

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 18 entitled “An act relating to banning flavored tobacco products and e-
4 liquids” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds that:

9 (1) Tobacco use is costly. Vermont spends ~~\$348~~ **more than \$400**
10 million annually to treat tobacco-caused illnesses, including ~~\$87.2~~ **more than**
11 **\$90** million each year in Medicaid expenses. This translates into a tax burden
12 each year of ~~\$759~~ **over \$1,000** per Vermont household. **Smoking-related**
13 productivity losses add ~~an additional \$232.8~~ **another \$576** million in
14 **additional costs** each year.

15 (2) Youth tobacco use is growing due to e-cigarettes. Seven percent of
16 Vermont high school students smoke, but if e-cigarette use is included,
17 28 percent of Vermont youths use some form of tobacco product. More than
18 one in four Vermont high school students now uses e-cigarettes. Use more
19 than doubled among this age group, from 12 percent to 26 percent, between
20 2017 and 2019.

1 (3) More students report frequent use of e-cigarettes, which
2 indicates possible nicotine addiction. According to the 2019 Vermont Youth
3 Risk Behavior Survey, 31 percent of Vermont high school e-cigarette users
4 used e-cigarettes daily, up from 15 percent in 2017.

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

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

1 (6) It is essential that menthol cigarettes are included in a ban on
2 flavored tobacco products, flavored e-liquids, and flavored e-cigarettes to
3 prevent youths who became addicted to nicotine through vaping from
4 transitioning to traditional cigarettes. Menthol creates a cooling and numbing
5 effect that reduces the harshness of cigarette smoke and suppresses the cough
6 reflex. Those effects make menthol cigarettes more appealing to young,
7 inexperienced smokers, and research shows that menthol cigarettes are more
8 likely to addict youths.

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

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

1 (9) The U.S. Food and Drug Administration (FDA) **took action on**
2 **flavored e-cigarettes in 2020, but that action only addresses flavored pod-**
3 **based e-cigarettes, leaving open tank e-cigarettes, the e-liquids used to fill**
4 **them, and flavored disposable e-cigarettes available for sale.**

5 **(10) The FDA** agrees that menthol cigarettes harm the public health. In
6 2013, the FDA published a report concluding that removal of menthol
7 cigarettes from the market would improve public health. In May 2022, the
8 FDA published a proposed rule establishing a tobacco product standard that
9 would prohibit menthol as a characterizing flavor in cigarettes, but the rule has
10 not been finalized and it is unclear when a final rule will be published or take
11 effect.

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

13 CHAPTER 40. TOBACCO PRODUCTS

14 § 1001. DEFINITIONS

15 As used in this chapter:

16 * * *

17 (3) “Tobacco products” means cigarettes, little cigars, roll-your-own
18 tobacco, snuff, cigars, new smokeless tobacco, and ~~other tobacco products as~~
19 ~~defined in 32 V.S.A. § 7702~~ any other product manufactured from, derived
20 from, or containing tobacco that is intended for human consumption by
21 smoking, by chewing, or in any other manner.

* * *

1
2 (8)(A) “Tobacco substitute” means ~~products~~ any product, including an
3 electronic ~~cigarettes~~ cigarette or other electronic or battery-powered ~~devices~~
4 device, or any component, part, or accessory thereof, that ~~contain or are~~
5 contains or is designed to deliver nicotine or other substances into the body
6 through the inhalation or other absorption of aerosol, vapor, or other emission
7 and that ~~have~~ has not been approved by the U.S. Food and Drug
8 Administration for tobacco cessation or other medical purposes. Products that
9 have been approved by the U.S. Food and Drug Administration for tobacco
10 cessation or other medical purposes shall not be considered to be tobacco
11 substitutes.

12 **(B) As used in subdivision (A) of this subdivision (8), “other**
13 **substances” does not include cannabis and cannabis products that are**
14 **offered by a cannabis establishment licensed pursuant to chapter 33 of**
15 **this title or by a medical cannabis dispensary licensed pursuant to chapter**
16 **37 of this title.**

17 (9) “E-liquid” means the solution, substance, or other material used in or
18 with a tobacco substitute that is heated or otherwise acted upon to produce an
19 aerosol, vapor, or other emission to be inhaled or otherwise absorbed by the
20 user, regardless of whether the solution, substance, or other material contains
21 nicotine. **The term does not include cannabis and cannabis products that**

1 **are offered by a cannabis establishment licensed pursuant to chapter 33 of**
2 **this title or by a medical cannabis dispensary licensed pursuant to chapter**
3 **37 of this title.**

4 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

5 (a)(1) No person shall engage in the retail sale of tobacco products, tobacco
6 substitutes, e-liquids, or tobacco paraphernalia in ~~his or her~~ the person's place
7 of business without a tobacco license obtained from the Division of Liquor
8 Control.

