



# House of Representatives

General Assembly

**File No. 651**

February Session, 2016

Substitute House Bill No. 5624

*House of Representatives, April 18, 2016*

The Committee on Finance, Revenue and Bonding reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING LICENSURE OF E-CIGARETTE SELLERS AND MANUFACTURERS.***

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

1 Section 1. Section 21a-415 of the 2016 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective from passage*):

4 (a) On and after March 1, 2016, no person in this state may sell, offer  
5 for sale or possess with intent to sell an electronic nicotine delivery  
6 system or vapor product unless such person has obtained an electronic  
7 nicotine delivery system certificate of dealer registration from the  
8 Commissioner of Consumer Protection pursuant to this section for the  
9 place of business where such system or product is sold, offered for sale  
10 or possessed with the intent to sell. An electronic nicotine delivery  
11 system certificate of dealer registration shall allow the sale of electronic  
12 nicotine delivery systems or vapor products at such place of business.  
13 A holder of an electronic nicotine delivery system certificate of dealer

14 registration shall post such registration in a prominent location  
15 adjacent to electronic nicotine delivery system products or vapor  
16 products offered for sale. For the purposes of this section, "person"  
17 means each owner of a business organization, or such owner's  
18 authorized designee, provided each affiliate of a business organization  
19 that is under common control or ownership shall constitute a separate  
20 person and "person" includes, but is not limited to, retailers,  
21 wholesalers and dealers.

22 (b) (1) On or after January 1, 2016, any person desiring an electronic  
23 nicotine delivery system certificate of dealer registration or a renewal  
24 of such a certificate of dealer registration shall make a sworn  
25 application therefor to the Department of Consumer Protection upon  
26 forms to be furnished by the department, showing the name, [and]  
27 address and electronic mail address of the applicant [,] and the location  
28 of the place of business which is to be operated under such certificate  
29 of dealer registration. [and a financial statement setting forth all  
30 elements and details of any business transactions connected with the  
31 application. The application shall also indicate any crimes of which the  
32 applicant has been convicted. Applicants shall] The department may  
33 require that an applicant submit documents sufficient to establish that  
34 state and local building, fire and zoning requirements will be met at  
35 the location of any sale. The department may, in its discretion, conduct  
36 an investigation to determine whether a certificate of dealer  
37 registration shall be issued to an applicant.

38 (2) The commissioner shall issue an electronic nicotine delivery  
39 system certificate of dealer registration to any such applicant not later  
40 than thirty days after the date of application unless the commissioner  
41 finds: (A) The applicant has wilfully made a materially false statement  
42 in such application or in any other application made to the  
43 commissioner; or (B) the applicant has neglected to pay any taxes due  
44 to this state, [,] or (C) the applicant has been convicted of violating any  
45 of the cigarette or other tobacco products tax laws of this or any other  
46 state or the cigarette tax laws of the United States or has such a  
47 criminal record that the commissioner reasonably believes that such

48 applicant is not a suitable person to be issued a license, provided no  
49 refusal shall be rendered under this subdivision except in accordance  
50 with the provisions of sections 46a-80 and 46a-81.]

51 (3) A certificate of dealer registration issued under this section shall  
52 be renewed annually and may be suspended or revoked at the  
53 discretion of the Department of Consumer Protection. Any person  
54 aggrieved by a denial of an application, refusal to renew a dealer  
55 registration or suspension or revocation of a dealer registration may  
56 appeal in the manner prescribed for permits under section 30-55. An  
57 electronic nicotine delivery system certificate of dealer registration  
58 shall not constitute property, nor shall it be subject to attachment and  
59 execution, nor shall it be alienable, [except that it shall descend to the  
60 estate of a deceased holder of a certificate of dealer registration by the  
61 laws of testate or intestate succession.]

62 (4) The applicant shall pay to the department a nonrefundable  
63 application fee of seventy-five dollars, which fee shall be in addition to  
64 the annual fee prescribed in subsection (c) of this section. An  
65 application fee shall not be charged for an application to renew a  
66 certificate of dealer registration.

