



House of Representatives

General Assembly

File No. 730

January Session, 2017

Substitute House Bill No. 5384

House of Representatives, May 9, 2017

The Committee on Finance, Revenue and Bonding reported through REP. ROJAS of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute 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2 repealed and the following is substituted in lieu thereof (*Effective*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,
10 except such persons described in subsection (g) of section 53-344, as
11 amended by this act, is prohibited by section 53-344, as amended by
12 this act, (2) the purchase or misrepresentation of age by a person under
13 [~~eighteen~~] twenty-one years of age, except such persons described in

14 subsection (g) of section 53-344, as amended by this act, to purchase
15 cigarettes or tobacco products is prohibited by said section 53-344, and
16 (3) the penalties and fines for violating said section 53-344 and section
17 12-295a.

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19 repealed and the following is substituted in lieu thereof (*Effective*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

21 (a) The commissioner may suspend or revoke the license of any
22 dealer or distributor for failure to comply with any provision of this
23 chapter or regulations related thereto or for the sale or delivery of
24 tobacco in any form to a [minor under eighteen] person under twenty-
25 one years of age, except such persons described in subsection (g) of
26 section 53-344, as amended by this act, following a hearing with
27 respect to which notice in writing, specifying the time and place of
28 such hearing and requiring such dealer or distributor to show cause
29 why such license should not be revoked, is mailed or delivered to such
30 dealer or distributor not less than ten days preceding the date of such
31 hearing. Such notice may be served personally or by registered or
32 certified mail.

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 Section 53-344 of the general statutes is repealed and the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

35 (a) As used in this section:

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

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

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

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

49 (b) Any person who sells, gives or delivers to any [minor] person
50 under [eighteen] twenty-one years of age tobacco, unless the [minor]
51 person under twenty-one years of age is delivering or accepting
52 delivery in such person's capacity as an employee, in any form shall be
53 fined not more than two hundred dollars for the first offense, not more
54 than three hundred fifty dollars for a second offense within an
55 eighteen-month period and not more than five hundred dollars for
56 each subsequent offense within an eighteen-month period.

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

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

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

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

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

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

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

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

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

105 (f) (1) In any prosecution of a seller or seller's agent or employee for
106 a violation of subsection (b) of this section, it shall be an affirmative

107 defense that all of the following occurred: (A) A cardholder attempting
108 to purchase or receive tobacco presented a driver's license or an
109 identity card; (B) a transaction scan of the driver's license or identity
110 card that the cardholder presented indicated that the license or card
111 was valid; and (C) the tobacco was sold, given away or otherwise
112 distributed to the cardholder in reasonable reliance upon the
113 identification presented and the completed transaction scan.

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

127 (g) Notwithstanding the provisions of subsections (b) to (f),
128 inclusive, of this section, any person who is (1) eighteen years of age or
129 older prior to October 1, 2017, or (2) a member of the armed forces, as
130 defined in section 27-103, may purchase and possess tobacco products
131 in any form.

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

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

135 (1) "Electronic nicotine delivery system" means an electronic device
136 that may be used to simulate smoking in the delivery of nicotine or
137 other substance to a person inhaling from the device, and includes, but
138 is not limited to, an electronic cigarette, electronic cigar, electronic

139 cigarillo, electronic pipe or electronic hookah and any related device
140 and any cartridge, electronic cigarette liquid or other component of
141 such device;

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

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

148 (4) "Transaction scan" means the process by which a seller or seller's
149 agent or employee checks, by means of a transaction scan device, the
150 validity of a driver's license or an identity card;

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

156 (6) "Sale" or "sell" means an act done intentionally by any person,
157 whether done as principal, proprietor, agent, servant or employee, of
158 transferring, or offering or attempting to transfer, for consideration, an
159 electronic nicotine delivery system or vapor product, including
160 bartering or exchanging, or offering to barter or exchange, an
161 electronic nicotine delivery system or vapor product;

162 (7) "Give" or "giving" means an act done intentionally by any
163 person, whether done as principal, proprietor, agent, servant or
164 employee, of transferring, or offering or attempting to transfer,
165 without consideration, an electronic nicotine delivery system or vapor
166 product;

167 (8) "Deliver" or "delivering" means an act done intentionally by any
168 person, whether as principal, proprietor, agent, servant or employee,
169 of transferring, or offering or attempting to transfer, physical

170 possession or control of an electronic nicotine delivery system or vapor
171 product;

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

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

181 (b) Any person who sells, gives or delivers to any [minor] person
182 under [eighteen] twenty-one years of age an electronic nicotine
183 delivery system or vapor product, unless the [minor] person under
184 twenty-one years of age is delivering or accepting delivery in such
185 person's capacity as an employee, in any form shall be fined not more
186 than two hundred dollars for the first offense, not more than three
187 hundred fifty dollars for a second offense within an eighteen-month
188 period and not more than five hundred dollars for each subsequent
189 offense within an eighteen-month period.

