
OLR Bill Analysis

sHB 7200

AN ACT PROHIBITING THE SALE OF CIGARETTES, TOBACCO PRODUCTS, ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS TO PERSONS UNDER AGE TWENTY-ONE.

SUMMARY

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

Additionally, the bill:

1. prohibits cigarette dealers and distributors (i.e., those who sell or distribute cigarettes and other tobacco products) and e-cigarette dealers from selling flavored products (§§ 21 & 22);
2. requires dealers who sell e-cigarettes online and ship them directly to consumers to obtain the signature of a person aged 21 or older at the shipping address prior to delivery and require the signer to show proof of age (§ 20);
3. increases, from \$50 to \$250, the annual license fee for cigarette dealers and requires \$160 of the fee to be deposited into a "Tobacco Control Enforcement Account" the bill establishes (§§ 3 & 5);
4. increases, from \$400 to \$1,000, the annual registration fee for e-cigarette dealers and requires \$480 of the fee to be deposited into an "Electronic Nicotine Delivery System and Vapor Product Enforcement Account" the bill establishes (§§ 9 & 11);

5. generally increases certain penalties for cigarette, tobacco product, and e-cigarette sales and purchases involving individuals under the legal age (§§ 7, 13 & 15-17);
6. requires the consumer protection (DCP) and revenue services (DRS) commissioners to annually conduct unannounced compliance checks on e-cigarette dealers and cigarette dealers and distributors, respectively, and post a list of non-compliant dealers and distributors on their department websites (§§ 7 & 13);
7. allows e-cigarette dealers to give promotional samples in connection with the promotion or advertisement of a product in a similar manner as current law allows for cigarettes and tobacco products (§§ 8 & 14); and
8. bans smoking and e-cigarettes on the grounds of child care centers and schools (§§ 18 & 19); and
9. makes other changes affecting the sale of these products.

The bill also updates and expands the definition of “tobacco product” to include products (1) derived from tobacco, in addition to those made from tobacco and (2) consumed by heating, absorbing, or ingesting them, in addition to those consumed by smoking or chewing.

It excludes from the definition (1) any drug or medical device as defined by the federal Food, Drug, and Cosmetic Act or (2) any combination product authorized for sale by the federal Food and Drug Administration.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2019

§§ 3 & 5 — CIGARETTE DEALER LICENSE FEE

The bill increases, from \$50 to \$250, the annual license fee for cigarette dealers. It requires \$160 of the fee to be deposited into a separate, non-lapsing General Fund “Tobacco Control Enforcement

Account” established by the bill.

The bill allows the DRS commissioner to use account funds as necessary to (1) administer cigarette dealer licenses, (2) educate and train dealers, and (3) inspect dealers’ retail establishments and conduct unannounced compliance checks (see § 7 below).

The bill also increases, from \$5 to \$50, the penalty for each day a cigarette dealer or distributor operates without a license.

§ 4 & 7 — VENDING MACHINE SALES

The bill prohibits e-cigarettes and tobacco products from being sold in cigarette vending machines or restricted cigarette vending machines (see BACKGROUND).

Current law allows the DRS commissioner, after a hearing, to impose penalties on owners of establishments with these vending machines for sales to individuals under the legal age as follows:

1. for a 1st violation, if the owner fails to successfully complete an online tobacco education program, \$500 and
2. for a 2nd or 3rd violation, \$750.

The bill increases, from \$750 to \$1,000, the penalty for a third violation. It also extends, from 24 to 36 months after the date of the first violation, the timeframe within which fines for 2nd and 3rd violations may be imposed.

Existing law, unchanged by the bill, requires an establishment owner who commits a third violation, to immediately remove the vending machine from the establishment and prohibits any vending machine at the establishment for one year after such removal.

By law, the DRS commissioner may also assess the following civil penalties against a person, dealer, or distributor who violates the vending machine laws: (1) \$250 for a first violation and (2) \$500 for a second or third violation within 18 months. After the third violation, the vending machine must be immediately removed from the area,

facility, or business where it is placed and such machines are prohibited from the location for one year after the removal.

