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ACTION CALENDAR

UNFINISHED BUSINESS OF FRIDAY, APRIL 5, 2024

GOVERNOR'S VETO

S. 18.

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

Pending question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

The text of the Communication from His Excellency, The Governor, whereby he *vetoed* and returned unsigned S. 18 to the Senate is as follows:

Text of Communication from Governor

April 3, 2024

The Honorable John Bloomer, Jr.
Secretary of the Senate
115 State House
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I'm returning S.18, *An act relating to banning flavored tobacco products and e-liquids*, without my signature because of my objections described herein.

Admittedly, I've struggled with this bill, as it seems hypocritical and out of step with other initiatives that have passed into law recently and over time.

To be clear, I too feel we have an obligation to protect our children, but it must be balanced in such a way that we honor the rights and freedoms of adults to make decisions about their individual lives.

That's why, in 2019, I signed a bill raising the legal age to buy tobacco or e-cigarette products from 18 to 21 and even increased a tax on some of those products to deter use. In my mind, these were reasonable steps that struck the right balance.

From my perspective, this bill is inconsistent with other laws related to legalized substance use. In 2020, the Legislature legalized the commercial sale of cannabis, including edibles and other flavored products, which are now

widely available, despite the known risks to youth and their developing brains. Yet, to my knowledge, I'm not aware of an initiative to ban such products, even considering their obvious appeal to minors and negative health impacts.

In addition, we (the State) allow, and in fact actively advertise and profit from, the sale of flavored alcohol products. We also promote and highlight our distilleries and breweries with all their unique flavors, which has been incredibly successful, not only financially, but also from a branding and tourism standpoint. But it can't be denied alcohol abuse has been the root cause of many societal challenges.

I've found people lose faith in government when policies have these types of inconsistencies, because they contradict common sense.

Furthermore, from a purely practical point of view, these products would continue to be widely available just across the river in New Hampshire, and through online sales.

Regardless of what becomes of this bill, the Legislature should direct the Attorney General and the Department of Liquor and Lottery to further crack down on direct online sales to minors.

In conclusion, I'm not convinced the in-state prohibition of flavored tobacco, e-liquids and tobacco substitutes only, is justified when sales will remain online, and when State law plainly encourages sales of other unhealthy adult products to continue.

Sincerely,
Philip B. Scott
Governor

PBS/kp

Text of bill as passed by Senate and House

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Tobacco use is costly. Vermont spends more than \$400 million annually to treat tobacco-caused illnesses, including more than \$90 million each year in Medicaid expenses. This translates into a tax burden each year of over \$1,000.00 per Vermont household. Smoking-related productivity losses add another \$576 million in additional costs each year.

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

(3) Menthol cigarette use is more prevalent among persons of color who smoke than among white persons who smoke and is more common among lesbian, gay, bisexual, and transgender smokers than among heterosexual smokers. Eighty-five percent of African American adult smokers use menthol cigarettes, and of Black youths 12–17 years of age who smoke, seven out of 10 use menthol cigarettes. Tobacco industry documents show a concerted effort to target African Americans through specific advertising efforts.

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

CHAPTER 40. TOBACCO PRODUCTS

§ 1001. DEFINITIONS

As used in this chapter:

(1) “Bidis” or “Beedies” means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tendu leaf (diospyros exculpra), or any other product that is offered to, or purchased by, consumers as bidis or beedies.

(2) “Board” means the Board of Liquor and Lottery.

(3) “Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or tobacco substitute, or a component part or byproduct of a tobacco product or tobacco substitute. The term includes tastes or aromas relating to any fruit, chocolate, vanilla, honey, maple, candy, cocoa, dessert, alcoholic beverage, mint, menthol, wintergreen, herb or spice, or other food or drink, or to any conceptual flavor that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor. The term also includes induced sensations, such as those produced by synthetic cooling agents, regardless of whether the agent itself imparts any taste or aroma.

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

or obtain a toxic or harmful amount of the substance in the container within a reasonable time.

(5) “Cigarette” means:

(A) any roll of tobacco wrapped in paper or any substance not containing tobacco; and

(B) any roll of tobacco wrapped in a substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (A) of this subdivision (5).

