
OLR Bill Analysis

HB 6450

AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS CONCERNING PUBLIC HEALTH.

SUMMARY

Starting January 1, 2022, this bill prohibits e-cigarette dealers from selling, delivering, giving, or possessing with the intent to sell, e-cigarettes and vapor products with (1) a nicotine content great than 35 milligrams per milliliter (mg/ml) or (2) a flavoring agent other than tobacco. It excludes from the flavor ban “modified risk tobacco products” designated by the U.S. Department of Health and Human Services (see BACKGROUND).

Additionally, the bill:

1. requires e-cigarette manufacturers to provide documentation to e-cigarette dealers on the nicotine content of their products and requires dealers to maintain the documentation (§ 2);
2. requires the Department of Mental Health and Addiction Services (DMHAS) 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 (§ 3);
3. increases the penalties for sales of cigarettes, tobacco products, e-cigarettes, and vapor products to individuals under age 21 and extends the same increased penalties to e-cigarette dealers who violate the bill’s flavor ban and nicotine content requirements (§§ 3-6);
4. increases the penalties on owners of establishments with cigarette vending machines and restricted cigarette vending machines for sales to individuals under the legal age (§ 4);

5. allows the state's health insurance exchange to (a) impose assessments on health carriers to cover the costs of the all-payer claims database (APCD) and (b) with the Office of Policy and Management's (OPM) approval, enter into an agreement with the Office of Health Strategy (OHS) to use these funds for the APCD (§ 7); and
6. requires the amount annually appropriated from the Insurance Fund to OHS, including the cost of fringe benefits for personnel, to be reduced by the amount of Medicaid reimbursement the state received for allowable administrative expenses (§ 8).

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: January 1, 2022

§§ 1-3 & 6 — E-CIGARETTES AND VAPOR PRODUCTS

Definition of Flavoring

Under the bill, flavored e-cigarettes and vapor products are those with a flavoring agent that has been added for the purpose of flavoring these products. It defines a "flavoring agent" as an additive:

1. used in accordance with good manufacturing practice principles and in the minimum quantity required to produce its intended effect;
2. (a) consisting of one or more ingredients generally recognized as safe in food or drugs, (b) has been previously sanctioned for such use by the state or federal government, (c) meets U.S. Pharmacopeia standards, or (d) is an additive permitted for direct addition to food for human consumption under FDA regulations;
3. that is inert and produces no effect other than the instillation or modification of flavor; and
4. is no greater than 5% of the product's total weight.

Nicotine Content

The bill prohibits e-cigarette dealers from selling e-cigarettes or vapor products with a nicotine content greater than 35 mg/ml. It requires e-cigarette manufacturers to provide documentation to dealers on the nicotine content of these products (expressed as mg/ml) that the manufacturers sell to them.

Under the bill, dealers must maintain this documentation at their registered place of business for each product sold, delivered, or given to them by a manufacturer. They must also provide the documentation to DMHAS upon request, during any unannounced compliance check the department conducts.

Compliance Checks

The bill requires the DMHAS commissioner, or her designee, to conduct unannounced compliance checks on e-cigarette dealers to determine whether they are complying with the bill's flavor ban and nicotine content requirements. Existing law already requires DMHAS to conduct these checks for underage sales (i.e., sales to individuals under age 21).

Under the bill, the department must refer e-cigarette dealers to the DRS commissioner after the initial compliance check who (1) do not produce documentation on the nicotine content of their products or (2) sell products that violate the nicotine threshold. In the case of the flavor ban, the department must refer non-compliant dealers to DRS after completing an unannounced follow-up compliance check. The DRS may impose a penalty (see Table 1 below).

§§ 3-6 — PENALTIES FOR UNDERAGE SALES

Existing law allows the DRS commissioner, after a hearing, to impose civil penalties on e-cigarette dealers, cigarette dealers and distributors, or their employees for sales to individuals under age 21. The bill increases these penalties as shown in the table below and extends the same penalties to e-cigarette dealers who violate the bill's flavor ban and nicotine content requirements.

