

2022 -- H 7869

LC005423

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY -- DEPARTMENT OF HEALTH

Introduced By: Representative Stephen M. Casey

Date Introduced: March 04, 2022

Referred To: House Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-1-55 and 23-1-58 of the General Laws in Chapter 23-1 entitled
2 "Department of Health" are hereby amended to read as follows:

3 **23-1-55. Electronic nicotine delivery system distributor, and dealer licenses required**
4 **-- Definitions.**

5 Definitions. Whenever used in §§ 23-1-56 to ~~23-1-58~~ 23-1-59, unless the context requires
6 otherwise:

7 (1) "Contraband" means any electronic nicotine-delivery system found to be in violation
8 of any provision of chapter 20 of title 44 of the general laws.

9 ~~(1)~~(2) "Dealer" means any person, whether located within or outside of this state, who sells
10 or distributes electronic nicotine-delivery system products to a consumer in this state;

11 ~~(2)~~(3) "Distributor" means any person:

12 (i) Whether located within or outside of this state, other than a dealer, who sells or
13 distributes electronic nicotine-delivery system products within or into this state. Such term shall
14 not include any electronic nicotine-delivery system products manufacturer, export warehouse
15 proprietor, or importer with a valid permit, if such person sells or distributes electronic nicotine -
16 delivery system products in this state only to licensed distributors or to an export warehouse
17 proprietor or another manufacturer with a valid permit;

18 (ii) Selling electronic nicotine-delivery system products directly to consumers in this state
19 by means of at least twenty-five (25) electronic nicotine-delivery system product vending

1 machines;

2 (iii) Engaged in this state in the business of manufacturing electronic nicotine-delivery
3 system products or any person engaged in the business of selling electronic nicotine-delivery
4 system products to dealers, or to other persons, for the purpose of resale only; provided that seventy-
5 five percent (75%) of all electronic nicotine-delivery system products sold by that person in this
6 state are sold to dealers or other persons for resale and selling electronic nicotine-delivery system
7 products directly to at least forty (40) dealers or other persons for resale; or

8 (iv) Maintaining one or more regular places of business in this state for that purpose;
9 provided, that seventy-five percent (75%) of the sold electronic nicotine-delivery system products
10 are purchased directly from the manufacturer and selling electronic nicotine-delivery system
11 products directly to at least forty (40) dealers or other persons for resale;

12 ~~(3)~~(4) "Electronic nicotine-delivery system" means the products as defined in § 11-9-
13 13.4(6).

14 (5) "Flavored electronic nicotine-delivery system" means any electronic nicotine-delivery
15 system that imparts a distinguishable taste or aroma, other than the taste or smell of tobacco, or
16 menthol, either prior to, or during, consumption of an electronic nicotine-delivery system,
17 including, but not limited to, tastes or aromas relating to any fruit, mint, wintergreen, chocolate,
18 vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice. The determination of
19 whether an electronic nicotine-delivery system is flavored shall not be based solely on the use of
20 additives, flavorings, or particular ingredients, but shall instead consider all aspects of a final
21 product including, but not limited to, taste, flavor and aroma, product labeling, and advertising
22 statements. An electronic nicotine-delivery system shall be presumed to be flavored if a dealer or
23 distributor has made a statement or claim directed to consumers or the public about such flavor,
24 whether expressed or implied, that it has a distinguishable taste or aroma (other than the taste or
25 aroma of tobacco).

26 **23-1-58. Penalty for operating without a dealer license.**

27 (a) Any individual or business who violates this chapter by selling or conveying an
28 electronic nicotine-delivery system product without a retail license, or any dealer who sells or offers
29 to sell an electronic nicotine-delivery system in violation of § 23-1-59, shall be cited for that
30 violation and shall be required to appear in district court for a hearing on the citation.

31 (b) Any individual or business cited for a violation hereunder shall:

32 (1) Either post a five hundred dollar (\$500) bond with the district court within ten (10) days
33 of the citation; or

34 (2) Sign and accept the citation indicating a promise to appear in court.

1 (c) An individual or business who or that has accepted the citation may:

2 (1) Pay the five hundred dollar (\$500) fine, either by mail or in person, within ten (10) days
3 after receiving the citation; or

4 (2) If that individual or business has posted a bond, forfeit the bond by not appearing at the
5 scheduled hearing. If the individual or business cited pays the five hundred dollar (\$500) fine or
6 forfeits the bond, that individual or business is deemed to have admitted the cited violation and to
7 have waived the right to a hearing on the issue of commission on the violation.

8 (d) The court, after a hearing on a citation, shall make a determination as to whether a
9 violation has been committed. If it is established that the violation did occur, the court shall impose
10 a five hundred dollar (\$500) fine in addition to any court costs or fees.

11 SECTION 2. Chapter 23-1 of the General Laws entitled "Department of Health" is hereby
12 amended by adding thereto the following section:

13 **23-1-59. Electronic nicotine delivery system sales restrictions.**

14 (a) The sale or offer for sale of any flavored electronic nicotine-delivery systems to
15 consumers within the State of Rhode Island is hereby prohibited. Any flavored electronic nicotine-
16 delivery system that receives a marketing order from the United States Food and Drug
17 Administration under 21 U.S.C. § 387j shall be exempt from this provision. Compassion centers
18 and licensed cultivators registered with the Rhode Island department of business regulations shall
19 also be exempt from this provision.

20 (b) Any electronic nicotine-delivery system found to be in violation of this chapter shall be
21 considered contraband and subject to the confiscation provisions outlined in § 44-20-15.

22 (c) Any dealer found to be selling or offering for sale an electronic nicotine-delivery system
23 in violation of this chapter shall be subject to the penalties outlined in §§ 23-1-58, 44-20-35, 44-
24 20-51, or 44-20-51.1.

25 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO HEALTH AND SAFETY -- DEPARTMENT OF HEALTH

- 1 This act would prohibit the sale or offer for sale and would provide penalties for the sale
- 2 of any flavored electronic nicotine-delivery system.
- 3 This act would take effect upon passage.

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