

**HOUSE . . . . . No. 2358**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Bradley H. Jones, Jr.***

*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 prohibiting the possession of tobacco by minors.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/20/2011</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>	<i>1/27/2011</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>2/2/2011</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>	<i>2/3/2011</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/3/2011</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2011</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>2/4/2011</i>
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>	<i>2/4/2011</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>2/1/2011</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/21/2011</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>	<i>2/1/2011</i>

**HOUSE . . . . . No. 2358**

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2358) of Bradley H. Jones, Jr., and others relative to prohibiting the possession of tobacco by minors. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3593 OF 2009-2010.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Eleven**

An Act prohibiting the possession of tobacco by minors.

*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. Chapter 270 of the General Laws, as appearing in the 2008 Official Edition,  
2 is hereby further amended by inserting after section five, the following section:—Section 5A. As  
3 used in this section and section 6 the following words shall, unless the context clearly requires  
4 otherwise, have the following meanings:“Tobacco Products”, cigarettes, bidis, cigars, chewing  
5 tobacco, pipe tobacco, snuff, or tobacco in any of its forms.“Retailer”, any establishment that  
6 sells tobacco products to individuals for personal consumption.“Person”, individual, employer,  
7 employee, retail store manager or owner, or the owner or operator of any establishment engaged  
8 in the sale of tobacco products.“Proof of age”, a motor vehicle license issued pursuant to section  
9 eight of chapter 90, a liquor purchase identification card issued pursuant to section 34 B of  
10 chapter 138, a valid passport issued by the United States government, or by the government,  
11 recognized by the United States government, of a foreign country, or a valid United States issued

12 military identification card. “Local Permit”, any permit that a retailer is required to obtain by  
13 local ordinance, by-law or board of health regulation in order to sell or distribute tobacco  
14 products. “Smoking”, inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other  
15 tobacco product in any form.

16 SECTION 2. Said chapter 270 is hereby further amended by striking out section 6, as so  
17 appearing, and inserting in place thereof the following section:—Section 6. (a) No person under  
18 18 years of age shall smoke, possess, or use any tobacco products in the commonwealth.(b) No  
19 person shall sell tobacco products or permit tobacco products to be sold to any person under 18  
20 years of age nor shall any person give a person under 18 years of age a tobacco product.(c) Every  
21 retailer shall verify by means of proof of age that no person purchasing tobacco products is under  
22 18 years of age. No person under 18 years of age shall misrepresent his or her age by presenting  
23 false proof of age to purchase tobacco products. No such verification is required for any person  
24 over 26 years of age.(d) Nothing in this section shall prohibit persons under 18 years of age from  
25 participating in compliance checks conducted in order to enforce and monitor compliance with  
26 this section or any other law governing the sale of tobacco products to minors or persons under  
27 18 years of age.(e) Any retailer who violates any provision of this section shall be fined \$100 for  
28 the first offense, \$200 for the second offense, and \$300 for the third or subsequent offense. Any  
29 retailer who violates this act four or more times within a three year period, calculated from the  
30 date of the first offense, shall be subject to a fine of \$300 for each offense and shall have his  
31 local permit suspended for seven consecutive calendar days. The board of health shall provide  
32 notice of the intent to suspend a tobacco permit, which notice shall contain the reasons for the  
33 permit suspension and establish a date and time for a hearing. The date of the hearing shall be no

34 earlier than seven days after the date of said notice. The permittee shall have an opportunity to be  
35 heard at such hearing and shall be notified of the Board's decision and reasons in writing.

36 (f) The court shall require any person who is under 18 years of age who violates any  
37 provision of this act to perform 20 hours of community service and enroll in a tobacco education  
38 program; provided, however, that this section shall not apply to a person who is under 18 years  
39 of age who possesses, transports, or carries on his person tobacco products in the course of his  
40 employment.

