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H.11

Introduced by Representative Marcotte of Coventry

Referred to Committee on

Date:

Subject: Alcoholic beverages; alcohol; tobacco; penalties; solicitor's license

Statement of purpose of bill as introduced: This bill proposes to amend various penalties and fines for violations of certain provisions of Title 7, and also proposes to amend the purposes for which a solicitor's license may be obtained.

An act relating to penalties for violations of alcoholic beverage and tobacco laws and to solicitor's licenses

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

Sec. 1. 7 V.S.A. § 63 is amended to read:

§ 63. IMPORTATION OR TRANSPORTATION OF ALCOHOL;

PROHIBITIONS; PERSONAL IMPORT LIMIT; PENALTY

(a)(1) All spirits and fortified wines imported or transported into this State shall be imported or transported by and through the Board of Liquor and Lottery. A person importing or transporting or causing to be imported or transported into this State any spirits or fortified wines, or both, in violation of

1 this section shall be imprisoned not more than one year or fined not more than
2 ~~\$1,000.00~~ \$5,000.00, or both.

3 * * *

4 Sec. 2. 7 V.S.A. § 64 is amended to read:

5 § 64. SALE OF MALT BEVERAGES AND VINOUS BEVERAGES IN
6 KEGS

7 * * *

8 (c) Any person, other than a wholesale dealer or manufacturer, who
9 intentionally removes or defaces the label attached to a keg shall be imprisoned
10 not more than ~~two years~~ one year or fined not more than \$1,000.00, or both.

11 Sec. 3. 7 V.S.A. § 65 is amended to read:

12 § 65. PURCHASE OF KEGS

13 Any individual who, within 60 days of purchase, fails to return a keg sold
14 pursuant to section 64 of this chapter to the second-class or fourth-class
15 licensee from which the keg was purchased shall be fined ~~not more than~~
16 \$200.00.

17 Sec. 4. 7 V.S.A. § 210 is amended to read:

18 § 210. SUSPENSION OR REVOCATION OF LICENSE OR PERMIT;
19 ADMINISTRATIVE PENALTY

20 * * *

1 (b)(1) ~~As an alternative to and in lieu of~~ In addition to the authority to
2 suspend or revoke any permit or license, the Board of Liquor and Lottery ~~shall~~
3 ~~also have the power to~~ may impose an administrative penalty of up to
4 ~~\$2,500.00~~ \$7,500.00 per violation against a holder of a wholesale dealer's
5 license or a holder of a first-, second-, or third-class license for a violation of
6 the conditions of the license or of this title or of any rule adopted by the Board.

7 * * *

8 (3) The Board may also impose an administrative penalty under this
9 subsection against a holder of a tobacco license ~~for~~ of up to ~~\$100.00~~ \$250.00
10 for a first violation and up to ~~\$1,000.00~~ \$2,500.00 for subsequent violations.

11 * * *

12 Sec. 5. 7 V.S.A. § 213 is amended to read:

13 § 213. LICENSEE EDUCATION

14 * * *

15 (c)(1) Each licensee, permittee, or common carrier certificate holder shall
16 ensure that every employee who is involved in the delivery, sale, or serving of
17 alcoholic beverages completes a training program approved by the Division of
18 Liquor Control before the employee begins delivering, serving, or selling
19 alcoholic beverages and at least once every 24 months thereafter. Each
20 licensee shall maintain written documentation, signed by each employee
21 trained, of each training program conducted.

1 name, residence, and business address of the applicant, the name and address
2 of the vendor, manufacturer, or employer to be represented by the applicant,
3 and an agreement by the applicant to comply with the rules of the Board.

4 (2) Submits to the Board a recommendation by the vendor,
5 manufacturer, or employer to be represented by the applicant that indicates the
6 applicant is qualified to hold a solicitor's license.

7 * * *

8 (b) A solicitor's license holder may, by canvassing or interviewing holders
9 of licenses issued under the provisions of this title:

10 (1) solicit orders for and promote the sale of malt or vinous beverages
11 ~~by canvassing or interviewing holders of licenses issued under the provisions~~
12 ~~of this title;~~ and

13 (2) promote the sale of spirits and fortified wines.

14 * * *

15 (d) A person who solicits, or attempts to solicit, orders for malt or vinous
16 beverages, or promotes, or attempts to promote, the sale of malt or vinous
17 beverages, ~~or attempts to solicit or promote the sale of malt or vinous~~
18 ~~beverages~~ spirits, or fortified wines by canvassing or interviewing a holder of a
19 license issued under the provisions of this title, without having first obtained a
20 solicitor's license as provided in this section, or who makes a false or
21 fraudulent statement or representation in an application for the license or in

1 connection with an application shall be imprisoned not more than six months
2 or fined not more than \$500.00, or both.

