



PA 19-13—sHB 7200

Public Health Committee

Finance, Revenue and Bonding Committee

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

SUMMARY: This act 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 in 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 act:

1. requires dealers who sell e-cigarettes and ship them directly to consumers (e.g., through online sales) to (a) obtain the signature of a person aged 21 or older at the shipping address prior to delivery and (b) require the signer to show proof of age (§ 19);
2. increases, from \$50 to \$200, the annual license fee for cigarette dealers (§§ 3 & 5);
3. increases, from \$400 to \$800, the annual registration fee for e-cigarette dealers and retains the \$400 fee for dealers with multiple registrations (§ 9);
4. reduces, from \$400 to \$200, the annual registration fee for e-cigarette manufacturers who hold multiple registrations (§ 10);
5. generally increases certain penalties for cigarette, tobacco product, and e-cigarette sales and purchases involving individuals under the legal age (§§ 7, 12 & 14-16);
6. requires the Department of Mental Health and Addiction Services (DMHAS) commissioner 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 (§ 12);
7. allows e-cigarette dealers to give promotional samples in connection with promoting or advertising a product in a similar manner as existing law allows for cigarettes and tobacco products (§§ 8 & 13);
8. bans smoking and e-cigarettes on the grounds of child care centers and schools (§§ 17 & 18); and
9. makes other changes affecting the sale of these products.

Additionally, the act excludes from the definition of “vapor product,” biological products that are authorized for sale by the federal Food and Drug Administration and used to prevent, treat, or cure diseases or injuries. It also

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makes minor changes to other related definitions.

Lastly, the act makes technical and conforming changes.
EFFECTIVE DATE: October 1, 2019

§§ 3 & 5 — CIGARETTE DEALER LICENSE FEE

The act increases, from \$50 to \$200, the annual license fee for cigarette dealers. It 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

Existing 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 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 violation, \$750.

The act increases the penalty for a third violation from \$750 to \$1,000. It continues to allow the commissioner to impose fines for 2nd and 3rd violations that occur within 24 months after the first violation.

Existing law, unchanged by the act, 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, 14 & 16 — PENALTIES FOR PURCHASES

Under prior law, a person under the legal age who (1) bought cigarettes, other tobacco products, or e-cigarettes; (2) misrepresented his or her age to do so; or (3) possessed one in public, faced a fine of up to \$50 for a first offense and between \$50 and \$100 for each subsequent offense. The act 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 act 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, 12 & 14-16 — PENALTIES FOR SALES

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Maximum Fines

The act 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.

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

Under existing law and the act, these penalties do 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

Existing law allows the DRS commissioner, after a hearing, to impose civil penalties on cigarette dealers, distributors, or their employees for sales to individuals under the legal age. The act increases the penalties on dealers or distributors for 3rd or 4th violations. It also allows the DRS commissioner, after a hearing, to impose civil penalties on e-cigarette dealers or their employees for sales to individuals under the legal age in generally the same manner as both existing law and the act allows him to do for cigarette dealers, distributors, or their employees.

Table 1 compares the penalties under prior law with those under the act. As under prior law, the penalties do not apply if the person under the legal age is delivering or accepting delivery of the product in his or her capacity as an employee.

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

	<i>Prior Law</i>	<i>Under the Act</i>
	<i>Penalties on Cigarette Dealers and Distributors</i>	
1st 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
2nd violation	\$750	\$750
3rd violation	\$750, plus 30-day license or certificate suspension	\$1,000, plus 30-day license suspension
4th violation	N/A	\$1,000, plus license revocation
	<i>Penalties on Employees of Dealers and Distributors</i>	
1st violation	\$200, if they fail to complete an online tobacco education	\$200, if they fail to complete an online tobacco education program

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	program within 30 days	within 30 days
2nd violation	\$250, if it occurred within 24 months after the first violation	\$250, if it occurred within 24 months after the first violation

As under prior 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 act, the DRS commissioner may only impose the above fines on e-cigarette dealers (or their employees) referred to him by the DMHAS commissioner after completing unannounced compliance checks (see below). 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 such action, the act 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 the dealer’s registration, the DCP commissioner is not required to hold an additional hearing before doing so.