~~(2)(6) “Commissioner” means the Commissioner of Liquor and Lottery.~~

~~(3) “Tobacco products” 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.~~

~~(4) “Vending machine” means any mechanical, electronic, or other similar device that dispenses tobacco products for money.~~

(7) “E-liquid” means the solution, substance, or other material that contains nicotine and is used in or with a tobacco substitute, and that is heated or otherwise acted upon to produce an aerosol, vapor, or other emission to be inhaled or otherwise absorbed by the user. The term does not include cannabis products as defined in section 831 of this title or products that are regulated by the Cannabis Control Board.

(8) “E-liquid container or other container holding a liquid or gel substance containing nicotine” means a bottle or other container of an e-liquid containing nicotine or a nicotine liquid or other substance containing nicotine that is sold, marketed, or intended for use in a tobacco substitute. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco substitute if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

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

(10) “Flavored tobacco product” means any tobacco product with a characterizing flavor. A tobacco product shall be presumed to be a flavored

tobacco product if a licensee, a manufacturer, or a licensee's or manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether express or implied, that the product has a distinguishable taste or aroma other than the taste or aroma of tobacco.

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

(12) "Licensed wholesale dealer" means a wholesale dealer licensed under 32 V.S.A. chapter 205.

(13) "Little cigars" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco, other than any roll of tobacco that is a cigarette, and as to which 1,000 units weigh not more than three pounds.

(14) "Nicotine" means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl)pyridine or C[10]H[14]N[2], including any salt or complex of nicotine, whether naturally or synthetically derived.

(15) "Proper proof of age" means a valid authorized form of identification as defined in section 589 of this title.

(16) "Retail dealer" means a person licensed pursuant to section 1002 of this title.

(17) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(18) "Snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, has a moisture content of not less than 45 percent, and is not offered in individual single-dose tablets or other discrete single-use units.

(5)(19) "Tobacco license" means a license issued by the Division of Liquor Control under this chapter permitting the licensee to engage in the retail sale of tobacco products.

(6) "Bidis" or "Beedies" means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tendu leaf (diospyros exculpra), or any other product that is offered to, or purchased by, consumers as bidis or beedies.

~~(7)~~(20) “Tobacco paraphernalia” means any device used, intended for use, or designed for use in smoking, inhaling, ingesting, or otherwise introducing tobacco products, tobacco substitutes, e-liquids, or a combination of these, into the human body, or for preparing tobacco for smoking, inhaling, ingesting, or otherwise introducing into the human body, including devices for holding tobacco, rolling paper, wraps, cigarette rolling machines, pipes, water pipes, carburetion devices, bongs, and hookahs, and clothing or accessories adapted for use with a tobacco product, a tobacco substitute, an e-liquid, or tobacco paraphernalia.

(21) “Tobacco products” means cigarettes, little cigars, roll-your-own tobacco, snuff, cigars, new smokeless tobacco, and any other product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, by chewing, or in any other manner.

~~(8)~~(22)(A) “Tobacco substitute” means ~~products~~ any product that is not a tobacco product, as defined in subdivision (21) of this section, and that meets one or both of the following descriptions:

(i) a product, including an electronic cigarettes cigarette or other electronic or battery-powered devices device, or any component, part, or accessory thereof, that contain or are contains or is designed to deliver nicotine or other substances into the body through the inhalation or other absorption of aerosol, vapor, or other emission and that have has not been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes; or

(ii) an oral nicotine product or any other item that is designed to deliver nicotine into the body, including a product or item containing or delivering nicotine that has been extracted from a tobacco plant or leaf.

(B) Cannabis products as defined in section 831 of this title or products that have been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes shall not be considered to be tobacco substitutes.

(23) “Vending machine” means any mechanical, electronic, or other similar device that sells or dispenses tobacco products, tobacco substitutes, e-liquids, tobacco paraphernalia, or a combination of these.

(24) “Wholesale dealer” 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 any of these products to other wholesale dealers or retail dealers for the purpose of resale, but not by small quantity or parcel to consumers thereof.

§ 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

(a)(1) Except as provided in subsection (h) of this section, no person shall engage in the retail sale of tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia in the person's place of business without a tobacco license obtained from the Division of Liquor Control.

* * *

(e) A person who sells tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia without obtaining a tobacco license and a tobacco substitute endorsement, as applicable, 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 16 years of age may sell tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia.

