



House of Representatives

File No. 847

General Assembly

January Session, 2015

(Reprint of File No. 673)

Substitute House Bill No. 6283
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 18, 2015

AN ACT REGULATING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) As used in this section
2 and section 2 of this act:

3 (1) "Child care facility" means a provider of child day care services
4 as defined in section 19a-77 of the general statutes, or a person or
5 entity required to be licensed under section 17a-145 of the general
6 statutes;

7 (2) "Electronic nicotine delivery system" means an electronic device
8 that may be used to simulate smoking in the delivery of nicotine or
9 other substances to a person inhaling from the device, and includes,
10 but is not limited to, an electronic cigarette, electronic cigar, electronic
11 cigarillo, electronic pipe or electronic hookah and any related device
12 and any cartridge or other component of such device;

13 (3) "Liquid nicotine container" means a container that holds a liquid

14 substance containing nicotine that is sold, marketed or intended for
15 use in an electronic nicotine delivery system or vapor product, except
16 "liquid nicotine container" does not include such a container that is
17 prefilled and sealed by the manufacturer and not intended to be
18 opened by the consumer; and

19 (4) "Vapor product" means any product that employs a heating
20 element, power source, electronic circuit or other electronic, chemical
21 or mechanical means, regardless of shape or size, to produce a vapor
22 that may or may not include nicotine, that is inhaled by the user of
23 such product.

24 (b) (1) No person shall use an electronic nicotine delivery system or
25 vapor product: (A) In any building or portion of a building owned and
26 operated or leased and operated by the state or any political
27 subdivision thereof; (B) in any area of a health care institution; (C) in
28 any area of a retail food store; (D) in any restaurant; (E) in any area of
29 an establishment with a permit issued for the sale of alcoholic liquor
30 pursuant to section 30-20a, 30-21, 30-21b, 30-22, 30-22a, 30-22c, 30-26,
31 30-28, 30-28a, 30-33a, 30-33b, 30-35a, 30-37a, 30-37e or 30-37f of the
32 general statutes, in any area of establishment with a permit issued for
33 the sale of alcoholic liquor pursuant to section 30-23 of the general
34 statutes issued after May 1, 2003, or the bar area of a bowling
35 establishment holding a permit pursuant to subsection (a) of section
36 30-37c of the general statutes; (F) within a school building while school
37 is in session or student activities are being conducted; (G) within a
38 child care facility, except, if the child care facility is a family day care
39 home as defined in section 19a-77 of the general statutes, such use is
40 prohibited only when a child enrolled in such home is present; (H) in
41 any passenger elevator, provided no person shall be arrested for
42 violating this subsection unless there is posted in such elevator a sign
43 which indicates that such use is prohibited by state law; (I) in any
44 dormitory in any public or private institution of higher education; or
45 (J) in any area of a dog race track or a facility equipped with screens for
46 the simulcasting of off-track betting race programs or jai alai games.
47 For purposes of this subsection, "restaurant" means space, in a suitable

48 and permanent building, kept, used, maintained, advertised and held
49 out to the public to be a place where meals are regularly served to the
50 public.

51 (2) This section shall not apply to (A) correctional facilities; (B)
52 designated smoking areas in psychiatric facilities; (C) public housing
53 projects, as defined in subsection (b) of section 21a-278a of the general
54 statutes; (D) classrooms where a demonstration of the use of an
55 electronic nicotine delivery system or vapor product is taking place as
56 part of a medical or scientific experiment or lesson; (E) establishments
57 without a permit for the sale of alcoholic liquor that sell electronic
58 nicotine delivery systems, vapor products or liquid nicotine containers
59 on-site and allow their customers to use such systems, products or
60 containers on-site; (F) smoking rooms provided by employers for
61 employees, pursuant to section 31-40q of the general statutes; (G)
62 notwithstanding the provisions of subparagraph (E) of subdivision (1)
63 of this subsection, the outdoor portion of the premises of any permittee
64 listed in subparagraph (E) of subdivision (1) of this subsection,
65 provided, in the case of any seating area maintained for the service of
66 food, at least seventy-five per cent of the outdoor seating capacity is an
67 area in which smoking is prohibited and which is clearly designated
68 with written signage as a nonsmoking area, except that any temporary
69 seating area established for special events and not used on a regular
70 basis shall not be subject to the prohibition on the use of an electronic
71 nicotine delivery system or vapor product or the signage requirements
72 of this subparagraph; or (H) any tobacco bar, provided no tobacco bar
73 shall expand in size or change its location from its size or location as of
74 October 1, 2015. For purposes of this subdivision, "outdoor" means an
75 area which has no roof or other ceiling enclosure, "tobacco bar" means
76 an establishment with a permit for the sale of alcoholic liquor to
77 consumers issued pursuant to chapter 545 of the general statutes that,
78 in the calendar year ending December 31, 2015, generated ten per cent
79 or more of its total annual gross income from the on-site sale of tobacco
80 products and the rental of on-site humidors, and "tobacco product"
81 means any substance that contains tobacco, including, but not limited

82 to, cigarettes, cigars, pipe tobacco or chewing tobacco.

