

HOUSE No. 2106

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the marketing and distribution of tobacco products.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	10th Middlesex
Susan C. Fargo	Third Middlesex
Martha M. Walz	8th Suffolk
Denise Provost	27th Middlesex
Barbara A. L'Italien	18th Essex
Elizabeth A. Malia	11th Suffolk
Jennifer M. Callahan	18th Worcester
Kathi-Anne Reinstein	16th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE MARKETING AND DISTRIBUTION OF TOBACCO PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 307A of chapter 94 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by inserting after the first paragraph the following
3 paragraph: -

4 For the purposes of this section, the word "cigarette" shall mean (1) any roll of tobacco wrapped
5 in paper or in any substance not containing tobacco, (2) little cigars, which shall mean rolls of
6 tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units
7 weigh not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing
8 tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging
9 and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in
10 clause (1).

11 SECTION 2. Said chapter 94 is hereby further amended by inserting after section 307C the
12 following section:-

13 Section 307D. (a) No person, either directly or indirectly by an agent or employee, shall sell,
14 offer for sale, or market to a person a cigarette or any of its component parts, including, but not
15 limited to: tobacco, filter, or paper; which contains a natural or artificial constituent or additive
16 that causes the cigarette or any smoke emanating from that product to have a characterizing
17 flavor other than tobacco, clove or menthol. In no event shall a cigarette or any component
18 thereof be construed to have a characterizing flavor based solely on the use of additives or
19 flavorings, or the provision of an ingredient list made available by any means.

20 (b) As used in this section,

21 (1) "Characterizing flavor" means that: the cigarette or any smoke emanating from the product,
22 imparts a distinguishable flavor, taste or aroma other than tobacco, clove or menthol prior to or
23 during consumption, including, but not limited to, strawberry, grape, orange, cinnamon,
24 pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, herb or spice flavoring; or
25 the cigarette or any component part thereof is advertised or marketed as having or producing any
26 such flavor, taste or aroma; and

27 (2) "Cigarette" means (a) any roll of tobacco wrapped in paper or in any substance not
28 containing tobacco, and (b) any roll of tobacco wrapped in any substance containing tobacco,
29 which, because of its appearance, the type of tobacco used in the filter, or its packaging and
30 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in
31 subparagraph (a) of this paragraph (2).

32 (3) "Component parts" includes, but is not limited to, the tobacco, paper, roll or filter, or any
33 other matter or substance which can be smoked.

34 SECTION 3. The definition of "Drug paraphernalia in section 1 of chapter 94C of the General
35 Laws, as so appearing, is hereby amended in clause (12) by inserting after subclause (o) the
36 following subclause: -

37 (p) blunt wrappers.

38 SECTION 4. Chapter 94F of the General Laws is hereby amended by inserting after section 6 of
39 the following section:-

40 Section 7. (a) A tobacco product manufacturer whose cigarettes are sold in the commonwealth,
41 whether directly or through an intermediary, shall execute and deliver to the attorney general and
42 to the commissioner of the department of public health, in a form and manner prescribed by the
43 department of public health, a certification under penalty of perjury containing the scientific
44 basis for each and every claim of reduction in risk made by the manufacturer for each of its
45 brand families or product members thereof. The scientific basis provided in each such
46 certification shall include a detailed description of the analysis of each brand family or product
47 members thereof, upon which the manufacturer supports the related claim of reduction of risk as
48 well as the identity of the institution or individual that conducted the analysis.

49 (b) A claim of reduction in risk that fails to demonstrate reduction in harm to users of the brand
50 family or product members thereof and to the general public, based on reasonable scientific
51 analysis of the manufacturer or the Department of Public Health, shall constitute an unfair or
52 deceptive act or practice under the provisions of chapter 93A, notwithstanding any contrary
53 provision of any other law of the Commonwealth or any exemption provided by said Chapter
54 93A. Manufacturers shall be afforded notice and opportunity to comment prior to a final
55 determination by Department of Public Health under this subsection (b).

56 (c) For purposes of this section, the term “claim of reduction in risk” shall mean any expressed or
57 implied claim on behalf of the manufacturer that a cigarette, as defined in Chapter 94E, (1)
58 exposes the user to a reduced quantity of one or more toxic or carcinogenic constituents; (2)
59 emits fewer particulates than other cigarettes; (3) may reduce the likelihood of one or more
60 adverse health effects or irritations associated with tobacco use or exposure to tobacco smoke;
61 (4) is a light or ultralight cigarette; (5) has a label, labeling, or advertising that uses the
62 descriptors ‘light’, ‘mild’, or ‘low’ or similar descriptors; and (6) is in anyway safer or less
63 addictive than other cigarettes.

64 (d) For purposes of this section, “reasonable scientific analysis” shall mean a manufacturer has
65 demonstrated to the department of public health that a product claimed to pose a reduced risk
66 will (1) significantly reduce harm and the risk of tobacco-related disease to individual tobacco
67 users; and (2) benefit the health of the population as a whole taking into account both users of
68 tobacco products and persons who do not currently use tobacco products.

69 (e) It shall be the duty of the attorney general of the commonwealth to institute proceedings in
70 the superior court to prevent and restrain violations of this section when the attorney general has
71 reason to believe that any tobacco manufacturer is engaging in a violation of this section. The
72 attorney general shall bring an action to enjoin the manufacturer from engaging in a violation of
73 this section.

74 (f) Nothing in this section shall affect the rights of any person under Section 9 of Chapter 93A.

75 SECTION 5. Chapter 270 of the General Laws is hereby amended by inserting after section 24
76 the following sections:-

77 Section 25. No person, manufacturer, distributor, or retailer shall distribute, or cause to be
78 distributed free samples of cigarettes, smokeless tobacco or other tobacco product for any
79 commercial purposes.

80 Section 26. No person, manufacturer, distributor, or retailer shall distribute, or cause to be
81 distributed tobacco products from vending machines.