

1

H.71

2

Introduced by Representatives Frank of Underhill and Krowinski of

3

Burlington

4

Referred to Committee on

5

Date:

6

Subject: Health; tobacco products

7

Statement of purpose of bill as introduced: This bill proposes to make

8

miscellaneous changes to the laws regarding tobacco products.

9

An act relating to tobacco products

10

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

11

Sec. 1. 7 V.S.A. § 1001 is amended to read:

12

§ 1001. DEFINITIONS

13

As used in this chapter:

14

* * *

15

(3) "Tobacco products" ~~mean cigarettes, cigars, cheroots, stogies,~~

16

~~periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking~~

17

~~tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut, and~~

18

~~other chewing tobaccos, shorts, refuse scraps, clippings, cuttings, and~~

19

~~sweepings of tobacco, and other kinds and forms of tobacco prepared in a~~

20

~~manner suitable for chewing or smoking in a pipe or otherwise, or both for~~

1 ~~chewing and smoking, or for delivery into the body through inhaling heated~~
2 ~~vapor or in any other manner~~ means cigarettes, little cigars, roll-your-own
3 tobacco, snuff, cigars, new smokeless tobacco, and other tobacco products as
4 defined in 32 V.S.A. § 7702.

5 * * *

6 Sec. 2. 7 V.S.A. § 1002 is amended to read:

7 § 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

8 (a) No person shall engage in the retail sale of tobacco products, tobacco
9 substitutes, or tobacco paraphernalia or provide a vending machine for their
10 sale in his or her place of business without a tobacco license obtained from the
11 ~~department of liquor control~~ Department of Liquor Control. Tobacco licenses
12 shall expire midnight, April 30, of each year.

13 * * *

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

18 (f) No individual under the age of 16 may sell tobacco products, tobacco
19 substitutes, or tobacco paraphernalia.

1 (g) No person shall engage in the retail sale of tobacco products in the State
2 unless the person is a licensed wholesale dealer as defined in 32 V.S.A. § 7702
3 or has purchased the tobacco products from a licensed wholesale dealer.

4 Sec. 3. 7 V.S.A. § 1003 is amended to read:

5 § 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
6 TOBACCO PARAPHERNALIA; REQUIREMENTS;
7 PROHIBITIONS

8 * * *

9 (b) Beginning August 28, 1997, vending machines selling tobacco
10 products, tobacco substitutes, or tobacco paraphernalia are prohibited. This
11 subsection shall not apply to a vending machine that is located in a commercial
12 establishment in which by law no person younger than 18 years of age is
13 permitted to enter at any time. A single vending machine may not be used to
14 sell other commodities in combination with tobacco products, tobacco
15 substitutes, or tobacco paraphernalia. A violation of this subsection shall result
16 in the seizure of the vending machine.

17 * * *

1 Sec. 4. 7 V.S.A. § 1004 is amended to read:

2 § 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;

3 TOBACCO SUBSTITUTES; TOBACCO PARAPHERNALIA

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

12 * * *

13 Sec. 5. 7 V.S.A. § 1005 is amended to read:

14 § 1005. PERSONS UNDER THE AGE OF 18; POSSESSION OF

15 TOBACCO PRODUCTS; MISREPRESENTING AGE OR

16 PURCHASING TOBACCO PRODUCTS; PENALTY

17 (a) A person ~~less than~~ under 18 years of age shall not ~~possess or purchase~~
18 possess, purchase, or attempt to purchase tobacco products, tobacco
19 substitutes, or tobacco paraphernalia unless the person is an employee of a
20 holder of a tobacco license and is in possession of tobacco products, tobacco
21 substitutes, or tobacco paraphernalia to effect a sale in the course of

