



House of Representatives

General Assembly

File No. 112

January Session, 2017

House Bill No. 5384

House of Representatives, March 22, 2017

The Committee on Public Health reported through REP. STEINBERG of the 136th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT RAISING THE LEGAL AGE FOR PURCHASE AND USE OF TOBACCO PRODUCTS.

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

1 Section 1. Subsection (a) of section 12-286a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2017*):

4 (a) Each distributor and each dealer, as defined in section 12-285,
5 shall place and maintain in legible condition at each point of sale of
6 cigarettes to consumers, including the front of each vending machine,
7 and each restricted cigarette vending machine a notice which states (1)
8 that the sale, giving or delivering of tobacco products, including
9 cigarettes, to any person under [eighteen] twenty-one years of age is
10 prohibited by section 53-344, as amended by this act, (2) the purchase
11 or misrepresentation of age by a person under [eighteen] twenty-one
12 years of age to purchase cigarettes or tobacco products is prohibited by
13 said section 53-344, and (3) the penalties and fines for violating said
14 section 53-344 and section 12-295a.

15 Sec. 2. Subsection (a) of section 12-295 of the general statutes is
16 repealed and the following is substituted in lieu thereof (*Effective*
17 *October 1, 2017*):

18 (a) The commissioner may suspend or revoke the license of any
19 dealer or distributor for failure to comply with any provision of this
20 chapter or regulations related thereto or for the sale or delivery of
21 tobacco in any form to a [minor under eighteen] person under twenty-
22 one years of age, following a hearing with respect to which notice in
23 writing, specifying the time and place of such hearing and requiring
24 such dealer or distributor to show cause why such license should not
25 be revoked, is mailed or delivered to such dealer or distributor not less
26 than ten days preceding the date of such hearing. Such notice may be
27 served personally or by registered or certified mail.

28 Sec. 3. Section 53-344 of the general statutes is repealed and the
29 following is substituted in lieu thereof (*Effective October 1, 2017*):

30 (a) As used in this section:

31 (1) "Cardholder" means any person who presents a driver's license
32 or an identity card to a seller or seller's agent or employee, to purchase
33 or receive tobacco from such seller or seller's agent or employee;

34 (2) "Identity card" means an identification card issued in accordance
35 with the provisions of section 1-1h;

36 (3) "Transaction scan" means the process by which a seller or seller's
37 agent or employee checks, by means of a transaction scan device, the
38 validity of a driver's license or an identity card; and

39 (4) "Transaction scan device" means any commercial device or
40 combination of devices used at a point of sale that is capable of
41 deciphering in an electronically readable format the information
42 encoded on the magnetic strip or bar code of a driver's license or an
43 identity card.

44 (b) Any person who sells, gives or delivers to any [minor] person

45 under [eighteen] twenty-one years of age tobacco, unless the [minor]
46 person under twenty-one years of age is delivering or accepting
47 delivery in such person's capacity as an employee, in any form shall be
48 fined not more than two hundred dollars for the first offense, not more
49 than three hundred fifty dollars for a second offense within an
50 eighteen-month period and not more than five hundred dollars for
51 each subsequent offense within an eighteen-month period.

52 (c) Any person under [eighteen] twenty-one years of age who
53 purchases or misrepresents such person's age to purchase tobacco in
54 any form or possesses tobacco in any form in any public place shall be
55 fined not more than fifty dollars for the first offense and not less than
56 fifty dollars or more than one hundred dollars for each subsequent
57 offense. For purposes of this subsection, "public place" means any area
58 that is used or held out for use by the public whether owned or
59 operated by public or private interests.

60 (d) (1) A seller or seller's agent or employee may perform a
61 transaction scan to check the validity of a driver's license or identity
62 card presented by a cardholder as a condition for selling, giving away
63 or otherwise distributing tobacco to the cardholder.

