

HOUSE No. 3233

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Protect Children in Vehicles from Secondhand Smoke..

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 7AA of Chapter 90 of the Massachusetts General Laws is hereby
2 amended by adding the following subsection at the end thereof:

3 No person or persons shall be allowed to smoke, as defined in Section 22, Chapter 270 of
4 M.G.L., in a motor vehicle when a person who has not attained 18 years of age in that motor
5 vehicle, regardless of whether the motor vehicle's windows are open.

6 An operator or passenger of a motor vehicle who violates the provisions of this
7 subsection shall be subject to a fine of at least 100 dollars for each person who is under 18 years
8 of age and who is in the motor vehicle. For each subsequent violation, the fine shall be increased
9 by 100 dollars for each person who is under 18 years of age and who is in the motor vehicle.

10 Any person who violates this act may have their fine waived by performing 5 hours of
11 community service or by enrolling in a tobacco education/cessation program. The provisions of
12 this section shall be enforced by law enforcement agencies when an operator of a motor vehicle
13 or passenger is smoking in plain view with passengers who appear to be under 18 years of age.

14 If a law enforcement office stops a vehicle for an apparent violation of this section, the officer

15 shall determine whether anyone in the motor vehicle is under 18 years of age. A police office
16 may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because
17 of a violation of this section. For a period of 90 days following the effective day of this act, any
18 law enforcement official who stops a motorist solely because of smoking in a motor vehicle
19 when a person who has not attained 18 years of age in that motor vehicle is present shall not
20 issue a citation, but shall only issue a written or verbal warning.

21 A violation of this section shall not be used as evidence of contributory negligence in any
22 civil action.

23 Any person who receives a citation for violating this section may contest such citation
24 pursuant to section three of chapter ninety C. A violation of this section shall not be considered
25 as a conviction of a moving violation of the motor vehicle laws for the purpose of determining
26 surcharges on motor vehicle premiums pursuant to section one hundred and thirteen B of chapter
27 one hundred and seventy-five.