1 employment. A person ~~less than~~ under 18 years of age shall not misrepresent
2 his or her age to purchase or attempt to purchase tobacco products, tobacco
3 substitutes, or tobacco paraphernalia. A person who possesses tobacco
4 products, tobacco substitutes, or tobacco paraphernalia in violation of this
5 subsection shall be subject to having the tobacco products, tobacco substitutes,
6 or tobacco paraphernalia immediately confiscated and shall be further subject
7 to a civil penalty of \$25.00. In the case of failure to pay a penalty, the ~~judicial~~
8 ~~bureau~~ Judicial Bureau shall mail a notice to the person at the address in the
9 complaint notifying the person that failure to pay the penalty within 60 days of
10 the notice will result in either the suspension of the person's operator's license
11 for a period of not more than 90 days or the delay of the initial licensing of the
12 person for a period of not more than one year. A copy of the notice shall be
13 sent to the ~~commissioner of motor vehicles, who~~ Commissioner of Motor
14 Vehicles, who, after expiration of 60 days from the date of notice and unless
15 notified by the ~~judicial bureau~~ Judicial Bureau that the penalty has been paid,
16 shall either suspend the person's operator's license or cause initial licensing of
17 the person to be delayed for the periods set forth in this subsection and the
18 rules. An action under this subsection shall be brought in the same manner as
19 a traffic violation pursuant to 23 V.S.A. chapter 24 ~~of Title 23~~. The
20 ~~commissioner of motor vehicles~~ Commissioner of Motor Vehicles shall adopt
21 rules in accordance with the provisions of 3 V.S.A. chapter 25 ~~of Title 3~~ to

1 implement the provisions of this subsection, which may provide for
2 incremental suspension or delays not exceeding cumulatively the maximum
3 periods established by this subsection.

4 (b) A person ~~less than~~ under 18 years of age who misrepresents his or her
5 age by presenting false identification to purchase tobacco products, tobacco
6 substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or
7 provide up to 10 hours of community service, or both.

8 Sec. 6. 7 V.S.A. § 1007 is amended to read:

9 § 1007. FURNISHING TOBACCO TO PERSONS UNDER EIGHTEEN

10 An individual who sells or furnishes tobacco products, tobacco substitutes,
11 or tobacco paraphernalia to a person under 18 years of age shall be subject to a
12 civil penalty of not more than \$100.00 for the first offense and not more than
13 \$500.00 for any subsequent offense. An action under this section shall be
14 brought in the same manner as for a traffic violation pursuant to 23 V.S.A.
15 chapter 24 ~~of Title 23~~ and shall be brought within 24 hours of the occurrence
16 of the alleged violation.

1 Sec. 7. 7 V.S.A. § 1010 is amended to read:

2 § 1010. INTERNET SALES

3 (a) As used in this section:

4 * * *

5 (2) ~~“Distributor” has the same definition as that found at 32 V.S.A. §~~
6 ~~7702(4).~~

7 * * *

8 Sec. 8. 32 V.S.A. § 7702 is amended to read:

9 § 7702. DEFINITIONS

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

12 * * *

13 (4) ~~“Distributor” means any person who imports, or causes to be~~
14 ~~imported, into this state any tobacco product for sale or who manufactures any~~
15 ~~tobacco product in this state, and any person within or without the state who is~~
16 ~~authorized by the commissioner to make returns and pay the tax on tobacco~~
17 ~~products sold, shipped, or delivered by him or her to any person in the state.~~

18 * * *

19 (7) “Manufacturer” means a person who manufactures and sells
20 cigarettes, little cigars, roll-your-own tobacco, snuff, new smokeless tobacco,
21 and other tobacco products.

1 (10) “Retail dealer” shall mean a person ~~who sells or furnishes cigarettes~~
2 ~~or tobacco products, or both, in small quantities to consumers only, but not for~~
3 ~~the purpose of resale~~ licensed pursuant to 7 V.S.A. § 1002.

4 * * *

5 (15) ~~“Tobacco products”~~ “Other tobacco products” means any product
6 manufactured from, derived from, or containing tobacco that is intended for
7 human consumption by smoking, chewing, or in any other manner; but shall
8 not include cigarettes, little cigars, roll-your-own tobacco, ~~moist~~ snuff, or new
9 smokeless tobacco as defined in this section.