(g) No person shall engage in the retail sale of tobacco products, tobacco substitutes, ~~substances containing nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia 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, tobacco substitutes, ~~substances containing nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia from a licensed wholesale dealer.

(h) This section shall not apply to a cannabis establishment licensed pursuant to chapter 33 of this title to engage in the retail sale of cannabis products as defined in section 831 of this title but not engaged in the sale of tobacco products or tobacco substitutes.

* * *

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

(a)(1) A person shall not:

(A) sell or provide tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to any person under 21 years of age; or

(B) knowingly enable the usage of tobacco products, tobacco substitutes, or e-liquids by a person under 21 years of age.

(2)(A) Except as otherwise provided in subdivision (B) of this subdivision (2), a person, including a retail dealer, who violates subdivision (1) of this subsection (a) shall be subject to a civil penalty of not more than

\$500.00 for the first offense and not more than \$2,000.00 for any subsequent offense.

(B) An employee of a retail dealer who violates subdivision (1) of this subsection (a) in the course of employment shall be subject to a civil penalty of not more than \$100.00 for a first offense and not more than \$500.00 for any subsequent offense. This penalty shall be in addition to the penalty imposed on the retail dealer pursuant to subdivision (A) of this subdivision (2).

(C) An action under this subsection (a) shall be brought in the same manner as for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought within 24 hours after the occurrence of the alleged violation.

(b) All vending machines selling or dispensing tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia, or a combination of these, are prohibited.

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

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

(B) in a locked container.

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

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

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

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

(d) The sale and the purchase of bidis is prohibited. A person who holds a tobacco license who sells bidis as prohibited by this subsection ~~shall be fined not more than \$500.00.~~ A or a person who purchases bidis from any source shall be ~~fined~~ subject to a civil penalty of not more than \$250.00 for a first offense and not more than \$500.00 for a subsequent offense.

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

(f) ~~As used in this section, “little cigars” means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco, other than any roll of tobacco that is a cigarette within the meaning of 32 V.S.A. § 7702(1), and as to which 1,000 units weigh not more than three pounds~~ “enable the usage of tobacco products, tobacco substitutes, or e-liquids” means creating a direct and immediate opportunity for a person to use tobacco products, tobacco substitutes, or e-liquids, or a combination of these.

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

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

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

§ 1005. PERSONS UNDER 21 YEARS OF AGE; POSSESSION OF
TOBACCO PRODUCTS, TOBACCO SUBSTITUTES, E-LIQUIDS,
OR TOBACCO PARAPHERNALIA; MISREPRESENTING AGE
OR PURCHASING TOBACCO PRODUCTS; PENALTY

(a)(1) A person under 21 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia unless:

(A) the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to effect a sale in the course of employment; or

(B) the person is in possession of tobacco products or tobacco paraphernalia in connection with Indigenous cultural tobacco practices.

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

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

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

§ 1006. POSTING OF SIGNS

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

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

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

~~(a) A person that sells or furnishes tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under 21 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 and shall be brought within 24 hours of the occurrence of the alleged violation. [Repealed.]~~

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

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

- (A) two violations two weekdays;
- (B) three violations 15-day suspension;
- (C) four violations 90-day suspension;
- (D) five violations one-year suspension.

(3) The Division shall report to the House Committee on ~~General, Housing, Government Operations~~ and Military Affairs, the Senate Committee on Economic Development, Housing and General Affairs, and the ~~Tobacco Evaluation and Review Board~~ Substance Misuse Prevention Oversight and Advisory Council annually, on or before January 15, the methodology and results of compliance tests conducted during the previous year. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the required report to be made under this subdivision.

* * *

§ 1009. CONTRABAND AND SEIZURE

(a) Any cigarettes or other tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia that have been sold, offered for sale, or possessed for sale in violation of section 1003, 1010, or 1013 of this title, 20 V.S.A. § 2757, 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial cigarette rolling machines possessed or utilized in violation of section 1011 of this title, shall be deemed contraband and shall be subject to seizure by the Commissioner, the Commissioner's agents or employees, the Commissioner of Taxes or any agent or employee of the Commissioner of Taxes, or by any law enforcement officer of this State when directed to do so by the Commissioner. ~~All cigarettes or other tobacco products~~ items seized under this subsection shall be destroyed.