67 [(5) In any case in which a certificate of dealer registration has been  
68 issued to a partnership, if one or more of the partners dies or retires,  
69 the remaining partner or partners need not file a new application for  
70 the unexpired portion of the current certificate of dealer registration,  
71 and no additional fee for such unexpired portion shall be required.  
72 Notice of any such change shall be given to the department and the  
73 certificate of dealer registration shall be endorsed to show correct  
74 ownership. Whenever any partnership changes by reason of the  
75 addition of one or more partners, a new application and the payment  
76 of new application and annual fees shall be required.]

77 (c) The annual fee for an electronic nicotine delivery system  
78 certificate of dealer registration shall be four hundred dollars.

79 (d) The department may renew a certificate of dealer registration

80 issued under this section that has expired if the applicant pays to the  
81 department any fine imposed by the commissioner pursuant to  
82 subsection (c) of section 21a-4, which fine shall be in addition to the  
83 fees prescribed in this section for the certificate of dealer registration  
84 applied for. The provisions of this subsection shall not apply to any  
85 certificate of dealer registration which is the subject of administrative  
86 or court proceedings.

87 (e) (1) Any person in this state who knowingly sells, offers for sale  
88 or possesses with intent to sell an electronic nicotine delivery system or  
89 vapor product [without] from a place of business that does not have a  
90 certificate of dealer registration as required under this section shall be  
91 fined not more than fifty dollars for each day of such violation, except  
92 that the commissioner may waive all or any part of such fine if it is  
93 proven to the commissioner's satisfaction that the failure to obtain or  
94 renew such certificate of dealer registration was due to reasonable  
95 cause.

96 (2) Notwithstanding the provisions of subdivision (1) of this  
97 subsection, any person whose electronic nicotine delivery system  
98 certificate of dealer registration for the place of business where  
99 electronic nicotine delivery systems or vapor products are sold, offered  
100 for sale or possessed with the intent to sell has expired and who  
101 knowingly sells, offers for sale or possesses with intent to sell an  
102 electronic nicotine delivery system or vapor product, where such  
103 person's period of operation without such certificate of dealer  
104 registration is not more than ninety days from the date of expiration of  
105 such certificate of dealer registration, shall have committed an  
106 infraction and shall be fined ninety dollars.

107 (3) Notwithstanding the provisions of subdivisions (1) and (2) of  
108 this subsection, no penalty shall be imposed under this subsection  
109 unless the commissioner sends written notice of any violation to the  
110 person who is subject to a penalty under subdivision (1) or (2) of this  
111 subsection and allows such person sixty days from the date such notice  
112 was sent to cease such violation and comply with the requirements of

113 this section. Such written notice shall be sent [, within available  
114 appropriations,] by mail evidenced by a certificate of mailing or other  
115 similar United States Postal Service form from which the date of  
116 deposit can be verified or by electronic mail to the electronic mail  
117 address designated by such person on its application or renewal  
118 application for nicotine delivery system certificate of dealer  
119 registration.

120 Sec. 2. Section 21a-415a of the 2016 supplement to the general  
121 statutes is repealed and the following is substituted in lieu thereof  
122 (*Effective from passage*):

123 (a) On and after March 1, 2016, no person in this state may  
124 manufacture an electronic nicotine delivery system or vapor product  
125 unless such person has obtained an electronic nicotine delivery system  
126 certificate of manufacturer registration from the Commissioner of  
127 Consumer Protection pursuant to this section for the place of business  
128 where such system or product is manufactured. An electronic nicotine  
129 delivery system certificate of manufacturer registration shall allow the  
130 manufacture of electronic nicotine delivery systems or vapor products  
131 in this state at such place of business. For the purposes of this section,  
132 "manufacturer" means any person who mixes, compounds, repackages  
133 or resizes any nicotine-containing electronic nicotine delivery system  
134 or vapor product, and "person" means each owner of a business  
135 organization, provided each affiliate of a business organization that is  
136 under common control or ownership shall constitute a separate  
137 person.

138 (b) (1) On or after January 1, 2016, any person desiring an electronic  
139 nicotine delivery system certificate of manufacturer registration or a  
140 renewal of such a certificate of manufacturer registration shall make a  
141 sworn application therefor to the Department of Consumer Protection  
142 upon forms to be furnished by the department, showing the name,  
143 [and] address and electronic mail address of the applicant [,] and the  
144 location of the place of business which is to be operated under such  
145 certificate of manufacturer registration, [and a financial statement

146 setting forth all elements and details of any business transactions  
147 connected with the application. The application shall also indicate any  
148 crimes of which the applicant has been convicted. Applicants shall]  
149 The department may require that an applicant submit documents  
150 sufficient to establish that state and local building, fire and zoning  
151 requirements will be met at the place of manufacture. The department  
152 may, in its discretion, conduct an investigation to determine whether a  
153 certificate of manufacturer registration shall be issued to an applicant.

