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H.729

Introduced by Representatives Gregoire of Fairfield, Anthony of Barre City,  
Boyden of Cambridge, Campbell of St. Johnsbury, Christie of  
Hartford, Cole of Hartford, Dodge of Essex, Garofano of Essex,  
Hango of Berkshire, Harrison of Chittenden, Howard of  
Rutland City, Labor of Morgan, LaBounty of Lyndon, Masland  
of Thetford, Noyes of Wolcott, Sibia of Dover, Stebbins of  
Burlington, Templeman of Brownington, and Williams of  
Granby

Referred to Committee on

Date:

Subject: Tobacco products; tobacco substitutes; directory

Statement of purpose of bill as introduced: This bill proposes to establish a  
directory of tobacco substitutes, often referred to as e-cigarettes, that are  
allowed to be sold in this State.

An act relating to establishing a tobacco substitute directory

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 7 V.S.A. chapter 40 is amended to read:

3 CHAPTER 40. TOBACCO PRODUCTS

4 Subchapter 1. Licenses; Purchase and Sale

5 § 1001. DEFINITIONS

6 \* \* \*

7 Subchapter 2. Directory of Tobacco Substitutes

8 § 1031. CERTIFICATIONS

9 (a)(1) Each manufacturer of tobacco substitutes that are sold in this State,  
10 whether directly or through a distributor, wholesaler, retailer, or similar  
11 intermediary or intermediaries, shall certify under penalty of perjury on a form  
12 and in the manner prescribed by the Division of Liquor Control in the  
13 Department of Liquor and Lottery, not later than August 1 annually, that the  
14 manufacturer agrees to comply with this subchapter and that either:

15 (A) the manufacturer has received a marketing authorization or  
16 similar order for the tobacco substitute from the U.S. Food and Drug  
17 Administration pursuant to 21 U.S.C. § 387j; or

18 (B) the tobacco substitute was marketed in the United States as of  
19 August 8, 2016, the manufacturer submitted a premarket tobacco product  
20 application for the tobacco substitute to the U.S. Food and Drug  
21 Administration pursuant to 21 U.S.C. § 387j on or before September 9, 2020,

1 and the application either remains under investigation by the U.S. Food and  
2 Drug Administration or a final decision on the application has not otherwise  
3 taken effect.

4 (2) A manufacturer shall provide a separate certification form for each  
5 tobacco substitute that is sold in this State.

6 (b) Each annual certification form required by subsection (a) of this section  
7 shall be accompanied by:

8 (1) a copy of the marketing authorization or other order for the tobacco  
9 substituted issued by the U.S. Food and Drug Administration pursuant to 21  
10 U.S.C. § 387j, or evidence that the premarket tobacco product application for  
11 the tobacco substitute was submitted to the U.S. Food and Drug  
12 Administration and a final authorization or order has not yet taken effect; and

13 (2) a payment of \$250.00 for each tobacco substitute the first time a  
14 manufacturer submits a certification form for that tobacco substitute and a  
15 payment of \$200.00 annually thereafter for each tobacco substitute.

16 (c) A manufacturer required to submit a certification form pursuant to  
17 subsection (a) of this section shall notify the Division of Liquor Control within  
18 30 days following any material change affecting the information on the  
19 certification form, including the issuance or denial of a marketing authorization  
20 or other order by the U.S. Food and Drug Administration pursuant to 21 U.S.C.  
21 § 387j or any other order or action by the U.S. Food and Drug Administration

1 or a federal court that affects the ability of the tobacco substitute to be  
2 introduced or delivered into interstate commerce for commercial distribution in  
3 the United States.

4 § 1032. DIRECTORY OF TOBACCO SUBSTITUTES AND  
5 MANUFACTURERS

6 (a) The Division of Liquor Control shall maintain and make publicly  
7 available on the Division's website a directory that lists all tobacco substitute  
8 manufacturers and tobacco substitutes for which certification forms have been  
9 submitted and shall update the directory at least monthly to ensure its accuracy.

10 (b) The Division of Liquor Control shall provide a manufacturer with  
11 notice and an opportunity to cure any deficiencies before removing the  
12 manufacturer or its product or products from the directory.

