



Senate

General Assembly

File No. 316

February Session, 2022

Senate Bill No. 367

Senate, April 5, 2022

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 bill ought to pass.

AN ACT CONCERNING 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 21a-415 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective January*
3 *1, 2023*):

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, including, but not
21 limited to, a concentrated plant extract or oil containing natural or
22 synthetic ingredients, that, when used in an electronic nicotine delivery
23 system or vapor product, produces a vapor that may or may not include
24 nicotine and [is] may be inhaled by the user of such electronic nicotine
25 delivery system or vapor product;

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

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

46 States Food and Drug Administration;

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

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

57 (10) "Flavored electronic nicotine delivery system or vapor product"
58 means any flavored electronic nicotine delivery system or vapor
59 product that imparts a taste or smell, other than the taste or smell of
60 tobacco, either prior to or during the use of an electronic nicotine
61 delivery system or vapor product, including, but not limited to, any
62 taste or smell relating to fruit, menthol, mint, wintergreen, chocolate,
63 cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb or
64 spice.

65 Sec. 2. (NEW) (*Effective January 1, 2023*) (a) No person shall sell, give,
66 deliver or possess with intent to sell in this state any flavored electronic
67 nicotine delivery system or vapor product.

68 (b) (1) No person shall sell, give, deliver or possess with intent to sell,
69 in this state an electronic nicotine delivery system or a vapor product
70 with a nicotine content that is greater than thirty-five milligrams per
71 milliliter. Each person with a manufacturer registration shall provide
72 documentation to a person with a dealer registration, indicating the
73 nicotine content, expressed as milligrams per milliliter, for each
74 electronic nicotine delivery system and vapor product sold by such
75 person with a manufacturer registration to such person with a dealer
76 registration.

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

88 (c) As used in this section, "person" means any individual, authorized
89 owner of a business entity, retail establishment, as defined in section
90 19a-106a of the general statutes, partnership, company, limited liability
91 company, public or private corporation, association, trustee, executor,
92 administrator or other fiduciary or custodian.

93 Sec. 3. Section 21a-415b of the general statutes is repealed and the
94 following is substituted in lieu thereof (*Effective January 1, 2023*):

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

105 (b) (1) The Commissioner of Mental Health and Addiction Services,
106 or the commissioner's designee, shall conduct unannounced compliance
107 checks on business entities [holding] with a dealer registration by
108 engaging persons between the ages of sixteen and twenty to enter the
109 place of business of each such business entity to attempt to purchase an

110 electronic nicotine delivery system or a vapor product.

111 (2) The Commissioner of Mental Health and Addiction Services, or
112 the commissioner's designee, shall conduct unannounced compliance
113 checks on business entities with a dealer registration to determine
114 whether any such business entity is selling, giving or delivering or has
115 sold, given or delivered any flavored electronic nicotine delivery system
116 or vapor product in violation of subsection (a) of section 2 of this act.

117 (3) 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 each such business entity is in possession of the documentation
121 required under subsection (b) of section 2 of this act and whether such
122 documentation indicates that electronic nicotine delivery systems or
123 vapor products with a nicotine content greater than thirty-five
124 milligrams per milliliter were sold, given or delivered by such business
125 entity. The commissioner shall refer all business entities that do not
126 possess such documentation or that sold, gave, delivered or possessed
127 with intent to sell an electronic nicotine delivery system or a vapor
128 product with a nicotine content that is greater than thirty-five
129 milligrams per milliliter to the Commissioner of Revenue Services.

130 (4) The [commissioner] Commissioner of Mental Health and
131 Addiction Services shall conduct unannounced follow-up compliance
132 checks of all noncompliant business entities and shall refer all
133 noncompliant business entities to the Commissioner of Revenue
134 Services.

135 (c) Upon receipt of a referral made pursuant to subsection (b) of this
136 section, the Commissioner of Revenue Services may, following a
137 hearing, impose a civil penalty and direct the Commissioner of
138 Consumer Protection to suspend or revoke the dealer registration of the
139 business entity that is the subject of such referral. The Commissioner of
140 Revenue Services shall provide such business entity with written notice
141 of the hearing, specifying the time and place of such hearing and
142 requiring such business entity to show cause why such dealer

143 registration should not be suspended or revoked. The written notice of
144 the hearing shall be mailed or delivered to such business entity not less
145 than ten days preceding the date of the hearing. Such notice may be
146 served personally or by registered or certified mail.

