

**SENATE . . . . . No. 2152**

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act to protect youth from the health risks of tobacco and nicotine addiction.

*Whereas*, The deferred operation of this act would tend to defeat its purposes, which are to immediately protect children and others from addiction to, and the harmful health effects of, tobacco and nicotine, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and health.

*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. Chapter 71 of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by striking out section 2A and inserting in place thereof the following  
3 section:-

4           Section 2A. (a) No person shall use tobacco products, as defined in section 6 of chapter  
5 207, on the grounds, facilities or buses of a primary or secondary school or at school-sponsored  
6 events.

7           Each school committee or board of directors shall establish a policy regarding violations  
8 of this law. The policy may include, but shall not be limited to, mandatory education classes on  
9 the hazards of tobacco.

10           (b) This section shall apply to public schools and private schools.

11 SECTION 2. Section 37H of chapter 71 of the General Laws, as so appearing, is hereby  
12 amended by striking out, in lines 3 and 4, the words “the use of any tobacco products” and  
13 inserting in place thereof the following words:- the use of any tobacco product, as defined in  
14 section 6 of chapter 270,

15 SECTION 3. Chapter 74 of the General Laws, as so appearing, is hereby amended by  
16 adding the following section:-

17 Section 57. No person shall use tobacco products, as defined in section 6 of chapter 270,  
18 on any vocational school’s grounds, facilities or buses or at school-sponsored events.

19 Each school committee shall establish a policy regarding violations of this law. This  
20 policy may include, but shall not be limited to, mandatory education classes on the hazards of the  
21 use of tobacco products.

22 SECTION 4. Chapter 74A of the General Laws, as so appearing, is hereby amended by  
23 adding the following section:-

24 Section 23. No person shall use tobacco products, as defined in section 6 of chapter 270,  
25 on the school grounds, facilities, buses or at school-sponsored events or any independent  
26 agricultural and technical institute.

27 Each school’s board of trustees shall establish a policy regarding violations of this law.  
28 The policy may include, but shall not be limited to, mandatory education classes on the hazards  
29 of the use of tobacco products.

30 SECTION 5. Chapter 94 of the General Laws, as so appearing, is hereby amended by  
31 striking out section 307C, as appearing in the 2014 Official Edition, and inserting in place  
32 thereof the following section:-

33 Section 307C. (a) For the purposes of this section, “tobacco product” shall mean “tobacco  
34 product,” as defined in Section 6 of Chapter 270.

35 (b) The department of public health may, in consultation with the attorney general and  
36 the department of revenue, establish regulations for persons engaged in the sale or shipment of  
37 tobacco products to prevent the sale or delivery of tobacco products to children under 21 years of  
38 age in the commonwealth.

39 SECTION 6. Chapter 112 of the General Laws, as so appearing, is hereby amended by  
40 inserting after section 61 the following section:-

41 Section 61A. (a) As used in this section, the following words shall have the following  
42 meanings:

43 “Health care institution”, any individual, partnership, association, corporation or trust or  
44 any person or group of persons that provides health care services and employs health care  
45 providers licensed, or subject to licensing, by the department of public health under this chapter  
46 or a retail establishment that provides pharmaceutical goods and services and is subject to the  
47 regulation of the board of registration in pharmacy; provided, that “health care institution” shall  
48 include doctor offices, optician and optometrist offices and dentist offices.

49 “Retail establishment”, any store that sells goods or articles of personal services to the  
50 public.

51 “Tobacco product”, shall have the same meaning as defined in section 6 of chapter 270.

52 (b) No health care institution located in the commonwealth shall sell or cause tobacco  
53 products to be sold.

54 (c) No retail establishment that operates or has a health care institution within it, such as a  
55 pharmacy, optician or optometrist office or drug store shall sell or cause tobacco products to be  
56 sold.

57 SECTION 7. Chapter 270 of the General Laws, as so appearing, is hereby amended by  
58 striking out section 6 and inserting in place thereof the following section:-

59 Section 6. (a) As used in this section, the following words shall have the following  
60 meanings:

61 “Manufacturer”, any person who manufactures or produces a tobacco product.

