



House of Representatives

General Assembly

File No. 237

January Session, 2021

Substitute House Bill No. 6450

House of Representatives, April 1, 2021

The Committee on Public Health reported through REP. STEINBERG of the 136th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 21a-415 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective January*
3 *1, 2022*):

4 (a) As used in this chapter and section [53-344] 2 of this act:

5 (1) "Authorized owner" means the owner or authorized designee of a
6 business entity that is applying for a registration or is registered with
7 the Department of Consumer Protection pursuant to this chapter;

8 (2) "Business entity" means any corporation, limited liability
9 company, association, partnership, sole proprietorship, government,
10 governmental subdivision or agency, business trust, estate, trust or any
11 other legal entity;

12 (3) "Dealer registration" means an electronic nicotine delivery system

13 certificate of dealer registration issued by the Commissioner of
14 Consumer Protection pursuant to this section;

15 (4) "Manufacturer registration" means an electronic nicotine delivery
16 system certificate of manufacturer registration issued by the
17 Commissioner of Consumer Protection pursuant to section 21a-415a to
18 any person who mixes, compounds, repackages or resizes any nicotine-
19 containing electronic nicotine delivery system or vapor product;

20 (5) "Electronic cigarette liquid" means a liquid that, when used in an
21 electronic nicotine delivery system or vapor product, produces a vapor
22 that may or may not include nicotine and is inhaled by the user of such
23 electronic nicotine delivery system or vapor product;

24 (6) "Electronic nicotine delivery system" means an electronic device
25 used in the delivery of nicotine or other substances to a person inhaling
26 from the device, and includes, but is not limited to, an electronic
27 cigarette, electronic cigar, electronic cigarillo, electronic pipe or
28 electronic hookah and any related device and any cartridge or other
29 component of such device, including, but not limited to, electronic
30 cigarette liquid;

31 (7) "Vapor product" means any product that employs a heating
32 element, power source, electronic circuit or other electronic, chemical or
33 mechanical means, regardless of shape or size, to produce a vapor that
34 may include nicotine and is inhaled by the user of such product. "Vapor
35 product" does not include a medicinal or therapeutic product that is (A)
36 used by a licensed health care provider to treat a patient in a health care
37 setting, (B) used by a patient, as prescribed or directed by a licensed
38 health care provider in any setting, or (C) any drug or device, as defined
39 in the federal Food, Drug and Cosmetic Act, 21 USC 321, as amended
40 from time to time, any combination product, as described in said act, 21
41 USC 353(g), as amended from time to time, or any biological product, as
42 described in 42 USC 262, as amended from time to time, and 21 CFR
43 600.3, as amended from time to time, authorized for sale by the United
44 States Food and Drug Administration;

45 (8) "Sale" or "sell" means an act done intentionally by any person,
46 whether done as principal, proprietor, agent, servant or employee, of
47 transferring, or offering or attempting to transfer, for consideration,
48 including bartering or exchanging, or offering to barter or exchange;
49 [and]

50 (9) "Deliver" or "delivering" means an act done intentionally by any
51 person, whether as principal, proprietor, agent, servant or employee, of
52 transferring, or offering or attempting to transfer, physical possession
53 or control of an electronic nicotine delivery system or vapor product; [.]

54 (10) "Flavoring agent" means an additive used in food or drugs when
55 such additive (A) is used in accordance with good manufacturing
56 practice principles and in the minimum quantity required to produce its
57 intended effect; (B) (i) consists of one or more ingredients generally
58 recognized as safe in food or drugs, (ii) has been previously sanctioned
59 for use in food or drugs by the state or the federal government, (iii)
60 meets United States Pharmacopeia standards, or (iv) is an additive
61 permitted for direct addition to food for human consumption pursuant
62 to 21 CFR 172, as amended from time to time; (C) is inert and produces
63 no effect other than the instillation or modification of flavor; and (D) is
64 not greater than five per cent of the total weight of the product.

65 Sec. 2. (NEW) (*Effective January 1, 2022*) (a) No person shall sell, give,
66 deliver or possess with intent to sell in this state an electronic nicotine
67 delivery system or a vapor product with a flavoring agent, other than
68 tobacco flavor, that has been added for the purpose of flavoring the
69 contents of the electronic nicotine delivery system or vapor product.
70 This section shall not apply to any product that the United States
71 Secretary of Health and Human Services determines to be a modified
72 risk tobacco product pursuant to 21 USC 387k, as amended from time to
73 time.

