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## OLR Bill Analysis

**sHB 7200 (as amended by House "A")\***

***AN ACT PROHIBITING THE SALE OF CIGARETTES, TOBACCO PRODUCTS, ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS TO PERSONS UNDER AGE TWENTY-ONE.***

### **SUMMARY**

This bill raises, from 18 to 21, the legal age to purchase cigarettes, other tobacco products, and e-cigarettes (i.e., electronic nicotine delivery systems and vapor products). It makes corresponding changes to the laws regarding the sale, giving, and delivery of such products to individuals under the legal age (e.g., updating the age on the required sign that cigarette dealers and distributors must display at the point of sale).

Additionally, the bill:

1. requires dealers who sell e-cigarettes and ship them directly to consumers (e.g., through online sales) to obtain the signature of a person aged 21 or older at the shipping address prior to delivery and require the signer to show proof of age (§ 19);
2. increases, from \$50 to \$200, the annual license fee for cigarette dealers (§§ 3 & 5);
3. increases, from \$400 to \$800, the annual registration fee for e-cigarette dealers and retains the \$400 fee for dealers with multiple registrations (§ 9);
4. reduces, from \$400 to \$200, the annual registration fee for e-cigarette manufacturers who hold multiple registrations (§ 10);
5. generally increases certain penalties for cigarette, tobacco product, and e-cigarette sales and purchases involving individuals under the legal age (§§ 7, 12, & 14-16);

6. requires the Department of Mental Health and Addiction Services (DMHAS) commissioner to conduct unannounced compliance checks on e-cigarette dealers and refer non-compliant dealers to the Department of Revenue Services (DRS) commissioner who may impose civil penalties (§ 12);
7. allows e-cigarette dealers to give promotional samples in connection with the promotion or advertisement of a product in a similar manner as current law allows for cigarettes and tobacco products (§§ 8 & 13);
8. bans smoking and e-cigarettes on the grounds of child care centers and schools (§§ 17 & 18); and
9. makes other changes affecting the sale of these products.

Additionally, the bill excludes from the definition of “vapor product,” biological products used to prevent, treat, or cure diseases or injuries that are authorized for sale by the federal Food and Drug Administration. It also makes minor changes to other related definitions.

Lastly, the bill makes technical and conforming changes.

\*House Amendment “A” replaces the original bill (File 579). It removes the provisions (1) prohibiting the sale of flavored cigarettes and e-cigarettes; (2) establishing a nonlapsing Tobacco Control Enforcement Account and Electronic Nicotine Delivery System and Vapor Product Account in the General Fund; (3) extending the timeframe, from 24 to 36 months, within which the DRS and Department of Consumer Protection (DCP) commissioners may impose certain fines for illegal sales; and (4) requiring the DRS commissioner to conduct annual unannounced compliance checks on cigarette dealers and distributors.

It also (1) increases the cigarette dealer license fee from \$50 to \$200, instead of \$250; (2) increases the e-cigarette dealer registration fee from \$400 to \$800, instead of \$1,000; (3) creates a tiered registration fee for e-

cigarette dealers and manufacturers; (4) requires DMHAS, instead of DCP, to conduct unannounced compliance checks of e-cigarette dealers; and (5) requires DMHAS to refer non-compliant e-cigarette dealers to DRS.

EFFECTIVE DATE: October 1, 2019

**§§ 3 & 5 — CIGARETTE DEALER LICENSE FEE**

The bill increases, from \$50 to \$200, the annual license fee for cigarette dealers. It also increases, from \$5 to \$50, the penalty for each day a cigarette dealer or distributor operates without a license.

**§§ 4 & 7 — VENDING MACHINE SALES**

Current law allows the DRS commissioner, after a hearing, to impose penalties on owners of establishments with cigarette vending machines and restricted cigarette vending machines (see BACKGROUND) for sales to individuals under the legal age as follows:

1. for a 1<sup>st</sup> violation, if the owner fails to successfully complete an online tobacco education program, \$500 and
2. for a 2<sup>nd</sup> or 3<sup>rd</sup> violation, \$750.

