § 7815 is amended to read:

§ 7815. ~~DISTRIBUTORS~~ LICENSED WHOLESALE DEALERS

All resident licensed wholesale dealers within the ~~state who are also distributors within the meaning of this chapter are authorized to act as such and~~ State are required to pay the tax on tobacco products for which they may be liable. A person without this ~~state~~ State who ships or transports tobacco products to retailers in this ~~state~~ State, to be sold by those retailers, may make application for license as a nonresident ~~distributor~~ licensed wholesale dealer, be granted such license by the ~~commissioner~~ Commissioner, and thereafter be subject to all the provisions of this chapter so far as the same pertain to tobacco products, and be entitled to act as a ~~distributor~~ licensed wholesale dealer, provided he or she files proof with his or her application that he or she has appointed the ~~secretary of state~~ Secretary of State as his or her agent for service of process relating to any matter or issue arising under this chapter. Such nonresident person shall also agree to submit his or her books, accounts, and records to examination during reasonable business hours by the ~~commissioner~~ Commissioner or his or her duly authorized agent.

Sec. 21. 32 V.S.A. § 7816 is amended to read:

§ 7816. RECORDS TO BE KEPT; EXAMINATION

At the time of delivering ~~tobacco products~~ other tobacco products, snuff, or new smokeless tobacco to any person, each ~~distributor~~ licensed wholesale dealer shall make a true duplicate invoice showing the date of delivery, and the items and the wholesale price of each item in each shipment of ~~tobacco~~

~~products~~ other tobacco products, snuff, and new smokeless tobacco delivered, and the name of the purchaser to whom delivery is made, and shall retain the same for a period of three years, subject to the use and inspection of the ~~commissioner~~ Commissioner. Each licensed wholesale dealer shall procure and retain invoices showing the items and wholesale price of each item in each shipment of ~~tobacco products~~ other tobacco products, snuff, or new smokeless tobacco received by him or her, the date ~~thereof~~ of receipt, and the name of the shipper, and shall retain the same for a period of three years, subject to the use and inspection of the ~~commissioner~~ Commissioner. The ~~commissioner~~ Commissioner, by regulation, may provide that whenever ~~tobacco products~~ other tobacco products, snuff, or new smokeless tobacco are shipped into the ~~state~~ State, the railroad company, express company, trucking company, or other carrier transporting any shipment thereof~~,~~ shall file with the ~~commissioner~~ Commissioner a copy of the freight bill within 10 days after the delivery in the ~~state~~ State of each shipment. All licensed wholesale dealers shall maintain and keep for a period of three years such other records of tobacco products received, sold, or delivered within the ~~state~~ State as may be required by the ~~commissioner~~ Commissioner. The ~~commissioner~~ Commissioner or ~~his or her duly authorized representative is~~ authorized agents of the Commissioner are hereby authorized to examine the books, papers, invoice, and other records, stock of ~~tobacco products~~ other tobacco products,

snuff, and new smokeless tobacco in and upon any premises where the same are placed, stored, and sold, and equipment of any such dealer pertaining to the sale and delivery of ~~tobacco products~~ other tobacco products, snuff, and new smokeless tobacco taxable under this subchapter. To verify the accuracy of the tax imposed and assessed by this subchapter, each such person is hereby directed and required to give to the ~~commissioner or his or her duly authorized representative~~ Commissioner or authorized agents of the Commissioner the means, facilities, and opportunity for such examinations as are herein provided for and required.

Sec. 22. 33 V.S.A. § 1918 is amended to read:

§ 1918. DIRECTORY OF CIGARETTES APPROVED FOR STAMPING AND SALE

(a) The ~~attorney general~~ Attorney General shall develop and publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this subchapter (the "directory") and all brand families that are listed in such certifications, except as noted in this subsection.

(1) The ~~attorney general~~ Attorney General shall not include or retain in such directory any brand family of any ~~nonparticipating~~ tobacco product manufacturer that has failed to provide the required certification or whose certification the ~~attorney general~~ Attorney General determines is not in

compliance with this subchapter, unless the ~~attorney general~~ Attorney General determines that such violation has been cured to the satisfaction of the ~~attorney general~~ Attorney General.

* * *

(f) If a nonparticipating manufacturer who has not been listed on the directory for the previous three years files a certification pursuant to this section, or if the Attorney General ~~reasonably~~ determines that a nonparticipating manufacturer who has filed a certification pursuant to this section poses an elevated risk for noncompliance with sections 1912–1914 of this title, neither the nonparticipating manufacturer nor any of its brand families shall be included or retained on the directory unless and until the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with section 1925 of this title and amendments thereto has posted a bond in accordance with this subsection. *Proof of the bond shall be submitted with the certification on a form approved by the Attorney General.*

(1) The bond required under this subsection shall be written in favor of the State of Vermont and shall be conditioned on the performance by the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with sections 1912–1914 and 1925 of this title. ~~The bond shall be issued by a~~

~~surety company authorized to transact business in this State and approved by the Commissioner of Financial Regulation as to its solvency and responsibility to secure the payment of any escrow due or which may become due from the nonparticipating manufacturer or its United States importer.~~ *The bond shall be issued by a surety company in good standing and authorized to transact business in this State to secure the payment of any escrow due or which may become due from the nonparticipating manufacturer or its United States importer.* The bond shall be maintained as a condition to the nonparticipating manufacturer and its brand families being included on the directory and shall remain in place for the pendency of such listing.

(2) The bond required shall be $20,000.00 for a nonparticipating manufacturer that has not been listed on the Vermont directory for at least three years prior to the nonparticipating manufacturer's application for certification.

(3) The bond required shall be $50,000.00 for a nonparticipating manufacturer that poses an elevated risk for noncompliance with sections 1912–1914 of this title.

(4) A nonparticipating manufacturer ~~may~~ *shall* be deemed to pose an elevated risk for noncompliance with sections 1912–1914 of this title if it:

(A) failed in the previous three years to make a full and timely escrow deposit due pursuant to section 1914 of this title, unless the failure was promptly cured upon notice;

(B) was involuntarily removed from any state's directory, unless the removal was determined to have been erroneous or illegal; or

(C) has litigation pending against it in any state for escrow or for penalties, costs, or attorney's fees related to noncompliance with any state's escrow laws.

(5) If a nonparticipating manufacturer that has posted a bond has failed to make or to have made on its behalf by an entity with joint and several liability escrow deposits equal to the full amount owed for a quarter within 15 days following the due date for the quarter under sections 1914 and 1925 of this title, the state may execute upon the bond first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under section 1914, and then to recover civil penalties and costs authorized under that section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and, as provided in section 1925 of this title, from importers that sold its cigarettes in the calendar quarter.

~~Sec. 23. EFFECTIVE DATE.~~

~~This act shall take effect on July 1, 2013.~~

Sec. 23. EFFECTIVE DATES

This section shall take effect on passage. Sec. 19 of this act shall take effect on June 30, 2013. All remaining sections shall take effect on July 1, 2013.