

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 288 entitled “An act relating to banning flavored tobacco products and e-
4 liquids” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. FINDINGS (NEW)

8 The General Assembly finds that:

9 (1) Tobacco use is costly. Vermont spends \$348 million annually to
10 treat tobacco-caused illnesses, including \$87.2 million each year in Medicaid
11 expenses. This translates into a tax burden each year of \$759 per Vermont
12 household. Productivity losses add an additional \$232.8 million each year.

13 (2) Youth tobacco use is growing due to e-cigarettes. Seven percent of
14 Vermont high school students smoke, but if e-cigarette use is included,
15 28 percent of Vermont youths use some form of tobacco product. More than
16 one in four Vermont high school students now uses e-cigarettes. Use more
17 than doubled among this age group, from 12 percent to 26 percent, between
18 2017 and 2019.

19 (3) More students report frequent use of e-cigarettes, which indicates
20 possible nicotine addiction. According to the 2019 Vermont Youth Risk

1 Behavior Survey, 31 percent of Vermont high school e-cigarette users used e-
2 cigarettes daily, up from 15 percent in 2017.

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

9 (5) Mint- and menthol-flavored e-cigarettes are increasing in popularity
10 among youths. Over the past four years, mint and menthol went from being
11 some of the least popular to being some of the most popular e-cigarette flavors
12 among high school students. Evidence indicates that if any e-cigarette flavors
13 remain on the market, youth will shift from one flavor to another. For
14 example, after Juul restricted the availability of fruit, candy, and other e-
15 cigarette flavors in retail stores in November 2018, use of mint and menthol e-
16 cigarettes by high school users increased sharply, from 42.3 percent reportedly
17 using mint and menthol e-cigarettes in 2017 to 63.9 percent using them in
18 2019.

19 (6) It is essential that menthol cigarettes are included in a ban on
20 flavored tobacco products, flavored e-liquids, and flavored e-cigarettes to
21 prevent youths who became addicted to nicotine through vaping from

1 transitioning to traditional cigarettes. Menthol creates a cooling and numbing
2 effect that reduces the harshness of cigarette smoke and suppresses the cough
3 reflex. Those effects make menthol cigarettes more appealing to young,
4 inexperienced smokers, and research shows that menthol cigarettes are more
5 likely to addict youth.

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

11 (8) Eliminating the sale of menthol tobacco products promotes health
12 equity. Menthol cigarette use is more prevalent among persons of color who
13 smoke than among white persons who smoke and is more common among
14 lesbian, gay, bisexual, and transgender smokers than among heterosexual
15 smokers. Eighty-five percent of African-American adult smokers use menthol
16 cigarettes, and of black youths 12–17 years of age who smoke, seven out of 10
17 use menthol cigarettes. Tobacco industry documents show a concerted effort
18 to target African-Americans through specific advertising efforts.

19 (9) The U.S. Food and Drug Administration (FDA) agrees that menthol
20 cigarettes harm the public health. In 2013, the FDA published a report

1 concluding that removal of menthol cigarettes from the market would improve
2 public health.

3 (10) Vermont cannot wait for the FDA to take action. The same federal
4 legislation that was passed in 2009 banning all other flavored cigarettes
5 allowed the FDA to regulate or ban menthol. Despite taking public comment
6 on the dangers of menthol in 2013 and again in 2018, the FDA has still failed
7 to act. The new policy released by the FDA on January 1, 2020 falls far short
8 of protecting Vermonters from the dangers of smoking and nicotine addiction.
9 The FDA’s policy bans only flavored cartridge- or pod-based e-cigarettes and
10 even then exempts those that are menthol or tobacco flavored. Open tank e-
11 cigarettes and the flavored e-liquids used to fill them can still be sold, as can
12 flavored, self-contained, disposable e-cigarettes.

13 Sec. 2. 7 V.S.A. chapter 40 is amended to read:

14 CHAPTER 40. TOBACCO PRODUCTS

15 § 1001. DEFINITIONS

16 As used in this chapter:

17 * * *

18 (3) “Tobacco products” means cigarettes, little cigars, roll-your-own
19 tobacco, snuff, cigars, new smokeless tobacco, and **other tobacco products as**
20 **defined in 32 V.S.A. § 7702 any other product manufactured from,**

1 **derived from, or containing tobacco that is intended for human**
2 **consumption by smoking, by chewing, or in any other manner.**

3 * * *

4 (9) “E-liquid” means the solution, substance, or other material used in or
5 with a tobacco substitute that is heated **or otherwise acted upon** to produce an
6 aerosol, vapor, or emission to be inhaled by the user, regardless of whether the
7 liquid contains nicotine.

