

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Department of Liquor and Lottery, Administrative Rules
Update**

/S/ Wendy Knight , on 02/13/2023
(signature) (date)

Printed Name and Title:

Wendy Knight, Commissioner, Dept. of Liquor and Lottery

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Department of Liquor and Lottery, Administrative Rules Update

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P 037

3. ADOPTING AGENCY:

Vermont Department of Liquor and Lottery

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Skyler Genest, Chief

Agency: Vermont Department of Liquor and Lottery

Mailing Address: 1311 US Rt 302, Barre VT 05641

Telephone: (802) 477-2429 Fax: (802) 828-2803

E-Mail: skyler.genest@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://liquorcontrol.vermont.gov/content/regulation-rewrite-workgroup-2022>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Brandon King, Lieutenant

Agency: Vermont Department of Liquor and Lottery

Mailing Address: 1311 US Rt 302, Barre VT 05641

Telephone: (802) 522-8954 Fax: (802) 828-2803

E-Mail: brandon.king@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

3 V.S.A. § 212(14); 7 V.S.A. §§ 101 to 108; 31 V.S.A. § 1208

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The Legislature specifically via Title 7 V.S.A. § 108 has empowered the Board of Liquor and Lottery to adopt rules necessary to enforce the provisions of Title 7. The legislature via Title 31 V.S.A. § 1208 has empowered the Commissioner of Liquor and Lottery to adopt rules for licensure and handling of proceeds.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The rules adopted by the Board of Liquor and Lottery includes several groups of regulations to ensure public safety by preventing the misuse of alcohol and tobacco through controlled distribution, providing for applicable enforcement, and establishing robust education requirements.

Several Acts as enacted by the Vermont Legislature in recent years have amended significant portions of Title 7, including the consolidation of the Departments of Liquor and Lottery. As such, many contradictions between statute and regulation have emerged.

Additionally, the impact of modern business practices is ever-changing, and regulatory agencies must remain agile to respond.

This proposed rule removes General Regulations 9, 39, 44, 46, Advertising Regulation 2, Section 7, Wholesale Regulations 4, 5, and 7, and Education Regulations 4, 5 and 6.

Many additional sections and regulations were updated, renumbered, and clarified.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Board of Liquor and Lottery has drafted several groups of regulations to ensure public safety by preventing the misuse of alcohol and tobacco through controlled distribution, providing for applicable enforcement, and establishing robust education requirements, and ensuring the proper administration of games of chance.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

In order to modernize and deconflict our currently regulatory model, a recent drafting process involved an extensive study of issues, over 11 hours of working group discussion, and input from industry stakeholders. The result of the proposed rules directly reflects an attempt to accommodate a modern beverage alcohol, tobacco, and gaming landscape in Vermont, with a clear goal of simplifying and modernizing the current regulations.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Any and all holders of the following licenses issued by the Board of Liquor and Lottery: First Class Licenses, Second Class Licenses, Third Class Licenses, Catering Licenses, Tobacco Licenses, Wholesale Dealers License, Manufacturer's or Rectifiers License, Break-Open Ticket Distributor of Manufacturers License, Master Resort License or any number of permits available to the persons within the state of Vermont.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The Department of Liquor and Lottery anticipates a net neutral economic impact of these proposed rules. Many of the proposed changes remove regulatory requirements, aiding in the net decrease in the cost of compliance. Several rules are expanded and clarified which may have some minor increased cost included to maintain

compliance. However, it is believed that the decreases in compliance cost are balanced by potential increases, therefore, the overall economic impact is neutral.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 1/20/2024

Time: 17:00 PM

Street Address: 1311 US Rt 302, Suite 200, Barre VT

Microsoft Teams meeting

<https://tinyurl.com/su725m7a>

Meeting ID: 275 441 994 641

Passcode: z93QVc

Or call in (audio only)

+1 802-828-7667,,938521039#

Zip Code: 05641

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

01/30/2023

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Beverage Alcohol

Gaming

Tobacco

Liquor & Lottery

Break Open Tickets

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Department of Liquor and Lottery, Administrative Rules Update