74 (b) (1) No person shall sell, give, deliver or possess with intent to sell,
75 in this state an electronic nicotine delivery system or a vapor product
76 with a nicotine content that is greater than thirty-five milligrams per
77 milliliter. Each person with a manufacturer registration shall provide

78 documentation to a person with a dealer registration, indicating the
79 nicotine content, expressed as milligrams per milliliter, for each
80 electronic nicotine delivery system and vapor product sold by such
81 person with a manufacturer registration to such person with a dealer
82 registration.

83 (2) Each business entity holding a dealer registration shall (A)
84 maintain documentation, within the place of business identified in the
85 business entity's application for dealer registration, of the nicotine
86 content provided pursuant to subdivision (1) of this subsection by the
87 person with a manufacturer registration, for each electronic nicotine
88 delivery system and vapor product sold, given or delivered by such
89 person to the business entity, and (B) provide such documentation at the
90 request of the Commissioner of Mental Health and Addiction Services,
91 or the commissioner's designee, during any unannounced compliance
92 check conducted pursuant to section 21-415b of the general statutes, as
93 amended by this act.

94 (c) As used in this section, "person" means any individual, authorized
95 owner of a business entity, retail establishment, as defined in section
96 19a-106a of the general statutes, partnership, company, limited liability
97 company, public or private corporation, association, trustee, executor,
98 administrator or other fiduciary or custodian.

99 Sec. 3. Section 21a-415b of the general statutes is repealed and the
100 following is substituted in lieu thereof (*Effective January 1, 2022*):

101 (a) Each business entity with a dealer registration shall place and
102 maintain in legible condition at each point of sale of electronic nicotine
103 delivery systems or vapor products a notice to consumers that states (1)
104 the sale, giving or delivering of electronic nicotine delivery systems and
105 vapor products to any person under twenty-one years of age is
106 prohibited by section 53-344b, as amended by this act, (2) the use of false
107 identification by a person under twenty-one years of age to purchase an
108 electronic nicotine delivery system or a vapor product is prohibited, and
109 (3) the penalties and fines for violating the provisions of this section and
110 section 53-344b, as amended by this act.

111 (b) (1) The Commissioner of Mental Health and Addiction Services,
112 or the commissioner's designee, shall conduct unannounced compliance
113 checks on business entities [holding] with a dealer registration by
114 engaging persons between the ages of sixteen and twenty to enter the
115 place of business of each such business entity to attempt to purchase an
116 electronic nicotine delivery system or a vapor product.

117 (2) The Commissioner of Mental Health and Addiction Services, or
118 the commissioner's designee, shall conduct unannounced compliance
119 checks on business entities with a dealer registration to determine
120 whether any such business entity is selling, giving or delivering or has
121 sold, given or delivered any electronic nicotine delivery system or vapor
122 product with a flavoring agent, other than tobacco flavor, that has been
123 added for the purpose of flavoring the contents of the electronic delivery
124 system or vapor product, in violation of subsection (a) of section 2 of
125 this act.

126 (3) The Commissioner of Mental Health and Addiction Services, or
127 the commissioner's designee, shall conduct unannounced compliance
128 checks on business entities with a dealer registration to determine
129 whether each such business entity is in possession of the documentation
130 required under subsection (b) of section 2 of this act and whether such
131 documentation indicates that electronic nicotine delivery systems or
132 vapor products with a nicotine content greater than thirty-five
133 milligrams per milliliter were sold, given or delivered by such business
134 entity. The commissioner shall refer all business entities that do not
135 possess such documentation or that sold, gave, delivered or possessed
136 with intent to sell an electronic nicotine delivery system or a vapor
137 product with a nicotine content that is greater than thirty-five
138 milligrams per milliliter to the Commissioner of Revenue Services.

139 (4) The commissioner shall conduct unannounced follow-up
140 compliance checks of all noncompliant business entities and shall refer
141 all noncompliant business entities to the Commissioner of Revenue
142 Services.