8 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE **(NEW)**

9 (a)(1) No person shall engage in the retail sale of tobacco products, tobacco
10 substitutes, e-liquids, or tobacco paraphernalia in his or her place of business
11 without a tobacco license obtained from the Division of Liquor Control.

12 * * *

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

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

20 (g) No person shall engage in the retail sale of tobacco products, tobacco
21 substitutes, ~~substances containing nicotine or otherwise intended for use with a~~

1 ~~tobacco substitute e-liquids~~, or tobacco paraphernalia in the State unless the
2 person is a licensed wholesale dealer as defined in 32 V.S.A. § 7702 or has
3 purchased the tobacco products, tobacco substitutes, ~~substances containing~~
4 ~~nicotine or otherwise intended for use with a tobacco substitute e-liquids~~, or
5 tobacco paraphernalia from a licensed wholesale dealer.

6 * * *

7 § 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
8 TOBACCO PARAPHERNALIA; REQUIREMENTS;
9 PROHIBITIONS **(NEW)**

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

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

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

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

17 (B) in a locked container.

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

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

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

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

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

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

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

1 § 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;
2 TOBACCO SUBSTITUTES; E-LIQUIDS; TOBACCO
3 PARAPHERNALIA **(NEW)**

4 (a) A person shall exhibit proper proof of his or her age upon demand of a
5 person licensed under this chapter, an employee of a licensee, or a law
6 enforcement officer. If the person fails to provide proper proof of age, the
7 licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes,
8 e-liquids, or tobacco paraphernalia to the person. The sale or furnishing of
9 tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to a
10 person exhibiting proper proof of age shall be prima facie evidence of a
11 licensee’s compliance with section 1007 of this title.

12 (b) As used in this section, “proper proof of age” means a valid authorized
13 form of identification as defined in section 589 of this title.

14 § 1005. PERSONS UNDER 21 YEARS OF AGE; POSSESSION OF
15 TOBACCO PRODUCTS; MISREPRESENTING AGE OR
16 PURCHASING TOBACCO PRODUCTS; PENALTY **(NEW)**

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

1 (2) A person under 21 years of age shall not misrepresent his or her age
2 to purchase or attempt to purchase tobacco products, tobacco substitutes, e-
3 liquids, or tobacco paraphernalia.

4 (b) A person who possesses tobacco products, tobacco substitutes, e-
5 liquids, or tobacco paraphernalia in violation of subsection (a) of this section
6 shall be subject to having the tobacco products, tobacco substitutes, e-liquids,
7 or tobacco paraphernalia immediately confiscated and shall be further subject
8 to a civil penalty of \$25.00. An action under this subsection shall be brought
9 in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24.

10 (c) A person under 21 years of age who misrepresents his or her age by
11 presenting false identification to purchase tobacco products, tobacco
12 substitutes, e-liquids, or tobacco paraphernalia shall be fined not more than
13 \$50.00 or provide up to 10 hours of community service, or both.

14 § 1006. POSTING OF SIGNS **(NEW)**

15 (a) A person licensed under this chapter shall post in a conspicuous place
16 on the premises identified in the tobacco license a warning sign stating that the
17 sale of tobacco products, tobacco substitutes, e-liquids, and tobacco
18 paraphernalia to persons under 21 years of age is prohibited. The Board shall
19 prepare the sign and make it available with the license forms issued under this
20 chapter. The sign may include information about the health effects of tobacco
21 and tobacco cessation services. The Board, in consultation with a

1 representative of the licensees when appropriate, is authorized to change the
2 design of the sign as needed to maintain its effectiveness.

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

5 § 1007. FURNISHING TOBACCO TO PERSONS UNDER 21 YEARS OF
6 AGE; REPORT **(NEW)**

7 (a) A person that sells or furnishes tobacco products, tobacco substitutes, e-
8 liquids, or tobacco paraphernalia to a person under 21 years of age shall be
9 subject to a civil penalty of not more than \$100.00 for the first offense and not
10 more than \$500.00 for any subsequent offense. An action under this section
11 shall be brought in the same manner as for a traffic violation pursuant to
12 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of
13 the alleged violation.