* * *

§ 1010. INTERNET SALES

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

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

(2) ~~[Repealed.]~~

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

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

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

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

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

(b) No person shall cause cigarettes, roll-your-own tobacco, little cigars, snuff, tobacco substitutes, ~~substances containing nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia, 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 or retail dealer in this State.

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

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

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

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

* * *

§ 1012. LIQUID NICOTINE E-LIQUIDS AND OTHER SUBSTANCES CONTAINING NICOTINE; PACKAGING

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

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

(2) any ~~nicotine liquid~~ e-liquid container or other container holding a liquid or gel substance containing nicotine unless that container constitutes child-resistant packaging.

(b) As used in this section:

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

(2) ~~“Nicotine liquid container” means a bottle or other container of a nicotine liquid or other substance containing nicotine that is sold, marketed, or intended for use in a tobacco substitute. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco substitute if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer. [Repealed.]~~

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

(a) No person shall engage in the retail sale of:

(1) any flavored tobacco substitute;

(2) any flavored e-liquid; or

(3) any menthol-flavored tobacco product.

(b)(1) A person who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$200.00 for the first offense and not more than \$500.00 for any subsequent offense.

(2) 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 and shall be brought within 24 hours after the occurrence of the alleged violation.

§ 1014. SALE OF DISCOUNTED TOBACCO PRODUCTS, TOBACCO SUBSTITUTES, E-LIQUIDS, AND TOBACCO PARAPHERNALIA PROHIBITED

(a) As used in this section, “price reduction instrument” means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

(b) No person shall do any of the following:

(1) sell or offer for sale a tobacco product, tobacco substitute, e-liquid, or tobacco paraphernalia to a consumer at a price lower than the price that was in effect at the time the seller purchased the item from the wholesale dealer;

(2) sell or offer for sale a tobacco product, tobacco substitute, e-liquid, or tobacco paraphernalia through any multipackage discount; or

(3) honor or accept a price reduction instrument in any transaction related to the sale of a tobacco product, tobacco substitute, e-liquid, or tobacco paraphernalia to a consumer.

(c) A person who violates subsection (b) of this section shall be subject to a civil penalty of not more than \$200.00 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 and shall be brought within 24 hours after the occurrence of the alleged violation.

Sec. 3. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(5) Violations of 7 V.S.A. § ~~1007~~ 1003(a), relating to furnishing tobacco products, tobacco substitutes, e-liquids, and tobacco paraphernalia to a person under 21 years of age.

* * *

(33) Violations of 7 V.S.A. § 1013, relating to sale of flavored tobacco substitutes, flavored e-liquids, and menthol-flavored tobacco products.

(34) Violations of 7 V.S.A. § 1014, relating to sale of discounted tobacco products, tobacco substitutes, e-liquids, and tobacco paraphernalia.

Sec. 4. 7 V.S.A. § 661(c) is amended to read:

(c) The provisions of subsection (b) of this section shall not apply to a violation of subsection 1005(a) of this title, relating to purchase of tobacco

products, tobacco substitutes, e-liquids, or tobacco paraphernalia by a person under 21 years of age.

Sec. 5. 16 V.S.A. § 140 is amended to read:

§ 140. TOBACCO USE OF TOBACCO PRODUCTS, TOBACCO SUBSTITUTES, AND E-LIQUIDS PROHIBITED ON PUBLIC SCHOOL GROUNDS

No person shall be permitted to use tobacco products ~~or~~, tobacco substitutes, or e-liquids, as those terms are defined in 7 V.S.A. § 1001, on public school grounds or at public school sponsored functions. ~~Public school boards may adopt policies that include confiscation and appropriate referrals to law enforcement authorities.~~

Sec. 6. 18 V.S.A. § 4226 is amended to read:

§ 4226. MINORS; TREATMENT; CONSENT

(a)(1) If a minor 12 years of age or older is suspected to ~~be dependent upon~~ have a substance use disorder, including a dependence on regulated drugs as defined in section 4201 of this title, on alcohol, on nicotine, or on tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001, or to have venereal disease, or to be an alcoholic as defined in section 8401 of this title a sexually transmitted infection, and the finding of such ~~dependency, disease, or alcoholism~~ substance use disorder or infection is verified by a licensed ~~physician~~ health care professional, the minor may give:

(A) ~~his or her consent to medical treatment~~ health care services and hospitalization; and

(B) ~~in the case of a drug dependent or alcoholic person~~ an individual who has a substance use disorder, consent to nonmedical inpatient or outpatient treatment at a program approved by the Agency of Human Services to provide treatment for ~~drug dependency or alcoholism~~ substance use disorder if deemed necessary by the examining ~~physician for diagnosis or treatment of such dependency or disease or alcoholism~~ health care professional.

