

1 S.18

2 Introduced by Senators Lyons, Chittenden, Clarkson, Gulick, Hashim, Ram

3 Hinsdale and Wrenner

4 Referred to Committee on

5 Date:

6 Subject: Health; tobacco products; tobacco substitutes; flavored tobacco

7 products; e-cigarettes; e-liquids

8 Statement of purpose of bill as introduced: This bill proposes to ban the retail  
9 sale of flavored cigarettes, e-cigarettes, and e-liquids. It would expand the  
10 applicability of provisions relating to the seizure and destruction of contraband  
11 tobacco products to include contraband e-cigarettes, e-liquids, and tobacco  
12 paraphernalia. The bill would also direct the Office of the Attorney General to  
13 report on the extent to which Vermont may legally restrict advertising and  
14 regulate labels for e-cigarettes and other vaping-related products.

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

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

17 Sec. 1. FINDINGS

18 The General Assembly finds that:

19 (1) Tobacco use is costly. Vermont spends \$348 million annually to  
20 treat tobacco-caused illnesses, including \$87.2 million each year in Medicaid

1 expenses. This translates into a tax burden each year of \$759 per Vermont  
2 household. Productivity losses add an additional \$232.8 million each year.

3 (2) Youth tobacco use is growing due to e-cigarettes. Seven percent of  
4 Vermont high school students smoke, but if e-cigarette use is included,  
5 28 percent of Vermont youths use some form of tobacco product. More than  
6 one in four Vermont high school students now uses e-cigarettes. Use more  
7 than doubled among this age group, from 12 percent to 26 percent, between  
8 2017 and 2019.

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

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

19 (5) Mint- and menthol-flavored e-cigarettes are increasing in popularity  
20 among youths. Over the past few years, mint and menthol went from being  
21 some of the least popular to being some of the most popular e-cigarette flavors

1 among high school students. Evidence indicates that if any e-cigarette  
2 flavors remain on the market, youths will shift from one flavor to  
3 another. For example, after Juul restricted the availability of fruit, candy, and  
4 other e-cigarette flavors in retail stores in November 2018, use of mint and  
5 menthol e-cigarettes by high school users increased sharply, from 42.3 percent  
6 reportedly using mint and menthol e-cigarettes in 2017 to 63.9 percent using  
7 them in 2019.

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

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





1 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

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

6 \* \* \*

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

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

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

21 \* \* \*

1 § 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;  
2 TOBACCO PARAPHERNALIA; REQUIREMENTS;  
3 PROHIBITIONS

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

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

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

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

11 (B) in a locked container.

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

13 (A) a display of tobacco products, tobacco substitutes, or e-liquids  
14 that is located in a commercial establishment in which by law no person under  
15 21 years of age is permitted to enter at any time;

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

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

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

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

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

15          § 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;

16                   TOBACCO SUBSTITUTES; E-LIQUIDS; TOBACCO

17                   PARAPHERNALIA

18          (a) A person shall exhibit proper proof of ~~his or her~~ the person's age upon  
19          demand of a person licensed under this chapter, an employee of a licensee, or a  
20          law enforcement officer. If the person fails to provide proper proof of age, the  
21          licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes,



1 e-liquids, or tobacco paraphernalia to the person. The sale or furnishing of  
2 tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to a  
3 person exhibiting proper proof of age shall be prima facie evidence of a  
4 licensee's compliance with section 1007 of this title.

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

7 § 1005. PERSONS UNDER 21 YEARS OF AGE; POSSESSION OF  
8 TOBACCO PRODUCTS; MISREPRESENTING AGE OR  
9 PURCHASING TOBACCO PRODUCTS; PENALTY

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

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

18 (b) A person who possesses tobacco products, tobacco substitutes, e-  
19 liquids, or tobacco paraphernalia in violation of subsection (a) of this section  
20 shall be subject to having the tobacco products, tobacco substitutes, e-liquids,  
21 or tobacco paraphernalia immediately confiscated and shall be further subject

1 to a civil penalty of \$25.00. An action under this subsection shall be brought  
2 in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24.

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

7 § 1006. POSTING OF SIGNS

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

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

19 § 1007. FURNISHING TOBACCO TO PERSONS UNDER 21 YEARS OF  
20 AGE; REPORT

1 (a) A person that sells or furnishes tobacco products, tobacco substitutes, e-  
2 liquids, or tobacco paraphernalia to a person under 21 years of age shall be  
3 subject to a civil penalty of not more than \$100.00 for the first offense and not  
4 more than \$500.00 for any subsequent offense. An action under this section  
5 shall be brought in the same manner as for a traffic violation pursuant to  
6 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of  
7 the alleged violation.

