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## **OLR Bill Analysis**

**sSB 24 (File 165, as amended by Senate "A")\***

### ***AN ACT CONCERNING THE GOVERNOR'S RECOMMENDATIONS REGARDING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND YOUTH SMOKING PREVENTION.***

#### **SUMMARY:**

This bill makes it illegal for a minor (under age 18) to buy or possess in public an "electronic nicotine delivery system" or "vapor product" (collectively called "e-cigarettes" in this analysis) and for anyone to sell, give, or deliver one to a minor. It subjects violators to some of the same penalties the law imposes on those who commit similar violations regarding tobacco cigarettes.

It tightens the law pertaining to the sale of tobacco cigarettes to minors by extending the look-back period for determining if a prior offense occurred from 18 to 24 months. At the same time, it makes this law more lenient for first offenders by waiving the civil penalty for those who successfully complete an online tobacco education course.

Under the bill, minors charged for a second or subsequent time with illegally buying tobacco cigarettes are subject to the higher penalty imposed on subsequent offenders only if they commit a second or subsequent violation within 24 months of the first violation.

The bill imposes fines, in addition to existing civil penalties, on people who sell improperly packaged or individual tobacco cigarettes.

It increases the amount of money the Tobacco and Health Trust Fund board of trustees can disburse annually, starting in FY 14, and allows the board to operate in FY 16. Current law suspends the board's operation for that fiscal year.

Finally, the bill corrects a statutory reference concerning the trust fund and makes conforming changes.

\*Senate Amendment "A" removes the classification of vapor products as a type of electronic nicotine delivery system and makes conforming changes.

EFFECTIVE DATE: October 1, 2014

## **§1 — E-CIGARETTES AND MINORS**

### ***Electronic Nicotine Delivery Systems and Vapor Products***

Under the bill an "electronic nicotine delivery system" is an electronic device used to simulate smoking in delivering nicotine or another substance to a person who inhales from it. Delivery systems include electronic (1) cigarettes; (2) cigars; (3) cigarillos; (4) pipes; (5) hookahs; and (6) related devices, cartridges, or other components.

A "vapor product" uses a heating element; power source; electronic circuit; or other electronic, chemical, or mechanical means, regardless of shape or size, to produce a vapor the user inhales. The vapor may or may not include nicotine.

### ***Purchase of E-cigarettes by Minors***

Under the bill, a minor who (1) buys an e-cigarette, (2) misrepresents his or her age to do so, or (3) possesses one in public, faces a fine of up to \$50 for a first offense and between \$50 and \$100 for each subsequent offense. Under the bill, a "public place" is an area used or held out for use by the public regardless of whether it is publicly or privately owned. Violators may pay the fine by mail, without making a court appearance.

### ***Sale of E-cigarettes to Minors***

The bill subjects anyone who sells, gives, or delivers an e-cigarette to a minor to a maximum fine of:

1. \$200 for a first offense,
2. \$350 for a second offense committed within 18 months of the first offense, and
3. \$500 for each subsequent offense committed within 18 months.

The bill does not specify whether the 18-month time frame for third and subsequent offenses runs from the date of the first or second offense. The bill exempts anyone who sells, gives, or delivers an e-cigarette to a minor who receives it in his or her capacity as an employee.

It requires sellers and their agents or employees who sell e-cigarettes to ask prospective buyers whose age is in doubt for proper proof of age, in the form of a driver's license, valid passport, or identity card. It bars the seller, agent, or employee from selling an e-cigarette to such a person who does not provide this proof.

### ***Electronic Scanners***

The bill applies to e-cigarettes the laws regarding the use of transaction scan devices (electronic scanners) to verify the age of prospective cigarette purchasers. These include:

1. allowing sellers to check the validity of certain documents other than driver's licenses and identity cards,
2. barring sellers from selling to someone if the scan fails to match the information on the license or identity card,
3. limiting what a transaction scanner can record,
4. barring sellers or their employees from selling the information from a transaction scan, and
5. allowing an affirmative defense under certain conditions in prosecutions for selling e-cigarettes to minors.

As under the law regarding tobacco cigarettes, violators are subject to a civil penalty of up to \$1,000.