2. ADOPTING AGENCY:

Vermont Department of Liquor and Lottery

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Regulations Related to the Sale of Alcoholic Liquor
January 3, 2017 Secretary of State Rule Log #16-065



State of Vermont
Agency of Administration
109 State Street
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322
[fax] 802-828-2428

Kristin L. Clouser, Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: December 12, 2022, virtually via Microsoft Teams

Members Present: Chair Sean Brown, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, and Donna Russo-Savage

Members Absent: Michael Obuchowski

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the November 14, 2022 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-7 to follow.
 1. Health Care Administrative Rules Definitions, Agency of Human Services, page 2
 2. Inpatient Hospital Services, Agency of Human Services, page 3
 3. Outpatient Hospital Services, Agency of Human Services, page 4
 4. Department of Liquor and Lottery, Administrative Rules Update, Department of Liquor and Lottery, page 5
 5. Radiological Health Rule, Vermont Department of Health, page 6
 6. Antidegradation Implementation Rule, Agency of Natural Resources, page 7
- Other business: Committee discussion on Economic Impact Analysis and internal agency practices being codified into rule versus an external-like motivating practice (for example: If there's a federal rule that's on point or if the Legislature is moving an agency to adopt a rule because of some existing kind of procedures or policies that are already being followed because they're essentially being enforced by another body).
- Next scheduled meeting is Monday, January 9, 2023 at 2:00 p.m.
- 4:02 p.m. meeting adjourned.



Proposed Rule: Department of Liquor and Lottery, Administrative Rules Update, Department of Liquor and Lottery

Presented By: Skyler Genest and Commissioner Wendy Knight

Motion made to accept the rule by Diane Bothfeld, seconded by Brendan Atwood, and passed unanimously with the following recommendations:

1. Proposed Rule Coversheet: Note that the Commissioner signed in addition to the Liquor Control Board Chair to adhere to statutory framework of rulemaking authority.
2. Throughout the Filing: Correct typos – some examples include:
 - a. Economic Impact Summary, #3: Correct typos for ‘alignment’ and ‘regulatory’.
 - b. Environmental Impact Analysis, #6
 - c. Public Input Maximization Plan #3 and #4
3. Proposed Rule Coversheet, #8: Clarify specific changes.
4. Proposed Rule Coversheet, #14: Include a virtual option to attend public hearings.
5. Economic Impact Summary: Clarify impact to all parties. Include any positive impacts and/or state the overall the impact will have a neutral effect if applicable.
6. Economic Impact Summary, #5 and #8: Spell out acronym.
7. Economic Impact Summary, #9: Include more detail.
8. Public Input Maximization Plan #3 and #4: Include additional proactive outreach, including independent restaurant coalition. Include independent restaurant coalition.
9. Remove Incorporated by Reference and Scientific Information Statement.

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Department of Liquor and Lottery, Administrative Rules Update

2. ADOPTING AGENCY:

Vermont Department of Liquor and Lottery

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Liquor License Holders, Tobacco License Holders, Beverage Alcohol Manufacturers, Beverage Alcohol Wholesale Distributors, Non-Profits, Break Open Ticket Manufacturers. No cost increase is associated with the adoption of the proposed modifications. The Benefits of the proposed adoption include a less burdensome

regulatory environment, alignment of the regulatory model with industry needs, and deconfliction with statutory changes to Title 7..

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No Impact.

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

Not applicable.

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The adoption of the proposed modifications would result in a less burdensome regulatory environment for small business, decreasing the cost of compliance.

7. **SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

As the bulk majority of the proposed modifications lessen the cost/burden of compliance by creating a less burdensome regulatory environment, the Department believes that this explanation is not required.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Not applicable.

