

1 H.747

2 Introduced by Representative Frank of Underhill

3 Referred to Committee on

4 Date:

5 Subject: Health; tobacco; cigarette manufacturers

6 Statement of purpose: This bill proposes to clarify the circumstances under
7 which a tobacco product manufacturer may be listed on the attorney general's
8 tobacco directory. The bill also proposes to make it a crime for a person to
9 utilize a cigarette rolling machine for commercial purposes.

10 An act relating to cigarette manufacturers

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

12 Sec. 1. 33 V.S.A. § 1918 is amended to read:

13 § 1918. DIRECTORY OF CIGARETTES APPROVED FOR STAMPING

14 AND SALE

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

1 ~~(4)~~(b) The attorney general shall not include or retain in such directory
2 any brand family of any ~~nonparticipating~~ tobacco product manufacturer that
3 has failed to provide the required certification or whose certification the
4 attorney general determines is not in compliance with this subchapter, unless
5 the attorney general determines that such violation has been cured to the
6 satisfaction of the attorney general.

7 ~~(2)~~(c) Neither a tobacco product manufacturer nor any brand family of
8 the tobacco product manufacturer shall be included or retained in the directory
9 if the attorney general concludes that ~~either~~:

10 ~~(A)~~(1) any escrow funds required to be deposited pursuant to
11 subchapter 1A of this chapter for any period related to any brand family,
12 whether or not listed by such tobacco product manufacturer in its certification,
13 have not been placed into a qualified escrow fund governed by an escrow
14 agreement that has been approved by the attorney general; ~~or~~

15 ~~(B)~~(2) any outstanding judgment, including interest thereon, obtained
16 pursuant to subchapter 1A of this chapter related to that tobacco product
17 manufacturer or any brand family of the tobacco product manufacturer has not
18 been fully satisfied;

19 (3) the participating manufacturer has failed to make a payment
20 calculated by an independent auditor to be due from it under the Master

1 Settlement Agreement except to the extent that it is formally disputing such
2 payments;

3 (4) the tobacco product manufacturer or any of the tobacco product
4 manufacturer's affiliates, officers, or directors have pleaded guilty or nolo
5 contendere to or been found guilty of a felony relating to the sale or taxation of
6 cigarettes or tobacco products;

7 (5) the tobacco product manufacturer has failed to provide reasonable
8 assurance that it will comply with sections 1911–1924 of this title;

9 (6) the tobacco product manufacturer has failed to disclose any material
10 information required or made any material false statement in the certification
11 or in any supporting information or documentation provided; or

12 (7) the tobacco product manufacturer and the tobacco product
13 manufacturer's brand families have been removed from the directory of
14 another state based on acts or omissions that would, if done in this state, serve
15 as a basis for removal from the directory maintained by the attorney general
16 under this section, unless the manufacturer demonstrates that its removal from
17 the other state's directory was effected without due process. A tobacco
18 manufacturer that is removed from the state directory pursuant to this
19 subdivision shall be eligible to apply for relisting in the directory on the earlier
20 of the date on which the tobacco product manufacturer cures the violation in

1 the other state or the date on which the tobacco product manufacturer is
2 reinstated to the directory in the other state.

3 (d) As used in this section, “reasonable assurances” means information and
4 documentation establishing to the satisfaction of the attorney general that a
5 failure to pay in Vermont or elsewhere was the result of a good faith dispute
6 over the payment obligation.

7 (e) Any nonparticipating manufacturers described in subdivision (1) or (2)
8 of this subsection shall file a bond approved by the attorney general in an
9 amount required by the applicable subdivision. The bond shall run to the state
10 and shall be maintained as a condition to the nonparticipating manufacturer
11 and its brand families being included on the directory.

12 (1) The bond required shall be \$20,000.00 for a nonparticipating
13 manufacturer that has not been listed on at least one state’s directory for at
14 least the last three years.

15 (2) The amount of the bond required shall be \$50,000.00 for a
16 nonparticipating manufacturer that:

17 (A) has failed in the past three years to make a full and timely escrow
18 deposit due pursuant to section 1914 of this title, unless the failure was
19 promptly cured upon notice.

20 (B) was involuntarily removed from any state’s directory, unless the
21 removal was determined to have been erroneous or illegal.

