

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM 2015



Bill Number: H.171 Name of Bill: An act relating to restrictions on the use of electronic cigarettes

Agency/Dept: Department of Health Author of Bill Review: updated by Rhonda Williams for Julie Arel

Date of Bill Review: 3/22/16 Related Bills and Key Players _____

Status of Bill: (check one): ☐ Upon Introduction ☒ As passed by 1st body ☐ As passed by both

Recommended Position:

☐ Support ☐ Oppose ☐ Remain Neutral ☒ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill addresses two issues:

- 1) **Restricting placement of tobacco products and substitutes on retail counters:** Requires tobacco products and substitutes to be displayed behind the sales counter, or in any other area of the establishment that is inaccessible to the public, or in a locked container that is not on the sale counter. There are exceptions for adult-only establishments, unopened cartons or multipacks, and cigars or pipe tobacco.
- 2) **Prohibiting use of tobacco substitutes where lit tobacco products are prohibited:** Adds "tobacco substitutes" to Vermont's clean air requirements for public places and work places except for a business that does not sell food or beverages but is established for the sole purpose of providing a setting for patrons to purchase and use tobacco substitutes and related paraphernalia and for the Vermont Veteran's Home.

2. Is there a need for this bill? *Please explain why or why not.*

- 1) **Restricting placement of tobacco products and substitutes on retail counters: Yes, with modifications.**
 - **Vermont tobacco retailers are a source of illegal youth access to tobacco.** 11% of Vermont high school students reported current smoking; 9% of youth smokers reported buying their own cigarettes at a store or gas station, and 8% reported taking them from the store or family (2015 YRBS). Vermont law does not require tobacco or tobacco substitutes to be in locked cases, and cartons, multipacks, cigars, and pipe tobacco do not need to be clerk-assisted. Even unlocked clerk-assisted products may allow access.
 - **Youth who see tobacco product and marketing are more likely to attempt an illegal purchase.** Vermont could decrease youth access to tobacco and purchase attempts by removing counter displays. DLC reports for 2015 that 12% of undercover youth buys were successful which is higher than the national average of 9.6%. Studies show youth exposed to tobacco product displays are more likely to attempt purchase.
 - **Limiting visibility and accessibility of tobacco decreases its social acceptability and youth appeal.** The U.S. Surgeon General (2012) identified tobacco marketing as a cause of youth smoking. The tobacco industry spends ~\$18.4 million in Vermont every year in marketing. A statewide audit of tobacco retailers found that tobacco substitutes were more than 2x as likely to be placed on counters as tobacco products.
- 2) **Prohibiting use of tobacco substitutes where lit tobacco products are prohibited: Yes, with modifications.**
 - **Tobacco substitute's aerosol and SH aerosol contain harmful chemicals & diminish Clean Air Laws.**

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- Toxic chemicals have been found in the aerosol emitted by tobacco substitutes. Used indoors, secondhand aerosol can cause exposure to nicotine and propylene glycol in levels considered hazardous by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, which develops national standards for clean indoor air.
- One study found that more than 75 percent of flavored e-cigarettes also contained diacetyl, a flavoring chemical that when inhaled, has been linked to cases of severe respiratory disease, or “popcorn lung” (Allen et al. 2015).
- While tobacco substitute aerosol may not be as harmful as conventional cigarette smoke, CDC states there is sufficient evidence to determine that their aerosol cannot be considered safe.
- 8 states have included tobacco substitutes in their comprehensive clean indoor air laws.
- **Tobacco substitutes threaten tobacco youth prevention efforts and Vermont’s clean indoor air standard**
 - Reducing access and use of e-cigarettes is important for reducing cigarette prevalence. Youth who smoked e-cigarettes were twice as likely to have intentions to smoke conventional cigarettes (Bunnell 2015).
 - Decades of tobacco control efforts have led to the creation of smoke-free policies that have diminished social acceptability of smoking. The standard for indoor air is clean air, and banning use of tobacco substitutes in indoor places, is consistent with this standard.
 - Youth use of e-cigarettes is quickly rising with it tripling in several years. By the State restricting e-cigarettes use in work and public spaces, it will limit exposure to aerosols, raise awareness about nicotine and addiction, and discourage youth and young adult use.
- **Tobacco substitutes are increasing dual use of tobacco products and may inhibit cessation success.**
 - High rates of dual use are prevalent among tobacco substitute users. Research indicates that smokers are substituting with e-cigarettes to get around indoor smoking bans.
 - A study found that over four times as many e-cigarette users smoke cigarettes and e-cigarettes than smoking e-cigarettes alone (Lee 2014).

