

**Sec. 53-344b. Sale or delivery of electronic nicotine delivery system or vapor product to minors. Purchase or misrepresentation of age by persons under eighteen years of age. Transaction scans. Affirmative defense.** (a) As used in this section:

(1) “Electronic nicotine delivery system” means an electronic device that may be used to simulate smoking in the delivery of nicotine or other substance 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;

(2) “Cardholder” means any person who presents a driver’s license or an identity card to a seller or seller’s agent or employee, to purchase or receive an electronic nicotine delivery system or vapor product from such seller or seller’s agent or employee;

(3) “Identity card” means an identification card issued in accordance with the provisions of section 1-1h;

(4) “Transaction scan” means the process by which a seller or seller’s agent or employee checks, by means of a transaction scan device, the validity of a driver’s license or an identity card;

(5) “Transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver’s license or an identity card;

(6) “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, an electronic nicotine delivery system or vapor product, including bartering or exchanging, or offering to barter or exchange, an electronic nicotine delivery system or vapor product;

(7) “Give” or “giving” 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, without consideration, an electronic nicotine delivery system or vapor product;

(8) “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

(9) “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 or may not include nicotine, that is inhaled by the user of such product.

(b) Any person who sells, gives or delivers to any minor under eighteen years of age an electronic nicotine delivery system or vapor product, unless the minor is delivering or accepting delivery in such person’s capacity as an employee, in any form shall be fined not more than two hundred dollars for the first offense, not more than three hundred fifty dollars for a second offense within an eighteen-month period and not more than five hundred dollars for each subsequent offense within an eighteen-month period.

(c) Any person under eighteen years of age who purchases or misrepresents such person’s age to purchase an electronic nicotine delivery system or vapor product in any form or possesses an electronic nicotine delivery system or vapor product in any form in any public place shall be fined not more than fifty dollars for the first offense and not less than fifty dollars or more than one hundred dollars for each subsequent offense. For purposes of this subsection “public place” means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(d) (1) A seller or seller’s agent or employee may perform a transaction scan to check the validity of a driver’s license or identity card presented by a cardholder as a condition for selling, giving or otherwise delivering an electronic nicotine delivery system or vapor product to the cardholder.

(2) If the information deciphered by the transaction scan performed under subdivision (1) of this subsection fails to match the information printed on the driver’s license or identity card presented by the cardholder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any seller’s agent or employee shall sell, give or otherwise deliver any electronic nicotine delivery system or vapor product to the cardholder.

(3) Subdivision (1) of this subsection does not preclude a seller or seller’s agent or employee from using a transaction scan device to check the validity of a document other than a driver’s license or an identity card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving or otherwise delivering an electronic nicotine delivery system or vapor product to the person presenting the document.

(e) (1) No seller or seller's agent or employee shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following: (A) The name and date of birth of the person listed on the driver's license or identity card presented by a cardholder; and (B) the expiration date and identification number of the driver's license or identity card presented by a cardholder.

(2) No seller or seller's agent or employee shall use a transaction scan device for a purpose other than the purposes specified in subsection (d) of this section, subsection (d) of section 53-344 or subsection (c) of section 30-86.

(3) No seller or seller's agent or employee shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising or promotional activities, but a seller or seller's agent or employee may release that information pursuant to a court order.

(4) Nothing in subsection (d) of this section or this subsection relieves a seller or seller's agent or employee of any responsibility to comply with any other applicable state or federal laws or rules governing selling, giving or otherwise delivering electronic nicotine delivery systems or vapor products.

(5) Any person who violates this subsection shall be subject to a civil penalty of not more than one thousand dollars.

(f) (1) In any prosecution of a seller or seller's agent or employee for a violation of subsection (b) of this section, it shall be an affirmative defense that all of the following occurred: (A) A cardholder attempting to purchase or receive an electronic nicotine delivery system or vapor product presented a driver's license or an identity card; (B) a transaction scan of the driver's license or identity card that the cardholder presented indicated that the license or card was valid; and (C) the electronic nicotine delivery system or vapor product was sold, given or otherwise delivered to the cardholder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or seller's agent or employee has proven the affirmative defense provided by subdivision (1) of this section, the trier of fact in such prosecution shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or seller's agent or employee to exercise reasonable diligence and that the use of a transaction scan device does not excuse a seller or seller's agent or employee from exercising such reasonable diligence to determine the following: (A) Whether a person to whom the seller or seller's agent or employee sells, gives or otherwise delivers an electronic nicotine

delivery system or vapor product is eighteen years of age or older; and (B) whether the description and picture appearing on the driver's license or identity card presented by a cardholder is that of the cardholder.

(g) Each seller of electronic nicotine delivery systems or vapor products or such seller's agent or employee shall require a person who is purchasing or attempting to purchase an electronic nicotine delivery system or vapor product, whose age is in question, to exhibit proper proof of age. If a person fails to provide such proof of age, such seller or seller's agent or employee shall not sell an electronic nicotine delivery system or vapor product to the person. As used in this subsection, "proper proof" means a motor vehicle operator's license, a valid passport or an identity card issued in accordance with the provisions of section 1-1h.