

HOUSE No. 4109

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, January 11, 2018.

The committee on Public Health to whom were referred the petition (accompanied by bill, House, No. 835) of Jonathan Hecht and others relative to defining child-resistant packaging of liquid nicotine containers and establishing civil penalties for violations, the petition (accompanied by bill, House, No. 1180) of Hannah Kane and others for legislation to prohibit the sale of electronic cigarettes to persons under 18 years of age, the 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, the petition (accompanied by bill, House, No. 2455) of Sean Garballey and others for legislation to prohibit the sale of tobacco products at certain health care institutions, and the 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, reports recommending that the accompanying bill (House, No. 4109) ought to pass.

For the committee,

KATE HOGAN.

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**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 2016 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, as so appearing, is hereby amended by
14 adding the 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 including public and private vocational schools, or at any vocational school-sponsored event.
18 Each school committee or board of trustees shall establish a policy regarding violations of this
19 section. The policy may include, but shall not be limited to, mandatory education classes on the
20 hazards of using of tobacco products.

21 SECTION 4. Chapter 94 of the General Laws, as so appearing, is hereby amended by
22 striking out section 307C and inserting in place thereof the following 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, as so appearing, is hereby amended by
28 inserting after 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 registration in
35 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, as so appearing, is hereby amended by
46 striking out sections 6 and 6A and inserting in place thereof the following 2 sections:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 SECTION 6A. Section 7 of said chapter 270 is hereby amended by striking out section 7
89 and inserting in place thereof the following section: —

90 Section 7. (a) A copy of sections 6 and 6A shall be posted conspicuously by a retailer, as
91 defined in section 6 of chapter 270, in their retail tobacco store, as defined in section 6 of chapter
92 270.

93 (b) The department of public health shall develop signage that discloses current referral
94 information about smoking cessation resources, which may include, but shall not be limited to,
95 the website of the Massachusetts Tobacco Cessation and Prevention Program
96 (www.makesmokinghistory.org) and the Massachusetts Smokers' Helpline at 1-800-Quit-Now

97 (1-800-784-8669). Retailers, as defined in section 6 of chapter 270, shall conspicuously post
98 such signage in their retail tobacco store, as defined in section 6 of chapter 270.

99 (c) Whoever violates the provisions in this section shall be punished by a fine of not more
100 than fifty dollars. Any person unlawfully removing a copy of the aforementioned signage on the
101 premises of a retail tobacco store shall be punished by a fine of ten dollars.

102 SECTION 7. Subsection (a) of section 22 of said chapter 270, is hereby amended by
103 striking out the definitions of ‘Smoking or smoke’ and ‘Smoking bar’ and inserting in place
104 thereof the following 3 definitions:—

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

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

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

119 SECTION 8. Said section 22 of said chapter 270 is hereby further amended by striking
120 out, in lines 90, 276 and 281, the figure ‘18’ and inserting in place thereof, in each instance, the
121 following figure:— 21.

122 SECTION 9. Said chapter 270 is hereby further amended by adding the following
123 section—

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

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

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

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

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

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

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

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

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

157 SECTION 11. On the effective date of this act, a retail establishment that sells tobacco
158 products as those terms are defined in section 6 of chapter 270 of the General Laws shall
159 conspicuously post a notice produced by the department of public health that states the minimum
160 legal sales age to purchase tobacco products. The notice shall include the dates that the minimum

161 age for sale of tobacco products shall go into effect. Retail establishments shall continuously post
162 the notice until January 1, 2020.

163 SECTION 12. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
164 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
165 prohibit such sales to persons who attained the age of 18 before January 1, 2017, provided,
166 however, that persons who attained the age of 18 before January 1, 2017 shall be subject to any
167 municipal ordinance, by-law or other regulation on the minimum age for sales of tobacco
168 products in effect on January 1, 2018.

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

174 SECTION 14. Section 206 of chapter 139 of the acts of 2012 is hereby amended by
175 inserting after the words “commissioner of public health, or a designee” the following:—, who
176 shall chair the commission.

177 SECTION 15. Section 166 of chapter 133 of the acts of 2016 is hereby amended by
178 striking out “December 31, 2017” and inserting in place thereof the following:—June 30, 2018.

179 SECTION 16. Nothing in the above sections shall permit the use of or sale and delivery
180 of tobacco products as defined herein in which the use of or sale and delivery of tobacco
181 products is or may hereafter be prohibited by law including, without limitation: any other law or
182 ordinance or by-law, or any fire, health or safety regulation. Nothing in the above sections shall

183 preempt further limitation of the use of or sale and delivery of tobacco products as defined herein
184 by the commonwealth or any department, agency or political subdivision of the commonwealth.

185 SECTION 17. This act shall take effect on July 1, 2018.