62 “Retail establishment”, any physical place of business or section of a physical place of  
63 business where a tobacco product in any of its forms is offered to consumers and which also  
64 includes portions of any physical place of business.

65 “Retail tobacco store”, an establishment which (i) is not required to possess a retail food  
66 permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, a  
67 tobacco product in any of its forms and related paraphernalia in which the sale of other products  
68 is merely incidental; (ii) in which the entry of persons under the age of 21 is prohibited at all  
69 times; and (iii) maintains a valid permit for the retail sale of a tobacco product in any of its forms  
70 as required to be issued by the appropriate authority in the city or town in which the  
71 establishment is located.

72 “Retailer”, any person who operates a store or concession to make sales of a tobacco  
73 product in any of its forms at retail.

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

83 (b) No person shall sell a tobacco product to any person under the age of 21 or, not being  
84 the person’s parent or guardian, give a tobacco product to any person under the age of 21.

85 (c) No manufacturer or retailer shall distribute or cause to be distributed any free samples  
86 of a tobacco product in any retail establishment, excluding retail tobacco stores and smoking  
87 bars.

88 (d) A person who violates this section shall be punished by a fine of not less than \$100  
89 for the first offense, not less than \$200 for a second offense and not less than \$300 for a third or  
90 subsequent offense.

91 (e) The department of public health shall promulgate regulations to implement this  
92 section.

93 (f) Nothing in this section shall permit the sale of a tobacco product if such sale is  
94 prohibited by law including, without limitation, any other law or ordinance or by-law or any fire,  
95 health or safety regulation.

96 SECTION 8. Said chapter 270 is hereby further amended by striking out section 6A and  
97 inserting in place thereof the following section:-

98 Section 6A. (a) For purposes of this section, the following words shall have the following  
99 meanings unless the context clearly requires otherwise:

100 "Person", any individual, firm, fiduciary, partnership, corporation, trust or association,  
101 however formed, club, trustee, agency or receiver.

102 "Tobacco product", shall have the same meaning as defined in section 6 of this chapter.

103 "Tobacco vending machine", any automated or mechanical self-service device, which  
104 upon insertion of money or other form of payment, dispenses or creates any tobacco product.

105 (b) No person shall use tobacco vending machines for the commercial distribution of  
106 tobacco products. No person shall use tobacco vending machines to sell tobacco products.

107 (c) Whoever sells cigarette rolling papers to any person under the age of 21 shall be  
108 punished by a fine of not less than \$25 for the first offense, not less than \$50 for the second  
109 offense and not less than \$100 for a third or subsequent offense.

110 (d) Notwithstanding the provisions of any civil ordinance or by-law or regulation to the  
111 contrary, which is in effect on the effective date of this section, no city, town, department, board  
112 or other political subdivision or agency of the commonwealth may impose any requirements,

113 restrictions or prohibitions pertaining to the sale of cigarette rolling papers, in addition to those in  
114 this section.

115 SECTION 9. Subsection (a) of section 22 of said chapter 270 is hereby amended by  
116 striking out the definitions of “Smoking’ or ‘smoke’” and “Smoking bar” and inserting in place  
117 thereof the following 3 definitions:-

118 “Smoking” or “smoke”, the inhaling, exhaling, burning, or carrying of any lighted or  
119 heated cigar, cigarette, pipe or other tobacco product or plant product intended for inhalation in  
120 any manner or any form. “Smoking” or “smoke” includes the use of electronic cigarettes,  
121 electronic cigars, electronic pipes or other similar products that rely on vaporization or  
122 aerosolization.

