



# Senate

General Assembly

**File No. 98**

January Session, 2021

Substitute Senate Bill No. 326

*Senate, March 22, 2021*

The Committee on Public Health reported through SEN. DAUGHERTY ABRAMS of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT PROHIBITING THE SALE OF FLAVORED CIGARETTES, TOBACCO PRODUCTS, ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.***

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

1 Section 1. Subsection (a) of section 12-285 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective from*  
3 *passage*):

4 (a) As used in this chapter and section 2 of this act, unless the context  
5 otherwise requires:

6 (1) "Person" means any individual, firm, fiduciary, partnership,  
7 corporation, limited liability company, trust or association, however  
8 formed;

9 (2) "Distributor" means (A) any person in this state engaged in the  
10 business of manufacturing cigarettes; (B) any person, other than a  
11 buying pool, who purchases cigarettes at wholesale from manufacturers

12 or other distributors for sale to licensed dealers, and who maintains an  
13 established place of business, including a location used exclusively for  
14 such business, which has facilities in which a substantial stock of  
15 cigarettes and related merchandise for resale can be kept at all times,  
16 and who sells at least seventy-five per cent of such cigarettes to retailers  
17 who, at no time, shall own any interest in the business of the distributor  
18 as a partner, stockholder or trustee; (C) any person operating five or  
19 more retail stores in this state for the sale of cigarettes, or franchising  
20 five or more retail stores in this state for the sale of cigarettes who shares  
21 in the gross profits generated by such stores and who purchases  
22 cigarettes at wholesale for sale to dealers but sells such cigarettes  
23 exclusively to retail stores such person is operating or franchising; (D)  
24 any person operating and servicing twenty-five or more cigarette  
25 vending machines in this state who buys such cigarettes at wholesale  
26 and sells them exclusively in such vending machines. If a person  
27 qualified as a distributor in accordance with this subparagraph, in  
28 addition sells cigarettes other than in vending machines, such person  
29 shall be required to be qualified as a distributor in accordance with  
30 subparagraph (B) of this subdivision and have an additional  
31 distributor's license for purposes of such other sales; (E) any person who  
32 imports into this state unstamped cigarettes, at least seventy-five per  
33 cent of which are to be sold to others for resale; and (F) any person  
34 operating storage facilities for unstamped cigarettes in this state;

35 (3) "Cigarette vending machine" means a machine used for the  
36 purpose of automatically merchandising packaged cigarettes through  
37 the insertion of the proper amount of coins therein by the purchaser, but  
38 does not mean a restricted cigarette vending machine;

39 (4) "Restricted cigarette vending machine" means a machine used for  
40 the dispensing of packaged cigarettes which automatically deactivates  
41 after each individual sale, cannot be left operable after a sale and  
42 requires, prior to each individual sale, a face-to-face interaction or  
43 display of identification between an employee of the area, facility or  
44 business where such machine is located and the purchaser;

45 (5) "Dealer" means any person other than a distributor who is  
46 engaged in this state in the business of selling cigarettes, including any  
47 person operating and servicing fewer than twenty-five cigarette  
48 vending machines, and any person who is engaged in the business of  
49 selling taxed tobacco products, as defined in section 12-330a, at retail;

50 (6) "Licensed dealer" means a dealer licensed under the provisions of  
51 this chapter;

52 (7) "Stamp" means any stamp authorized to be used under this  
53 chapter by the Commissioner of Revenue Services and includes heat-  
54 applied decals;

55 (8) "Sale" or "sell" means an act done intentionally by any person,  
56 whether done as principal, proprietor, agent, servant or employee, of  
57 transferring, offering or attempting to transfer, for consideration,  
58 including bartering or exchanging, or offering to barter and exchange;

59 (9) "Buying pool" means and includes any combination, corporation,  
60 association, affiliation or group of retail dealers operating jointly in the  
61 purchase, sale, exchange or barter of cigarettes, the profits from which  
62 accrue directly or indirectly to such retail dealers, provided any person  
63 holding a distributor's license issued prior to June 29, 1951, shall be  
64 deemed to be a distributor within the terms of this section;

65 (10) "Tobacco products" has the same meaning as provided in section  
66 12-330a; and

67 (11) "Taxed tobacco products" has the same meaning as provided in  
68 section 12-330a.

