

HOUSE No. 4361

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 6, 2016.

The committee on Health Care Financing to whom was referred the Bill to protect youth from the health risks of tobacco and nicotine addiction (Senate, No. 2269), reports recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4361.

For the committee,

JEFFREY SÁNCHEZ.

HOUSE No. 4361

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)

By striking out all after the enacting clause and inserting in place thereof the following:-

1 “SECTION 1. Chapter 71 of the General Laws is hereby amended by striking out section
2 2A, as appearing in the 2014 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 2A. No person shall use tobacco products as defined in section 6 of chapter 270
5 within the school buildings or facilities or on the grounds or school buses of a primary or
6 secondary school, including public and private schools, or at any school-sponsored event.

7 Each school committee or board of trustees shall establish a policy regarding violations
8 of this section. The policy may include, but shall not be limited to, mandatory education classes
9 on the hazards of using tobacco products.

10 SECTION 2. Section 37H of said chapter 71, as so appearing, is hereby amended by
11 inserting after the word ‘products’, in line 4, the following words:- , as defined in section 6 of
12 chapter 270.

13 SECTION 3. Chapter 74 of the General Laws is hereby amended by adding the
14 following section:-

15 Section 57. No person shall use tobacco products as defined in section 6 of chapter 270
16 within the school buildings or facilities or on the grounds or school buses of a vocational school
17 or at any school-sponsored event at a vocational school.

18 Each school committee or board of trustees shall establish a policy regarding violations
19 of this section. The policy may include, but shall not be limited to, mandatory education classes
20 on the hazards of using of tobacco products.

21 SECTION 4. Chapter 94 of the General Laws is hereby amended by striking out section
22 307C, as appearing in the 2014 Official Edition, and inserting in place thereof the following
23 section:-

24 Section 307C. The department of public health may, in consultation with the attorney
25 general and the department of revenue, establish regulations for persons engaged in the sale or
26 shipment of tobacco products as defined in section 6 of chapter 270 to prevent the sale or
27 delivery of tobacco products to individuals under 21 years of age.

28 SECTION 5. Chapter 112 of the General Laws is hereby amended by inserting after
29 section 61 the following section:-

30 Section 61A. (a) As used in this section, the following words shall have the following
31 meanings unless the context clearly requires otherwise:

32 ‘Health care institution’, an individual, partnership, association, corporation or trust or a
33 person or group of persons that: (i) provides health care services and employs health care
34 providers subject to licensing under this chapter; or (ii) a retail establishment that sells

35 pharmaceutical goods and services and is subject to regulation by the board of registration in
36 pharmacy.

37 'Retail establishment', a store that sells goods to the public.

38 'Tobacco product', a tobacco product as defined in section 6 of chapter 270.

39 (b) No health care institution shall sell or authorize the sale of tobacco products within
40 the buildings or facilities or on the grounds of the health care institution. For the purposes of this
41 section, a retail establishment shall be considered a health care institution if it operates at a health
42 care institution or has a health care institution located on or within its premises; provided,
43 however, a retail establishment that provides optician, optometric, hearing aid or audiology
44 services but is not subject to regulation by the board of registration in pharmacy shall not be
45 considered a health care institution.

46 SECTION 6. Chapter 270 of the General Laws is hereby amended by striking out
47 sections 6 and 6A, as appearing in the 2014 Official Edition, and inserting in place thereof the
48 following 2 sections:-

49 Section 6. (a) As used in this section and section 6A, the following words shall have the
50 following meanings unless the context clearly requires otherwise:

51 'Manufacturer', a person or entity that manufactures or produces a tobacco product.

52 "Person", an individual, firm, fiduciary, partnership, corporation, trust or association,
53 however formed, a club, trustee, agency or receiver.

54 'Retail establishment', a physical place of business or a section of a physical place of
55 business where a tobacco product is offered for sale to consumers.