§§ 7, 15 & 17 — PENALTIES FOR PURCHASES

Under current law, 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. The bill eliminates the fine for possessing these products in public. By law, violators may pay the above listed fines by mail, without making a court appearance (CGS § 51-164n).

Additionally, the bill eliminates the DRS commissioner's authority to, after a hearing, also impose civil penalties on individuals under the legal age who purchase cigarettes or other tobacco products.

§§ 7, 13 & 15-17 — PENALTIES FOR SALES

Maximum Fines

The bill increases the maximum fines that may be imposed on someone who sells, gives, or delivers cigarettes, other tobacco products, or e-cigarettes to someone under the legal age as follows:

1. for a first offense, from \$200 to \$300;
2. for a second offense, from \$350 to \$750; and
3. for each subsequent offense, from \$500 to \$1,000.

Under the bill, the fines for second and subsequent offenses apply to those that occur within 36 months of the first offense, instead of within 24 months, as under current law.

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 for medical research that meets specified criteria.

DCP and DRS Penalties

Current law allows the DRS commissioner, after a hearing, to also impose civil penalties on cigarette dealers, distributors, or their employees for sales to individuals under the legal age. Table 1 compares the penalties under current law with those proposed under the bill.

Table 1: Penalties for Sales to Individuals Under the Legal Age

<i>Instance of Violation</i>	<i>Current Law</i>	<i>Under the bill</i>
<i>Sales by Cigarette Dealers and Distributors</i>		
1 st violation	\$300, if they fail to complete an online tobacco prevention education program within 30 days	\$300, if they fail to complete an online tobacco prevention education program within 30 days
2 nd violation	\$750	\$750
3 rd violation	\$750, plus 30-day license or certificate suspension	\$1000, plus 30-day license or certificate suspension
4 th violation	N/A	\$1000, plus license or certificate revocation
<i>Sales by Employees of Dealers and Distributors</i>		
1 st violation	\$200, if they fail to complete an online tobacco education program within 30 days	\$200, if they fail to complete an online tobacco education program within 30 days
2 nd violation	\$250	\$250

The bill also extends the timeframe within which the above fines for second and subsequent violations may be imposed, from 24 to 36 months after the date of the first violation.

Additionally, the bill allows the DCP commissioner, after a hearing, to impose similar penalties on e-cigarette dealers for sales to individuals under age 21 as those for cigarette dealers and distributors, under the bill except that:

1. for a first violation, e-cigarette dealers are not required to complete an online tobacco education program;
2. for a third violation, the bill does not specify for how long an e-cigarette dealer's registration must be suspended; and
3. there are no penalties for employees of e-cigarette dealers who sell such products to individuals under age 21 (but the dealers themselves are subject to these penalties for their employees' actions).

Public Notice of License Suspension or Revocation

If the DCP or DRS commissioners suspend or revoke the license or certificate of an e-cigarette dealer or a cigarette dealer or distributor, respectively, the bill requires the commissioners to order them to conspicuously post a notice in a public place stating that such products cannot be sold during the suspension or revocation period as well as the reasons for the suspension or revocation. Under the bill, a dealer or distributor who sells these products during the suspension or revocation period commits an additional violation.

Proof of Age

The bill requires cigarette, tobacco product, and e-cigarette sellers and their agents or employees to ask a prospective buyer who appears to be under age 30 for proper proof of age, in the form of a driver's license, valid passport, or identity card. Current law requires sellers to do this when a prospective buyer's age is in question.

Under existing law and the bill, sellers are prohibited from selling cigarettes, tobacco products, or e-cigarettes to someone who does not provide this proof.

Consumer Notice for E-Cigarette Sales

The bill requires e-cigarette dealers to place and maintain at each point of sale a notice to consumers that states:

1. the sale, giving, or delivery of e-cigarettes to anyone under age 21 is prohibited by law,

2. a person under age 21 is prohibited from using false identification to purchase e-cigarettes, and
3. the penalties and fines for violating the e-cigarette purchasing laws.

Similar requirements already apply to cigarette dealers and distributors under existing law.

Compliance Checks

The bill requires the DCP and DRS commissioners, at least annually, to conduct unannounced compliance checks on (1) e-cigarette dealers and (2) cigarette dealers and distributors, respectively by having adults ages 18 to 20 enter the dealers' and distributors' establishments and attempt to purchase cigarettes, tobacco products, or e-cigarettes.

The commissioners must also conduct an unannounced follow-up compliance check of all non-compliant dealers and distributors no later than three months after the date of non-compliance. The bill requires the commissioners to annually publish the names of non-compliant dealers and distributors on their department websites.

§§ 8 & 14 — PROMOTIONAL SAMPLES

The bill authorizes the DCP commissioner to allow an e-cigarette dealer to give or deliver free e-cigarette samples in connection with the promotion or advertisement of a product in the same manner as current law allows for dealers and distributors of cigarettes and tobacco products. Specifically, an e-cigarette dealer may do so if:

1. the product is given or delivered at the dealer's retail establishment or at an event or establishment in an area that can only be accessed by adults of legal age to purchase and
2. the sample contains at least two e-cigarettes, for which taxes have previously been paid.

Under the bill, the e-cigarette dealer is liable for any e-cigarette sample given or delivered to a person under age 21 on the dealer's

premises by someone conducting a promotion or advertisement of the product.

The bill does not apply to e-cigarette samples given or delivered in connection with the sale of a similar product.

Additionally, the bill requires e-cigarette, cigarette, and tobacco product samples to be delivered or given in accordance with federal laws and regulations.

§§ 9 & 11 — E-CIGARETTE DEALER REGISTRATION AND ENFORCEMENT ACCOUNT

Increased Registration Fee and Enforcement Account

The bill increases, from \$400 to \$1,000, the annual e-cigarette dealer registration fee. It requires \$480 of each registration fee to be deposited into an Electronic Nicotine Delivery System and Vapor Product Enforcement Account that the bill establishes.

Under the bill, the account is a separate, nonlapsing General Fund account, whose funds the DCP commissioner may use as necessary to (1) administer e-cigarette dealer registration, (2) educate and train dealers, and (3) inspect dealers' retail establishments and conduct unannounced compliance checks.

Expired Registrations

Under current law, a dealer who knowingly sells, offers for sale, or possesses with the intent to sell an e-cigarette with an expired registration commits an infraction and is subject to a \$90 fine. The bill specifies that the fine applies to each day the dealer is in violation of the law.

Existing law requires the commissioner, before imposing such fines, to notify the dealer in writing and allow him or her 60 days to correct the violation.

§ 10 — EMPLOYEE ASSISTED E-CIGARETTE SALES

The bill specifies that e-cigarette dealers generally may only sell e-cigarettes at retail establishments through employee-assisted sales

where customers cannot access the e-cigarettes without the employee's assistance.

As under current law, e-cigarette dealers are exempt from the requirements if they prohibit anyone under age 21 from entering the retail establishment and post notice of the prohibition clearly at all of the establishment's entrances.

§ 12 — SUSPENSION OR REVOCATION OF E-CIGARETTE DEALER REGISTRATIONS

The bill allows the DCP commissioner to suspend or revoke an e-cigarette dealer's registration for (1) failing to comply with the bill's provisions or existing e-cigarette laws and regulations or (2) selling or delivering e-cigarettes to someone under age 21.

The commissioner may only take such action after a hearing and must notify the dealer in writing at least ten days before the hearing date. The notice must specify the hearing time and location and require the dealer to show cause for why the registration should not be revoked. The notice may be personally served to the dealer or mailed by registered or certified mail.

If the commissioner revokes a dealer's registration, the bill prohibits her from issuing the dealer a new registration unless she is satisfied that the dealer will comply with the state's e-cigarette laws and regulations.

Existing law allows the DRS commissioner, after a hearing, to suspend or revoke the license of a dealer or distributor for cigarette or tobacco product sales to individuals under the legal age.

§§ 18 & 19 — SMOKING AND E-CIGARETTE BAN AT CHILD CARE CENTERS AND SCHOOLS

Current law prohibits smoking and e-cigarette use in various locations, such as restaurants, health care institutions, and state or municipal buildings.

The bill adds to the law's prohibited locations by including all

school property, inside or outside, instead of only within a school building while school is in session or during student activities.

It also (1) expands current law's prohibition on e-cigarette use to include the grounds of a child care facility, instead of only inside the facility and (2) extends the prohibition to include cigarette and other tobacco product use. Under the bill, as under current law for e-cigarette use, the prohibition applies to family child care homes (i.e., private homes caring for up to six children) only when a child enrolled in the home is present.

§ 20 — ONLINE SALE AND DELIVERY OF E-CIGARETTES

The bill requires e-cigarette dealers who sell e-cigarettes online and ship them directly to in-state consumers to obtain the signature of a person aged 21 or older at the shipping address prior to delivery, and requires the signer to provide a driver's license or identification card as proof of age.

The bill also requires the seller to ensure that the shipping label on such packages conspicuously states the following:

“CONTAINS AN ELECTRONIC NICOTINE DELIVERY SYSTEM OR VAPOR PRODUCT - SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.”

§§ 21 & 22 — BAN ON FLAVORED CIGARETTES, E-CIGARETTES, AND TOBACCO PRODUCTS

Flavorings Prohibited

The bill prohibits cigarette dealers and distributors and e-cigarette dealers from selling, offering or displaying for sale, or possessing with the intent to sell, flavored cigarettes, tobacco products, and e-cigarettes.

The bill defines flavored cigarettes, tobacco products, and e-cigarettes as those imparted with a distinguishable taste or aroma (i.e., characterizing flavor) other than tobacco, including fruit, chocolate, menthol, mint, wintergreen, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice. It specifies that these products

cannot be determined to be flavored solely because they use additives or flavorings or include ingredient information.

Under the bill, a public statement or claim made or disseminated by a cigarette, e-cigarette, or tobacco product manufacturer, or a person the manufacturer authorizes, that such products have or produce a characterizing flavor is prima facie evidence that the product is flavored.

Civil Penalties

If the DRS or DCP commissioners find, after a hearing, that (1) a cigarette or tobacco product dealer or distributor or (2) an e-cigarette dealer knowingly violated the bill's ban on flavorings, the respective commissioner must find that the dealer or distributor committed an infraction and assess a civil penalty of (1) \$300 for the first infraction and (2) \$750 and \$1,000, respectively, for a second and third infraction that occurs within 36 months after the first infraction.

License or Certificate Revocation

Under the bill, if a cigarette or tobacco product dealer or distributor commits a third infraction within 36 months after the first infraction, the DRS commissioner must suspend the dealer's or distributor's license for at least 30 days or may revoke the license. But the commissioner must revoke the license if they commit a fourth infraction within that time period.

For e-cigarette dealers, the bill requires the DCP commissioner to revoke the dealer's license or certificate if they commit a third infraction within that time period.

BACKGROUND

Cigarette Vending Machines

Existing law distinguishes between two types of machines that it authorizes to dispense cigarettes. One is the traditional coin-operated vending machine. The other is the "restricted cigarette vending machine," which (1) automatically deactivates and cannot be operated after each sale and (2) requires a face-to-face interaction or display of

identification between the purchaser and employee of the business where the machine is located.

Related Bills

HB 5975 (File 115), favorably reported by the Children’s Committee, similarly requires a signature and proof of age for the delivery of e-cigarettes purchased online.

HB 6404 (File 118), favorably reported by the Children’s Committee, bans certain retail establishments from selling or offering for sale flavored e-cigarette liquid.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 20 Nay 1 (03/22/2019)