CHARITY R. CLARK
ATTORNEY GENERAL

TEL: (802) 828-3171

www.ago.vermont.gov

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

Good morning. My name is Rose Kennedy, I am an assistant Attorney General. I've been in the Attorney General's Office since June of 2022 and in the Consumer Protection Division since May 2024. I have some prepared remarks in support of S.198—a bill that would protect Vermont's youth and respond to the rapid expansion of non-traditional tobacco products. Then I'm happy to take any questions from the Committee.

My primary responsibility since joining the Consumer Protection Division has been Tobacco enforcement. As you may know, Vermont is a signatory to the Master Settlement Agreement ("MSA") from 1998 in which the sale and distribution of traditional combustible cigarettes and roll your own tobacco is highly regulated. The diligent enforcement of the terms of the MSA is important work, that our office, the Department of Liquor and Lottery ("DLL") and the Tax Department does together all year round to make sure every cigarette that is sold in Vermont is in compliance with both state and federal laws. In 2025, under the MSA, Vermont received a payment of approximately $23 Million dollars and since the MSA's inception, Vermont has received over $800 million from tobacco manufacturers. So just to be clear, monitoring brick and mortal stores and the sale of combustible cigarettes and roll your own tobacco continues to be a vital part of what we all do.

However, the trend is that the MSA payments that Vermont receives are decreasing and will likely continue to decrease over time, largely because of the growth of the tobacco

substitutes market, which brings us here today. Tobacco substitutes includes Electronic Nicotine Delivery System, ("ENDS"), otherwise known as Vapes or e-cigarettes, and nicotine pouches. These products came into existence, after 2006 and therefore, are not covered by the MSA. The same framework that exists to regulate the sale of combustible tobacco does not exist when it comes to these products. Especially the restrictions that prohibit the marketing and advertising to youth.

When these tobacco substitutes products were first introduced, there was some hope that they may assist adults in their efforts to quit smoking cigarettes. However, the reality is that none of these products have been approved by the Food and Drug Administration ("FDA") as 'cessation devices' or medicines and all of these products contain nicotine, or synthetic nicotine, which is highly addictive.

The Attorney General's Office believes that tobacco and nicotine products are harmful to Vermont consumers, especially youth, and has attempted, throughout the years to combat their illegal sales. Foremost in our minds, as we do this work, is the concern that while the MSA may have helped to curb traditional cigarette smoking amongst Vermont's younger generations – those born after Joe Camel – the ENDS or nicotine pouch market is helping to grow a new generation of nicotine-addicted youth. As of 2023, according to the Vermont Department of Health, 16% of Vermont high school students reported that they used e-cigarettes at least once in the past 30 days, but what is most concerning about that number is that of those students, 37% said they did so daily – which seems to suggest addiction. We know that approximately 86% of kids that start using nicotine products do so with a flavored product or with a product that appears to be marketed to appeal to youth and to downplay the addictive impact of the product.

For background's sake, it's important to understand that the authority to regulate this nicotine market falls primarily within the purview of the federal government. In 2009, the Family Smoking Prevention and Tobacco Control Act ("Act"), gave the FDA the authority to regulate

tobacco products. And in 2016, that authority was extended to the regulation of e-cigarettes and tobacco substitutes when the FDA adopted what is commonly known as the "Deeming Rule." See 21 U.S.C.A. § 387p(a)(2)(A).

However, since the adoption of the Deeming Rule, there has been an extraordinary growth in this market and the FDA tasked with reviewing new products, was inundated with some 6.5 million premarket tobacco product applications ("PMTAs"), most of which were for electronic cigarettes. To date, the FDA has only authorized only thirty-nine (39) e-cigarettes and twenty-six (26) nicotine pouches that may be lawfully sold in the U.S. And to be clear, this does not mean that the FDA approves of these products as 'safe' but merely authorizes their sale.
And if you go to the FDA website, that is exactly what it says.

This means that many of the ENDS and nicotine products that you see on Vermont shelves are, in fact, illegal. However, the FDA, in large part because the market was flooded and the agency was overwhelmed with applications, created a policy whereby products that had been in the market as of August 2016 and where an application had been submitted by September 2020, the FDA chose not to prosecute these products, assuming that it would be able to make decisions on the pending applications, within a reasonable period of time. However, here we are almost 5½ years later, with millions of applications still pending and illegal products still on the shelves.