## **§ 2 — DEPARTMENT OF REVENUE SERVICES CIVIL PENALTIES FOR PURCHASE OR SALE OF TOBACCO CIGARETTES TO MINORS**

By law, the Department of Revenue Services (DRS) commissioner may, after a hearing, impose civil penalties on (1) minors who buy

tobacco cigarettes; (2) dealers, distributors, or their employees who sell them to minors; and (3) owners of businesses with cigarette vending machines that sell cigarettes to minors. The commissioner may also suspend or revoke the license of a dealer or distributor for selling to a minor.

***Purchase of Tobacco Cigarettes by Minors***

Under current law, a minor who illegally buys these cigarettes faces a maximum penalty of \$100 for a first violation and \$150 for each subsequent violation. Under the bill, the commissioner cannot fine a minor for a second or subsequent violation unless the minor committed it within 24 months of a first violation.

***Sale to Minors by Dealers, Distributors, or Their Employees, or Owners of Businesses with Cigarette Vending Machines***

The bill waives, for a first offense, the penalty for dealers, distributors, their employees, or owners of businesses with cigarette vending machines who successfully complete an online tobacco prevention education program administered by the Department of Mental Health and Addiction Services. They must do so within 30 days after the DRS commissioner finds that they have violated the law.

But it imposes the existing civil penalties on first-time offenders who fail to successfully complete the program. It extends, from 18 months to 24 months, the period in which a violation of the law is deemed a subsequent offense for purposes of imposing a higher penalty and specifies that the 24-month period runs from the date of the first violation.

The bill does not change the amount of the penalties, listed in Table 1 below, or the hearing requirement. By law, people may appeal any fine the commissioner imposes.

**Table 1: DRS Penalties for Sale of Tobacco Products to Minors**

	<b><i>First Offense</i></b>	<b><i>Second Offense</i></b>	<b><i>Subsequent Offense</i></b>
Employee of Dealer or Distributor	\$200	\$250	\$250

Dealer/Distributor	\$300	\$750	\$750 and 30-day license suspension
Owner of Business with Cigarette Vending Machines	\$500	\$750	\$750 and removal of vending machine. No replacement machine for one year.

### § 3 — SALE OF INDIVIDUAL CIGARETTES

The law prohibits anyone from selling cigarettes except in unopened packages of at least 20 cigarettes that (1) originated with the manufacturer and (2) bear the legally required health warning. Under current law, DRS may impose civil penalties on violators. The bill subjects violators to fines in addition to these civil penalties.

It subjects people who violate this law to a maximum fine of \$200 for a first offense; \$300 for a second offense within 24 months; and \$500 for each subsequent offense within 24 months of the first offense. The bill allows violators to pay the fine by mail without making a court appearance.

Under current law, unchanged by the bill, the DRS commissioner may impose civil penalties of \$50 for a first offense; \$250 for a second offense; and \$500 for a subsequent offense. These penalties are in addition to any other penalty the law provides, including suspension or revocation of a dealer's or distributor's license.

### § 4 — TOBACCO AND HEALTH TRUST FUND

The Tobacco and Health Trust Fund provides funds to (1) support and encourage reduction of tobacco abuse through prevention, education, and cessation programs; (2) support and encourage development of programs reducing substance abuse; and (3) develop and implement programs to meet unmet physical and mental health needs in the state.

Current law caps the trust fund board's annual disbursements for FY 14 and FY 15 at \$3 million per year. Starting in FY 17, current law restores prior trust fund disbursement levels of (1) up to one-half the previous fiscal year's annual disbursement to the trust fund from the

Tobacco Settlement Fund, to a maximum of \$6 million a year, and (2) the trust fund's net earnings on principal from the previous fiscal year.

The bill instead allows the board to recommend, for fiscal years starting with FY 14, the disbursement of up to the fund's total unobligated balance, after funds have been disbursed according to law, up to a maximum of \$12 million annually.

Finally, it allows the board to operate in FY 16. Current law suspends the board's operation for that fiscal year.

**COMMITTEE ACTION**

Committee on Children

Joint Favorable Substitute

Yea 12 Nay 0 (03/11/2014)

Judiciary Committee

Joint Favorable

Yea 35 Nay 1 (04/09/2014)

Appropriations Committee

Joint Favorable

Yea 48 Nay 0 (04/22/2014)