

HOUSE No. 3998

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 6, 2017.

The committee on Revenue to whom was referred the petition (accompanied by bill, Senate, No. 1576) of Michael O. Moore, Michael J. Rodrigues, William C. Galvin, David T. Vieira and other members of the General Court for legislation to the tax electronic smoking devices, cigars and smoking tobacco, reports recommending that the accompanying bill (House, No. 3998) ought to pass.

For the committee,

JAY R. KAUFMAN

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

An Act relative to the taxation of electronic smoking devices, cigars and smoking tobacco.

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 16 of chapter 62C of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking out subsection (c¹/₂) and inserting in place thereof
3 the following subsection:-

4 (c¹/₂) Every licensee under section 7B of chapter 64C shall, on or before the twentieth day
5 of each calendar month or on or before the twentieth day of the month following each calendar
6 quarter, as the commissioner shall require, file with the commissioner a return for each place of
7 business maintained, stating the quantity of cigars, smoking tobacco and electronic smoking
8 liquid sold by such licensee in the commonwealth during the preceding calendar month or
9 quarter, as the case may be, and such return shall contain or be accompanied by such further
10 information as the commissioner shall require. If a licensee ceases to sell cigars, smoking
11 tobacco and electronic smoking liquid within the commonwealth, he shall immediately file with
12 the commissioner a return for the period ending with such cessation.

13 SECTION 1. Said section 67 of said chapter 62C of the General Laws, as so appearing, is
14 hereby amended by striking out, in lines 7-8, the words “cigar distributor or cigar retailer” and
15 inserting in place thereof the following words:-

16 cigar distributor, cigar retailer, electronic smoking liquid distributor or electronic
17 smoking liquid retailer

18 SECTION 2. Said section 67 of said chapter 62C of the General Laws, as so appearing, is
19 hereby further amended by striking out the third paragraph and inserting in place thereof the
20 following paragraph:-

21 All licenses, other than licenses for retailers, cigar retailers and electronic smoking liquid
22 retailers as defined in chapter 64C, shall expire annually on a date prescribed by the
23 commissioner. Licenses for retailers, cigar retailers and electronic smoking liquid retailers shall
24 expire every other year on a date prescribed by the commissioner. The commissioner may
25 provide for combined forms of licenses and license applications.

26 SECTION 1. Section 7B of said chapter 64C of the General Laws, as so appearing, is
27 hereby amended by inserting in subsection (a) after the definition of “cigar retailer”, the
28 following definitions:-

29 “Electronic smoking liquid”, any liquid, gel or other medium that can be used in a
30 product that relies on vaporization or aerosolization, regardless of whether it contains nicotine,
31 and whether it is sold separately from the vaporization or aerosolization device; provided,
32 however, that “electronic smoking liquid” shall not include any product that has been approved
33 by the United States Food and Drug Administration for sale as a tobacco cessation product and is
34 marketed and sold exclusively for the approved purpose.

35 “Electronic smoking liquid distributor”, (i) any person who imports, or causes to be
36 imported, into the commonwealth electronic smoking liquid for sale or who manufactures
37 electronic smoking liquid in the commonwealth, and (ii) any person within or without the
38 commonwealth who is authorized by the commissioner to make returns and pay the excise on
39 electronic smoking liquid sold, shipped or delivered by such person to any person in the
40 commonwealth.

41 "Electronic smoking liquid retailer", any person who sells or furnishes electronic smoking
42 liquid in small quantities to consumers for individual use; provided, however, said electronic
43 smoking liquid shall not be used for the purpose of resale.

44 SECTION 2. Said section 7B of said chapter 64C, as so appearing, is hereby further
45 amended by inserting after the first paragraph of subsection (b) the following paragraph:-

46 An excise shall be imposed on all electronic smoking liquid held in the commonwealth at
47 the rate of 20 per cent of the wholesale price of such products. This excise shall be imposed on
48 the electronic smoking liquid distributors of such products at the time the product is purchased,
49 received or acquired for retail sale in the commonwealth in accordance with such regulations as
50 may be promulgated by the commissioner.