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

199 (d) (1) A seller or seller's agent or employee may perform a
200 transaction scan to check the validity of a driver's license or identity
201 card presented by a cardholder as a condition for selling, giving or

202 otherwise delivering an electronic nicotine delivery system or vapor
203 product to the cardholder.

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

211 (3) Subdivision (1) of this subsection does not preclude a seller or
212 seller's agent or employee from using a transaction scan device to
213 check the validity of a document other than a driver's license or an
214 identity card, if the document includes a bar code or magnetic strip
215 that may be scanned by the device, as a condition for selling, giving or
216 otherwise delivering an electronic nicotine delivery system or vapor
217 product to the person presenting the document.

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

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

228 (3) No seller or seller's agent or employee shall sell or otherwise
229 disseminate the information derived from a transaction scan to any
230 third party, including, but not limited to, selling or otherwise
231 disseminating that information for any marketing, advertising or
232 promotional activities, but a seller or seller's agent or employee may
233 release that information pursuant to a court order.

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

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

241 (f) (1) In any prosecution of a seller or seller's agent or employee for
242 a violation of subsection (b) of this section, it shall be an affirmative
243 defense that all of the following occurred: (A) A cardholder attempting
244 to purchase or receive an electronic nicotine delivery system or vapor
245 product presented a driver's license or an identity card; (B) a
246 transaction scan of the driver's license or identity card that the
247 cardholder presented indicated that the license or card was valid; and
248 (C) the electronic nicotine delivery system or vapor product was sold,
249 given or otherwise delivered to the cardholder in reasonable reliance
250 upon the identification presented and the completed transaction scan.

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

265 (g) Each seller of electronic nicotine delivery systems or vapor
266 products or such seller's agent or employee shall require a person who

267 is purchasing or attempting to purchase an electronic nicotine delivery
 268 system or vapor product, whose age is in question, to exhibit proper
 269 proof of age. If a person fails to provide such proof of age, such seller
 270 or seller's agent or employee shall not sell an electronic nicotine
 271 delivery system or vapor product to the person. As used in this
 272 subsection, "proper proof" means a motor vehicle operator's license, a
 273 valid passport or an identity card issued in accordance with the
 274 provisions of section 1-1h.

275 (h) Notwithstanding the provisions of subsections (b) to (f),
 276 inclusive, of this section, any person who is (1) eighteen years of age or
 277 older prior to October 1, 2017, or (2) a member of the armed forces, as
 278 defined in section 27-103, may purchase and possess an electronic
 279 nicotine delivery system or vapor product.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	12-286a(a)
Sec. 2	October 1, 2017	12-295(a)
Sec. 3	October 1, 2017	53-344
Sec. 4	October 1, 2017	53-344b

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:

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Department of Revenue Services	GF - Revenue Loss	None	None
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; it exempts anyone age 18 or older as of October 1, 2017 and members of the U.S. Armed Services. This results in a significant General Fund revenue loss from cigarette and tobacco taxes annually beginning in FY 21, 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 results in increased penalties of less than \$75,000.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$	FY 22 \$
Department of Revenue Services	GF - Revenue Loss	None	Significant	Significant
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: 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**sHB-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 exempts from the increased age requirement anyone age 18 or older as of October 1, 2017 or a U.S. Armed Services member (see BACKGROUND).

The bill 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)).

Additionally, 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 existing 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 existing 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 existing 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)).

U.S. Armed Forces

The U.S. Armed Forces includes the Army, Navy, Marine Corps, Coast Guard, and Air Force and any reserve component of these branches, including the Connecticut National Guard performing duty under Title 32 of federal law (e.g., certain Homeland Security missions).

Legislative History

The House referred the bill (File 112) to the Finance, Revenue and Bonding Committee, which reported a substitute that added the exemption from the increased age requirement for anyone age 18 or older as of October 1, 2017 or an armed services member.

COMMITTEE ACTION

Public Health Committee

Joint Favorable
Yea 19 Nay 7 (03/06/2017)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 41 Nay 10 (04/27/2017)