9. **SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.**

This economic impact analysis sufficiently explains that the proposed modifications generally anticipate a net neutral economic impact of these proposed rules. Many of the proposed changes remove regulatory

requirements, aiding in the net decrease in the cost of compliance. Several rules are expanded and clarified which may have some minor increased cost included to maintain compliance. However, it is believed that the decreases in compliance cost are balanced by potential increases, therefore, the overall economic impact is neutral.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Department of Liquor and Lottery, Administrative Rules Update

2. ADOPTING AGENCY:

Vermont Department of Liquor and Lottery

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

No Impact

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No Impact

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No Impact

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
This updated rule eases many regulatory burdens in terms of ability to operate beverage alcohol and tobacco retail establishments in Vermont.
7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No Impact
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No Impact
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
There is generally no environmental impact of the proposed modifications.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Department of Liquor and Lottery, Administrative Rules Update

2. ADOPTING AGENCY:

Vermont Department of Liquor and Lottery

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

During the summer months of 2022, the Department of Liquor and Lottery held weekly 1-hour meetings over 11 weeks which were open to the public and advertised to industry, community, and policy stakeholders to work with DLL as we exhaustively looked at each section of the administrative rule. This review weighed industry standards, best practices, and common sense to align the regulatory framework with current statutes. Several stakeholders were routine participants and feedback was constant and persistent throughout the process. As the filing moves through the appropriate processes, the Department will maintain a section of it's website dedicated to these efforts, and the information will be directly relayed to stakeholder groups through the department's regularly scheduled quarterly stakeholder meetings.

Public Input

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Amy Spear, Vermont Chamber of Commerce

Claire Buckley, Wholesale Beverage Association

Kevin O'Flaherty, Campaign for Tobacco-Free Kids

Amy Brewer, Franklin Grand Isle Tobacco Prevention Coalition

Michael Rollo, American Cancer Society

Tina Zuk, American Heart Association

Sophia Light, Caledonia Spirits

Cassandra LaRae-Perez, Gravel & Shea PC

Jessica Oski, Necrason Group

Mellissa Cornin, Vermont Brewers Association

Erin Sigrist, Vermont Retail & Grocers Association

Amy Spear, Vermont Independent Restaurants (VTIR)

Sheri Baraw Smith, Vermont Lodging Association

James R. Pulsifer
Director, Regulatory & Legislative
Industry Engagement
484-369-1964



January 30, 2023

Skyler Genest
Vermont Department of Liquor and Lottery
Division of Liquor Control
1311 US Route 302 - Suite 100
Barre, VT 05641

RE: Rule Number 22P037

Mr. Genest,

The following comments are in response to a proposed rule change by the Vermont Department of Liquor and Lottery to the Tobacco Licensing & Registration Requirements (VT77718). The proposed changes include language stating that retailers are prohibited from selling tobacco products "at a price lower than the price in effect at the time of purchase from the wholesale dealer." (see Section 3, Item 26 (p. 16)). This language is vague, ambiguous and fails to put manufacturers and Vermont retailers on notice of what is intended by the rule change, what will be required to comply, and what the impact would be to retailers' businesses if such a change is enacted.

To the extent, however, that the language is intended to prohibit Vermont retailers from reducing the prices at which they sell tobacco products, including other tobacco products, the proposed change should be rejected for several reasons:

- It would in essence lock a retailer into its existing prices and preclude it from lowering them to compete in the marketplace, thereby forcing Vermont shoppers already impacted by the current inflation crises to pay artificially high prices; and
- Vermont retailers, many of which are small independent business owners, will lose business, including to stores outside of Vermont that are not prohibited from offering lower prices; and
- It would preclude manufacturers and retailers from offering price incentives designed to encourage smokers to transition to non-combustible and potentially less harmful tobacco products.

In sum, the intent and import of the language is fatally unclear, yet this seemingly innocuous rule change could result in an outsized negative impact to Vermont businesses and consumers; such a change is unnecessary and potentially harmful.

