



Senate

General Assembly

File No. 682

January Session, 2021

Substitute Senate Bill No. 326

Senate, May 12, 2021

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE SALE OF CERTAIN ELECTRONIC NICOTINE DELIVERY SYSTEMS, VAPOR PRODUCTS, CIGARETTES AND TOBACCO PRODUCTS.

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2 repealed and the following is substituted in lieu thereof (*Effective January*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 (1) 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, or (2) for which the manufacturer has applied for or received a
74 marketing order from the federal Food and Drug Administration under
75 21 USC 387j, as amended from time to time.

76 (b) (1) No person shall sell, give, deliver or possess with intent to sell,
77 in this state an electronic nicotine delivery system or a vapor product

78 with a nicotine content that is greater than thirty-five milligrams per
79 milliliter. Each person with a manufacturer registration shall provide
80 documentation to a person with a dealer registration, indicating the
81 nicotine content, expressed as milligrams per milliliter, for each
82 electronic nicotine delivery system and vapor product sold by such
83 person with a manufacturer registration to such person with a dealer
84 registration.

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

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

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

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

111 (3) the penalties and fines for violating the provisions of this section and
112 section 53-344b, as amended by this act.

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

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

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

141 (4) The [commissioner] Commissioner of Mental Health and
142 Addiction Services shall conduct unannounced follow-up compliance
143 checks of all noncompliant business entities and shall refer all

144 noncompliant business entities to the Commissioner of Revenue
145 Services.

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

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

175 (e) (1) If the Commissioner of Revenue Services finds, after a hearing
176 pursuant to subsection (c) of this section, that [(1)] (A) any business

177 entity issued a dealer registration under section 21a-415, as amended by
178 this act, has sold, given or delivered an electronic nicotine delivery
179 system or vapor product to a person under twenty-one years of age,
180 other than a person under twenty-one years of age who is delivering or
181 accepting delivery in such person's capacity as an employee, or [(2)] (B)
182 such person's employee has sold, given or delivered an electronic
183 nicotine delivery system or vapor product to a person under twenty-one
184 years of age, the commissioner shall, for the first violation, require the
185 authorized owner of such business entity to successfully complete an
186 online prevention education program administered by the Department
187 of Mental Health and Addiction Services not later than thirty days after
188 said commissioner's finding. [Said commissioner] The Commissioner of
189 Revenue Services shall assess any business entity issued a dealer
190 registration, whose authorized owner fails to complete such program, a
191 civil penalty of [three] six hundred dollars for the first violation. [Said
192 commissioner]

193 (2) The Commissioner of Revenue Services shall assess such business
194 entity a civil penalty of [seven hundred fifty] one thousand five hundred
195 dollars for a second violation on or before twenty-four months after the
196 date of the first violation.

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

204 (4) For a fourth violation on or before twenty-four months after the
205 date of the first violation, the Commissioner of Revenue Services shall
206 assess such business entity a civil penalty of [one] two thousand dollars
207 and notify the Commissioner of Consumer Protection that the dealer
208 registration held by such business entity under [said] this chapter shall
209 be revoked. The Commissioner of Revenue Services shall order such

210 business entity to conspicuously post a notice in a public place stating
211 that electronic nicotine delivery systems and vapor products cannot be
212 sold during the period of suspension or revocation and the reasons for
213 such suspension or revocation. Any sale of an electronic nicotine
214 delivery system or vapor product by such business entity during the
215 period of such suspension or revocation shall be deemed an additional
216 violation of this section.

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

237 (2) The Commissioner of Revenue Services shall assess such business
238 entity a civil penalty of one thousand five hundred dollars for a second
239 violation on or before twenty-four months after the date of the first
240 violation.

241 (3) For a third violation by such business entity on or before twenty-
242 four months after the date of the first violation, The Commissioner of

243 Revenue Services shall assess such business entity a civil penalty of two
244 thousand dollars and notify the Commissioner of Consumer Protection
245 that the dealer registration held by such business entity under this
246 chapter shall be suspended for not less than thirty days.

247 (4) For a fourth violation on or before twenty-four months after the
248 date of the first violation, the Commissioner of Revenue Services shall
249 assess such business entity a civil penalty of two thousand dollars and
250 notify the Commissioner of Consumer Protection that the dealer
251 registration held by such business entity under this chapter shall be
252 revoked. The Commissioner of Revenue Services shall order such
253 business entity to conspicuously post a notice in a public place stating
254 that electronic nicotine delivery systems and vapor products cannot be
255 sold during the period of suspension or revocation and the reasons for
256 such suspension or revocation. Any sale of an electronic nicotine
257 delivery system or vapor product by such business entity during the
258 period of such suspension or revocation shall be deemed an additional
259 violation of this section.

260 ~~[(f)]~~ (g) Upon receipt of notice of determination from the
261 Commissioner of Revenue Services made under subsection (e) ~~or (f)~~ of
262 this section, the Commissioner of Consumer Protection shall suspend or
263 revoke the dealer registration of the business entity that is the subject of
264 ~~[said]~~ the determination. The Commissioner of Consumer Protection
265 shall not be required to hold a hearing in connection with any notice of
266 determination received from the Commissioner of Revenue Services
267 under this section.

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

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

276 (a) If the Commissioner of Revenue Services finds, after a hearing,
277 that any person employed by a dealer or distributor, as defined in
278 section 12-285, has sold, given or delivered cigarettes or tobacco
279 products to a person under twenty-one years of age other than a person
280 under twenty-one years of age who is delivering or accepting delivery
281 in such person's capacity as an employee, said commissioner shall, for
282 the first violation, require such person to successfully complete an
283 online tobacco prevention education program administered by the
284 Department of Mental Health and Addiction Services not later than
285 thirty days after said commissioner's finding. [Said commissioner] The
286 Commissioner of Revenue Services shall assess any person who fails to
287 complete such program a civil penalty of [two] four hundred dollars.
288 Said commissioner shall assess any person employed by a dealer or
289 distributor a civil penalty of [two hundred fifty] five hundred dollars
290 for a second or subsequent violation on or before twenty-four months
291 after the date of the first violation.

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

306 (2) The Commissioner of Revenue Services shall assess [any] such
307 dealer or distributor a civil penalty of [seven hundred fifty] one
308 thousand five hundred dollars for a second violation on or before
309 twenty-four months after the date of the first violation.

310 (3) For a third violation on or before twenty-four months after the
311 date of the first violation, [said commissioner] the Commissioner of
312 Revenue Services shall assess such dealer or distributor a civil penalty
313 of [one] two thousand dollars and suspend any license held by such
314 dealer or distributor under this chapter for not less than thirty days.

315 (4) For a fourth violation on or before twenty-four months after the
316 date of the first violation, [said commissioner] the Commissioner of
317 Revenue Services shall assess such dealer or distributor a civil penalty
318 of [one] two thousand dollars and revoke any license issued to such
319 dealer or distributor under this chapter. Said commissioner shall order
320 such distributor or dealer to conspicuously post a notice in a public
321 place within such distributor's or dealer's establishment stating that
322 cigarettes and tobacco products cannot be sold during the period of such
323 suspension or revocation and the reasons for such suspension or
324 revocation. Any sale of cigarettes or a tobacco product by such dealer or
325 distributor during such suspension or revocation shall be deemed an
326 additional violation of this subsection.

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

343 (2) The Commissioner of Revenue Services shall assess [any] such
344 owner a civil penalty of [seven hundred fifty] one thousand five
345 hundred dollars for a second violation on or before twenty-four months
346 after the date of the first violation.

347 (3) For a third violation on or before twenty-four months after the
348 date of the first violation, [said commissioner] the Commissioner of
349 Revenue Services shall assess such owner a civil penalty of [one] two
350 thousand dollars and immediately remove any such machine from such
351 establishment and no such machine may be placed in such
352 establishment for a period of one year following such removal.

353 (d) Any person aggrieved by any action of the [commissioner]
354 Commissioner of Revenue Services pursuant to this section may take
355 any appeal of such action as provided in sections 12-311 and 12-312.

356 Sec. 5. Subsection (b) of section 53-344 of the general statutes is
357 repealed and the following is substituted in lieu thereof (*Effective January*
358 *1, 2022*):

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

374 Sec. 6. Subsection (b) of section 53-344b of the general statutes is

375 repealed and the following is substituted in lieu thereof (*Effective January*
376 *1, 2022*):

377 (b) Any person who sells, gives or delivers to any person under
378 twenty-one years of age an electronic nicotine delivery system or vapor
379 product in any form shall be fined not more than [three] six hundred
380 dollars for the first offense, not more than [seven hundred fifty] one
381 thousand five hundred dollars for a second offense on or before twenty-
382 four months after the date of the first offense and not more than [one]
383 two thousand dollars for each subsequent offense on or before twenty-
384 four months after the date of the first offense. The provisions of this
385 subsection shall not apply to a person under twenty-one years of age
386 who is delivering or accepting delivery of an electronic nicotine delivery
387 system or vapor product (1) in such person's capacity as an employee,
388 or (2) as part of a scientific study being conducted by an organization
389 for the purpose of medical research to further efforts in tobacco use
390 prevention and cessation, provided such medical research has been
391 approved by the organization's institutional review board, as defined in
392 section 21a-408.

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

Statement of Legislative Commissioners:
In Section 3(b)(4), "commissioner" was bracketed and, after the closing bracket, "Commissioner of Mental Health and Addiction Services" was inserted for clarity, in Section 3(d) and (e), references to "said commissioner" and "Said commissioner" were bracketed and, after the closing brackets, references to "the Commissioner of Revenue Services" and "The Commissioner of Revenue Services" were inserted for clarity, and in Section 4, references to "Said commissioner" and "said commissioner" were bracketed and, after the closing brackets,

references to "The Commissioner of Revenue Services" and "the Commissioner of Revenue Services" were inserted for clarity.

FIN *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	1.3 million	2.5 million
Department of Revenue Services	GF - Cost	42,933	88,441
Mental Health & Addiction Serv., Dept.	GF - Cost	At least 33,750	At least 77,096
State Comptroller - Fringe Benefits ¹	GF - Cost	At least 31,670	At least 65,476

Note: GF=General 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 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

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.

Hearings Officer at the Department of Revenue Services.

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*

OLR Bill Analysis**sSB 326*****AN ACT CONCERNING THE SALE OF CERTAIN ELECTRONIC NICOTINE DELIVERY SYSTEMS, VAPOR PRODUCTS, CIGARETTES AND TOBACCO PRODUCTS.*****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 a (1) nicotine content great than 35 milligrams per milliliter (mg/ml) or (2) flavoring agent other than tobacco. It excludes from the flavor ban (1) “modified risk tobacco products” designated by the U.S. Department of Health and Human Services and (2) products for which a manufacturer has applied for or received a federal Food and Drug Administration (FDA) marketing order (see BACKGROUND).

The bill also:

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 selling 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 or nicotine content requirements (§§ 3-6); and

4. increases the penalties on owners of establishments with cigarette vending machines and restricted cigarette vending machines for sales to individuals under age 21 (§ 4).

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 was added to flavor them. It defines a “flavoring agent” as an additive:

1. used in accordance with good manufacturing practice principles and in the minimum quantity needed to produce its intended effect;
2. (a) consisting of one or more ingredients generally recognized as safe in food or drugs, (b) that was sanctioned for the use by the state or federal government, (c) that meets U.S. Pharmacopeia standards, or (d) that 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 instilling or modifying flavor; and
4. that 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 it 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 DMHAS commissioner must refer e-cigarette dealers to the DRS commissioner after the initial compliance check who (1) do not have documentation on the nicotine content of their products or (2) sold products that violate the nicotine threshold.

For either the flavoring ban or nicotine content provisions, the DMHAS commissioner must refer non-compliant dealers to DRS after completing an unannounced follow-up compliance check. The DRS commissioner may impose a civil penalty (see table below).

§§ 3-6 — PENALTIES

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 or nicotine content requirements.

Table 1: Civil Penalties for Underage Sales

	Current Law	The Bill
Penalties on Cigarette Dealers and Distributors and E-Cigarette Dealers		
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
Penalties on Their Employees		
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 for underage sales under existing law, the DRS commissioner may only impose the above fines on e-cigarette dealers who violate the bill's flavor ban or nicotine threshold if they are referred to him by the DMHAS commissioner after 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 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 a dealer's registration, the DCP commissioner does not need to hold an additional hearing beforehand.

In addition to the DRS civil penalties, the law generally provides fines for sales of cigarettes, tobacco products, e-cigarettes, or vapor products to people under age 21. The bill correspondingly increases the maximum amount of those fines, as follows:

1. for a first offense, from \$300 to \$600;
2. for a second offense, from \$750 to \$1,500; and
3. for each subsequent offense, from \$1,000 to \$2,000.

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

§ 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 age 21. 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 second and third 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 placement laws: (1) \$250 for a first violation and (2) \$500 for a second or third violation within 18 months. For a third violation, the vending machine must also be immediately removed from

the area, facility, or business with it, and these machines are banned from the location for one year after the removal (CGS § 12-289a(b)).

BACKGROUND

Legislative History

The Senate referred the bill (File 98) to the Finance, Revenue and Bonding Committee, which reported out a substitute that replaced the prior bill and (1) eliminated provisions prohibiting the sale of flavored cigarettes and tobacco products, (2) exempted MRTPs and products subject to an FDA marketing order from the flavor ban, and (3) increased penalties for underage sales.

Related Bill

HB 6450 (File 237), favorably reported by the Public Health Committee, contains similar provisions (§§ 1-6).

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 with the machine.

Modified Risk Tobacco Products (MRTP)

MRTPs are tobacco products designated by the FDA 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) that using 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.

FDA Premarket Tobacco Product Applications (PMTA)

The federal Tobacco Control Act generally prohibits a new tobacco product from entering the U.S. market unless the manufacturer submits to the FDA (1) an application proving the product was legally on the market prior to February 15, 2007, or (2) a PMTA. For the latter, the FDA must issue a subsequent order finding that the product would be appropriate for protecting the public health (21 U.S.C. § 387j).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 25 Nay 8 (03/05/2021)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 35 Nay 14 (05/03/2021)