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

4 (f) If a nonparticipating manufacturer that has posted a bond has failed to
5 make or have made on its behalf by an entity with joint and several liability
6 escrow deposits equal to the full amount owed for a quarter within 15 days
7 following the due date for the quarter pursuant to sections 1914 and 1922 of
8 this title, the state may execute upon the bond, first to recover delinquent
9 escrow, which amount shall be deposited into a qualified escrow account
10 pursuant to section 1914 of this title and then to recover civil penalties and
11 costs authorized under that section. Escrow obligations above the amount
12 collected on the bond remain due from the nonparticipating manufacturer and
13 as provided in section 1925 of this title, from importers that sold the
14 manufacturer's cigarettes in the calendar quarter.

15 ~~(b)~~(g) The attorney general shall update the directory in order to correct
16 mistakes and add or remove a tobacco product manufacturer or brand family to
17 keep the directory in conformity with the requirements of this subchapter, and
18 the attorney general shall transmit by e-mail or other practicable means to each
19 stamping agent, and to any other entity that registers with the tax department or
20 the attorney general requesting receipt of the same, notice at least 30 days prior

1 to any removal from the directory of any tobacco product manufacturer or
2 brand family.

3 ~~(e)~~(h) Unless otherwise provided by agreement between a stamping agent
4 and a tobacco product manufacturer, a stamping agent shall be entitled to a
5 refund from a tobacco product manufacturer for any money paid by the
6 stamping agent to the tobacco product manufacturer for any cigarettes of that
7 tobacco product manufacturer still in the possession of the stamping agent on
8 the date of the attorney general's removal from the directory of that tobacco
9 product manufacturer or the individual styles or brands of cigarettes of that
10 tobacco product manufacturer. Also, unless otherwise provided by agreement
11 between a retail dealer and a distributor or a tobacco product manufacturer, a
12 retail dealer shall be entitled to a refund from either a distributor or a tobacco
13 product manufacturer for any money paid by the retail dealer to the distributor
14 or tobacco product manufacturer for any cigarettes of that distributor or
15 tobacco product manufacturer still in the possession of the retail dealer on the
16 date of the attorney general's removal from the directory of that tobacco
17 product manufacturer or the individual styles or brands of cigarettes of that
18 tobacco product manufacturer. The attorney general shall not restore to the
19 directory a tobacco product manufacturer or any individual styles or brands or
20 cigarettes or, if applicable, brand families of that tobacco product manufacturer

1 until the tobacco product manufacturer has paid all stamping agents any refund
2 due pursuant to this section.

3 ~~(d)~~(i) The commissioner shall refund to a retailer dealer or stamping agent
4 any tax paid under 32 V.S.A. chapter 205 of ~~Title 32~~ on products no longer
5 saleable in the state under this subchapter.

6 ~~(e)~~(j) A determination of the attorney general not to list or to remove from
7 the directory a tobacco product manufacturer, an individual style or brand of
8 cigarette or, if applicable, brand family is a final agency decision with the same
9 status as an agency decision or order in a contested case under the Vermont
10 Administrative Procedure Act. A tobacco product manufacturer aggrieved by
11 a determination of the attorney general under this section may appeal to the
12 superior court in Washington County, which shall review the matter pursuant
13 to 3 V.S.A. § 815.

14 Sec. 2. 33 V.S.A. § 1920 is amended to read:

15 § 1920. AGENT FOR SERVICE OF PROCESS

16 (a) Any nonresident or foreign nonparticipating manufacturer that has not
17 registered to do business in the state as a foreign corporation or other business
18 entity shall, as a condition precedent to having its brand families included or
19 retained in the directory, appoint and continually engage without interruption
20 the services of an agent in this state to act as agent for the service of process on
21 whom all process, and any action or proceeding against it concerning or arising

1 out of the enforcement of this subchapter or subchapter 1A of this chapter, or
2 both, may be served in any manner authorized by law. Such service shall
3 constitute legal and valid service of process on the nonparticipating
4 manufacturer. The nonparticipating manufacturer shall provide the name,
5 address, telephone number, and satisfactory proof of the appointment and
6 availability of such agent to the attorney general. Any nonparticipating
7 manufacturer located outside the United States shall, as an additional condition
8 to having its brand families included or retained on the directory, cause each of
9 its importers into the United States of any of its brand families to be sold in
10 Vermont to appoint and continuously engage without interruption the services
11 of an agent in the state in accordance with the provisions of this section.

