

General Assembly

Raised Bill No. 139

February Session, 2022

LCO No. 1184



Referred to Committee on PUBLIC HEALTH

Introduced by: (PH)

## AN ACT CONCERNING THE USE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS BY CHILDREN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. Subsection (a) of section 21a-415 of the general statutes is
- 2 repealed and the following is substituted in lieu thereof (*Effective January*
- 3 1, 2023):
- 4 (a) As used in this chapter and section [53-344] 2 of this act:
- 5 (1) "Authorized owner" means the owner or authorized designee of a
- 6 business entity that is applying for a registration or is registered with
- 7 the Department of Consumer Protection pursuant to this chapter;
- 8 (2) "Business entity" means any corporation, limited liability
- 9 company, association, partnership, sole proprietorship, government,
- 10 governmental subdivision or agency, business trust, estate, trust or any
- 11 other legal entity;
- 12 (3) "Dealer registration" means an electronic nicotine delivery system
- 13 certificate of dealer registration issued by the Commissioner of

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14 Consumer Protection pursuant to this section;

- 15 (4) "Manufacturer registration" means an electronic nicotine delivery 16 system certificate of manufacturer registration issued by the 17 Commissioner of Consumer Protection pursuant to section 21a-415a to 18 any person who mixes, compounds, repackages or resizes any nicotine-19 containing electronic nicotine delivery system or vapor product;
  - (5) "Electronic cigarette liquid" means a liquid, including, but not limited to, a concentrated plant extract or oil containing natural or synthetic ingredients, that, when used in an electronic nicotine delivery system or vapor product, produces a vapor that may or may not include nicotine and [is] may be inhaled by the user of such electronic nicotine delivery system or vapor product;
  - (6) "Electronic nicotine delivery system" means an electronic device used in the delivery of nicotine or other substances to a person inhaling from the device, and includes, but is not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or electronic hookah and any related device and any cartridge or other component of such device, including, but not limited to, electronic cigarette liquid;
  - (7) "Vapor product" means any product that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape or size, to produce a vapor that may include nicotine and is inhaled by the user of such product. "Vapor product" does not include a medicinal or therapeutic product that is (A) used by a licensed health care provider to treat a patient in a health care setting, (B) used by a patient, as prescribed or directed by a licensed health care provider in any setting, or (C) any drug or device, as defined in the federal Food, Drug and Cosmetic Act, 21 USC 321, as amended from time to time, any combination product, as described in said act, 21 USC 353(g), as amended from time to time, or any biological product, as described in 42 USC 262, as amended from time to time, and 21 CFR 600.3, as amended from time to time, authorized for sale by the United

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States Food and Drug Administration;

- (8) "Sale" or "sell" means an act done intentionally by any person, whether done as principal, proprietor, agent, servant or employee, of transferring, or offering or attempting to transfer, for consideration, including bartering or exchanging, or offering to barter or exchange; [and]
  - (9) "Deliver" or "delivering" means an act done intentionally by any person, whether as principal, proprietor, agent, servant or employee, of transferring, or offering or attempting to transfer, physical possession or control of an electronic nicotine delivery system or vapor product; and
  - (10) "Flavoring agent" means an additive used in food or drugs when such additive (A) is used in accordance with good manufacturing practice principles and in the minimum quantity required to produce its intended effect; (B)(i) consists of one or more ingredients generally recognized as safe in food or drugs, (ii) has been previously sanctioned for use in food or drugs by the state or the federal government, (iii) meets United States Pharmacopeia standards, or (iv) is an additive permitted for direct addition to food for human consumption pursuant to 21 CFR 172, as amended from time to time; (C) is inert and produces no effect other than the instillation or modification of flavor; and (D) is not greater than five per cent of the total weight of the product.
  - Sec. 2. (NEW) (*Effective January 1, 2022*) (a) No person shall sell, give, deliver or possess with intent to sell in this state an electronic nicotine delivery system or a vapor product with a flavoring agent, other than tobacco flavor, that has been added for the purpose of flavoring the contents of the electronic nicotine delivery system or vapor product. This section shall not apply to any product (1) that the United States Secretary of Health and Human Services determines to be a modified risk tobacco product pursuant to 21 USC 387k, as amended from time to time, or (2) for which the manufacturer has applied for or received a marketing order from the federal Food and Drug Administration under

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78 21 USC 387j, as amended from time to time.