64 (2) If the information deciphered by the transaction scan performed
65 under subdivision (1) of this subsection fails to match the information
66 printed on the driver's license or identity card presented by the
67 cardholder, or if the transaction scan indicates that the information so
68 printed is false or fraudulent, neither the seller nor any seller's agent or
69 employee shall sell, give away or otherwise distribute any tobacco to
70 the cardholder.

71 (3) Subdivision (1) of this subsection does not preclude a seller or
72 seller's agent or employee from using a transaction scan device to
73 check the validity of a document other than a driver's license or an
74 identity card, if the document includes a bar code or magnetic strip
75 that may be scanned by the device, as a condition for selling, giving
76 away or otherwise distributing tobacco to the person presenting the
77 document.

78 (e) (1) No seller or seller's agent or employee shall electronically or
79 mechanically record or maintain any information derived from a
80 transaction scan, except the following: (A) The name and date of birth
81 of the person listed on the driver's license or identity card presented by
82 a cardholder; (B) the expiration date and identification number of the
83 driver's license or identity card presented by a cardholder.

84 (2) No seller or seller's agent or employee shall use a transaction
85 scan device for a purpose other than the purposes specified in
86 subsection (e) of section 53-344b, as amended by this act, subsection (d)
87 of this section or subsection (c) of section 30-86.

88 (3) No seller or seller's agent or employee shall sell or otherwise
89 disseminate the information derived from a transaction scan to any
90 third party, including, but not limited to, selling or otherwise
91 disseminating that information for any marketing, advertising or
92 promotional activities, but a seller or seller's agent or employee may
93 release that information pursuant to a court order.

94 (4) Nothing in subsection (d) of this section or this subsection
95 relieves a seller or seller's agent or employee of any responsibility to
96 comply with any other applicable state or federal laws or rules
97 governing the sale, giving away or other distribution of tobacco.

98 (5) Any person who violates this subsection shall be subject to a civil
99 penalty of not more than one thousand dollars.

100 (f) (1) In any prosecution of a seller or seller's agent or employee for
101 a violation of subsection (b) of this section, it shall be an affirmative
102 defense that all of the following occurred: (A) A cardholder attempting
103 to purchase or receive tobacco presented a driver's license or an
104 identity card; (B) a transaction scan of the driver's license or identity
105 card that the cardholder presented indicated that the license or card
106 was valid; and (C) the tobacco was sold, given away or otherwise
107 distributed to the cardholder in reasonable reliance upon the
108 identification presented and the completed transaction scan.

109 (2) In determining whether a seller or seller's agent or employee has
110 proven the affirmative defense provided by subdivision (1) of this
111 section, the trier of fact in such prosecution shall consider that
112 reasonable reliance upon the identification presented and the
113 completed transaction scan may require a seller or seller's agent or
114 employee to exercise reasonable diligence and that the use of a
115 transaction scan device does not excuse a seller or seller's agent or
116 employee from exercising such reasonable diligence to determine the
117 following: (A) Whether a person to whom the seller or seller's agent or
118 employee sells, gives away or otherwise distributes tobacco is
119 [eighteen] twenty-one years of age or older; and (B) whether the
120 description and picture appearing on the driver's license or identity
121 card presented by a cardholder is that of the cardholder.

122 Sec. 4. Section 53-344b of the general statutes is repealed and the
123 following is substituted in lieu thereof (*Effective October 1, 2017*):

124 (a) As used in this section and sections 21a-415 and 21a-415a:

125 (1) "Electronic nicotine delivery system" means an electronic device
126 that may be used to simulate smoking in the delivery of nicotine or
127 other substance to a person inhaling from the device, and includes, but
128 is not limited to, an electronic cigarette, electronic cigar, electronic
129 cigarillo, electronic pipe or electronic hookah and any related device
130 and any cartridge, electronic cigarette liquid or other component of
131 such device;

132 (2) "Cardholder" means any person who presents a driver's license
133 or an identity card to a seller or seller's agent or employee, to purchase
134 or receive an electronic nicotine delivery system or vapor product from
135 such seller or seller's agent or employee;

