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## OLR Bill Analysis

### SB 367

#### ***AN ACT CONCERNING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.***

#### **SUMMARY**

Starting January 1, 2023, this bill prohibits anyone, including 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) flavor other than tobacco.

Additionally, the bill:

1. requires (a) e-cigarette manufacturers to provide documentation to e-cigarette dealers on the nicotine content of their products and (b) 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 and transfers 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); and
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).

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: January 1, 2023

## **§§ 1-3 — E-CIGARETTES AND VAPOR PRODUCTS**

### ***Definition of Flavored Products (§ 1)***

Under the bill, flavored e-cigarettes and vapor products are those that impart a taste or smell, other than tobacco, either before or during their use. It includes the following flavors: fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

The bill also modifies the statutory definition of e-cigarette liquid to specify that the liquid (1) may include a concentrated plant extract or oil containing natural or synthetic ingredients and (2) when used in an e-cigarette or vapor product, produces a vapor that may or may not be inhaled by the user.

### ***Flavor Ban and Nicotine Content Requirements (§ 2)***

The bill prohibits anyone, including e-cigarette dealers, from selling, giving, delivering, or possessing with the intent to sell in Connecticut e-cigarettes or vapor products that are flavored or have 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 (§ 3)***

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).

The bill requires the department, after the initial compliance check, to refer to the DRS commissioner e-cigarette dealers 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. DRS may impose a penalty (see Table 1 below).

## **§§ 3-6 — PENALTIES FOR SALES**

### ***Maximum Fines (§§ 5 & 6)***

The bill increases the maximum fines that may be imposed on someone who sells, gives, or delivers cigarettes, other tobacco products, e-cigarettes, or vapor products to someone under the legal age 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.

Under existing law and the bill, these penalties do not apply if the person under the legal age is delivering or accepting delivery of the product (1) in his or her capacity as an employee or (2) as part of a scientific study for medical research that meets specified criteria.

### ***DCP and DRS Penalties (§§ 3 & 4)***

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 and transfers (“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 or documentation requirements.

**Table 1: Civil Penalties**

<b>Penalties on Cigarette Dealers and Distributors and E-Cigarette Dealers</b>		
	<b>Current Law</b> <i>(applies to underage sales)</i>	<b>Under the Bill</b> <i>(applies to underage sales, flavor ban, and nicotine content and documentation requirements)</i>
<b>1<sup>st</sup> violation</b>	\$300, if they fail to complete an online prevention education program within 30 days	\$600, if they fail to complete an online prevention education program within 30 days
<b>2<sup>nd</sup> violation</b>	\$750	\$1,500
<b>3<sup>rd</sup> violation</b>	\$1,000, plus minimum 30-day license suspension	\$2,000, plus minimum 30-day license suspension
<b>4<sup>th</sup> violation</b>	\$1,000, plus license revocation	\$2,000, plus license revocation
<b>Penalties on Their Employees</b>		
	<b>Current Law</b> <i>(applies to underage sales)</i>	<b>Under the Bill</b> <i>(applies to underage sales)</i>
<b>1<sup>st</sup> violation</b>	\$200, if the employee fails to complete an online prevention education program within 30 days	\$400, if the employee fails to complete an online prevention education program within 30 days
<b>2<sup>nd</sup> or subsequent violation</b>	\$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 who violate the bill's flavor ban and nicotine threshold if they are referred to him by the DMHAS commissioner after completing unannounced follow-up 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. For a fourth violation, the dealer must also post a notice in a public place stating that e-cigarettes and vapor products cannot be

sold during the suspension and revocation period and the reasons for the suspension or revocation. Under the bill, any dealer sales that occur during this period are considered an additional violation.

Before taking such action, existing law requires the DRS commissioner to (1) notify the e-cigarette dealer in writing about the hearing time and location and (2) 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 1<sup>st</sup> violation, if the owner fails to successfully complete an online tobacco education program within 30 days, from \$500 to \$1,000;
2. for a 2<sup>nd</sup> violation, from \$750 to \$1,500; and
3. for a 3<sup>rd</sup> violation, from \$1,000 to \$2,000.

As under current law, the commissioner may impose fines for 2<sup>nd</sup> and 3<sup>rd</sup> 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.

**BACKGROUND**

***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 (CGS § 12-285).

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable

Yea 20 Nay 11 (03/23/2022)