

James R. Pulsifer
Director, Regulatory & Legislative
Industry Engagement
484-369-1964



Altria
Altria Group
Distribution Company

January 30, 2023

Skyler Genest
Vermont Department of Liquor and Lottery
Division of Liquor Control
1311 US Route 302 - Suite 100
Barre, VT 05641

RE: Rule Number 22P037

Mr. Genest,

The following comments are in response to a proposed rule change by the Vermont Department of Liquor and Lottery to the Tobacco Licensing & Registration Requirements (VT77718). The proposed changes include language stating that retailers are prohibited from selling tobacco products "*at a price lower than the price in effect at the time of purchase from the wholesale dealer.*" (see Section 3, Item 26 (p. 16)). This language is vague, ambiguous and fails to put manufacturers and Vermont retailers on notice of what is intended by the rule change, what will be required to comply, and what the impact would be to retailers' businesses if such a change is enacted.

To the extent, however, that the language is intended to prohibit Vermont retailers from reducing the prices at which they sell tobacco products, including other tobacco products, the proposed change should be rejected for several reasons:

- It would in essence lock a retailer into its existing prices and preclude it from lowering them to compete in the marketplace, thereby forcing Vermont shoppers already impacted by the current inflation crises to pay artificially high prices; and
- Vermont retailers, many of which are small independent business owners, will lose business, including to stores outside of Vermont that are not prohibited from offering lower prices; and
- It would preclude manufacturers and retailers from offering price incentives designed to encourage smokers to transition to non-combustible and potentially less harmful tobacco products.

In sum, the intent and import of the language is fatally unclear, yet this seemingly innocuous rule change could result in an outsized negative impact to Vermont businesses and consumers; such a change is unnecessary and potentially harmful.

Sincerely,

James R. Pulsifer
Director, Regulatory & Legislative Industry Engagement
Altria Group Distribution Company

Altria Group Distribution Company
6601 West Broad Street, Richmond, VA 23230

VERMONT WHOLESALE BEVERAGE ASSOCIATION

1 Blanchard Court, Suite 101
Montpelier, VT 05602-3843
802-229-4900 --- Fax: 802-229-5110

Sent via email to Skyler.Genest@vermont.gov

To: Skyler Genest, Sr. Director of Licensee Operations
From: Clare Buckley on behalf of the Vermont Wholesale Beverage Association
Re: Comments on Proposed Rule 22P037
Date: January 30, 2023

Thank you for providing the members of the Vermont Wholesale Beverage Association (VWBA) with the opportunity to submit comments regarding the Department of Liquor and Lottery's Proposed Rule 22P037. VWBA is a trade association representing many of Vermont's licensed wholesalers of malt, vinous and ready-to-drink spirits beverages.

These comments are set forth in the order of the annotated version of the proposed rule.

Section 3, General Regulations

Reg 4a. Page 10, reads:

Holders of a manufacturer's license that are granted any permit to occur upon a licensed premises, may introduce products lawfully manufactured by the holder of the permit onto the licensed premises so long as the licensed manufacturer engages in on-premise sampling and off-premise sales only and clearly labels all beverage alcohol brought onto the licensed premises "for sale to the public only."

We don't understand the purpose of this section and what it allows. The term "permit to occur upon a licensed premise" is confusing. We recommend this section be clarified.

Reg 17. Page 13, reads in part:

First, Second and/or Third-Class Licensees, and Master Resort Licenses may transfer beverage alcohol without prior authorization among similarly licensed locations so long as the locations are controlled by the same licensed entity.

As this proposed rule applies to Master Resort Licenses it makes sense to allow those licensees to move alcohol around the resort. But in terms of first, second and/or third class licensees, this is broad in that it would allow a store to ship beer or wine from one of its stores to another of its stores, for example. When wholesalers transport alcohol around the state they do so with invoices that can be tracked, which don't appear to apply when these other licensed entities are shipping alcohol between their licensed locations. These transfers of alcohol should also only be allowed intrastate by the same licensed entity. For example, a Vermont licensed premises should not be able to accept shipments of beverage alcohol from out-of-state even if both the Vermont and out-of-state location are controlled by the same licensed entity. Finally, transfer of beverage alcohol should only be allowed where the product is purchased from an in-state licensed wholesaler or otherwise allowed under Vermont's three-tier system. We'd request that DLL consider limiting this authority to only what is necessary.

Reg. 25. Page 15, This regulation addresses suspended or conditioned licenses. VWBA supports the requirement that the licensee must post a notice that their license is suspended or conditioned on every entry way. However, DLL's website is not always up to date with suspended or conditioned licenses so wholesalers may not have notice of the suspension or condition. VWBA requests that DLL send out an email to all licensed wholesalers when a retailer's license is suspended or conditioned. Without notice, if a licensee makes an order on-line or over the phone or the wholesaler makes a delivery, enforcement should be on the licensee with the suspension, not the wholesaler.

If a license is suspended, the licensee is required to post notice of that suspension to the public giving the effective date and length of the time of the suspension in every entry way. Licensees under suspension shall not sell, serve, allow the consumption of, make orders for, or receive deliveries of regulated products upon the licensed premises. DLL shall notify all wholesalers by email when a license is suspended or conditioned. If a licensee with a suspended license makes orders for or receives deliveries of regulated products on the licensed premises or otherwise violates this section, enforcement shall be on the licensee whose license is suspended and not the wholesaler.

Section 4. Advertising

Reg 5. Page 23 reads: *Any malt or vinous beverage point of sale advertising shall be submitted to the Liquor Control Board for approval prior to its use by manufacturers, holders of certificate of approval, wholesale dealers, or retailers in Vermont.*

VWBA proposes to delete this requirement that certain licensees must obtain Liquor Control Board approval for malt or vinous beverage point of sale advertising because it is not current practice and is unnecessary and administratively difficult for licensees and the Liquor Control Board.

Section 6. Credit

Reg 1 Page 24. The proposed rule allows for the use of credit and debit cards for licensees purchasing all beverage alcohol. VWBA members have significant concerns about the use of credit and debit cards for retailers purchasing beer, wine and RTDs. VWBA supports amending the proposed rule to conform with the DLL Board's interpretation that payment rendered by credit and debit card by licensees at State Liquor Agencies is not considered credit prohibited by the regulations.

Section 7. Wholesale Dealers and Certificate Approval Holders and Vermont Manufacturers

Reg 1. Page 24 - Prohibition on employees working for multiple licensees.

VWBA would like to comment generally regarding the prohibitions in the Vermont law and DLL regulations prohibiting certain employees from working at more than one licensed establishment. VWBA members believe that individuals should be able to work for more than one licensee if they do not hold solicitors' permits and do not exercise control over or participate in the management of any licensee's business, and the employment at both licensees will not result in the exclusion of any competitor's brand of beverage alcohol. VWBA is aware that some of these prohibitions are in statute and DLL cannot make these change without legislation.

Reg. 5. Page 25. VWBA members support giving wholesalers the option of utilizing electronic copies of invoices with no hard copies so long as the wholesaler can produce an electronic version at any time for DLL. To accomplish that VWBA proposes the following amendment:

All invoices furnished by the wholesale dealer to the retail dealer must carry serial numbers and can be either manually or electronically generated and transmitted. One invoice is to be left on the premises of the wholesale dealer and a copy is to be left with the retail dealer upon delivery if the wholesale dealer manually generates and transmits the invoice. If a wholesale dealer electronically generates and transmits an invoice, no hard copy of the invoice is needed to be kept on the premise of the wholesale dealer or to be left with the retailer; provided however that the wholesale dealer shall generate a hard copy of any invoice upon DLL's request. All invoices must show the name or the initials of the person taking the order. Invoices are to be made out in the name of the licensee as it appears on the trade name of the establishment.

Thank you for considering these comments. If you have any questions, please contact Clare Buckley at cbuckley@leoninepublicaffairs.com or (802) 777-2064.

From: Erin Sigrist <erin@vtrga.org>
Sent: Thursday, January 19, 2023 3:38 PM
To: Genest, Skyler
Cc: Martin, Charles; Matt McMahon
Subject: Re: Question RE Proposed Regulation Changes

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Thanks, Skyler.

I would anticipate that this type of a change would be a legislative change rather than a rule change. And I understand that there were public hearings, so I'll apologize for missing these discussions. Below is a general overview of the concern VRGA has. I'll plan to be at the hearing tomorrow.

If a product is being discontinued, a retailer would prefer to sell such products rather than throw them out in order to make up for some of their loss in revenue.

We do not believe that the adoption of the proposed modifications would result in a less burdensome regulatory environment for small business, decreasing the cost of compliance. Rather retailers would lose revenue due a reduction in sales of various products.

Further, many of the products sold in Vermont under the umbrella of DLL are wholesaled exclusively by one distributor. The lack of exclusive franchise territory for tobacco products differentiates them from products like liquor or beer. Given that multiple distributors, many of them who operate regionally, are serving different retailers the same products in Vermont, it may be difficult and time consuming for DLL staff to track wholesale prices across distributors and retailers on a regular basis. If DLL does not plan on tracking this information, we question how this policy would be enforced. Additionally, different wholesale prices across retailers for the same product could limit how some retailers price their products versus their larger in-state competitors, in some cases.