51 SECTION 3. Said section 7B of said chapter 64C, as so appearing, is hereby further
52 amended by inserting after the first paragraph of subsection (c) the following paragraph:-

53 Every electronic smoking liquid retailer shall be liable for the collection of the excise on
54 all such products in his possession at any time, upon which the excise has not been paid by an
55 electronic smoking liquid distributor, and the failure of any such retailer to produce or exhibit to
56 the commissioner or his authorized representative, upon demand, an invoice by an electronic

57 smoking liquid distributor for any electronic smoking liquid in his possession, shall be
58 presumptive evidence that the excise thereon has not been paid and that such retailer is liable for
59 the collection of the excise thereon.

60 SECTION 4. Said section 7B of said chapter 64C, as so appearing, is hereby further
61 amended by striking out subsection (d) and inserting in its place the following subsection:-

62 (d) The amount of the excise advanced and paid, as provided in this section, shall be
63 added to and collected as part of, the sales price of the products subject to the excise.

64 SECTION 5. Said section 7B of said chapter 64C, as so appearing, is hereby further
65 amended by adding at the end of paragraph (1) of subsection (e) the following sentence:-

66 An electronic smoking liquid distributor shall be liable for the payment of the excise on
67 all such product that he imports or causes to be imported into the commonwealth or that he
68 manufactures in the commonwealth, and every such electronic smoking liquid distributor
69 authorized by the commissioner to make returns and pay the excise on electronic smoking liquid
70 sold, shipped or delivered by him to any person in the commonwealth shall be liable for the
71 collection and payment of the excise on all such product sold, shipped or delivered.

72 SECTION 6. Said section 7B of said chapter 64C, as so appearing, is further amended by
73 striking out subsection (g) and inserting in its place the following:-

74 (g) Every resident of the commonwealth shall be liable for the collection of the excise on
75 all cigars, smoking tobacco or electronic smoking liquid in the resident's possession at any time,
76 upon which the excise has not been paid by a cigar distributor, cigar retailer, electronic smoking
77 liquid distributor or electronic smoking liquid retailer in accordance with this section. The failure

78 of any such consumer to produce or exhibit to the commissioner or the commissioner's
79 authorized representative, upon demand, an invoice or sales receipt by a cigar distributor or cigar
80 retailer for any cigars or smoking tobacco in the consumer's possession or an invoice or sales
81 receipt by an electronic smoking liquid distributor or electronic smoking liquid retailer for any
82 electronic smoking liquid in the consumer's possession, shall be presumptive evidence that the
83 excise thereon has not been paid and that such consumer is liable for the collection of the excise
84 thereon.

85 SECTION 7. Said chapter 64C of the General Laws is hereby amended by inserting after
86 section 40 the following section:-

87 Section 41. (a) As used in this section, the following words shall have the following
88 meanings unless the context clearly requires otherwise:

89 "Cigar", shall have the same meaning assigned to it in section 7B.

90 "Cigarette", shall have the same meaning assigned to it in section 2A.

91 "Electronic smoking liquid", shall have the same meaning assigned to it in section 7B.

92 "Smoking tobacco", shall have the same meaning assigned to it in section 7B.

93 (b) No person shall cause cigars, cigarettes, electronic smoking liquid, smoking tobacco
94 or smokeless tobacco ordered or purchased by mail or through a computer network, telephonic
95 network, or other electronic network, to be shipped to anyone other than a person licensed under
96 section 67 of chapter 62C as a manufacturer, wholesaler, vending machine operator, unclassified
97 acquirer, transportation company, retailer, cigar distributor, cigar retailer, electronic smoking
98 liquid distributor or electronic smoking liquid retailer as defined in this chapter.

99 (c) No person shall, with knowledge or reason to know of the violation, assist or aid a
100 person in violation of this section.

101 (d) Whoever knowingly or intentionally violates this section shall be punished by a fine
102 of not more than \$1,000 or by imprisonment in state prison for not more than 1 year, or both.

103 For the purposes of this subsection, each shipment or transport of cigarettes, cigars,
104 smoking tobacco or smokeless tobacco shall constitute a separate violation.

105 (e) A person who violates this section engages in an unfair and deceptive trade practice in
106 violation chapter 93A.

107 (f) The commissioner shall promulgate regulations to implement and enforce this section.

108 SECTION 8. Sections 1 to 6, inclusive, shall take effect on January 1, 2018.