

HOUSE No. 4486

The Commonwealth of Massachusetts

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

An Act protecting 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. Section 73 of chapter 54 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “meeting”, in line 2, the
3 following words:- , use any vapor product, as defined in section 6 of chapter 270.

4 SECTION 2. Section 10 of chapter 64C of the General Laws, as so appearing, is hereby
5 amended by striking out, in lines 41, 42, 46 and 50, the word “eighteen” and inserting in place
6 thereof, in each instance, the following figure:- 21.

7 SECTION 3. Section 1 of chapter 71 of the General Laws, as so appearing, is hereby
8 amended by inserting after the word “tobacco”, in line 28, the following words:- and vapor
9 products.

10 SECTION 4. Said chapter 71 is hereby further amended by striking out section 2A, as so
11 appearing, and inserting in place thereof the following section:-

12 Section 2A. No person shall use tobacco products or vapor products, as defined in section
13 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a
14 primary or secondary school, including public and private schools, or at any school-sponsored
15 event. Each school committee or board of trustees shall establish a policy regarding violations of
16 this section. The policy may include, but shall not be limited to, mandatory education classes on
17 the hazards of using tobacco products or vapor products.

18 SECTION 5. Section 37H of said chapter 71, as so appearing, is hereby amended by
19 striking out, on line 4, the word “within” and inserting in place thereof the following words:- or
20 vapor products, as defined in section 6 of chapter 270, within.

21 SECTION 6. Chapter 74 of the General Laws is hereby amended by adding the following
22 section:-

23 Section 58. No person shall use tobacco products or vapor products, as defined in section
24 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a
25 vocational school, including public and private vocational schools, or at any vocational school-
26 sponsored event. Each school committee or board of trustees shall establish a policy regarding
27 violations of this section. The policy may include, but shall not be limited to, mandatory
28 education classes on the hazards of using tobacco products or vapor products.

29 SECTION 7. Section 307 of chapter 94 of the General Laws, as appearing in the 2016
30 Official Edition, is hereby amended by inserting after the words “tobacco”, in line 2, the
31 following words:- , vapor products.

32 SECTION 8. Said chapter 94 is hereby further amended by striking out section 307C, as
33 so appearing, and inserting in place thereof the following section:-

34 Section 307C. The department of public health may, in consultation with the attorney
35 general and the department of revenue, establish regulations for persons engaged in the sale or
36 shipment of tobacco products or vapor products, as defined in section 6 of chapter 270, to
37 prevent the sale or delivery of tobacco products or vapor products to individuals under 21 years
38 of age.

39 SECTION 9. Section 72X of chapter 111 of the General Laws, as so appearing, is hereby
40 amended by striking out the second sentence and inserting in place thereof the following
41 sentence:- Smoking tobacco products or vapor products, as defined in section 6 of chapter 270,
42 by any employee of such nursing homes is hereby prohibited in all patient care areas..

43 SECTION 10. Chapter 112 of the General Laws is hereby amended by inserting after
44 section 61 the following section:-

45 Section 61A. (a) As used in this section, the following words shall, unless the context
46 clearly requires otherwise, have the following meanings:- “Health care institution”, (i) an
47 individual, partnership, association, corporation or trust or a person or group of persons that
48 provides health care services and employs health care providers subject to licensing under this
49 chapter; or (ii) a retail establishment that sells pharmaceutical goods and services and is subject
50 to regulation by the board of registration in pharmacy. For the purposes of this section, a retail
51 establishment shall be considered a health care institution if it operates at a health care institution
52 or has a health care institution located on or within its premises; provided, however, a retail
53 establishment that provides optician, optometric, hearing aid or audiology services but is not
54 subject to regulation by the board of registration in pharmacy shall not be considered a health
55 care institution.

56 (b) No health care institution shall sell or authorize the sale of tobacco products or vapor
57 products, as defined in section 6 of chapter 270, within the buildings or facilities or on the
58 grounds of the health care institution.

59 SECTION 11. Chapter 270 of the General Laws is hereby amended by striking out
60 sections 6 and 6A, as appearing in the 2016 Official Edition, and inserting in place thereof the
61 following 2 sections:-

62 Section 6. (a) As used in this section and section 6A, the following words shall, unless
63 the context clearly requires otherwise, have the following meanings:- “Manufacturer”, a
64 person or entity that manufactures or produces a tobacco product or vapor product.

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

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

69 “Retailer”, a person or entity that operates a retail establishment.

