

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 288 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 million annually to
10 treat tobacco-caused illnesses, including \$87.2 million each year in Medicaid
11 expenses. This translates into a tax burden each year of \$759 per Vermont
12 household. Productivity losses add an additional \$232.8 million each year.

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

19 (3) More students report frequent use of e-cigarettes, which indicates
20 possible nicotine addiction. According to the 2019 Vermont Youth Risk

1 Behavior Survey, 31 percent of Vermont high school e-cigarette users used e-
2 cigarettes daily, up from 15 percent in 2017.

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

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

19 (6) It is essential that menthol cigarettes are included in a ban on
20 flavored tobacco products, flavored e-liquids, and flavored e-cigarettes to
21 prevent youths who became addicted to nicotine through vaping from

1 transitioning to traditional cigarettes. Menthol creates a cooling and numbing
2 effect that reduces the harshness of cigarette smoke and suppresses the cough
3 reflex. Those effects make menthol cigarettes more appealing to young,
4 inexperienced smokers, and research shows that menthol cigarettes are more
5 likely to addict youth.

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

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

19 (9) The U.S. Food and Drug Administration (FDA) agrees that menthol
20 cigarettes harm the public health. In 2013, the FDA published a report

1 concluding that removal of menthol cigarettes from the market would improve
2 public health.

3 (10) Vermont cannot wait for the FDA to take action. The same federal
4 legislation that was passed in 2009 banning all other flavored cigarettes
5 allowed the FDA to regulate or ban menthol. Despite taking public comment
6 on the dangers of menthol in 2013 and again in 2018, the FDA has still failed
7 to act. The new policy released by the FDA on January 1, 2020 falls far short
8 of protecting Vermonters from the dangers of smoking and nicotine addiction.
9 The FDA’s policy bans only flavored cartridge- or pod-based e-cigarettes and
10 even then exempts those that are menthol or tobacco flavored. Open tank e-
11 cigarettes and the flavored e-liquids used to fill them can still be sold, as can
12 flavored, self-contained, disposable e-cigarettes.

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

14 CHAPTER 40. TOBACCO PRODUCTS

15 § 1001. DEFINITIONS

16 As used in this chapter:

17 * * *

18 (3) “Tobacco products” means cigarettes, little cigars, roll-your-own
19 tobacco, snuff, cigars, new smokeless tobacco, and ~~other tobacco products as~~
20 ~~defined in 32 V.S.A. § 7702~~ any other product manufactured from, derived

1 from, or containing tobacco that is intended for human consumption by
2 smoking, by chewing, or in any other manner.

3 * * *

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

14 (9) “E-liquid” means the solution, substance, or other material used in or
15 with a tobacco substitute that is heated or otherwise acted upon to produce an
16 aerosol, vapor, or **other** emission to be inhaled **or otherwise absorbed** by the
17 user, regardless of whether the liquid contains nicotine.

18 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

19 (a)(1) No person shall engage in the retail sale of tobacco products, tobacco
20 substitutes, e-liquids, or tobacco paraphernalia in his or her place of business
21 without a tobacco license obtained from the Division of Liquor Control.

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

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

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

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

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

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

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

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

6 (B) in a locked container.

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

8 (A) a display of tobacco products, tobacco substitutes, or e-liquids
9 that is located in a commercial establishment in which by law no person under
10 21 years of age is permitted to enter at any time;

11 (B) cigarettes in unopened cartons and smokeless tobacco in
12 unopened multipack containers of 10 or more packages, any of which shall be
13 displayed in plain view and under the control of a responsible employee so that
14 removal of the cartons or multipacks from the display can be readily observed
15 by that employee; or

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

20 (d) The sale and the purchase of bidis is prohibited. A person who holds a
21 tobacco license who sells bidis as prohibited by this subsection shall be fined

1 not more than \$500.00. A person who purchases bidis from any source shall be
2 fined not more than \$250.00.

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

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

9 § 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;

10 TOBACCO SUBSTITUTES; E-LIQUIDS; TOBACCO

11 PARAPHERNALIA

12 (a) A person shall exhibit proper proof of his or her age upon demand of a
13 person licensed under this chapter, an employee of a licensee, or a law
14 enforcement officer. If the person fails to provide proper proof of age, the
15 licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes,
16 e-liquids, or tobacco paraphernalia to the person. The sale or furnishing of
17 tobacco products, tobacco substitutes, e-liquids, or tobacco paraphernalia to a
18 person exhibiting proper proof of age shall be prima facie evidence of a
19 licensee’s compliance with section 1007 of this title.

