

**HOUSE . . . . . No. 3639**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Jeffrey Sánchez*

*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:	DATE ADDED:
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	<i>8/16/2013</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>8/16/2013</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>8/20/2013</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>8/16/2013</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>8/16/2013</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>8/16/2013</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>	<i>8/20/2013</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	<i>8/16/2013</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>8/19/2013</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>8/19/2013</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>8/19/2013</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>8/16/2013</i>
<i>Jay Livingstone</i>	<i>8th Suffolk</i>	<i>8/19/2013</i>
<i>Daniel B. Winslow</i>	<i>9th Norfolk</i>	<i>8/16/2013</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>8/19/2013</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>8/16/2013</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>8/16/2013</i>

*Kay Khan*

*Jason M. Lewis*

*11th Middlesex*

*Fifth Middlesex*

**HOUSE . . . . . No. 3639**

By Mr. Sánchez of Boston, a petition (subject to Joint Rule 12) of Jeffrey Sánchez and others for legislation to prohibit the sale to minors of electronic devices used to deliver liquid nicotine vapor. Public Health.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

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:*

1 SECTION 1. Section 2A of chapter 71 of the General Laws is hereby amended by  
2 inserting after the word “products”, in line 3, the following words: -

3 or nicotine delivery products, as such terms are defined in section 6 of chapter 270, in any  
4 of their forms,

5 SECTION 2. Section 37H of chapter 71 of the General Laws is hereby amended by  
6 inserting after the word “products”, in line 3, the following words: -

7 or nicotine delivery products, as such terms are defined in section 6 of chapter 270, in any  
8 of their forms,

9 SECTION 3. Chapter 94 of the General Laws is hereby amended by striking out section  
10 307C, as appearing in the 2012 Official Edition, and inserting in place thereof the following  
11 section: -

12 Section 307C. The department of public health may, in consultation with the attorney  
13 general and the department of revenue, establish regulations for persons engaged in the sale or  
14 shipment of nicotine delivery products or tobacco products, as such terms are defined in section  
15 6 of chapter 270, in any of their forms, to prevent the sale or delivery of nicotine delivery  
16 products or tobacco products in any of their forms to children under 18 years of age in the  
17 commonwealth.

18 SECTION 4. Chapter 270 of the General Laws is hereby amended by striking out section  
19 6, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:  
20 -

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

23 “E-cigarette”, any electronic device that can be used to deliver liquid nicotine vapor to  
24 the user, or release on vaporization of any liquid or solid, and shall include such devices whether  
25 manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

26 “Manufacturer”, any person who manufactures or produces nicotine delivery products or  
27 tobacco products.

28 “Nicotine delivery product”, any manufactured article or product made wholly or in part  
29 of a tobacco substitute or otherwise containing nicotine that is expected or intended for human  
30 consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or  
31 ingested, but not including a tobacco substitute prescribed by a licensed medical provider or a  
32 product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco  
33 use cessation or harm reduction product or for other medical purposes and which is being  
34 marketed and sold solely for that approved purpose. Nicotine delivery products include, but are  
35 not limited to, e-cigarettes.

36 “Retail establishment”, any physical place of business or section of a physical place of  
37 business where tobacco products or nicotine delivery products are offered to consumers, and  
38 which also includes portions of any physical place of business where vending machines that  
39 dispense tobacco products or nicotine delivery products are located.

40 “Retail tobacco store”, an establishment which is not required to possess a retail food  
41 permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco  
42 products or nicotine delivery products and paraphernalia, including e-cigarettes, in which the sale  
43 of other products is merely incidental, and in which the entry of persons under the age of 18 is  
44 prohibited at all times, and maintains a valid permit for the retail sale of tobacco products or  
45 nicotine delivery products as required to be issued by the appropriate authority in the city or  
46 town where the establishment is located.

47 “Retailer”, any person who operates a store or concession for the purposes of making  
48 sales of tobacco products at retails, and any person selling tobacco products through vending  
49 machines.

50 “Smoking bar”, an establishment that occupies exclusively an enclosed indoor space and  
51 that primarily is engaged in the retail sale of tobacco products or nicotine delivery products for  
52 consumption by customers on the premises; derives revenue from the sale of food, alcohol or

53 other beverages that is incidental to the sale of tobacco products or nicotine delivery products;  
54 prohibits entry to a person under the age of 18 years of age during the time when the  
55 establishment is open for business; prohibits any food or beverage not sold directly by the  
56 business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco  
57 products or nicotine delivery products as required to be issued by the appropriate authority in the  
58 city or town where the establishment is located; and, maintains a valid permit to operate a  
59 smoking bar issued by the department of revenue.

60 “Tobacco product”, a cigarette, cigar, little cigar, chewing tobacco, pipe tobacco, snuff,  
61 or other tobacco in any form intended for human consumption.

62 (b) No person shall sell nicotine delivery products or tobacco products in any of their  
63 forms to any person under the age of 18 or, not being his parent or guardian, give a nicotine  
64 delivery product or tobacco product in any of their forms to any person under the age of 18.

65 (c) No manufacturer or retailer shall distribute or cause to be distributed any free samples  
66 of nicotine delivery products or tobacco products in any retail establishment, excluding retail  
67 tobacco stores and smoking bars.

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

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

73 SECTION 5. Section 22 of chapter 270 of the General Laws is hereby amended by  
74 striking out, in subsection (a) in lines 82 to 104, as appearing in the 2012 Official Edition, the  
75 definitions for “Retail tobacco store”, “Smoking” or “Smoke”, and “Smoking Bar” and inserting  
76 in place thereof the following definitions:-

77 “Retail tobacco store”, an establishment which is not required to possess a retail food  
78 permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco  
79 products or nicotine delivery products and paraphernalia, including e-cigarettes, in which the sale  
80 of other products is merely incidental, and in which the entry of persons under the age of 18 is  
81 prohibited at all times, and maintains a valid permit for the retail sale of tobacco products or  
82 nicotine delivery products as required to be issued by the appropriate authority in the city or  
83 town where the establishment is located.

84 “Smoking” or “smoke”, the lighting of a cigar, cigarette, pipe or other tobacco product or  
85 possessing a lighted cigar, cigarette, pipe, or other tobacco or non-tobacco product designed to  
86 be combusted or inhaled.

87           “Smoking bar”, an establishment that occupies exclusively an enclosed indoor space and  
88 that primarily is engaged in the retail sale of tobacco products or nicotine delivery products for  
89 consumption by customers on the premises; derives revenue from the sale of food, alcohol or  
90 other beverages that is incidental to the sale of tobacco products or nicotine delivery products;  
91 prohibits entry to a person under the age of 18 years of age during the time when the  
92 establishment is open for business; prohibits any food or beverage not sold directly by the  
93 business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco  
94 products or nicotine delivery products as required to be issued by the appropriate authority in the  
95 city or town where the establishment is located; and, maintains a valid permit to operate a  
96 smoking bar issued by the department of revenue.

97           SECTION 6. Section 22 of chapter 270 of the General Laws is hereby further amended  
98 by adding, in subsection (a) in line 10, the following definition:-

99           “E-cigarette”, any electronic device that can be used to deliver liquid nicotine vapor to  
100 the user, or release on vaporization of any liquid or solid, and shall include such devices whether  
101 manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

102           SECTION 7. Section 22 of chapter 270 of the General Laws is hereby further amended  
103 by adding the following subsection:-

104           (p) The provisions within this section pertaining to smoking shall also apply to use of e-  
105 cigarettes.