



General Assembly

Substitute Bill No. 326

January Session, 2021



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

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2 repealed and the following is substituted in lieu thereof (*Effective January*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, 2022*):

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
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;

20 (5) "Electronic cigarette liquid" means a liquid that, when used in an
21 electronic nicotine delivery system or vapor product, produces a vapor
22 that may or may not include nicotine and is inhaled by the user of such
23 electronic nicotine delivery system or vapor product;

24 (6) "Electronic nicotine delivery system" means an electronic device
25 used in the delivery of nicotine or other substances to a person inhaling
26 from the device, and includes, but is not limited to, an electronic
27 cigarette, electronic cigar, electronic cigarillo, electronic pipe or
28 electronic hookah and any related device and any cartridge or other
29 component of such device, including, but not limited to, electronic
30 cigarette liquid;

31 (7) "Vapor product" means any product that employs a heating
32 element, power source, electronic circuit or other electronic, chemical or
33 mechanical means, regardless of shape or size, to produce a vapor that
34 may include nicotine and is inhaled by the user of such product. "Vapor
35 product" does not include a medicinal or therapeutic product that is (A)
36 used by a licensed health care provider to treat a patient in a health care
37 setting, (B) used by a patient, as prescribed or directed by a licensed
38 health care provider in any setting, or (C) any drug or device, as defined
39 in the federal Food, Drug and Cosmetic Act, 21 USC 321, as amended
40 from time to time, any combination product, as described in said act, 21
41 USC 353(g), as amended from time to time, or any biological product, as
42 described in 42 USC 262, as amended from time to time, and 21 CFR
43 600.3, as amended from time to time, authorized for sale by the United
44 States Food and Drug Administration;

45 (8) "Sale" or "sell" means an act done intentionally by any person,
46 whether done as principal, proprietor, agent, servant or employee, of
47 transferring, or offering or attempting to transfer, for consideration,

48 including bartering or exchanging, or offering to barter or exchange;
49 [and]

50 (9) "Deliver" or "delivering" means an act done intentionally by any
51 person, whether as principal, proprietor, agent, servant or employee, of
52 transferring, or offering or attempting to transfer, physical possession
53 or control of an electronic nicotine delivery system or vapor product;

54 (10) "Flavoring agent" means an additive used in food or drugs when
55 such additive (A) is used in accordance with good manufacturing
56 practice principles and in the minimum quantity required to produce its
57 intended effect; (B) (i) consists of one or more ingredients generally
58 recognized as safe in food or drugs, (ii) has been previously sanctioned
59 for use in food or drugs by the state or the federal government, (iii)
60 meets United States Pharmacopeia standards, or (iv) is an additive
61 permitted for direct addition to food for human consumption pursuant
62 to 21 CFR 172, as amended from time to time; (C) is inert and produces
63 no effect other than the instillation or modification of flavor; and (D) is
64 not greater than five per cent of the total weight of the product.

65 Sec. 2. (NEW) (*Effective January 1, 2022*) (a) No person shall sell, give,
66 deliver or possess with intent to sell in this state an electronic nicotine
67 delivery system or a vapor product with a flavoring agent, other than
68 tobacco flavor, that has been added for the purpose of flavoring the
69 contents of the electronic nicotine delivery system or vapor product.
70 This section shall not apply to any product (1) that the United States
71 Secretary of Health and Human Services determines to be a modified
72 risk tobacco product pursuant to 21 USC 387k, as amended from time to
73 time, or (2) for which the manufacturer has applied for or received a
74 marketing order from the federal Food and Drug Administration under
75 21 USC 387j, as amended from time to time.

76 (b) (1) No person shall sell, give, deliver or possess with intent to sell,
77 in this state an electronic nicotine delivery system or a vapor product
78 with a nicotine content that is greater than thirty-five milligrams per
79 milliliter. Each person with a manufacturer registration shall provide

80 documentation to a person with a dealer registration, indicating the
81 nicotine content, expressed as milligrams per milliliter, for each
82 electronic nicotine delivery system and vapor product sold by such
83 person with a manufacturer registration to such person with a dealer
84 registration.