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

164 (e) (1) If the Commissioner of Revenue Services finds, after a hearing
165 pursuant to subsection (c) of this section, that [(1)] (A) any business
166 entity issued a dealer registration under section 21a-415, as amended by
167 this act, has sold, given or delivered an electronic nicotine delivery
168 system or vapor product to a person under twenty-one years of age,
169 other than a person under twenty-one years of age who is delivering or
170 accepting delivery in such person's capacity as an employee, or [(2)] (B)
171 such person's employee has sold, given or delivered an electronic
172 nicotine delivery system or vapor product to a person under twenty-one
173 years of age, the commissioner shall, for the first violation, require the
174 authorized owner of such business entity to successfully complete an
175 online prevention education program administered by the Department
176 of Mental Health and Addiction Services not later than thirty days after

177 said commissioner's finding. [Said commissioner] The Commissioner of
178 Revenue Services shall assess any business entity issued a dealer
179 registration, whose authorized owner fails to complete such program, a
180 civil penalty of [three] six hundred dollars for the first violation. [Said
181 commissioner]

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

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

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

206 (f) (1) If the Commissioner of Revenue Services finds, after a hearing
207 pursuant to subsection (c) of this section, that (A) any business entity
208 issued a dealer registration under section 21a-415, as amended by this
209 act, has sold, given or delivered any flavored electronic nicotine delivery

210 system or vapor product, or (B) any such business entity does not
211 possess documentation of nicotine content or nicotine content that
212 indicates a level of nicotine that is greater than thirty-five milligrams per
213 milliliter for any electronic nicotine delivery system or vapor product
214 sold, given or delivered within the retail establishment of the business
215 entity, the commissioner shall, for the first violation, require the
216 authorized owner of such business entity to successfully complete an
217 online prevention education program administered by the Department
218 of Mental Health and Addiction Services not later than thirty days after
219 said commissioner's finding. The Commissioner of Revenue Services
220 shall assess any business entity issued a dealer registration, whose
221 authorized owner fails to complete such program, a civil penalty of six
222 hundred dollars for the first violation.

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

227 (3) For a third violation by such business entity on or before twenty-
228 four months after the date of the first violation, the Commissioner of
229 Revenue Services shall assess such business entity a civil penalty of two
230 thousand dollars and notify the Commissioner of Consumer Protection
231 that the dealer registration held by such business entity under this
232 chapter shall be suspended for not less than thirty days.

233 (4) For a fourth violation on or before twenty-four months after the
234 date of the first violation, the Commissioner of Revenue Services 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 revoked. The Commissioner of Revenue Services shall order such
239 business entity to conspicuously post a notice in a public place stating
240 that electronic nicotine delivery systems and vapor products cannot be
241 sold during the period of suspension or revocation and the reasons for
242 such suspension or revocation. Any sale of an electronic nicotine

243 delivery system or vapor product by such business entity during the
244 period of such suspension or revocation shall be deemed an additional
245 violation of this section.

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

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

260 Sec. 4. Section 12-295a of the general statutes is repealed and the
261 following is substituted in lieu thereof (*Effective January 1, 2023*):

262 (a) If the Commissioner of Revenue Services finds, after a hearing,
263 that any person employed by a dealer or distributor, as defined in
264 section 12-285, has sold, given or delivered cigarettes or tobacco
265 products to a person under twenty-one years of age other than a person
266 under twenty-one years of age who is delivering or accepting delivery
267 in such person's capacity as an employee, said commissioner shall, for
268 the first violation, require such person to successfully complete an
269 online tobacco prevention education program administered by the
270 Department of Mental Health and Addiction Services not later than
271 thirty days after said commissioner's finding. [Said commissioner] The
272 Commissioner of Revenue Services shall assess any person who fails to
273 complete such program a civil penalty of [two] four hundred dollars.
274 Said commissioner shall assess any person employed by a dealer or
275 distributor a civil penalty of [two hundred fifty] five hundred dollars

276 for a second or subsequent violation on or before twenty-four months
277 after the date of the first violation.

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

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

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

301 (4) For a fourth violation on or before twenty-four months after the
302 date of the first violation, [said commissioner] the Commissioner of
303 Revenue Services shall assess such dealer or distributor a civil penalty
304 of [one] two thousand dollars and revoke any license issued to such
305 dealer or distributor under this chapter. Said commissioner shall order
306 such distributor or dealer to conspicuously post a notice in a public
307 place within such distributor's or dealer's establishment stating that
308 cigarettes and tobacco products cannot be sold during the period of such

309 suspension or revocation and the reasons for such suspension or
310 revocation. Any sale of cigarettes or a tobacco product by such dealer or
311 distributor during such suspension or revocation shall be deemed an
312 additional violation of this subsection.