The bill increases, from \$750 to \$1,000, the penalty for a third violation. As under current law, the commissioner may impose fines for 2<sup>nd</sup> and 3<sup>rd</sup> violations that occur within 24 months after the date of the first violation.

Existing law, unchanged by the bill, requires an establishment owner who commits a third violation, to immediately remove the vending machine from the establishment and prohibits any vending machine at the establishment for one year after such removal.

By law, the DRS commissioner may also assess the following civil penalties against a person, dealer, or distributor who violates the vending machine laws: (1) \$250 for a first violation and (2) \$500 for a second or third violation within 18 months. After the third violation,

the vending machine must be immediately removed from the area, facility, or business where it is placed and such machines are prohibited from the location for one year after the removal.

### **§§ 7, 14, & 16 — PENALTIES FOR PURCHASES**

Under current law, a person under the legal age who (1) buys cigarettes, other tobacco products, or e-cigarettes; (2) misrepresents his or her age to do so; or (3) possesses one in public, faces a fine of up to \$50 for a first offense and between \$50 and \$100 for each subsequent offense. The bill eliminates the fine for possessing these products in public. By law, violators may pay the above listed fines by mail, without making a court appearance (CGS § 51-164n).

Additionally, the bill eliminates the DRS commissioner's authority to, after a hearing, also impose civil penalties on individuals under the legal age who purchase cigarettes or other tobacco products.

### **§§ 7, 12, & 14-16 — PENALTIES FOR SALES**

#### ***Maximum Fines***

The bill increases the maximum fines that may be imposed on someone who sells, gives, or delivers cigarettes, other tobacco products, or e-cigarettes to someone under the legal age as follows:

1. for a first offense, from \$200 to \$300;
2. for a second offense, from \$350 to \$750; and
3. for each subsequent offense, from \$500 to \$1,000.

As under current law, the fines for second and subsequent offenses apply to those that occur within 24 months of the first offense.

Under existing law and the bill, these penalties do not apply if the person under the legal age is delivering or accepting delivery of the product (1) in his or her capacity as an employee or (2) as part of a scientific study for medical research that meets specified criteria.

#### ***DCP and DRS Penalties***

Current law allows the DRS commissioner, after a hearing, to impose civil penalties on cigarette dealers, distributors, or their employees for sales to individuals under the legal age. The bill increases the penalties on dealers or distributors for 3<sup>rd</sup> or 4<sup>th</sup> violations. It also allows the DRS commissioner, after a hearing, to impose civil penalties on e-cigarette dealers or their employees for sales to individuals under the legal age in generally the same manner as current law and the bill allows him to do for cigarette dealers, distributors, or their employees.

Table 1 compares the penalties under current law with those under the bill. As under current law, the penalties do not apply if the person under the legal age is delivering or accepting delivery of the product in his or her capacity as an employee.

**Table 1: Penalties for Sales to Individuals under the Legal Age**

	<i>Current Law</i>	<i>Under the Bill</i>
	<b><i>Penalties on Cigarette Dealers and Distributors</i></b>	
<b>1<sup>st</sup> violation</b>	\$300, if they fail to complete an online tobacco prevention education program within 30 days	\$300, if they fail to complete an online tobacco prevention education program within 30 days
<b>2<sup>nd</sup> violation</b>	\$750	\$750
<b>3<sup>rd</sup> violation</b>	\$750, plus 30-day license or certificate suspension	\$1000, plus 30-day license suspension
<b>4<sup>th</sup> violation</b>	N/A	\$1000, plus license revocation
	<b><i>Penalties on Employees of Dealers and Distributors</i></b>	
<b>1<sup>st</sup> violation</b>	\$200, if they fail to complete an online tobacco education program within 30 days	\$200, if they fail to complete an online tobacco education program within 30 days
<b>2<sup>nd</sup> violation</b>	\$250, if it occurred within 24 months of the first violation	\$250, if it occurred within 24 months of the first violation

As under current law, the above fines for second and subsequent violations may be imposed for violations that occur within 24 months after the first violation.