- (b) (1) No person shall sell, give, deliver or possess with intent to sell, in this state an electronic nicotine delivery system or a vapor product with a nicotine content that is greater than thirty-five milligrams per milliliter. Each person with a manufacturer registration shall provide documentation to a person with a dealer registration, indicating the nicotine content, expressed as milligrams per milliliter, for each electronic nicotine delivery system and vapor product sold by such person with a manufacturer registration to such person with a dealer registration.
- (2) Each business entity holding a dealer registration shall (A) maintain documentation, within the place of business identified in the business entity's application for dealer registration, of the nicotine content provided pursuant to subdivision (1) of this subsection by the person with a manufacturer registration, for each electronic nicotine delivery system and vapor product sold, given or delivered by such person to the business entity, and (B) provide such documentation at the request of the Commissioner of Mental Health and Addiction Services, or the commissioner's designee, during any unannounced compliance check conducted pursuant to section 21-415b of the general statutes, as amended by this act.
- (c) As used in this section, "person" means any individual, authorized owner of a business entity, retail establishment, as defined in section 19a-106a of the general statutes, partnership, company, limited liability company, public or private corporation, association, trustee, executor, administrator or other fiduciary or custodian.
- Sec. 3. Section 21a-415b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):
- (a) Each business entity with a dealer registration shall place and maintain in legible condition at each point of sale of electronic nicotine delivery systems or vapor products a notice to consumers that states (1) the sale, giving or delivering of electronic nicotine delivery systems and

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vapor products to any person under twenty-one years of age is prohibited by section 53-344b, <u>as amended by this act</u>, (2) the use of false identification by a person under twenty-one years of age to purchase an electronic nicotine delivery system or a vapor product is prohibited, and (3) the penalties and fines for violating the provisions of this section and section 53-344b, as amended by this act.

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- (b) (1) The Commissioner of Mental Health and Addiction Services, or the commissioner's designee, shall conduct unannounced compliance checks on business entities [holding] with a dealer registration by engaging persons between the ages of sixteen and twenty to enter the place of business of each such business entity to attempt to purchase an electronic nicotine delivery system or a vapor product.
- 122 (2) The Commissioner of Mental Health and Addiction Services, or 123 the commissioner's designee, shall conduct unannounced compliance 124 checks on business entities with a dealer registration to determine 125 whether any such business entity is selling, giving or delivering or has 126 sold, given or delivered any electronic nicotine delivery system or vapor 127 product with a flavoring agent, other than tobacco flavor, that has been 128 added for the purpose of flavoring the contents of the electronic delivery 129 system or vapor product, in violation of subsection (a) of section 2 of 130 this act.
  - (3) The Commissioner of Mental Health and Addiction Services, or the commissioner's designee, shall conduct unannounced compliance checks on business entities with a dealer registration to determine whether each such business entity is in possession of the documentation required under subsection (b) of section 2 of this act and whether such documentation indicates that electronic nicotine delivery systems or vapor products with a nicotine content greater than thirty-five milligrams per milliliter were sold, given or delivered by such business entity. The commissioner shall refer all business entities that do not possess such documentation or that sold, gave, delivered or possessed with intent to sell an electronic nicotine delivery system or a vapor product with a nicotine content that is greater than thirty-five