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

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

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

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

342 Sec. 5. Subsection (b) of section 53-344 of the general statutes is
343 repealed and the following is substituted in lieu thereof (*Effective January*
344 *1, 2023*):

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

360 Sec. 6. Subsection (b) of section 53-344b of the general statutes is
361 repealed and the following is substituted in lieu thereof (*Effective January*
362 *1, 2023*):

363 (b) Any person who sells, gives or delivers to any person under
364 twenty-one years of age an electronic nicotine delivery system or vapor
365 product in any form shall be fined not more than [three] six hundred
366 dollars for the first offense, not more than [seven hundred fifty] one
367 thousand five hundred dollars for a second offense on or before twenty-
368 four months after the date of the first offense and not more than [one]
369 two thousand dollars for each subsequent offense on or before twenty-
370 four months after the date of the first offense. The provisions of this
371 subsection shall not apply to a person under twenty-one years of age
372 who is delivering or accepting delivery of an electronic nicotine delivery
373 system or vapor product (1) in such person's capacity as an employee,
374 or (2) as part of a scientific study being conducted by an organization

375 for the purpose of medical research to further efforts in tobacco use
376 prevention and cessation, provided such medical research has been
377 approved by the organization's institutional review board, as defined in
378 section 21a-408.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2023</i>	21a-415(a)
Sec. 2	<i>January 1, 2023</i>	New section
Sec. 3	<i>January 1, 2023</i>	21a-415b
Sec. 4	<i>January 1, 2023</i>	12-295a
Sec. 5	<i>January 1, 2023</i>	53-344(b)
Sec. 6	<i>January 1, 2023</i>	53-344b(b)

PH *Joint Favorable*

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 23 \$	FY 24 \$
Revenue Serv., Dept.	GF - Revenue Loss	1.4 million	2.7 million
Mental Health & Addiction Serv., Dept.	GF - Cost	At least 32,960	At least 65,901
State Comptroller - Fringe Benefits ¹	GF - Cost	At least 13,360	At least 26,710
Revenue Serv., Dept.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which bans certain vapor products and increases various penalties associated with the illegal sale of cigarettes, tobacco products, e-cigarettes, and vapor products, results in: 1) a General Fund revenue loss of \$1.4 million in FY 23 (partial year) and \$2.7 million in FY 24, 2) a cost to the Department of Mental Health and Addiction Services (DMHAS) of at least \$46,320 in FY 23 (partial year) and at least \$92,611 in FY 24, inclusive of fringe benefit costs, and 3) a potential revenue gain to the General Fund from increased civil penalties and fines.

Revenue Impact

The revenue loss of \$1.4 million in FY 23 and \$2.7 million in FY 24

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 40.53% of payroll in FY 23.

assumes a 55% drop in vapor product tax revenue.² These estimates are based on information from the United States Department of Health and Human Services Centers for Disease Control and Prevention indicating that flavored products comprise just over half the vapor product market.

The bill also results in a potential General Fund revenue gain by raising the maximum fines and penalties that may be imposed on someone who sells, gives, or delivers tobacco or vapor products to someone under the legal age. Revenue from penalties and fines levied by the Department of Revenue Services (DRS) averaged approximately \$65,000 over the past five full fiscal years (FY 17 to FY 21).

Cost Impact

The cost of at least \$32,960 in FY 23 and \$65,910 in FY 24 (with associated fringe benefit costs of \$13,360 and \$26,710, respectively) to DMHAS is to support at least one Special Investigator to comply with the unannounced compliance checks required under the bill.

It is anticipated that DRS and the Department of Consumer Protection can handle the enforcement and penalty provisions of the bill without the need for additional resources.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation; the annualized ongoing revenue impacts identified above would continue into the future subject to growth in the overall vapor product market and the number of cigarette, tobacco product, e-cigarette, and vapor product sales violations found.

Sources: US Department of Health and Human Services Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report

² Electronic cigarette products tax revenue totaled \$5.2 million in FY 21.

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

<i>Penalties on Cigarette Dealers and Distributors and E-Cigarette Dealers</i>		
	<i>Current Law</i> <i>(applies to underage sales)</i>	<i>Under the Bill</i> <i>(applies to underage sales, flavor ban, and nicotine content and documentation requirements)</i>
1st violation	\$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
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>		
	<i>Current Law</i> <i>(applies to underage sales)</i>	<i>Under the Bill</i> <i>(applies to underage sales)</i>
1st violation	\$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
2nd or subsequent 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 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 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.

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)