

SENATE No. 1606

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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 adoption of the accompanying bill:

An Act protecting youth from nicotine addiction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/29/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/30/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/30/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>1/31/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/30/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/30/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/4/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/11/2019</i>

SENATE No. 1606

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 1606) of Harriette L. Chandler, Marjorie C. Decker, Jason M. Lewis, Rebecca L. Rausch and other members of the General Court for legislation to protect youth from nicotine addiction. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act protecting youth from nicotine addiction.

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 6 of chapter 64C of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking out the first paragraph and inserting in place
3 thereof the following paragraph:-

4 Every licensee who is required to file a return under section 16 of chapter 62C shall, at
5 the time of filing such return, pay to the commissioner an excise equal to 200 1/2 mills plus any
6 amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so sold
7 during the calendar month covered by the return; provided, however, that cigarettes with respect
8 to which the excise under this section has once been imposed and has not been refunded, if paid,
9 shall not be subject upon a subsequent sale to the excise imposed by this section. Each
10 unclassified acquirer shall, at the time of filing a return required by said section 16 of said
11 chapter 62C, pay to the commissioner an excise equal to 200 1/2 mills plus any amount by which
12 the federal excise tax on cigarettes is less than 8 mills for each cigarette so imported or acquired

13 and held for sale or consumption, and cigarettes, with respect to which such excise has been
14 imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any
15 further excise under this section. The commissioner may, in the commissioner's discretion,
16 require reports from any common carrier who transports cigarettes to any point or points within
17 the commonwealth and from any other person who, under contract, so transports cigarettes, and
18 from any bonded warehouseman or bailee who has in his possession any cigarettes, such reports
19 to contain such information concerning shipments of cigarettes as the commissioner shall
20 determine. All such carriers, bailees, warehousemen and other persons shall permit the
21 examination by the commissioner or the commissioner's duly authorized agent of any records
22 relating to the shipment of cigarettes into or from, or the receipt thereof within, the
23 commonwealth.

24 SECTION 2. Section 7B of said chapter 64C, as so appearing, is hereby amended by
25 striking out subsection (b) and inserting in place thereof the following subsection:-

26 (b) An excise shall be imposed on all cigars and smoking tobacco held in the
27 commonwealth at the rate of 80 per cent of the wholesale price of such products. This excise
28 shall be imposed on cigar distributors at the time cigars or smoking tobacco are manufactured,
29 purchased, imported, received or acquired in the commonwealth. This excise shall not be
30 imposed on any cigars or tobacco products that (i) are exported from the commonwealth; or (ii)
31 are not subject to taxation by the commonwealth pursuant to any law of the United States.

32 SECTION 3. Notwithstanding any general or special law to the contrary, a manufacturer,
33 wholesaler, vending machine operator, unclassified acquirer or retailer, as defined in section 1 of
34 chapter 64C of the General Laws, and a stamper appointed by the commissioner under section 30

35 of said chapter 64C who, as of the commencement of business 7 days after the effective date of
36 this act, has on hand any cigarettes for sale or any unused adhesive or encrypted stamps, shall
37 make and file with the commissioner within 21 days a return, subscribed and sworn to under the
38 penalties of perjury, showing a complete inventory of such cigarettes and stamps and shall, at the
39 time such manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer or
40 stamper is required to file such return, pay an additional excise of 50 mills per cigarette on all
41 cigarettes and all unused adhesive and encrypted stamps upon which an excise of only 150 ½
42 mills has previously been paid. Chapters 62C of the General Laws and 64C of the General Laws
43 relative to the assessment, collection, payment, abatement, verification and administration of
44 taxes, including penalties, shall apply to the excise imposed by this section.

45 SECTION 4. Said Chapter 64C is hereby amended by adding the following new section:-

46 Section 7E. (a) As used in this section the following words shall, unless the context
47 clearly requires otherwise, have the following meanings:-

48 “Electronic smoking device” any device that can be used to deliver aerosolized or
49 vaporized nicotine to the person inhaling from the device, including, but not limited to an e-
50 cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any
51 component, part, or accessory of such a device, whether or not sold separately, that is used
52 during the operation of the device. Electronic smoking device does not include any battery or
53 battery charger that is sold separately. In addition, electronic smoking device does not include
54 drugs, devices, or combination products approved for sale by the U.S. Food and Drug
55 Administration.”