70 “Tobacco product”, any product containing, made, or derived from tobacco or
71 nicotine that is intended for human consumption, including, but not limited to, cigarettes, cigars,
72 little cigars, pipe tobacco, snuff, and any product or electronic device that contains nicotine or
73 produces a vapor containing nicotine; provided further, that “tobacco product” shall not include a
74 vapor product as defined in this section nor shall it include a product that has been approved by
75 the United States Food and Drug Administration for the sale or use as a tobacco cessation
76 product and is marketed and sold exclusively for the approved purpose.

77 “Vapor product”, any non-combustible product that employs a heating element,
78 power source, electronic circuit, or other electronic, chemical or mechanical means, that can be
79 used to produce vapor intended for human consumption, including but not limited to, any
80 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape
81 pen, vaporizer or similar product or device and any container containing a consumable material
82 that has been manufactured to be used with or in an electronic cigarette, electronic cigar,
83 electronic cigarillo, electronic pipe, electronic hookah, vape pen, vaporizer or similar product or
84 device; provided, however, the term “vapor product” shall not include a tobacco product, as
85 defined in this section, marijuana, as defined in section 1 of chapter 94G, or any product
86 regulated as a drug or device by the United States Food and Drug Administration under Chapter
87 V of the Food, Drug and Cosmetic Act.

88 (b) No person shall sell a tobacco product or a vapor product to a person under the age of
89 21 or give a tobacco product or vapor product to a person under the age of 21.

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

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

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

98 Section 6A. (a) For purposes of this section, the term “vending machine”, shall mean an
99 automated or mechanical self-service device which, upon insertion of money or other form of
100 payment, dispenses or creates a vapor product.

101 (b) No person shall use a vending machine for the commercial distribution of vapor
102 products or to otherwise sell vapor products.

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

106 SECTION 12. Said chapter 270 is hereby further amended by striking out section 7, as so
107 appearing, and inserting in place thereof the following section:-

108 Section 7. (a) A copy of sections 6 and 6A shall be posted conspicuously by a retailer, as
109 defined in section 6 of this chapter, in the retail establishment, as defined in section 6. (b) The
110 department of public health shall develop signage that discloses current referral information
111 about smoking cessation resources. Retailers, as defined in section 6, shall conspicuously post
112 such signage in the retail establishment, as defined in said section 6.

113 (c) Whoever violates the provisions in this section shall be punished by a fine of not more
114 than \$50. Any person unlawfully removing a copy of the aforementioned signage on the
115 premises of a retail tobacco store shall be punished by a fine of \$10.

116 SECTION 13. Section 22 of said chapter 270, as so appearing, is hereby amended by
117 striking out, in lines 90, 276 and 281, the figure “18” and inserting in place thereof, in each
118 instance, the following figure:- 21.

119 SECTION 14. Subsection (a) of said section 22 of said chapter 270, is hereby amended
120 by striking out the definitions of “Smoking or smoke” and “Smoking bar” and inserting in place
121 thereof the following 4 definitions:-

122 “Smoking” or “smoke”, the inhaling, exhaling, burning or carrying of a lighted or heated
123 cigar, cigarette, pipe or other tobacco product, plant product or vapor product intended for
124 inhalation in any manner or form.

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

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

135 “Vapor product”, a vapor product as defined in section 6.

136 SECTION 15. Said section 22 of said chapter 270, as so appearing, is hereby further
137 amended by inserting after the word “products”, in line 195, the following words:- or vapor
138 products.

139 SECTION 16. Said section 22 of said chapter 270, as so appearing, is hereby further
140 amended by inserting after the word “products”, in line 239, the following words:- or vapor
141 products.

142 SECTION 17. Said section 22 of said chapter 270, as so appearing, is hereby further
143 amended by inserting after the word “smoke”, in line 249, the following words:- or vapors.

144 SECTION 18. Said chapter 270 is hereby further amended by adding the following
145 section:-

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

148 “Child-resistant packaging”, packaging intended to reduce the risk of children ingesting
149 nicotine that meets the minimum standards as set forth in 16 CFR §1700 et seq., pursuant to 15
150 U.S.C. §§1471 to 1476, inclusive as amended from time to time.

151 “Electronic liquid container”, a package that is used to hold, in any concentration: (i)
152 nicotine in a solution or other form; or (ii) any other liquid or substance that can be used to
153 produce vapor from consumable material intended for human consumption.

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

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

158 (ii) an electronic liquid container unless that container includes child-resistant packaging
159 as part of its design.