I appreciate that you have received feedback from advocacy groups on this topic. As the statewide retail organization, we represent many licensees who hope that you will consider our feedback. Thank you and let me know if we can provide further detail.

See you tomorrow,

Erin Sigrist

Vermont Retail & Grocers Association | President

Vermont Specialty Food Association | Executive Director

963 Paine Turnpike North | Berlin, VT 05602

O-802-839-1928 | C-802-363-1457

Our Champion Sponsors: Supporting our work. Making an impact.



From: Erin Sigrist <erin@vtrga.org>

Sent: Thursday, January 19, 2023 6:43 AM

To: Genest, Skyler <Skyler.Genest@vermont.gov>

Subject: Question RE Proposed Regulation Changes

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning Skyler,

I'm hoping you can provide clarification on the below proposed change in former section 28 - now 26.

~~28. 26. First or second class~~ **No** licensees shall not sell malt or vinous beverages **alcohol, tobacco products, tobacco substitutes, tobacco paraphernalia, or other tobacco products** at a price lower than the price in effect at the time of purchase from the wholesale dealer, **the Board**, or holders of a direct-to-retail shipping license

Can you tell me: does this mean that customers will no longer have the ability to use coupons for cigarettes? And how will this affect any potential clearance sale of soon-to-be-expired alcohol?

If it was intended as written then it would have severe impact on retailers and would essentially negate nearly all retail programming and funding they receive from the manufacturers.

Thanks so much,

Erin Sigrist

Vermont Retail & Grocers Association | President

Vermont Specialty Food Association | Executive Director

963 Paine Turnpike North | Berlin, VT 05602

O-802-839-1928 | C-802-363-1457

Our Champion Sponsors: Supporting our work. Making an impact.



APPENDIX

Reg. rewrite request

AS Amy Spear <aspear@vtchamber.com>
To: Genet, Skylar
You replied to this message on 8/12/2022 10:51 AM.

Reply Reply All Forward

Fri 8/5/2022 1:51 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hi Skylar,

I was not able to attend your listening session on section 43, but I have had some folks reach out to me and wanted to pass details to you.

- **Current language:** Except as otherwise authorized by law or by the Liquor Control Board, licensees shall not reuse, refill or tamper with any bottle of alcoholic beverages nor shall such licensee adulterate, dilute, fortify, or cause any substitution of any nature to be made in or to the contents of any bottle of alcoholic beverages.
- **Industry proposed:** "Adulterate" does not include a licensee that colors, flavors, mixes, blends or infuses alcoholic beverages in preparation for later service at the licensed premise. The mixture/infusion must be clearly labeled with the following information: the date of production, the name of the person who created the mixture/infusion, the ingredients in the mixture/infusion including the alcohol brand name(s) and quantity, and the estimated proof of the mixture/infusion. Any mixture/infusion created shall be produced in a safe and sanitary manner. Any vessel used for dispensing the mixture/infusion shall not have a beverage alcohol brand label, nor shall it be dispensed from a vessel that is of a design that would signify a particular brand of beverage alcohol to a consumer
- **Goals:**
 - o Batching and kegging in advance would be an important change for some to deal with the labor shortage
 - o It would allow for more consistency and control

Let me know if you have any questions and thank you for consideration!

Best,
Amy

Amy Spear
Vice President of Tourism | Vermont Chamber of Commerce
President | Vermont Attractions Association



[Virtual Manufacturing Supply Chain Summit](#) – Registration Now Open! September 23-22, 2022!
[Join](#) the Vermont Chamber today!



Skyler Genest

August 18, 2022

Vermont Department of Liquor and Lottery

Via email (skyler.genest@vermont.gov)

Re: American Heart Association comment on DLL rulemaking section 10, tobacco regulations

Dear Skyler,

On behalf of the American Heart Association, I would like to submit the following as written comment on the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite.

- 1) We urge the department to decouple the alcohol and tobacco license fees. A tobacco license should have its own fee with revenue raised from the fee going to tobacco enforcement. Enforcement funds are effective and needed.
 - a. Via an MOU with the Vermont Department of Health, and a \$30,000 investment, DLL, working with the AGO, enforced the online delivery sales ban and secured \$834,000 in penalties.
 - b. DLL will also feel increased pressure on staff in the coming year, having to enforce 60 new cannabis licenses with no extra funding.
- 2) We urge DLL to require as a condition of a tobacco license that tobacco retailers may not sell flavored tobacco products including menthol tobacco products.
- 3) We urge DLL to disallow a wholesaler from also being licensed as a tobacco retailer. As VDH notes in its report, "Assessing Vermont's 2019 tobacco Control Policies," it is common for wholesalers to also be licensed as tobacco retailers which allows wholesalers and retailers to lessen the e-cigarette tax by selling the products to themselves at lower rates. This means the tax could have a lower than intended impact on Vermont youths' access and use of the products. Alcohol retailers are currently prohibited from doing this for the same reason.
- 4) As well, the American Heart Association considers the following as the most effective tobacco retail licensure in terms of its impact on public health, reducing smoking and preventing youth from starting. We'd urge DLL to adopt the items it has authority over and work with our organization regarding items that would need legislative action.

- a. Fee -- An annual retail license fee, paid by all tobacco retailers, which goes towards the enforcement of licensure requirements. Must be high enough to cover the cost of enforcement and operations.
- b. Enforcement -- A minimum of one compliance check for violations of minimum legal sales age laws per year, and there should be a recheck for violations within a specified time period, such as three months.
- c. Penalty structure -- Specific for violations of the minimum legal sales age, penalties should include an escalating monetary penalty paid by the store or business owner. Suspensions and license revocation must also be part of the structure – minimum of 15-day suspension by the third violation, and revocation of license by the fourth violation in a period of at least two years. Suspension only penalties must be high enough to offset the need for monetary penalties with revocation of the license by the fourth violation at the latest within two years.
- d. Paying fines -- Penalties for sale must be levied on the owner/operator of the retail establishment, not just the employee or person who made the sale. It is preferred that penalties levied on the owner/operator are significantly higher than penalties on the person/employee. Any violation count must be applied to the store, and not the employee, so that firing an employee does not reset the count on compliance violations for a store. Penalties on employees must not include potential jail time and monetary penalties must be lower than the owner/operator.
- e. NO "PUP" provisions – We'd like to eliminate any fines/penalties against youth for purchase, use or possession as penalizing kids is not an effective strategy to reduce youth tobacco use. PUP laws unfairly punish and stigmatize kids, many of whom become addicted because of the tobacco industry's aggressive marketing to kids. Removing PUP penalties would also include Driver's license revocation for an individual as a penalty for PUP as it creates a hardship and equity concerns. We began a conversation about removing PUP provisions with Commissioner Knight last session and would be interested in continuing the conversation.

Thank you for the opportunity to comment and the good work of the department.

Sincerely,

Tina Zuk

Government Relations Director, VT

American Heart Association

Tina.zuk@heart.org

802-578-3466



**Testimony of Michael Rollo, Government Relations Director,
American Cancer Society Cancer Action Network**

In Support of Changes to VT Tobacco Regulations by the Board of Liquor and Lottery

August 16, 2022

Good afternoon, Chief Genest, and members of the Board of Liquor and Lottery. My name is Michael Rollo, and I am the Government Relations Director for the American Cancer Society Cancer Action Network (ACS CAN). ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

On behalf of ACS CAN, thank you for the opportunity to provide testimony in support of revising regulations under Title 7, to ensure ***“public safety by preventing the misuse of alcohol and tobacco through controlled distribution, providing for applicable enforcement, and establishing robust education requirements.”***

As such, ACS CAN would encourage the department to consider including the following in its proposed rule changes:

1. Requiring minimum price standards and package size for all tobacco products sold in the state.
2. Prohibit retailers from honoring or redeeming coupons to purchase a tobacco product for less than the full retail price.
3. Limiting the number of tobacco licenses based on local equity and or zoning plans.

One in 2 men and 1 in 3 women are expected to be diagnosed with cancer in their lifetime.ⁱ This year alone, it is estimated that more than 4,200 Vermonters will be diagnosed with cancer.ⁱⁱ An estimated 1,000 deaths are caused by smoking each year in Vermont including 27% of cancer deaths.ⁱⁱⁱ Smoking is estimated to cost Vermont \$348 million in direct health care costs, including \$87 million in Medicaid costs annually.^{iv}

Due to sharp increases in youth tobacco use in recent years, largely due to skyrocketing rates of e-cigarette use, the decades of progress that has been made in reducing tobacco use rates in youth is now in jeopardy. Here in Vermont, 28.2% of high school students use tobacco products, with higher rates among dual users.^v Is it any surprise that youth rates are so high when the tobacco industry skirts tobacco excise taxes by offering coupons to entice young people? By guaranteeing a minimum price, minimum pack size and prohibiting coupons, DLL can help ensure that these products are not priced in a way to make them attractive to young Vermonters.