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- milligrams per milliliter to the Commissioner of Revenue Services.
- 144 (4) The [commissioner] Commissioner of Mental Health and
  145 Addiction Services shall conduct unannounced follow-up compliance
  146 checks of all noncompliant business entities and shall refer all
  147 noncompliant business entities to the Commissioner of Revenue
  148 Services.
- (c) Upon receipt of a referral made pursuant to subsection (b) of this section, the Commissioner of Revenue Services may, following a hearing, impose a civil penalty and direct the Commissioner of Consumer Protection to suspend or revoke the dealer registration of the business entity that is the subject of such referral. The Commissioner of Revenue Services shall provide such business entity with written notice of the hearing, specifying the time and place of such hearing and requiring such business entity to show cause why such dealer registration should not be suspended or revoked. The written notice of the hearing shall be mailed or delivered to such business entity not less than ten days preceding the date of the hearing. Such notice may be served personally or by registered or certified mail.

(d) If the Commissioner of Revenue Services finds, after a hearing pursuant to subsection (c) of this section, that any person employed by any business entity issued a dealer registration under section 21a-415, as amended by this act, has sold, given or delivered an electronic nicotine delivery system or vapor product to a person under twenty-one years of age, other than a person under twenty-one years of age who is delivering or accepting delivery in such person's capacity as an employee, said commissioner shall, for the first violation, require such employee to successfully complete an online prevention education program administered by the Department of Mental Health and Addiction Services not later than thirty days after said commissioner's finding. [Said commissioner] The Commissioner of Revenue Services shall assess any employee who fails to complete such program a civil penalty of [two] four hundred dollars. Said commissioner shall assess any employee a civil penalty of [two hundred fifty] five hundred dollars

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for a second or subsequent violation on or before twenty-four months after the date of the first violation.

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- (e) (1) If the Commissioner of Revenue Services finds, after a hearing pursuant to subsection (c) of this section, that [(1)] (A) any business entity issued a dealer registration under section 21a-415, as amended by this act, has sold, given or delivered an electronic nicotine delivery system or vapor product to a person under twenty-one years of age, other than a person under twenty-one years of age who is delivering or accepting delivery in such person's capacity as an employee, or [(2)] (B) such person's employee has sold, given or delivered an electronic nicotine delivery system or vapor product to a person under twenty-one years of age, the commissioner shall, for the first violation, require the authorized owner of such business entity to successfully complete an online prevention education program administered by the Department of Mental Health and Addiction Services not later than thirty days after said commissioner's finding. [Said commissioner] The Commissioner of Revenue Services shall assess any business entity issued a dealer registration, whose authorized owner fails to complete such program, a civil penalty of [three] six hundred dollars for the first violation. [Said commissioner]
- (2) The Commissioner of Revenue Services shall assess such business entity a civil penalty of [seven hundred fifty] one thousand dollars for a second violation on or before twenty-four months after the date of the first violation.
- (3) For a third violation by such business entity on or before twenty-four months after the date of the first violation, [said commissioner] the Commissioner of Revenue Services shall assess such business entity a civil penalty of [one] two thousand dollars and notify the Commissioner of Consumer Protection that the dealer registration held by such business entity under this chapter shall be suspended for not less than thirty days.
- 207 (4) For a fourth violation on or before twenty-four months after the

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date of the first violation, the Commissioner of Revenue Services shall assess such business entity a civil penalty of [one] two thousand dollars and notify the Commissioner of Consumer Protection that the dealer registration held by such business entity under [said] this chapter shall be revoked. The Commissioner of Revenue Services shall order such business entity to conspicuously post a notice in a public place stating that electronic nicotine delivery systems and vapor products cannot be sold during the period of suspension or revocation and the reasons for such suspension or revocation. Any sale of an electronic nicotine delivery system or vapor product by such business entity during the period of such suspension or revocation shall be deemed an additional violation of this section.