3 Sec. 8. 7 V.S.A. § 281 is amended to read:

4 § 281. PROHIBITIONS

5 (a)(1) Except as otherwise provided in section 226 of this title, direct
6 shipments of malt or vinous beverages are prohibited if the shipment is not
7 specifically authorized and in compliance with sections 277-280 of this
8 subchapter.

9 (2) Any person who knowingly makes, participates in, imports, or
10 receives a direct shipment of malt or vinous beverages from a person who does
11 not hold a license, permit, or certificate pursuant to sections 226 or 277-280 of
12 this title may be fined not more than ~~\$1,000.00~~ \$2,500.00 or imprisoned not
13 more than one year, or both.

14 * * *

15 Sec. 9. 7 V.S.A. § 651 is amended to read:

16 § 651. SOLICITING ORDERS

17 A person who, for himself or herself or as agent, takes or solicits orders for
18 the sale of malt or vinous beverages, except for licensees or from agencies of
19 the U.S. Armed Forces as specified in section 421 of this title, or of spirits or
20 fortified wines shall be imprisoned not more than six months ~~nor less than~~
21 ~~three months~~ or fined not more than \$500.00 nor less than \$100.00, or both.

1 Sec. 10. 7 V.S.A. § 652 is amended to read:

2 § 652. TRANSPORTATION

3 A person who, by himself or herself, or through a clerk or agent, brings into
4 the State, or conveys or transports over or along a railroad or public highway,
5 or by land, air, or water, alcoholic beverages or alcohol ~~which~~ that the person
6 knows or has reason to believe is to be unlawfully kept, sold, or furnished shall
7 be imprisoned not more than six months nor less than three months or fined not
8 more than ~~\$500.00~~ \$2,500.00 nor less than \$100.00, or both.

9 Sec. 11. 7 V.S.A. § 655 is amended to read:

10 § 655. BARTER

11 (a) A licensee or permittee shall be imprisoned not more than ~~12~~ six
12 months nor less than ~~six months~~ 30 days or fined not more than ~~\$1,000.00~~
13 \$1,500.00 nor less than ~~\$300.00~~ \$500.00, or both, if the licensee or permittee:

14 (1) purchases or receives apparel, tools, implements of trade or
15 husbandry, household goods, furniture, or provisions, directly or indirectly, by
16 way of sale or barter, the consideration for which is, in whole or in part,
17 alcoholic beverages or alcohol or the price of the alcoholic beverages or
18 alcohol; or

19 (2) receives apparel, tools, implements of trade or husbandry, household
20 goods, furniture, or provisions in pawn for alcoholic beverages or alcohol or
21 the price of the alcoholic beverages or alcohol.

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Sec. 12. 7 V.S.A. § 658 is amended to read:

§ 658. SALE OR FURNISHING TO MINORS; ENABLING

CONSUMPTION BY MINORS; MINORS CAUSING DEATH OR

SERIOUS BODILY INJURY

(a) A person shall not:

(1) sell or furnish alcoholic beverages to a person under 21 years of age;

or

(2) knowingly enable the consumption of alcoholic beverages by a
person under 21 years of age.

* * *

(c) A person who violates subsection (a) of this section shall be fined not
less than \$500.00 nor more than \$2,000.00 or imprisoned not more than two
years, or both. However, an employee of a licensee or an employee of a State
liquor agency, who in the course of employment violates subdivision (a)(1) of
this section:

(1) during a compliance check conducted by a law enforcement officer
as defined in 20 V.S.A. § 2358:

(A) shall be assessed a civil penalty of not more than \$100.00 for the
first violation, and a civil penalty of not less than \$100.00 nor more than

1 (b) A person that willfully violates a provision of this title for which no
2 other penalty is prescribed or that willfully violates a rule of the Board of
3 Liquor and Lottery shall be imprisoned not more than three months nor less
4 than one month or fined not more than ~~\$200.00~~ \$500.00 nor less than ~~\$50.00~~
5 \$100.00, or both.

6 * * *

7 Sec. 14. 7 V.S.A. § 1002a is amended to read:

8 § 1002a. LICENSEE EDUCATION

9 * * *

10 (b) The holder of a tobacco license that does not also hold a liquor license
11 issued pursuant to this title for the same premises shall:

12 (1) Complete the Division's in-person or online enforcement seminar at
13 least once every two years. A corporation, partnership, or association shall
14 designate a director, partner, or manager to comply with this subdivision.