Michael Rollo
Government Relations Director NH & VT

American Cancer Society Cancer Action Network, Inc.
2 Commerce Dr, Bedford, NH 03110
603.518.6469/ 1.800.227.2345 Email: mike.rollo@cancer.org
fightcancer.org





While overall smoking rates have declined in recent years among adults, smoking rates remain higher among specific subpopulations, including the LGBTQ+ community and BIPOC communities.^{vi} These differences are in large part due to the tobacco industry's targeted marketing through advertising, price discounting and other strategies.

These additional strategies include greater tobacco retailer density nationwide in census tracts with a higher proportion of African American residents.^{vii} The more tobacco retailers, the more exposure to tobacco marketing individuals face. In fact, retail marketing, including in-store advertising, product displays, and discounts accounts for a large portion of the tobacco industry's marketing budget. In 2020 Big Tobacco spent 97% of their total cigarette and smokeless tobacco advertising and promotion budgets on strategies that facilitated retail sales, such as price discounts, point-of-sale advertising, coupons, and payments to ensure prime retail space.^{viii} Local municipalities should be empowered through rules to restrict tobacco licenses in their communities based on their local equity and zoning plans.

For these reasons, we urge the Board to include these changes to your proposed rules to ensure a healthier Vermont.

ⁱ <https://www.cancer.org/cancer/cancer-basics/lifetime-probability-of-developing-or-dying-from-cancer.html>

ⁱⁱ American Cancer Society, "Cancer Facts & Figures, 2022." Atlanta: American Cancer Society, 2022.

<https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2022/2022-cancer-facts-and-figures.pdf>

ⁱⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated April 16, 2021, <https://www.tobaccofreekids.org/problem/toll-us/vermont>

^{iv} Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated April 16, 2021, <https://www.tobaccofreekids.org/problem/toll-us/vermont>

^v United States Centers for Disease Control and Prevention, 2019 Youth Risk Behavior Surveillance System, <https://nccd.cdc.gov/Youthonline/App/Results.aspx?LID=VT>

^{vi} The Truth Initiative, Campaign for Tobacco-Free Kids, American Heart Association and American Stroke Association, American Cancer Society Cancer Action Network, American Lung Association, Americans for Nonsmokers' Rights, and Robert Wood Johnson Foundation. A report entitled Broken Promises to Our Children: A State-By-State Look at the 1998 State Tobacco Settlement 19 Years Later. December, 2017. Available on-line at: <https://www.tobaccofreekids.org/whatwe-do/us/statereport>.

^{vii} Campaign for Tobacco-Free Kids. Tobacco Company Marketing to African Americans <https://www.tobaccofreekids.org/assets/factsheets/0208.pdf>

^{viii} U.S. Federal Trade Commission (FTC), Cigarette Report for 2020, 2021 <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report2020/p114508fy20cigarettereport.pdf> [data for top 5 manufacturers only].; FTC, Smokeless Tobacco Report for 2020, 2021, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobaccoreport2020/p114508fy20smokelesstobacco.pdf> [Data for top 5 manufacturers only].



Document submitted via email from Rolf Parker on 8/26/2022

Below is an example of a coupon for menthol flavored Newport Boost cigarettes that was mailed to a woman in Vermont. She is not a smoker, and she was mailed this coupon on two occasions. She turned the coupons over to BAPC staff.



According to Dr Kelvin Choi, a Senior Investigator at the National Institute of Health, tobacco company documents show that they benefit from coupons because they help retain smokers that might quit, and replace smokers who die or quit, with new customers, including non-smokers.

Mailed coupons have been shown in research by Dr. Choi to have these effects; a percentage of non-smokers who receive these types of coupons in the mail, take up smoking and a percentage of recipients change from occasional users to daily ones. Two relevant examples of his research papers are available [here](#).

Receipt of Tobacco Direct Mail Coupons and Changes in Smoking Status in a Nationally Representative Sample of US Adults

<https://pubmed.ncbi.nlm.nih.gov/30124987/>

“Distributing direct mail coupons is a strategy employed by tobacco companies to promote their products. We found, in a US national study, that many adults received tobacco coupons, and receiving these coupons was associated with subsequent progression of smoking among nonsmokers, and continuation of smoking and daily smoking among smokers. Scrutiny over the use of direct mail coupons and its effects on population health is warranted.”

Frequency and Characteristics Associated with Exposure to Tobacco Direct Mail Marketing and Its Prospective Effect on Smoking Behaviors Among Young Adults from the US Midwest

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192087/>

Among baseline nonsmokers and ex-smokers, receiving coupons was associated with becoming current smokers at follow-up ($P < .05$). Among baseline current smokers, receiving coupons was associated with lower likelihood of smoking cessation at follow-up ($P < .05$).”

“*Conclusions.* Tobacco direct mail marketing promoted and sustained smoking behaviors among US Midwest young adults. Regulating this marketing strategy might reduce the prevalence of smoking in this population.”

Coupons are known in general to fuel purchase attempts by the people who receive them or obtain them, which is why tobacco companies and other businesses make use of them. Adolescents who receive or obtain coupons are also at increased risk of harm.

SEE THIS PAPER ON ADOLESCENT ACQUISITION OF COUPONS, AND THE IMPACT THAT IT HAS ON THEM. DESPITE IT BEING ILLEGAL FOR THEM TO PURCHASE CIGARETTES, YOUTH WHO RECEIVE OR OBTAIN COUPONS ARE MORE LIKELY TO OBTAIN AND USE CIGARETTES.

ADOLESCENT TOBACCO COUPON RECEIPT, VULNERABILITY CHARACTERISTICS AND SUBSEQUENT TOBACCO USE: ANALYSIS OF PATH STUDY, WAVES 1 AND 2

“Vulnerable youth had the greatest odds of coupon receipt. Coupon recipients had greater odds of tobacco use among never users, trying a new tobacco product and current use.”

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6371970/>

In **2012**, a federal district judge upheld a municipal ban on the **acceptance and redemption** of tobacco coupons, and ruled that it did not impact the first amendment rights of manufacturers or retailers.

States that ban Tobacco coupon redemption by retailers.

New York: 2020

New Jersey: 2020

Rhode Island: 2021

Document submitted via email from Rolf Parker on 8/26/2022

8/26/22

Dear Chief Genest,

As a private citizen of Vermont with a 20-year career in tobacco control in 3 different states, I would like to submit comment to the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite.

As I have been advocating for years, everything we can do to denormalize tobacco, vape, and alcohol use, to decrease access specifically for underage Vermonters, and to apply the strongest youth prevention policies we can identify for alcohol or tobacco and to both substances are important steps to protecting Vermonters.

Specifically, I am requesting that DLL consider the following:

1. Alcohol and tobacco licenses should be decoupled, and an equivalent fee should be applied to tobacco licenses.
2. Annual license fees and enforcement fines/penalties should be applied the same across substances using whichever substance has the strictest fees/fines/penalties (i.e., license suspension). Likewise, they should be applied on the owner/operator, not just the employee or person making the sale. No violation should be "reset" when an employee is terminated.
3. Close the loophole that allows tobacco wholesalers to also be licensed as tobacco retailers (Alcohol retailers are prohibited from doing this.)
4. Eliminate "PUP" (purchase, use and possession) laws or rules that punish vulnerable youth. Laws and rules should protect youth from the harms of the tobacco/alcohol industries' marketing and block the industries and retail establishments from profiting from the sales to those under 21.

Addiction to nicotine and harms that come from underage alcohol and cannabis remain important health and economic concerns in Vermont. I am thrilled that DLL has undertaken the task of reviewing and updating its regulations and I do hope that we continue to be a leader in protecting youth from substance misuse using all the tools we have available to us.

In good health,

Amy M. Brewer, MPH

amymara@hotmail.com

802-922-2587

Williston, VT



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005
PHONE (202) 296-5469 • FAX (202) 296-5427

Dear Mr. Genest,

On behalf of the Campaign for Tobacco-Free Kids, I submit the following as written comment on the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite. The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, and help smokers quit.

While Vermont has made great strides in reducing tobacco use, tobacco use continues to take the lives of 1,000 Vermont residents each year. In addition, e-cigarettes are addicting a new generation and threaten to undermine the progress Vermont has made in reducing youth tobacco use, with over a quarter of Vermont high schoolers reporting current e-cigarette use.¹ As you rewrite Section 10 of the Department of Liquor and Lottery's current rulemaking, I strongly urge you to require as a condition of a tobacco license that tobacco retailers may not sell flavored tobacco products and encourage you to eliminate fines and penalties against youth for purchase, use or possession (PUP) of tobacco products.

Prohibiting the sale of all flavored tobacco products in all tobacco retailers is a critical step that will help protect Vermont residents from the unrelenting efforts by the tobacco industry to hook them to a deadly addiction. Flavored tobacco products are designed to alter the taste and reduce the harshness of tobacco products so that they are more appealing and easier for beginners, who are almost always kids. These products are pervasive and are marketed and sold in a variety of kid-friendly flavors. With their colorful packaging and sweet flavors, flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets.