143 (c) Upon receipt of a referral made pursuant to subsection (b) of this

144 section, the Commissioner of Revenue Services may, following a
145 hearing, impose a civil penalty and direct the Commissioner of
146 Consumer Protection to suspend or revoke the dealer registration of the
147 business entity that is the subject of such referral. The Commissioner of
148 Revenue Services shall provide such business entity with written notice
149 of the hearing, specifying the time and place of such hearing and
150 requiring such business entity to show cause why such dealer
151 registration should not be suspended or revoked. The written notice of
152 the hearing shall be mailed or delivered to such business entity not less
153 than ten days preceding the date of the hearing. Such notice may be
154 served personally or by registered or certified mail.

155 (d) If the Commissioner of Revenue Services finds, after a hearing
156 pursuant to subsection (c) of this section, that any person employed by
157 any business entity issued a dealer registration under section 21a-415,
158 as amended by this act, has sold, given or delivered an electronic
159 nicotine delivery system or vapor product to a person under twenty-one
160 years of age, other than a person under twenty-one years of age who is
161 delivering or accepting delivery in such person's capacity as an
162 employee, said commissioner shall, for the first violation, require such
163 employee to successfully complete an online prevention education
164 program administered by the Department of Mental Health and
165 Addiction Services not later than thirty days after said commissioner's
166 finding. Said commissioner shall assess any employee who fails to
167 complete such program a civil penalty of [two] four hundred dollars.
168 Said commissioner shall assess any employee a civil penalty of [two
169 hundred fifty] five hundred dollars for a second or subsequent violation
170 on or before twenty-four months after the date of the first violation.

171 (e) (1) If the Commissioner of Revenue Services finds, after a hearing
172 pursuant to subsection (c) of this section, that [(1)] (A) any business
173 entity issued a dealer registration under section 21a-415, as amended by
174 this act, has sold, given or delivered an electronic nicotine delivery
175 system or vapor product to a person under twenty-one years of age,
176 other than a person under twenty-one years of age who is delivering or
177 accepting delivery in such person's capacity as an employee, or [(2)] (B)

178 such person's employee has sold, given or delivered an electronic
179 nicotine delivery system or vapor product to a person under twenty-one
180 years of age, the commissioner shall, for the first violation, require the
181 authorized owner of such business entity to successfully complete an
182 online prevention education program administered by the Department
183 of Mental Health and Addiction Services not later than thirty days after
184 said commissioner's finding. Said commissioner shall assess any
185 business entity issued a dealer registration, whose authorized owner
186 fails to complete such program, a civil penalty of [three] six hundred
187 dollars for the first violation.

188 (2) Said commissioner shall assess such business entity a civil penalty
189 of [seven hundred fifty] one thousand five hundred dollars for a second
190 violation on or before twenty-four months after the date of the first
191 violation.

192 (3) For a third violation by such business entity on or before twenty-
193 four months after the date of the first violation, said commissioner shall
194 assess such business entity a civil penalty of [one] two thousand dollars
195 and notify the Commissioner of Consumer Protection that the dealer
196 registration held by such business entity under this chapter shall be
197 suspended for not less than thirty days.

198 (4) For a fourth violation on or before twenty-four months after the
199 date of the first violation, the Commissioner of Revenue Services shall
200 assess such business entity a civil penalty of [one] two thousand dollars
201 and notify the Commissioner of Consumer Protection that the dealer
202 registration held by such business entity under [said] this chapter shall
203 be revoked. The Commissioner of Revenue Services shall order such
204 business entity to conspicuously post a notice in a public place stating
205 that electronic nicotine delivery systems and vapor products cannot be
206 sold during the period of suspension or revocation and the reasons for
207 such suspension or revocation. Any sale of an electronic nicotine
208 delivery system or vapor product by such business entity during the
209 period of such suspension or revocation shall be deemed an additional
210 violation of this section.