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

162 (d) The local board of health, the local department of public health, the local inspection
163 department or equivalent local authority or its agent shall enforce this section through the
164 noncriminal disposition of violations.

165 SECTION 19. Section 43A of chapter 272 of the General Laws, as appearing in the 2016
166 Official Edition, is hereby amended by striking out, in line 4, the words “or pipe shall” and
167 inserting in place thereof the following words:- pipe, tobacco product or vapor product, as
168 defined in section 6 of chapter 270, shall.

169 SECTION 20. Section 166 of chapter 133 of the acts of 2016 is hereby amended by
170 striking out, in line 6, the words “December 31, 2017” and inserting in place thereof the
171 following words:- December 31, 2018.

172 SECTION 21. Section 206 of chapter 139 of the acts of 2012 is hereby amended by
173 inserting after the word “designee”, in line 10, the following words:-, who shall serve as chair.

174 SECTION 22. The commissioner of public health may promulgate regulations to restrict
175 the sale of tobacco products and vapor products to individuals under the age of 21. The
176 commissioner shall send a notice of proposed changes, including proposed draft regulations, to
177 the house and senate committees on ways and means and the joint committee on public health
178 not less than 90 days before filing draft regulations with the state secretary.

179 SECTION 23. On the effective date of this act, a retail establishment that sells tobacco
180 products or vapor products as those terms are defined in section 6 of chapter 270 of the General

181 Laws shall conspicuously post a notice produced by the department of public health that states
182 the minimum sales age to purchase tobacco products and vapor products. The notice shall
183 include the dates that the minimum sales age to purchase tobacco products and vapor products
184 shall go into effect. Retail establishments shall continuously post the notice until January 1,
185 2022.

186 SECTION 24. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
187 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
188 prohibit such sales to persons who attained the age of 18 before December 31, 2018, provided,
189 however, notwithstanding section 26, that persons who attained the age of 18 before December
190 31, 2018 shall be subject to any municipal ordinance, by-law or other regulation that prohibited
191 sales of tobacco products or vapor products to persons under the age of 19, 20 or 21 in effect on
192 December 30, 2018.

193 SECTION 25. The center for health information and analysis, in collaboration with the
194 division of insurance, department of public health, the group insurance commission and the
195 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance
196 plan and compare the tobacco cessation benefits to the United States Preventive Services Task
197 Force recommendations for tobacco smoking cessation in adults.

198 SECTION 26. This act shall preempt, supersede or nullify any inconsistent, contrary or
199 conflicting state or local law relating to the minimum sales age to purchase tobacco products or
200 vapor products; provided, that this act shall not preempt, supersede or nullify any inconsistent,
201 contrary or conflicting local law in effect on December 30, 2018 that prohibits the sale of
202 tobacco products or vapor products to persons under the age of 19, 20, or 21 as applied to

203 persons who attained the age of 18 before December 31, 2018. This act shall not otherwise
204 preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or
205 safety regulation that limits or prohibits the purchase of tobacco products or vapor products.

206 SECTION 27. This act shall take effect on December 31, 2018.

207 SECTION 28. Notwithstanding any general or special law to the contrary, there shall be a
208 task force established to study and provide recommendations regarding the vaping industry.

209 The task force shall examine the use of vapes, juuls, and other e-cigarettes, particularly
210 among teens and young adults, and investigate how minors are achieving access to such devices.
211 The task force shall also study the potential negative health effects of using different e-cigarette
212 devices. The study shall include, but not be limited to, considering ways to regulate the vaping
213 industry, identifying opportunities to educate students on the dangers of e-cigarettes and related
214 devices in comparison to regular cigarettes, and developing best practices for restricting the use
215 of e-cigarette devices in and near schools.

216 The task force shall consist of 15 members, including the house and senate chairs on the
217 joint committee of public health, who shall be the co-chairs; the speaker of the house of
218 representatives or a designee; the president of the senate or a designee; the house minority leader
219 or a designee; the senate minority leader or a designee; the commissioner of the department of
220 public health or a designee; and 8 members to be appointed by the governor; provided that, one
221 shall have experience as a school resource officer, one shall be from the Massachusetts Cancer
222 Action Center, two shall be school administrators, two shall be representatives from the
223 Massachusetts Health and Hospital Association, and two shall be representatives from the
224 tobacco or vaping industry.

225 The task force shall submit its report and findings, along with any recommendations, to
226 the house and senate committees on ways and means, the joint committee on public health, and
227 the clerks of the house of representatives and senate no later than January 1, 2019.