(2) Consent under this section shall not be subject to disaffirmance due to minority of the person consenting. The consent of the parent or legal guardian of a minor consenting under this section shall not be necessary to authorize care as described in this subsection.

(b) The parent, parents, or legal guardian shall be notified by the physician if the condition of a minor child requires immediate hospitalization as the result of ~~drug usage, alcoholism, or alcohol use~~ or for the treatment of a venereal disease sexually transmitted infection.

(c) As used in this section, “health care professional” means an individual licensed as a physician under 26 V.S.A. chapter 23 or 33, an individual licensed as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as a registered nurse or advanced practice registered nurse under 26 V.S.A. chapter 28.

Sec. 7. 18 V.S.A. § 4803(a) is amended to read:

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

(1) alcohol;

(2) cannabis;

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

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

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

§ 7702. DEFINITIONS

As used in this chapter unless the context otherwise requires:

* * *

(15) “Other tobacco products” means any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, by chewing, or in any other manner, including. The term also includes products sold as a tobacco substitute, as defined in 7 V.S.A. § 1001(8), and including any liquids, whether nicotine based or not, or, e-liquids, as defined in 7 V.S.A. § 1001; and delivery devices sold separately for use with a tobacco substitute or e-liquid, but shall not include cigarettes, little cigars, roll-your-own tobacco, snuff, or new smokeless tobacco as defined in this section, or cannabis products as defined in 7 V.S.A. § 831.

* * *

Sec. 9. 18 V.S.A. § 9503 is amended to read:

§ 9503. VERMONT TOBACCO PREVENTION AND TREATMENT

(a) Except as otherwise specifically provided, the tobacco prevention and treatment program shall be administered and coordinated statewide by the Department of Health, pursuant to the provisions of this chapter. The program shall be comprehensive and research-based.

(b) The Department shall establish goals for reducing adult and youth smoking rates, including performance measures for each goal in conjunction with the Substance Misuse Prevention Oversight and Advisory Council established pursuant to section 4803 of this title. The services provided by a quitline approved by the Department of Health shall be offered and made available to any minor, upon ~~his or her~~ the minor's consent, who is a smoker or user of tobacco products, tobacco substitutes, or e-liquids, as those terms are defined in 7 V.S.A. § 1001.

(c) The Department of Liquor and Lottery shall administer the component of the program that relates to enforcement activities.

(d) The Agency of Education shall administer school-based programs.

(e) The Department shall pay all fees and costs of the surveillance and evaluation activities, including the costs associated with hiring a contractor to conduct an independent evaluation of the program.

Sec. 10. 33 V.S.A. § 1900 is amended to read:

§ 1900. DEFINITIONS

As used in this subchapter, unless otherwise indicated:

* * *

(10) "Tobacco" means all of the products listed in the definition of "tobacco products" in 7 V.S.A. § 1001(3).

* * *

Sec. 11. HEALTH EQUITY ADVISORY COMMISSION; MENTHOL TOBACCO PRODUCT BAN; REPORT

On or before January 15, 2025, in its annual report due pursuant to 18 V.S.A. § 252(e), the Health Equity Advisory Commission shall recommend to the General Assembly whether the sale of tobacco products containing menthol, including menthol cigarettes, should be banned in Vermont.

Sec. 12. TOBACCO SUBSTITUTES AND E-LIQUIDS; ADVERTISING RESTRICTIONS; REPORT

On or before December 1, 2024, the Office of the Attorney General shall report to the House Committees on Commerce and Economic Development and on Human Services and the Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare regarding whether and to what extent Vermont may legally restrict advertising and regulate the content of labels for tobacco substitutes, including oral nicotine products, and e-liquids in this State.