The wide variety of e-cigarette flavors—from mango and mint to cotton candy and bubble gum—indisputably drove a youth e-cigarette epidemic. Nationally, 85% of youth e-cigarette users report using flavored e-cigarettes.² Youth are clearly not just experimenting with e-cigarettes, but using them on a frequent basis, an indicator of serious addiction. According to the FDA, "Teens who vape may end up addicted to nicotine faster than teens who smoke cigarettes. This is because vapes may expose users to more nicotine and may be used more frequently. Plus, e-cigarettes may come in flavors that appeal to youth. Appealing flavors may cause teens to vape longer and more often, putting them at risk for nicotine addiction."³ Youth who use e-cigarette are also at an increased risk of trying regular cigarettes.⁴ FDA action to restrict certain flavored e-cigarettes has had little impact, and the overall e-cigarette market has continued to grow, driven by the popularity of kid-friendly flavored disposable e-cigarettes.⁵

In addition to e-cigarettes, tobacco companies continue to target kids with other flavored products, including menthol cigarettes and flavored cigars. Flavored cigars—available in hundreds of flavors, like Cherry Dynamite and Chocolate—now make up more than half of cigar sales in convenience stores.⁶ Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking. In Vermont, 8.1% of high school boys are current cigar smokers.⁷

No flavored tobacco product contributes more to death and disease than menthol cigarettes. Researchers estimate that between 1990 and 2018, menthol cigarettes were responsible for 10.1 million additional new smokers, 378,000 premature deaths and nearly 3 million life years lost.⁸ According to the FDA, menthol

cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.⁹ Menthol cools and numbs the throat, reduces the harshness of tobacco smoke, and makes menthol cigarettes more appealing to youth who are starting to smoke. Indeed, half of youth who have ever smoked initiated with menthol cigarettes.¹⁰

Menthol cigarettes also contribute to tobacco-related disparities, due to the industry's targeted marketing in communities of color. Prevalence of menthol cigarette use is highest among Black Americans – 85% of all Black smokers smoke menthol cigarettes, compared to 29% of Whites.¹¹ Black smokers generally have higher levels of nicotine dependence and lower cessation success because of their preference for mentholated cigarettes.¹² Each year, approximately 45,000 Black Americans die from a smoking-caused illness.¹³ In addition to youth and Black smokers, preference for menthol among is also disproportionately high among lesbian, gay, and bisexual smokers, smokers with mental health problems, socioeconomically disadvantaged populations, and pregnant women.¹⁴

Earlier this year, the FDA issued proposed rulemaking earlier this year to prohibit menthol cigarettes and flavored cigars—action supported by Acting Attorney General Susanne Young.¹⁵ However, this is just the first step of a lengthy rulemaking process. It will take time for the FDA to finalize and implement the necessary regulations, and tobacco industry efforts to block or postpone FDA actions could cause further delays. Revising Section 10 to prohibit licensed tobacco retailers from selling flavored tobacco products would protect Vermont residents much more expeditiously.

As you revise Section 10, we also encourage you to eliminate fines and penalties against youth for purchase, use or possession (PUP) of tobacco products as there is little evidence that PUP laws reduce youth tobacco use.¹⁶ Further, PUP laws divert attention from more effective tobacco control strategies, minimize the responsibility of retailers, and shift the blame from the industry's irresponsible marketing to its victims. Finally, some communities are concerned that these provisions may be enforced inconsistently with respect to youth from certain racial and ethnic groups, resulting in their introduction into the criminal justice system

Prohibiting the sale of all flavored tobacco products is one of the most important things you can do to protect the health of Vermont's kids, reverse health disparities, and prevent the 1,000 deaths in Vermont each year that are due to tobacco use.

Sincerely,



Kevin O'Flaherty
Director, U.S. Northeast Region
Campaign for Tobacco-Free Kids

¹ CDC, 2019 Youth Risk Behavior Survey, Available at <http://nccd.cdc.gov/youthonline/>.

² Park-Lee, E, et al., "E-Cigarette Use Among Middle and High School Students—National Youth Tobacco Survey, 2021," *MMWR*, 70(39): 1387-1389, October 1, 2021, <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039a4-H.pdf>.

³ FDA Center for Tobacco Products, *Resources for Professionals About Vaping & E-Cigarettes: A Toolkit for Working with Youth*, <https://digitalmedia.hhs.gov/tobacco/hosted/Vaping-E-Cigarettes-Youth-Toolkit.pdf>.

⁴ National Academies of Sciences, Engineering, and Medicine. 2018. *Public health consequences of e-cigarettes*. Washington, DC: The National Academies Press. <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

⁵ CDC Foundation & Information Resources, Inc., "Monitoring U.S. E-Cigarette Sales: National Trends," <https://www.cdcfoundation.org/programs/monitoring-e-cigarette-use-among-youth>. Data from Information Resources, Inc. (IRI), which includes e-cigarette sales data from convenience stores, gas stations and other retail store chains. Sales from the internet and tobacco-specialty stores, including vape shops, are not included.

- ⁶ Delnevo, CD, et al. "Cigar Sales in Convenience Stores in the US, 2009-2020," *JAMA* 326(23):2429-2432.
- ⁷ CDC, 2019 Youth Risk Behavior Survey, Available at <http://nccd.cdc.gov/youthonline/>.
- ⁸ Le, TT, "An estimation of the harm of menthol cigarettes in the United States from 1980 to 2018," *Tobacco Control*, published online February 25, 2021.
- ⁹ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes* (2013) <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>
- ¹⁰ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.
- ¹¹ Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- ¹² FDA, "Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes," 2013; Tobacco Products Scientific Advisory Committee, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011,.; Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," *Nicotine & Tobacco Research*, 18(S1): S91-S101, 2016.
- ¹³ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998, http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.
- ¹⁴ Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- ¹⁵ State Attorneys General Comments on Proposed Regulations to Establish Tobacco Product Standards for Menthol in Cigarettes, Docket Nos. FDA-2021-N-1349 and FDA-2021-N-1309 <https://oag.ca.gov/system/files/attachments/press-docs/23%20State%20AGs%20Comments%20on%20FDA%20Proposed%20Product%20Standards%20-%20FDA-2021-N-1349%20and%20FDA-2021-N-1309.docx>.
- ¹⁶ Wakefield, M, and Giovino, G, "Teen penalties for tobacco possession, use, and purchase: evidence and issues," *Tobacco Control*, 12(Suppl 1):i6-i13, 2003.

Comments on VT DLL Rules

CB

Clare Buckley <cbuckley@leoninepublicaffairs.com>

To: r Genest, Styler

Reply

Reply All

Forward

Tue 9/19/2022 4:54 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Chief Genest:

The members of the DLL rule working group over the past few meetings asked a few questions for broader feedback from the wholesaler community. I convened a group of Vermont Wholesale Beverage Association (VWBA) members and offer the following responses to the questions the working group posed:

Credit Regulation No. 1 – VWBA members strongly support the current prohibition on credit for malt and vinous beverages, including a prohibition on the use of credit cards, and urge DLL to keep the rule in place. VWBA members support adding ready-to-drink spirits beverages to the ban on credit in Credit Regulation No. 1. Our understanding is that "cider" is considered a "vinous beverage" under Act 177 so wherever wine or vinous beverage appears in the regulation, it includes cider, so the ban on credit also applies to "cider."

Wholesale Dealer Reg. No. 8 - VWBA members support giving wholesalers the option of utilizing electronic copies of invoices with no hard copies so long as the wholesaler can produce an electronic version at any time for DLL.

Wholesale Dealer Reg. No. 12 - VWBA supports adding ready-to-drink spirits beverages to this regulation so that it applies to malt beverages and RTDs.

Wholesale Dealer Reg. No. 14 - VWBA supports adding ready-to-drink spirits beverages to this regulation regarding minimum delivery amounts. VWBA supports the \$75 minimum delivery amount and retaining the "aggregate quantity" concept so the aggregate quantity would consist of malt beverages, vinous beverages and ready-to-drink spirits beverages.

If you have questions about the above comments or have additional questions you'd like me to run by VWBA members, please let me know. Thanks for giving us the opportunity to participate in the working group.

Clare

Clare Buckley, Partner
Leonine Public Affairs, LLP
1 Blanchard Court, Suite 101, Montpelier, VT 05602
Cell: 802-777-2064
cbuckley@leoninepublicaffairs.com

Genest, Skyler

From: Amy Spear <aspear@vtchamber.com>
Sent: Friday, September 16, 2022 3:51 PM
To: Genest, Skyler
Cc: Posley, Jacqueline; Knight, Wendy
Subject: RE: Break Open Tickets / Gaming Proposed Regulation

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Skylar,

Thank you for the information. From what I have heard from our members there would not be any issue with the changes to break open tickets.

I will keep you posted if I heard otherwise!

Best,
Amy

Amy Spear

Vice President of Tourism | Vermont Chamber of Commerce
President | Vermont Attractions Association



[Join](#) the Vermont Chamber today!

