SENATE DOCKET, NO. 1200 FILED ON: 1/16/2015

# SENATE . . . . . No. 1119

## The Commonwealth of Massachusetts

PRESENTED BY:

***Harriette L. Chandler***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act modernizing tobacco control and protecting the health of minors.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---|---|---|
| *Harriette L. Chandler* | *First Worcester* | |
| *Jeffrey Sánchez* | *15th Suffolk* | |
| *Jonathan Hecht* | *29th Middlesex* | |
| *Barbara A. L'Italien* | *Second Essex and Middlesex* | |
| *Sal N. DiDomenico* | *Middlesex and Suffolk* | |
| *Denise Provost* | *27th Middlesex* | |
| *Jason M. Lewis* | *Fifth Middlesex* | |
| *John F. Keenan* | *Norfolk and Plymouth* | |
| *Jeffrey N. Roy* | *10th Norfolk* | |
| *William N. Brownsberger* | *Second Suffolk and Middlesex* | |
| *Gailanne M. Cariddi* | *1st Berkshire* | |
| *Carolyn C. Dykema* | *8th Middlesex* | |
| *James M. Cantwell* | *4th Plymouth* | |
| *Angelo J. Puppolo, Jr.* | *12th Hampden* | |
| *Michael J. Barrett* | *Third Middlesex* | |
| *Marjorie C. Decker* | *25th Middlesex* | |
| *James B. Eldridge* | *Middlesex and Worcester* | |
| *Danielle W. Gregoire* | *4th Middlesex* | |

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|---|---|---|
| *Edward F. Coppinger* | *10th Suffolk* | |
| *Anne M. Gobi* | *Worcester, Hampden, Hampshire and Middlesex* | |
| *Thomas J. Calter* | *12th Plymouth* | |
| *James E. Timilty* | *Bristol and Norfolk* | |
| *John W. Scibak* | *2nd Hampshire* | |
| *Timothy J. Toomey, Jr.* | *26th Middlesex* | |
| *Brian A. Joyce* | *Norfolk, Bristol and Plymouth* | |
| *Cory Atkins* | *14th Middlesex* | |
| *Patricia D. Jehlen* | *Second Middlesex* | |
| *Cynthia S. Creem* | *First Middlesex and Norfolk* | |
| *Josh S. Cutler* | *6th Plymouth* | |
| *James Arciero* | *2nd Middlesex* | |
| *Michael O. Moore* | *Second Worcester* | |
| *Sean Garballey* | *23rd Middlesex* | |
| *David Paul Linsky* | *5th Middlesex* | |
| *Angelo L. D'Emilia* | *8th Plymouth* | |
| *Joan B. Lovely* | *Second Essex* | |
| *Robert L. Hedlund* | *Plymouth and Norfolk* | *4/6/2015* |
| *Ryan C. Fattman* | *Worcester and Norfolk* | *4/29/2015* |

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# SENATE . . . . . No. 1119

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 1119) of Harriette L. Chandler, Jeffrey Sánchez, Jonathan Hecht, Barbara L'Italien and other members of the General Court for legislation relative to modernizing tobacco control and protecting the health of minors. Public Health.

## The Commonwealth of Massachusetts

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

An Act modernizing tobacco control and protecting the health of minors.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 2A of chapter 71 of the General Laws is hereby amended by inserting after the word “use”, in line 3, the following words:- “a tobacco product, as defined in section 6 of chapter 270,”.

SECTION 2. Section 37H of chapter 71 of the General Laws is hereby amended by inserting after the word “use”, in line 3, the following words:- “a tobacco product, as defined in section 6 of chapter 270,”.

SECTION 3. Chapter 94 of the General Laws is hereby amended by striking out section 307C, as appearing in the 2012 Official Edition, and inserting in place thereof the following section: -

Section 307C. The department of public health may, in consultation with the attorney general and the department of revenue, establish regulations for persons engaged in the sale or

12 shipment of a tobacco product, as defined in section 6 of chapter 270, in any of its forms, to
13 prevent the sale or delivery of a tobacco product in any of its forms to children under 18 years of
14 age in the commonwealth.

15 SECTION 4. Chapter 270 of the General Laws is hereby amended by striking out section
16 6, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:-

17 Section 6. (a) As used in this section, the following terms shall have the following
18 meanings:

19 "Manufacturer", any person who manufactures or produces a tobacco product in any of
20 its forms.

21 "Retail establishment", any physical place of business or section of a physical place of
22 business where a tobacco product in any of its forms is offered to consumers, and which also
23 includes portions of any physical place of business where vending machines that dispense a
24 tobacco product in any of its forms are located.

25 "Retail tobacco store", an establishment which is not required to possess a retail food
26 permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, a
27 tobacco product in any of its forms and paraphernalia in which the sale of other products is
28 merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times,
29 and maintains a valid permit for the retail sale of a tobacco product in any of its forms as
30 required to be issued by the appropriate authority in the city or town where the establishment is
31 located.

32 “Retailer”, any person who operates a store or concession for the purposes of making
33 sales of a tobacco product in any of its forms at retail, and any person selling a tobacco product
34 in any of its forms through vending machines.

35 “Smoking bar”, an establishment that occupies exclusively an enclosed indoor space and
36 that primarily is engaged in the retail sale of a tobacco product in any of its forms for
37 consumption by customers on the premises; derives revenue from the sale of food, alcohol or
38 other beverages that is incidental to the sale of a tobacco product in any of its forms; prohibits
39 entry to a person under the age of 18 years of age during the time when the establishment is open
40 for business; prohibits any food or beverage not sold directly by the business to be consumed on
41 the premises; maintains a valid permit for the retail sale of a tobacco product in any of its forms
42 as required to be issued by the appropriate authority in the city or town where the establishment
43 is located; and, maintains a valid permit to operate a smoking bar issued by the department of
44 revenue.

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

54 (b) No person shall sell a tobacco product in any of its forms to any person under the age
55 of 18 or, not being his parent or guardian, give a tobacco product in any of its forms to any
56 person under the age of 18.

57 (c) No manufacturer or retailer shall distribute or cause to be distributed any free samples
58 of a tobacco product in any of its forms in any retail establishment, excluding retail tobacco
59 stores and smoking bars.

60 (d) Anyone in violation of the provisions of this section shall be punished by a fine of not
61 less than 100 dollars for the first offense, not less than 200 dollars for a second offense and not
62 less than 300 dollars for any third or subsequent offense.

63 (e) The Department of Public Health shall promulgate regulations for implementation of
64 the provisions of this section.

65 (f) Nothing in this section shall permit the sale of a tobacco product in any of its forms in
66 which such sale is prohibited or may hereafter be prohibited by law including, without limitation,
67 any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this
68 section shall preempt further limitation of the sale of a tobacco product in any of its forms by the
69 commonwealth or any department, agency or political subdivision of the commonwealth.

70 SECTION 5. Section 22 of chapter 270 of the General Laws is hereby amended by
71 striking out, in subsection (a) in lines 90 to 92, as appearing in the 2012 Official Edition, the
72 definition for "Smoking" or "Smoke", and inserting in place thereof the following definitions:-

73 "Smoking" or "smoke", the inhaling, exhaling, burning, or carrying of any lighted or
74 heated cigar, cigarette, pipe or other tobacco product or plant product intended for inhalation in

75 any manner or any form. “Smoking” or “smoke” also includes the use of electronic cigarettes,

76 electronic cigars, electronic pipes, or other similar products that rely on vaporization or

77 aerosolization.