

SENATE No. 2571

The Commonwealth of Massachusetts

—————
In the One Hundred and Ninetieth General Court
(2017-2018)
—————

SENATE, Thursday, June 21, 2018

The committee on Ways and Means, to whom was referred the House Bill protecting youth from the health risks of tobacco and nicotine addiction (House, No. 4486); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2571.

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

1 SECTION 1. Chapter 64C of the General Laws is hereby amended by striking out section
2 10, as appearing in the 2016 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 10. A person who sells, offers for sale or possesses with intent to sell cigarettes
5 or who otherwise acts as a manufacturer, wholesaler, transportation company or retailer without
6 being licensed so to do shall, in addition to any other penalty provided in this chapter, be
7 punished by a civil penalty of not more than \$250 for a first violation, not more than \$500 for a
8 second violation and not more than \$1,000 for a third or subsequent violation. A person who is
9 convicted of acting as an unclassified acquirer without being licensed as provided in section 2
10 shall be punished by a fine of not less than \$500 but not more than \$1,000 or by imprisonment
11 for not more than 1 year or by both such fine and imprisonment. Any person who knowingly
12 purchases or possesses cigarettes not manufactured, purchased or imported by a licensed
13 manufacturer, wholesaler, unclassified acquirer or transportation company shall be punished by a
14 fine of not less than \$50 but not more than \$1,000. A person who knowingly possesses a
15 shipping case or other container of cigarettes and such shipping case or container does not bear
16 the name and address of the person receiving the cigarettes from a manufacturer or such other

17 markings as the commissioner may prescribe and any person who knowingly possesses a
18 shipping case or other container of cigarettes from which such name and address has been erased
19 or defaced shall be punished by a civil penalty of not more than \$250 for a first violation, not
20 more than \$500 for a second violation and \$1,000 for a third or subsequent violation. No person,
21 either as principal or agent, shall sell or solicit orders for cigarettes to be shipped, mailed or
22 otherwise sent or brought into the commonwealth to a person who is not a licensed manufacturer,
23 wholesaler, unclassified acquirer or transportation company unless the cigarettes are to be sold to
24 or through a licensed wholesaler. Each violation of this chapter shall constitute a separate
25 offense. A person who files a false return, affidavit or statement or who otherwise violates this
26 chapter and no other penalty has been provided shall be punished by a fine of not more than
27 \$1,000 dollars or by imprisonment for not more than 1 year or by both such fine and
28 imprisonment. The department of state police and local police departments may enforce this
29 chapter; provided, however, that at the request of the commissioner or a duly authorized agent,
30 the department of state police and local police departments shall enforce of this section.

31 SECTION 2. Chapter 71 of the General Laws is hereby amended by striking out section
32 2A, as so appearing, and inserting in place thereof the following section:-

33 Section 2A. No person shall use a tobacco product as defined in section 6 of chapter 270
34 within the school buildings or facilities or on the grounds or school buses of a public or private
35 primary or secondary school or at a school-sponsored event.

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

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

41 Section 58. No person shall use a tobacco product as defined in section 6 of chapter 270
42 within the school buildings or facilities or on the grounds or school buses of a public or private
43 vocational school or at a vocational school-sponsored event.

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

47 SECTION 4. Chapter 94 of the General Laws is hereby amended by striking out section
48 307C, as appearing in the 2016 Official Edition, and inserting in place thereof the following
49 section:-

50 Section 307C. The department of public health may, in consultation with the attorney
51 general and the department of revenue and the multi-agency illegal tobacco task force
52 established in section 40 of chapter 64C, establish regulations for persons engaged in the sale or
53 shipment of a tobacco product as defined in section 6 of chapter 270 to prevent the sale or
54 delivery of any such tobacco product to a person under 21 years of age.

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

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

59 “Health care institution”, (i) an individual, partnership, association, corporation or trust or
60 a person or group of persons who provides health care services and employs health care
61 providers subject to licensing under this chapter; or (ii) a retail establishment that sells
62 pharmaceutical goods and services and is subject to regulation by the board of registration in
63 pharmacy; provided, however that, “health care institution” shall include a retail establishment if
64 the retail establishment operates at a health care institution or has a health care institution located
65 on or within its premises; and provided further, that a retail establishment that provides optician,
66 optometric, hearing aid or audiology services but is not subject to regulation by the board of
67 registration in pharmacy shall not be considered a health care institution.

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

69 (b) No health care institution shall sell or authorize the sale of tobacco products as
70 defined in section 6 of chapter 270 within its buildings or facilities or on its grounds.

71 SECTION 61. Chapter 270 of the General Laws is hereby amended by striking out
72 sections 6 to 7, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof
73 the following 3 sections:-

74 Section 6. (a) As used in this section and sections 6A and 7, the following words shall
75 have the following meanings unless the context clearly requires otherwise:

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

77 “Person”, an individual, firm, fiduciary, partnership, corporation, trust or association,
78 however formed, or a club, trustee, agency or receiver.

79 “Retail establishment”, a physical place of business or a section of a physical place of
80 business wherein a tobacco product is offered for sale to consumers.

81 “Retailer”, a person that operates a retail establishment.

82 “Tobacco product”, a product containing, made or derived from tobacco or nicotine that
83 is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,
84 snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars,
85 little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars,
86 electronic pipes or any other similar products that rely on vaporization or aerosolization;
87 provided, however, that “tobacco product” shall also include any component, part or accessory of
88 a tobacco product; and provided further, that “tobacco product” shall not include a product that
89 has been approved by the United States Food and Drug Administration for the sale as a tobacco
90 cessation product and is marketed and sold exclusively for the approved purpose.