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(f) (1) If the Commissioner of Revenue Services finds, after a hearing pursuant to subsection (c) of this section, that (A) any business entity issued a dealer registration under section 21a-415, as amended by this act, has sold, given or delivered an electronic nicotine delivery system or vapor product with a flavoring agent, other than tobacco flavor, that has been added for the purpose of flavoring the contents of the electronic nicotine delivery system or vapor product, or (B) any such business entity does not possess documentation of nicotine content or nicotine content that indicates a level of nicotine that is greater than thirty-five milligrams per milliliter for any electronic nicotine delivery system or vapor product sold, given or delivered within the retail establishment of the business entity, the commissioner shall, for the first violation, require the authorized owner of such business entity to successfully complete an online prevention education program administered by the Department of Mental Health and Addiction Services not later than thirty days after said commissioner's finding. The Commissioner of Revenue Services shall assess any business entity issued a dealer registration, whose authorized owner fails to complete such program, a civil penalty of six hundred dollars for the first violation.

(2) The Commissioner of Revenue Services shall assess such business entity a civil penalty of one thousand five hundred dollars for a second

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- violation on or before twenty-four months after the date of the firstviolation.
- 244 (3) For a third violation by such business entity on or before twenty-245 four months after the date of the first violation, the Commissioner of 246 Revenue Services shall assess such business entity a civil penalty of two 247 thousand dollars and notify the Commissioner of Consumer Protection 248 that the dealer registration held by such business entity under this 249 chapter shall be suspended for not less than thirty days.

- (4) For a fourth violation on or before twenty-four months after the date of the first violation, the Commissioner of Revenue Services shall assess such business entity a civil penalty of two thousand dollars and notify the Commissioner of Consumer Protection that the dealer registration held by such business entity under this chapter shall be revoked. The Commissioner of Revenue Services shall order such business entity to conspicuously post a notice in a public place stating that electronic nicotine delivery systems and vapor products cannot be sold during the period of suspension or revocation and the reasons for such suspension or revocation. Any sale of an electronic nicotine delivery system or vapor product by such business entity during the period of such suspension or revocation shall be deemed an additional violation of this section.
- [(f)] (g) Upon receipt of notice of determination from the Commissioner of Revenue Services made under subsection (e) of this section, the Commissioner of Consumer Protection shall suspend or revoke the dealer registration of the business entity that is the subject of said determination. The Commissioner of Consumer Protection shall not be required to hold a hearing in connection with any notice of determination received from the Commissioner of Revenue Services under this section.
- [(g)] (h) The Commissioner of Consumer Protection shall not issue a new dealer registration to a former registrant whose dealer registration was revoked unless the commissioner is satisfied that such business

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- entity that holds a dealer registration will comply with the provisions of this chapter and any regulations related thereto, and section 53-344b, as amended by this act.
- Sec. 4. Section 12-295a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

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- (a) If the Commissioner of Revenue Services finds, after a hearing, that any person employed by a dealer or distributor, as defined in section 12-285, has sold, given or delivered cigarettes or tobacco products to a person under twenty-one years of age other than a person under twenty-one years of age who is delivering or accepting delivery in such person's capacity as an employee, said commissioner shall, for the first violation, require such person to successfully complete an online tobacco prevention education program administered by the Department of Mental Health and Addiction Services not later than thirty days after said commissioner's finding. [Said commissioner] The Commissioner of Revenue Services shall assess any person who fails to complete such program a civil penalty of [two] four hundred dollars. Said commissioner shall assess any person employed by a dealer or distributor a civil penalty of [two hundred fifty] five hundred dollars for a second or subsequent violation on or before twenty-four months after the date of the first violation.
- (b) (1) If the Commissioner of Revenue Services finds, after a hearing, that any dealer or distributor has sold, given or delivered cigarettes or a tobacco product to a person under twenty-one years of age other than a person under twenty-one years of age who is delivering or accepting delivery in such person's capacity as an employee, or such dealer or distributor's employee has sold, given or delivered cigarettes or a tobacco product to such person, said commissioner shall require such dealer or distributor, for the first violation, to successfully complete an online tobacco prevention education program administered by the Department of Mental Health and Addiction Services not later than thirty days after said commissioner's finding. [Said commissioner] The Commissioner of Revenue Services shall assess any dealer or distributor

