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TO: Rep. Michael Marcotte, Chair, House Committee on Commerce & Economic
Development
Rep. Rey Garofano, Vice Chair, House Committee on Human Services.

FROM: Rose Kennedy, AAG

DATE: May 8, 2025

RE: Written Testimony – Vape Sales Enforcement Joint Hearing

My name is Rose Kennedy, I am an assistant Attorney General, I've been in the Attorney General's Office since June of 2022, and in the Consumer Protection Division since last May. I have prepared a few summary remarks about the AGO's role in enforcing tobacco laws in Vermont, then I'm happy to take any questions the Joint Committee may have.

My primary responsibility since last May has been tobacco enforcement, including compliance with the Multi-Settlement Agreement (MSA) that Vermont is a signatory to and deals with the sale and distribution of traditional combustible cigarettes and roll your own tobacco. The diligent enforcement of the terms of the MSA continues to be important work, work that our office, the Department of Liquor and Lottery (DLL) and the Tax Department does together all year round to make sure every cigarette that is sold in Vermont is in compliance with both state and federal laws. This year, under the MSA, Vermont received a payment of approximately \$23 million and has received over \$800 million from the MSA since it was reached in the late 1990s. So just to be clear, monitoring brick and mortar stores and the sale of combustible cigarettes and roll your own tobacco continues to be a vital part of what we all do.

In addition to assuring compliance with the MSA, I have been tasked with attempting to address the ever- emerging nicotine market that includes Electronic Nicotine Delivery System, ENDS, otherwise known as Vapes or e-cigarettes and nicotine pouches.

The Attorney General's Office believes that tobacco and nicotine products are harmful to Vermont consumers, as they are highly addictive and has attempted, throughout the years to combat their illegal sales. Foremost in our minds, as we do this work, is the concern that while the MSA may have helped to curb cigarette smoking in Vermont, the ENDS market and nicotine pouch market is helping to grow a new generation of nicotine-addicted youth. As of 2023, according to the Vermont Department of Health, 16% of Vermont high school students said they used e-cigarettes at least once in the past 30 days and what is most concerning about that number is that of those students, 37% said they did so daily – which seems to suggest addiction. We know that approximately 86% of kids that start using nicotine products do so with a flavored product that we believe is marketed to appeal to youth and downplay the addictive impact of the product.

Given this harm to VT consumers and appeal to Youth, we attempt to enforce against bad actors in the market, both in the context of brick-and-mortar stores and online.

As you know, one very key tool in combatting illegal tobacco and nicotine product sales is our State's Delivery Sales Ban at 7 VSA §1010(b) which was enacted in 2008 but amended in 2019 to include tobacco substitutes. As such,

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, 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.

While the federal PACT Act or the Preventing All Cigarette Trafficking Act was amended in 2020 to limit online sales of tobacco and e-cigarettes on a national scale to those under legal sales age, and to prevent such sales from occurring through the US Mail System (with some exceptions) our state ban prohibits sales of all these products to anyone other than a licensed wholesaler or retailer. It is a valuable tool and just two weeks ago, at a Conference in San Diego, I was asked to speak to AAGs from across the country about our Delivery Sales Ban and how we have used it to enforce against online sales of tobacco and nicotine products. I think it is fair to say that other states were certainly jealous of our delivery sales ban and were interested in modeling VT's efforts in this regard.

Vermont is one of only 17 states that ban these sales for both tobacco, ENDS products and products that contain nicotine through online sales. Additionally, these sales are:

- considered an unfair or deceptive act or practice in commerce and violates the Vermont Consumer Protection Act, 9 VSA § 2453;
- subject to a civil penalty of up to \$5K per violation under the delivery sales ban;
- subject to a civil penalty of up to \$10K for each unfair or deceptive act or practice under the CPA;
- and pursuant to these laws, AGO may seek Injunctive Relief under both § 1010 and CPA.

Since 2020, our office, along with DLL, have worked together to target online sellers of tobacco and tobacco substitute products. I'm sure DLL will discuss their efforts with you momentarily. But, based on their work and our office's subsequent investigations, again since 2020, our office has initiated investigations of approximately 34 online sellers and reached settlement resolutions with the majority of these sellers that have resulted in about \$1.3 million dollars in civil penalties, plus injunctive relief that requires the end of online sales practices by these sellers.

Most notably, in October of 2024, our office announced that it had reached a settlement with Amazon because some of its sellers were selling tobacco and nicotine products into Vermont in violation of our delivery sales ban. Based on a sale conducted by DLL and follow-up investigation by our office, we were able to resolve the matter for a payment to VT of \$400,000. Additionally, we negotiated Injunctive relief. As such, Amazon must continue to strengthen its Tobacco Controls and starting January 2025, for four consecutive years must compile a list of sellers who have intentionally evaded their Tobacco Controls by selling to customers in VT. Our office is committed to continuing to work with DLL to address illegal online sales. In fact, your request for testimony caught us in the middle of discussions about the latest round of online buys conducted by DLL that I believe began in February, and next action steps in our continuing investigations and enforcement.

Based on prior handling of these cases, we expect to conduct streamlined, expedited investigations with quick resolutions and negotiated settlements that address both civil penalties and end the prohibited sales. Our close partnership with DLL, TAX, and the Department of Health represents an important public health, consumer protection, and regulatory enforcement collaboration. In addition to individual websites, we will continue to look at social media platforms and how they may be held accountable for content or sales that derive from their sites.

Additionally, if I could also make a plug, we recently added to our AGO Website a link for folks to be able to report any Online Sales of Tobacco or Nicotine Products or any Underage Sales information that may be occurring in Brick and Mortars stores directly to our office. And I am happy to give you that link. <https://ago.vermont.gov/form/2025-vermont-underage-vaping-report-form>

If you have any questions for me, I am happy to try and answer them. Thank you.