83 (c) The operator of a hotel, motel or similar lodging may allow
84 guests to use an electronic nicotine delivery system or vapor product
85 in not more than twenty-five per cent of the rooms offered as
86 accommodations to guests.

87 (d) In each room, elevator, area or building in which the use of an
88 electronic nicotine delivery system or vapor product is prohibited by
89 this section, the person in control of the premises shall post or cause to
90 be posted in a conspicuous place signs stating that such use is
91 prohibited by state law. Such signs, except in elevators, restaurants,
92 establishments with permits to sell alcoholic liquor to consumers
93 issued pursuant to chapter 545 of the general statutes, hotels, motels or
94 similar lodgings, and health care institutions, shall have letters at least
95 four inches high with the principal strokes of letters not less than one-
96 half inch wide.

97 (e) Any person found guilty of using an electronic nicotine delivery
98 system or vapor product in violation of this section, failure to post
99 signs as required by this section or the unauthorized removal of such
100 signs shall have committed an infraction.

101 (f) Nothing in this section shall be construed to require the
102 designation of any area for the use of electronic nicotine delivery
103 system or vapor product in any building.

104 (g) The provisions of this section shall supersede and preempt the
105 provisions of any municipal law or ordinance relative to the use of an
106 electronic nicotine delivery system or vapor product effective prior to,
107 on or after October 1, 2015.

108 Sec. 2. (*Effective October 1, 2015*) Not later than thirty days after the
109 federal Food and Drug Administration's proposed rule regarding
110 tobacco products deemed to be subject to the federal Food, Drug and
111 Cosmetic Act, 21 CFR Parts 1100, 1140 and 1143, becomes final, the
112 joint standing committee of the General Assembly having cognizance

113 of matters relating to public health shall hold a public hearing for
114 purposes of reviewing such rule and determining whether it
115 recommends legislation concerning products, including, but not
116 limited to, electronic nicotine delivery systems and vapor products, in
117 response to such rule.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	New section

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: None

Municipal Impact: None

Explanation

The bill's requirement of the development of regulations by the Department of Public Health results in no fiscal impact as they have the required expertise necessary to complete the task.

House "A" (LCO 6666) eliminated a requirement that the Department of Consumer Protection enforce certain child resistant cap regulations pertaining to nicotine products which eliminated costs of \$79,063 in FY 16 and \$105,416 in FY 17.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6283 (as amended by House "A")******AN ACT REGULATING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.***

This bill imposes restrictions on the use of “electronic nicotine delivery systems” and “vapor products” (collectively called e-cigarettes in this analysis) in certain establishments and public areas that are similar to existing restrictions on smoking in such areas. In doing so, it:

1. prohibits the use of e-cigarettes in state buildings, restaurants, places serving alcohol, schools, child care facilities, and health care facilities, among other areas;
2. makes exceptions for e-cigarette use in certain areas and facilities, including designated smoking areas, tobacco bars, and outdoor areas in establishments serving alcohol;
3. permits hotel and motel operators to allow e-cigarette use in up to 25% of rooms;
4. requires signs in areas where e-cigarette use is prohibited;
5. establishes penalties for violations of the bill; and
6. specifies that nothing in the bill requires the designation of an area in a building for e-cigarette use.

Under the bill, the Public Health Committee must hold a hearing to determine whether any legislation is needed after the federal Food and Drug Administration (FDA) finalizes a rule that could impose federal regulations on e-cigarettes.

Finally, the bill specifies that it supersedes and preempts municipal laws or ordinances on e-cigarette use.

*House Amendment "A" removes the provisions in the original bill (File 673) requiring (1) DPH to adopt implementing regulations, (2) liquid nicotine containers sold in the state to meet child resistant standards, and (3) the Public Health Committee to determine legislative recommendations on liquid nicotine containers following implementation of the final FDA rule.

EFFECTIVE DATE: October 1, 2015

ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS

Under the act, 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. Such 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.

