

**HOUSE . . . . . No. 3726**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Thirteen**  
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An Act modernizing tobacco control and protecting the health of minors.

*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 2A of chapter 71 of the General Laws is hereby amended by  
2 inserting after the word “use”, in line 3, the following words: -

3           “a tobacco product, as defined in section 6 of chapter 270,”.

4           SECTION 2. Section 37H of chapter 71 of the General Laws is hereby amended by  
5 inserting after the word “use”, in line 3, the following words: -

6           “a tobacco product, as defined in section 6 of chapter 270,”.

7           SECTION 3. Chapter 94 of the General Laws is hereby amended by striking out section  
8 307C, as appearing in the 2012 Official Edition, and inserting in place thereof the following  
9 section: -

10           Section 307C. The department of public health may, in consultation with the attorney  
11 general and the department of revenue, establish regulations for persons engaged in the sale or  
12 shipment of a tobacco product, as defined in section 6 of chapter 270, in any of its forms, to  
13 prevent the sale or delivery of a tobacco product in any of its forms to children under 18 years of  
14 age in the commonwealth.

15           SECTION 4. Chapter 270 of the General Laws is hereby amended by striking out section  
16 6, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:  
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18           Section 6. (a) As used in this section, the following terms shall have the following  
19 meanings:

20 “Manufacturer”, any person who manufactures or produces a tobacco product in any of  
21 its forms.

22 “Retail establishment”, any physical place of business or section of a physical place of  
23 business where a tobacco product in any of its forms is offered to consumers, and which also  
24 includes portions of any physical place of business where vending machines that dispense a  
25 tobacco product in any of its forms are located.

26 “Retail tobacco store”, an establishment which is not required to possess a retail food  
27 permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, a  
28 tobacco product in any of its forms and paraphernalia in which the sale of other products is  
29 merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times,  
30 and maintains a valid permit for the retail sale of a tobacco product in any of its forms as  
31 required to be issued by the appropriate authority in the city or town where the establishment is  
32 located.

33 “Retailer”, any person who operates a store or concession for the purposes of making  
34 sales of a tobacco product in any of its forms at retail, and any person selling a tobacco product  
35 in any of its forms through vending machines.

36 “Smoking bar”, an establishment that occupies exclusively an enclosed indoor space and  
37 that primarily is engaged in the retail sale of a tobacco product in any of its forms for  
38 consumption by customers on the premises; derives revenue from the sale of food, alcohol or  
39 other beverages that is incidental to the sale of a tobacco product in any of its forms; prohibits  
40 entry to a person under the age of 18 years of age during the time when the establishment is open  
41 for business; prohibits any food or beverage not sold directly by the business to be consumed on  
42 the premises; maintains a valid permit for the retail sale of a tobacco product in any of its forms  
43 as required to be issued by the appropriate authority in the city or town where the establishment  
44 is located; and, maintains a valid permit to operate a smoking bar issued by the department of  
45 revenue.

46 “Tobacco product”, any product containing, made, or derived from tobacco or nicotine  
47 that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,  
48 snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars,  
49 little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars,  
50 electronic pipes, or other similar products that rely on vaporization or aerosolization. “Tobacco  
51 product” includes any component, part, or accessory of a tobacco product. “Tobacco product”  
52 does not include any product that has been approved by the United States Food and Drug  
53 Administration for sale as a tobacco cessation product and is being marketed and sold solely for  
54 the approved purpose.

55 (b) No person shall sell a tobacco product in any of its forms to any person under the age  
56 of 18 or, not being his parent or guardian, give a tobacco product in any of its forms to any  
57 person under the age of 18.

58 (c) No manufacturer or retailer shall distribute or cause to be distributed any free samples  
59 of a tobacco product in any of its forms in any retail establishment, excluding retail tobacco  
60 stores and smoking bars.

61 (d) Anyone in violation of the provisions of this section shall be punished by a fine of not  
62 less than 100 dollars for the first offense, not less than 200 dollars for a second offense and not  
63 less than 300 dollars for any third or subsequent offense.

64 (e) The Department of Public Health shall promulgate regulations for implementation of  
65 the provisions of this section.

66 (f) Nothing in this section shall permit the sale of a tobacco product in any of its forms in  
67 which such sale is prohibited or may hereafter be prohibited by law including, without limitation,  
68 any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this  
69 section shall preempt further limitation of the sale of a tobacco product in any of its forms by the  
70 commonwealth or any department, agency or political subdivision of the commonwealth.

71 SECTION 5. Section 22 of chapter 270 of the General Laws is hereby amended by  
72 striking out, in subsection (a) in lines 90 to 92, as appearing in the 2012 Official Edition, the  
73 definition for “Smoking” or “Smoke”, and inserting in place thereof the following definitions:-

74 “Smoking” or “smoke”, the inhaling, exhaling, burning, or carrying of any lighted or  
75 heated cigar, cigarette, pipe or other tobacco product or plant product intended for inhalation in  
76 any manner or any form. “Smoking” or “smoke” also includes the use of electronic cigarettes,  
77 electronic cigars, electronic pipes, or other similar products that rely on vaporization or  
78 aerosolization.