136 (3) "Identity card" means an identification card issued in accordance
137 with the provisions of section 1-1h;

138 (4) "Transaction scan" means the process by which a seller or seller's
139 agent or employee checks, by means of a transaction scan device, the

140 validity of a driver's license or an identity card;

141 (5) "Transaction scan device" means any commercial device or
142 combination of devices used at a point of sale that is capable of
143 deciphering in an electronically readable format the information
144 encoded on the magnetic strip or bar code of a driver's license or an
145 identity card;

146 (6) "Sale" or "sell" means an act done intentionally by any person,
147 whether done as principal, proprietor, agent, servant or employee, of
148 transferring, or offering or attempting to transfer, for consideration, an
149 electronic nicotine delivery system or vapor product, including
150 bartering or exchanging, or offering to barter or exchange, an
151 electronic nicotine delivery system or vapor product;

152 (7) "Give" or "giving" means an act done intentionally by any
153 person, whether done as principal, proprietor, agent, servant or
154 employee, of transferring, or offering or attempting to transfer,
155 without consideration, an electronic nicotine delivery system or vapor
156 product;

157 (8) "Deliver" or "delivering" means an act done intentionally by any
158 person, whether as principal, proprietor, agent, servant or employee,
159 of transferring, or offering or attempting to transfer, physical
160 possession or control of an electronic nicotine delivery system or vapor
161 product;

162 (9) "Vapor product" means any product that employs a heating
163 element, power source, electronic circuit or other electronic, chemical
164 or mechanical means, regardless of shape or size, to produce a vapor
165 that may or may not include nicotine, that is inhaled by the user of
166 such product; and

167 (10) "Electronic cigarette liquid" means a liquid that, when used in
168 an electronic nicotine delivery system or vapor product, produces a
169 vapor that may or may not include nicotine and is inhaled by the user
170 of such electronic nicotine delivery system or vapor product.

171 (b) Any person who sells, gives or delivers to any [minor] person
172 under [eighteen] twenty-one years of age an electronic nicotine
173 delivery system or vapor product, unless the [minor] person under
174 twenty-one years of age is delivering or accepting delivery in such
175 person's capacity as an employee, in any form shall be fined not more
176 than two hundred dollars for the first offense, not more than three
177 hundred fifty dollars for a second offense within an eighteen-month
178 period and not more than five hundred dollars for each subsequent
179 offense within an eighteen-month period.

180 (c) Any person under [eighteen] twenty-one years of age who
181 purchases or misrepresents such person's age to purchase an electronic
182 nicotine delivery system or vapor product in any form or possesses an
183 electronic nicotine delivery system or vapor product in any form in
184 any public place shall be fined not more than fifty dollars for the first
185 offense and not less than fifty dollars or more than one hundred
186 dollars for each subsequent offense. For purposes of this subsection
187 "public place" means any area that is used or held out for use by the
188 public whether owned or operated by public or private interests.

189 (d) (1) A seller or seller's agent or employee may perform a
190 transaction scan to check the validity of a driver's license or identity
191 card presented by a cardholder as a condition for selling, giving or
192 otherwise delivering an electronic nicotine delivery system or vapor
193 product to the cardholder.

194 (2) If the information deciphered by the transaction scan performed
195 under subdivision (1) of this subsection fails to match the information
196 printed on the driver's license or identity card presented by the
197 cardholder, or if the transaction scan indicates that the information so
198 printed is false or fraudulent, neither the seller nor any seller's agent or
199 employee shall sell, give or otherwise deliver any electronic nicotine
200 delivery system or vapor product to the cardholder.

201 (3) Subdivision (1) of this subsection does not preclude a seller or
202 seller's agent or employee from using a transaction scan device to
203 check the validity of a document other than a driver's license or an

204 identity card, if the document includes a bar code or magnetic strip
205 that may be scanned by the device, as a condition for selling, giving or
206 otherwise delivering an electronic nicotine delivery system or vapor
207 product to the person presenting the document.