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

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

21 (A) Two violations two weekdays;



1 of this State when directed to do so by the Commissioner. All ~~cigarettes or~~  
2 ~~other tobacco products~~ items seized under this subsection shall be destroyed.

3 \* \* \*

4 § 1010. INTERNET SALES

5 (a) As used in this section:

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

7 (2) [Repealed.]

8 (3) “Licensed wholesale dealer” has the same meaning as in 32 V.S.A.  
9 § 7702(5).

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

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

12 (6) “Roll-your-own tobacco” has the same meaning as in 32 V.S.A.  
13 § 7702(11).

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

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

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

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

4 (1) A knowing or intentional violation of this section shall be punishable  
5 by imprisonment for not more than five years or a fine of not more than  
6 \$5,000.00, or both.

7 (2) In addition to or in lieu of any other civil or criminal remedy  
8 provided by law, upon a determination that a person has violated this section,  
9 the Attorney General may impose a civil penalty in an amount not to exceed  
10 \$5,000.00 for each violation. For purposes of this subsection, each shipment  
11 or transport of cigarettes, roll-your-own tobacco, little cigars, ~~or snuff, tobacco~~  
12 substitutes, e-liquids, or tobacco paraphernalia shall constitute a separate  
13 violation.

14 \* \* \*

15 § 1012. ~~LIQUID NICOTINE~~ E-LIQUIDS CONTAINING NICOTINE;

16 PACKAGING

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

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

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

5           (b) As used in this section:

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

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

20           § 1013. FLAVORED TOBACCO PRODUCTS, FLAVORED TOBACCO  
21                           SUBSTITUTES, AND FLAVORED E-LIQUIDS PROHIBITED

1           (a) As used in this section:

2           (1) “Characterizing flavor” means a taste or aroma, other than the taste  
3           or aroma of tobacco, imparted either prior to or during consumption of a  
4           tobacco product or tobacco substitute, or a component part or byproduct of a  
5           tobacco product or tobacco substitute. The term includes tastes or aromas  
6           relating to any fruit, chocolate, vanilla, honey, maple, candy, cocoa, dessert,  
7           alcoholic beverage, mint, menthol, wintergreen, herb or spice, or other food or  
8           drink, or to any conceptual flavor that imparts a taste or aroma that is  
9           distinguishable from tobacco flavor but may not relate to any particular known  
10          flavor.

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

17          (3) “Flavored tobacco product” means any tobacco product with a  
18          characterizing flavor. A tobacco product shall be presumed to be a flavored  
19          tobacco product if a licensee, a manufacturer, or a licensee’s or manufacturer’s  
20          agent or employee has made a statement or claim directed to consumers or the



1 public, whether express or implied, that the product has a distinguishable taste  
2 or aroma other than the taste or aroma of tobacco.

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

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

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

15 (c) If a tobacco retailer or a tobacco retailer’s agent or employee violates  
16 this section, the tobacco retailer shall be subject to a civil penalty of not more  
17 than \$100.00 for a first offense and not more than \$500.00 for any subsequent  
18 offense. An action under this section shall be brought in the same manner as  
19 for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought  
20 within 24 hours after the occurrence of the alleged violation.



1 Council shall provide advice to the Governor and General Assembly for  
2 improving prevention policies and programming throughout the State and to  
3 ensure that population prevention measures are at the forefront of all policy  
4 determinations. The Advisory Council's prevention initiatives shall  
5 encompass all substances at risk of misuse, including:

6 (1) alcohol;

7 (2) cannabis;

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

10 (4) tobacco products ~~and~~ tobacco substitutes, and e-liquids as defined in  
11 7 V.S.A. § 1001 ~~and substances containing nicotine or that are otherwise~~  
12 ~~intended for use with a tobacco substitute.~~

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

14 § 7702. DEFINITIONS

15 As used in this chapter unless the context otherwise requires:

16 \* \* \*

17 (15) "Other tobacco products" means any product manufactured  
18 from, derived from, or containing tobacco that is intended for human  
19 consumption by smoking, by chewing, or in any other manner, ~~including.~~  
20 The term also includes products sold as a tobacco substitute, as defined in  
21 7 V.S.A. § 1001(8), ~~and including any liquids, whether nicotine based or not,~~

1 ~~or~~; e-liquids, as defined in 7 V.S.A. § 1001(9); and delivery devices sold  
2 separately for use with a tobacco substitute or e-liquid, but shall not include  
3 cigarettes, little cigars, roll-your-own tobacco, snuff, or new smokeless tobacco  
4 as defined in this section.

5 \* \* \*

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

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

15 Sec. 9. EFFECTIVE DATE

16 This act shall take effect on September 1, 2023.