CONFIDENTIAL

LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.217 Name of Bill: An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands

Agency/ Dept: AHS – VDH HPDP Author of Bill Review: Apprived by BC, DE and Commissioner Chen 4/1/14

Date of Bill Review: 3/25/14 Status of Bill: (check one):

_Upon Introduction _X_ As passed by 1st body _____As passed by both bodies _____ Fiscal

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Recommended Position:

X Support _____Oppose _____Remain Neutral _____Support with modifications identified in #8 below

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Analysis of Bill

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

As passed by the House, H.217 expands workplace and public place protections against secondhand smoke exposure in the following environments:

- **Lodging establishments:** H.217 requires that the sleeping quarters and adjoining rooms rented to guests in hotels, motels, and other lodging establishments be smoke-free, in addition to those establishments' common areas.
- **State-owned property:** The bill creates a 25-foot smoke-free zone around all buildings owned, leased, or rented by the State. This restriction would not include adjacent properties not owned by the state, e.g. sidewalks or areas owned by neighboring businesses. Additional areas of property or grounds owned by or leased to the state could be designated as smoke-free as well.
- **State-operated hospitals:** H.217 creates a smoke-free campus for state-operated hospitals or secure recovery facilities. This would affect the Vermont Psychiatric Care Hospital.
- **Motor vehicles:** As amended by the House, H.217 prohibits smoking in motor vehicles occupied by children restrained by a car seat, punishable by a $100 fine.

H.217 enhances existing language for tobacco-free environments on school grounds and in childcare facilities:

- **Public schools:** H.217 expands the definition of products prohibited on school grounds to include tobacco substitutes, namely e-cigarettes.
- **Childcare facilities:** H.217 would prohibit the use of tobacco products and tobacco substitutes in licensed child care centers and afterschool programs at all times – both indoor and on the grounds. For licensed or registered family child care homes, use of tobacco and tobacco substitutes would be prohibited while children were in care. In addition, if smoking occurs on the premises when children are not in care, parents would have to be notified that children would be exposed to this environment.

H.217 also adds language to the definition of tobacco substitutes to emphasize that FDA-approved cessation products are not considered to be tobacco substitutes.

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

H.217 would provide necessary clarity to Vermont's secondhand smoke protections and provide more comprehensive coverage in workplaces, public places, and childcare facilities. Secondhand smoke exposure in public places remains a significant health issue for Vermonters. There is no safe level of exposure to secondhand smoke, and exposure remains a major cause of disease, disability, and premature death among nonsmokers.[1] Despite Vermont's existing smoking restrictions, data from the 2012 Vermont Adult Tobacco Survey show that 48% of Vermonters report exposure to secondhand smoke in the home, a vehicle, or public place in the last week.[2] Smoking restrictions in public places are associated with health improvements on the population level, contribute to smoking cessation, and change social norms around tobacco use and secondhand smoke.[3,4,5]

H.217 expands Vermont's secondhand smoke protections, especially for children and other vulnerable populations.

- **Workplace protections for lodging establishments:** More than 15,000 Vermonters currently work in the Accommodation Industry, which includes lodging and short-term accommodations for travelers, vacationers, and others.[6] Vermont's current workplace protections do not cover guest quarters, and employees are at risk of secondhand smoke exposure when they clean, maintain, or are otherwise assigned to perform services for an employer. Four states (Indiana, Michigan, North Dakota, and Wisconsin), over 60 municipalities, and several major national hotel and motel chains (Comfort Inns, Marriott, Westin) have enacted 100% smoking bans to protect employees and guests.[7] The Vermont Tobacco Control Program has received queries from motel managers who are concerned about staff exposure to secondhand smoke; managers cannot always enact their own smoking ban because national chains may determine policy based on state law. H.217 would provide the same workplace protections for accommodations employees that already cover Vermont employees in other sectors.

- **Protecting children from secondhand smoke:** One in five (22%) Vermont youth in grades six through eight report being exposed to secondhand smoke in a car in the last week (2013 Youth Risk Behavior Survey). The 2012 Vermont Adult Tobacco Survey indicated that tobacco use in cars when children are present is decreasing overall, yet 44% of adult smokers with children do not have smoke-free vehicles. Secondhand smoke in cars can reach dangerously high levels, even with the car windows open and in car rides as short as five minutes. Children exposed to secondhand smoke are at increased risk for Sudden Unexpected Infant Death (SUID, also known as SIDS), respiratory infections, pneumonia, bronchitis, chronic coughing, shortness of breath, and ear infections. A growing body of research indicates that thirdhand smoke, or particles left behind after the cigarette is extinguished, can also be harmful. Six other states (AR, CA, LA, ME, OR, UT) and Puerto Rico have adopted smoke-free cars provisions to protect children per age groups, e.g. under 16 or 15 years of age. By banning smoking in cars when children are present, H.217 would increase secondhand smoke protections for those most vulnerable to its effects.