Under the bill, the DRS commissioner may only impose the above fines on e-cigarette dealers (or their employees) referred to him by the

DMHAS commissioner after completing unannounced compliance checks (see below). For third and fourth violations, the DRS commissioner must direct the DCP commissioner to suspend or revoke the e-cigarette dealer's registration. Before taking such action, the bill requires the DRS commissioner to notify the e-cigarette dealer in writing of the hearing time and location and require the dealer to show cause why the registration should not be suspended or revoked. The notice must be delivered personally, or by registered or certified mail at least ten days before the hearing date. The DCP commissioner is not required to hold a hearing before suspending or revoking the e-cigarette dealer's registration.

Existing law similarly requires the DRS commissioner to do this for cigarette dealers and distributors and allows him, after a hearing, to suspend or revoke the license of a dealer or distributor for cigarette or tobacco product sales to individuals under the legal age.

#### ***Public Notice of License Suspension or Revocation***

If the DCP or DRS commissioners suspend or revoke the license or certificate of an e-cigarette dealer or a cigarette dealer or distributor, respectively, the bill requires the DRS commissioner to order them to conspicuously post a notice in a public place in the establishment stating that such products cannot be sold during the suspension or revocation period as well as the reasons for the suspension or revocation. Under the bill, a dealer or distributor who sells these products during the suspension or revocation period commits an additional violation.

#### ***Reinstating an E-Cigarette Dealer Registration***

If the DCP commissioner revokes an e-cigarette dealer's registration, the bill prohibits her from issuing the dealer a new registration unless she is satisfied that the dealer will comply with the state's e-cigarette laws and regulations.

#### ***Proof of Age***

The bill requires cigarette, tobacco product, and e-cigarette sellers and their agents or employees to ask a prospective buyer who appears

to be under age 30 for proper proof of age, in the form of a driver's license, valid passport, or identity card. Current law requires sellers to do this when a prospective buyer's age is in question.

Under existing law and the bill, sellers are prohibited from selling cigarettes, tobacco products, or e-cigarette to someone who does not provide this proof.

### ***Consumer Notice for E-Cigarette Sales***

The bill requires e-cigarette dealers to place and maintain at each point of sale a notice to consumers that states:

1. the sale, giving, or delivery of e-cigarettes to anyone under age 21 is prohibited by law;
2. a person under age 21 is prohibited from using false identification to purchase e-cigarettes; and
3. the penalties and fines for violating the e-cigarette purchasing laws.

Similar requirements already apply to cigarette dealers and distributors under existing law.

### ***Compliance Checks***

The bill requires the DMHAS commissioner to conduct unannounced compliance checks on e-cigarette dealers by having adults ages 16 to 20 enter the dealers' place of business and attempt to purchase e-cigarettes.

The commissioner must also conduct an unannounced follow-up compliance check of all non-compliant dealers and refer them to the DRS commissioner, who may then impose a penalty (see above). (The bill does not specify a timeframe for the initial and follow-up compliance checks.)

### **§§ 8 & 13 — PROMOTIONAL SAMPLES**

The bill allows e-cigarette dealers to give or deliver free e-cigarette samples in connection with the promotion or advertisement of a

product in a similar manner as current law allows for dealers and distributors of cigarettes and tobacco products. Specifically, an e-cigarette dealer may do so if:

1. the product is given or delivered at the location identified on the dealer's registration application or at an event or establishment in an area that can only be accessed by adults of legal age to purchase and
2. the sample contains at least two e-cigarettes, for which taxes have previously been paid.

Under the bill, the e-cigarette dealer is liable for any e-cigarette sample given or delivered to a person under age 21 on the dealer's premises by someone conducting a promotion or advertisement of the product.

The bill does not apply to e-cigarette samples given or delivered in connection with the sale of a similar product.

Additionally, the bill requires e-cigarette, cigarette, and tobacco product samples to be delivered or given in accordance with federal laws and regulations.

## **§§ 9 & 10 — E-CIGARETTE DEALER AND MANUFACTURER REGISTRATIONS AND ENFORCEMENT ACCOUNT**

### ***Dealer Registration Requirements and Increased Fees***

The bill specifies that a person cannot sell, offer for sale, or possess with the intent to sell, e-cigarettes unless he or she is an employee, agent, or direct affiliate of a business with an active e-cigarette dealer registration from DCP. It also specifically requires a separate dealer registration for each place of business that sells these products.