85 (2) Each business entity holding a dealer registration shall (A)
86 maintain documentation, within the place of business identified in the
87 business entity's application for dealer registration, of the nicotine
88 content provided pursuant to subdivision (1) of this subsection by the
89 person with a manufacturer registration, for each electronic nicotine
90 delivery system and vapor product sold, given or delivered by such
91 person to the business entity, and (B) provide such documentation at the
92 request of the Commissioner of Mental Health and Addiction Services,
93 or the commissioner's designee, during any unannounced compliance
94 check conducted pursuant to section 21-415b of the general statutes, as
95 amended by this act.

96 (c) As used in this section, "person" means any individual, authorized
97 owner of a business entity, retail establishment, as defined in section
98 19a-106a of the general statutes, partnership, company, limited liability
99 company, public or private corporation, association, trustee, executor,
100 administrator or other fiduciary or custodian.

101 Sec. 3. Section 21a-415b of the general statutes is repealed and the
102 following is substituted in lieu thereof (*Effective January 1, 2022*):

103 (a) Each business entity with a dealer registration shall place and
104 maintain in legible condition at each point of sale of electronic nicotine
105 delivery systems or vapor products a notice to consumers that states (1)
106 the sale, giving or delivering of electronic nicotine delivery systems and
107 vapor products to any person under twenty-one years of age is
108 prohibited by section 53-344b, as amended by this act, (2) the use of false
109 identification by a person under twenty-one years of age to purchase an
110 electronic nicotine delivery system or a vapor product is prohibited, and
111 (3) the penalties and fines for violating the provisions of this section and

112 section 53-344b, as amended by this act.

113 (b) (1) The Commissioner of Mental Health and Addiction Services,
114 or the commissioner's designee, shall conduct unannounced compliance
115 checks on business entities [holding] with a dealer registration by
116 engaging persons between the ages of sixteen and twenty to enter the
117 place of business of each such business entity to attempt to purchase an
118 electronic nicotine delivery system or a vapor product.

119 (2) The Commissioner of Mental Health and Addiction Services, or
120 the commissioner's designee, shall conduct unannounced compliance
121 checks on business entities with a dealer registration to determine
122 whether any such business entity is selling, giving or delivering or has
123 sold, given or delivered any electronic nicotine delivery system or vapor
124 product with a flavoring agent, other than tobacco flavor, that has been
125 added for the purpose of flavoring the contents of the electronic delivery
126 system or vapor product, in violation of subsection (a) of section 2 of
127 this act.

128 (3) The Commissioner of Mental Health and Addiction Services, or
129 the commissioner's designee, shall conduct unannounced compliance
130 checks on business entities with a dealer registration to determine
131 whether each such business entity is in possession of the documentation
132 required under subsection (b) of section 2 of this act and whether such
133 documentation indicates that electronic nicotine delivery systems or
134 vapor products with a nicotine content greater than thirty-five
135 milligrams per milliliter were sold, given or delivered by such business
136 entity. The commissioner shall refer all business entities that do not
137 possess such documentation or that sold, gave, delivered or possessed
138 with intent to sell an electronic nicotine delivery system or a vapor
139 product with a nicotine content that is greater than 35 milligrams per
140 milliliter to the Commissioner of Revenue Services.

141 (4) The [commissioner] Commissioner of Mental Health and
142 Addiction Services shall conduct unannounced follow-up compliance
143 checks of all noncompliant business entities and shall refer all

144 noncompliant business entities to the Commissioner of Revenue
145 Services.

