



Senate

General Assembly

File No. 387

February Session, 2018

Senate Bill No. 164

Senate, April 10, 2018

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist. and SEN. SOMERS of the 18th Dist., Chairpersons of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT RAISING THE LEGAL AGE TO PURCHASE TOBACCO TO TWENTY-ONE.

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2 repealed and the following is substituted in lieu thereof (*Effective*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, 2018*):

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 a person 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 a person 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19 repealed and the following is substituted in lieu thereof (*Effective*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, 2018*):

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 a person described in subsection (g) of section
26 53-344, as amended by this act, following a hearing with respect to
27 which notice in writing, specifying the time and place of such hearing
28 and requiring such dealer or distributor to show cause why such
29 license should not be revoked, is mailed or delivered to such dealer or
30 distributor not less than ten days preceding the date of such hearing.
31 Such notice may be served personally or by registered or certified mail.

32 Sec. 3. Section 53-344 of the 2018 supplement to the general statutes
33 is repealed and the following is substituted in lieu thereof (*Effective*
34 *October 1, 2018*):

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 person under
50 [eighteen] twenty-one years of age tobacco shall be fined not more
51 than two hundred dollars for the first offense, not more than three
52 hundred fifty dollars for a second offense within a twenty-four-month
53 period and not more than five hundred dollars for each subsequent
54 offense within a twenty-four-month period. The provisions of this
55 subsection shall not apply to a person under [eighteen] twenty-one
56 years of age who is delivering or accepting delivery of tobacco (1) in
57 such person's capacity as an employee, or (2) as part of a scientific
58 study being conducted by an organization for the purpose of medical
59 research to further efforts in tobacco use prevention and cessation,
60 provided such medical research has been approved by the
61 organization's institutional review board, as defined in section 21a-408.

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

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

74 (2) If the information deciphered by the transaction scan performed
75 under subdivision (1) of this subsection fails to match the information
76 printed on the driver's license or identity card presented by the

77 cardholder, or if the transaction scan indicates that the information so
78 printed is false or fraudulent, neither the seller nor any seller's agent or
79 employee shall sell, give away or otherwise distribute any tobacco to
80 the cardholder.

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

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

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

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

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

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

110 (f) (1) In any prosecution of a seller or seller's agent or employee for
111 a violation of subsection (b) of this section, it shall be an affirmative
112 defense that all of the following occurred: (A) A cardholder attempting
113 to purchase or receive tobacco presented a driver's license or an
114 identity card; (B) a transaction scan of the driver's license or identity
115 card that the cardholder presented indicated that the license or card
116 was valid; and (C) the tobacco was sold, given away or otherwise
117 distributed to the cardholder in reasonable reliance upon the
118 identification presented and the completed transaction scan.

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

132 (g) Notwithstanding the provisions of subsections (b) to (f),
133 inclusive, of this section, any person who is eighteen years of age or
134 older prior to October 1, 2018, may purchase and possess tobacco
135 products in any form.

136 Sec. 4. Section 53-344b of the 2018 supplement to the general statutes
137 is repealed and the following is substituted in lieu thereof (*Effective*
138 *October 1, 2018*):

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

140 (1) "Electronic nicotine delivery system" means an electronic device
141 that may be used to simulate smoking in the delivery of nicotine or
142 other substance to a person inhaling from the device, and includes, but
143 is not limited to, an electronic cigarette, electronic cigar, electronic
144 cigarillo, electronic pipe or electronic hookah and any related device
145 and any cartridge, electronic cigarette liquid or other component of
146 such device;

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

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

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

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

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

167 (7) "Give" or "giving" means an act done intentionally by any
168 person, whether done as principal, proprietor, agent, servant or
169 employee, of transferring, or offering or attempting to transfer,
170 without consideration, an electronic nicotine delivery system or vapor

171 product;

172 (8) "Deliver" or "delivering" means an act done intentionally by any
173 person, whether as principal, proprietor, agent, servant or employee,
174 of transferring, or offering or attempting to transfer, physical
175 possession or control of an electronic nicotine delivery system or vapor
176 product;