211 (f) (1) If the Commissioner of Revenue Services finds, after a hearing
212 pursuant to subsection (c) of this section, that (A) any business entity
213 issued a dealer registration under section 21a-415, as amended by this
214 act, has sold, given or delivered an electronic nicotine delivery system
215 or vapor product with a flavoring agent, other than tobacco flavor, that
216 has been added for the purpose of flavoring the contents of the
217 electronic nicotine delivery system or vapor product, or (B) any such
218 business entity does not possess documentation of nicotine content or
219 nicotine content that indicates a level of nicotine that is greater than
220 thirty-five milligrams per milliliter for any electronic nicotine delivery
221 system or vapor product sold, given or delivered within the retail
222 establishment of the business entity, the commissioner shall, for the first
223 violation, require the authorized owner of such business entity to
224 successfully complete an online prevention education program
225 administered by the Department of Mental Health and Addiction
226 Services not later than thirty days after said commissioner's finding.
227 Said commissioner shall assess any business entity issued a dealer
228 registration, whose authorized owner fails to complete such program, a
229 civil penalty of six hundred dollars for the first violation.

230 (2) Said commissioner shall assess such business entity a civil penalty
231 of one thousand five hundred dollars for a second violation on or before
232 twenty-four months after the date of the first violation.

233 (3) For a third violation by such business entity on or before twenty-
234 four months after the date of the first violation, said commissioner shall
235 assess such business entity a civil penalty of two thousand dollars and
236 notify the Commissioner of Consumer Protection that the dealer
237 registration held by such business entity under this chapter shall be
238 suspended for not less than thirty days.

239 (4) For a fourth violation on or before twenty-four months after the
240 date of the first violation, the Commissioner of Revenue Services shall
241 assess such business entity a civil penalty of two thousand dollars and
242 notify the Commissioner of Consumer Protection that the dealer
243 registration held by such business entity under this chapter shall be

244 revoked. The Commissioner of Revenue Services shall order such
245 business entity to conspicuously post a notice in a public place stating
246 that electronic nicotine delivery systems and vapor products cannot be
247 sold during the period of suspension or revocation and the reasons for
248 such suspension or revocation. Any sale of an electronic nicotine
249 delivery system or vapor product by such business entity during the
250 period of such suspension or revocation shall be deemed an additional
251 violation of this section.

252 [(f)] (g) Upon receipt of notice of determination from the
253 Commissioner of Revenue Services made under subsection (e) or (f) of
254 this section, the Commissioner of Consumer Protection shall suspend or
255 revoke the dealer registration of the business entity that is the subject of
256 [said] the determination. The Commissioner of Consumer Protection
257 shall not be required to hold a hearing in connection with any notice of
258 determination received from the Commissioner of Revenue Services
259 under this section.

260 [(g)] (h) The Commissioner of Consumer Protection shall not issue a
261 new dealer registration to a former registrant whose dealer registration
262 was revoked unless the commissioner is satisfied that such business
263 entity that holds a dealer registration will comply with the provisions of
264 this chapter and any regulations related thereto, and section 53-344b, as
265 amended by this act.

266 Sec. 4. Section 12-295a of the general statutes is repealed and the
267 following is substituted in lieu thereof (*Effective January 1, 2022*):

268 (a) If the Commissioner of Revenue Services finds, after a hearing,
269 that any person employed by a dealer or distributor, as defined in
270 section 12-285, has sold, given or delivered cigarettes or tobacco
271 products to a person under twenty-one years of age other than a person
272 under twenty-one years of age who is delivering or accepting delivery
273 in such person's capacity as an employee, said commissioner shall, for
274 the first violation, require such person to successfully complete an
275 online tobacco prevention education program administered by the
276 Department of Mental Health and Addiction Services not later than

277 thirty days after said commissioner's finding. Said commissioner shall
278 assess any person who fails to complete such program a civil penalty of
279 [two] four hundred dollars. Said commissioner shall assess any person
280 employed by a dealer or distributor a civil penalty of [two hundred fifty]
281 five hundred dollars for a second or subsequent violation on or before
282 twenty-four months after the date of the first violation.

283 (b) (1) If the Commissioner of Revenue Services finds, after a hearing,
284 that any dealer or distributor has sold, given or delivered cigarettes or a
285 tobacco product to a person under twenty-one years of age other than a
286 person under twenty-one years of age who is delivering or accepting
287 delivery in such person's capacity as an employee, or such dealer or
288 distributor's employee has sold, given or delivered cigarettes or a
289 tobacco product to such person, said commissioner shall require such
290 dealer or distributor, for the first violation, to successfully complete an
291 online tobacco prevention education program administered by the
292 Department of Mental Health and Addiction Services not later than
293 thirty days after said commissioner's finding. Said commissioner shall
294 assess any dealer or distributor who fails to complete such program a
295 civil penalty of [three] six hundred dollars.