From: Genest, Skyler <Skyler.Genest@vermont.gov>
Sent: Wednesday, September 14, 2022 11:01 AM
To: Amy Spear <aspear@vtchamber.com>
Cc: Posley, Jacqueline <Jacqueline.Posley@vermont.gov>; Knight, Wendy <Wendy.Knight@vermont.gov>
Subject: External: Break Open Tickets / Gaming Proposed Regulation

Hi Amy,

As I believe you are aware, but the Department has engaged in a lengthy and exhaustive review of our regulations looking at gaps in regulation, conflicts with statute, and relevancy of existing regulations.

In the realm of break open tickets, we did land on some proposed regulatory language that our Office of Compliance and Enforcement believes would create a paradigm which would protect the non-profit organizations who can be vulnerable victims of fraud when they partner with on-premise locations to sell these gaming products on their behalf (as permitted by law). You might be aware that the Department has identified examples of criminal activity where licensees have not provided all of the proceeds generated by the sale of break open tickets to the non-profit organization contrary to state law. OCE believes that this occurrence is more frequent than we are made aware of because the non-profits are reluctant to report this as they don't wish to jeopardize any possible income, even if it isn't the full amount they are entitled to via law.

We would really value some feedback from the industry on the following proposed regulatory language. Most of this mirrors requirements in state law. In particular, #6 below would be a significant change in how the arrangement to engage in these sales occur now. Current state, licensees will sell the tickets and after the fact provide the proceeds. Proposed Gaming Regulation #6 would require the licensee to provide the expected net proceed to the non-profit before they engage in sales to their patrons, and then recoup the funds via the sales.

Could we rely on your network to garner any possible feedback on this issue?

OCE recommends the following regulatory language related to break open tickets:

Gaming Regulations

- 1. Prior to approval from Department to engage in Break-Open Ticket sales, a licensee must provide an IRS 501(c) designation letter, or provide enough proof to the Department that the non-profit they are benefiting via sale of Break-Open Ticket sales would qualify for 501(c) status pursuant to applicable provisions in state law.**
- 2. Except for clubs as defined by Title 7, No owners or employees of a licensed establishment may order or take delivery of break open tickets from a wholesale distributor, pursuant to applicable provisions in state law, unless the owners or employees are bona-fide members or certified agents of the nonprofit. Only nonprofit organizations may purchase break-open tickets from a license wholesale distributor.**
- 3. Except for clubs as defined by Title 7, No licensee may engage in games of chance that would benefit or support any non-profit of which they have direct or indirect control of, or have a direct or indirect financial interest in.**
- 4. No licensee or employee of a licensee, or their volunteers shall engage in any game of chance play at their respective licensed establishment(s).**
- 5. Licensees who engage in break-open ticket sales at their establishment must account for proceeds generated for each game on forms prescribed by the Department. That accounting shall include: Serial number of the game, Number of tickets per game, Number of tickets sold, Total dollar amount in payout for prizes awarded, Total dollar amount given to nonprofit organization, and Total dollar amount of any retained accounting fees. Licensees may retain a reasonable accounting fee. Pursuant to applicable provisions in state law this fee shall not exceed \$2,000 in any calendar year.**
- 6. Except for clubs as defined by Title 7, prior to the sale of any single implement of a game of chance such as a break open ticket on behalf of an eligible non-profit, the licensed establishment shall provide funds in the amount of the total expected net revenue as identified by the manufacturer of the game of change, minus the reasonable accounting fees identified in applicable provisions in state law.**

I appreciate in advance any work you can do with this!

Best

Chief Skyler Genest
Senior Director, Licensee Operations
Vermont Department of Liquor and Lottery
802.477.2429 | skyler.genest@vermont.gov

From: Erin Sigrist <erin@vtrga.org>
Sent: Thursday, January 19, 2023 3:38 PM
To: Genest, Skyler
Cc: Martin, Charles; Matt McMahon
Subject: Re: Question RE Proposed Regulation Changes

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Thanks, Skyler.

I would anticipate that this type of a change would be a legislative change rather than a rule change. And I understand that there were public hearings, so I'll apologize for missing these discussions. Below is a general overview of the concern VRGA has. I'll plan to be at the hearing tomorrow.

If a product is being discontinued, a retailer would prefer to sell such products rather than throw them out in order to make up for some of their loss in revenue.

We do not believe that the adoption of the proposed modifications would result in a less burdensome regulatory environment for small business, decreasing the cost of compliance. Rather retailers would lose revenue due a reduction in sales of various products.

Further, many of the products sold in Vermont under the umbrella of DLL are wholesaled exclusively by one distributor. The lack of exclusive franchise territory for tobacco products differentiates them from products like liquor or beer. Given that multiple distributors, many of them who operate regionally, are serving different retailers the same products in Vermont, it may be difficult and time consuming for DLL staff to track wholesale prices across distributors and retailers on a regular basis. If DLL does not plan on tracking this information, we question how this policy would be enforced. Additionally, different wholesale prices across retailers for the same product could limit how some retailers price their products versus their larger in-state competitors, in some cases.

I appreciate that you have received feedback from advocacy groups on this topic. As the statewide retail organization, we represent many licensees who hope that you will consider our feedback. Thank you and let me know if we can provide further detail.

See you tomorrow,

Erin Sigrist

Vermont Retail & Grocers Association | President

Vermont Specialty Food Association | Executive Director

963 Paine Turnpike North | Berlin, VT 05602

O-802-839-1928 | C-802-363-1457

Our Champion Sponsors: Supporting our work. Making an impact.



From: Erin Sigrist <erin@vtrga.org>

Sent: Thursday, January 19, 2023 6:43 AM

To: Genest, Skyler <Skyler.Genest@vermont.gov>

Subject: Question RE Proposed Regulation Changes

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning Skyler,

I'm hoping you can provide clarification on the below proposed change in former section 28 - now 26.

~~28. 26. First or second class~~ *No licensees shall not sell malt or vinous beverages alcohol, tobacco products, tobacco substitutes, tobacco paraphernalia, or other tobacco products at a price lower than the price in effect at the time of purchase from the wholesale dealer, the Board, or holders of a direct-to-retail shipping license*

Can you tell me: does this mean that customers will no longer have the ability to use coupons for cigarettes? And how will this affect any potential clearance sale of soon-to-be-expired alcohol?

If it was intended as written then it would have severe impact on retailers and would essentially negate nearly all retail programming and funding they receive from the manufacturers.

Thanks so much,

Erin Sigrist

Vermont Retail & Grocers Association | President

Vermont Specialty Food Association | Executive Director

963 Paine Turnpike North | Berlin, VT 05602

O-802-839-1928 | C-802-363-1457

Our Champion Sponsors: Supporting our work. Making an impact.



APPENDIX

Reg. rewrite request

AS

Amy Spear <aspear@vtchamber.com>
To: Gemet, Skylar

You replied to this message on 8/12/2022 10:51 AM.

Reply Reply All Forward

Fri 8/5/2022 1:51 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Skylar,

I was not able to attend your listening session on section 43, but I have had some folks reach out to me and wanted to pass details to you.

- **Current language:** Except as otherwise authorized by law or by the Liquor Control Board, licensees shall not reuse, refill or tamper with any bottle of alcoholic beverages nor shall such licensee adulterate, dilute, fortify, or cause any substitution of any nature to be made in or to the contents of any bottle of alcoholic beverages.
- **Industry proposed:** "Adulterate" does not include a licensee that colors, flavors, mixes, blends or infuses alcoholic beverages in preparation for later service at the licensed premise. The mixture/infusion must be clearly labeled with the following information: the date of production, the name of the person who created the mixture/infusion, the ingredients in the mixture/infusion including the alcohol brand name(s) and quantity, and the estimated proof of the mixture/infusion. Any mixture/infusion created shall be produced in a safe and sanitary manner. Any vessel used for dispensing the mixture/infusion shall not have a beverage alcohol brand label, nor shall it be dispensed from a vessel that is of a design that would signify a particular brand of beverage alcohol to a consumer
- **Goals:**
 - o Batchling and kegging in advance would be an important change for some to deal with the labor shortage
 - o It would allow for more consistency and control

Let me know if you have any questions and thank you for consideration!

Best,
Amy

Amy Spear
Vice President of Tourism | Vermont Chamber of Commerce
President | Vermont Attractions Association

The logo for the Vermont Chamber of Commerce, featuring the text 'VERMONT CHAMBER of Commerce' with a stylized mountain and sun graphic.

Icons for Facebook, LinkedIn, and Twitter.

[Virtual Manufacturing Supply Chain Summit](#) – Registration Now Open! September 21-22, 2022!
[Join the Vermont Chamber today!](#)



Skyler Genest

August 18, 2022

Vermont Department of Liquor and Lottery

Via email (skyler.genest@vermont.gov)

Re: American Heart Association comment on DLL rulemaking section 10, tobacco regulations

Dear Skyler,

On behalf of the American Heart Association, I would like to submit the following as written comment on the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite.