9 * * *

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

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

17 (g) No person shall engage in the retail sale of tobacco products, tobacco
18 substitutes, ~~substances containing nicotine or otherwise intended for use with a~~
19 ~~tobacco substitute~~ e-liquids, or tobacco paraphernalia in the State unless the
20 person is a licensed wholesale dealer as defined in 32 V.S.A. § 7702 or has
21 purchased the tobacco products, tobacco substitutes, ~~substances containing~~

1 ~~nicotine or otherwise intended for use with a tobacco substitute~~ e-liquids, or
2 tobacco paraphernalia from a licensed wholesale dealer.

3 * * *

4 § 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
5 TOBACCO PARAPHERNALIA; REQUIREMENTS;
6 PROHIBITIONS

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

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

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

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

14 (B) in a locked container.

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

16 (A) a display of tobacco products, tobacco substitutes, or e-liquids
17 that is located in a commercial establishment in which by law no person under
18 21 years of age is permitted to enter at any time;

19 (B) cigarettes in unopened cartons and smokeless tobacco in
20 unopened multipack containers of 10 or more packages, any of which shall be
21 displayed in plain view and under the control of a responsible employee so that

1 removal of the cartons or multipacks from the display can be readily observed
2 by that employee; or

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

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

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

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

17 § 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;

18 TOBACCO SUBSTITUTES; E-LIQUIDS; TOBACCO

19 PARAPHERNALIA

20 (a) A person shall exhibit proper proof of ~~his or her~~ the person's age upon
21 demand of a person licensed under this chapter, an employee of a licensee, or a

1 law enforcement officer. If the person fails to provide proper proof of age, the
2 licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes,
3 e-liquids, or tobacco paraphernalia to the person. The sale or furnishing of
4 tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to a
5 person exhibiting proper proof of age shall be prima facie evidence of a
6 licensee’s compliance with section 1007 of this title.

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

9 § 1005. PERSONS UNDER 21 YEARS OF AGE; POSSESSION OF

10 TOBACCO PRODUCTS; MISREPRESENTING AGE ~~OR~~ **FOR**

11 PURCHASING TOBACCO PRODUCTS; PENALTY

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

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

20 (b) A person who possesses tobacco products, tobacco substitutes, e-
21 liquids, or tobacco paraphernalia in violation of subsection (a) of this section

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

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

9 § 1006. POSTING OF SIGNS

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

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

1 § 1007. FURNISHING TOBACCO TO PERSONS UNDER 21 YEARS OF
2 AGE; REPORT

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

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

17 (2) Any violation by a tobacco licensee of subsection 1003(a) of this
18 title and this section after a sale violation or during a compliance test
19 conducted within six months of a previous violation shall be considered a
20 multiple violation and shall result in the minimum license suspension in

1 addition to any other penalties available under this title. Minimum license
2 suspensions for multiple violations shall be assessed as follows:

- 3 (A) Two violations two weekdays;
- 4 (B) Three violations 15-day suspension;
- 5 (C) Four violations 90-day suspension;
- 6 (D) Five violations one-year suspension.

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

15 * * *

16 § 1009. CONTRABAND AND SEIZURE

17 (a) Any cigarettes or other tobacco products, tobacco substitutes, e-liquids,
18 or tobacco paraphernalia that have been sold, offered for sale, or possessed for
19 sale in violation of section 1003, 1010, or 1013 of this title, 20 V.S.A. § 2757,
20 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial cigarette rolling
21 machines possessed or utilized in violation of section 1011 of this title, shall be

1 deemed contraband and shall be subject to seizure by the Commissioner, the
2 Commissioner’s agents or employees, the Commissioner of Taxes or any agent
3 or employee of the Commissioner of Taxes, or by any law enforcement officer
4 of this State when directed to do so by the Commissioner. All ~~cigarettes or~~
5 ~~other tobacco products~~ items seized under this subsection shall be destroyed.

6 * * *

7 § 1010. INTERNET SALES

8 (a) As used in this section:

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

10 (2) [Repealed.]

11 (3) “Licensed wholesale dealer” has the same meaning as in 32 V.S.A.
12 § 7702(5).

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

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

15 (6) “Roll-your-own tobacco” has the same meaning as in 32 V.S.A.
16 § 7702(11).