56 ‘Retail tobacco store’, an establishment: (i) that is not required to possess a retail food
57 permit; (ii) whose primary purpose is to sell or offer for sale to consumers, but not for resale, a
58 tobacco product and related paraphernalia in which the sale of other products is merely
59 incidental; (iii) that prohibits the entry of persons under the age of 21; and (iv) that maintains a
60 valid permit for the retail sale of a tobacco product as required to be issued by the appropriate
61 authority in the city or town in which the establishment is located.

62 ‘Retailer’, a person or entity that operates a store or premises that offers a tobacco
63 product for sale.

64 ‘Tobacco product’, a product containing, made or derived from tobacco or nicotine that is
65 intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,
66 snorted, sniffed or ingested by any other means including, but not limited to: cigarettes, cigars,
67 little cigars, chewing tobacco, pipe tobacco and snuff and electronic cigarettes, electronic cigars,
68 electronic pipes or other similar products that rely on vaporization or aerosolization; provided,
69 however, that ‘tobacco product’ shall include any component, part or accessory of a tobacco
70 product; and provided further, that ‘tobacco product’ shall not include a product that has been
71 approved by the United States Food and Drug Administration for the sale as a tobacco cessation
72 product and is marketed and sold exclusively for the approved purpose.

73 (b) No person shall sell a tobacco product to a person under the age of 21 or give a
74 tobacco product to a person under the age of 21.

75 (c) No manufacturer or retailer shall distribute or cause to be distributed a free sample of
76 a tobacco product in a retail or other commercial establishment; provided, however, that this
77 subsection shall not apply to retail tobacco stores and smoking bars as defined in section 22.

78 (d) A person who violates this section shall be punished by a fine of \$100 for the first
79 offense, \$200 for a second offense and \$300 for a third or subsequent offense.

80 (e) The department of public health may promulgate regulations to implement this
81 section.

82 Section 6A. (a) For purposes of this section, 'tobacco vending machine', shall mean an
83 automated or mechanical self-service device which, upon insertion of money or other form of
84 payment, dispenses or creates a tobacco product.

85 (b) No person shall use a tobacco vending machine for the commercial distribution of
86 tobacco products or to otherwise sell tobacco products.

87 (c) A person who sells tobacco rolling papers to a person under the age of 21 shall be
88 punished by a fine of \$25 for the first offense, \$50 for the second offense and \$100 for a third or
89 subsequent offense.

90

91 SECTION 6A. Section 7 of said chapter 270, as so appearing, is hereby amended by
92 adding the following paragraph:-

93 The owner or other person in charge of a shop or other place used to sell any tobacco
94 products at retail shall conspicuously post signage provided by the department of public health
95 that discloses current referral information about smoking cessation which may include, but shall
96 not be limited to, the website of the Massachusetts Tobacco Cessation and Prevention Program
97 (www.makesmokinghistory.org) and the Massachusetts Smokers' Helpline at 1-800-Quit-Now
98 (1-800-784-8669).

99 SECTION 7. Subsection (a) of section 22 of said chapter 270, as appearing in the 2014
100 Official Edition, is hereby amended by striking out the definitions of ‘Smoking or smoke’ and
101 ‘Smoking bar’ and inserting in place thereof the following 3 definitions:-

102 ‘Smoking’, the inhaling, exhaling, burning or carrying of a lighted or heated cigar,
103 cigarette, pipe or other tobacco product or plant product intended for inhalation in any manner or
104 form; provided, however, that ‘smoking’ shall include the use of electronic cigarettes, electronic
105 cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

106 ‘Smoking bar’, an establishment that: (i) exclusively occupies an enclosed indoor space
107 and is primarily engaged in the retail sale of tobacco products as defined in section 6 for
108 consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or
109 other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person
110 under 21 years of age; (iii) prohibits any food or beverage not sold directly by the business from
111 being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco
112 product as required to be issued by the appropriate authority in the city or town in which the
113 establishment is located; and (v) maintains a valid permit to operate a smoking bar issued by the
114 department of revenue.

