

1 S.24

2 Introduced by Senators Lyons, Clarkson, Hooker, McCormack and Pollina

3 Referred to Committee on

4 Date:

5 Subject: Health; tobacco products; tobacco substitutes; flavored tobacco
6 products; e-cigarettes; e-liquids

7 Statement of purpose of bill as introduced: This bill proposes to ban the retail
8 sale of flavored cigarettes, e-cigarettes, and e-liquids. It would eliminate the
9 existing ban on and penalty for possession of cigarettes, e-cigarettes, and
10 tobacco paraphernalia by individuals under 21 years of age and expand the
11 applicability of provisions for the seizure and destruction of contraband
12 tobacco products to include contraband e-cigarettes, e-liquids, and tobacco
13 paraphernalia. The bill would also direct the Office of the Attorney General to
14 report on the extent to which Vermont may legally restrict advertising and
15 regulate labels for e-cigarettes and other vaping-related products.

16 An act relating to banning flavored tobacco products and e-liquids

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

18 Sec. 1. FINDINGS

19 The General Assembly finds that:

1 (1) Tobacco use is costly. Vermont spends \$348 million annually to
2 treat tobacco-caused illnesses, including \$87.2 million each year in Medicaid
3 expenses. This translates into a tax burden each year of \$759 per Vermont
4 household. Productivity losses add an additional \$232.8 million each year.

5 (2) Youth tobacco use is growing due to e-cigarettes. Seven percent of
6 Vermont high school students smoke, but if e-cigarette use is included,
7 28 percent of Vermont youths use some form of tobacco product. More than
8 one in four Vermont high school students now uses e-cigarettes. Use more
9 than doubled among this age group, from 12 percent to 26 percent, between
10 2017 and 2019.

11 (3) More students report frequent use of e-cigarettes, which
12 indicates possible nicotine addiction. According to the 2019 Vermont Youth
13 Risk Behavior Survey, 31 percent of Vermont high school e-cigarette users
14 used e-cigarettes daily, up from 15 percent in 2017.

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

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

11 (6) It is essential that menthol cigarettes are included in a ban on
12 flavored tobacco products, flavored e-liquids, and flavored e-cigarettes to
13 prevent youths who became addicted to nicotine through vaping from
14 transitioning to traditional cigarettes. Menthol creates a cooling and numbing
15 effect that reduces the harshness of cigarette smoke and suppresses the cough
16 reflex. Those effects make menthol cigarettes more appealing to young,
17 inexperienced smokers, and research shows that menthol cigarettes are more
18 likely to addict youths.

19 (7) Youth smokers are the age group most likely to use menthol
20 cigarettes, but are also likely to quit if menthol cigarettes are no longer
21 available. Fifty-four percent of youths 12–17 years of age nationwide who

1 smoke use menthol cigarettes. Nearly 65 percent of young menthol smokers
2 say they would quit smoking if menthol cigarettes were banned.

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

11 (9) The U.S. Food and Drug Administration (FDA) agrees that menthol
12 cigarettes harm the public health. In 2013, the FDA published a report
13 concluding that removal of menthol cigarettes from the market would improve
14 public health.

15 (10) Vermont cannot wait for the FDA to take action. The same federal
16 legislation that was passed in 2009 banning all other flavored cigarettes
17 allowed the FDA to regulate or ban menthol. Despite taking public comment
18 on the dangers of menthol in 2013 and again in 2018, the FDA has still failed
19 to act. The policy released by the FDA on January 1, 2020 falls far short of
20 protecting Vermonters from the dangers of smoking and nicotine addiction.
21 The FDA’s policy bans only flavored cartridge- or pod-based e-cigarettes

1 and even then exempts those that are menthol or tobacco flavored. Open tank
2 e-cigarettes and the flavored e-liquids used to fill them can still be sold, as can
3 flavored, self-contained, disposable e-cigarettes.

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

5 CHAPTER 40. TOBACCO PRODUCTS

6 § 1001. DEFINITIONS

7 As used in this chapter:

8 * * *

9 (3) "Tobacco products" means cigarettes, little cigars, roll-your-own
10 tobacco, snuff, cigars, new smokeless tobacco, and ~~other tobacco products as~~
11 ~~defined in 32 V.S.A. § 7702~~ any other product manufactured from, derived
12 from, or containing tobacco that is intended for human consumption by
13 smoking, by chewing, or in any other manner.

14 * * *

15 (8) "Tobacco substitute" means ~~products~~ any product, including an
16 electronic ~~cigarettes~~ cigarette or other electronic or battery-powered ~~devices~~
17 device, or any component, part, or accessory thereof, that ~~contain or are~~
18 contains or is designed to deliver nicotine or other substances into the body
19 through the inhalation or other absorption of aerosol, vapor, or other emission
20 and that ~~have~~ has not been approved by the U.S. Food and Drug
21 Administration for tobacco cessation or other medical purposes. Products that

1 have been approved by the U.S. Food and Drug Administration for tobacco
2 cessation or other medical purposes shall not be considered to be tobacco
3 substitutes.