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

- 1) **Restricting placement of tobacco products and substitutes on retail counters:** None.
- 2) **Prohibiting use of tobacco substitutes where lit tobacco products are prohibited:** As of July 1, 2014, indoor use of tobacco substitutes was banned in public schools and licensed child care facilities but not in indoor public and work places. No programmatic or fiscal implications are expected for VDH. The Vermont Tobacco Control Program and Food & Lodging Program have protocols for tracking and enforcing clean air complaints and violations. Tobacco substitute complaints are already tracked as an unenforceable complaint.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

This bill would have an initial programmatic implication for DLC, which communicates with all licensees and investigators about new regulations after the end of each legislative session. DLC enforces the current requirement that tobacco products and substitutes be clerk assisted and could replace that component of their inspection with the new off-counter requirements.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

- 1) **Restricting placement of tobacco products and substitutes on retail counters:**
 - There may be a small fiscal implication for tobacco retailers if they need to purchase off-counter storage cases to keep products locked and inaccessible.
- 2) **Use of tobacco substitutes where lit products are prohibited:** None.

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6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

- CDC, Coalition for a Tobacco-Free Vermont and other advocates, American Lung Association of Vermont, American Heart Association of Vermont, American Cancer Society of Vermont, tobacco coalitions, Agency of Education, Department of Liquor Control (with modifications – see 8 below)
- Vermont chapters of American Academy of Pediatrics, American Academy of Family Physicians and American Medical Society
- Smart Approaches to Marijuana Vermont (SAM-VT)

6.2 Who else is likely to oppose the proposal and why?

- Vermont Retail and Grocers Association, tobacco industry which owns more than 80% of e-cigarette brands, vape shop owners
- Consumers and Consumer Advocates for Smoke-free Alternatives Association (CASAA) which is a national advocacy group for tobacco substitutes

7. Rationale for recommendation: *Justify recommendation stated above.*

- 1) **Restricting placement of tobacco products and substitutes on retail counters:** We support removing tobacco products and substitutes from retail counters to reduce visibility and accessibility to youth.
- 2) **Prohibiting use of tobacco substitutes where lit tobacco products are prohibited:** We support including tobacco substitutes in all sections of Vermont's clean indoor air laws to protect the public and workers from harmful chemicals in secondhand aerosol, strengthen the tobacco-free norms the state has worked hard to create and maintain, decrease nicotine addiction, and encourage evidence-based cessation.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

1) Regarding restriction of placement of tobacco products and substitutes on retail counters

- Remove exemptions for unopened cartons and multipack containers, and humidors for cigars and pipe tobacco. Last year, DLC communicated that they prefer no exceptions. Vermont youth are equally likely to use cigars as cigarettes. Lower cost pipe tobacco is seen as an alternative to roll-your-own tobacco. These products should not be exempted.

2) Regarding use of tobacco substitutes where lit products are prohibited

- Request that the exemption of businesses (vape shops) be grandfathered in so that the clean indoor air requirement would apply to all workplaces by July 1, 2019. Several other states took this approach.

9. Gubernatorial appointments to board or commission?

Secretary/Commissioner has reviewed this document: _____ **Date:** _____

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