- 1) We urge the department to decouple the alcohol and tobacco license fees. A tobacco license should have its own fee with revenue raised from the fee going to tobacco enforcement. Enforcement funds are effective and needed.
 - a. Via an MOU with the Vermont Department of Health, and a \$30,000 investment, DLL, working with the AGO, enforced the online delivery sales ban and secured \$834,000 in penalties.
 - b. DLL will also feel increased pressure on staff in the coming year, having to enforce 60 new cannabis licenses with no extra funding.
- 2) We urge DLL to require as a condition of a tobacco license that tobacco retailers may not sell flavored tobacco products including menthol tobacco products.
- 3) We urge DLL to disallow a wholesaler from also being licensed as a tobacco retailer. As VDH notes in its report, "Assessing Vermont's 2019 tobacco Control Policies," it is common for wholesalers to also be licensed as tobacco retailers which allows wholesalers and retailers to lessen the e-cigarette tax by selling the products to themselves at lower rates. This means the tax could have a lower than intended impact on Vermont youths' access and use of the products. Alcohol retailers are currently prohibited from doing this for the same reason.
- 4) As well, the American Heart Association considers the following as the most effective tobacco retail licensure in terms of its impact on public health, reducing smoking and preventing youth from starting. We'd urge DLL to adopt the items it has authority over and work with our organization regarding items that would need legislative action.

- a. Fee -- An annual retail license fee, paid by all tobacco retailers, which goes towards the enforcement of licensure requirements. Must be high enough to cover the cost of enforcement and operations.
- b. Enforcement -- A minimum of one compliance check for violations of minimum legal sales age laws per year, and there should be a recheck for violations within a specified time period, such as three months.
- c. Penalty structure -- Specific for violations of the minimum legal sales age, penalties should include an escalating monetary penalty paid by the store or business owner. Suspensions and license revocation must also be part of the structure – minimum of 15-day suspension by the third violation, and revocation of license by the fourth violation in a period of at least two years. Suspension only penalties must be high enough to offset the need for monetary penalties with revocation of the license by the fourth violation at the latest within two years.
- d. Paying fines -- Penalties for sale must be levied on the owner/operator of the retail establishment, not just the employee or person who made the sale. It is preferred that penalties levied on the owner/operator are significantly higher than penalties on the person/employee. Any violation count must be applied to the store, and not the employee, so that firing an employee does not reset the count on compliance violations for a store. Penalties on employees must not include potential jail time and monetary penalties must be lower than the owner/operator.
- e. NO "PUP" provisions – We'd like to eliminate any fines/penalties against youth for purchase, use or possession as penalizing kids is not an effective strategy to reduce youth tobacco use. PUP laws unfairly punish and stigmatize kids, many of whom become addicted because of the tobacco industry's aggressive marketing to kids. Removing PUP penalties would also include Driver's license revocation for an individual as a penalty for PUP as it creates a hardship and equity concerns. We began a conversation about removing PUP provisions with Commissioner Knight last session and would be interested in continuing the conversation.

Thank you for the opportunity to comment and the good work of the department.

Sincerely,

Tina Zuk

Government Relations Director, VT

American Heart Association

Tina.zuk@heart.org

802-578-3466



**Testimony of Michael Rollo, Government Relations Director,
American Cancer Society Cancer Action Network**

In Support of Changes to VT Tobacco Regulations by the Board of Liquor and Lottery

August 16, 2022

Good afternoon, Chief Genest, and members of the Board of Liquor and Lottery. My name is Michael Rollo, and I am the Government Relations Director for the American Cancer Society Cancer Action Network (ACS CAN). ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

On behalf of ACS CAN, thank you for the opportunity to provide testimony in support of revising regulations under Title 7, to ensure ***“public safety by preventing the misuse of alcohol and tobacco through controlled distribution, providing for applicable enforcement, and establishing robust education requirements.”***

As such, ACS CAN would encourage the department to consider including the following in its proposed rule changes:

1. Requiring minimum price standards and package size for all tobacco products sold in the state.
2. Prohibit retailers from honoring or redeeming coupons to purchase a tobacco product for less than the full retail price.
3. Limiting the number of tobacco licenses based on local equity and or zoning plans.

One in 2 men and 1 in 3 women are expected to be diagnosed with cancer in their lifetime.ⁱ This year alone, it is estimated that more than 4,200 Vermonters will be diagnosed with cancer.ⁱⁱ An estimated 1,000 deaths are caused by smoking each year in Vermont including 27% of cancer deaths.ⁱⁱⁱ Smoking is estimated to cost Vermont \$348 million in direct health care costs, including \$87 million in Medicaid costs annually.^{iv}

Due to sharp increases in youth tobacco use in recent years, largely due to skyrocketing rates of e-cigarette use, the decades of progress that has been made in reducing tobacco use rates in youth is now in jeopardy. Here in Vermont, 28.2% of high school students use tobacco products, with higher rates among dual users.^v Is it any surprise that youth rates are so high when the tobacco industry skirts tobacco excise taxes by offering coupons to entice young people? By guaranteeing a minimum price, minimum pack size and prohibiting coupons, DLL can help ensure that these products are not priced in a way to make them attractive to young Vermonters.

Michael Rollo
Government Relations Director NH & VT

American Cancer Society Cancer Action Network, Inc.
2 Commerce Dr, Bedford, NH 03110
603.518.6469/ 1.800.227.2345 Email: mike.rollo@cancer.org
fightcancer.org





While overall smoking rates have declined in recent years among adults, smoking rates remain higher among specific subpopulations, including the LGBTQ+ community and BIPOC communities.^{vi} These differences are in large part due to the tobacco industry's targeted marketing through advertising, price discounting and other strategies.

These additional strategies include greater tobacco retailer density nationwide in census tracts with a higher proportion of African American residents.^{vii} The more tobacco retailers, the more exposure to tobacco marketing individuals face. In fact, retail marketing, including in-store advertising, product displays, and discounts accounts for a large portion of the tobacco industry's marketing budget. In 2020 Big Tobacco spent 97% of their total cigarette and smokeless tobacco advertising and promotion budgets on strategies that facilitated retail sales, such as price discounts, point-of-sale advertising, coupons, and payments to ensure prime retail space.^{viii} Local municipalities should be empowered through rules to restrict tobacco licenses in their communities based on their local equity and zoning plans.

For these reasons, we urge the Board to include these changes to your proposed rules to ensure a healthier Vermont.

ⁱ <https://www.cancer.org/cancer/cancer-basics/lifetime-probability-of-developing-or-dying-from-cancer.html>

ⁱⁱ American Cancer Society, "Cancer Facts & Figures, 2022." Atlanta: American Cancer Society, 2022.

<https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2022/2022-cancer-facts-and-figures.pdf>

ⁱⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated April 16, 2021, <https://www.tobaccofreekids.org/problem/toll-us/vermont>

^{iv} Campaign for Tobacco-Free Kids. The Toll of Tobacco in Vermont. Updated April 16, 2021, <https://www.tobaccofreekids.org/problem/toll-us/vermont>

^v United States Centers for Disease Control and Prevention, 2019 Youth Risk Behavior Surveillance System, <https://nccd.cdc.gov/Youthonline/App/Results.aspx?LID=VT>

^{vi} The Truth Initiative, Campaign for Tobacco-Free Kids, American Heart Association and American Stroke Association, American Cancer Society Cancer Action Network, American Lung Association, Americans for Nonsmokers' Rights, and Robert Wood Johnson Foundation. A report entitled Broken Promises to Our Children: A State-By-State Look at the 1998 State Tobacco Settlement 19 Years Later. December, 2017. Available on-line at: <https://www.tobaccofreekids.org/whatwe-do/us/statereport>.

^{vii} Campaign for Tobacco-Free Kids. Tobacco Company Marketing to African Americans <https://www.tobaccofreekids.org/assets/factsheets/0208.pdf>

^{viii} U.S. Federal Trade Commission (FTC), Cigarette Report for 2020, 2021 <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report2020/p114508fy20cigarettereport.pdf> [data for top 5 manufacturers only].; FTC, Smokeless Tobacco Report for 2020, 2021, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobaccoreport2020/p114508fy20smokelesstobacco.pdf> [Data for top 5 manufacturers only].



Document submitted via email from Rolf Parker on 8/26/2022

Below is an example of a coupon for menthol flavored Newport Boost cigarettes that was mailed to a woman in Vermont. She is not a smoker, and she was mailed this coupon on two occasions. She turned the coupons over to BAPC staff.



According to Dr Kelvin Choi, a Senior Investigator at the National Institute of Health, tobacco company documents show that they benefit from coupons because they help retain smokers that might quit, and replace smokers who die or quit, with new customers, including non-smokers.

Mailed coupons have been shown in research by Dr. Choi to have these effects; a percentage of non-smokers who receive these types of coupons in the mail, take up smoking and a percentage of recipients change from occasional users to daily ones. Two relevant examples of his research papers are available [here](#).