Table 1: Civil Penalties for Underage Sales

	<i>Current Law</i>	<i>Under the Bill</i>
<i>Penalties on Cigarette Dealers and Distributors and E-Cigarette Dealers</i>		
1st violation	\$300, if they fail to complete an online tobacco prevention education program within 30 days	\$600, if they fail to complete an online tobacco prevention education program within 30 days
2nd violation	\$750	\$1,500
3rd violation	\$1,000, plus minimum 30-day license suspension	\$2,000, plus minimum 30-day license suspension
4th violation	\$1,000, plus license revocation	\$2,000, plus license revocation
<i>Penalties on Their Employees</i>		
1st violation	\$200, if the employee fails to complete an online tobacco education program within 30 days	\$400, if the employee fails to complete an online tobacco education program within 30 days
2nd violation	\$250	\$500

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, as under current law, the DRS commissioner may only impose the above fines on e-cigarette dealers (or their employees) who violate the bill's flavor ban and nicotine threshold if they are referred to him by the DMHAS commissioner after completing unannounced compliance checks (see above). For third and fourth violations, the DRS commissioner must direct the Department of Consumer Protection (DCP) commissioner to suspend or revoke the e-cigarette dealer's registration.

Before taking such action, existing law 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 10 days before the hearing date. When the DRS commissioner directs the DCP

commissioner to suspend or revoke the dealer's registration, the DCP commissioner is not required to hold an additional hearing before doing so.

§ 4 — 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. The bill increases these penalties as follows:

1. for a 1st violation, if the owner fails to successfully complete an online tobacco education program within 30 days, from \$500 to \$1,000;
2. for a 2nd violation, from \$750 to \$1,500; and
3. for a 3rd violation, from \$1,000 to \$2,000.

As under current law, the commissioner may impose fines for 2nd and 3rd 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 the 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 (CGS § 12-289a(b)).

§ 7 — ALL PAYER CLAIMS DATABASE

By law, the state's health insurance exchange (HIE) charges assessments or user fees to health carriers capable of offering a qualified health plan through the exchange to cover the exchange's costs. The bill allows the HIE to also charge these assessments or user fees to cover the costs of the state's all-payer claims database. As under current law, the HIE may impose interest and penalties on health carriers for delinquent payments of these assessments or fees.

The bill also authorizes the HIE to enter into an agreement with OHS to transfer the funds collected for the APCD's operation and to receive data from the ACPD database. Under the bill, the agreement must be approved by OPM and is not considered proprietary.

By law, OHS administers the APCD, which collects data relating to medical, pharmacy, dental, and other insurance claims information from public and private health insurers.

§ 8 — INSURANCE FUND

Existing law requires insurance companies and hospital and medical service corporations to annually pay into the Insurance Fund an amount that covers OHS's appropriation, including fringe benefits and certain capital equipment purchases. The bill requires the appropriation amount to be reduced by the amount of federal Medicaid reimbursement it receives for allowable Medicaid administrative expenses.

BACKGROUND

Modified Risk Tobacco Products (MRTP)

MRTPs are tobacco products designated by the federal Food and Drug Administration as providing less harm or risk of tobacco-related disease when compared to other commercially-marketed tobacco products, such as combustible cigarettes.

To qualify as an MRTP, product manufacturers must show, among other things, (1) scientific evidence that supports their claims about reduced harm or risk, (2) that consumers can adequately understand the information and appropriately perceive the relative risk of these

products compared to other tobacco products, and (3) the use of the MRTP will significantly reduce the harm and risk of tobacco-related disease to individual users and benefit the health of the population as a whole.

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 Bill

sSB 326 (File 98), favorably reported by the Public Health Committee, prohibits e-cigarette dealers and cigarette dealers and distributors from selling, offering or displaying for sale, or possessing with the intent to sell, flavored cigarettes, tobacco products, e-cigarettes, and vapor products and extends current law’s underage sale penalties for violations.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 24 Nay 9 (03/12/2021)