69 Sec. 2. (NEW) (*Effective from passage*) (a) For purposes of this section,  
70 (1) "flavored" means imparting a characterizing flavor, and (2)  
71 "characterizing flavor" means a distinguishable taste or aroma,  
72 including, but not limited to, tastes or aromas relating to any fruit,  
73 chocolate, menthol, mint, wintergreen, vanilla, honey, candy, cocoa,  
74 dessert, alcoholic beverage, herb or spice, but does not include the taste  
75 or aroma of tobacco.

76 (b) On and after October 1, 2021, no distributor or dealer shall sell,  
77 offer for sale, display for sale or possess with intent to sell any flavored  
78 cigarette or flavored tobacco product. No cigarette or tobacco product  
79 shall be determined to be flavored solely because of the use of additives  
80 or flavoring or the inclusion of ingredient information. A public  
81 statement, claim or indicia made or disseminated by the manufacturer  
82 of the cigarette or tobacco product, or any person authorized by the  
83 manufacturer to make or disseminate public statements concerning  
84 such cigarette or tobacco product, that such cigarette or tobacco product  
85 has or produces a characterizing flavor shall constitute prima facie  
86 evidence that such cigarette or tobacco product is a flavored cigarette or  
87 tobacco product.

88 (c) If the Commissioner of Revenue Services finds, after a hearing,  
89 that a distributor or dealer knowingly violated any provision of  
90 subsection (b) of this section, the commissioner shall find that such  
91 distributor or dealer committed a violation and shall assess such  
92 distributor or dealer a civil penalty of three hundred dollars for the first  
93 violation or seven hundred fifty dollars for a second violation on or  
94 before thirty-six months after the date of the first violation. For a third  
95 violation on or before thirty-six months after the date of the first  
96 violation, the commissioner shall assess such distributor or dealer a civil  
97 penalty of one thousand dollars and suspend for not less than thirty  
98 days or revoke any license held by such distributor or dealer. For a  
99 fourth violation on or before thirty-six months after the date of the first  
100 violation, the commissioner shall revoke any license held by such  
101 distributor or dealer.

102 Sec. 3. Subsection (a) of section 21a-415 of the general statutes is  
103 repealed and the following is substituted in lieu thereof (*Effective from*  
104 *passage*):

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

107 (1) "Authorized owner" means the owner or authorized designee of a  
108 business entity that is applying for a registration or is registered with

109 the Department of Consumer Protection pursuant to this chapter;

110 (2) "Business entity" means any corporation, limited liability  
111 company, association, partnership, sole proprietorship, government,  
112 governmental subdivision or agency, business trust, estate, trust or any  
113 other legal entity;

114 (3) "Dealer registration" means an electronic nicotine delivery system  
115 certificate of dealer registration issued by the Commissioner of  
116 Consumer Protection pursuant to this section;

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

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

126 (6) "Electronic nicotine delivery system" means an electronic device  
127 used in the delivery of nicotine or other substances to a person inhaling  
128 from the device, and includes, but is not limited to, an electronic  
129 cigarette, electronic cigar, electronic cigarillo, electronic pipe or  
130 electronic hookah and any related device and any cartridge or other  
131 component of such device, including, but not limited to, electronic  
132 cigarette liquid;

133 (7) "Vapor product" means any product that employs a heating  
134 element, power source, electronic circuit or other electronic, chemical or  
135 mechanical means, regardless of shape or size, to produce a vapor that  
136 may include nicotine and is inhaled by the user of such product. "Vapor  
137 product" does not include a medicinal or therapeutic product that is (A)  
138 used by a licensed health care provider to treat a patient in a health care  
139 setting, (B) used by a patient, as prescribed or directed by a licensed