4 (9) "E-liquid" means the solution, substance, or other material used in or
5 with a tobacco substitute that is heated or otherwise acted upon to produce an
6 aerosol, vapor, or other emission to be inhaled or otherwise absorbed by the
7 user, regardless of whether the solution, substance, or other material contains
8 nicotine.

9 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

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

13 * * *

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

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

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

8 * * *

9 § 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
10 TOBACCO PARAPHERNALIA; REQUIREMENTS;
11 PROHIBITIONS

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

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

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

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

19 (B) in a locked container.

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

1 (A) a display of tobacco products, tobacco substitutes, or e-liquids
2 that is located in a commercial establishment in which by law no person under
3 21 years of age is permitted to enter at any time;

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

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

13 (d) The sale and the purchase of bidis is prohibited. A person who holds a
14 tobacco license who sells bidis as prohibited by this subsection shall be fined
15 not more than \$500.00. A person who purchases bidis from any source shall be
16 fined not more than \$250.00.

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

19 (f) As used in this section, "little cigars" means any rolls of tobacco
20 wrapped in leaf tobacco or any substance containing tobacco, other than any

1 roll of tobacco that is a cigarette within the meaning of 32 V.S.A. § 7702(1),
2 and as to which 1,000 units weigh not more than three pounds.

3 § 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;

4 TOBACCO SUBSTITUTES; E-LIQUIDS; TOBACCO

5 PARAPHERNALIA

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

14 (b) As used in this section, "proper proof of age" means a valid authorized
15 form of identification as defined in section 589 of this title.

16 § 1005. PERSONS UNDER 21 YEARS OF AGE; ~~POSSESSION~~

17 PURCHASE OF TOBACCO PRODUCTS; MISREPRESENTING

18 AGE ~~OR~~ FOR PURCHASING TOBACCO PRODUCTS;

19 PENALTY

20 (a)(1) A person under 21 years of age shall not ~~possess~~, purchase, or
21 attempt to purchase tobacco products, tobacco substitutes, e-liquids, or tobacco

1 ~~paraphernalia unless the person is an employee of a holder of a tobacco license~~
2 ~~and is in possession of tobacco products, tobacco substitutes, or tobacco~~
3 ~~paraphernalia to effect a sale in the course of employment.~~

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

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

14 (c) A person under 21 years of age who misrepresents his or her age by
15 presenting false identification to purchase tobacco products, tobacco
16 substitutes, e-liquids, or tobacco paraphernalia shall be fined not more than
17 \$50.00 or provide up to 10 hours of community service, or both.

18 § 1006. POSTING OF SIGNS

19 (a) A person licensed under this chapter shall post in a conspicuous place
20 on the premises identified in the tobacco license a warning sign stating that the
21 sale of tobacco products, tobacco substitutes, e-liquids, and tobacco

1 paraphernalia to persons under 21 years of age is prohibited. The Board shall
2 prepare the sign and make it available with the license forms issued under this
3 chapter. The sign may include information about the health effects of tobacco
4 and tobacco cessation services. The Board, in consultation with a
5 representative of the licensees when appropriate, is authorized to change the
6 design of the sign as needed to maintain its effectiveness.

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

9 § 1007. FURNISHING TOBACCO TO PERSONS UNDER 21 YEARS OF
10 AGE; REPORT

11 (a) A person that sells or furnishes tobacco products, tobacco substitutes, e-
12 liquids, or tobacco paraphernalia to a person under 21 years of age shall be
13 subject to a civil penalty of not more than \$100.00 for the first offense and not
14 more than \$500.00 for any subsequent offense. An action under this section
15 shall be brought in the same manner as for a traffic violation pursuant to
16 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of
17 the alleged violation.

18 (b)(1) The Division of Liquor Control shall conduct or contract for
19 compliance tests of tobacco licensees as frequently and as comprehensively as
20 necessary to ensure consistent statewide compliance with the prohibition on
21 sales to persons under 21 years of age of at least 90 percent for buyers who are

1 between 17 and 20 years of age. An individual under 21 years of age
2 participating in a compliance test shall not be in violation of section 1005 of
3 this title.

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

- | | | |
|----|----------------------|----------------------|
| 10 | (A) Two violations | two weekdays; |
| 11 | (B) Three violations | 15-day suspension; |
| 12 | (C) Four violations | 90-day suspension; |
| 13 | (D) Five violations | one-year suspension. |

14 (3) The Division shall report to the House Committee on General,
15 Housing, and Military Affairs, the Senate Committee on Economic
16 Development, Housing and General Affairs, and the ~~Tobacco Evaluation and~~
17 ~~Review Board~~ Substance Misuse Prevention Oversight and Advisory Council
18 annually, on or before January 15, the methodology and results of compliance
19 tests conducted during the previous year. The provisions of 2 V.S.A. § 20(d)
20 (expiration of required reports) shall not apply to the required report to be
21 made under this subdivision.