208 (e) (1) No seller or seller's agent or employee shall electronically or
209 mechanically record or maintain any information derived from a
210 transaction scan, except the following: (A) The name and date of birth
211 of the person listed on the driver's license or identity card presented by
212 a cardholder; and (B) the expiration date and identification number of
213 the driver's license or identity card presented by a cardholder.

214 (2) No seller or seller's agent or employee shall use a transaction
215 scan device for a purpose other than the purposes specified in
216 subsection (d) of this section, subsection (d) of section 53-344, as
217 amended by this act, or subsection (c) of section 30-86.

218 (3) No seller or seller's agent or employee shall sell or otherwise
219 disseminate the information derived from a transaction scan to any
220 third party, including, but not limited to, selling or otherwise
221 disseminating that information for any marketing, advertising or
222 promotional activities, but a seller or seller's agent or employee may
223 release that information pursuant to a court order.

224 (4) Nothing in subsection (d) of this section or this subsection
225 relieves a seller or seller's agent or employee of any responsibility to
226 comply with any other applicable state or federal laws or rules
227 governing selling, giving or otherwise delivering electronic nicotine
228 delivery systems or vapor products.

229 (5) Any person who violates this subsection shall be subject to a civil
230 penalty of not more than one thousand dollars.

231 (f) (1) In any prosecution of a seller or seller's agent or employee for
232 a violation of subsection (b) of this section, it shall be an affirmative
233 defense that all of the following occurred: (A) A cardholder attempting
234 to purchase or receive an electronic nicotine delivery system or vapor

235 product presented a driver's license or an identity card; (B) a
 236 transaction scan of the driver's license or identity card that the
 237 cardholder presented indicated that the license or card was valid; and
 238 (C) the electronic nicotine delivery system or vapor product was sold,
 239 given or otherwise delivered to the cardholder in reasonable reliance
 240 upon the identification presented and the completed transaction scan.

241 (2) In determining whether a seller or seller's agent or employee has
 242 proven the affirmative defense provided by subdivision (1) of this
 243 section, the trier of fact in such prosecution shall consider that
 244 reasonable reliance upon the identification presented and the
 245 completed transaction scan may require a seller or seller's agent or
 246 employee to exercise reasonable diligence and that the use of a
 247 transaction scan device does not excuse a seller or seller's agent or
 248 employee from exercising such reasonable diligence to determine the
 249 following: (A) Whether a person to whom the seller or seller's agent or
 250 employee sells, gives or otherwise delivers an electronic nicotine
 251 delivery system or vapor product is [eighteen] twenty-one years of age
 252 or older; and (B) whether the description and picture appearing on the
 253 driver's license or identity card presented by a cardholder is that of the
 254 cardholder.

255 (g) Each seller of electronic nicotine delivery systems or vapor
 256 products or such seller's agent or employee shall require a person who
 257 is purchasing or attempting to purchase an electronic nicotine delivery
 258 system or vapor product, whose age is in question, to exhibit proper
 259 proof of age. If a person fails to provide such proof of age, such seller
 260 or seller's agent or employee shall not sell an electronic nicotine
 261 delivery system or vapor product to the person. As used in this
 262 subsection, "proper proof" means a motor vehicle operator's license, a
 263 valid passport or an identity card issued in accordance with the
 264 provisions of section 1-1h.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	12-286a(a)

Sec. 2	<i>October 1, 2017</i>	12-295(a)
Sec. 3	<i>October 1, 2017</i>	53-344
Sec. 4	<i>October 1, 2017</i>	53-344b

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 18 \$	FY 19 \$
Department of Revenue Services	GF - Revenue Loss	14.3 million	33.3 million
Resources of the General Fund	GF - Potential Revenue Gain	Less than 75,000	Less than 75,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill raises, from 18 to 21, the legal age to purchase or possess tobacco products in the state. This results in an estimated cigarette and tobacco tax revenue loss of \$14.3 million in FY 18 and \$33.3 million in FY 19, and a potential increase in penalty revenue of less than \$75,000 annually beginning in FY 18.