91 (b) No person shall sell or provide a tobacco product to a person who is under 21 years of
92 age.

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

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

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

100 Section 6A. (a) No person shall use a vending machine for the sale or distribution of
101 tobacco products. A person who violates this subsection shall be punished by a fine of not more
102 than \$1,000.

103 (b) No person shall sell tobacco rolling papers to a person who is under the age of 21.
104 Any person who violates this section shall be punished by a fine of \$25 for the first offense, \$50
105 for a second offense and \$100 for a third or subsequent offense.

106 (c) For the purposes of this section, “vending machine”, shall mean an automated or
107 mechanical self-service device which, upon insertion of money or other form of payment by a
108 purchaser, dispenses or creates a tobacco product.

109 Section 7. (a) A copy of section 6 and subsection (b) of section 6A shall be posted
110 conspicuously in a retail establishment.

111 (b) The department of public health shall develop signage that shall disclose referral
112 information for smoking cessation resources which may include, but shall not be limited to
113 including, the website of the Massachusetts Tobacco Cessation and Prevention Program at
114 www.makesmokinghistory.org and the Massachusetts Smokers' Helpline at 1-800-Quit-Now or
115 1-800-784-8669. Such signage shall be conspicuously posted in a retail establishment.

116 (c) Whoever violates this section shall be punished by a fine of not more than \$50.

117 SECTION 7. Section 22 of said chapter 270, as so appearing, is hereby amended by
118 striking out, in lines 90, 276 and 281, the figure “18” and inserting in place thereof, in each
119 instance, the following figure:- 21.

120 SECTION 8. Subsection (a) of said section 22 of said chapter 270, as so appearing, is
121 hereby amended by striking out the definitions of “Smoking” or smoke” and “Smoking bar” and
122 inserting in place thereof the following 3 definitions:-

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

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

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

137 SECTION 8. Said chapter 270 is hereby further amended by adding the following
138 section:-

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

141 “Child-resistant packaging”, packaging intended to reduce the risk of a child ingesting
142 nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C.
143 1471 to 1476, inclusive.

144 “Liquid nicotine container”, a package: (i) from which nicotine in a solution or other
145 form is accessible through normal and foreseeable use by a consumer; and (ii) that is used to
146 hold soluble nicotine in any concentration; provided, however, that “liquid nicotine container”
147 shall not include a sealed, prefilled and disposable container of nicotine in a solution or other
148 form in which the container is inserted directly into an electronic cigarette, electronic nicotine
149 delivery system or other similar product if the nicotine in the container is inaccessible through
150 customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion
151 or other contact by children.

152 (b) No person shall knowingly sell, distribute or import for sale:

153 (i) a liquid or gel substance containing nicotine unless the substance is contained
154 in child-resistant packaging; or

155 (ii) a liquid nicotine container unless the container includes child-resistant
156 packaging as part of its design.

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

159 (d) Local boards of health, departments of public health, inspection departments or
160 equivalent local authorities or their agents shall enforce this section through the noncriminal
161 disposition of violations process.

162 SECTION 9. Section 43A of chapter 272 of the General Laws, as appearing in the 2016
163 Official Edition, is hereby amended by striking out, in line 4, the words “cigar, cigarette, or pipe”
164 and inserting in place thereof the following words:- pipe or tobacco product as defined in section
165 6 of chapter 270.

166 SECTION 10. Section 206 of chapter 139 of the acts of 2012, as amended by section 24A
167 of chapter 118 of the acts of 2013, is hereby further amended by inserting after the word
168 “designee”, in line 10, the following words:-, who shall serve as chair.

169 SECTION 10. Section 166 of chapter 133 of the acts of 2016 is hereby amended by
170 striking out, in line 6, the figure “2017” and inserting in place thereof the following figure:-
171 2018.

172 SECTION 12. The commissioner of public health may promulgate regulations to restrict
173 the sale of tobacco products to persons under the age of 21. The commissioner shall send a notice
174 of proposed changes, including proposed draft regulations, to the house and senate committees
175 on ways and means and the joint committee on public health not less than 90 days before filing
176 any such draft regulations with the secretary of state.

177 SECTION 13. On the effective date of this act, a retail establishment as defined in section
178 6 of chapter 270 of the General Laws that sells a tobacco product as defined in said section 6 of
179 said chapter 270 shall conspicuously post a notice produced by the department of public health
180 that states the minimum age for a person to purchase a tobacco product. The notice shall include
181 the effective date that the minimum sales age to purchase a tobacco product was raised to 21
182 years of age. Retail establishments shall continuously post the notice until January 1, 2022.

183 SECTION 14. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
184 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
185 prohibit such sales to persons who attained the age of 18 before December 31, 2018; provided,
186 however, that a person who attained the age of 18 before December 31, 2018 shall be subject to
187 any municipal ordinance, by-law or other regulation that prohibited sales of tobacco products to
188 persons under the age of 19, 20 or 21 in effect on December 30, 2018.

189 SECTION 15. The center for health information and analysis, in collaboration with the
190 division of insurance, the department of public health, the group insurance commission and the
191 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance
192 plan and compare the tobacco cessation benefits to the United States Preventive Services Task
193 Force recommendations for tobacco smoking cessation in adults. The center shall provide a
194 report of its findings on its website and also forward a copy of the report to the clerks of the
195 senate and house of representatives and the joint committee on public health, the joint committee
196 on healthcare financing and senate and house committees on ways and means not later than July
197 1, 2019.

198 SECTION 16. This act shall take effect on December 31, 2018.