E-CIGARETTE USE IN CERTAIN ESTABLISHMENTS AND PUBLIC AREAS

Where Use Is Prohibited

The bill prohibits e-cigarette use in the following places:

1. buildings owned or leased and operated by the state or its political subdivisions,
2. health care institutions,
3. retail food stores,
4. restaurants (see below),

5. places that serve alcohol under specified permits (see below),
6. school buildings during school or student activities,
7. specified child care facilities (see below),
8. passenger elevators,
9. dormitories at public or private higher education institutions,
and
10. dog race tracks or facilities equipped with screens for simulcasting off-track betting racing programs or jai alai games.

Under the bill, a restaurant is a space, in a suitable and permanent building, kept, used, maintained, advertised, and held out to the public as a place where meals are regularly served to the public.

E-cigarette use is prohibited in establishments that serve alcohol under the following permits: university; hotel; resort; restaurant; café; juice bar; tavern; railroad; airline; coliseum or coliseum concession; special sporting facility; nonprofit theater or public museum; or airport, airport restaurant, bar, concession, or airline club. E-cigarette use is also prohibited in (1) any club issued a permit after May 1, 2003 to serve alcohol and (2) the bar areas of bowling establishments that hold such a permit.

Finally, under the bill, a “child care facility” is a child day care center, group or family day care home, or any child care facility that must be licensed by the Department of Children and Families. The bill specifies that the prohibition on e-cigarette use applies only in homes used for family day care when a child enrolled in the day care is present.

By law:

1. child day care centers offer or provide supplementary care to more than 12 related or unrelated children outside their own

homes on a regular basis;

2. group day care homes (a) offer or provide supplementary care to seven to 12 related or unrelated children on a regular basis or (b) meet the definition of a family day care home, except that they do not operate in a private family home; and
3. family day care homes are private family homes that generally provide care on a regularly recurring basis for up to six children, including the provider's children, who are not in school full time between three and 12 hours during a 24-hour period (CGS § 19a-77).

Exceptions

Under the bill, the prohibition on e-cigarette use does not apply to:

1. correctional facilities;
2. designated smoking areas in psychiatric facilities;
3. public housing projects;
4. classrooms, during e-cigarette demonstrations that are part of a medical or scientific experiment or lesson;
5. smoking rooms provided by employers for employees;
6. outdoor portions of places serving alcohol, under certain circumstances (see below); and
7. tobacco bars, provided they do not expand or change their location as of October 1, 2015.

Establishments serving alcohol where using e-cigarettes is generally prohibited under the bill may allow e-cigarette use in outdoor areas (i.e., areas with no roof or other ceiling enclosure). If they choose to do so, they must prohibit e-cigarette use in at least 75% of outdoor areas where food is served and designate such areas with a

“nonsmoking” sign. Any temporary seating area for special events in such establishments is not subject to the prohibition on e-cigarette use or signage requirements.

Under the bill, a “tobacco bar” is a bar that has a permit to sell alcohol and, in the calendar year ending December 31, 2015, generated 10 percent or more of its annual gross income from on-site tobacco product sales and humidor rentals.

The bill also permits hotel, motel, or similar lodging operators to allow guests to use e-cigarettes in up to 25% of rooms offered as guest accommodations.

Signage

In each room, elevator, area, or building in which e-cigarette use is prohibited by the bill, the person in control of the premises must post or have someone post a sign indicating that e-cigarette use is prohibited by state law. Generally, the signs must have letters at least four inches high with principal strokes at least one-half inch wide. The bill exempts elevators, restaurants, establishments that serve alcohol, hotels, motels, other lodgings, and healthcare institutions from the letter-size requirements.

Penalties

Under the bill, a person commits an infraction if he or she is found guilty of (1) using an e-cigarette where prohibited by the bill, (2) failing to post required signs, or (3) removing the signs without authorization. The bill specifies that a person may be arrested for using an e-cigarette in an elevator only if there is a sign indicating that doing so is prohibited.

HEARING FOLLOWING FINAL FDA RULE

The bill requires the Public Health Committee to hold a public hearing within 30 days after the finalization of the FDA's proposed rule on tobacco products deemed subject to the Food, Drug, and Cosmetic Act. The act gives the FDA the authority to regulate

cigarettes, smokeless tobacco, and any other tobacco products that the FDA determines, by regulation, to be subject to the law. Part of the proposed FDA rule deems e-cigarettes to be tobacco products, thus subjecting them to many of the restrictions that currently apply to cigarettes (e.g., requiring submission of ingredient lists and reporting of harmful and potentially harmful ingredients).

At the hearing required by the bill, the committee must review the FDA rule and determine whether to recommend legislation on tobacco products, including e-cigarettes and vapor products.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 21 Nay 4 (03/30/2015)