56 “Tobacco product”, a product containing, made or derived from tobacco or nicotine, or
57 other non-nicotine containing substance that is intended for human consumption via an electronic
58 smoking device, as defined by this section.

59 “Electronic smoking device or tobacco product distributor”, (i) any person who imports,
60 or causes to be imported, into the commonwealth electronic smoking devices or tobacco
61 products, as defined by this section, for sale or who manufactures electronic smoking devices or
62 tobacco products, as defined by this section, in the commonwealth, and (ii) any person within or
63 without the commonwealth who is authorized by the commissioner to make returns and pay the
64 excise on electronic smoking devices or tobacco products, as defined by this section, sold,
65 shipped or delivered by him to any person in the commonwealth.

66 "Person", a natural person, corporation, association, partnership or other legal entity.

67 “Electronic smoking device or tobacco product retailer”, any person who sells or
68 furnishes electronic smoking devices or tobacco products, as defined by this section, in small
69 quantities to consumers for individual use; provided, however, said electronic smoking devices
70 or tobacco products, as defined by this section, shall not be used for the purpose of resale.

71 'Wholesale price", (i) in the case of a manufacturer of electronic smoking devices or
72 tobacco products, as defined by this section, the price set for such products or, if no price has
73 been set, the wholesale value of these products; (ii) in the case of a distributor who is not a
74 manufacturer of electronic smoking devices or tobacco products, as defined by this section, the
75 price at which the distributor purchased these products; or (iii) in the case of a retailer or a
76 consumer, the price at which he purchased these products.

77 "Taxed electronic smoking device or tobacco product", electronic smoking device or
78 tobacco product, as defined by this section, upon which the excise has been paid in full by the
79 date on which payment is due, and with respect to which the return has been completed, signed
80 and filed with the commissioner by the date on which the return is due, in accordance with this
81 section and with section 16 of chapter 62C.

82 "Untaxed electronic smoking device or tobacco product", electronic smoking device or
83 tobacco product, as defined by this section, upon which the excise has not been paid in full by
84 the date on which payment is due, or with respect to which the return has not been completed,
85 signed and filed with the commissioner by the date on which the return is due, in accordance
86 with this section and with section 16 of chapter 62C.

87 "Wholesale dealer", any person who sells electronic smoking devices or tobacco
88 products, as defined by this section, to retail dealers or other persons for purposes of resale,

89 (b) An excise shall be imposed on all electronic smoking devices or tobacco products, as
90 defined by this section, held in the commonwealth at the rate of 75 per cent of the wholesale
91 price of such products. This excise shall be imposed on electronic smoking device or tobacco
92 product distributors at the time electronic smoking devices or tobacco products, as defined by
93 this section, are manufactured, purchased, imported, received or acquired in the commonwealth.

94 (c) Every electronic smoking device or tobacco product retailer shall be liable for the
95 collection of the excise on all electronic smoking devices or tobacco products, as defined by this
96 section, in his possession at any time, upon which the excise has not been paid by a electronic
97 smoking device or tobacco product distributor, and the failure of any electronic smoking device
98 or tobacco product retailer to produce or exhibit to the commissioner or his authorized

99 representative, upon demand, an invoice by an electronic smoking device or tobacco product
100 distributor for any electronic smoking devices or tobacco products, as defined by this section, in
101 his possession, shall be presumptive evidence that the excise thereon has not been paid and that
102 such electronic smoking device or tobacco product retailer is liable for the collection of the
103 excise thereon.

104 (d) The amount of the excise advanced and paid by an electronic smoking device or
105 tobacco product distributor or electronic smoking device or tobacco product retailer, as provided
106 in this section, shall be added to and collected as part of, the sales price of the electronic smoking
107 devices or tobacco products, as defined by this section.

108 (e)(1) An electronic smoking device or tobacco product distributor shall be liable for the
109 payment of the excise on electronic smoking devices or tobacco products, as defined by this
110 section, that he imports or causes to be imported into the commonwealth or that he manufactures
111 in the commonwealth, and every electronic smoking device or tobacco product distributor
112 authorized by the commissioner to make returns and pay the excise on electronic smoking
113 devices or tobacco products, as defined by this section, sold, shipped or delivered by him to any
114 person in the commonwealth shall be liable for the collection and payment of the excise on all
115 electronic smoking devices or tobacco products, as defined by this section, sold, shipped or
116 delivered.