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

1 § 1005. PERSONS UNDER 21 YEARS OF AGE; **POSSESSION**
2 **PURCHASE** OF TOBACCO PRODUCTS; MISREPRESENTING
3 AGE **OR FOR** PURCHASING TOBACCO PRODUCTS;
4 PENALTY

5 (a)(1) A person under 21 years of age shall not **possess,** purchase, or
6 attempt to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco
7 paraphernalia **unless the person is an employee of a holder of a tobacco**
8 **license and is in possession of tobacco products, tobacco substitutes, or**
9 **tobacco paraphernalia to effect a sale in the course of employment.**

10 (2) A person under 21 years of age shall not misrepresent his or her age
11 to purchase or attempt to purchase tobacco products, tobacco substitutes, e-
12 liquids, or tobacco paraphernalia.

13 (b) A person who **possesses** **purchases or attempts to purchase** tobacco
14 products, tobacco substitutes, e-liquids, or tobacco paraphernalia in violation
15 of subsection (a) of this section shall be subject to having the tobacco products,
16 tobacco substitutes, e-liquids, or tobacco paraphernalia immediately
17 confiscated and shall be further subject to a civil penalty of \$25.00. An action
18 under this subsection shall be brought in the same manner as a traffic violation
19 pursuant to 23 V.S.A. chapter 24.

20 (c) A person under 21 years of age who misrepresents his or her age by
21 presenting false identification to purchase tobacco products, tobacco

1 substitutes, e-liquids, or tobacco paraphernalia shall be fined not more than
2 \$50.00 or provide up to 10 hours of community service, or both.

3 § 1006. POSTING OF SIGNS

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

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

15 § 1007. FURNISHING TOBACCO TO PERSONS UNDER 21 YEARS OF

16 AGE; REPORT

17 (a) A person that sells or furnishes tobacco products, tobacco substitutes, e-
18 liquids, or tobacco paraphernalia to a person under 21 years of age shall be
19 subject to a civil penalty of not more than \$100.00 for the first offense and not
20 more than \$500.00 for any subsequent offense. An action under this section
21 shall be brought in the same manner as for a traffic violation pursuant to

1 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of
2 the alleged violation.

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

10 (2) Any violation by a tobacco licensee of subsection 1003(a) of this
11 title and this section after a sale violation or during a compliance test
12 conducted within six months of a previous violation shall be considered a
13 multiple violation and shall result in the minimum license suspension in
14 addition to any other penalties available under this title. Minimum license
15 suspensions for multiple violations shall be assessed as follows:

- 16 (A) Two violations two weekdays;
17 (B) Three violations 15-day suspension;
18 (C) Four violations 90-day suspension;
19 (D) Five violations one-year suspension.

20 (3) The Division shall report to the House Committee on General,
21 Housing, and Military Affairs, the Senate Committee on Economic

1 Development, Housing and General Affairs, and the ~~Tobacco Evaluation and~~
2 ~~Review Board~~ Substance Misuse Prevention Oversight and Advisory Council
3 annually, on or before January 15, the methodology and results of compliance
4 tests conducted during the previous year. The provisions of 2 V.S.A. § 20(d)
5 (expiration of required reports) shall not apply to the required report to be
6 made under this subdivision.

7 * * *

8 § 1009. CONTRABAND AND SEIZURE

9 (a) Any cigarettes or other tobacco products, tobacco substitutes, e-liquids,
10 or tobacco paraphernalia that have been sold, offered for sale, or possessed for
11 sale in violation of section 1003, 1010, or 1013 of this title, 20 V.S.A. § 2757,
12 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial cigarette rolling
13 machines possessed or utilized in violation of section 1011 of this title, shall be
14 deemed contraband and shall be subject to seizure by the Commissioner, the
15 Commissioner's agents or employees, the Commissioner of Taxes or any agent
16 or employee of the Commissioner of Taxes, or by any law enforcement officer
17 of this State when directed to do so by the Commissioner. All **cigarettes or**
18 **other tobacco products** items seized under this subsection shall be destroyed.

19 * * *

20 § 1010. INTERNET SALES

21 (a) As used in this section:

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

2 (2) [Repealed.]

3 (3) “Licensed wholesale dealer” has the same meaning as in 32 V.S.A.
4 § 7702(5).

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

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

7 (6) “Roll-your-own tobacco” has the same meaning as in 32 V.S.A. §
8 7702(11).

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

10 (b) No person shall cause cigarettes, roll-your-own tobacco, little cigars,
11 snuff, tobacco substitutes, ~~substances containing nicotine or otherwise intended~~
12 ~~for use with a tobacco substitute~~ e-liquids, or tobacco paraphernalia, ordered or
13 purchased by mail or through a computer network, telephonic network, or
14 other electronic network, to be shipped to anyone other than a licensed
15 wholesale dealer or retail dealer in this State.

