

SENATE No. 2357

The Commonwealth of Massachusetts

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

Senate, September 26, 2019

The committee on Public Health, to whom was referred the petition (accompanied by bill, Senate, No. 1279) of John F. Keenan, Carolyn C. Dykema, Jason M. Lewis, Donald H. Wong and other members of the General Court for legislation to regulate flavored tobacco products, reports the accompanying bill (Senate, No. 2357).

For the committee,
Joanne M. Comerford

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An Act regulating flavored 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 Chapter 270 of the General Laws, as amended by chapter 157 of the acts of 2018, is
2 hereby amended by inserting after section 27 the following section:-

3 Section 28. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Characterizing Flavor”, a distinguishable taste or aroma, other than the taste or aroma of
6 tobacco, imparted or detectable either prior to or during consumption of a tobacco product or
7 component part thereof, including but not limited to, a taste or aroma relating to any fruit,
8 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen,
9 herb or spice; provided, however, that no tobacco product shall be determined to have a
10 characterizing flavor solely because of the provision of ingredient information or the use of
11 additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

12 “Component part”, any element of a tobacco product, including, but not limited to, the
13 tobacco, filter and paper, but not including any constituent.

14 “Constituent”, any ingredient, substance, chemical or compound, other than tobacco,
15 water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product
16 during the processing, manufacturing or packaging of the tobacco product. Such term shall
17 include a smoke constituent.

18 “Distinguishable”, perceivable by either the sense of smell or taste.

19 “Flavored tobacco product enhancer”, any product designed, manufactured, produced,
20 marketed or sold to produce a characterizing flavor when added to any tobacco product or vapor
21 product, as defined in section 6, or to any other similar product that relies on vaporizations or
22 aerosolization regardless of nicotine content in the product.

23 “Flavored tobacco product”, any tobacco product as defined in section 6, or any
24 component part thereof, that contains a constituent that has or produces a characterizing flavor;
25 and “Flavored tobacco product” shall also include any vapor product as defined in section 6 or
26 any other similar product that relies on vaporizations or aerosolization that produces a
27 characterizing flavor regardless of nicotine content in the product. A public statement, claim or
28 indicia made or disseminated by the manufacturer of a flavored tobacco product, or by any
29 person authorized or permitted by the manufacturer to make or disseminate public statements
30 concerning such flavored tobacco product, that such flavored tobacco product has or produces a
31 characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored
32 tobacco product. “Flavored tobacco product” does not include any product that has been
33 approved by the United States Food and Drug Administration for the sale or use as a tobacco
34 cessation product and is marketed and sold exclusively for the approved purpose.

35 “Smoke Constituent”, any chemical or chemical compound in mainstream or sidestream
36 tobacco smoke that either transfers from any component of the tobacco product to the smoke or
37 that is formed by the combustion or heating of tobacco, additives or other component of the
38 tobacco product.

39 (b) No retailer, retail establishment, or other person or entity shall sell or distribute or
40 cause to be sold or distributed or offer for sale any flavored tobacco product or flavored tobacco
41 product enhancer to any consumer, except in a smoking bar as defined in section 22 and only for
42 use in the smoking bar.

43 (c) A person who violates this section shall be subject to the same fines established for
44 violations of section 6.

45 (d) Nothing in this section shall preempt further restriction by the commonwealth or any
46 department, agency or political subdivision of the commonwealth.

47 (e) The department of public health may promulgate such procedures, rules or regulations
48 as it deems necessary to implement the provisions of this section.