The bill results in potential increased revenue from fines from the purchase or sale of tobacco products by persons aged 18 to 20. In FY 16, there were 39 offenses for the purchase of tobacco products by a person under 18 with fines totaling \$2,235. There were 308 offenses of sale of tobacco products to a person under 18 with fines totaling \$62,855. Based on current penalties, it is estimated that the bill will result in increased penalties of less than \$75,000.

The estimated revenue loss is based on state population data and information from the Centers for Disease Control and Prevention indicating that approximately 5.4% of Connecticut residents aged 18 to 20 smoke; it is assumed that this population would cease smoking

under the bill’s provisions. The fully annualized revenue loss is estimated to be approximately \$42.3 million based on information from the Institute of Medicine indicating that raising the legal smoking age to 21 decreases smoking rates by approximately 12% over time.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$	FY 22 \$
Department of Revenue Services	GF - Revenue Loss	42.3 million	42.3 million	42.3 million
Resources of the General Fund	GF - Potential Revenue Gain	Less than 75,000	Less than 75,000	Less than 75,000

Note: GF=General Fund

Municipal Impact: None

Sources: Centers for Disease Control and Prevention
 Institute of Medicine of the National Academies: Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products, 3/15
 Judicial Department Offenses and Revenue Database

OLR Bill Analysis**HB 5384*****AN ACT RAISING THE LEGAL AGE FOR PURCHASE AND USE OF TOBACCO PRODUCTS.*****SUMMARY**

This bill raises, from 18 to 21, the legal age to purchase or possess in public cigarettes and other tobacco products, electronic nicotine delivery systems (e.g., electronic cigarettes), and vapor products. It makes corresponding changes to the laws regarding the sale, delivery, or giving of such products to individuals under the legal age (e.g., updating the age on the required sign that cigarette dealers and distributors must post at the point of sale (§ 1)).

The bill extends some of the existing penalties for purchases by minors (i.e., under age 18), or sales to minors, to purchases by or sales to individuals ages 18 to 20. But it does not extend certain penalties that the Department of Revenue Services (DRS) may impose under existing law for tobacco purchases and sales involving minors.

EFFECTIVE DATE: October 1, 2017

PENALTIES FOR PURCHASE OR POSSESSION

Under current law and the bill, a person under the legal age who (1) buys tobacco products, electronic nicotine delivery systems, or vapor products; (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 (§§ 3(c) and 4(c)). Violators may pay the fine by mail, without making a court appearance (CGS § 51-164n).

Under existing law, the DRS commissioner, after a hearing, may also impose civil penalties on minors who purchase tobacco products

(CGS § 12-295a(a)). The bill does not extend these penalties to individuals ages 18 to 20 who purchase tobacco products.

PENALTIES FOR SALES

Under current law and the bill, anyone who sells, gives, or delivers tobacco products, electronic nicotine delivery systems, or vapor products to someone under the legal age is subject 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.

As under current law, (1) this penalty does not apply to someone who sells, gives, or delivers such a product to, or receives one from, someone under the legal age who receives or delivers it as an employee (§§ 3(b) and 4(b)); and (2) the bill allows the DRS commissioner to suspend or revoke the license of a dealer or distributor who illegally sells or delivers tobacco products to individuals under the legal age (§ 2).

Existing law also allows the DRS commissioner, after a hearing, to impose penalties on cigarette dealers, distributors, or their employees, or owners of businesses with cigarette vending machines, for sales to minors (CGS § 12-295a). The bill does not extend these provisions to sales to individuals ages 18 to 20.

BACKGROUND

Electronic Nicotine Delivery Systems and Vapor Products

By law, 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; and (5) hookahs. They also include 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(a)).

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 19 Nay 7 (03/06/2017)