140 health care provider in any setting, or (C) any drug or device, as defined  
141 in the federal Food, Drug and Cosmetic Act, 21 USC 321, as amended  
142 from time to time, any combination product, as described in said act, 21  
143 USC 353(g), as amended from time to time, or any biological product, as  
144 described in 42 USC 262, as amended from time to time, and 21 CFR  
145 600.3, as amended from time to time, authorized for sale by the United  
146 States Food and Drug Administration;

147 (8) "Sale" or "sell" means an act done intentionally by any person,  
148 whether done as principal, proprietor, agent, servant or employee, of  
149 transferring, or offering or attempting to transfer, for consideration,  
150 including bartering or exchanging, or offering to barter or exchange; and

151 (9) "Deliver" or "delivering" means an act done intentionally by any  
152 person, whether as principal, proprietor, agent, servant or employee, of  
153 transferring, or offering or attempting to transfer, physical possession  
154 or control of an electronic nicotine delivery system or vapor product.

155 Sec. 4. (NEW) (*Effective from passage*) (a) For purposes of this section,  
156 (1) "flavored" means imparting a characterizing flavor, and (2)  
157 "characterizing flavor" means a distinguishable taste or aroma imparted  
158 either prior to or during the use or consumption of an electronic nicotine  
159 delivery system or vapor product, including, but not limited to, tastes  
160 or aromas relating to any fruit, chocolate, menthol, mint, wintergreen,  
161 vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice,  
162 but does not include the taste or aroma of tobacco.

163 (b) On and after October 1, 2021, no person with an electronic nicotine  
164 delivery system certificate of dealer registration under section 21a-415  
165 of the general statutes, as amended by this act, shall sell, offer for sale,  
166 display for sale or possess with intent to sell any flavored electronic  
167 nicotine delivery system or flavored vapor product. No electronic  
168 nicotine delivery system or vapor product shall be determined to be  
169 flavored solely because of the use of additives or flavoring or the  
170 inclusion of ingredient information. A public statement, claim or indicia  
171 made or disseminated by the manufacturer of the electronic nicotine  
172 delivery system, vapor product or a component part of such system or

173 product that such system, product or component part thereof has or  
 174 produces a characterizing flavor shall constitute prima facie that such  
 175 system, product or component part thereof is a flavored electronic  
 176 nicotine delivery system or flavored vapor product.

177 (c) If the Commissioner of Revenue Services finds, after a hearing,  
 178 that any such certificate holder knowingly violated any provision of  
 179 subsection (b) of this section, the commissioner shall find that such  
 180 certificate holder committed a violation and assess such certificate  
 181 holder a civil penalty of three hundred dollars for the first violation or a  
 182 civil penalty of seven hundred fifty dollars for any second violation on  
 183 or before thirty-six months after the date of the first violation. For a third  
 184 violation on or before thirty-six months after the date of the first  
 185 violation, the commissioner shall assess such certificate holder a civil  
 186 penalty of one thousand dollars and any license or certificate held by  
 187 such certificate holder under chapter 214 or 420g of the general statutes  
 188 shall be revoked.

|   |                     |             |
|---|---------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                     |             |
| Section 1   | <i>from passage</i> | 12-285(a)   |
| Sec. 2  | <i>from passage</i> | New section |
| Sec. 3  | <i>from passage</i> | 21a-415(a)  |
| Sec. 4  | <i>from passage</i> | New section |

**PH**            *Joint Favorable Subst.*

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   | 87.9 million | 108.8 million |
| Department of Revenue Services                   | GF - Cost           | 155,942      | 160,620       |
| State Comptroller - Fringe Benefits <sup>1</sup> | GF - Cost           | 64,404       | 66,336        |
| Mental Health & Addiction Serv., Dept.           | GF - Potential Cost | 65,910       | 67,887        |
| State Comptroller - Fringe Benefits              | GF - Potential Cost | 27,221       | 28,037        |