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

18 (b) No person shall cause cigarettes, roll-your-own tobacco, little cigars,
19 snuff, tobacco substitutes, ~~substances containing nicotine or otherwise intended~~
20 ~~for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia, ordered or
21 purchased by mail or through a computer network, telephonic network, or

1 other electronic network, to be shipped to anyone other than a licensed
2 wholesale dealer or retail dealer in this State.

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

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

6 (1) A knowing or intentional violation of this section shall be punishable
7 by imprisonment for not more than five years or a fine of not more than
8 \$5,000.00, or both.

9 (2) In addition to or in lieu of any other civil or criminal remedy
10 provided by law, upon a determination that a person has violated this section,
11 the Attorney General may impose a civil penalty in an amount not to exceed
12 \$5,000.00 for each violation. For purposes of this subsection, each shipment
13 or transport of cigarettes, roll-your-own tobacco, little cigars, ~~or snuff~~, tobacco
14 substitutes, e-liquids, or tobacco paraphernalia shall constitute a separate
15 violation.

16 * * *

17 § 1012. ~~LIQUID NICOTINE~~ E-LIQUIDS CONTAINING NICOTINE;

18 PACKAGING

19 (a) Unless specifically preempted by federal law, no person shall
20 manufacture, regardless of location, for sale in; offer for sale in; sell in or into

1 the stream of commerce in; or otherwise introduce into the stream of
2 commerce in Vermont:

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

5 (2) any ~~nicotine liquid~~ e-liquid container unless that container
6 constitutes child-resistant packaging.

7 (b) As used in this section:

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

15 (2) “~~Nicotine liquid~~ E-liquid container” means a bottle or other
16 container of a ~~nicotine liquid or other substance~~ an e-liquid containing nicotine
17 that is sold, marketed, or intended for use in a tobacco substitute. The term
18 does not include a container containing nicotine in a cartridge that is sold,
19 marketed, or intended for use in a tobacco substitute if the cartridge is prefilled
20 and sealed by the manufacturer and not intended to be opened by the
21 consumer.

1 § 1013. FLAVORED TOBACCO PRODUCTS, FLAVORED TOBACCO
2 SUBSTITUTES, AND FLAVORED E-LIQUIDS PROHIBITED

3 (a) As used in this section:

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

15 (2) “Flavored e-liquid” means any e-liquid with a characterizing flavor.

16 An e-liquid shall be presumed to be a flavored e-liquid if a licensee, a
17 manufacturer, or a licensee’s or manufacturer’s agent or employee has made a
18 statement or claim directed to consumers or the public, whether express or
19 implied, that the product has a distinguishable taste or aroma other than the
20 taste or aroma of tobacco.

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

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

13 (5) “Tobacco retailer” means any individual, partnership, joint venture,
14 society, club, trustee, trust, association, organization, or corporation who owns,
15 operates, or manages any retail establishment that has a tobacco license from
16 the Division of Liquor Control.

17 (b) No person shall engage in the retail sale of any flavored tobacco
18 product, flavored e-liquid, or flavored tobacco substitute.

19 (c) If a tobacco retailer or a tobacco retailer’s agent or employee violates
20 this section, the tobacco retailer shall be subject to a civil penalty of not more
21 than \$100.00 for a first offense and not more than \$500.00 for any subsequent

1 offense. An action under this section shall be brought in the same manner as
2 for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought
3 within 24 hours after the occurrence of the alleged violation.

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

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

6 * * *

7 (31) Violations of 7 V.S.A. § 1013(b), relating to flavored tobacco
8 products, flavored e-liquids, and flavored tobacco substitutes.

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

10 (c) The provisions of subsection (b) of this section shall not apply to a
11 violation of subsection 1005(a) of this title, relating to purchase of tobacco
12 products, tobacco substitutes, e-liquids, or tobacco paraphernalia by a person
13 under 21 years of age.

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

15 § 140. TOBACCO USE PROHIBITED ON PUBLIC SCHOOL GROUNDS

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

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

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

11 (1) alcohol;

12 (2) cannabis;

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

15 (4) tobacco products ~~and~~, tobacco substitutes, and e-liquids as defined in
16 7 V.S.A. § 1001 ~~and substances containing nicotine or that are otherwise~~
17 ~~intended for use with a tobacco substitute.~~

18 Sec. 7. 32 V.S.A. § 7702 is amended to read:

19 § 7702. DEFINITIONS

20 As used in this chapter unless the context otherwise requires:

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE