



Senate

General Assembly

File No. 220

January Session, 2021

Substitute Senate Bill No. 985

Senate, March 30, 2021

The Committee on Children reported through SEN. ANWAR of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE SALE OF FLAVORED ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS AND CHILDREN'S 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2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

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

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

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

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

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

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

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

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

46 (8) "Sale" or "sell" means an act done intentionally by any person,
47 whether done as principal, proprietor, agent, servant or employee, of
48 transferring, or offering or attempting to transfer, for consideration,
49 including bartering or exchanging, or offering to barter or exchange; 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 Sec. 2. (NEW) (*Effective from passage*) (a) For purposes of this section,
55 (1) "flavored" means imparting a characterizing flavor, and (2)
56 "characterizing flavor" means a distinguishable taste or aroma imparted
57 either prior to or during the use or consumption of an electronic nicotine
58 delivery system or vapor product, including, but not limited to, tastes
59 or aromas relating to any fruit, chocolate, menthol, mint, wintergreen,
60 vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice,
61 but does not include the taste or aroma of tobacco.

62 (b) Except as provided in subsection (c) of this section, on and after
63 October 1, 2021, no person with an electronic nicotine delivery system
64 certificate of dealer registration under section 21a-415 of the general
65 statutes, as amended by this act, shall sell, offer for sale, display for sale
66 or possess with intent to sell any flavored electronic nicotine delivery
67 system or flavored vapor product. No electronic nicotine delivery
68 system or vapor product shall be determined to be flavored solely
69 because of the use of additives or flavoring or the inclusion of ingredient
70 information. A public statement, claim or indicia made or disseminated
71 by the manufacturer of the electronic nicotine delivery system, vapor
72 product or a component part of such system or product that such
73 system, product or component part thereof has or produces a
74 characterizing flavor shall constitute prima facie evidence that such
75 system, product or component part thereof is a flavored electronic
76 nicotine delivery system or flavored vapor product.

77 (c) The provisions of subsection (b) of this section shall not apply to a
78 person with an electronic nicotine delivery system certificate of dealer

79 registration under section 21a-415 of the general statutes, as amended
 80 by this act, if individuals under the age of twenty-one are prohibited
 81 from entering the place of business operated by such person and a notice
 82 concerning such prohibition is posted clearly on all entrances of the
 83 place of business.

84 (d) If the Commissioner of Revenue Services finds, after a hearing,
 85 that a person with an electronic nicotine delivery system certificate of
 86 dealer registration under section 21a-415 of the general statutes, as
 87 amended by this act, knowingly violated any provision of subsection (b)
 88 of this section, except as provided in subsection (c) of this section, the
 89 commissioner shall assess such person a civil penalty of three hundred
 90 dollars for the first violation or a civil penalty of seven hundred fifty
 91 dollars for a second violation on or before thirty-six months after the
 92 date of the first violation. For a third violation on or before thirty-six
 93 months after the date of the first violation, the commissioner shall assess
 94 such person a civil penalty of one thousand dollars and any license or
 95 certificate held by such person under chapter 214 or 420g of the general
 96 statutes shall be revoked.

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

Statement of Legislative Commissioners:

In Sec. 2(d) "except as provided in subsection (c) of this section," was inserted for clarity.

KID *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	Up to 1.9 million	Up to 2.5 million
Department of Revenue Services	GF - Cost	Up to 155,942	Up to 160,620
State Comptroller - Fringe Benefits ¹	GF - Cost	Up to 64,404	Up to 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 generally² bans flavored e-cigarette or vapor products and requires the Department of Revenue Services (DRS) to enforce its provisions, results in: 1) a General Fund revenue loss of up to \$1.9 million in FY 22 and up to \$2.5 million in FY 23; and 2) a cost to the DRS of up to \$220,346 in FY 22 and up to \$226,956 in FY 23 for salary and fringe benefit costs associated with as many as two Revenue Agent

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.

² Under the bill, e-cigarette dealers are exempt from this ban if they prohibit anyone under age 21 from entering the establishment and post notice of the prohibition clearly at all of the establishment's entrances.

positions.³ 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 costs of \$27,221 and \$28,037, respectively).

The revenue estimate assumes up to a 55% drop in e-cigarette revenue based on data indicating that flavored products comprise just over half the vaping market. It is not anticipated that any potential civil penalties levied by the DRS pursuant to the bill's provisions would appreciably offset the loss of tax revenue from e-cigarette and vapor products.

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
US Department of Health and Human Services*

³ The actual number of Revenue Agents needed will depend on the volume of necessary enforcement actions.

OLR Bill Analysis**sSB 985*****AN ACT CONCERNING THE SALE OF FLAVORED ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS AND CHILDREN'S HEALTH.*****SUMMARY**

Starting October 1, 2021, this bill generally prohibits e-cigarette dealers from selling, offering or displaying for sale, or possessing with intent to sell any flavored e-cigarette system or flavored vapor product. Under the bill, e-cigarette dealers are exempt from this ban if they prohibit anyone under age 21 from entering the establishment and post notice of the prohibition clearly at all the establishment's entrances.

The bill establishes civil penalties for dealers that violate the bill's ban on flavorings. It also requires the Department of Revenue Services (DRS) to revoke an e-cigarette dealer's license if the dealer commits three violations within a specified time period.

EFFECTIVE DATE: Upon passage

FLAVORINGS PROHIBITED

The bill defines flavored e-cigarettes or vapor 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. It 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 an e-cigarette product manufacturer that such products have or produce a characterizing flavor is prima facie evidence that the product is

flavored.

Civil Penalties and License or Certificate Revocation

If the DRS commissioner finds, after a hearing, that an e-cigarette dealer 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.

Under the bill, if an e-cigarette dealer commits a third violation within 36 months after the first violation, the DRS commissioner must revoke the dealer’s license in addition to assessing the \$1,000 penalty. (While the bill grants this revocation authority to DRS, the Department of Consumer Protection issues the e-cigarette dealer registration.)

BACKGROUND

Related Bills

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.

HB 6450 (§§ 1-6), favorably reported by the Public Health Committee, makes various changes to e-cigarette and smoking laws, such as prohibiting e-cigarette dealers from selling, giving, or possessing with the intent to sell, e-cigarettes and vapor products with a flavoring agent, other than tobacco, or more than a specified amount of nicotine.

COMMITTEE ACTION

Committee on Children

Joint Favorable Substitute
Yea 10 Nay 4 (03/15/2021)