146 (c) Upon receipt of a referral made pursuant to subsection (b) of this
147 section, the Commissioner of Revenue Services may, following a
148 hearing, impose a civil penalty and direct the Commissioner of
149 Consumer Protection to suspend or revoke the dealer registration of the
150 business entity that is the subject of such referral. The Commissioner of
151 Revenue Services shall provide such business entity with written notice
152 of the hearing, specifying the time and place of such hearing and
153 requiring such business entity to show cause why such dealer
154 registration should not be suspended or revoked. The written notice of
155 the hearing shall be mailed or delivered to such business entity not less
156 than ten days preceding the date of the hearing. Such notice may be
157 served personally or by registered or certified mail.

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

175 (e) (1) If the Commissioner of Revenue Services finds, after a hearing
176 pursuant to subsection (c) of this section, that [(1)] (A) any business

177 entity issued a dealer registration under section 21a-415, as amended by
178 this act, has sold, given or delivered an electronic nicotine delivery
179 system or vapor product to a person under twenty-one years of age,
180 other than a person under twenty-one years of age who is delivering or
181 accepting delivery in such person's capacity as an employee, or [(2)] (B)
182 such person's employee has sold, given or delivered an electronic
183 nicotine delivery system or vapor product to a person under twenty-one
184 years of age, the commissioner shall, for the first violation, require the
185 authorized owner of such business entity to successfully complete an
186 online prevention education program administered by the Department
187 of Mental Health and Addiction Services not later than thirty days after
188 said commissioner's finding. [Said commissioner] The Commissioner of
189 Revenue Services shall assess any business entity issued a dealer
190 registration, whose authorized owner fails to complete such program, a
191 civil penalty of [three] six hundred dollars for the first violation.

192 (2) [Said commissioner] The Commissioner of Revenue Services shall
193 assess such business entity a civil penalty of [seven hundred fifty] one
194 thousand five hundred dollars for a second violation on or before
195 twenty-four months after the date of the first violation.

196 (3) For a third violation by such business entity on or before twenty-
197 four months after the date of the first violation, [said commissioner] the
198 Commissioner of Revenue Services shall assess such business entity a
199 civil penalty of [one] two thousand dollars and notify the Commissioner
200 of Consumer Protection that the dealer registration held by such
201 business entity under this chapter shall be suspended for not less than
202 thirty days.

203 (4) For a fourth violation on or before twenty-four months after the
204 date of the first violation, the Commissioner of Revenue Services shall
205 assess such business entity a civil penalty of [one] two thousand dollars
206 and notify the Commissioner of Consumer Protection that the dealer
207 registration held by such business entity under [said] this chapter shall
208 be revoked. The Commissioner of Revenue Services shall order such
209 business entity to conspicuously post a notice in a public place stating

210 that electronic nicotine delivery systems and vapor products cannot be
211 sold during the period of suspension or revocation and the reasons for
212 such suspension or revocation. Any sale of an electronic nicotine
213 delivery system or vapor product by such business entity during the
214 period of such suspension or revocation shall be deemed an additional
215 violation of this section.

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

236 (2) The Commissioner of Revenue Services shall assess such business
237 entity a civil penalty of one thousand five hundred dollars for a second
238 violation on or before twenty-four months after the date of the first
239 violation.

240 (3) For a third violation by such business entity on or before twenty-
241 four months after the date of the first violation, The Commissioner of
242 Revenue Services shall assess such business entity a civil penalty of two

243 thousand dollars and notify the Commissioner of Consumer Protection
244 that the dealer registration held by such business entity under this
245 chapter shall be suspended for not less than thirty days.

246 (4) For a fourth violation on or before twenty-four months after the
247 date of the first violation, the Commissioner of Revenue Services shall
248 assess such business entity a civil penalty of two thousand dollars and
249 notify the Commissioner of Consumer Protection that the dealer
250 registration held by such business entity under this chapter shall be
251 revoked. The Commissioner of Revenue Services shall order such
252 business entity to conspicuously post a notice in a public place stating
253 that electronic nicotine delivery systems and vapor products cannot be
254 sold during the period of suspension or revocation and the reasons for
255 such suspension or revocation. Any sale of an electronic nicotine
256 delivery system or vapor product by such business entity during the
257 period of such suspension or revocation shall be deemed an additional
258 violation of this section.