Sec. 13. DEPARTMENT OF HEALTH; VERMONT YOUTH RISK
BEHAVIOR SURVEY; TOBACCO SALES; REPORT

On or before March 1, 2027, the Department of Health shall report to the House Committee on Human Services and the Senate Committee on Health and Welfare the results of the 2025 Vermont Youth Risk Behavior Survey that relate to youth use of tobacco products, tobacco substitutes, and e-liquids, along with a comparison of the rates of use from previous Vermont Youth Risk Behavior Surveys. In its report, the Department shall also provide data on retail sales of tobacco products, tobacco substitutes, and e-liquids during calendar years 2024, 2025, and 2026.

Sec. 14. DEPARTMENT OF HEALTH; SCHOOL-BASED USAGE AND
CESSATION EFFORTS; DIVERSION TO TOBACCO
CESSATION PROGRAM; REPORT

(a) The Department of Health shall collaborate with relevant school and community partners to survey and report on the use of tobacco products, tobacco substitutes, and e-liquids, as well as on nicotine and tobacco cessation efforts, in Vermont's schools.

(b) The Department of Health, in consultation with the Division of Liquor Control and the Court Diversion Program, shall develop one or more options for diversion to a tobacco cessation program as an alternative to the existing civil penalties and fines for a person under 21 years of age who possesses, purchases, or uses false identification to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia under 7 V.S.A. § 1005.

(c) On or before January 15, 2026, the Department shall report to the House Committees on Human Services, on Education, and on Judiciary and the Senate Committees on Health and Welfare, on Education, and on Judiciary with its findings and recommendations regarding the use of tobacco products, tobacco substitutes, and e-liquids in schools; cessation efforts in schools; and options for one or more diversion programs as set forth in subsections (a) and (b) of this section.

Sec. 14a. INVESTIGATOR POSITION CREATED; APPROPRIATION;
REPORT

(a) One new permanent classified position, Investigator, is established in the Department of Liquor and Lottery to enforce, and to investigate potential violations of, Vermont laws relating to direct-to-consumer sales and delivery of alcohol and tobacco products, including 7 V.S.A. §§ 277, 279, 280, and 1010.

(b)(1) The sum of \$160,000.00 is appropriated to the Department of Liquor and Lottery from the Tobacco Litigation Settlement Fund in fiscal year 2025 to fund the Investigator position established in subsection (a) of this section.

(2) It is the intent of the General Assembly that the position established in subsection (a) of this section should be funded from the Tobacco Litigation Settlement Fund for fiscal years 2025 and 2026. It is also the intent of the General Assembly that, beginning in fiscal year 2027, the funding for the Investigator position should be built into base funding for the Department of Liquor and Lottery's budget, with the amount of the salary and benefits for the Investigator position offset by an equivalent amount of the revenue generated to the Department or to the Office of the Attorney General, or both, by the Investigator's activities in enforcing and in investigating violations of Vermont law, with the remainder of the revenue deposited into the General Fund.

(c) If the revenue generated by the Investigator's activities becomes insufficient to cover the cost of the position in the future, the Department of Liquor and Lottery shall propose eliminating the position as part of its next budget or budget adjustment presentation to the General Assembly.

(d)(1) On or before March 15, 2025, the Department of Liquor and Lottery shall provide an update to the House Committees on Government Operations and Military Affairs and on Human Services and the Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare regarding the status of its implementation of the new Investigator position.

(2) Annually on or before December 15, the Department of Liquor and Lottery shall report to the House Committees on Government Operations and Military Affairs and on Human Services and the Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare on the impact of the Investigator's activities on compliance with Vermont's laws relating to direct-to-consumer sales and delivery of alcohol and tobacco products.

Sec. 15. EFFECTIVE DATES

(a) Secs. 2 (7 V.S.A. chapter 40), 3 (4 V.S.A. § 1102(b); Judicial Bureau jurisdiction), 4 (7 V.S.A. § 661(c); penalties), 5 (16 V.S.A. § 140; use prohibited on school grounds), 7 (18 V.S.A. § 4803(a); Substance Misuse Prevention Oversight and Advisory Council), 8 (32 V.S.A. § 7702; definition for tobacco tax purposes), and 10 (33 V.S.A. § 1900; definition for medical assistance statutes) shall take effect on January 1, 2026.

(b) Secs. 1 (findings), 6 (18 V.S.A. § 4226; minor consent to treatment), 9 (18 V.S.A. § 9503; tobacco prevention and treatment), 11 (Health Equity Advisory Commission; menthol ban; report), 12 (advertising restrictions; report), 13 (Youth Risk Behavior Survey; tobacco sales; report), and 14 (school-based usage and cessation efforts; report) and this section shall take effect on passage.