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

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

19 (1) A knowing or intentional violation of this section shall be punishable
20 by imprisonment for not more than five years or a fine of not more than
21 \$5,000.00, or both.

1 open or obtain a toxic or harmful amount of the substance in the container
2 within a reasonable time and not difficult for normal adults to use properly, but
3 does not mean packaging that all children under five years of age cannot open
4 or obtain a toxic or harmful amount of the substance in the container within a
5 reasonable time.

6 (2) “~~Nicotine liquid~~ ~~E-liquid~~ container” means a bottle or other
7 container of ~~a nicotine liquid or other substance~~ an e-liquid containing
8 nicotine that is sold, marketed, or intended for use in a tobacco substitute. The
9 term does not include a container containing nicotine in a cartridge that is sold,
10 marketed, or intended for use in a tobacco substitute if the cartridge is prefilled
11 and sealed by the manufacturer and not intended to be opened by the
12 consumer.

13 § 1013. FLAVORED TOBACCO PRODUCTS, FLAVORED TOBACCO
14 SUBSTITUTES, AND FLAVORED E-LIQUIDS PROHIBITED

15 (a) As used in this section:

16 (1) “Characterizing flavor” means a taste or aroma, other than the taste
17 or aroma of tobacco, imparted either prior to or during consumption of a
18 tobacco product or tobacco substitute, or a component part or byproduct of a
19 tobacco product or tobacco substitute. The term includes tastes or aromas
20 relating to any fruit, chocolate, vanilla, honey, maple, candy, cocoa, dessert,
21 alcoholic beverage, mint, menthol, wintergreen, herb or spice, or other food or

1 drink, or to any conceptual flavor that imparts a taste or aroma that is
2 distinguishable from tobacco flavor but may not relate to any particular known
3 flavor.

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

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

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

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

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

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

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

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

§ 140. TOBACCO USE PROHIBITED ON PUBLIC SCHOOL GROUNDS

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

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

(a) Creation. There is created the Substance Misuse Prevention Oversight and Advisory Council within the Department of Health to improve the health outcomes of all Vermonters through a consolidated and holistic approach to substance misuse prevention that addresses all categories of substances. The Council shall provide advice to the Governor and General Assembly for improving prevention policies and programming throughout the State and to

1 ensure that population prevention measures are at the forefront of all policy
2 determinations. The Advisory Council’s prevention initiatives shall
3 encompass all substances at risk of misuse, including:

4 (1) alcohol;

5 (2) cannabis;

6 (3) controlled substances, such as opioids, cocaine, and
7 methamphetamines; and

8 (4) tobacco products, ~~and tobacco substitutes, and e-liquids~~ as defined in
9 7 V.S.A. § 1001 ~~and substances containing nicotine or that are otherwise~~
10 ~~intended for use with a tobacco substitute.~~

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

12 § 7702. DEFINITIONS

13 The following words and phrases, as used in this chapter, shall have the
14 following meanings, unless the context otherwise requires:

15 * * *

16 (15) “Other tobacco products” means any product manufactured from,
17 derived from, or containing tobacco that is intended for human consumption by
18 smoking, by chewing, or in any other manner, ~~including~~. The term also
19 includes products sold as a tobacco substitute, as defined in 7 V.S.A.
20 § 1001(8), ~~and including any liquids, whether nicotine based or not, or e-~~
21 liquids, as defined in 7 V.S.A. § 1001(9), and delivery devices sold separately

1 for use with a tobacco substitute or e-liquid; but shall not include cigarettes,
2 little cigars, roll-your-own tobacco, snuff, or new smokeless tobacco as defined
3 in this section.

4 * * *

5 Sec. 8. ELECTRONIC CIGARETTES AND OTHER VAPING-RELATED
6 PRODUCTS; ADVERTISING RESTRICTIONS; REPORT

7 On or before December 1, 2020, the Office of the Attorney General shall
8 report to the House Committees on Commerce and Economic Development
9 and on Human Services and the Senate Committees on Economic
10 Development, Housing and General Affairs and on Health and Welfare
11 regarding whether and to what extent Vermont may legally restrict advertising
12 and regulate the content of labels for electronic cigarettes and other vaping-
13 related products in this State.

14 Sec. 9. EFFECTIVE DATE

15 This act shall take effect on **passage July 1, 2020.**

16
17
18 (Committee vote: _____)

19 _____
20 Senator _____

21 FOR THE COMMITTEE