296 (2) Said commissioner shall assess [any] such dealer or distributor a
297 civil penalty of [seven hundred fifty] one thousand five hundred dollars
298 for a second violation on or before twenty-four months after the date of
299 the first violation.

300 (3) For a third violation on or before twenty-four months after the
301 date of the first violation, said commissioner shall assess such dealer or
302 distributor a civil penalty of [one] two thousand dollars and suspend
303 any license held by such dealer or distributor under this chapter for not
304 less than thirty days.

305 (4) For a fourth violation on or before twenty-four months after the
306 date of the first violation, said commissioner shall assess such dealer or
307 distributor a civil penalty of [one] two thousand dollars and revoke any
308 license issued to such dealer or distributor under this chapter. Said
309 commissioner shall order such distributor or dealer to conspicuously

310 post a notice in a public place within such distributor's or dealer's
311 establishment stating that cigarettes and tobacco products cannot be
312 sold during the period of such suspension or revocation and the reasons
313 for such suspension or revocation. Any sale of cigarettes or a tobacco
314 product by such dealer or distributor during such suspension or
315 revocation shall be deemed an additional violation of this subsection.

316 (c) (1) If the Commissioner of Revenue Services finds, after a hearing,
317 that any owner of an establishment in which a cigarette vending
318 machine or restricted cigarette vending machine is located has sold,
319 given or delivered cigarettes or tobacco products from any such
320 machine to a person under twenty-one years of age other than a person
321 under twenty-one years of age who is delivering or accepting delivery
322 in such person's capacity as an employee, or has allowed cigarettes or
323 tobacco products to be sold, given or delivered to such person from any
324 such machine, said commissioner shall require such owner, for the first
325 violation, to successfully complete an online tobacco prevention
326 education program administered by the Department of Mental Health
327 and Addiction Services not later than thirty days after said
328 commissioner's finding. Said commissioner shall assess any owner who
329 fails to complete such program a civil penalty of [five hundred] one
330 thousand dollars.

331 (2) Said commissioner shall assess [any] such owner a civil penalty of
332 [seven hundred fifty] one thousand five hundred dollars for a second
333 violation on or before twenty-four months after the date of the first
334 violation.

335 (3) For a third violation on or before twenty-four months after the
336 date of the first violation, said commissioner shall assess such owner a
337 civil penalty of [one] two thousand dollars and immediately remove any
338 such machine from such establishment and no such machine may be
339 placed in such establishment for a period of one year following such
340 removal.

341 (d) Any person aggrieved by any action of the commissioner
342 pursuant to this section may take any appeal of such action as provided

343 in sections 12-311 and 12-312.

344 Sec. 5. Subsection (b) of section 53-344 of the general statutes is
345 repealed and the following is substituted in lieu thereof (*Effective January*
346 *1, 2022*):

347 (b) Any person who sells, gives or delivers to any person under
348 twenty-one years of age cigarettes or a tobacco product shall be fined
349 not more than [three] six hundred dollars for the first offense, not more
350 than [seven hundred fifty] one thousand five hundred dollars for a
351 second offense on or before twenty-four months after the date of the first
352 offense and not more than [one] two thousand dollars for each
353 subsequent offense on or before twenty-four months after the date of the
354 first offense. The provisions of this subsection shall not apply to a person
355 under twenty-one years of age who is delivering or accepting delivery
356 of cigarettes or a tobacco product (1) in such person's capacity as an
357 employee, or (2) as part of a scientific study being conducted by an
358 organization for the purpose of medical research to further efforts in
359 cigarette and tobacco product use prevention and cessation, provided
360 such medical research has been approved by the organization's
361 institutional review board, as defined in section 21a-408.