In short, the FDA's policy of non-prosecution has left this market in a bit of chaos – confusing retailers and frustrating consumers. And while, there have been some statements by the current administration that enforcement efforts will be stepped up, and that only FDA authorized products are legal, Vermont and her fellow states have not seen much regulation and enforcement from the federal government. We need to step into this space to fill this void.

Meanwhile, more Vermont youth are trying these products and are potentially becoming nicotine-addicted. That's why we are here today, in support of the provisions in S.198. We believe that products targeted to youth should be banned under our state law, that those who sell tobacco

and tobacco substitutes should be properly licensed, that DLL should have the authority to conduct brick and mortar audits on nicotine products like they do for cigarettes and that our state should be 100% certain that the tax it is owed on these products is being collected.

There's a lot in this bill, but I want to focus on a few key provisions. First, I want to discuss the **deceptive products ban** that is incorporated in S.198. I brought with me today some images of these products so that you can see what we are talking about. The AGO thinks it is important to prohibit the sale of nicotine products that are designed to look like toys, games or school supplies. We believe these types of products are designed to appeal to youth, and are attractive to youth, but also tend to make youth, and even parents, believe that they are not harmful. When a product looks like a kid's toy, youth and parents tend to believe that they are 'safe for kids.' We have heard stories of parents having no idea what a vape really is – not realizing that their child is inhaling nicotine (and metals, we're learning), -- but rather thinking a vape is just a fruity water vapor treat. Alternatively, products designed to look like toys or school supplies are able to be hidden from adults in plain sight, because parents and teachers, are not quite sure what to look for and these products are designed to be stealthy.

These products are clearly meant to hook youth and we believe they should be prohibited in Vermont. We are aware of some vapes that have a video game component where the more puffs a youth takes – i.e., the more nicotine they ingest – the higher their score.

Secondly, S.198 attempts to **strengthen licensing requirements** and clearly determines who can sell these products. Currently, if a retailer wants a license to sell alcohol, a tobacco license is thrown in for free, and for an additional $50 they can have a license to sell other nicotine products. We believe it's time to make these licenses independent of each other and to increase the fees, recognizing the growing market and the costs our state will likely incur from a new generation of nicotine users.

Additionally, S.198 **increases the penalties for those who would sell to underage folks or sell without a license.**

Third, S.198 provides for a **regulatory framework that would allow DLL to verify that nicotine products sold in stores are bought through licensed wholesalers and that Vermont tax is being paid**. Currently, DLL goes into every brick-and-mortar store in our state and can verify whether the cigarettes on the shelves are legal and whether the Vermont tax has been paid on these products by confirming that a tax stamp has been affixed to the product. This bill, would create a similar program for all nicotine products – just like cigarettes – and would allow DLL and Tax to confirm that the products on the shelves in Vermont stores were bought through licensed wholesalers and that a tax stamp—or other proof of tax payment—is properly affixed. We understand, because we've talked to representatives from the nicotine industry and the wholesalers that distribute these products that the packaging for these products may not be standard like a carton or pack of cigarettes is, but, we need some system in which Vermont can easily verify that these products are being sold through proper channels and that our state tax is being paid.

Lastly, we are seeing an increase in nicotine products – both vapes and pouches – with increasing nicotine concentrations. We are even seeing vapes that have the capability to alter the concentration per puff. These products are more potent than combustible cigarettes and we are concerned about their increasing popularity and their impact on our youth. As such, we support S.198's attempt to de-incentivize the production and sale of these products by taxing tobacco substitutes with higher nicotine concentrations at a higher tax rate. As such, S.198 proposes taxing **ENDS and pouches with levels of nicotine exceeding 5ml/gram at 100%.**

Much has changed in the tobacco market since the day of Joe Camel and the Marlboro Man. S.198 seeks to return some balance as the non-traditional nicotine market continues to evolve, ensuring proper regulation, appropriate taxation, and protection for Vermont's youth.

I know there is a lot for you to consider in this bill. The AGO appreciates your time and consideration in trying to regulate this market and with that, I am happy to answer any questions you may have.