Additionally, the bill increases, from \$400 to \$800, the annual e-cigarette dealer registration fee. But it retains the \$400 registration fee for e-cigarette dealers with multiple dealer registrations.

The bill also makes related minor, technical, and conforming changes.

### ***Manufacturer Registration Requirements***

Under current law, e-cigarette manufacturers must register with DCP and annually pay a \$400 registration fee. The bill reduces the registration fee to \$200 for e-cigarette manufacturers who hold multiple manufacturer registrations.

### ***Expired Registrations***

Under current law, an e-cigarette manufacturer or dealer who knowingly (1) manufacturers or (2) sells, offers for sale, or possesses with the intent to sell an e-cigarette with a registration that has expired for 90 days or less commits an infraction and is subject to a \$90 fine. The bill specifies that the fine applies to each day the dealer or manufacturer is in violation of the law.

Existing law requires the commissioner, before imposing such fines, to notify the manufacturer or dealer in writing and allow him or her 60 days to correct the violation. The bill eliminates the requirement that the written notice be sent by (1) certified mail, or similar United States Postal Service delivery method, or (2) electronic mail.

Current law allows DCP to renew a manufacturer's expired registration if the applicant pays any required fines. The bill allows the commissioner to do this only for registrations that have expired for six months or less.

## **§ 11 — EMPLOYEE AND OWNER ASSISTED E-CIGARETTE SALES**

The bill specifies that e-cigarette dealers generally may only sell e-cigarettes at the place of business identified on their dealer application through employee- or owner-assisted sales where customers cannot access the e-cigarettes without the employee's or owner's assistance. It continues to prohibit e-cigarette sales using self-service displays.

As under current law, e-cigarette dealers are exempt from the requirements if they prohibit anyone under age 21 from entering the place of business and post notice of the prohibition clearly at all of the business's entrances.

## **§§ 17 & 18 — SMOKING AND E-CIGARETTE BAN AT CHILD CARE CENTERS AND SCHOOLS**

Current law generally prohibits smoking and e-cigarette use in various locations, such as restaurants, health care institutions, and state or municipal buildings.

The bill adds to the law's prohibited locations by including all school property, inside or outside, instead of only within a school building while school is in session or during student activities. It specifies that the ban applies to public and private schools.

It also (1) expands current law's prohibition on e-cigarette use to include the grounds of a child care facility, instead of only inside the facility and (2) extends the prohibition to include cigarette and other tobacco product use. Under the bill, as under current law for e-cigarette use, the prohibition applies to family child care homes (i.e., private homes caring for up to six children) only when a child enrolled in the home is present.

## **§ 19 — ONLINE SALE AND DELIVERY OF E-CIGARETTES**

The bill requires e-cigarette dealers who sell e-cigarettes and ship them directly to in-state consumers (e.g., through online sales) to obtain the signature of a person aged 21 or older at the shipping address prior to delivery, and require the signer to provide a driver's license or identification card as proof of age.

The bill also requires the seller to ensure that the shipping label on such packages conspicuously states the following:

“CONTAINS AN ELECTRONIC NICOTINE DELIVERY SYSTEM OR VAPOR PRODUCT - SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.”

## **BACKGROUND**

### ***Cigarette Vending Machines***

Existing law distinguishes between two types of machines that it authorizes to dispense cigarettes. One is the traditional coin-operated vending machine. The other is the “restricted cigarette vending

machine,” which (1) automatically deactivates and cannot be operated after each sale and (2) requires a face-to-face interaction or display of identification between the purchaser and employee of the business where the machine is located.

***Related Bills***

HB 5975 (File 115), favorably reported by the Children’s Committee, similarly requires a signature and proof of age for the delivery of e-cigarettes purchased online.

HB 6404 (File 118), favorably reported by the Children’s Committee, bans certain retail establishments from selling or offering for sale flavored e-cigarette liquid.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 20 Nay 1 (03/22/2019)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 44 Nay 6 (05/01/2019)