12 * * *

13 Sec. 3. 33 V.S.A. § 1925 is added to read:

14 § 1925. JOINT AND SEVERAL LIABILITY OF IMPORTERS OF

15 NONPARTICIPATING MANUFACTURER'S BRAND FAMILIES

16 Each nonparticipating manufacturer located outside the United States and
17 each importer of any nonparticipating manufacturer's brand families that are
18 sold in the state shall bear joint and several liability for the deposit of all
19 escrow due and payment of all penalties, costs, and attorney fees imposed
20 under this subchapter. The nonparticipating manufacturer, as a condition to
21 being listed on the directory, shall provide a declaration on a form prescribed

1 by the attorney general from each of its importers of any of its brand families
2 to be sold in the state that the importer accepts joint and several liability for all
3 escrow deposits due pursuant to section 1914 of this title and for all penalties,
4 costs, and attorney fees assessed under section 1914 of this title.

5 Sec. 4. 7 V.S.A. § 1001 is amended to read:

6 § 1001. DEFINITIONS

7 As used in this chapter:

8 * * *

9 (3) "Tobacco products" mean cigarettes, cigars, cheroots, stogies,
10 periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking
11 tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut, and
12 other chewing tobaccos, shorts, refuse scraps, clippings, cuttings, and
13 sweepings of tobacco, and other kinds and forms of tobacco prepared in a
14 manner suitable for chewing or smoking in a pipe or otherwise, or both for
15 chewing and smoking, or for delivery into the body through inhaling heated
16 vapor or in any other manner.

17 * * *

18 (7) "Tobacco paraphernalia" means any device used, intended for use,
19 or designed for use in smoking, inhaling, ingesting, or otherwise introducing
20 tobacco products into the human body, or for preparing tobacco for smoking,
21 inhaling, ingesting, or otherwise introducing into the human body, including

1 devices for holding tobacco, rolling paper, wraps, cigarette rolling machines,
2 pipes, water pipes, carburetion devices, bongs, and hookahs.

3 (8) "Tobacco substitute" means products including electronic cigarettes
4 or other electronic or battery-powered devices that contain and are designed to
5 deliver nicotine or other substances into the body through inhaling vapor and
6 that have not been approved by the United States Food and Drug
7 Administration for tobacco cessation or other medical purposes.

8 Sec. 5. 7 V.S.A. § 1002 is amended to read:

9 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

10 * * *

11 (d) A person applying simultaneously for a tobacco license and a liquor
12 license shall apply to the legislative body of the municipality and shall pay to
13 the department ~~only~~ in addition to the fee required to obtain the liquor license,
14 a tobacco license fee of \$200.00. A person applying only for a tobacco license
15 shall submit a tobacco-only license fee of \$10.00 \$200.00 to the legislative
16 body of the municipality for each tobacco license or renewal. The municipal
17 clerk shall forward the application to the department, and the department shall
18 issue the tobacco license. ~~The municipal clerk shall retain \$5.00 of this fee,~~
19 ~~and the remainder shall be deposited in the treasury of the municipality.~~

20 * * *

1 Sec. 6. 7 V.S.A. § 1003 is amended to read:

2 § 1003. SALE OF TOBACCO PRODUCTS; REQUIREMENTS;

3 PROHIBITIONS

4 (a) A person shall not sell or provide tobacco products, tobacco substitutes
5 or tobacco paraphernalia to any person younger than 18 years of age.

6 * * *

7 (f) No person holding a tobacco license shall sell cigarettes or little cigars
8 as defined in 32 V.S.A. § 7702(6) individually or in packs that contain fewer
9 than 20 cigarettes or little cigars.