13 (1) The Division of Liquor Control shall not remove a manufacturer or  
14 its product or products from the directory until at least 15 business days after  
15 the manufacturer has been given notice of the Division's intended action.  
16 Notice shall be sufficient and shall be deemed immediately received by a  
17 manufacturer if the notice is sent either electronically or by facsimile to an e-  
18 mail address or facsimile number, as applicable, provided by the manufacturer  
19 in its most recent certification filed pursuant to subsection 1031(a) of this  
20 chapter.

1           (2) The tobacco substitute manufacturer shall have 15 business days  
2           from the date of service of the notice of the Division's intended action to  
3           establish that the manufacturer or its products, or both, should be maintained in  
4           the directory.

5           (c) If a product is removed from the directory, each retailer, distributor, and  
6           wholesaler shall have 21 days from the date the product is removed from the  
7           directory to remove the product from its inventory and return the product to the  
8           manufacturer for disposal. After 21 days following removal from the  
9           directory, the tobacco substitutes identified in the notice of removal are  
10          contraband and shall not be purchased or sold in this State. The cost of  
11          returning the products to the manufacturer shall be borne by the person who  
12          offered or held the products for sale.

13          (d) Beginning on October 1, 2024 or on the date that the Division of Liquor  
14          Control first makes the directory available for public inspection on its website,  
15          whichever is later:

16               (1) a person shall not sell or offer for sale in this State a tobacco  
17               substitute that is not included in the directory described in this section; and

18               (2) a tobacco substitute manufacturer shall not sell, either directly or  
19               through a distributor or wholesaler, retailer, or similar intermediary or  
20               intermediaries, a tobacco substitute in this State that is not included in the  
21               directory described in this section.

1     § 1033. PENALTIES

2           (a)(1) A retailer, distributor, or wholesaler that sells or offers for sale in this  
3     State a tobacco substitute that is not included in the directory described in  
4     section 1032 of this chapter shall be subject to a civil penalty of \$500.00 per  
5     day for each product offered for sale in violation of this subchapter until the  
6     offending product is removed from the market or is properly listed in the  
7     directory.

8           (2) In addition to the civil penalty set forth in subdivision (1) of this  
9     subsection:

10           (A) for a second violation within a 12-month period, the license of  
11     the licensee shall be suspended for at least 30 days;

12           (B) for a third violation within a 12-month period, the license of the  
13     licensee shall be suspended for at least 90 days; and

14           (C) for a fourth or subsequent violation within a 12-month period, the  
15     license of the licensee shall be suspended for at least one year.

16           (b) A tobacco substitute manufacturer whose tobacco substitutes are not  
17     listed in the directory and are sold in this State, whether directly or through a  
18     distributor or wholesaler, retailer, or similar intermediary or intermediaries,  
19     shall be subject to a civil penalty of \$500.00 per day for each product offered  
20     for sale in violation of this subchapter until the offending product is removed  
21     from the market or is properly listed in the directory. In addition, any

1 manufacturer that falsely represents any of the information required by section  
2 1031 of this chapter shall be imprisoned not more than two years or fined not  
3 more than \$10,000.00, or both.

4 (c) A person who violates any provision of this subchapter commits an  
5 unfair and deceptive act in commerce in violation of the Consumer Protection  
6 Act, 9 V.S.A. chapter 63.

7 § 1034. ENFORCEMENT; APPEALS

8 (a) To enforce the provisions of this subchapter, the Division of Liquor  
9 Control and its agents, including State and local law enforcement officers, may  
10 examine the books, papers, invoices, and other records of any person in  
11 possession, control, or occupancy of any premises on which tobacco  
12 substitutes are placed, stored, sold, or offered for sale, as well as the stock of  
13 tobacco substitutes on the premises. Every person in possession, control, or  
14 occupancy of any premises on which tobacco substitutes are placed, stored,  
15 sold, or offered for sale shall give the Division of Liquor Control and its  
16 agents, including State and local law enforcement officers, the means,  
17 facilities, and opportunity for the examinations authorized by this section.