362 Sec. 6. Subsection (b) of section 53-344b of the general statutes is
363 repealed and the following is substituted in lieu thereof (*Effective January*
364 *1, 2022*):

365 (b) Any person who sells, gives or delivers to any person under
366 twenty-one years of age an electronic nicotine delivery system or vapor
367 product in any form shall be fined not more than [three] six hundred
368 dollars for the first offense, not more than [seven hundred fifty] one
369 thousand five hundred dollars for a second offense on or before twenty-
370 four months after the date of the first offense and not more than [one]
371 two thousand dollars for each subsequent offense on or before twenty-
372 four months after the date of the first offense. The provisions of this
373 subsection shall not apply to a person under twenty-one years of age
374 who is delivering or accepting delivery of an electronic nicotine delivery
375 system or vapor product (1) in such person's capacity as an employee,

376 or (2) as part of a scientific study being conducted by an organization
377 for the purpose of medical research to further efforts in tobacco use
378 prevention and cessation, provided such medical research has been
379 approved by the organization's institutional review board, as defined in
380 section 21a-408.

381 Sec. 7. Section 38a-1083 of the general statutes is repealed and the
382 following is substituted in lieu thereof (*Effective January 1, 2022*):

383 (a) For purposes of sections 38a-1080 to 38a-1093, inclusive, "purposes
384 of the exchange" means the purposes of and the pursuit of the goals of
385 the exchange expressed in and pursuant to this section and the
386 performance of the duties and responsibilities of the exchange set forth
387 in sections 38a-1084 to 38a-1087, inclusive, which are hereby determined
388 to be public purposes for which public funds may be expended. The
389 powers enumerated in this section shall be interpreted broadly to
390 effectuate the purposes of the exchange and shall not be construed as a
391 limitation of powers.

392 (b) The goals of the exchange shall be to reduce the number of
393 individuals without health insurance in this state and assist individuals
394 and small employers in the procurement of health insurance by, among
395 other services, offering easily comparable and understandable
396 information about health insurance options.

397 (c) The exchange is authorized and empowered to:

398 (1) Have perpetual succession as a body politic and corporate and to
399 adopt bylaws for the regulation of its affairs and the conduct of its
400 business;

401 (2) Adopt an official seal and alter the same at pleasure;

402 (3) Maintain an office in the state at such place or places as it may
403 designate;

404 (4) Employ such assistants, agents, managers and other employees as
405 may be necessary or desirable;

406 (5) Acquire, lease, purchase, own, manage, hold and dispose of real
407 and personal property, and lease, convey or deal in or enter into
408 agreements with respect to such property on any terms necessary or
409 incidental to the carrying out of these purposes, provided all such
410 acquisitions of real property for the exchange's own use with amounts
411 appropriated by this state to the exchange or with the proceeds of bonds
412 supported by the full faith and credit of this state shall be subject to the
413 approval of the Secretary of the Office of Policy and Management and
414 the provisions of section 4b-23;

415 (6) Receive and accept, from any source, aid or contributions,
416 including money, property, labor and other things of value;

417 (7) Charge assessments or user fees to health carriers that are capable
418 of offering a qualified health plan through the exchange or otherwise
419 generate funding necessary to support the operations of the exchange
420 and the all-payer claims database program established under section
421 19a-755a and impose interest and penalties on such health carriers for
422 delinquent payments of such assessments or fees;

423 (8) Procure insurance against loss in connection with its property and
424 other assets in such amounts and from such insurers as it deems
425 desirable;

426 (9) Invest any funds not needed for immediate use or disbursement
427 in obligations issued or guaranteed by the United States of America or
428 the state and in obligations that are legal investments for savings banks
429 in the state;

430 (10) Issue bonds, bond anticipation notes and other obligations of the
431 exchange for any of its corporate purposes, and to fund or refund the
432 same and provide for the rights of the holders thereof, and to secure the
433 same by pledge of revenues, notes and mortgages of others;

434 (11) Borrow money for the purpose of obtaining working capital;

435 (12) Account for and audit funds of the exchange and any recipients
436 of funds from the exchange;