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§ 1009. CONTRABAND AND SEIZURE

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

* * *

§ 1010. INTERNET SALES

(a) As used in this section:

- (1) “Cigarette” has the same meaning as in 32 V.S.A. § 7702(1).
- (2) [Repealed.]
- (3) “Licensed wholesale dealer” has the same meaning as in 32 V.S.A. § 7702(5).
- (4) “Little cigars” has the same meaning as in 32 V.S.A. § 7702(6).
- (5) “Retail dealer” has the same meaning as in 32 V.S.A. § 7702(10).

1 (6) “Roll-your-own tobacco” has the same meaning as in 32 V.S.A.
2 § 7702(11).

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

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

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

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

13 (1) A knowing or intentional violation of this section shall be punishable
14 by imprisonment for not more than five years or a fine of not more than
15 \$5,000.00, or both.

16 (2) In addition to or in lieu of any other civil or criminal remedy
17 provided by law, upon a determination that a person has violated this section,
18 the Attorney General may impose a civil penalty in an amount not to exceed
19 \$5,000.00 for each violation. For purposes of this subsection, each shipment
20 or transport of cigarettes, roll-your-own tobacco, little cigars, ~~or~~ snuff, tobacco

1 substitutes, e-liquids, or tobacco paraphernalia shall constitute a separate
2 violation.

3 * * *

4 § 1012. ~~LIQUID NICOTINE~~ E-LIQUIDS CONTAINING NICOTINE;
5 PACKAGING

6 (a) Unless specifically preempted by federal law, no person shall
7 manufacture, regardless of location, for sale in; offer for sale in; sell in or into
8 the stream of commerce in; or otherwise introduce into the stream of
9 commerce in Vermont:

10 (1) any ~~liquid or gel substance~~ e-liquid containing nicotine unless that
11 product is contained in child-resistant packaging; or

12 (2) any ~~nicotine liquid~~ e-liquid container unless that container
13 constitutes child-resistant packaging.

14 (b) As used in this section:

15 (1) "Child-resistant packaging" means packaging that is designed or
16 constructed to be significantly difficult for children under five years of age to
17 open or obtain a toxic or harmful amount of the substance in the container
18 within a reasonable time and not difficult for normal adults to use properly, but
19 does not mean packaging that all children under five years of age cannot open
20 or obtain a toxic or harmful amount of the substance in the container within a
21 reasonable time.

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

8 § 1013. FLAVORED TOBACCO PRODUCTS, FLAVORED TOBACCO
9 SUBSTITUTES, AND FLAVORED E-LIQUIDS PROHIBITED

10 (a) As used in this section:

11 (1) “Characterizing flavor” means a taste or aroma, other than the taste
12 or aroma of tobacco, imparted either prior to or during consumption of a
13 tobacco product or tobacco substitute, or a component part or byproduct of a
14 tobacco product or tobacco substitute. The term includes tastes or aromas
15 relating to any fruit, chocolate, vanilla, honey, maple, candy, cocoa, dessert,
16 alcoholic beverage, mint, menthol, wintergreen, herb or spice, or other food or
17 drink, or to any conceptual flavor that imparts a taste or aroma that is
18 distinguishable from tobacco flavor but may not relate to any particular known
19 flavor.

20 (2) “Flavored e-liquid” means any e-liquid with a characterizing flavor.
21 An e-liquid shall be presumed to be a flavored e-liquid if a licensee, a

1 manufacturer, or a licensee’s or manufacturer’s agent or employee has made a
2 statement or claim directed to consumers or the public, whether express or
3 implied, that the product has a distinguishable taste or aroma other than the
4 taste or aroma of tobacco.

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

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

17 (5) “Tobacco retailer” means any individual, partnership, joint venture,
18 society, club, trustee, trust, association, organization, or corporation who owns,
19 operates, or manages any retail establishment that has a tobacco license from
20 the Division of Liquor Control.

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

2 § 140. TOBACCO USE PROHIBITED ON PUBLIC SCHOOL GROUNDS

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

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

8 (a) Creation. There is created the Substance Misuse Prevention Oversight
9 and Advisory Council within the Department of Health to improve the health
10 outcomes of all Vermonters through a consolidated and holistic approach to
11 substance misuse prevention that addresses all categories of substances. The
12 Council shall provide advice to the Governor and General Assembly for
13 improving prevention policies and programming throughout the State and to
14 ensure that population prevention measures are at the forefront of all policy
15 determinations. The Advisory Council's prevention initiatives shall
16 encompass all substances at risk of misuse, including:

17 (1) alcohol;

18 (2) cannabis;

19 (3) controlled substances, such as opioids, cocaine, and

20 methamphetamines; and

1 Sec. 8. ELECTRONIC CIGARETTES AND OTHER VAPING-RELATED
2 PRODUCTS; ADVERTISING RESTRICTIONS; REPORT

3 On or before December 1, 2021, the Office of the Attorney General shall
4 report to the House Committees on Commerce and Economic Development
5 and on Human Services and the Senate Committees on Economic
6 Development, Housing and General Affairs and on Health and Welfare
7 regarding whether and to what extent Vermont may legally restrict advertising
8 and regulate the content of labels for electronic cigarettes and other vaping-
9 related products in this State.

10 Sec. 9. EFFECTIVE DATE

11 This act shall take effect on September 1, 2021.