18 (b) Each retailer, distributor, or wholesaler that sells or distributes tobacco  
19 substitutes in this State shall be subject to at least two unannounced  
20 compliance checks annually for purposes of enforcing this section.  
21 Unannounced follow-up compliance checks of all noncompliant retailers,

1 distributors, and wholesalers shall be conducted within 30 days following any  
2 violation of this subchapter. The Division of Liquor Control shall publish the  
3 results of all compliance checks at least annually on its website and shall make  
4 the results available to the public upon request.

5 (c)(1) Any nonresident or foreign manufacturer of tobacco substitutes that  
6 has not registered to do business in this State as a foreign corporation or other  
7 business entity shall, as a condition precedent to having its products included  
8 or retained in the directory established pursuant to section 1032 of this chapter,  
9 appoint and continually engage without interruption the services of an agent in  
10 this State to act as agent for the service of process on whom all process, and  
11 any action or proceeding against the manufacturer concerning or arising out of  
12 enforcement of this subchapter, may be served in any manner authorized by  
13 law. Such service shall constitute legal and valid service of process on the  
14 manufacturer. The manufacturer shall provide the name, address, telephone  
15 number, and satisfactory proof of the appointment and availability of the agent  
16 to the Division of Liquor Control. The Secretary of State shall be designated  
17 as agent for service of process for importers of manufacturers located outside  
18 the United States. Service shall be made upon the Secretary of State in  
19 accordance with the provisions of 12 V.S.A. §§ 851 and 852.

20 (2) A manufacturer shall provide notice to the Division of Liquor  
21 Control 30 days prior to termination of the authority of an agent and shall



1 further provide proof to the satisfaction of the Division of Liquor Control of  
2 the appointment of a new agent not fewer than five days prior to the  
3 termination of an existing agent appointment. In the event an agent terminates  
4 an agent appointment, the manufacturer shall notify the Division of the  
5 termination within five calendar days and shall include proof to the Division's  
6 satisfaction of appointment of a new agent.

7 (3) Any manufacturer whose products are sold in this State who has not  
8 appointed and engaged an agent as required by this subsection shall be deemed  
9 to have appointed the Secretary of State as the manufacturer's agent and may  
10 be proceeded against in courts of this State by service of process upon on the  
11 Secretary of State; provided, however, that the appointment of the Secretary of  
12 State as the manufacturer's agent shall not satisfy the condition precedent, as  
13 set forth in subdivision (1) of this subsection, for having the manufacturer's  
14 products included or retained in the directory.

15 (d) A determination by the Division of Liquor Control not to include or to  
16 remove from the directory a manufacturer or a product is a final agency  
17 decision with the same status as an agency decision or order in a contested case  
18 under the Vermont Administrative Procedure Act. A tobacco substitute  
19 manufacturer aggrieved by a determination of the Division of Liquor Control  
20 under this subchapter may appeal to the Superior Court of Washington County.

1 which shall review the matter pursuant to 3 V.S.A. § 815. An appeal under  
2 this subsection may include a request for declaratory or injunctive relief.

3 (e) All fees and penalties collected by the Division of Liquor Control  
4 pursuant to this subchapter shall be deposited into the Liquor Control  
5 Enterprise Fund and used to administer and enforce this subchapter.

6 § 1035. REPORTING REQUIREMENT; RULEMAKING

7 (a) Annually, on or before January 31, the Division of Liquor Control shall  
8 submit a report to the General Assembly regarding the status of the directory,  
9 the manufacturers and products included in the directory, revenue and  
10 expenses related to the administration of this subchapter, and enforcement  
11 activities undertaken pursuant to this subchapter.

12 (b) The Board of Liquor and Lottery may adopt rules in accordance with  
13 3 V.S.A. chapter 25 to carry out the purposes of this subchapter.

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2024 and shall apply as follows:

16 (1) tobacco substitute manufacturers shall submit their first annual  
17 certifications under 7 V.S.A. § 1031 on or before August 1, 2024;

18 (2) the Division of Liquor Control shall post the first directory on its  
19 website pursuant to 7 V.S.A. § 1032 on October 1, 2024; and

20 (3) the Division of Liquor Control shall submit its first annual report  
21 pursuant to 7 V.S.A. § 1035 on or before January 31, 2025.