Sincerely,

James R. Pulsifer
Director, Regulatory & Legislative Industry Engagement
Altria Group Distribution Company

Altria Group Distribution Company
6601 West Broad Street, Richmond, VA 23230

VERMONT WHOLESALE BEVERAGE ASSOCIATION

1 Blanchard Court, Suite 101

Montpelier, VT 05602-3843

802-229-4900 --- Fax: 802-229-5110

Sent via email to Skyler.Genest@vermont.gov

To: Skyler Genest, Sr. Director of Licensee Operations
From: Clare Buckley on behalf of the Vermont Wholesale Beverage Association
Re: Comments on Proposed Rule 22P037
Date: January 30, 2023

Thank you for providing the members of the Vermont Wholesale Beverage Association (VWBA) with the opportunity to submit comments regarding the Department of Liquor and Lottery's Proposed Rule 22P037. VWBA is a trade association representing many of Vermont's licensed wholesalers of malt, vinous and ready-to-drink spirits beverages.

These comments are set forth in the order of the annotated version of the proposed rule.

Section 3, General Regulations

Reg 4a. Page 10, reads:

Holders of a manufacturer's license that are granted any permit to occur upon a licensed premises, may introduce products lawfully manufactured by the holder of the permit onto the licensed premises so long as the licensed manufacturer engages in on-premise sampling and off-premise sales only and clearly labels all beverage alcohol brought onto the licensed premises "for sale to the public only."

We don't understand the purpose of this section and what it allows. The term "permit to occur upon a licensed premise" is confusing. We recommend this section be clarified.

Reg 17. Page 13, reads in part:

First, Second and/or Third-Class Licensees, and Master Resort Licenses may transfer beverage alcohol without prior authorization among similarly licensed locations so long as the locations are controlled by the same licensed entity.

As this proposed rule applies to Master Resort Licenses it makes sense to allow those licensees to move alcohol around the resort. But in terms of first, second and/or third class licensees, this is broad in that it would allow a store to ship beer or wine from one of its stores to another of its stores, for example. When wholesalers transport alcohol around the state they do so with invoices that can be tracked, which don't appear to apply when these other licensed entities are shipping alcohol between their licensed locations. These transfers of alcohol should also only be allowed intrastate by the same licensed entity. For example, a Vermont licensed premises should not be able to accept shipments of beverage alcohol from out-of-state even if both the Vermont and out-of-state location are controlled by the same licensed entity. Finally, transfer of beverage alcohol should only be allowed where the product is purchased from an in-state licensed wholesaler or otherwise allowed under Vermont's three-tier system. We'd request that DLL consider limiting this authority to only what is necessary.

Reg. 25. Page 15, This regulation addresses suspended or conditioned licenses. VWBA supports the requirement that the licensee must post a notice that their license is suspended or conditioned on every entry way. However, DLL's website is not always up to date with suspended or conditioned licenses so wholesalers may not have notice of the suspension or condition. VWBA requests that DLL send out an email to all licensed wholesalers when a retailer's license is suspended or conditioned. Without notice, if a licensee makes an order on-line or over the phone or the wholesaler makes a delivery, enforcement should be on the licensee with the suspension, not the wholesaler.

If a license is suspended, the licensee is required to post notice of that suspension to the public giving the effective date and length of the time of the suspension in every entry way. Licensees under suspension shall not sell, serve, allow the consumption of, make orders for, or receive deliveries of regulated products upon the licensed premises. DLL shall notify all wholesalers by email when a license is suspended or conditioned. If a licensee with a suspended license makes orders for or receives deliveries of regulated products on the licensed premises or otherwise violates this section, enforcement shall be on the licensee whose license is suspended and not the wholesaler.

Section 4. Advertising

Reg 5. Page 23 reads: *Any malt or vinous beverage point of sale advertising shall be submitted to the Liquor Control Board for approval prior to its use by manufacturers, holders of certificate of approval, wholesale dealers, or retailers in Vermont.*

VWBA proposes to delete this requirement that certain licensees must obtain Liquor Control Board approval for malt or vinous beverage point of sale advertising because it is not current practice and is unnecessary and administratively difficult for licensees and the Liquor Control Board.