10 (16) “Wholesale dealer” ~~shall mean~~ means a person who imports or
11 causes to be imported into the state any cigarettes, little cigars, roll-your-own
12 tobacco, snuff, new smokeless tobacco, or other tobacco product for sale or
13 who sells or furnishes cigarettes or tobacco products, or both, any of these
14 products to other wholesale dealers or retail dealers for the purpose of resale,
15 but not by the small quantity or parcel to consumers thereof.

16 * * *

17 (18) “Wholesale outlet” shall mean any premises where cigarettes, little
18 cigars, roll-your-own tobacco, snuff, new smokeless tobacco or other tobacco
19 products, or both, are sold, transferred, displayed, or held for sale by a
20 wholesale dealer.

1 Sec. 11. 32 V.S.A. § 7734 is amended to read:

2 § 7734. PENALTIES FOR SALES WITHOUT LICENSE

3 Any wholesale dealer ~~or distributor~~ who shall sell, offer for sale or possess
4 with intent to sell, any cigarettes or tobacco products, or both, without having
5 first obtained a license as provided in this subchapter shall be fined not more
6 than \$25.00 for the first offense and not more than \$200.00 nor less than
7 \$25.00 for each subsequent offense.

8 Sec. 12. 32 V.S.A. § 7736 is amended to read:

9 § 7736. REVOCATION AND SUSPENSION OF LICENSES

10 The ~~commissioner~~ Commissioner may revoke or suspend the license of any
11 licensed wholesale dealer ~~or distributor~~ for failure to comply with any
12 provision of this chapter, for failure to comply with the provisions of
13 11 V.S.A. chapter 15 of Title 11, or for failure to comply with the provisions of
14 33 V.S.A. chapter 19, subchapter 1B ~~of chapter 19 of Title 33~~. Any person
15 aggrieved by such revocation or suspension may apply to the ~~commissioner~~
16 Commissioner for a hearing as provided in section 7782 of this title and may
17 further appeal to the courts as provided in section 7783 of this title.

18 Sec. 13. 32 V.S.A. § 7737 is amended to read:

19 § 7737. BONDING

20 When the ~~commissioner~~ Commissioner, in his or her discretion, deems it
21 necessary to protect the revenues to be obtained under this chapter, he or she

1 may require any licensed wholesale dealer ~~or distributor~~ to file with him or her
2 a bond, issued by a surety company authorized to transact business in this ~~state~~
3 State, and approved by the ~~commissioner of financial regulation~~ Commissioner
4 of Financial Regulation of this ~~state~~ State as to its solvency and responsibility,
5 in an amount fixed by the ~~commissioner~~ Commissioner, to secure the payment
6 of any tax or penalties or interest due or which may become due from that
7 licensed wholesale dealer ~~or distributor~~ under this chapter. In the event that
8 the ~~commissioner~~ Commissioner determines that a licensed wholesale dealer ~~or~~
9 ~~distributor~~ is to file a bond, he or she shall give notice to him or her to that
10 effect, specifying the amount of the bond required. The licensed wholesale
11 dealer ~~or distributor~~ shall file the bond within 15 days after the giving of the
12 notice unless within those 15 days he or she shall request in writing a hearing
13 before the ~~commissioner~~ Commissioner at which the necessity, propriety, and
14 amount of the bond shall be determined by the ~~commissioner~~ Commissioner.
15 The determination shall be final and shall be complied with within 15 days
16 after the giving of notice thereof. In lieu of a bond, securities approved by the
17 ~~commissioner~~ Commissioner or cash in such amount as he or she may
18 prescribe may be deposited, which shall be kept in the custody of the ~~state~~
19 ~~treasurer~~ State Treasurer, who may, at any time, upon instruction from the
20 ~~commissioner~~ Commissioner without notice to the depositor, apply them to
21 any tax or interest or penalties due, and for that purpose the securities may be

1 sold by him or her at public or private sale without notice to the depositor
2 thereof. In determining whether a person should be required to obtain a bond,
3 the ~~commissioner~~ Commissioner is specifically authorized to consider the
4 filing and payment history, with respect to any tax administered by the
5 ~~commissioner~~ Commissioner, of the person or any individual, corporation,
6 partnership, or other legal entity with which the person is or was associated as
7 principal, partner, officer, director, employee, ~~agent, or agent, or~~ incorporator.

