

**HOUSE . . . . . No. 2106**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act relative to the marketing and distribution of 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 SECTION 1. Section 307A of chapter 94 of the General Laws, as appearing in the 2006  
2 Official Edition, is hereby amended by inserting after the first paragraph the following  
3 paragraph: -

4 For the purposes of this section, the word "cigarette" shall mean (1) any roll of tobacco  
5 wrapped in paper or in any substance not containing tobacco, (2) little cigars, which shall mean  
6 rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which  
7 1,000 units weigh not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance  
8 containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its  
9 packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette  
10 described in clause (1).

11 SECTION 2. Said chapter 94 is hereby further amended by inserting after section 307C  
12 the following section:-

13           Section 307D. (a) No person, either directly or indirectly by an agent or employee, shall  
14 sell, offer for sale, or market to a person a cigarette or any of its component parts, including, but  
15 not limited to: tobacco, filter, or paper; which contains a natural or artificial constituent or  
16 additive that causes the cigarette or any smoke emanating from that product to have a  
17 characterizing flavor other than tobacco, clove or menthol. In no event shall a cigarette or any  
18 component thereof be construed to have a characterizing flavor based solely on the use of  
19 additives or flavorings, or the provision of an ingredient list made available by any means.

20           (b) As used in this section,

21           (1) “Characterizing flavor” means that: the cigarette or any smoke emanating from the  
22 product, imparts a distinguishable flavor, taste or aroma other than tobacco, clove or menthol  
23 prior to or during consumption, including, but not limited to, strawberry, grape, orange,  
24 cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, herb or spice  
25 flavoring; or the cigarette or any component part thereof is advertised or marketed as having or  
26 producing any such flavor, taste or aroma; and

27           (2) “Cigarette” means (a) any roll of tobacco wrapped in paper or in any substance not  
28 containing tobacco, and (b) any roll of tobacco wrapped in any substance containing tobacco,  
29 which, because of its appearance, the type of tobacco used in the filter, or its packaging and  
30 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in  
31 subparagraph (a) of this paragraph (2).

32           (3) “Component parts” includes, but is not limited to, the tobacco, paper, roll or filter, or  
33 any other matter or substance which can be smoked.

34 SECTION 3. The definition of “Drug paraphernalia in section 1 of chapter 94C of the  
35 General Laws, as so appearing, is hereby amended in clause (12) by inserting after subclause (o)  
36 the following subclause: -

37 (p) blunt wrappers.

38 SECTION 4. Chapter 94F of the General Laws is hereby amended by inserting after  
39 section 6 of the following section:-

40 Section 7. (a) A tobacco product manufacturer whose cigarettes are sold in the  
41 commonwealth, whether directly or through an intermediary, shall execute and deliver to the  
42 attorney general and to the commissioner of the department of public health, in a form and  
43 manner prescribed by the department of public health, a certification under penalty of perjury  
44 containing the scientific basis for each and every claim of reduction in risk made by the  
45 manufacturer for each of its brand families or product members thereof. The scientific basis  
46 provided in each such certification shall include a detailed description of the analysis of each  
47 brand family or product members thereof, upon which the manufacturer supports the related  
48 claim of reduction of risk as well as the identity of the institution or individual that conducted the  
49 analysis.

50 (b) A claim of reduction in risk that fails to demonstrate reduction in harm to users of the  
51 brand family or product members thereof and to the general public, based on reasonable  
52 scientific analysis of the manufacturer or the Department of Public Health, shall constitute an  
53 unfair or deceptive act or practice under the provisions of chapter 93A, notwithstanding any  
54 contrary provision of any other law of the Commonwealth or any exemption provided by said

55 Chapter 93A. Manufacturers shall be afforded notice and opportunity to comment prior to a final  
56 determination by Department of Public Health under this subsection (b).

57 (c) For purposes of this section, the term “claim of reduction in risk” shall mean any  
58 expressed or implied claim on behalf of the manufacturer that a cigarette, as defined in Chapter  
59 94E, (1) exposes the user to a reduced quantity of one or more toxic or carcinogenic constituents;  
60 (2) emits fewer particulates than other cigarettes; (3) may reduce the likelihood of one or more  
61 adverse health effects or irritations associated with tobacco use or exposure to tobacco smoke;  
62 (4) is a light or ultralight cigarette; (5) has a label, labeling, or advertising that uses the  
63 descriptors ‘light’, ‘mild’, or ‘low’ or similar descriptors; and (6) is in anyway safer or less  
64 addictive than other cigarettes.

65 (d) For purposes of this section, “reasonable scientific analysis” shall mean a  
66 manufacturer has demonstrated to the department of public health that a product claimed to pose  
67 a reduced risk will (1) significantly reduce harm and the risk of tobacco-related disease to  
68 individual tobacco users; and (2) benefit the health of the population as a whole taking into  
69 account both users of tobacco products and persons who do not currently use tobacco products.

70 (e) It shall be the duty of the attorney general of the commonwealth to institute  
71 proceedings in the superior court to prevent and restrain violations of this section when the  
72 attorney general has reason to believe than any tobacco manufacturer is engaging in a violation  
73 of this section. The attorney general shall bring an action to enjoin the manufacturer from  
74 engaging in a violation of this section.

75 (f) Nothing in this section shall affect the rights of any person under Section 9 of Chapter  
76 93A.

77           SECTION 5. Chapter 270 of the General Laws is hereby amended by inserting after  
78 section 24 the following sections:-

79           Section 25. No person, manufacturer, distributor, or retailer shall distribute, or cause to  
80 be distributed free samples of cigarettes, smokeless tobacco or other tobacco product for any  
81 commercial purposes.

82           Section 26. No person, manufacturer, distributor, or retailer shall distribute, or cause to  
83 be distributed tobacco products from vending machines.