10 Sec. 7. 7 V.S.A. § 1006 is amended to read:

11 § 1006. POSTING OF SIGNS

12 (a) A person licensed under this chapter shall post ~~a plainly printed copy of~~
13 ~~the provisions of sections 1004 and 1005 of this title~~ in a conspicuous place on
14 the premises identified in the tobacco license ~~and on any vending machine~~
15 ~~located on the premises~~ a warning sign stating that the sale of tobacco products
16 to minors is prohibited. The board shall prepare the ~~signs~~ sign and make ~~them~~
17 it available with the license forms issued under this chapter. The sign may
18 include information about the health effects of tobacco and tobacco cessation
19 services. The board is authorized to change the design of the sign as needed to
20 maintain its effectiveness.

21 * * *

1 Sec. 8. 7 V.S.A. § 1009 is amended to read:

2 § 1009. CONTRABAND AND SEIZURE

3 Any cigarettes or other tobacco products that have been sold, offered for
4 sale, or possessed for sale in violation of section 1003 of this title, 20 V.S.A.
5 § 2757, 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any cigarette rolling
6 machines possessed or utilized in violation of section 1011 of this title, shall be
7 deemed contraband, and shall be subject to seizure by the commissioner, the
8 commissioner's agents or employees, the commissioner of taxes, or any agent
9 or employee thereof, or by any peace officer of this state when directed to do
10 so by the commissioner. All cigarettes or other tobacco products seized shall
11 be destroyed.

12 Sec. 9. 7 V.S.A. § 1010 is amended to read:

13 § 1010. INTERNET SALES

14 (a) As used in this section:

15 (1) "Cigarette" has the same definition as that found at 32 V.S.A.
16 § 7702(1).

17 (2) "Distributor" has the same definition as that found at 32 V.S.A.
18 § 7702(4).

19 (3) "Licensed wholesale dealer" has the same definition as that found at
20 32 V.S.A § 7702(5).

1 (4) “Little cigars” has the same definition as that found at 32 V.S.A.
2 § 7702(6).

3 (5) “Retail dealer” has the same definition as that found at 32 V.S.A.
4 § 7702(10).

5 (6) “Roll-your-own tobacco” has the same definition as that found at
6 32 V.S.A § 7702(11).

7 (7) “Snuff” has the same definition as that found at 32 V.S.A.
8 § 7702(13).

9 (8) “Tobacco substitute” has the same definition as that found at
10 subdivision 1001(8) of this title.

11 (b) No person shall cause cigarettes, roll-your-own tobacco, little cigars, ~~or~~
12 snuff, or tobacco substitutes, ordered or purchased by mail or through a
13 computer network, telephonic network, or other electronic network, to be
14 shipped to anyone other than a licensed wholesale dealer, distributor, or retail
15 dealer in this state.

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

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

19 (1) A knowing or intentional violation of this section shall be punishable
20 by imprisonment for not more than five years or a fine of not more than
21 \$5,000.00, or both.

1 (2) In addition to or in lieu of any other civil or criminal remedy
2 provided by law, upon a determination that a person has violated this section,
3 the attorney general may impose a civil penalty in an amount not to exceed
4 \$5,000.00 for each violation. For purposes of this subsection, each shipment
5 or transport of cigarettes, roll-your-own tobacco, little cigars, ~~or~~ snuff, or
6 tobacco substitutes shall constitute a separate violation.

7 * * *

8 Sec. 10. 7 V.S.A. § 1011 is added to read:

9 § 1011. CIGARETTE ROLLING MACHINES

10 (a) A person shall not possess or use a cigarette rolling machine for
11 commercial purposes.

12 (b) A person that knowingly violates subsection (a) of this section shall be
13 subject to the following civil penalties:

14 (1) The revocation or termination of any license, permit, appointment, or
15 commission under this chapter.

16 (2) A civil penalty of up to \$50,000.00 in any action brought by the
17 department of taxes, the department of liquor control, or the attorney general.

18 (c) Penalties assessed under subsection (b) of this section shall be paid into
19 the general fund.

20 (d) A person that violates subsection (a) of this section shall be imprisoned
21 for not more than three years or fined not more than \$100,000.00 or both.

1 (e) This section shall not apply to the possession of a cigarette rolling
2 machine intended solely for personal use by individuals who do not intend to
3 offer the resulting product for resale.

4 (f) A cigarette rolling machine capable of rolling 200 cigarettes in fewer
5 than 15 minutes is presumed to be for commercial purposes.