

HOUSE No. 1217

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:
Jeffrey Sánchez	15th Suffolk	1/13/2017
Frank I. Smizik	15th Norfolk	
Kevin G. Honan	17th Suffolk	
James M. Cantwell	4th Plymouth	
Jonathan Hecht	29th Middlesex	
Kenneth I. Gordon	21st Middlesex	
Smitty Pignatelli	4th Berkshire	
Michael S. Day	31st Middlesex	
Alice Hanlon Peisch	14th Norfolk	

HOUSE No. 1217

By Mr. Sánchez of Boston, a petition (accompanied by bill, House, No. 1217) of Jeffrey Sánchez and others for legislation to prohibit the sale of electronic devices used to deliver liquid nicotine vapor to minors. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2050 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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. 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 58. 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 270 of the General Laws is hereby amended by striking out
29 sections 6 and 6A, as appearing in the 2014 Official Edition, and inserting in place thereof the
30 following 2 sections:-

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

33 ‘Manufacturer’, a person or entity that manufactures or produces a tobacco product.

34 “Person”, an individual, firm, fiduciary, partnership, corporation, trust or association,
35 however formed, a club, trustee, agency or receiver.

36 ‘Retail establishment’, a physical place of business or a section of a physical place of
37 business where a tobacco product is offered for sale to consumers.

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

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

46 ‘Tobacco product’, a product containing, made or derived from tobacco or nicotine that is
47 intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,
48 snorted, sniffed or ingested by any other means including, but not limited to: cigarettes, cigars,
49 little cigars, chewing tobacco, pipe tobacco and snuff and electronic cigarettes, electronic cigars,
50 electronic pipes or other similar products that rely on vaporization or aerosolization; provided,
51 however, that ‘tobacco product’ shall include any component, part or accessory of a tobacco

52 product; and provided further, that ‘tobacco product’ shall not include a product that has been
53 approved by the United States Food and Drug Administration for the sale as a tobacco cessation
54 product and is marketed and sold exclusively for the approved purpose.

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

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

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

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

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

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

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

72 SECTION 6. Subsection (a) of section 22 of said chapter 270, as appearing in the 2014
73 Official Edition, is hereby amended by striking out the definitions of ‘Smoking or smoke’ and
74 ‘Smoking bar’ and inserting in place thereof the following 3 definitions:-

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

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

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

89 SECTION 7. Said section 22 of said chapter 270, as so appearing, is hereby further
90 amended by striking out, in lines 90, 276 and 281, the figure ‘18’ and inserting in place thereof,
91 in each instance, the following figure:- 21.