123 “Smoking bar”, an establishment that (i) occupies exclusively an enclosed indoor space  
124 and that primarily is engaged in the retail sale of a tobacco product, as defined in section 6 of  
125 chapter 270, for consumption by customers on the premises; (ii) derives revenue from the sale of  
126 food, alcohol or other beverages that is incidental to the sale of a tobacco product, as so defined;  
127 prohibits entry to a person under 21 years of age during the time when the establishment is open  
128 for business; (iii) prohibits any food or beverage not sold directly by the business from being  
129 consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product,  
130 as so defined, as required to be issued by the appropriate authority in the city or town in which  
131 the establishment is located; and (v) maintains a valid permit to operate a smoking bar issued by  
132 the department of revenue.

133 “Tobacco product”, shall have the same meaning as defined in section 6 of this chapter.

134 SECTION 10. Section 22 of said chapter 270 is hereby further amended by striking out  
135 the figure "18" in lines 90, 276, and 281 and inserting in place thereof the following figure:- 21

136 SECTION 11. Said chapter 270 is hereby further amended by adding the following  
137 section:-

138 Section 27. (a) As used in this section, the following terms shall have the following  
139 meanings:

140 "Child-resistant packaging", special packaging used to reduce the risk of children  
141 ingesting nicotine that meet the minimum standards for special packaging as set forth in 15  
142 U.S.C. §§ 1471 through 1476 and 16 CFR § 1700 et seq.

143 "Nicotine liquid container", a bottle or other container designed to contain a liquid or gel  
144 substance containing nicotine that is marketed as a nicotine product; provided, that "nicotine  
145 liquid container" shall not include a container if the container is prefilled and sealed by the  
146 manufacturer and not intended to be opened by the consumer or retailer.

147 (b) No person shall import for sale, distribute or sell within the commonwealth:

148 (1) any liquid or gel substance containing nicotine unless that product is contained  
149 in child-resistant packaging; or

150 (2) any nicotine liquid container unless that container includes as part of its design  
151 child-resistant packaging.

152 (c) A person who violates this section shall be subject to a civil penalty of \$250 for a first  
153 violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.



154 (d) The local board of health, the department of public health, the local inspection  
155 department or equivalent local authority, and a municipal government or its agent shall enforce  
156 this section through noncriminal disposition. In the city of Boston, the commissioner of health  
157 and the commissioner's authorized agents shall enforce this section through noncriminal  
158 disposition. The disposition of fines assessed under this section shall be subject to section 188 of  
159 chapter 111. Fines assessed by the commonwealth or its agent shall be subject to section 2 of  
160 chapter 29.

161 SECTION 12. To protect the health and wellbeing of minors, the commissioner of public  
162 health may promulgate regulations to restrict the sale of new nicotine-containing products to  
163 consumers under the age of 21; provided, however, that any product so regulated shall contain  
164 nicotine and be primarily consumed to deliver nicotine to the user; and provided further that the  
165 commissioner shall communicate any proposed change in regulation of tobacco and nicotine  
166 products proposed pursuant to this section to the house and senate committees on ways and  
167 means and the joint committee on public health not later than 90 days prior to filing draft  
168 regulations with the secretary of state.

169 SECTION 13. As of the effective date of this act, a retail establishment that sells tobacco  
170 products, as defined in section 6 of chapter 270 of the General Laws, shall conspicuously post a  
171 sign, provided by the department of public health, explaining the rise in the minimum legal sales  
172 age to purchase tobacco products. The notice shall include the dates that the minimum age of  
173 purchase for tobacco products shall go into effect.

174 Retail establishments shall continuously post the sign until September 1, 2019.

175           SECTION 14. Notwithstanding subsection (b) of section 6 of chapter 270 of the General  
176 Laws, the prohibition on sales of tobacco products to persons under the age of 21 under said  
177 section 6 shall not prohibit such sales to persons who attained the age of 18 as of September 1,  
178 2016.

179           SECTION 15. The center for health information and analysis, in collaboration with the  
180 department of insurance, department of public health, the government insurance commission,  
181 and Masshealth, shall review the tobacco cessation benefits offered by each health insurance plan  
182 in the commonwealth of Massachusetts and compare the tobacco cessation benefits to the center  
183 for disease control's best practices for comprehensive tobacco control.