259 ~~[(f)]~~ (g) Upon receipt of notice of determination from the
260 Commissioner of Revenue Services made under subsection (e) ~~or (f)~~ of
261 this section, the Commissioner of Consumer Protection shall suspend or
262 revoke the dealer registration of the business entity that is the subject of
263 ~~[said] the~~ determination. The Commissioner of Consumer Protection
264 shall not be required to hold a hearing in connection with any notice of
265 determination received from the Commissioner of Revenue Services
266 under this section.

267 ~~[(g)]~~ (h) The Commissioner of Consumer Protection shall not issue a
268 new dealer registration to a former registrant whose dealer registration
269 was revoked unless the commissioner is satisfied that such business
270 entity that holds a dealer registration will comply with the provisions of
271 this chapter and any regulations related thereto, and section 53-344b, ~~as~~
272 amended by this act.

273 Sec. 4. Section 12-295a of the general statutes is repealed and the
274 following is substituted in lieu thereof (*Effective January 1, 2022*):

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

291 (b) (1) If the Commissioner of Revenue Services finds, after a hearing,
292 that any dealer or distributor has sold, given or delivered cigarettes or a
293 tobacco product to a person under twenty-one years of age other than a
294 person under twenty-one years of age who is delivering or accepting
295 delivery in such person's capacity as an employee, or such dealer or
296 distributor's employee has sold, given or delivered cigarettes or a
297 tobacco product to such person, said commissioner shall require such
298 dealer or distributor, for the first violation, to successfully complete an
299 online tobacco prevention education program administered by the
300 Department of Mental Health and Addiction Services not later than
301 thirty days after said commissioner's finding. [Said commissioner] The
302 Commissioner of Revenue Services shall assess any dealer or distributor
303 who fails to complete such program a civil penalty of [three] six
304 hundred dollars.

305 (2) [Said commissioner] The Commissioner of Revenue Services shall
306 assess [any] such dealer or distributor a civil penalty of [seven hundred
307 fifty] one thousand five hundred dollars for a second violation on or

308 before twenty-four months after the date of the first violation.

309 (3) For a third violation on or before twenty-four months after the
310 date of the first violation, [said commissioner] the Commissioner of
311 Revenue Services shall assess such dealer or distributor a civil penalty
312 of [one] two thousand dollars and suspend any license held by such
313 dealer or distributor under this chapter for not less than thirty days.

314 (4) For a fourth violation on or before twenty-four months after the
315 date of the first violation, [said commissioner] the Commissioner of
316 Revenue Services shall assess such dealer or distributor a civil penalty
317 of [one] two thousand dollars and revoke any license issued to such
318 dealer or distributor under this chapter. Said commissioner shall order
319 such distributor or dealer to conspicuously post a notice in a public
320 place within such distributor's or dealer's establishment stating that
321 cigarettes and tobacco products cannot be sold during the period of such
322 suspension or revocation and the reasons for such suspension or
323 revocation. Any sale of cigarettes or a tobacco product by such dealer or
324 distributor during such suspension or revocation shall be deemed an
325 additional violation of this subsection.

326 (c) (1) If the Commissioner of Revenue Services finds, after a hearing,
327 that any owner of an establishment in which a cigarette vending
328 machine or restricted cigarette vending machine is located has sold,
329 given or delivered cigarettes or tobacco products from any such
330 machine to a person under twenty-one years of age other than a person
331 under twenty-one years of age who is delivering or accepting delivery
332 in such person's capacity as an employee, or has allowed cigarettes or
333 tobacco products to be sold, given or delivered to such person from any
334 such machine, said commissioner shall require such owner, for the first
335 violation, to successfully complete an online tobacco prevention
336 education program administered by the Department of Mental Health
337 and Addiction Services not later than thirty days after said
338 commissioner's finding. [Said commissioner] The Commissioner of
339 Revenue Services shall assess any owner who fails to complete such
340 program a civil penalty of [five hundred] one thousand dollars.