41 The court shall treat a violation of this section as a civil infraction. A person complained  
42 of for such civil infraction shall be adjudicated responsible upon such finding by the court and  
43 shall neither be sentenced to a term of incarceration nor be entitled to appointed counsel pursuant  
44 to chapter 211D. An adjudication of responsibility under this section shall not be used in the  
45 calculation of second and subsequent offenses under any chapter, nor as the basis for the  
46 revocation of parole or of a probation surrender.

47 SECTION 3. Said chapter 270 is hereby further amended by inserting after section 7, the  
48 following section:—Section 7A. (a) Police officers, school officials and their agents shall have  
49 the authority to confiscate any tobacco products from any person under 18 years of age and may  
50 return the confiscated tobacco products to said person's parent or legal guardian upon written  
51 request within 30 days. If the tobacco product is not claimed within 30 days, the police officers,  
52 school officials and their agents shall destroy the tobacco product.(b) In addition to the penalties  
53 provided in section six of chapter 270 upon petition of a board of health to the commissioner of  
54 revenue that a retailer has been cited in violation of said section six, four or more times within a  
55 three year period, calculated from the date of the first offense, the commissioner of revenue shall,

56 after providing the retailer with notice and opportunity to be heard, suspend for 30 days the  
57 retailer's license, issued in accordance with section 67 of chapter 62C. The commissioner shall  
58 provide notice of the intent to suspend said license, which notice shall contain the reasons for the  
59 suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier  
60 than seven days after the date of said notice. The licensee shall have an opportunity to be heard  
61 at such hearing and shall be notified of the commissioner's decision and reasons in writing. Any  
62 person aggrieved by the commissioner's suspension of said license may within 60 days of the  
63 date of notice of such suspension appeal to the appellate tax board, whose decision shall be  
64 final.(c) Police officers, school officials and their agents shall have the authority to confiscate  
65 any tobacco products from any person who is under 18 years of age; the commonwealth of  
66 Massachusetts or its agents, including but not limited to the department of public health, the  
67 attorney general, and the state police; any city or town or its agent, any board of health or its  
68 agent, and any city or town police department, any school official or its agent may enforce all  
69 other provisions of this act. If the enforcing authority is a board of health or its authorized agent,  
70 any violation of this section may be disposed of by the non-criminal method of disposition  
71 procedures contained in section 21D of chapter 40 without an enabling ordinance or bylaw. If the  
72 enforcing authority is any city or town or its agent, any board of health or its agent, or any city or  
73 town police department, fines that are assessed pursuant to section 6 of chapter 270 may be  
74 payable to the city or town in which the violation of this section occurs. Any city or town may,  
75 by ordinance or bylaw, establish a fund for the disposition of any revenues received from fines  
76 levied in accordance with the provisions of section 6 of chapter 270, in which case, the municipal  
77 health department or board of health shall expend said funds for the purpose of enforcing this act  
78 or any local law that regulates the sale of tobacco products.

79           SECTION 4. Nothing in any of the sections of this act shall be construed to preempt any  
80 existing law, ordinance, by-law or regulation which requires a permit or license for the sale of  
81 tobacco products, or which regulates the sale, use, or distribution of tobacco products. Nothing in  
82 any of the sections of this act shall prohibit any city, town, or board of health from enacting or  
83 enforcing any law, ordinance, by-law or regulation which requires a permit for the sale of  
84 tobacco products or which regulates the sale, use, or distribution of tobacco products.

85           SECTION 5. If the age restriction of this act is preempted under Section 360(k)(a) of  
86 Title XXI of the United States code, the governor shall, within 30 days of the effective date of  
87 this act, apply to the commissioner of the federal food and drug administration for a waiver  
88 pursuant to Section 360(k)(b) of Title XXI of the United States code.

89           SECTION 6. If any paragraph or provision of this regulation is found to be illegal or  
90 against public policy or unconstitutional, it shall not affect the legality of any remaining  
91 paragraphs or provisions being in force.