(c) Sec. 14a (Investigator position created; appropriation; report) shall take effect on July 1, 2024, with the first report under subdivision (d)(2) due on or before December 15, 2025.

NEW BUSINESS

House Proposal of Amendment

S. 278.

An act relating to prohibiting a comparative negligence defense in an action for a negligence claim relating to a sexual act or sexual conduct.

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 1036 is amended to read:

§ 1036. CONTRIBUTORY AND COMPARATIVE NEGLIGENCE

(a) Contributory negligence shall not bar recovery in an action by any plaintiff, or ~~his or her~~ the plaintiff's legal representative, to recover damages for negligence resulting in death, personal injury, or property damage, if the negligence was not greater than the causal total negligence of the defendant or defendants, but the damage shall be diminished by general verdict in proportion to the amount of negligence attributed to the plaintiff. Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of ~~his or her~~ the defendant's causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.

(b) Contributory and comparative negligence shall be prohibited as a defense to limit a plaintiff's recovery for damages in an action for a negligence claim relating to a sexual act as defined in 13 V.S.A. § 3251 or sexual conduct as defined in 13 V.S.A. § 2821.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

NOTICE CALENDAR

**Second Reading
Favorable**

H. 603.

An act relating to the poultry slaughter exception to inspection.

Reported favorably by Senator Collamore for the Committee on Agriculture.

The Committee on Agriculture recommends that the bill ought to pass in concurrence.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of January 25, 2024, page 148)

H. 621.

An act relating to health insurance coverage for diagnostic breast imaging.

Reported favorably by Senator Hardy for the Committee on Health and Welfare.

The Committee on Health and Welfare recommends that the bill ought to pass in concurrence.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 20, 2024, page 626)

H. 666.

An act relating to escrow deposit bonds.

Reported favorably by Senator Cummings for the Committee on Economic Development, Housing and General Affairs.

The Committee on Economic Development, Housing and General Affairs recommends that the bill ought to pass in concurrence.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of February 7, 2024, page 184)

H. 741.

An act relating to health insurance coverage for colorectal cancer screening.

Reported favorably by Senator Gulick for the Committee on Health and Welfare.

The Committee on Health and Welfare recommends that the bill ought to pass in concurrence.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 19, 2024, page 565)

Favorable with Proposal of Amendment

H. 694.

An act relating to sexual exploitation.

Reported favorably with recommendation of proposal of amendment by Senator Vyhovsky for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

By inserting a new section to be Sec. 3a to read as follows:

Sec. 3a. VERMONT SENTENCING COMMISSION; DEFINITIONS;
SEXUALLY BASED OFFENSES

(a) The Vermont Sentencing Commission shall review definitions in 13 V.S.A. chapters 59 (lewdness and prostitution), 64 (sexual exploitation of children), and 72 (sexual assault) for the purpose of updating and harmonizing the definitions as they are used in those chapters. As part of the review, the Commission shall, in particular, consider the definitions of “sexual conduct” as defined in 13 V.S.A. § 2821 and “sexual act” as defined in 13 V.S.A. § 3251.

(b) The Commission shall report its recommendations for legislative consideration to the Senate and House Committees on Judiciary on or before December 1, 2024.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 28, 2024, page 349.)

ORDERED TO LIE

S. 94.

An act relating to the City of Barre tax increment financing district.

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Edward M. McNamara of Montpelier - Chair, Public Utility Commission - Sen. Cummings for the Committee on Finance. (4/3/2024)

Margaret Tandoh of South Burlington - Member, Board of Medical Practice Sen. Lyons for the Committee on Health and Welfare. (4/10/2024)

Julie Hulburd of Colchester - Member, Cannabis Control Board - Sen. Vyhovsky for the Committee on Government Operations. (4/10/2024)

James Pepper of Montpelier - Chair, Cannabis Control Board - Sen. Norris for the Committee on Government Operations. (4/10/2024)

Denise Reilly-Hughes of Cavendish - Secretary, Agency of Digital Services - Sen. White for the Committee on Government Operations. (4/10/2024)

JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

JFO #3191: One (1) limited-service position to the Agency of Human Services, Department of Health to assess and carry out work related to data on maternal mortality and sudden unexpected infant deaths. Position requires quality assurance of data and transfer to federal data tracking systems. Position is funded through 09/29/2024 through previously approved JFO #1891.