  H.217 also expands protections for youth in licensed childcare facilities. Current regulations for childcare facilities do not include tobacco substitutes (e-cigarette)s. For licensed child care centers, H.217 would prohibit tobacco products and tobacco substitutes indoors and outdoors on the premises at all times. For registered child care homes, current regulations stipulate that smoking cannot occur in sight of children, which does not protect children from secondhand smoke. H.217 would ban smoking when children are present in registered family child care homes when children are in care and require parents to be notified if tobacco is used in the home when children are not present. Not only does H.217 provide stronger protections for Vermont's youngest children, it also sends a strong message that secondhand smoke poses an unacceptable risk to children.

- **Changing social norms for youth-oriented facilities:** Current state statute covering public schools is unclear about when tobacco use is prohibited and whether non-students are allowed to use tobacco at school-sponsored functions. The statute language requires individual school boards to adopt policies that prohibit student tobacco possession and use "while under supervision of school staff", but it does not address tobacco use by students when not supervised or by non-students in these settings. School board and district implementation of tobacco-

free policies has also been inconsistent. According to the CDC School Health Profiles, only 61% of Vermont Schools prohibit tobacco use at all times in all locations. Furthermore, 16 VSA § 140 was adopted before the emergence of tobacco paraphernalia and substitutes (e-cigarettes). E-cigarettes, defined as tobacco substitutes in 7 VSA § 1001, are a quickly emerging and unregulated product, and their sale to minors in Vermont is prohibited. Youth are at increasing risk for using e-cigarettes, even if they have never smoked a cigarette. The CDC reports that e-cigarette use has more than doubled among U.S. middle and high school students from 2011 to 2012, and current state statute does not ban their use by students, staff or non-staff within schools, on school grounds or at school-sponsored events. H.217 moves Vermont closer to having 100% tobacco-free school grounds, 100% of the time, sending a strong, consistent message that tobacco use around youth is unacceptable in environments that foster positive youth development.

- **Supporting wellness for behavioral health populations:** Data from the CDC and other sources point to the disparity seen in shorter life span and in greater addiction to tobacco among those with mental illness. Over 80% of psychiatric hospitals nationwide are smoke-free facilities. VDH has a tobacco-free initiative underway, setting the expectation for tobacco-free campuses for substance abuse treatment centers starting July 1, 2014. H.217 expands this effort by creating smoke-free grounds for the Vermont Psychiatric Care Hospital. Creating smoke-free environments for those affected by mental illness and substance use disorders is an evidence-based way to improve the delivery of tobacco cessation services to clients and staff. Furthermore, a growing body of research shows that treating tobacco addiction along with mental illness and substance use disorders can improve psychiatric and recovery outcomes.

- **Letting the State lead tobacco-free areas by example:** An additional secondhand smoke protection measure in H.217 is to establish a 25-foot smoke-free boundary around all publicly owned or leased buildings and offices. Creating smoke-free state properties will improve the health and wellness of employees, as well as clients, volunteers, and visitors who use state property. While some Vermont state office buildings have established no-smoking zones or followed the 50-foot stipulation, H.217 would send a strong and consistent message that Vermont supports healthy smoke-free environments. It would also aid with enforcement of smoke-free boundaries around State offices; the 50-foot stipulation is challenging to enforce because of the ambiguity of language and a lack of enforcement responsibility. Oregon recently enacted a ban on all tobacco products on state property.[8]

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

Fiscal and programmatic implications would be minimal with a strong communication strategy. As with all secondhand smoke laws, the best enforcement strategy is public outreach and communication. Previous expansions of Vermont's smoke-free laws have resulted in a brief initial uptick in complaints that diminishes as the public becomes aware and accustomed to new restrictions. Depending on enforcement protocol, enforcement for H.217 might be shared by the Tobacco Control Program in Health Promotion and Disease Prevention (for enclosed public places and worksites) and the Food and Lodging Program in Environmental Health (for accommodations). For both programs, enforcement could be incorporated into existing protocol and staff resources.

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?

There are limited fiscal or programmatic implications of this bill for other departments in state government. The bill might have limited positive financial implications through improving health and reducing healthcare costs for conditions exacerbated by secondhand smoke exposure with modest fiscal benefit for Department of Children and Families and Department of Vermont Health Access. All state employees would also benefit from reduced secondhand smoke exposure on state property. The bill could result in modest fiscal gains for the State through violation fines. The Agency of

Education supports strengthening the tobacco (and tobacco substitute) -free language for school grounds, and the Department of Children and Families supports expanding protections for childcare facilities.