15 (2) Ensure that every employee involved in the sale of tobacco products
16 completes a Division of Liquor Control in-person or online training program or
17 other training programs approved by the Division before the employee begins
18 selling or providing tobacco products, and at least once every 24 months
19 thereafter. A licensee may comply with this subdivision by conducting its own
20 training program on its premises using information and materials furnished by
21 the Division of Liquor Control. A licensee that fails to comply with the

1 requirements of this subsection shall be subject to suspension of its tobacco
2 license for not less than one day or a fine of not more than \$100.00, or both.

3 * * *

4 Sec. 15. 7 V.S.A. § 1005 is amended to read:

5 § 1005. PERSONS UNDER 18 YEARS OF AGE; POSSESSION OF
6 TOBACCO PRODUCTS; MISREPRESENTING AGE OR
7 PURCHASING TOBACCO PRODUCTS; PENALTY

8 (a)(1) A person under 18 years of age shall not possess, purchase, or
9 attempt to purchase tobacco products, tobacco substitutes, or tobacco
10 paraphernalia unless the person is an employee of a holder of a tobacco license
11 and is in possession of tobacco products, tobacco substitutes, or tobacco
12 paraphernalia to effect a sale in the course of employment.

13 (2) A person under 18 years of age shall not misrepresent his or her age
14 to purchase or attempt to purchase tobacco products, tobacco substitutes, or
15 tobacco paraphernalia.

16 (b)(1) A person who possesses tobacco products, tobacco substitutes, or
17 tobacco paraphernalia in violation of subsection (a) of this section shall be
18 subject to having the tobacco products, tobacco substitutes, or tobacco
19 paraphernalia immediately confiscated and shall be further subject to a ~~civil~~
20 ~~penalty of \$25.00.;~~

1 (A) for a first violation, a civil penalty of \$75.00 or be required to
2 provide up to 10 hours of community service, or both;

3 (B) for a second violation, a civil penalty of \$100.00 or be required to
4 provide up to 10 hours of community service, or both; and

5 (C) for subsequent violations, a civil penalty of \$200.00 or be
6 required to provide up to 10 hours of community service, or both.

7 (2) An action under this subsection shall be brought in the same manner
8 as a traffic violation pursuant to 23 V.S.A. chapter 24.

9 (c)(1) A person under 18 years of age who knowingly misrepresents his or
10 her age by presenting false identification to purchase tobacco products, tobacco
11 substitutes, or tobacco paraphernalia ~~shall be fined not more than \$50.00 or~~
12 ~~provide up to 10 hours of community service, or both~~ commits a civil
13 violation.

14 (A) For a first violation of this subsection, a person shall be subject to
15 a civil penalty of \$75.00 or required to provide up to 10 hours of community
16 service, or both.

17 (B) For a second or subsequent violation of this subsection, a person
18 shall be referred to the Court Diversion Program. A person who fails to
19 complete the program successfully shall be subject to a suspension of the
20 person's operator's license and privilege to operate a motor vehicle for a

1 period of 30 days, and be required to pay a civil penalty of \$100.00 or to
2 provide up to 10 hours of community service, or both.

3 (2) A law enforcement officer shall issue to a person under 18 years of
4 age who commits a second or subsequent violation of this subsection a notice
5 of violation in a form approved by the Court Administrator. The notice of
6 violation shall require the person to provide his or her name and address and
7 shall explain procedures under subdivision (1)(B) of this subsection, including
8 that:

9 (A) the person shall contact the Diversion Program in the county
10 where the offense occurred within 15 days;

11 (B) failure to contact the Diversion Program within 15 days shall
12 result in the case being referred to the Judicial Bureau, where the person, if
13 found liable for the violation, shall be subject to a suspension of their
14 operator's license, and a civil penalty or an order to provide community
15 service, or both, and may face substantially increased insurance rates;

16 (C) no money should be submitted to pay any penalty until after
17 adjudication; and

18 (D) the person shall notify the Diversion Program if the person's
19 address changes.

20 (3) When a person is issued a notice of violation under subdivision
21 (1)(B) of this subsection, the law enforcement officer shall complete a

1 summons and complaint for the offense and send it to the Diversion Program
2 in the county where the offense occurred. The summons and complaint shall
3 not be filed with the Judicial Bureau at that time.