117 (2) Every person who does not acquire untaxed electronic smoking devices or tobacco
118 products, as defined by this section, but acquires taxed electronic smoking devices or tobacco
119 products, as defined by this section, for sale at retail, shall not be licensed as an electronic
120 smoking device or tobacco product distributor under this section, but shall be required, during

121 the period that such person is an electronic smoking device or tobacco product retailer of taxed
122 electronic smoking devices or tobacco products, as defined by this section, to be licensed as an
123 electronic smoking device or tobacco product retailer.

124 (f) A person outside the commonwealth who ships or transports electronic smoking
125 devices or tobacco products, as defined by this section, to electronic smoking device or tobacco
126 product retailers in the commonwealth, to be sold by those electronic smoking device or tobacco
127 product retailers, may apply for a license as a nonresident electronic smoking device or tobacco
128 product distributor and, if the commissioner issues such a license to him, he shall thereafter be
129 subject to all the provisions of this section and be entitled to act as an electronic smoking device
130 or tobacco product distributor, provided he files proof with his application that he has appointed
131 the state secretary as his agent for service of process relating to any matter or issue arising under
132 this section. Such a nonresident person shall also agree to submit his books, accounts and records
133 for examination in the commonwealth during reasonable business hours by the commissioner or
134 his authorized representative.

135 (g) Every resident of the commonwealth shall be liable for the collection of the excise on
136 all electronic smoking devices or tobacco products, as defined by this section, in his possession
137 at any time, upon which the excise has not been paid by an electronic smoking device or tobacco
138 product distributor or electronic smoking device or tobacco product retailer, and the failure of
139 any such consumer to produce or exhibit to the commissioner or his authorized representative,
140 upon demand, an invoice or sales receipt by an electronic smoking device or tobacco product
141 distributor or electronic smoking device or tobacco product retailer for any electronic smoking
142 devices or tobacco products, as defined by this section, in his possession, shall be presumptive

143 evidence that the excise thereon has not been paid and that such consumer is liable for the
144 collection of the excise thereon.

145 (h) No person shall act as an electronic smoking device or tobacco product distributor or
146 electronic smoking device or tobacco product retailer in the commonwealth unless licensed to do
147 so in accordance with section 67 of chapter 62C. If an electronic smoking device or tobacco
148 product distributor or electronic smoking device or tobacco product retailer acts in more than 1
149 of said capacities at any 1 place of business, he shall procure a license for every capacity in
150 which he acts, unless, upon application to the commissioner, the commissioner determines
151 otherwise. Each license so issued or a duplicate copy thereof shall be prominently displayed on
152 the premises covered by the license.

153 (i) Except as this section expressly provides to the contrary, the provisions of this chapter
154 and of chapter 62C relative to the assessment, collection, payment, abatement, verification and
155 administration of taxes, including penalties, shall so far as pertinent, apply to the excise tax
156 imposed by this section.

157 (j) For the purposes of section 5, electronic smoking devices and tobacco products shall
158 be tobacco products, electronic smoking device or tobacco product distributors shall be
159 wholesalers and electronic smoking device or tobacco product retailers shall be retailers.

160 (k) For the purposes of section 8, untaxed electronic smoking devices or tobacco
161 products, found in the commonwealth shall be cigarettes, which have not been returned and are
162 not returnable under section 16 of chapter 62C or section 6 as the context requires.

163 (l)(1) Any person who sells, offers for sale or possesses with intent to sell any electronic
164 smoking devices or tobacco products, as defined by this section, or otherwise acts as an

165 electronic smoking device or tobacco product distributor or electronic smoking device or tobacco
166 product retailer without being licensed so to do, shall, in addition to any other penalty provided
167 by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first
168 offense and not more than \$25,000 for each subsequent offense. Any person who knowingly
169 purchases or possesses any electronic smoking devices or tobacco products, as defined by this
170 section, not manufactured, purchased or imported by a licensed electronic smoking device or
171 tobacco product distributor or licensed electronic smoking device or tobacco product retailer
172 shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a
173 civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each
174 subsequent offense.

175 No person, either as principal or agent, shall sell or solicit orders for electronic smoking
176 devices or tobacco products, as defined by this section, to be shipped, mailed or otherwise sent or
177 brought into the commonwealth to any person not a licensed electronic smoking device or
178 tobacco product distributor or licensed electronic smoking device or tobacco product retailer,
179 unless the same is to be sold to or through a licensed electronic smoking device or tobacco
180 product distributor or licensed electronic smoking device or tobacco product retailer. Any person
181 who knowingly violates this provision shall, in addition to any other penalty provided by this
182 chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense
183 and not more than \$25,000 for each subsequent offense.