Existing law similarly requires the DRS commissioner to do this for cigarette dealers and distributors and allows him, 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.

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 act requires the DRS commissioner to order them to conspicuously post a notice in a public place in the establishment 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 act, a dealer or distributor who sells these products during the suspension or revocation period commits an additional violation.

Reinstating an E-Cigarette Dealer Registration

If the DCP commissioner revokes an e-cigarette dealer’s registration, the act 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.

Proof of Age

The act 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. Prior law required sellers to do this when a prospective buyer’s age was in

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question.

Under existing law and the act, 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 act 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 act requires DMHAS to conduct unannounced compliance checks on e-cigarette dealers by having individuals ages 16 to 20 enter the dealers' place of business and attempt to purchase e-cigarettes.

The department must also conduct an unannounced follow-up compliance check of all non-compliant dealers and refer them to the DRS commissioner, who may then impose a penalty (see above).

§§ 8 & 13 — PROMOTIONAL SAMPLES

The act allows e-cigarette dealers to give or deliver free e-cigarette samples in connection with the promotion or advertisement of a product in a similar manner as existing 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 location identified on the dealer's registration application 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 act, 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 promoting or advertising the product.

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

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

§§ 9 & 10 — E-CIGARETTE DEALER AND MANUFACTURER REGISTRATIONS AND ENFORCEMENT ACCOUNT

Dealer Registration Requirements and Increased Fees

The act specifies that a person cannot sell, offer for sale, or possess with the intent to sell, e-cigarettes unless he or she is an employee, agent, or direct affiliate of a business with an active e-cigarette dealer registration from DCP. It also specifically requires a separate dealer registration for each place of business that sells these products.

Additionally, the act increases, from \$400 to \$800, the annual e-cigarette dealer registration fee. But it retains the \$400 registration fee for e-cigarette dealers with multiple dealer registrations.

The act also makes related minor, technical, and conforming changes.

Manufacturer Registration Requirements

Prior law required e-cigarette manufacturers to register with DCP and annually pay a \$400 registration fee. The act reduces the registration fee to \$200 for e-cigarette manufacturers who hold multiple manufacturer registrations.

Expired Registrations

By law, an e-cigarette manufacturer or dealer who knowingly (1) manufactures or (2) sells, offers for sale, or possesses with the intent to sell, an e-cigarette with a registration that has expired for 90 days or less commits an infraction and is subject to a \$90 fine. The act specifies that the fine applies to each day the dealer or manufacturer violates the law.

Existing law requires the DCP commissioner, before imposing such fines, to notify the manufacturer or dealer in writing and allow him or her 60 days to correct the violation. The act eliminates the requirement that the written notice be sent by (1) certified mail, or similar United States Postal Service delivery method, or (2) electronic mail.

Prior law allowed DCP to renew a manufacturer's expired registration if the applicant paid any required fines. The act allows the commissioner to do this only for registrations that have expired for six months or less.

§ 11 — EMPLOYEE AND OWNER ASSISTED E-CIGARETTE SALES

The act specifies that e-cigarette dealers generally may only sell e-cigarettes at the place of business identified on their dealer application through employee- or owner-assisted sales where customers cannot access the e-cigarettes without the employee's or owner's assistance. It continues to prohibit e-cigarette sales using self-service displays.

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

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§§ 17 & 18 — SMOKING AND E-CIGARETTE BAN AT CHILD CARE CENTERS AND SCHOOLS

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

The act expands 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 specifies that the ban applies to public and private schools.

It also (1) expands the 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 act, as under existing law for e-cigarette use, the prohibition only applies to family child care homes (i.e., private homes caring for up to six children) when a child enrolled in the home is present.

§ 19 — ONLINE SALE AND DELIVERY OF E-CIGARETTES

The act requires e-cigarette dealers who sell e-cigarettes and ship them directly to in-state consumers (e.g., through online sales) to (1) obtain the signature of a person aged 21 or older at the shipping address prior to delivery and (2) require the signer to provide a driver's license or identification card as proof of age.

The act 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.”

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.