437 (13) Make and enter into any contract or agreement necessary or
438 incidental to the performance of its duties and execution of its powers,
439 including, but not limited to, an agreement with the Office of Health
440 Strategy to use funds collected under this section for the operation of
441 the all-payer claims database established under section 19a-755a and to
442 receive data from such database. The contracts entered into by the
443 exchange shall not be subject to the approval of any other state
444 department, office or agency, provided copies of all contracts of the
445 exchange shall be maintained by the exchange as public records, subject
446 to the proprietary rights of any party to the contract, except any
447 agreement with the Office of Health Strategy shall be subject to approval
448 by said office and the Office of Policy and Management and no portion
449 of such agreement shall be considered proprietary;

450 (14) To the extent permitted under its contract with other persons,
451 consent to any termination, modification, forgiveness or other change of
452 any term of any contractual right, payment, royalty, contract or
453 agreement of any kind to which the exchange is a party;

454 (15) Award grants to trained and certified individuals and
455 institutions that will assist individuals, families and small employers
456 and their employees in enrolling in appropriate coverage through the
457 exchange. Applications for grants from the exchange shall be made on
458 a form prescribed by the board;

459 (16) Limit the number of plans offered, and use selective criteria in
460 determining which plans to offer, through the exchange, provided
461 individuals and employers have an adequate number and selection of
462 choices;

463 (17) Evaluate jointly with the Health Care Cabinet established
464 pursuant to section 19a-725 the feasibility of implementing a basic
465 health program option as set forth in Section 1331 of the Affordable Care
466 Act;

467 (18) Establish one or more subsidiaries, in accordance with section
468 38a-1093, to further the purposes of the exchange;

469 (19) Make loans to each subsidiary established pursuant to section
470 38a-1093 from the assets of the exchange and the proceeds of bonds,
471 bond anticipation notes and other obligations issued by the exchange or
472 assign or transfer to such subsidiary any of the rights, moneys or other
473 assets of the exchange, provided such assignment or transfer is not in
474 violation of state or federal law;

475 (20) Sue and be sued, plead and be impleaded;

476 (21) Adopt regular procedures that are not in conflict with other
477 provisions of the general statutes, for exercising the power of the
478 exchange; and

479 (22) Do all acts and things necessary and convenient to carry out the
480 purposes of the exchange, provided such acts or things shall not conflict
481 with the provisions of the Affordable Care Act, regulations adopted
482 thereunder or federal guidance issued pursuant to the Affordable Care
483 Act.

484 (d) (1) The chief executive officer of the exchange shall provide to the
485 commissioner the name of any health carrier that fails to pay any
486 assessment or user fee under subdivision (7) of subsection (c) of this
487 section to the exchange. The commissioner shall see that all laws
488 respecting the authority of the exchange pursuant to said subdivision
489 (7) are faithfully executed. The commissioner has all the powers
490 specifically granted under this title and all further powers that are
491 reasonable and necessary to enable the commissioner to enforce the
492 provisions of said subdivision (7).

493 (2) Any health carrier aggrieved by an administrative action taken by
494 the commissioner under subdivision (1) of this subsection may appeal
495 therefrom in accordance with the provisions of section 4-183, except
496 venue for such appeal shall be in the judicial district of New Britain.

497 Sec. 8. Section 38a-47 of the general statutes is repealed and the
498 following is substituted in lieu thereof (*Effective January 1, 2022*):

499 (a) All domestic insurance companies and other domestic entities

500 subject to taxation under chapter 207 shall, in accordance with section
501 38a-48, annually pay to the Insurance Commissioner, for deposit in the
502 Insurance Fund established under section 38a-52a, an amount equal to:

503 (1) The actual expenditures made by the Insurance Department
504 during each fiscal year, and the actual expenditures made by the Office
505 of the Healthcare Advocate, including the cost of fringe benefits for
506 department and office personnel as estimated by the Comptroller;

507 (2) The amount appropriated to the Office of Health Strategy from
508 the Insurance Fund for the fiscal year, including the cost of fringe
509 benefits for office personnel as estimated by the Comptroller shall be
510 reduced by the amount of federal reimbursement received for allowable
511 Medicaid administrative expenses;

512 (3) The expenditures made on behalf of the department and said
513 offices from the Capital Equipment Purchase Fund pursuant to section
514 4a-9 for such year, but excluding such estimated expenditures made on
515 behalf of the Health Systems Planning Unit of the Office of Health
516 Strategy; and

517 (4) The amount appropriated to the Department of Aging and
518 Disability Services for the fall prevention program established in section
519 17a-303a from the Insurance Fund for the fiscal year.