8 Sec. 14. 32 V.S.A. § 7773 is amended to read:

9 § 7773. USE AND REDEMPTION OF STAMPS

10 No licensed wholesale dealer or retail dealer shall sell or transfer any
11 stamps issued under the provisions of this chapter. The ~~commissioner~~
12 Commissioner shall redeem at the amount paid therefor by the licensed
13 wholesale or retail dealer any unused stamps issued under the provisions of
14 this chapter, which are presented to him or her at his or her office in
15 Montpelier.

16 Sec. 15. 32 V.S.A. § 7774 is amended to read:

17 § 7774. AFFIXING STAMPS

18 Each licensed wholesale dealer shall affix or cause to be affixed to each
19 individual package of cigarettes sold or distributed by him or her stamps of the
20 proper denomination as required by section 7771 of this title and in such
21 manner as the ~~commissioner~~ Commissioner may specify in regulations issued

1 pursuant to this chapter. ~~Such~~ The stamps may be affixed by a licensed
2 wholesale dealer at any time before the cigarettes are transferred out of his or
3 her possession.

4 Sec. 16. 32 V.S.A. § 7776 is amended to read:

5 § 7776. COLLECTION OF CIGARETTE TAX THROUGH

6 ~~NONRESIDENT WHOLESALERS~~ LICENSED WHOLESALE

7 DEALERS

8 (a) When the ~~commissioner of taxes~~ Commissioner of Taxes shall find that
9 the collection of the tax imposed by this chapter would be facilitated thereby,
10 he or she may, in his or her discretion, authorize any person resident or located
11 outside this ~~state~~ State engaged in the business of manufacturing cigarettes; or
12 any person resident or located outside this ~~state~~ State who ships cigarettes into
13 this ~~state~~ State for sale to retail dealers in this ~~state~~ State as defined in section
14 7702 of this title; and who qualifies as a licensed wholesale dealer as defined in
15 section 7702 of this title, but need not have a place of business in this ~~state~~
16 State, upon complying with the requirements of the ~~commissioner~~
17 Commissioner to affix; or cause to be affixed; the stamps required by this
18 chapter on behalf of the purchasers of such cigarettes who would otherwise be
19 taxable therefor, and the ~~commissioner~~ Commissioner may sell such stamps to
20 such person as provided in section 7772 of this title.

21 * * *

1 Sec. 17. 32 V.S.A. § 7777 is amended to read:

2 § 7777. RECORDS REQUIRED; INSPECTION AND EXAMINATION;

3 ASSESSMENT OF TAX DEFICIENCY

4 (a) Each licensed wholesale dealer and each retail dealer shall keep
5 complete and accurate records of all cigarettes, little cigars, and roll-your-own
6 tobacco manufactured, produced, purchased, transferred, and sold by the
7 dealer. ~~Such~~ The records shall be of such kind and in such form as the
8 ~~commissioner~~ Commissioner may prescribe and shall be safely preserved for
9 six years in such manner as to insure permanency and accessibility for
10 inspection by the commissioner and authorized agents. The ~~commissioner~~
11 Commissioner or authorized agents of the Commissioner may enter in or upon
12 any premises where the ~~commissioner~~ Commissioner or they have reason to
13 believe that cigarettes are possessed, stored, or sold, for the purpose of
14 determining whether the provisions of this chapter or subchapter 1A or 1B of
15 chapter 19 of Title 33 are being obeyed and may examine and copy the books,
16 papers, records, and cigarette stock of any licensed wholesale dealer or retail
17 dealer, for the purpose of determining whether the tax imposed by this chapter
18 has been fully paid.

19 (b) If the ~~commissioner~~ Commissioner determines that a licensed
20 wholesale dealer has not purchased sufficient stamps to cover sales of
21 cigarettes and little cigars, or that a retail dealer has made sales of unstamped

1 cigarettes or little cigars or untaxed roll-your-own tobacco, the ~~commissioner~~
2 Commissioner shall thereupon assess the deficiency in tax plus interest and
3 penalties as provided in section 3202 of this title.