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

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

186 (b) Any person who sells, gives or delivers to any person under
187 [eighteen] twenty-one years of age an electronic nicotine delivery
188 system or vapor product in any form shall be fined not more than two
189 hundred dollars for the first offense, not more than three hundred fifty
190 dollars for a second offense within a twenty-four-month period and
191 not more than five hundred dollars for each subsequent offense within
192 a twenty-four-month period. The provisions of this subsection shall
193 not apply to a person under [eighteen] twenty-one years of age who is
194 delivering or accepting delivery of an electronic nicotine delivery
195 system or vapor product (1) in such person's capacity as an employee,
196 or (2) as part of a scientific study being conducted by an organization
197 for the purpose of medical research to further efforts in tobacco use
198 prevention and cessation, provided such medical research has been
199 approved by the organization's institutional review board, as defined
200 in section 21a-408.

201 (c) Any person under [eighteen] twenty-one years of age who
202 purchases or misrepresents such person's age to purchase an electronic

203 nicotine delivery system or vapor product in any form or possesses an
204 electronic nicotine delivery system or vapor product in any form in
205 any public place shall be fined not more than fifty dollars for the first
206 offense and not less than fifty dollars or more than one hundred
207 dollars for each subsequent offense. For purposes of this subsection
208 "public place" means any area that is used or held out for use by the
209 public whether owned or operated by public or private interests.

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

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

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

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

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

239 (3) No seller or seller's agent or employee shall sell or otherwise
240 disseminate the information derived from a transaction scan to any
241 third party, including, but not limited to, selling or otherwise
242 disseminating that information for any marketing, advertising or
243 promotional activities, but a seller or seller's agent or employee may
244 release that information pursuant to a court order.

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

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

252 (f) (1) In any prosecution of a seller or seller's agent or employee for
253 a violation of subsection (b) of this section, it shall be an affirmative
254 defense that all of the following occurred: (A) A cardholder attempting
255 to purchase or receive an electronic nicotine delivery system or vapor
256 product presented a driver's license or an identity card; (B) a
257 transaction scan of the driver's license or identity card that the
258 cardholder presented indicated that the license or card was valid; and
259 (C) the electronic nicotine delivery system or vapor product was sold,
260 given or otherwise delivered to the cardholder in reasonable reliance
261 upon the identification presented and the completed transaction scan.

262 (2) In determining whether a seller or seller's agent or employee has
263 proven the affirmative defense provided by subdivision (1) of this
264 section, the trier of fact in such prosecution shall consider that
265 reasonable reliance upon the identification presented and the
266 completed transaction scan may require a seller or seller's agent or

267 employee to exercise reasonable diligence and that the use of a
 268 transaction scan device does not excuse a seller or seller's agent or
 269 employee from exercising such reasonable diligence to determine the
 270 following: (A) Whether a person to whom the seller or seller's agent or
 271 employee sells, gives or otherwise delivers an electronic nicotine
 272 delivery system or vapor product is [eighteen] twenty-one years of age
 273 or older; and (B) whether the description and picture appearing on the
 274 driver's license or identity card presented by a cardholder is that of the
 275 cardholder.

276 (g) Each seller of electronic nicotine delivery systems or vapor
 277 products or such seller's agent or employee shall require a person who
 278 is purchasing or attempting to purchase an electronic nicotine delivery
 279 system or vapor product, whose age is in question, to exhibit proper
 280 proof of age. If a person fails to provide such proof of age, such seller
 281 or seller's agent or employee shall not sell an electronic nicotine
 282 delivery system or vapor product to the person. As used in this
 283 subsection, "proper proof" means a motor vehicle operator's license, a
 284 valid passport or an identity card issued in accordance with the
 285 provisions of section 1-1h.

286 (h) Notwithstanding the provisions of subsections (b) to (f),
 287 inclusive, of this section, any person who is eighteen years of age or
 288 older prior to October 1, 2018, may purchase and possess an electronic
 289 nicotine delivery system or vapor product.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	12-286a(a)
Sec. 2	<i>October 1, 2018</i>	12-295(a)
Sec. 3	<i>October 1, 2018</i>	53-344
Sec. 4	<i>October 1, 2018</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 19 \$	FY 20 \$
Department of Revenue Services	GF - Revenue Loss	2 million	5.2 million
Resources of the General Fund	GF - Potential Revenue Gain	Minimal	Minimal

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, 2018. This results in an estimated cigarette and tobacco tax revenue loss of \$2 million in FY 19 and \$5.2 million in FY 20, and a potential minimal increase in annual penalty revenue beginning in FY 19.

The bill results in potential revenue gain from fines by raising the legal age to purchase tobacco products from 18 to 21. In FY 17, 80 violators were fined a total of \$11,625 for related offenses.

This estimated revenue loss is based on information published in the American Journal of Public Health indicating that 3% of smokers are between the ages of 18 and 21 and the average annual cigarette consumption for these smokers is approximately 3,132. Using Connecticut population data, this translates to approximately 11,525 smokers between 18 and 21 consuming approximately 36.1 million cigarettes annually.

The Out Years**State Impact:**

Agency Affected	Fund-Effect	FY 21 \$	FY 22 \$	FY 23 \$
Department of Revenue Services	GF - Revenue Loss	7.8 million	7.8 million	7.8 million
Resources of the General Fund	GF - Potential Revenue Gain	Minimal	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Sources: *American Journal of Public Health "Retail Impact of Raising Tobacco Sales Age to 21 Years"*
Henry J. Kaiser Family Foundation "Percent of Adults Who Smoke"
Judicial Department Offenses and Revenue Database
United States Census Bureau Quick Facts

OLR Bill Analysis**SB 164*****AN ACT RAISING THE LEGAL AGE TO PURCHASE TOBACCO TO TWENTY-ONE.*****SUMMARY**

This bill raises, from 18 to 21, the legal age to purchase or possess in public cigarettes, other tobacco products, and e-cigarettes (i.e., electronic nicotine delivery systems and vapor products). It exempts from the increased age requirement anyone age 18 or older before October 1, 2018.

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).

Additionally, the bill extends some of the existing penalties for purchases by minors, or sales to minors, to purchases by or sales to individuals ages 18 to 20. But it does not make corresponding changes to certain penalties that the Department of Revenue Services (DRS) may impose under existing law for cigarette and tobacco purchases and sales involving minors.

EFFECTIVE DATE: October 1, 2018

§§ 3 & 4 — PENALTIES FOR PURCHASE OR POSSESSION

Under existing law and the bill, a person under the legal age who (1) buys cigarettes, other tobacco products, or e-cigarettes; (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. By law, violators may pay the fine by mail, without making a court appearance (CGS § 51-164n).

By law, the DRS commissioner, after a hearing, may also impose civil penalties on minors who purchase cigarettes or other tobacco products (CGS § 12-295a(a)). The bill does not extend these penalties to individuals ages 18 to 20 who purchase these products.

§§ 2-4 — PENALTIES FOR SALES

Under existing law and the bill, anyone who sells, gives, or delivers cigarettes or other tobacco products or e-cigarettes 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 24 months, and
3. \$500 for each subsequent offense committed within 24 months.

Under existing law and the bill, this penalty does not apply if the person under the legal age is delivering or accepting delivery of the product (1) in his or her capacity as an employee or (2) as part of a scientific study that meets specified criteria.

As under existing law, the bill allows the DRS commissioner, after a hearing, to suspend or revoke the license of a dealer or distributor who illegally sells or delivers cigarettes or other tobacco products to individuals under the legal age.

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)).

Related Bills

sHB 5289, reported favorably by the Public Health Committee, makes various changes to the state’s smoking laws, such as (1) banning smoking and e-cigarette use in any public housing project constructed on or after October 1, 2018 and (2) prohibiting employers from designating areas for smoking or e-cigarette use inside business facilities.

HB 5293, reported favorably by the Public Health Committee, requires retailers of e-cigarettes to sell them to consumers only in a direct, face-to-face transaction, as is already required for the sale of cigarettes and smokeless tobacco.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 22 Nay 4 (03/26/2018)