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

1 § 1009. CONTRABAND AND SEIZURE **(KEEP?)**

2 (a) Any cigarettes or other tobacco products, tobacco substitutes, e-liquids,
3 or tobacco paraphernalia that have been sold, offered for sale, or possessed for
4 sale in violation of section 1003, 1010, or 1013 of this title, 20 V.S.A. § 2757,
5 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial 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 of the Commissioner of Taxes, or by any law enforcement officer
10 of this State when directed to do so by the Commissioner. All cigarettes or
11 other tobacco products items seized under this subsection shall be destroyed.

12 * * *

13 § 1010. INTERNET SALES **(NEW)**

14 (a) As used in this section:

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

16 (2) [Repealed.]

17 (3) “Licensed wholesale dealer” has the same meaning as in 32 V.S.A.
18 § 7702(5).

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

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

1 (6) “Roll-your-own tobacco” has the same meaning as in 32 V.S.A §
2 7702(11).

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

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

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

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

13 (1) A knowing or intentional violation of this section shall be punishable
14 by imprisonment for not more than five years or a fine of not more than
15 \$5,000.00, or both.

16 (2) In addition to or in lieu of any other civil or criminal remedy
17 provided by law, upon a determination that a person has violated this section,
18 the Attorney General may impose a civil penalty in an amount not to exceed
19 \$5,000.00 for each violation. For purposes of this subsection, each shipment
20 or transport of cigarettes, roll-your-own tobacco, little cigars, ~~or~~ snuff, tobacco

1 substitutes, e-liquids, or tobacco paraphernalia shall constitute a separate
2 violation.

3 * * *

4 § 1012. LIQUID NICOTINE; PACKAGING **ADD E-LIQUIDS?**

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

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

11 (2) any nicotine liquid container unless that container constitutes child-
12 resistant packaging.

13 (b) As used in this section:

14 (1) “Child-resistant packaging” means packaging that is designed or
15 constructed to be significantly difficult for children under five years of age to
16 open or obtain a toxic or harmful amount of the substance in the container
17 within a reasonable time and not difficult for normal adults to use properly, but
18 does not mean packaging that all children under five years of age cannot open
19 or obtain a toxic or harmful amount of the substance in the container within a
20 reasonable time.

1 statement or claim directed to consumers or the public, whether express or
2 implied, that the product has a distinguishable taste or aroma other than the
3 taste or aroma of tobacco.

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

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

16 (b) A person shall not sell, offer for sale, give, provide, transport,
17 manufacture, or otherwise distribute one or more flavored tobacco products,
18 flavored e-liquids, or flavored tobacco substitutes.

19 ~~(c) A person shall not possess, purchase, or attempt to purchase one or~~
20 ~~more flavored tobacco products, flavored e-liquids, or flavored tobacco~~
21 ~~substitutes.~~

1 school sponsored functions. Public school boards may adopt policies that
2 include confiscation and appropriate referrals to law enforcement authorities.

3 Sec. 6. 18 V.S.A. § 4803(a) is amended to read: **(NEW)**

4 (a) Creation. There is created the Substance Misuse Prevention Oversight
5 and Advisory Council within the Department of Health to improve the health
6 outcomes of all Vermonters through a consolidated and holistic approach to
7 substance misuse prevention that addresses all categories of substances. The
8 Council shall provide advice to the Governor and General Assembly for
9 improving prevention policies and programming throughout the State and to
10 ensure that population prevention measures are at the forefront of all policy
11 determinations. The Advisory Council's prevention initiatives shall
12 encompass all substances at risk of misuse, including:

13 (1) alcohol;

14 (2) cannabis;

15 (3) controlled substances, such as opioids, cocaine, and
16 methamphetamines; and

17 (4) tobacco products, ~~and tobacco substitutes, and e-liquids~~ as defined in
18 7 V.S.A. § 1001 ~~and substances containing nicotine or that are otherwise~~
19 ~~intended for use with a tobacco substitute.~~

20 Sec. 7. 32 V.S.A. § 7702 is amended to read: **(NEW)**

21 § 7702. DEFINITIONS

1 **and regulate the content of labels** for electronic cigarettes and other vaping-
2 related products in this State.

3 Sec. 9. EFFECTIVE DATE **(CHANGE?)**

4 This act shall take effect on passage.

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14 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE