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## OLR Bill Analysis

### sSB 326

#### ***AN ACT CONCERNING THE SALE OF CERTAIN ELECTRONIC NICOTINE DELIVERY SYSTEMS, VAPOR PRODUCTS, CIGARETTES AND TOBACCO PRODUCTS.***

#### **SUMMARY**

Starting January 1, 2022, this bill prohibits e-cigarette dealers from selling, delivering, giving, or possessing with the intent to sell, e-cigarettes and vapor products with a (1) nicotine content greater than 35 milligrams per milliliter (mg/ml) or (2) flavoring agent other than tobacco. It excludes from this prohibition (1) “modified risk tobacco products” designated by the U.S. Department of Health and Human Services and (2) products for which a manufacturer has applied for or received a federal Food and Drug Administration (FDA) marketing order (see BACKGROUND).

The bill also:

1. requires e-cigarette manufacturers to provide documentation to e-cigarette dealers on the nicotine content of their products and requires dealers to maintain the documentation (§ 2);
2. requires the Department of Mental Health and Addiction Services (DMHAS) to conduct unannounced compliance checks on e-cigarette dealers and refer non-compliant dealers to the Department of Revenue Services (DRS) commissioner who may impose civil penalties (§ 3);
3. increases the penalties for selling cigarettes, tobacco products, e-cigarettes, and vapor products to individuals under age 21 and extends the same increased penalties to e-cigarette dealers who violate the bill’s flavor ban or nicotine content requirements (§§ 3-6); and

4. increases the penalties on owners of establishments with cigarette vending machines and restricted cigarette vending machines for sales to individuals under age 21 (§ 4).

EFFECTIVE DATE: January 1, 2022

## **§§ 1-3 & 6 — E-CIGARETTES AND VAPOR PRODUCTS**

### ***Definition of Flavoring***

Under the bill, flavored e-cigarettes and vapor products are those with a flavoring agent that was added to flavor them. It defines a “flavoring agent” as an additive:

1. used in accordance with good manufacturing practice principles and in the minimum quantity needed to produce its intended effect;
2. (a) consisting of one or more ingredients generally recognized as safe in food or drugs, (b) that was sanctioned for the use by the state or federal government, (c) that meets U.S. Pharmacopeia standards, or (d) that is an additive permitted for direct addition to food for human consumption under FDA regulations;
3. that is inert and produces no effect other than instilling or modifying flavor; and
4. that is no greater than 5% of the product’s total weight.

### ***Nicotine Content***

The bill prohibits e-cigarette dealers from selling e-cigarettes or vapor products with a nicotine content greater than 35 mg/ml. It requires e-cigarette manufacturers to provide documentation to dealers on the nicotine content of these products (expressed as mg/ml) that the manufacturers sell to them.

Under the bill, dealers must maintain this documentation at their registered place of business for each product sold, delivered, or given to them by a manufacturer. They must also provide it to DMHAS,

upon request, during any unannounced compliance check the department conducts.

### **Compliance Checks**

The bill requires the DMHAS commissioner, or her designee, to conduct unannounced compliance checks on e-cigarette dealers to determine whether they are complying with the bill's flavor ban and nicotine content requirements. Existing law already requires DMHAS to conduct these checks for underage sales (i.e., sales to individuals under age 21).

Under the bill, the DMHAS commissioner must refer e-cigarette dealers to the DRS commissioner after the initial compliance check who (1) do not have documentation on the nicotine content of their products or (2) sold products that violate the nicotine threshold.

For either the flavoring ban or nicotine content provisions, the DMHAS commissioner must refer non-compliant dealers to DRS after completing an unannounced follow-up compliance check. The DRS commissioner may impose a civil penalty (see table below).

### **§§ 3-6 — PENALTIES**

Existing law allows the DRS commissioner, after a hearing, to impose civil penalties on e-cigarette dealers, cigarette dealers and distributors, or their employees for sales to individuals under age 21. The bill increases these penalties, as shown in the table below, and extends the same penalties to e-cigarette dealers who violate the bill's flavor ban or nicotine content requirements.

**Table 1: Civil Penalties for Underage Sales**

	<b>Current Law</b>	<b>The Bill</b>
<b>Penalties on Cigarette Dealers and Distributors and E-Cigarette Dealers</b>		
<b>1<sup>st</sup> violation</b>	\$300, if they fail to complete an online tobacco prevention education program within 30 days	\$600, if they fail to complete an online tobacco prevention education program within 30 days
<b>2<sup>nd</sup> violation</b>	\$750	\$1,500

<b>3<sup>rd</sup> violation</b>	\$1,000, plus minimum 30-day license suspension	\$2,000, plus minimum 30-day license suspension
<b>4<sup>th</sup> violation</b>	\$1,000, plus license revocation	\$2,000, plus license revocation
<b>Penalties on Their Employees</b>		
<b>1<sup>st</sup> violation</b>	\$200, if the employee fails to complete an online tobacco education program within 30 days	\$400, if the employee fails to complete an online tobacco education program within 30 days
<b>2<sup>nd</sup> violation</b>	\$250	\$500

As under current law, the above fines for second and subsequent violations may be imposed for violations that occur within 24 months after the first violation.

Under the bill, as for underage sales under existing law, the DRS commissioner may only impose the above fines on e-cigarette dealers who violate the bill's flavor ban or nicotine threshold if they are referred to him by the DMHAS commissioner after unannounced compliance checks (see above). For third and fourth violations, the DRS commissioner must direct the Department of Consumer Protection (DCP) commissioner to suspend or revoke the e-cigarette dealer's registration.

Before taking action, existing law requires the DRS commissioner to notify the e-cigarette dealer in writing of the hearing time and location and require the dealer to show cause why the registration should not be suspended or revoked. The notice must be delivered personally, or by registered or certified mail at least 10 days before the hearing date. When the DRS commissioner directs the DCP commissioner to suspend or revoke a dealer's registration, the DCP commissioner does not need to hold an additional hearing beforehand.

In addition to the DRS civil penalties, the law generally provides fines for sales of cigarettes, tobacco products, e-cigarettes, or vapor products to people under age 21. The bill correspondingly increases the maximum amount of those fines, as follows:

1. for a first offense, from \$300 to \$600;
2. for a second offense, from \$750 to \$1,500; and
3. for each subsequent offense, from \$1,000 to \$2,000.

As under current law, the fines for second and subsequent offenses apply to those that occur within 24 months after the first offense.

#### **§ 4 — VENDING MACHINE SALES**

Current law allows the DRS commissioner, after a hearing, to impose penalties on owners of establishments with cigarette vending machines and restricted cigarette vending machines (see BACKGROUND) for sales to individuals under age 21. The bill increases these penalties as follows:

1. for a 1<sup>st</sup> violation, if the owner fails to successfully complete an online tobacco education program within 30 days, from \$500 to \$1,000;
2. for a 2<sup>nd</sup> violation, from \$750 to \$1,500; and
3. for a 3<sup>rd</sup> violation, from \$1,000 to \$2,000.

As under current law, the commissioner may impose fines for second and third violations that occur within 24 months after the date of the first violation.

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 the removal.

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

banned from the location for one year after the removal (CGS § 12-289a(b)).

## **BACKGROUND**

### ***Legislative History***

The Senate referred the bill (File 98) to the Finance, Revenue and Bonding Committee, which reported out a substitute that replaced the prior bill and (1) eliminated provisions prohibiting the sale of flavored cigarettes and tobacco products, (2) exempted from the nicotine content and flavor prohibition MRTPs and products subject to an FDA marketing order, and (3) increased penalties for underage sales.

### ***Related Bill***

HB 6450 (File 237), favorably reported by the Public Health Committee, contains similar provisions (§§ 1-6).

### ***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 with the machine.

### ***Modified Risk Tobacco Products (MRTP)***

MRTPs are tobacco products designated by the FDA as providing less harm or risk of tobacco-related disease when compared to other commercially-marketed tobacco products, such as combustible cigarettes.

To qualify as an MRTP, product manufacturers must show, among other things, (1) scientific evidence that supports their claims about reduced harm or risk, (2) that consumers can adequately understand the information and appropriately perceive the relative risk of these products compared to other tobacco products, and (3) that using the MRTP will significantly reduce the harm and risk of tobacco-related

disease to individual users and benefit the health of the population as a whole.

***FDA Premarket Tobacco Product Applications (PMTA)***

The federal Tobacco Control Act generally prohibits a new tobacco product from entering the U.S. market unless the manufacturer submits to the FDA (1) an application proving the product was legally on the market prior to February 15, 2007, or (2) a PMTA. For the latter, the FDA must issue a subsequent order finding that the product would be appropriate for protecting the public health (21 U.S.C. § 387j).

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 25 Nay 8 (03/05/2021)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 35 Nay 14 (05/03/2021)