

SENATE No. 2234

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Thursday, April 21, 2016

The committee on Ways and Means, to whom was referred the Senate Bill to protect youth from the health risks of tobacco and nicotine addiction (Senate, No. 2152),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2234).

For the committee,
Karen E. Spilka

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to protect youth from the health risks of tobacco and 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. Chapter 71 of the General Laws is hereby amended by striking out section
2 2A, as appearing in the 2014 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 2A. No person shall use tobacco products as defined in section 6 of chapter 270
5 within the school buildings or facilities or on the grounds or school buses of a primary or
6 secondary school, including public and private schools, or at any school-sponsored event.

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

10 SECTION 2. Section 37H of said chapter 71, as so appearing, is hereby amended by
11 inserting after the word “products”, in line 4, the following words:- , as defined in section 6 of
12 chapter 270.

13 SECTION 3. Chapter 74 of the General Laws is hereby amended by adding the
14 following section:-

15 Section 57. No person shall use tobacco products as defined in section 6 of chapter 270
16 within the school buildings or facilities or on the grounds or school buses of a vocational school
17 or at any school-sponsored event at a vocational school.

18 Each school committee or board of trustees shall establish a policy regarding violations
19 of this section. The policy may include, but shall not be limited to, mandatory education classes
20 on the hazards of using of tobacco products.

21 SECTION 4. Chapter 94 of the General Laws is hereby amended by striking out section
22 307C, as appearing in the 2014 Official Edition, and inserting in place thereof the following
23 section:-

24 Section 307C. The department of public health may, in consultation with the attorney
25 general, the department of revenue and the multi-agency illegal tobacco task force established in
26 section 40 of chapter 64C, establish regulations for persons engaged in the sale or shipment of
27 tobacco products as defined in section 6 of chapter 270 to prevent the sale or delivery of tobacco
28 products to individuals under 21 years of age.

29 SECTION 5. Chapter 112 of the General Laws is hereby amended by inserting after
30 section 61 the following section:-

31 Section 61A. (a) As used in this section, the following words shall have the following
32 meanings unless the context clearly requires otherwise:

33 “Health care institution”, an individual, partnership, association, corporation or trust or a
34 person or group of persons that: (i) provides health care services and employs health care
35 providers subject to licensing under this chapter; or (ii) a retail establishment that sells
36 pharmaceutical goods and services and is subject to regulation by the board of registration in
37 pharmacy.

38 “Retail establishment”, a store that sells goods to the public.

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

40 (b) No health care institution shall sell or authorize the sale of tobacco products within
41 the buildings or facilities or on the grounds of the health care institution. For the purposes of this
42 section, a retail establishment that operates at a health care institution or has a health care
43 institution located on or within its premises shall be considered a health care institution.

44 SECTION 6. Chapter 270 of the General Laws is hereby amended by striking out
45 sections 6 and 6A, as appearing in the 2014 Official Edition, and inserting in place thereof the
46 following 2 sections:-

47 Section 6. (a) As used in this section and section 6A, the following words shall have the
48 following meanings unless the context clearly requires otherwise:

49 “Manufacturer”, a person or entity that manufactures or produces a tobacco product.

50 "Person", an individual, firm, fiduciary, partnership, corporation, trust or association,
51 however formed, a club, trustee, agency or receiver.

52 “Retail establishment”, a physical place of business or a section of a physical place of
53 business where a tobacco product is offered for sale to consumers.

54 “Retail tobacco store”, an establishment: (i) that is not required to possess a retail food
55 permit; (ii) whose primary purpose is to sell or offer for sale to consumers, but not for resale, a
56 tobacco product and related paraphernalia in which the sale of other products is merely
57 incidental; (iii) that prohibits the entry of persons under the age of 21; and (iv) that maintains a
58 valid permit for the retail sale of a tobacco product as required to be issued by the appropriate
59 authority in the city or town in which the establishment is located.

60 “Retailer”, a person or entity that operates a store or premises that offers a tobacco
61 product for sale.

62 “Tobacco product”, a product containing, made or derived from tobacco or nicotine that
63 is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,
64 snorted, sniffed or ingested by any other means including, but not limited to: cigarettes, cigars,
65 little cigars, chewing tobacco, pipe tobacco and snuff and electronic cigarettes, electronic cigars,
66 electronic pipes or other similar products that rely on vaporization or aerosolization; provided,
67 however, that “tobacco product” shall include any component, part or accessory of a tobacco
68 product; and provided further, that “tobacco product” shall not include a product that has been
69 approved by the United States Food and Drug Administration for the sale or use as a tobacco
70 cessation product and is marketed and sold exclusively for the approved purpose.

71 (b) No person shall sell a tobacco product to a person under the age of 21 or give a
72 tobacco product to a person under the age of 21.

73 (c) No manufacturer or retailer shall distribute or cause to be distributed a free sample of
74 a tobacco product in a retail or other commercial establishment; provided, however, that this
75 subsection shall not apply to retail tobacco stores and smoking bars as defined in section 22.

76 (d) A person who violates this section shall be punished by a fine of \$100 for the first
77 offense, \$200 for a second offense and \$300 for a third or subsequent offense.

78 (e) The department of public health may promulgate regulations to implement this
79 section.

80 Section 6A. (a) For purposes of this section, “tobacco vending machine”, shall mean an
81 automated or mechanical self-service device which, upon insertion of money or other form of
82 payment, dispenses or creates a tobacco product.

83 (b) No person shall use a tobacco vending machine for the commercial distribution of
84 tobacco products or to otherwise sell tobacco products.