341 (2) [Said commissioner] The Commissioner of Revenue Services shall
342 assess [any] such owner a civil penalty of [seven hundred fifty] one
343 thousand five hundred dollars for a second violation on or before
344 twenty-four months after the date of the first violation.

345 (3) For a third violation on or before twenty-four months after the
346 date of the first violation, [said commissioner] the Commissioner of
347 Revenue Services shall assess such owner a civil penalty of [one] two
348 thousand dollars and immediately remove any such machine from such
349 establishment and no such machine may be placed in such
350 establishment for a period of one year following such removal.

351 (d) Any person aggrieved by any action of the [commissioner]
352 Commissioner of Revenue Services pursuant to this section may take
353 any appeal of such action as provided in sections 12-311 and 12-312.

354 Sec. 5. Subsection (b) of section 53-344 of the general statutes is
355 repealed and the following is substituted in lieu thereof (*Effective January*
356 *1, 2022*):

357 (b) Any person who sells, gives or delivers to any person under
358 twenty-one years of age cigarettes or a tobacco product shall be fined
359 not more than [three] six hundred dollars for the first offense, not more
360 than [seven hundred fifty] one thousand five hundred dollars for a
361 second offense on or before twenty-four months after the date of the first
362 offense and not more than [one] two thousand dollars for each
363 subsequent offense on or before twenty-four months after the date of the
364 first offense. The provisions of this subsection shall not apply to a person
365 under twenty-one years of age who is delivering or accepting delivery
366 of cigarettes or a tobacco product (1) in such person's capacity as an
367 employee, or (2) as part of a scientific study being conducted by an
368 organization for the purpose of medical research to further efforts in
369 cigarette and tobacco product use prevention and cessation, provided
370 such medical research has been approved by the organization's
371 institutional review board, as defined in section 21a-408.

372 Sec. 6. Subsection (b) of section 53-344b of the general statutes is
373 repealed and the following is substituted in lieu thereof (*Effective January*
374 *1, 2022*):

375 (b) Any person who sells, gives or delivers to any person under
376 twenty-one years of age an electronic nicotine delivery system or vapor
377 product in any form shall be fined not more than [three] six hundred
378 dollars for the first offense, not more than [seven hundred fifty] one
379 thousand five hundred dollars for a second offense on or before twenty-
380 four months after the date of the first offense and not more than [one]
381 two thousand dollars for each subsequent offense on or before twenty-
382 four months after the date of the first offense. The provisions of this
383 subsection shall not apply to a person under twenty-one years of age
384 who is delivering or accepting delivery of an electronic nicotine delivery
385 system or vapor product (1) in such person's capacity as an employee,
386 or (2) as part of a scientific study being conducted by an organization
387 for the purpose of medical research to further efforts in tobacco use
388 prevention and cessation, provided such medical research has been
389 approved by the organization's institutional review board, as defined in
390 section 21a-408.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2022</i>	21a-415(a)
Sec. 2	<i>January 1, 2022</i>	New section
Sec. 3	<i>January 1, 2022</i>	21a-415b
Sec. 4	<i>January 1, 2022</i>	12-295a
Sec. 5	<i>January 1, 2022</i>	53-344(b)
Sec. 6	<i>January 1, 2022</i>	53-344b(b)

Statement of Legislative Commissioners:

In Section 3 (b)(4), "commissioner" was bracketed and, after the closing bracket, "Commissioner of Mental Health and Addiction Services" was inserted for clarity, in Section 3 (f), references to "said commissioner" and "Said commissioner" were bracketed and, after the closing brackets, references to "the Commissioner of Revenue Services" and "The Commissioner of Revenue Services" were inserted for clarity, and in

Section 4, references to "Said commissioner" and "said commissioner" were bracketed and, after the closing brackets, references to "The Commissioner of Revenue Services" and "the Commissioner of Revenue Services" were inserted for clarity.

FIN *Joint Favorable Subst.*