

HOUSE No. 2864

The Commonwealth of Massachusetts

PRESENTED BY:

Paul McMurtry

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 to protect youth from the health risks of tobacco and nicotine addiction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>

<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Brian Murray</i>	<i>10th Worcester</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>

<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Bud Williams</i>	<i>11th Hampden</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>

<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>William Driscoll</i>	<i>7th Norfolk</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>

HOUSE No. 2864

By Mr. McMurtry of Dedham, a petition (accompanied by bill, House, No. 2864) of Paul McMurtry and others relative to the use of tobacco products in primary and secondary school buildings or facilities. Education.

The Commonwealth of Massachusetts

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

An Act to protect youth from the health risks of tobacco and nicotine addiction.

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

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

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

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

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

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

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

36 ‘Retail establishment’, a store that sells goods to the public.

37 ‘Tobacco product’, a tobacco product as defined in section 6 of chapter 270.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 SECTION 15: Nothing in the above sections shall permit the use of or sale and delivery
173 of tobacco products as defined herein in which the use of or sale and delivery of tobacco
174 products is or may hereafter be prohibited by law including, without limitation: any other law or
175 ordinance or by-law, or any fire, health or safety regulation. Nothing in the above sections shall
176 preempt further limitation of the use of or sale and delivery of tobacco products as defined herein
177 by the commonwealth or any department, agency or political subdivision of the commonwealth.

178 SECTION 16. This act shall take effect on July 1, 2017.”.