4 (c) In any case ~~where~~ in which a licensed wholesale dealer cannot produce
5 evidence of sufficient stamp purchases to cover the dealer's receipts and sales
6 or other disposition of cigarettes or little cigars, it shall be presumed that ~~such~~
7 the cigarettes or little cigars were sold without having the proper stamps
8 affixed. In any case in which a licensed wholesale dealer cannot produce
9 proper evidence of payment of the tax on roll-your-own tobacco to cover the
10 dealer's receipts and sales or other disposition of roll-your-own tobacco, it
11 shall be presumed that the roll-your-own tobacco was sold without the proper
12 tax having been paid.

13 (d) If a ~~wholesale~~ licensed wholesale dealer or retail dealer has failed to
14 timely pay for stamps obtained for payment within 10 days or to pay the tax
15 imposed on roll-your-own tobacco, the dealer shall be subject to assessment,
16 collection, and enforcement in the same manner as provided under subchapter
17 4 of this chapter.

18 * * *

1 Sec. 18. 32 V.S.A. § 7785 is amended to read:

2 § 7785. MONTHLY REPORT

3 Each licensed wholesale dealer shall file with the ~~commissioner~~
4 Commissioner, on or before the 15th day of each month, a report for the
5 calendar month immediately preceding, in a form prescribed by the
6 ~~commissioner~~ Commissioner, showing the amount and source of cigarettes
7 acquired, the amount of stamps purchased, a list identifying the brand families
8 of a tobacco product manufacturer, as that term is defined in 33 V.S.A.
9 chapter 19, subchapters 1A and 1B ~~of chapter 19 of Title 33~~, the total number
10 of cigarettes upon which stamps were affixed or, in the case of roll-your-own
11 tobacco, the equivalent stick count, as determined by the formula set forth in
12 33 V.S.A. chapter 19, subchapter 1A ~~of chapter 19 of Title 33~~, upon which the
13 applicable tax was paid, and such other information as the ~~commissioner~~
14 Commissioner may require.

15 Sec. 19. 32 V.S.A. § 7811 is amended to read:

16 § 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

17 There is hereby imposed and shall be paid a tax on all other tobacco
18 products ~~except roll your own tobacco and little cigars taxed under section~~
19 ~~7771 of this title~~, snuff, and new smokeless tobacco possessed in the ~~state~~ State
20 of Vermont by any person for sale on and after July 1, 1959 which were
21 imported into the ~~state~~ State or manufactured in the ~~state~~ State after ~~said~~ that

1 date, except that no tax shall be imposed on tobacco products sold under such
2 circumstances that this ~~state~~ State is without power to impose such tax, or sold
3 to the United States, or sold to or by a voluntary unincorporated organization
4 of the ~~armed forces~~ Armed Forces of the United States operating a place for
5 the sale of goods pursuant to regulations promulgated by the appropriate
6 executive agency of the United States. ~~Such~~ The tax is intended to be imposed
7 only once upon the wholesale sale of any tobacco product, snuff, and new
8 smokeless tobacco and shall be at the rate of 92 percent of the wholesale price
9 for all tobacco products except snuff, which shall be taxed at \$1.87 per ounce,
10 or fractional part thereof, new smokeless tobacco, which shall be taxed at the
11 greater of \$1.87 per ounce or, if packaged for sale to a consumer in a package
12 that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of
13 \$2.24 per package, and cigars with a wholesale price greater than \$2.17, which
14 shall be taxed at the rate of \$2.00 per cigar if the wholesale price of the cigar is
15 greater than \$2.17 and less than \$10.00, and at the rate of \$4.00 per cigar if the
16 wholesale price of the cigar is \$10.00 or more. Provided, however, that upon
17 payment of the tax within 10 days, the distributor or dealer may deduct from
18 the tax two percent of the tax due. It shall be presumed that all other tobacco
19 products, snuff, and new smokeless tobacco within the ~~state~~ State are subject to
20 tax until the contrary is established and the burden of proof that any other
21 tobacco products, snuff, and new smokeless tobacco are not taxable hereunder

1 shall be upon the person in possession thereof. ~~Wholesalers~~ Licensed
2 wholesalers of other tobacco products, snuff, and new smokeless tobacco shall
3 state on the invoice whether the price includes the Vermont tobacco products
4 tax.