[Received March 12, 2024]

JFO #3192: \$327,250.00 to the Agency of Human Services, Department of Health from the Centers for Disease Control and Prevention for data collection

and public awareness related to Chronic Obstructive Pulmonary Disease. The grant is expected to fund yearly through 9/29/2027. The grant includes one (1) limited-service position, Health Systems Program Administrator, to manage contracts and grants associated with the funding and communications with the CDC. The position is also funded through 9/29/2027.

[Received March 12, 2024]

JFO #3193: Land donation of 18.6 acres of undevelopable wetlands in Newport City, VT from Linda Chamberlin Mosher to the Agency of Natural Resources, Department of Fish and Wildlife. The land abuts the existing South Bay Wildlife Management Area and will expand wildlife and fish habitats and improve public access. The donation value is \$51,500.00. Estimated closing costs of \$10,000.00 and ongoing maintenance costs are covered by already budgeted federal funds. No state funds will be used for the acquisition.

[Received March 12, 2024]

JFO #3194: \$10,483,053.00 to the Agency of Commerce and Community Development, Department of Tourism and Marketing from the U.S. Department of Commerce, Economic Development Administration. Funds will support the resiliency and long-term recovery of the travel and tourism sectors in Vermont after the wide-spread disruption of these sectors during the Covid-19 pandemic. The Department of Tourism and Marketing has been working with the Economic Development Administration (EDA) for over 18 months to develop a plan that would satisfy the EDA requirements and meet the specific needs of the Vermont travel and tourism industry. The grant includes two (2) limited-service positions, Grants Programs Manager and Travel Marketing Administrator to complete the grant administration plan. Both positions are fully funded through the new award through 10/31/2025.

[Received March 19, 2024]

JFO #3195: One (1) limited-service position, Environmental Scientist III to the Agency of Natural Resources, Department of Environmental Conservation. The position will support high-priority efforts to reduce the spread of aquatic invasive species in public waters in the Lake Champlain Basin and is funded through additional federal funds received under an existing EPA grant for work in the Lake Champlain Basin program. Funding is for one-year with anticipation that funding will renew and be available for the foreseeable future. Position requested is through 12/31/2028.

[Received March 19, 2024]

JFO #3196: Two (2) limited-service positions, both Grant Specialists, to the Agency of Natural Resources, Department of Forests, Parks and Recreation. The positions will manage stewardship of existing grants and applications and outreach for annual grant cycles. Both positions are 70% funded through existing federal funds. The remaining 30% will be a combination of state special funds: State Recreation Trails Fund and Vermont Outdoor Recreation Economic Collaborative funds. The positions will not rely on annual appropriations of the General Fund. Both funded through 9/30/2024.

[Received March 19, 2024]

JFO #3197: One (1) limited-service position, Environmental Analyst IV, to the Agency of Natural Resources, Department of Environmental Conservation. The position will manage the increase in funding and the resulting increase in projects for the Healthy Homes program which provides financial assistance to low to moderate income homeowners to address failed or inadequate water, wastewater, drainage and storm water issues. A portion of the American Rescue Plan Act – Coronavirus State Fiscal Recovery Funds appropriated in Act 78 of 2023, funds this position through 12/31/2026.

[Received March 19, 2024]

JFO #3198: Bargain sale of timber rights to the Agency of Natural Resources, Department of Fish and Wildlife from the A Johnson Co., LLC. Vermont acquired the current Pond Woods Wildlife Management Area in Benson and Orwell, VT in the 1960s. At that time the A Johnson Co. retained the timber rights. The State now has the opportunity to acquire the timber rights, valued at \$2,320,529.00, for \$900,000.00. Acquisition of the timber rights will allow greater control over the property management. The \$900,000.00 sale price plus closing costs is covered by ongoing, annual funding from the U.S. Department of Fish and Wildlife.

[Received March 24, 2024]

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 15, 2024**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day. House

Committee bills must be voted out of Committee by Friday, March 15, 2024 and introduced the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 22, 2024**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee. **Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, Pay Bill, and Miscellaneous Tax Bill).**