Section 6. Credit

Reg 1 Page 24. The proposed rule allows for the use of credit and debit cards for licensees purchasing all beverage alcohol. VWBA members have significant concerns about the use of credit and debit cards for retailers purchasing beer, wine and RTDs. VWBA supports amending the proposed rule to conform with the DLL Board's interpretation that payment rendered by credit and debit card by licensees at State Liquor Agencies is not considered credit prohibited by the regulations.

Section 7. Wholesale Dealers and Certificate Approval Holders and Vermont Manufacturers

Reg 1. Page 24 - Prohibition on employees working for multiple licensees.

VWBA would like to comment generally regarding the prohibitions in the Vermont law and DLL regulations prohibiting certain employees from working at more than one licensed establishment. VWBA members believe that individuals should be able to work for more than one licensee if they do not hold solicitors' permits and do not exercise control over or participate in the management of any licensee's business, and the employment at both licensees will not result in the exclusion of any competitor's brand of beverage alcohol. VWBA is aware that some of these prohibitions are in statute and DLL cannot make these change without legislation.

Reg. 5. Page 25. VWBA members support giving wholesalers the option of utilizing electronic copies of invoices with no hard copies so long as the wholesaler can produce an electronic version at any time for DLL. To accomplish that VWBA proposes the following amendment:

All invoices furnished by the wholesale dealer to the retail dealer must carry serial numbers and can be either manually or electronically generated and transmitted. One invoice is to be left on the premises of the wholesale dealer and a copy is to be left with the retail dealer upon delivery if the wholesale dealer manually generates and transmits the invoice. If a wholesale dealer electronically generates and transmits an invoice, no hard copy of the invoice is needed to be kept on the premise of the wholesale dealer or to be left with the retailer; provided however that the wholesale dealer shall generate a hard copy of any invoice upon DLL's request. All invoices must show the name or the initials of the person taking the order. Invoices are to be made out in the name of the licensee as it appears on the trade name of the establishment.

Thank you for considering these comments. If you have any questions, please contact Clare Buckley at cbuckley@leoninepublicaffairs.com or (802) 777-2064.

From: Erin Sigrist <erin@vtrga.org>
Sent: Thursday, January 19, 2023 3:38 PM
To: Genest, Skyler
Cc: Martin, Charles; Matt McMahon
Subject: Re: Question RE Proposed Regulation Changes

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Thanks, Skyler.

I would anticipate that this type of a change would be a legislative change rather than a rule change. And I understand that there were public hearings, so I'll apologize for missing these discussions. Below is a general overview of the concern VRGA has. I'll plan to be at the hearing tomorrow.

If a product is being discontinued, a retailer would prefer to sell such products rather than throw them out in order to make up for some of their loss in revenue.

We do not believe that the adoption of the proposed modifications would result in a less burdensome regulatory environment for small business, decreasing the cost of compliance. Rather retailers would lose revenue due a reduction in sales of various products.

Further, many of the products sold in Vermont under the umbrella of DLL are wholesaled exclusively by one distributor. The lack of exclusive franchise territory for tobacco products differentiates them from products like liquor or beer. Given that multiple distributors, many of them who operate regionally, are serving different retailers the same products in Vermont, it may be difficult and time consuming for DLL staff to track wholesale prices across distributors and retailers on a regular basis. If DLL does not plan on tracking this information, we question how this policy would be enforced. Additionally, different wholesale prices across retailers for the same product could limit how some retailers price their products versus their larger in-state competitors, in some cases.

I appreciate that you have received feedback from advocacy groups on this topic. As the statewide retail organization, we represent many licensees who hope that you will consider our feedback. Thank you and let me know if we can provide further detail.

See you tomorrow,

Erin Sigrist

Vermont Retail & Grocers Association | President

Vermont Specialty Food Association | Executive Director

963 Paine Turnpike North | Berlin, VT 05602

O-802-839-1928 | C-802-363-1457

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From: Erin Sigrist <erin@vtrga.org>

Sent: Thursday, January 19, 2023 6:43 AM

To: Genest, Skyler <Skyler.Genest@vermont.gov>

Subject: Question RE Proposed Regulation Changes

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning Skyler,

I'm hoping you can provide clarification on the below proposed change in former section 28 - now 26.