184 It shall be presumed that the electronic smoking devices or tobacco products, as defined
185 by this section, are subject to the excise until the contrary is established and the burden of proof
186 that they are not shall be upon the person on whose premises the electronic smoking devices or
187 tobacco products, as defined by this section, were found.

188 (2) Any person who knowingly has in his possession a shipping case or other container of
189 electronic smoking devices or tobacco products, as defined by this section, not bearing the name
190 and address of the person receiving the electronic smoking devices or tobacco products, as
191 defined by this section, from a manufacturer or such other markings as the commissioner may
192 prescribe and any person knowingly in possession of such a shipping case or other container of
193 electronic smoking devices or tobacco products, as defined by this section, from which this name
194 and address has been erased or defaced shall, in addition to any other penalty provided by this
195 chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense
196 or not more than \$25,000 for each subsequent offense.

197 (3) Any person who files any false return, affidavit, or statement, or who violates any
198 provision of this section for which no other penalty has been provided shall, in addition to any
199 other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more
200 than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.

201 (4) Whenever the commissioner or a police officer discovers, in the possession of any
202 person not being a licensed electronic smoking device or tobacco products distributor or one
203 authorized by the commissioner, any untaxed electronic smoking devices or tobacco products, as
204 defined by this section, he may seize and take possession of those electronic smoking devices or
205 tobacco products, as defined by this section, together with any vending machine or other
206 receptacle, which shall include, without limitation, a motor vehicle, boat or airplane, in which
207 they are contained or in which they are transported. Such electronic smoking devices or tobacco
208 products, as defined by this section, vending machine or other receptacle seized by a police
209 officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The
210 commissioner shall destroy such electronic smoking devices or tobacco products, as defined by

211 this section, and shall destroy or otherwise dispose of such vending machine or other receptacle.
212 The commissioner may, within a reasonable time after the seizure, by a public notice at least 5
213 days before the day of sale, sell the vending machine or other receptacle at public sale and
214 deposit the proceeds in the General Fund.

215 (5) The state police and all local police authorities may, and at the request of the
216 commissioner or his duly authorized agent shall, enforce this section. Each violation of this
217 section shall be a separate offense.

218 SECTION 5. Section 16 of chapter 62C of the General Laws, as so appearing, is hereby
219 amended by adding after subsection (c1/2) the following new subsection:-

220 (c3/4) Every licensee under section 7E of chapter 64C shall, on or before the twentieth
221 day of each calendar month or on or before the twentieth day of the month following each
222 calendar quarter, as the commissioner shall require, file with the commissioner a return for each
223 place of business maintained, stating the quantity of electronic smoking devices or tobacco
224 products, as defined by said Section 7E of Chapter 64C, sold by such licensee in the
225 commonwealth during the preceding calendar month or quarter, as the case may be, and such
226 return shall contain or be accompanied by such further information as the commissioner shall
227 require. If a licensee ceases to sell electronic smoking devices or tobacco products, as defined by
228 said Section 7E of Chapter 64C, within the commonwealth, he shall immediately file with the
229 commissioner a return for the period ending with such cessation.

230 SECTION 6. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby
231 amended in the first sentence of paragraph 1 by adding after the words “chapter 64C” the
232 following:-

233 “as an electronic smoking device or tobacco product distributor or electronic smoking
234 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

235 And said Section 67 of Chapter 62C is further amended in the first sentence of paragraph
236 2 by adding after the words “as defined in chapter sixty-four C” the following:-

237 “as an electronic smoking device or tobacco product distributor or electronic smoking
238 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

239 And said Section 67 of Chapter 62C is further amended in the first sentence of paragraph
240 5 by adding after the words “cigar retailers” the following:-

241 “as an electronic smoking device or tobacco product distributor or electronic smoking
242 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

243 And said Section 67 of Chapter 62C is further amended in the first sentence of paragraph
244 by adding after the words “cigar retailers” the following:-

245 “as an electronic smoking device or tobacco product distributor or electronic smoking
246 device or tobacco product retailer as defined by Section 7E of Chapter 64C”