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

H.217 could have positive fiscal implications for the hospitality industry.[9,10] As more hotels nationwide go smoke-free, travelers and tourists have come to prefer smoke-free guest rooms.[11] In addition, some professional organizations will only hold conferences in cities or states that have comprehensive smoke-free laws, including in hotels and motels. Employees in the accommodations industry would experience health benefits from a 100% smoke-free workplace. H.217 would also benefit employees, clients, and visitors of state office buildings and grounds by limiting secondhand smoke exposure.

6. Other Stakeholders:

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

Supporters and advocates include the public health and medical communities that see the health impacts of secondhand smoke exposure firsthand. The network of Vermont tobacco control advocates and community coalitions are supportive (Coalition for Tobacco-Free Vermont, American Lung Association, American Heart Association, and American Cancer Society, among others). The ALA and the American Academy of Pediatrics Vermont chapter supports the smoke-free cars provision in H.217, while ACS and AHA are neutral about this provision of H.217. Some managers of hotels and motels would also support the measure, as demonstrated by managers who have called the Tobacco Control Program about employee protection.

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

Members of the public who oppose governmental regulation of smoking may oppose the bill. However, the majority of Vermonters support complete smoking bans in building entryways (80%) and complete or partial bans on smoking on outdoor worksite campuses (71%).[12]

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

Support of H.217 is recommended to improve workplace and public place protections against secondhand smoke exposure and provide clear definitions and guidance for areas covered under law. H.217 resolves gaps in Vermont's existing smoke-free laws and extends protections for Vermont's children.

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.*

- Possible modifications
    - Definition of "enclosed": A way to improve upon the bill, given that the definition of "partially enclosed" has been removed, is to better define "enclosed. " This would improve enforcement of Vermont's smoke-free laws. The tobacco program receives inquiries and complaints regarding what is covered by "enclosed." Given the political climate and the current inclusion of cars, it is recommended to address the exposure gaps that "partially enclosed" did in a future legislative session.
    - Smoke-free cars: Based on language enacted by other states, the tobacco program recommends using an age-based restriction instead of a visual restriction based on car seats, aligning with other states, and citing or clarifying as a secondary offense which is easier for law enforcement.

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- School grounds: While the school grounds restriction is stronger, H.217 still defers to school boards to set policy. Leadership at the Agency of Education, Supervisory Unions, and Superintendents have all agreed that if action is taken, the policy regarding tobacco substitutes should be consistent across the state. The tobacco program recommends setting policy and enforcement statewide instead of district by district to achieve consistent results for e-cigarettes.

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

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[1] U.S. Department of Health and Human Services. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

[2] Vermont Department of Health Tobacco Control Program. *2012 Adult Tobacco Survey Report*. 2013.

[3] Vander Weg MW, Rosenthal GE, Sarrazin MV. Smoking bans linked to lower hospitalizations for heart attacks and lung disease among Medicare beneficiaries. *Health Affairs*. 2012;31(12):2699-2707.

[4] Hopkins DP, Briss PA, Ricard CJ, Husten CG, Carande-Kulis VG, Fielding JE, Alao MO, McKenna JW, Sharp DJ, Harris JR, Woolery TA, Harris KW. Reviews of Evidence Regarding Interventions to Reduce Tobacco Use and Exposure to Environmental Tobacco Smoke. *Am J Prev Med*. 2001;20(2S).

[5] Head P, Bradford BE, Bae S, Cherry D. Hospital discharge rates before and after implementation of a city-wide smoking ban in a Texas city, 2004-2008. *Prev Chronic Dis*. 2012;9:120079.

[6] Vermont Department of Labor. *Nonfarm Payroll Employment*. Available at: http://www.vtlmi.info/ces.cfm. Accessed February 8, 2013.

[7] Americans for Nonsmokers' Rights. *Smoke-free travel: Hotels*. Available at: http://no-smoke.org/learnmore.php?id=188. Accessed February 8, 2013.

[8] State of Oregon: Office of the Governor. Executive Order 12-13: Tobacco-free Properties. Available at: http://www.oregon.gov/gov/docs/executive_orders/eo_12-13.pdf. Accessed February 8, 2013.

[9] Hyland A, Puli V, Cummings M, Sciandra R. New York's smoker-free regulations: effect on employment and sales in the hospitality industry. *Cornell Hotel and Restaurant Administration Quarterly*. 2003;44(3):9-16.

[10] Christophi CA, Paisi M, Pampaka D, Kehigias M, Vardavas C, Connolly GN. The impact of the Cyprus comprehensive smoking ban on air quality and economic business of hospitality venues. *BMC Public Health*. 2013;13(76).

[11] Stoller G. More hotels go completely smoke-free. *USA Today*. Published February 16, 2011. Available at: http://travel.usatoday.com/hotels/story/2011/02/More-hotels-go-completely-smoke-free/43823744/1. Accessed February 8, 2013.

[12] Vermont Department of Health. Tobacco Control Program Macro Poll, April 2012.

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