5 Sec. 20. 32 V.S.A. § 7815 is amended to read:

6 § 7815. DISTRIBUTORS

7 All resident licensed wholesale dealers within the ~~state~~ State who are also
8 distributors within the meaning of this chapter are authorized to act as such and
9 are required to pay the tax on tobacco products for which they may be liable.
10 A person without this ~~state~~ State who ships or transports tobacco products to
11 retailers in this ~~state~~ State, to be sold by those retailers, may make application
12 for license as a nonresident distributor, be granted such license by the
13 ~~commissioner~~ Commissioner, and thereafter be subject to all the provisions of
14 this chapter so far as the same pertain to tobacco products, and be entitled to
15 act as a distributor, provided he or she files proof with his or her application
16 that he or she has appointed the ~~secretary of state~~ Secretary of State as his or
17 her agent for service of process relating to any matter or issue arising under
18 this chapter. Such nonresident person shall also agree to submit his or her
19 books, accounts, and records to examination during reasonable business hours
20 by the ~~commissioner~~ Commissioner or his or her duly authorized agent.

1 Sec. 21. 32 V.S.A. § 7816 is amended to read:

2 § 7816. RECORDS TO BE KEPT; EXAMINATION

3 At the time of delivering ~~tobacco products~~ other tobacco products, snuff, or
4 new smokeless tobacco to any person, each ~~distributor~~ licensed wholesale
5 dealer shall make a true duplicate invoice showing the date of delivery, and the
6 items and the wholesale price of each item in each shipment of ~~tobacco~~
7 products other tobacco products, snuff, and new smokeless tobacco delivered,
8 and the name of the purchaser to whom delivery is made, and shall retain the
9 same for a period of three years, subject to the use and inspection of the
10 ~~commissioner~~ Commissioner. Each licensed wholesale dealer shall procure
11 and retain invoices showing the items and wholesale price of each item in each
12 shipment of ~~tobacco products~~ other tobacco products, snuff, or new smokeless
13 tobacco received by him or her, the date ~~thereof~~ of receipt, and the name of the
14 shipper, and shall retain the same for a period of three years, subject to the use
15 and inspection of the ~~commissioner~~ Commissioner. The ~~commissioner~~
16 Commissioner, by regulation, may provide that whenever ~~tobacco products~~
17 other tobacco products, snuff, or new smokeless tobacco are shipped into the
18 ~~state~~ State, the railroad company, express company, trucking company, or
19 other carrier transporting any shipment thereof, shall file with the
20 ~~commissioner~~ Commissioner a copy of the freight bill within 10 days after the
21 delivery in the ~~state~~ State of each shipment. All licensed wholesale dealers

1 shall maintain and keep for a period of three years such other records of
2 tobacco products received, sold, or delivered within the ~~state~~ State as may be
3 required by the ~~commissioner~~ Commissioner. The ~~commissioner~~
4 Commissioner or ~~his or her duly authorized representative~~ is authorized agents
5 of the Commissioner are hereby authorized to examine the books, papers,
6 invoice, and other records, stock of ~~tobacco products~~ other tobacco products,
7 snuff, and new smokeless tobacco in and upon any premises where the same
8 are placed, stored, and sold, and equipment of any such dealer pertaining to the
9 sale and delivery of ~~tobacco products~~ other tobacco products, snuff, and new
10 smokeless tobacco taxable under this subchapter. To verify the accuracy of the
11 tax imposed and assessed by this subchapter, each such person is hereby
12 directed and required to give to the ~~commissioner or his or her duly authorized~~
13 ~~representative~~ Commissioner or authorized agents of the Commissioner the
14 means, facilities, and opportunity for such examinations as are herein provided
15 for and required.