Note: GF=General Fund

**Municipal Impact:** None

### Explanation

The bill, which bans flavored cigarettes, tobacco products, e-cigarettes, and vapor products and requires the Department of Revenue Services (DRS) to enforce its provisions, results in: 1) a General Fund revenue loss of \$87.9 million in FY 22 and \$108.8 million in FY 23; and 2) a cost to the DRS of \$220,346 in FY 22 and \$226,956 for salary and fringe benefit costs associated with two Revenue Agent positions. To the extent the Department of Mental Health and Addiction Services is required to conduct compliance checks to enforce the bill's provisions, the agency would incur increased costs for a Special Investigator (\$65,910 in FY 22 and \$67,887 in FY 23 with associated fringe benefit

<sup>1</sup>The 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.



costs of \$27,221 and \$28,037, respectively).

The revenue estimate is based on actual data from Massachusetts that showed a 25.3% drop in cigarette tax revenue following implementation of a similar ban, adjusted to reflect a higher share of menthol cigarettes in the Connecticut market versus the Massachusetts market. Additionally, the revenue estimate assumes a 55% drop in e-cigarette revenue based on data indicating that flavored products comprise just over half the vaping market.

### **The Out Years**

#### **State Impact:**

| Agency Affected                        | Fund-Effect          | FY 24 \$      | FY 25 \$     | FY 26 \$     |
|--|----------------------|---------------|--------------|--------------|
| Department of Revenue Services         | GF - Revenue Loss    | 103.3 million | 98.2 million | 93.3 million |
| Department of Revenue Services         | GF - Cost*           | 163,832       | 167,109      | 170,451      |
| State Comptroller - Fringe Benefits    | GF - Cost*           | 67,663        | 69,016       | 70,396       |
| Mental Health & Addiction Serv., Dept. | GF - Potential Cost* | 69,245        | 70,630       | 72,043       |
| State Comptroller - Fringe Benefits    | GF - Potential Cost* | 28,598        | 29,170       | 29,753       |

Note: GF=General Fund

\*These figures have been adjusted for inflation at a rate of 2%

#### **Municipal Impact:** None

Sources: *Management Science Associates, Inc.*  
*Massachusetts Department of Revenue Monthly Blue Book Reports*

**OLR Bill Analysis****sSB 326*****AN ACT PROHIBITING THE SALE OF FLAVORED CIGARETTES, TOBACCO PRODUCTS, ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.*****SUMMARY**

Starting October 1, 2021, this bill 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. The bill defines flavored products as those imparted with a distinguishable taste or aroma (i.e., characterizing flavor) other than tobacco, including fruit, chocolate, menthol, mint, wintergreen, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

The bill specifies that these products cannot be determined to be flavored solely because they use additives or flavorings or include ingredient information.

Under the bill, a public statement or claim made or disseminated by a manufacturer that these products have or produce a characterizing flavor is prima facie evidence that the product is flavored. For cigarette and tobacco product manufacturers, this also applies to statements or claims made or disseminated by a person they authorize.

If the Department of Revenue Services (DRS) commissioner finds, after a hearing, that an e-cigarette dealer or a cigarette or tobacco product dealer or distributor knowingly violated the bill's ban on flavorings, the commissioner must assess a civil penalty of (1) \$300 for the first violation and (2) \$750 and \$1,000, respectively, for a second and third violation that occurs within 36 months after the first violation.

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Under the bill, if a cigarette or tobacco product dealer or distributor

commits a third violation within 36 months after the first violation, the DRS commissioner must either suspend the dealer's or distributor's license for at least 30 days or revoke the license. But the commissioner must revoke the license if they commit a fourth violation within that time period. For e-cigarette dealers, the bill requires the commissioner to revoke the dealer's license or certificate if they commit a third violation within that time period.

EFFECTIVE DATE: Upon passage

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 25 Nay 8 (03/05/2021)