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who fails to complete such program a civil penalty of [three] <u>six</u> hundred dollars. [Said commissioner]

- (2) The Commissioner of Revenue Services shall assess [any] such dealer or distributor a civil penalty of [seven hundred fifty] one thousand five hundred dollars for a second violation on or before twenty-four months after the date of the first violation.
- (3) For a third violation on or before twenty-four months after the date of the first violation, [said commissioner] the Commissioner of Revenue Services shall assess such dealer or distributor a civil penalty of [one] two thousand dollars and suspend any license held by such dealer or distributor under this chapter for not less than thirty days.
- (4) For a fourth violation on or before twenty-four months after the date of the first violation, [said commissioner] the Commissioner of Revenue Services shall assess such dealer or distributor a civil penalty of [one] two thousand dollars and revoke any license issued to such dealer or distributor under this chapter. Said commissioner shall order such distributor or dealer to conspicuously post a notice in a public place within such distributor's or dealer's establishment stating that cigarettes and tobacco products cannot be sold during the period of such suspension or revocation and the reasons for such suspension or revocation. Any sale of cigarettes or a tobacco product by such dealer or distributor during such suspension or revocation shall be deemed an additional violation of this subsection.
- (c) (1) If the Commissioner of Revenue Services finds, after a hearing, that any owner of an establishment in which a cigarette vending machine or restricted cigarette vending machine is located has sold, given or delivered cigarettes or tobacco products from any such machine to a person under twenty-one years of age other than a person under twenty-one years of age who is delivering or accepting delivery in such person's capacity as an employee, or has allowed cigarettes or tobacco products to be sold, given or delivered to such person from any such machine, said commissioner shall require such owner, for the first

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- 339 violation, to successfully complete an online tobacco prevention
- 340 education program administered by the Department of Mental Health
- 341 and Addiction Services not later than thirty days after said
- commissioner's finding. [Said commissioner] The Commissioner of
- 343 Revenue Services shall assess any owner who fails to complete such
- program a civil penalty of [five hundred] one thousand dollars. [Said
- 345 commissioner]
- 346 (2) The Commissioner of Revenue Services shall assess [any] such
- owner a civil penalty of [seven hundred fifty] one thousand five
- 348 hundred dollars for a second violation on or before twenty-four months
- 349 after the date of the first violation.
- 350 (3) For a third violation on or before twenty-four months after the
- date of the first violation, [said commissioner] the Commissioner of
- Revenue Services shall assess such owner a civil penalty of [one] two
- 353 thousand dollars and immediately remove any such machine from such
- 354 establishment and no such machine may be placed in such
- 355 establishment for a period of one year following such removal.
- 356 (d) Any person aggrieved by any action of the [commissioner]
- 357 Commissioner of Revenue Services pursuant to this section may take
- any appeal of such action as provided in sections 12-311 and 12-312.
- Sec. 5. Subsection (b) of section 53-344 of the general statutes is
- repealed and the following is substituted in lieu thereof (*Effective January*
- 361 1, 2023):
- 362 (b) Any person who sells, gives or delivers to any person under
- 363 twenty-one years of age cigarettes or a tobacco product shall be fined
- not more than [three] six hundred dollars for the first offense, not more
- than [seven hundred fifty] one thousand five hundred dollars for a
- 366 second offense on or before twenty-four months after the date of the first
- 367 offense and not more than [one] two thousand dollars for each
- 368 subsequent offense on or before twenty-four months after the date of the
- 369 first offense. The provisions of this subsection shall not apply to a person
- 370 under twenty-one years of age who is delivering or accepting delivery