Receipt of Tobacco Direct Mail Coupons and Changes in Smoking Status in a Nationally Representative Sample of US Adults

<https://pubmed.ncbi.nlm.nih.gov/30124987/>

“Distributing direct mail coupons is a strategy employed by tobacco companies to promote their products. We found, in a US national study, that many adults received tobacco coupons, and receiving these coupons was associated with subsequent progression of smoking among nonsmokers, and continuation of smoking and daily smoking among smokers. Scrutiny over the use of direct mail coupons and its effects on population health is warranted.”

Frequency and Characteristics Associated with Exposure to Tobacco Direct Mail Marketing and Its Prospective Effect on Smoking Behaviors Among Young Adults from the US Midwest

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192087/>

Among baseline nonsmokers and ex-smokers, receiving coupons was associated with becoming current smokers at follow-up ($P < .05$). Among baseline current smokers, receiving coupons was associated with lower likelihood of smoking cessation at follow-up ($P < .05$).”

“*Conclusions.* Tobacco direct mail marketing promoted and sustained smoking behaviors among US Midwest young adults. Regulating this marketing strategy might reduce the prevalence of smoking in this population.”

Coupons are known in general to fuel purchase attempts by the people who receive them or obtain them, which is why tobacco companies and other businesses make use of them. Adolescents who receive or obtain coupons are also at increased risk of harm.

SEE THIS PAPER ON ADOLESCENT ACQUISITION OF COUPONS, AND THE IMPACT THAT IT HAS ON THEM. DESPITE IT BEING ILLEGAL FOR THEM TO PURCHASE CIGARETTES, YOUTH WHO RECEIVE OR OBTAIN COUPONS ARE MORE LIKELY TO OBTAIN AND USE CIGARETTES.

ADOLESCENT TOBACCO COUPON RECEIPT, VULNERABILITY CHARACTERISTICS AND SUBSEQUENT TOBACCO USE: ANALYSIS OF PATH STUDY, WAVES 1 AND 2

“Vulnerable youth had the greatest odds of coupon receipt. Coupon recipients had greater odds of tobacco use among never users, trying a new tobacco product and current use.”

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6371970/>

In **2012**, a federal district judge upheld a municipal ban on the **acceptance and redemption** of tobacco coupons, and ruled that it did not impact the first amendment rights of manufacturers or retailers.

States that ban Tobacco coupon redemption by retailers.

New York: 2020

New Jersey: 2020

Rhode Island: 2021

Document submitted via email from Rolf Parker on 8/26/2022

8/26/22

Dear Chief Genest,

As a private citizen of Vermont with a 20-year career in tobacco control in 3 different states, I would like to submit comment to the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite.

As I have been advocating for years, everything we can do to denormalize tobacco, vape, and alcohol use, to decrease access specifically for underage Vermonters, and to apply the strongest youth prevention policies we can identify for alcohol or tobacco and to both substances are important steps to protecting Vermonters.

Specifically, I am requesting that DLL consider the following:

1. Alcohol and tobacco licenses should be decoupled, and an equivalent fee should be applied to tobacco licenses.
2. Annual license fees and enforcement fines/penalties should be applied the same across substances using whichever substance has the strictest fees/fines/penalties (i.e., license suspension). Likewise, they should be applied on the owner/operator, not just the employee or person making the sale. No violation should be "reset" when an employee is terminated.
3. Close the loophole that allows tobacco wholesalers to also be licensed as tobacco retailers (Alcohol retailers are prohibited from doing this.)
4. Eliminate "PUP" (purchase, use and possession) laws or rules that punish vulnerable youth. Laws and rules should protect youth from the harms of the tobacco/alcohol industries' marketing and block the industries and retail establishments from profiting from the sales to those under 21.

Addiction to nicotine and harms that come from underage alcohol and cannabis remain important health and economic concerns in Vermont. I am thrilled that DLL has undertaken the task of reviewing and updating its regulations and I do hope that we continue to be a leader in protecting youth from substance misuse using all the tools we have available to us.

In good health,

Amy M. Brewer, MPH

amymara@hotmail.com

802-922-2587

Williston, VT



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005
PHONE (202) 296-5469 • FAX (202) 296-5427

Dear Mr. Genest,

On behalf of the Campaign for Tobacco-Free Kids, I submit the following as written comment on the Department of Liquor and Lottery's current rulemaking, specifically on Section 10 of the proposed regulation rewrite. The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, and help smokers quit.

While Vermont has made great strides in reducing tobacco use, tobacco use continues to take the lives of 1,000 Vermont residents each year. In addition, e-cigarettes are addicting a new generation and threaten to undermine the progress Vermont has made in reducing youth tobacco use, with over a quarter of Vermont high schoolers reporting current e-cigarette use.¹ As you rewrite Section 10 of the Department of Liquor and Lottery's current rulemaking, I strongly urge you to require as a condition of a tobacco license that tobacco retailers may not sell flavored tobacco products and encourage you to eliminate fines and penalties against youth for purchase, use or possession (PUP) of tobacco products.

Prohibiting the sale of all flavored tobacco products in all tobacco retailers is a critical step that will help protect Vermont residents from the unrelenting efforts by the tobacco industry to hook them to a deadly addiction. Flavored tobacco products are designed to alter the taste and reduce the harshness of tobacco products so that they are more appealing and easier for beginners, who are almost always kids. These products are pervasive and are marketed and sold in a variety of kid-friendly flavors. With their colorful packaging and sweet flavors, flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets.

The wide variety of e-cigarette flavors—from mango and mint to cotton candy and bubble gum—indisputably drove a youth e-cigarette epidemic. Nationally, 85% of youth e-cigarette users report using flavored e-cigarettes.² Youth are clearly not just experimenting with e-cigarettes, but using them on a frequent basis, an indicator of serious addiction. According to the FDA, "Teens who vape may end up addicted to nicotine faster than teens who smoke cigarettes. This is because vapes may expose users to more nicotine and may be used more frequently. Plus, e-cigarettes may come in flavors that appeal to youth. Appealing flavors may cause teens to vape longer and more often, putting them at risk for nicotine addiction."³ Youth who use e-cigarette are also at an increased risk of trying regular cigarettes.⁴ FDA action to restrict certain flavored e-cigarettes has had little impact, and the overall e-cigarette market has continued to grow, driven by the popularity of kid-friendly flavored disposable e-cigarettes.⁵

In addition to e-cigarettes, tobacco companies continue to target kids with other flavored products, including menthol cigarettes and flavored cigars. Flavored cigars—available in hundreds of flavors, like Cherry Dynamite and Chocolate—now make up more than half of cigar sales in convenience stores.⁶ Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking. In Vermont, 8.1% of high school boys are current cigar smokers.⁷

No flavored tobacco product contributes more to death and disease than menthol cigarettes. Researchers estimate that between 1990 and 2018, menthol cigarettes were responsible for 10.1 million additional new smokers, 378,000 premature deaths and nearly 3 million life years lost.⁸ According to the FDA, menthol

cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking.⁹ Menthol cools and numbs the throat, reduces the harshness of tobacco smoke, and makes menthol cigarettes more appealing to youth who are starting to smoke. Indeed, half of youth who have ever smoked initiated with menthol cigarettes.¹⁰

Menthol cigarettes also contribute to tobacco-related disparities, due to the industry's targeted marketing in communities of color. Prevalence of menthol cigarette use is highest among Black Americans – 85% of all Black smokers smoke menthol cigarettes, compared to 29% of Whites.¹¹ Black smokers generally have higher levels of nicotine dependence and lower cessation success because of their preference for mentholated cigarettes.¹² Each year, approximately 45,000 Black Americans die from a smoking-caused illness.¹³ In addition to youth and Black smokers, preference for menthol among is also disproportionately high among lesbian, gay, and bisexual smokers, smokers with mental health problems, socioeconomically disadvantaged populations, and pregnant women.¹⁴

Earlier this year, the FDA issued proposed rulemaking earlier this year to prohibit menthol cigarettes and flavored cigars—action supported by Acting Attorney General Susanne Young.¹⁵ However, this is just the first step of a lengthy rulemaking process. It will take time for the FDA to finalize and implement the necessary regulations, and tobacco industry efforts to block or postpone FDA actions could cause further delays. Revising Section 10 to prohibit licensed tobacco retailers from selling flavored tobacco products would protect Vermont residents much more expeditiously.

As you revise Section 10, we also encourage you to eliminate fines and penalties against youth for purchase, use or possession (PUP) of tobacco products as there is little evidence that PUP laws reduce youth tobacco use.¹⁶ Further, PUP laws divert attention from more effective tobacco control strategies, minimize the responsibility of retailers, and shift the blame from the industry's irresponsible marketing to its victims. Finally, some communities are concerned that these provisions may be enforced inconsistently with respect to youth from certain racial and ethnic groups, resulting in their introduction into the criminal justice system

Prohibiting the sale of all flavored tobacco products is one of the most important things you can do to protect the health of Vermont's kids, reverse health disparities, and prevent the 1,000 deaths in Vermont each year that are due to tobacco use.