4 (4) Within 15 days after receiving a notice of violation, the person shall
5 contact the Diversion Program in the county where the offense occurred. If the
6 person fails to do so, the Diversion Program shall file the summons and
7 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.
8 The Diversion Program shall provide a copy of the summons and complaint to
9 the law enforcement officer who issued the notice of violation and shall
10 provide two copies to the person charged with the violation.

11 (5) Upon receipt from a law enforcement officer of a summons and
12 complaint completed under this section, the Diversion Program shall send the
13 person a notice to report to the Diversion Program. The notice to report shall
14 provide that:

15 (A) The person is required to complete all conditions related to the
16 offense imposed by the Diversion Program.

17 (B) If the person does not satisfactorily complete any condition
18 related to the offense imposed by the Diversion Program, the case shall be
19 referred to the Judicial Bureau, where the person, if found liable for the
20 violation, shall be subject to a suspension of their operator's license, and a civil

1 penalty or an order to provide community service, or both, and may face
2 substantially increased insurance rates.

3 (C) If the person satisfactorily completes all conditions related to the
4 offense imposed by the Diversion Program, the person's operator's license
5 shall not be suspended, and no penalty shall be imposed nor shall any
6 community service be ordered.

7 (6)(A) When a person has satisfactorily completed the conditions related
8 to the offense that the Diversion Program has imposed, the Diversion Program
9 shall:

10 (i) Void the summons and complaint with no penalty due.

11 (ii) Send copies of the voided summons and complaint to the
12 Judicial Bureau and to the law enforcement officer who completed them.
13 Before sending copies of the voided summons and complaint to the Judicial
14 Bureau under this subdivision, the Diversion Program shall redact all language
15 containing the person's name, address, Social Security number, and any other
16 information that identifies the person.

17 (B) If a person does not satisfactorily complete the conditions related
18 to the offense imposed by the Diversion Program or if the person fails to pay
19 the Diversion Program any required program fees, the Diversion Program shall
20 file the summons and complaint with the Judicial Bureau for adjudication
21 under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the

1 summons and complaint to the law enforcement officer who issued the notice
2 of violation and shall provide two copies to the person charged with the
3 violation.

4 (C) A person aggrieved by a decision of the Diversion Program may
5 seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil
6 Procedure.

7 (7) Upon adjudicating a person in violation of this section, the Judicial
8 Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a
9 record of all such adjudications that shall be separate from the registry
10 maintained by the Department for motor vehicle driving records. The identity
11 of a person in the registry shall be revealed only to a law enforcement officer
12 determining whether the person has previously violated this section.

13 Sec. 16. 7 V.S.A. § 1007 is amended to read:

14 § 1007. FURNISHING TOBACCO TO PERSONS UNDER 18 YEARS OF
15 AGE; REPORT

16 * * *

17 (b)(1) The Division of Liquor Control shall conduct or contract for
18 compliance tests of tobacco licensees as frequently and as comprehensively as
19 necessary to ensure consistent statewide compliance with the prohibition on
20 sales to persons under 18 years of age of at least 90 percent for buyers who are

1 16 or 17 years of age. An individual under 18 years of age participating in a
2 compliance test shall not be in violation of section 1005 of this title.

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

9 (A) Two violations ~~one weekday~~ two weekdays;

10 (B) Three violations ~~two weekdays~~ 15-day suspension;

11 (C) Four violations ~~three weekdays~~ 90-day suspension;

12 (D) Five violations ~~three weekend days, Friday through Sunday~~
13 one-year suspension.

14 * * *

15 Sec. 17. 7 V.S.A. § 1009 is amended to read:

16 § 1009. CONTRABAND AND SEIZURE

17 (a) Any cigarettes or other tobacco products that have been sold, offered for
18 sale, or possessed for sale in violation of section 1003 of this title, 20 V.S.A.
19 § 2757, 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial cigarette
20 rolling machines possessed or utilized in violation of section 1011 of this title,
21 shall be deemed contraband and shall be subject to seizure by the

1 Commissioner, the Commissioner's agents or employees, the Commissioner of
2 Taxes or any agent or employee of the Commissioner of Taxes, or by any law
3 enforcement officer of this State when directed to do so by the Commissioner.
4 All cigarettes or other tobacco products seized shall be destroyed.

5 (b)(1) Any person in possession of property considered contraband under
6 this section shall be fined not more than \$1,000.00 nor less than \$500.00.

7 (2) Any vehicle, aircraft or watercraft, or other conveyance in which
8 property considered contraband under this section is found may be seized and
9 subject to forfeiture and condemnation pursuant to sections 570 and 572-574
10 of this title.

11 Sec. 18. EFFECTIVE DATE

12 This act shall take effect on July 1, 2019.