154 (2) The commissioner shall issue an electronic nicotine delivery  
155 system certificate of manufacturer registration to any such applicant  
156 not later than thirty days after the date of application unless the  
157 commissioner finds: (A) The applicant has wilfully made a materially  
158 false statement in such application or in any other application made to  
159 the commissioner; or (B) the applicant has neglected to pay any taxes  
160 due to this state, [; or (C) the applicant has been convicted of violating  
161 any of the cigarette or other tobacco products tax laws of this or any  
162 other state or the cigarette tax laws of the United States or has such a  
163 criminal record that the commissioner reasonably believes that such  
164 applicant is not a suitable person to be issued a license, provided no  
165 refusal shall be rendered under this subdivision except in accordance  
166 with the provisions of sections 46a-80 and 46a-81.]

167 (3) A certificate of manufacturer registration issued under this  
168 section shall be renewed annually and may be suspended or revoked  
169 at the discretion of the Department of Consumer Protection. Any  
170 person aggrieved by a denial of an application, refusal to renew a  
171 certificate of manufacturer registration or suspension or revocation of a  
172 certificate of manufacturer registration may appeal in the manner  
173 prescribed for permits under section 30-55. An electronic nicotine  
174 delivery system certificate of manufacturer registration shall not  
175 constitute property, nor shall it be subject to attachment and execution,  
176 nor shall it be alienable, [, except that it shall descend to the estate of a  
177 deceased holder of a certificate of manufacturer registration by the  
178 laws of testate or intestate succession.]

179 (4) The applicant shall pay to the department a nonrefundable  
180 application fee of seventy-five dollars, which fee shall be in addition to  
181 the annual fee prescribed in subsection (c) of this section. An  
182 application fee shall not be charged for an application to renew a  
183 certificate of manufacturer registration.

184 [(5) In any case in which a certificate of manufacturer registration  
185 has been issued to a partnership, if one or more of the partners dies or  
186 retires, the remaining partner or partners need not file a new  
187 application for the unexpired portion of the current certificate of  
188 manufacturer registration, and no additional fee for such unexpired  
189 portion shall be required. Notice of any such change shall be given to  
190 the department and the certificate of manufacturer registration shall be  
191 endorsed to show correct ownership. Whenever any partnership  
192 changes by reason of the addition of one or more partners, a new  
193 application and the payment of new application and annual fees shall  
194 be required.]

195 (c) The annual fee for an electronic nicotine delivery system  
196 certificate of manufacturer registration shall be four hundred dollars.

197 (d) The department may renew a certificate of manufacturer  
198 registration issued under this section that has expired if the applicant  
199 pays to the department any fine imposed by the commissioner  
200 pursuant to subsection (c) of section 21a-4, which fine shall be in  
201 addition to the fees prescribed in this section for the certificate of  
202 manufacturer registration applied for. The provisions of this  
203 subsection shall not apply to any certificate of manufacturer  
204 registration which is the subject of administrative or court  
205 proceedings.

206 (e) (1) Any person in this state who knowingly manufactures an  
207 electronic nicotine delivery system or vapor product [without] from a  
208 place of business that does not have a certificate of manufacturer  
209 registration as required under this section shall be fined not more than  
210 fifty dollars for each day of such violation, except that the  
211 commissioner may waive all or any part of such fine if it is proven to

212 the commissioner's satisfaction that the failure to obtain or renew such  
213 certificate of manufacturer registration was due to reasonable cause.

214 (2) Notwithstanding the provisions of subdivision (1) of this  
215 subsection, any person whose electronic nicotine delivery system  
216 certificate of manufacturer registration for the place of business where  
217 electronic nicotine delivery systems or vapor products are  
218 manufactured has expired and who manufactures in this state an  
219 electronic nicotine delivery system or vapor product, where such  
220 person's period of operation without such certificate of manufacturer  
221 registration is not more than ninety days from the date of expiration of  
222 such certificate of manufacturer registration, shall have committed an  
223 infraction and shall be fined ninety dollars.