115 ‘Tobacco product’, a tobacco product as defined in section 6.

116 SECTION 8. Said section 22 of said chapter 270, as so appearing, is hereby further
117 amended by striking out, in lines 90, 276 and 281, the figure ‘18’ and inserting in place thereof,
118 in each instance, the following figure:- 21.

119 SECTION 9. Said chapter 270 is hereby further amended by adding the following
120 section:-

121 Section 27. (a) As used in this section, the following words shall have the following
122 meanings unless the context clearly requires otherwise:

123 'Child-resistant packaging', packaging intended to reduce the risk of children ingesting
124 nicotine that meets the minimum standards as set forth in 15 U.S.C. §§ 1471 to 1476, inclusive,
125 and 16 CFR § 1700 et seq.

126 'Liquid nicotine container', a package: (i) from which nicotine in a solution or other form
127 is accessible through normal and foreseeable use by a consumer; and (ii) that is used to hold
128 soluble nicotine in any concentration; provided, however, that the term 'liquid nicotine
129 container' shall not include a sealed, prefilled and disposable container of nicotine in a solution
130 or other form in which such container is inserted directly into an electronic cigarette, electronic
131 nicotine delivery system or other similar product if the nicotine in the container is inaccessible
132 through customary or reasonably foreseeable handling or use, including reasonably foreseeable
133 ingestion or other contact by children, as amended from time to time.

134 (b) No person shall knowingly sell, distribute or import for sale within the
135 commonwealth:

136 (i) a liquid or gel substance containing nicotine unless that product is contained in
137 child-resistant packaging; or

138 (ii) a nicotine liquid container unless that container includes child-resistant
139 packaging as part of its design.

140 (c) A person who violates this section shall be subject to a civil penalty of \$250 for a
141 first violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.

142 (d) The local board of health, the local department of public health, the local inspection
143 department or equivalent local authority or its agent shall enforce this section through the
144 noncriminal disposition of violations. In the city of Boston, the commissioner of health and the
145 commissioner's authorized agents shall enforce this section through the noncriminal disposition
146 of violations.

147 SECTION 10. The commissioner of public health may promulgate regulations to restrict
148 the sale of products containing nicotine to individuals under the age of 21; provided, however,
149 that a regulated product shall contain nicotine and be primarily manufactured or used to deliver
150 nicotine to the user. The commissioner shall send a notice of proposed changes, including
151 proposed draft regulations, to the house and senate committees on ways and means and the joint
152 committee on public health at least 90 days before filing draft regulations with the secretary of
153 state.

154 SECTION 11. On the effective date of this act, a retail establishment that sells tobacco
155 products as those terms are defined in section 6 of chapter 270 of the General Laws shall
156 conspicuously post a notice produced by the department of public health that states the minimum
157 legal sales age to purchase tobacco products. The notice shall include the dates that the minimum
158 age for purchase of tobacco products shall go into effect. Retail establishments shall
159 continuously post the notice until January 1, 2019.

160 SECTION 12. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
161 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
162 prohibit such sales to persons who attained the age of 18 before January 1, 2017.

163 SECTION 13. The center for health information and analysis, in collaboration with the
164 division of insurance, department of public health, the group insurance commission and the
165 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance
166 plan and compare the tobacco cessation benefits to the United States Preventive Services Task
167 Force recommendations for best practices for comprehensive tobacco cessation treatment.

168 SECTION 14. The special commission established in section 206 of chapter 139 of the
169 acts of 2012, and extended by section 24A of chapter 118 of the acts of 2013 is hereby revived
170 and continued. The commission shall file a report of its recommendations to the clerks of the
171 senate and house of representatives, the joint committee on public health, the joint committee on
172 health care financing and the house and senate committees on ways and means not later than
173 December 31, 2017.

174 SECTION 15. This act shall take effect on January 1, 2017.”.