520 (b) The expenditures and amounts specified in subdivisions (1) to (4),
521 inclusive, of subsection (a) of this section shall exclude expenditures
522 paid for by fraternal benefit societies, foreign and alien insurance
523 companies and other foreign and alien entities under sections 38a-49
524 and 38a-50.

525 (c) Payments shall be made by assessment of all such domestic
526 insurance companies and other domestic entities calculated and
527 collected in accordance with the provisions of section 38a-48. Any such
528 domestic insurance company or other domestic entity aggrieved
529 because of any assessment levied under this section may appeal
530 therefrom in accordance with the provisions of section 38a-52.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2022	21a-415(a)
Sec. 2	January 1, 2022	New section
Sec. 3	January 1, 2022	21a-415b
Sec. 4	January 1, 2022	12-295a
Sec. 5	January 1, 2022	53-344(b)
Sec. 6	January 1, 2022	53-344b(b)
Sec. 7	January 1, 2022	38a-1083
Sec. 8	January 1, 2022	38a-47

Statement of Legislative Commissioners:

In Sections 3(e)(4), (f)(4) and (g), 4(b)(2), and 4(c)(2), grammatical changes were made for clarity and consistency.

PH *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Department of Revenue Services	GF - Revenue Loss	1.3 million	2.5 million
Resources of the Insurance Fund	IF - Revenue Loss	462,500	925,000
The Exchange	Other - Cost	Up to 650,000	650,000
The Exchange	Other - Revenue Gain	Up to 650,000	650,000
Office of Health Strategy	GF - Cost Avoidance	Up to 650,000	650,000
Department of Revenue Services	GF - Cost	42,933	88,441
State Comptroller - Fringe Benefits ¹	GF - Cost	17,731	36,526
Mental Health & Addiction Serv., Dept.	GF - Cost	At least 33,750	At least 77,096
State Comptroller - Fringe Benefits	GF - Cost	At least 13,939	At least 28,950

Note: GF=General Fund; IF=Insurance Fund

Municipal Impact: None

Explanation

The bill, which bans flavored e-cigarette and vapor products, results in a General Fund revenue loss of \$1.3 million in FY 22 (partial year) and \$2.5 million in FY 23 and annually thereafter, as well as the following impacts:

Section 3 results in a cost of at least \$33,750 in FY 22 and \$70,096 in

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.3% of payroll in FY 22 and FY 23.

FY 23 (with associated fringe benefit costs of \$13,939 and \$28,950, respectively) to the Department of Mental Health and Addiction Services (DMHAS) to support at least one Special Investigator to comply with the unannounced compliance checks required under the bill.

Section 3 also results in a cost of \$60,664 in FY 22 (partial year funding) and \$124,967 in FY 23, inclusive of fringe benefit costs, for one Hearings Officer at the Department of Revenue Services.

Section 7 requires the Connecticut Health Insurance Exchange ("Exchange")² to fund the All-Payer Claims Database (APCD) through an agreement with the Office of Health Strategy (OHS),³ which results in an annual cost to the Exchange of approximately \$650,000 and eliminates an annual cost to OHS of an identical amount. It also results in a revenue gain to the Exchange of approximately \$650,000 annually, as it is required to increase its assessment on health carriers or charge them user fees to support the APCD. As this section is effective 1/1/22, it is unclear if the Exchange will provide full or partial year funding in FY 22.

Section 8 requires that the Insurance Fund (IF) assessment for OHS be reduced by the amount of federal Medicaid revenue received by the state as reimbursement for the agency's Health Information Exchange efforts. This results in a reduction to the IF of approximately \$462,500 in FY 22 (half-year) and \$925,000 in FY 23 (annualized).

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report 9/18/2020
Testimony of Office of Policy and Management Secretary, Melissa McCaw
US Department of Health and Human Services*

² The Exchange, also known as Access Health CT, is a quasi-public state agency that is funded primarily through an assessment on health carriers that are capable of offering a qualified health plan through the Exchange.

³ Public Act 18-91 transferred responsibility for the APCD from the Exchange to OHS in 2018.

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)