28. 26. ~~First or second class~~ No licensees shall ~~not~~ sell ~~malt or vinous~~ beverages alcohol, tobacco products, tobacco substitutes, tobacco paraphernalia, or other tobacco products at a price lower than the price in effect at the time of purchase from the wholesale dealer, the Board, or holders of a direct-to-retail shipping license

Can you tell me: does this mean that customers will no longer have the ability to use coupons for cigarettes? And how will this affect any potential clearance sale of soon-to-be-expire alcohol?

If it was intended as written then it would have severe impact on retailers and would essentially negate nearly all retail programming and funding they receive from the manufacturers.

Thanks so much,

Erin Sigrist

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Reg. rewrite request

AS Any Beer in Any Bar/Club/Restaurant
BY 11/19/2013



EXISTING LABEL: Do not open attachments or click on links unless you recognize and trust the sender of the email.

I was not able to attach your labeling request as section 43, but I have had some folks reach out to me and wanted to pass email to you.

- Current language. Except as otherwise indicated by law or by the Liquor Control Board, licensee shall not create, sell or transfer with any bottle of alcoholic beverage on retail sale to any retailer, wholesaler, wholesaler, wholesaler, or other any substitution of any nature to be made in or to the contents of any bottle of alcoholic beverage.
- Language proposed: "Subsequent" does not include a licensee that offers, exports, sells, or imports alcoholic beverages in preparation for later service at the licensed premises. The creator/producer must be clearly labeled with the following information: the date of production, the name of the person who created the alcoholic beverage, the ingredients to the alcoholic beverage (including the alcohol brand name(s) and strength), and the exact net point of the alcohol content. Any alcoholic beverage created shall be produced in a safe and sanitary manner. Any request for dispensing the alcoholic beverage shall have a three (3) sided brand label, not shall it be dispensed from a vessel that is of a design that would signify a particular brand of beverage alcohol to a consumer.
- Note:
 - Substituting and labeling to someone would be an important change for some to deal with the label shortage.
 - It would allow for more consistency and control.

Let me know if you have any questions, and thank you for consideration!

Best,
Amy

Amy Spivey
Vice President of Stewards | Vermont Chamber of Commerce
President | Vermont Attractions Association



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www.VermontChamber.com



Skyler Genest

August 18, 2022

Vermont Department of Liquor and Lottery

Via email (skyler.genest@vermont.gov)

Re: American Heart Association comment on DLL rulemaking section 10, tobacco regulations

Dear Skyler,

On behalf of the American Heart Association, I would like to submit the following as written comment on the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite.

- 1) We urge the department to decouple the alcohol and tobacco license fees. A tobacco license should have its own fee with revenue raised from the fee going to tobacco enforcement. Enforcement funds are effective and needed.
 - a. Via an MOU with the Vermont Department of Health, and a \$30,000 investment, DLL, working with the AGO, enforced the online delivery sales ban and secured \$834,000 in penalties.
 - b. DLL will also feel increased pressure on staff in the coming year, having to enforce 60 new cannabis licenses with no extra funding.
- 2) We urge DLL to require as a condition of a tobacco license that tobacco retailers may not sell flavored tobacco products including menthol tobacco products.
- 3) We urge DLL to disallow a wholesaler from also being licensed as a tobacco retailer. As VDH notes in its report, "Assessing Vermont's 2019 tobacco Control Policies," it's common for wholesalers to also be licensed as tobacco retailers which allows wholesalers and retailers to lessen the e-cigarette tax by selling the products to themselves at lower rates. This means the tax could have a lower than intended impact on Vermont youths' access and use of the products. Alcohol retailers are currently prohibited from doing this for the same reason.
- 4) As well, the American Heart Association considers the following as the most effective tobacco retail licensure in terms of its impact on public health, reducing smoking and preventing youth from starting. We'd urge DLL to adopt the items it has authority over and work with our organization regarding items that would need legislative action.