Sincerely,



Kevin O'Flaherty
Director, U.S. Northeast Region
Campaign for Tobacco-Free Kids

¹ CDC, 2019 Youth Risk Behavior Survey, Available at <http://nccd.cdc.gov/youthonline/>.

² Park-Lee, E, et al., "E-Cigarette Use Among Middle and High School Students—National Youth Tobacco Survey, 2021," *MMWR*, 70(39): 1387-1389, October 1, 2021, <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039a4-H.pdf>.

³ FDA Center for Tobacco Products, *Resources for Professionals About Vaping & E-Cigarettes: A Toolkit for Working with Youth*, <https://digitalmedia.hhs.gov/tobacco/hosted/Vaping-E-Cigarettes-Youth-Toolkit.pdf>.

⁴ National Academies of Sciences, Engineering, and Medicine. 2018. *Public health consequences of e-cigarettes*. Washington, DC: The National Academies Press. <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

⁵ CDC Foundation & Information Resources, Inc., "Monitoring U.S. E-Cigarette Sales: National Trends," <https://www.cdcfoundation.org/programs/monitoring-e-cigarette-use-among-youth>. Data from Information Resources, Inc. (IRI), which includes e-cigarette sales data from convenience stores, gas stations and other retail store chains. Sales from the internet and tobacco-specialty stores, including vape shops, are not included.

- ⁶ Delnevo, CD, et al. "Cigar Sales in Convenience Stores in the US, 2009-2020," *JAMA* 326(23):2429-2432.
- ⁷ CDC, 2019 Youth Risk Behavior Survey, Available at <http://nccd.cdc.gov/youthonline/>.
- ⁸ Le, TT, "An estimation of the harm of menthol cigarettes in the United States from 1980 to 2018," *Tobacco Control*, published online February 25, 2021.
- ⁹ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes* (2013) <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>
- ¹⁰ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.
- ¹¹ Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- ¹² FDA, "Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes," 2013; Tobacco Products Scientific Advisory Committee, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011,.; Alexander, LA, et al., "Why we must continue to investigate menthol's role in the African American smoking paradox," *Nicotine & Tobacco Research*, 18(S1): S91-S101, 2016.
- ¹³ HHS, "Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General," 1998, http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf.
- ¹⁴ Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.
- ¹⁵ State Attorneys General Comments on Proposed Regulations to Establish Tobacco Product Standards for Menthol in Cigarettes, Docket Nos. FDA-2021-N-1349 and FDA-2021-N-1309 <https://oag.ca.gov/system/files/attachments/press-docs/23%20State%20AGs%20Comments%20on%20FDA%20Proposed%20Product%20Standards%20-%20FDA-2021-N-1349%20and%20FDA-2021-N-1309.docx>.
- ¹⁶ Wakefield, M, and Giovino, G, "Teen penalties for tobacco possession, use, and purchase: evidence and issues," *Tobacco Control*, 12(Suppl 1):i6-i13, 2003.

Comments on VT DLL Rules

CB

Clare Buckley <cbuckley@leoninepublicaffairs.com>
To: r. Genest, Styler

Reply

Reply All

Forward

Tue 9/19/2022 4:54 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Chief Genest:

The members of the DLL rule working group over the past few meetings asked a few questions for broader feedback from the wholesaler community. I convened a group of Vermont Wholesale Beverage Association (VWBA) members and offer the following responses to the questions the working group posed:

Credit Regulation No. 1 – VWBA members strongly support the current prohibition on credit for malt and vinous beverages, including a prohibition on the use of credit cards, and urge DLL to keep the rule in place. VWBA members support adding ready-to-drink spirits beverages to the ban on credit in Credit Regulation No. 1. Our understanding is that "cider" is considered a "vinous beverage" under Act 177 so wherever wine or vinous beverage appears in the regulation, it includes cider, so the ban on credit also applies to "cider."

Wholesale Dealer Reg. No. 8 - VWBA members support giving wholesalers the option of utilizing electronic copies of invoices with no hard copies so long as the wholesaler can produce an electronic version at any time for DLL.

Wholesale Dealer Reg. No. 12 - VWBA supports adding ready-to-drink spirits beverages to this regulation so that it applies to malt beverages and RTDs.

Wholesale Dealer Reg. No. 14 - VWBA supports adding ready-to-drink spirits beverages to this regulation regarding minimum delivery amounts. VWBA supports the \$75 minimum delivery amount and retaining the "aggregate quantity" concept so the aggregate quantity would consist of malt beverages, vinous beverages and ready-to-drink spirits beverages.

If you have questions about the above comments or have additional questions you'd like me to run by VWBA members, please let me know. Thanks for giving us the opportunity to participate in the working group.

Clare

Clare Buckley, Partner
Leonine Public Affairs, LLP
1 Blanchard Court, Suite 101, Montpelier, VT 05602
Cell: 802-777-2064
cbuckley@leoninepublicaffairs.com

Genest, Skyler

From: Amy Spear <aspear@vtchamber.com>
Sent: Friday, September 16, 2022 3:51 PM
To: Genest, Skyler
Cc: Posley, Jacqueline; Knight, Wendy
Subject: RE: Break Open Tickets / Gaming Proposed Regulation

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Skylar,

Thank you for the information. From what I have heard from our members there would not be any issue with the changes to break open tickets.

I will keep you posted if I heard otherwise!

Best,
Amy

Amy Spear
Vice President of Tourism | Vermont Chamber of Commerce
President | Vermont Attractions Association



[Join](#) the Vermont Chamber today!

From: Genest, Skyler <Skyler.Genest@vermont.gov>
Sent: Wednesday, September 14, 2022 11:01 AM
To: Amy Spear <aspear@vtchamber.com>
Cc: Posley, Jacqueline <Jacqueline.Posley@vermont.gov>; Knight, Wendy <Wendy.Knight@vermont.gov>
Subject: External: Break Open Tickets / Gaming Proposed Regulation

Hi Amy,

As I believe you are aware, but the Department has engaged in a lengthy and exhaustive review of our regulations looking at gaps in regulation, conflicts with statute, and relevancy of existing regulations.

In the realm of break open tickets, we did land on some proposed regulatory language that our Office of Compliance and Enforcement believes would create a paradigm which would protect the non-profit organizations who can be vulnerable victims of fraud when they partner with on-premise locations to sell these gaming products on their behalf (as permitted by law). You might be aware that the Department has identified examples of criminal activity where licensees have not provided all of the proceeds generated by the sale of break open tickets to the non-profit organization contrary to state law. OCE believes that this occurrence is more frequent than we are made aware of because the non-profits are reluctant to report this as they don't wish to jeopardize any possible income, even if it isn't the full amount they are entitled to via law.

We would really value some feedback from the industry on the following proposed regulatory language. Most of this mirrors requirements in state law. In particular, #6 below would be a significant change in how the arrangement to engage in these sales occur now. Current state, licensees will sell the tickets and after the fact provide the proceeds. Proposed Gaming Regulation #6 would require the licensee to provide the expected net proceed to the non-profit before they engage in sales to their patrons, and then recoup the funds via the sales.

Could we rely on your network to garner any possible feedback on this issue?

OCE recommends the following regulatory language related to break open tickets:

Gaming Regulations

- 1. Prior to approval from Department to engage in Break-Open Ticket sales, a licensee must provide an IRS 501(c) designation letter, or provide enough proof to the Department that the non-profit they are benefiting via sale of Break-Open Ticket sales would qualify for 501(c) status pursuant to applicable provisions in state law.**
- 2. Except for clubs as defined by Title 7, No owners or employees of a licensed establishment may order or take delivery of break open tickets from a wholesale distributor, pursuant to applicable provisions in state law, unless the owners or employees are bona-fide members or certified agents of the nonprofit. Only nonprofit organizations may purchase break-open tickets from a license wholesale distributor.**
- 3. Except for clubs as defined by Title 7, No licensee may engage in games of chance that would benefit or support any non-profit of which they have direct or indirect control of, or have a direct or indirect financial interest in.**
- 4. No licensee or employee of a licensee, or their volunteers shall engage in any game of chance play at their respective licensed establishment(s).**
- 5. Licensees who engage in break-open ticket sales at their establishment must account for proceeds generated for each game on forms prescribed by the Department. That accounting shall include: Serial number of the game, Number of tickets per game, Number of tickets sold, Total dollar amount in payout for prizes awarded, Total dollar amount given to nonprofit organization, and Total dollar amount of any retained accounting fees. Licensees may retain a reasonable accounting fee. Pursuant to applicable provisions in state law this fee shall not exceed \$2,000 in any calendar year.**
- 6. Except for clubs as defined by Title 7, prior to the sale of any single implement of a game of chance such as a break open ticket on behalf of an eligible non-profit, the licensed establishment shall provide funds in the amount of the total expected net revenue as identified by the manufacturer of the game of change, minus the reasonable accounting fees identified in applicable provisions in state law.**

I appreciate in advance any work you can do with this!

Best

Chief Skyler Genest
Senior Director, Licensee Operations
Vermont Department of Liquor and Lottery
802.477.2429 | skyler.genest@vermont.gov