85 (c) A person who sells tobacco rolling papers to a person under the age of 21 shall be
86 punished by a fine of \$25 for the first offense, \$50 for the second offense and \$100 for a third or
87 subsequent offense.

88 SECTION 7. Subsection (a) of section 22 of said chapter 270, as appearing in the 2014
89 Official Edition, is hereby amended by striking out the definitions of “Smoking or smoke” and
90 “Smoking bar” and inserting in place thereof the following 3 definitions:-

91 “Smoking”, the inhaling, exhaling, burning or carrying of a lighted or heated cigar,
92 cigarette, pipe or other tobacco product or plant product intended for inhalation in any manner or
93 form; provided, however, that “smoking” shall include the use of electronic cigarettes, electronic
94 cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

95 “Smoking bar”, an establishment that: (i) exclusively occupies an enclosed indoor space
96 and is primarily engaged in the retail sale of tobacco products as defined in section 6 for

97 consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or
98 other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person
99 under 21 years of age; (iii) prohibits any food or beverage not sold directly by the business from
100 being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco
101 product as required to be issued by the appropriate authority in the city or town in which the
102 establishment is located; and (v) maintains a valid permit to operate a smoking bar issued by the
103 department of revenue.

104 “Tobacco product”, a tobacco product as defined in section 6.

105 SECTION 8. Said section 22 of said chapter 270, as so appearing, is hereby further
106 amended by striking out, in lines 90, 276 and 281, the figure “18” and inserting in place thereof,
107 in each instance, the following figure:- 21.

108 SECTION 9. Said chapter 270 is hereby further amended by adding the following
109 section:-

110 Section 27. (a) As used in this section, the following words shall have the following
111 meanings unless the context clearly requires otherwise:

112 “Child-resistant packaging”, packaging intended to reduce the risk of children ingesting
113 nicotine that meets the minimum standards as set forth in 15 U.S.C. §§ 1471 to 1476, inclusive,
114 and 16 CFR § 1700 et seq.

115 “Liquid nicotine container”, a package: (i) from which nicotine in a solution or other
116 form is accessible through normal and foreseeable use by a consumer; and (ii) that is used to
117 hold soluble nicotine in any concentration; provided, however, that the term “liquid nicotine

118 container” shall not include a sealed, prefilled and disposable container of nicotine in a solution
119 or other form in which such container is inserted directly into an electronic cigarette, electronic
120 nicotine delivery system or other similar product if the nicotine in the container is inaccessible
121 through customary or reasonably foreseeable handling or use, including reasonably foreseeable
122 ingestion or other contact by children, as amended from time to time.

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

124 (i) a liquid or gel substance containing nicotine unless that product is contained in
125 child-resistant packaging; or

126 (ii) a nicotine liquid container unless that container includes child-resistant
127 packaging as part of its design.

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

130 (d) The local board of health, the local department of public health, the local inspection
131 department or equivalent local authority or its agent shall enforce this section through the
132 noncriminal disposition of violations. In the city of Boston, the commissioner of health and the
133 commissioner’s authorized agents shall enforce this section through the noncriminal disposition
134 of violations.

135 SECTION 10. The commissioner of public health may promulgate regulations to restrict
136 the sale of products containing nicotine to individuals under the age of 21; provided, however,
137 that a regulated product shall contain nicotine and be primarily manufactured to deliver nicotine
138 to the user. The commissioner shall send a notice of proposed changes, including proposed draft

139 regulations, to the house and senate committees on ways and means and the joint committee on
140 public health at least 90 days before filing draft regulations with the secretary of state.

141 SECTION 11. On the effective date of this act, a retail establishment that sells tobacco
142 products as those terms are defined in section 6 of chapter 270 of the General Laws shall
143 conspicuously post a notice produced by the department of public health that states the minimum
144 legal sales age to purchase tobacco products. The notice shall include the dates that the minimum
145 age for purchase of tobacco products shall go into effect. Retail establishments shall
146 continuously post the notice until January 1, 2019.

147 SECTION 12. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
148 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
149 prohibit such sales to persons who attained the age of 18 before January 1, 2017.

150 SECTION 13. The center for health information and analysis, in collaboration with the
151 division of insurance, department of public health, the group insurance commission and the
152 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance
153 plan and compare the tobacco cessation benefits to the United States Preventive Services Task
154 Force recommendations for best practices for comprehensive tobacco cessation treatment.

155 SECTION 14. There shall be a special task force to investigate the differences in the
156 regulation and oversight of electronic nicotine delivery products compared to other tobacco
157 products. The task force shall make recommendations regarding: (i) ways to regulate the
158 manufacture of e-liquid, whether it contains nicotine or not; (ii) exemptions from statutory or
159 regulatory requirements for tobacco products; and (iii) other means to ensure the safe use of
160 electronic nicotine delivery products.

161 The task force shall consist of the commissioner of public health or a designee who shall serve as
162 chair and 6 person to be appointed by the governor, 2 of whom shall be experts on the public
163 health implications of electronic nicotine delivery products, 2 of whom shall be experts in safe
164 manufacturing processes for e-liquid, 1 of whom shall be an expert in the development of
165 electronic nicotine products and 1 of whom shall be an owner of a retail establishment offering
166 electronic nicotine delivery products for sale.

167 Not later than October 1, 2017, the task force shall submit its recommendations, together with
168 drafts of legislation necessary to carry those recommendations into effect by filing the same with
169 the clerks of the senate and house of representatives and the senate and house chairs of the joint
170 committee on public health.

171 SECTION 15. This act shall take effect on January 1, 2017.