- a. Fee -- An annual retail license fee, paid by all tobacco retailers, which goes towards the enforcement of licensure requirements. Must be high enough to cover the cost of enforcement and operations.
- b. Enforcement -- A minimum of one compliance check for violations of minimum legal sales age laws per year, and there should be a recheck for violations within a specified time period, such as three months.
- c. Penalty structure -- Specific for violations of the minimum legal sales age, penalties should include an escalating monetary penalty paid by the store or business owner. Suspensions and license revocation must also be part of the structure -- minimum of 15-day suspension by the third violation, and revocation of license by the fourth violation in a period of at least two years. Suspension only penalties must be high enough to offset the need for monetary penalties with revocation of the license by the fourth violation at the latest within two years.
- d. Paying fines -- Penalties for sale must be levied on the owner/operator of the retail establishment, not just the employee or person who made the sale. It is preferred that penalties levied on the owner/operator are significantly higher than penalties on the person/employee. Any violation count must be applied to the store, and not the employee, so that firing an employee does not reset the count on compliance violations for a store. Penalties on employees must not include potential jail time and monetary penalties must be lower than the owner/operator.
- e. NO "PUP" provisions -- We'd like to eliminate any fines/penalties against youth for purchase, use or possession as penalizing kids is not an effective strategy to reduce youth tobacco use. PUP laws unfairly punish and stigmatize kids, many of whom become addicted because of the tobacco industry's aggressive marketing to kids. Removing PUP penalties would also include Driver's license revocation for an individual as a penalty for PUP as it creates a hardship and equity concerns. We began a conversation about removing PUP provisions with Commissioner Knight last session and would be interested in continuing the conversation.

Thank you for the opportunity to comment and the good work of the department.

Sincerely,

Tina Zuk

Government Relations Director, VT

American Heart Association

Tina.zuk@heart.org

802-578-3466



Testimony of Michael Rollo, Government Relations Director,
American Cancer Society Cancer Action Network

In Support of Changes to VT Tobacco Regulations by the Board of Liquor and Lottery

August 16, 2022

Good afternoon, Chief Genest, and members of the Board of Liquor and Lottery. My name is Michael Rollo, and I am the Government Relations Director for the American Cancer Society Cancer Action Network (ACS CAN). ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

On behalf of ACS CAN, thank you for the opportunity to provide testimony in support of revising regulations under Title 7, to ensure ***“public safety by preventing the misuse of alcohol and tobacco through controlled distribution, providing for applicable enforcement, and establishing robust education requirements.”***

As such, ACS CAN would encourage the department to consider including the following in its proposed rule changes:

1. Requiring minimum price standards and package size for all tobacco products sold in the state.
2. Prohibit retailers from honoring or redeeming coupons to purchase a tobacco product for less than the full retail price.
3. Limiting the number of tobacco licenses based on local equity and or zoning plans.

One in 2 men and 1 in 3 women are expected to be diagnosed with cancer in their lifetime.ⁱ This year alone, it is estimated that more than 4,200 Vermonters will be diagnosed with cancer.ⁱⁱ An estimated 1,000 deaths are caused by smoking each year in Vermont including 27% of cancer deaths.ⁱⁱⁱ Smoking is estimated to cost Vermont \$348 million in direct health care costs, including \$87 million in Medicaid costs annually.^{iv}

Due to sharp increases in youth tobacco use in recent years, largely due to skyrocketing rates of e-cigarette use, the decades of progress that has been made in reducing tobacco use rates in youth is now in jeopardy. Here in Vermont, 28.2% of high school students use tobacco products, with higher rates among dual users.^v Is it any surprise that youth rates are so high when the tobacco industry skirts tobacco excise taxes by offering coupons to entice young people? By guaranteeing a minimum price, minimum pack size and prohibiting coupons, DLL can help ensure that these products are not priced in a way to make them attractive to young Vermonters.

Michael Rollo
Government Relations Director NH & VT

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