224 (3) Notwithstanding the provisions of subdivisions (1) and (2) of  
225 this subsection, no penalty shall be imposed under this subsection  
226 unless the commissioner sends written notice of any violation to the  
227 person who is subject to a penalty under subdivision (1) or (2) of this  
228 subsection and allows such person sixty days from the date such notice  
229 was sent to cease such violation and comply with the requirements of  
230 this section. Such written notice shall be sent [, within available  
231 appropriations,] by mail evidenced by a certificate of mailing or other  
232 similar United States Postal Service form from which the date of  
233 deposit can be verified or by electronic mail to the electronic mail  
234 address designated by such person on its application or renewal  
235 application for nicotine delivery system certificate of dealer  
236 registration.

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

**FIN**            *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:*** None

***Municipal Impact:*** None

***Explanation***

This bill makes various changes to the laws requiring electronic nicotine delivery system or vapor product dealers and manufacturers to register with the Department of Consumer Protection, which results in no fiscal impact as it conforms statute to agency practice.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis**

**sHB 5624**

***AN ACT CONCERNING LICENSURE OF E-CIGARETTE SELLERS AND MANUFACTURERS.***

**SUMMARY:**

This bill makes various changes to the laws requiring electronic nicotine delivery system or vapor product dealers and manufacturers to register with the Department of Consumer Protection (DCP) and annually renew their registrations in order to sell or manufacture these products (see BACKGROUND).

Among other things, the bill:

1. limits the registration requirement to business owners, rather than any person selling or manufacturing these products, and requires them to obtain a registration for each place of business where the products are sold or manufactured;
2. modifies the information applicants must provide in their applications, including eliminating a requirement that applicants indicate their criminal convictions;
3. eliminates the requirement that the commissioner deny an application if he finds that the applicant was convicted of violating any state or federal cigarette or tobacco product tax law or is unsuitable because of his or her criminal record, except as permitted by law;
4. eliminates provisions (a) specifying application procedures for registrations issued to partnerships and (b) allowing a registration to transfer through a registrant's estate when he or she dies; and

5. allows DCP to send notices of violations by email.

EFFECTIVE DATE: Upon passage

### **DEALER AND MANUFACTURER REGISTRATION**

The bill limits the manufacturers' registration requirement to business owners and dealers' registration requirement to business owners or their authorized designees. Under current law, the requirement applies to any "person" selling or manufacturing these products. Under the bill, each affiliate under the business's common control or ownership must obtain its own permit.

The bill eliminates provisions (1) requiring partnerships to submit new applications and pay new fees if they add one or more new partners and (2) specifying that the remaining partners need not file a new application or pay an additional fee if one or more of the partners dies or retires.

The bill also specifies that the dealer registration requirement applies to retailers, wholesalers, and dealers.

### **APPLICATION**

The bill requires the application for a dealer or manufacturer registration to include the applicant's email address. It eliminates requirements that the applications include (1) a financial statement detailing any business transactions connected to the application and (2) the applicant's criminal convictions. It also allows, rather than requires, DCP to require applicants to provide proof that the business location will meet state and local building, fire, and zoning requirements.

### **NOTICE OF VIOLATIONS**

The law makes it illegal to manufacture, sell, offer for sale, or possess with intent to sell an electronic nicotine delivery system or vapor product without a manufacturer or dealer registration requirement and establishes fines and penalties for violations.

Current law requires the DCP commissioner to notify a dealer or manufacturer of a violation before imposing a penalty. The bill eliminates a requirement that he do so within available appropriations and allows him to send the notice by email to the email address designated on the dealer or manufacturer's application or renewal form. As under existing law, he may also send the notice with a certificate of mailing or a similar U.S. Postal Service form that verifies the date on which it was sent.

## **BACKGROUND**

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

An electronic nicotine delivery system is an electronic device used to simulate smoking while delivering nicotine or another substance to a person who inhales from it. By law, this includes (1) electronic cigarettes, cigars, cigarillos, pipes, and hookahs and (2) related devices, cartridges, liquid, 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 (CGS § 53-344b).

## **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 49 Nay 0 (03/31/2016)