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- of cigarettes or a tobacco product (1) in such person's capacity as an
- employee, or (2) as part of a scientific study being conducted by an
- organization for the purpose of medical research to further efforts in
- cigarette and tobacco product use prevention and cessation, provided
- 375 such medical research has been approved by the organization's
- institutional review board, as defined in section 21a-408.
- Sec. 6. Subsection (b) of section 53-344b of the general statutes is
- 378 repealed and the following is substituted in lieu thereof (*Effective January*
- 379 1, 2023):
- 380 (b) Any person who sells, gives or delivers to any person under
- 381 twenty-one years of age an electronic nicotine delivery system or vapor
- product in any form shall be fined not more than [three] six hundred
- dollars for the first offense, not more than [seven hundred fifty] one
- 384 thousand five hundred dollars for a second offense on or before twenty-
- four months after the date of the first offense and not more than [one]
- 386 two thousand dollars for each subsequent offense on or before twenty-
- four months after the date of the first offense. The provisions of this
- 388 subsection shall not apply to a person under twenty-one years of age
- 389 who is delivering or accepting delivery of an electronic nicotine delivery
- 390 system or vapor product (1) in such person's capacity as an employee,
- 391 or (2) as part of a scientific study being conducted by an organization
- 392 for the purpose of medical research to further efforts in tobacco use
- 393 prevention and cessation, provided such medical research has been
- 394 approved by the organization's institutional review board, as defined in
- 395 section 21a-408.
- Sec. 7. Section 21a-418 of the general statutes is repealed and the
- 397 following is substituted in lieu thereof (*Effective October 1, 2022*):
- 398 (a) As used in this section:
- 399 (1) "Person" means any individual, firm, fiduciary, partnership,
- 400 corporation, limited liability company, trust or association, however
- 401 formed;

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402 (2) "Electronic cigarette liquid" has the same meaning as provided in section 21a-415, as amended by this act;

- [(2)] (3) "Electronic nicotine delivery system" has the same meaning as provided in section 21a-415, as amended by this act; and
- [(3)] (4) "Vapor product" has the same meaning as provided in section 21a-415, as amended by this act.
- 408 (b) A person with an electronic nicotine delivery system certificate of dealer registration, when selling and shipping an electronic nicotine 409 410 delivery system or a vapor product directly to a consumer in the state, 411 shall: (1) [Ensure] At the time of sale (A) require such consumer to 412 provide a copy of such consumer's valid motor vehicle operator's license or valid identity card, as described in section 1-1h, or (B) verify such 413 414 consumer's identity on a commercially available third-party database 415 used for the purpose of age verification by business entities; (2) ensure 416 that the name on such consumer's valid motor vehicle operator's license 417 payment used to purchase such system or product at the time of sale; (3) 418 ensure that the shipping labels on all containers of an electronic nicotine 419 delivery system or vapor product [shipped directly to a consumer in the 420 state conspicuously states] conspicuously state the following: 421 "CONTAINS AN ELECTRONIC NICOTINE DELIVERY SYSTEM OR 422 VAPOR PRODUCT – SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY"; and [(2)] (4) obtain the signature of a 423 424 person [age] twenty-one years of age or older at the shipping address 425 prior to delivery, after requiring the signer to demonstrate that he or she 426 is age twenty-one or older by providing a valid motor vehicle operator's 427 license or a valid identity card. [described in section 1-1h] No person 428 with an electronic nicotine delivery system certificate of dealer 429 registration shall sell or ship to a consumer in the state more than two 430 vapor products and thirty cartridges of electronic cigarette liquid in a 431 one-month period.

This act shall take effect as follows and shall amend the following sections:

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Section 1	January 1, 2023	21a-415(a)
Sec. 2	January 1, 2022	New section
Sec. 3	January 1, 2023	21a-415b
Sec. 4	January 1, 2023	12-295a
Sec. 5	January 1, 2023	53-344(b)
Sec. 6	January 1, 2023	53-344b(b)
Sec. 7	October 1, 2022	21a-418

## Statement of Purpose:

To discourage the use of electronic nicotine delivery systems and vapor products by children.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

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