16 Sec. 22. 33 V.S.A. § 1918 is amended to read:

17 § 1918. DIRECTORY OF CIGARETTES APPROVED FOR STAMPING
18 AND SALE

19 (a) The ~~attorney general~~ Attorney General shall develop and publish on its
20 website a directory listing all tobacco product manufacturers that have
21 provided current and accurate certifications conforming to the requirements of

1 this subchapter (the “directory”) and all brand families that are listed in such
2 certifications, except as noted in this subsection.

3 (1) The ~~attorney general~~ Attorney General shall not include or retain in
4 such directory any brand family of any ~~nonparticipating tobacco product~~
5 manufacturer that has failed to provide the required certification or whose
6 certification the ~~attorney general~~ Attorney General determines is not in
7 compliance with this subchapter, unless the ~~attorney general~~ Attorney General
8 determines that such violation has been cured to the satisfaction of the ~~attorney~~
9 ~~general~~ Attorney General.

10 * * *

11 (f) If a nonparticipating manufacturer who has not been listed on the
12 directory for the previous three years files a certification pursuant to this
13 section, or if the Attorney General reasonably determines that a
14 nonparticipating manufacturer who has filed a certification pursuant to this
15 section poses an elevated risk for noncompliance with sections 1912–1914 of
16 this title, neither the nonparticipating manufacturer nor any of its brand
17 families shall be included or retained on the directory unless and until the
18 nonparticipating manufacturer or its United States importer that undertakes
19 joint and several liability for the manufacturer’s performance in accordance
20 with section 1925 of this title and amendments thereto has posted a bond in
21 accordance with this subsection.

1 (1) The bond required under this subsection shall be written in favor of
2 the State of Vermont and shall be conditioned on the performance by the
3 nonparticipating manufacturer or its United States importer that undertakes
4 joint and several liability for the manufacturer's performance in accordance
5 with sections 1912–1914 and 1925 of this title. The bond shall be issued by a
6 surety company authorized to transact business in this State and approved by
7 the Commissioner of Financial Regulation as to its solvency and responsibility
8 to secure the payment of any escrow due or which may become due from the
9 nonparticipating manufacturer or its United States importer. The bond shall be
10 maintained as a condition to the nonparticipating manufacturer and its brand
11 families being included on the directory and shall remain in place for the
12 pendency of such listing.

13 (2) The bond required shall be \$20,000.00 for a nonparticipating
14 manufacturer that has not been listed on the Vermont directory for at least
15 three years prior to the nonparticipating manufacturer's application for
16 certification.

17 (3) The bond required shall be \$50,000.00 for a nonparticipating
18 manufacturer that poses an elevated risk for noncompliance with sections
19 1912–1914 of this title.

20 (4) A nonparticipating manufacturer may be deemed to pose an elevated
21 risk for noncompliance with sections 1912–1914 of this title if it:

1 (A) failed in the previous three years to make a full and timely
2 escrow deposit due pursuant to section 1914 of this title, unless the failure was
3 promptly cured upon notice;

4 (B) was involuntarily removed from any state's directory, unless the
5 removal was determined to have been erroneous or illegal; or

6 (C) has litigation pending against it in any state for escrow or for
7 penalties, costs, or attorney's fees related to noncompliance with any state's
8 escrow laws.

9 (5) If a nonparticipating manufacturer that has posted a bond has failed
10 to make or to have made on its behalf by an entity with joint and several
11 liability escrow deposits equal to the full amount owed for a quarter within
12 15 days following the due date for the quarter under sections 1914 and 1925 of
13 this title, the state may execute upon the bond first to recover delinquent
14 escrow, which amount shall be deposited into a qualified escrow account under
15 section 1914, and then to recover civil penalties and costs authorized under that
16 section. Escrow obligations above the amount collected on the bond remain
17 due from that nonparticipating manufacturer and, as provided in section 1925
18 of this title, from importers that sold its cigarettes in the calendar quarter.

19 Sec. 23. EFFECTIVE DATE

20 This act shall take effect on July 1, 2013.