

HOUSE No. 4479

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 9, 2018.

The committee on Ways and Means, to whom was referred the Bill to protect youth from the health risks of tobacco and nicotine addiction (House, No. 4109), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4479) [Mr. Boldyga of Southwich dissents].

For the committee,

JEFFREY SÁNCHEZ.

HOUSE No. 4479

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. Section 73 of chapter 54 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “meeting”, in line 2, the
3 following words:- , use any vapor product, as defined in section 6 of chapter 270.

4 SECTION 2. Section 10 of chapter 64C of the General Laws, as appearing in the 2016
5 Official Edition, is hereby amended by striking out, in lines 41, 42, 46 and 50, the word
6 “eighteen” and inserting in place thereof, in each instance, the following figure:- 21.

7 SECTION 3. Section 1 of chapter 71 of the General Laws, as appearing in the 2016
8 Official Edition, is hereby amended by inserting after the word “tobacco”, in line 28, the
9 following words:- and vapor products.

10 SECTION 4. Said chapter 71 of the General Laws, as so appearing, is hereby amended by
11 striking out section 2A and inserting in place thereof the following section:-

12 Section 2A. No person shall use tobacco products or vapor products, as defined in section
13 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a
14 primary or secondary school, including public and private schools, or at any school-sponsored
15 event. Each school committee or board of trustees shall establish a policy regarding violations of
16 this section. The policy may include, but shall not be limited to, mandatory education classes on
17 the hazards of using tobacco products or vapor products.

18 SECTION 5. Section 37H of said chapter 71, as so appearing, is hereby amended by
19 inserting after the word “products”, in line 4, the following words:- or vapor products, as defined
20 in section 6 of chapter 270,.

21 SECTION 6. Chapter 74 of the General Laws, as appearing in the 2016 Official Edition,
22 is hereby amended by adding the following section:-

23 Section 58. No person shall use tobacco products or vapor products, as defined in section
24 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a
25 vocational school, including public and private vocational schools, or at any vocational school-
26 sponsored event. Each school committee or board of trustees shall establish a policy regarding
27 violations of this section. The policy may include, but shall not be limited to, mandatory
28 education classes on the hazards of using tobacco products or vapor products.

29 SECTION 7. Section 307 of chapter 94 of the General Laws, as appearing in the 2016
30 Official Edition, is hereby amended by inserting after the words “tobacco”, in line 2, the
31 following words:- , vapor products.

32 SECTION 8. Said chapter 94 is hereby amended by striking out section 307C, as so
33 appearing, and inserting in place thereof the following section:-

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

39 SECTION 9. Section 72X of chapter 111 of the General Laws, as appearing in the 2016
40 Official Edition, is hereby amended by striking out the second sentence and inserting in place
41 thereof the following sentence:- Smoking tobacco products or vapor products, as defined in
42 section 6 of chapter 270, by any employee of such nursing homes is hereby prohibited in all
43 patient care areas..

44 SECTION 10. Chapter 112 of the General Laws, as appearing in the 2016 Official
45 Edition, is hereby amended by inserting after section 61 the following section:-

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

48 “Health care institution”, (i) an individual, partnership, association, corporation or trust or
49 a person or group of persons that provides health care services and employs health care providers
50 subject to licensing under this chapter; or (ii) a retail establishment that sells pharmaceutical
51 goods and services and is subject to regulation by the board of registration in pharmacy. For the
52 purposes of this section, a retail establishment shall be considered a health care institution if it
53 operates at a health care institution or has a health care institution located on or within its
54 premises; provided, however, a retail establishment that provides optician, optometric, hearing

55 aid or audiology services but is not subject to regulation by the board of registration in pharmacy
56 shall not be considered a health care institution.

57 (b) No health care institution shall sell or authorize the sale of tobacco products or vapor
58 products, as defined in section 6 of chapter 270, within the buildings or facilities or on the
59 grounds of the health care institution.

60 SECTION 11. Chapter 270 of the General Laws, as so appearing, is hereby amended by
61 striking out sections 6 and 6A, as so appearing, and inserting in place thereof the following 2
62 sections:-

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

65 “Manufacturer”, a person or entity that manufactures or produces a tobacco product or
66 vapor product.

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

69 “Retail establishment”, a physical place of business or a section of a physical place of
70 business where a tobacco product or vapor product is offered for sale to consumers.

71 “Retailer”, a person or entity that operates a retail establishment.

72 “Tobacco product”, any product containing, made, or derived from tobacco or
73 nicotine that is intended for human consumption, including but not limited to, cigarettes, cigars,
74 little cigars, pipe tobacco, snuff, and any product or electronic device that contains nicotine or
75 produces a vapor containing nicotine; provided further, that “tobacco product” shall not include a

76 vapor product as defined in this section nor shall it include a product that has been approved by
77 the United States Food and Drug Administration for the sale or use as a tobacco cessation
78 product and is marketed and sold exclusively for the approved purpose.

79 “Vapor product”, any non-combustible product that employs a heating element,
80 power source, electronic circuit, or other electronic, chemical or mechanical means, that can be
81 used to produce vapor intended for human consumption, including but not limited to, any
82 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape
83 pen, vaporizer or similar product or device and any container containing a consumable material
84 that has been manufactured to be used with or in an electronic cigarette, electronic cigar,
85 electronic cigarillo, electronic pipe, electronic hookah, vape pen, vaporizer or similar product or
86 device; provided, however, the term “vapor product” shall not include a tobacco product, as
87 defined in this section, marijuana, as defined in section 1 of chapter 94G, or any product
88 regulated as a drug or device by the United States Food and Drug Administration under Chapter
89 V of the Food, Drug and Cosmetic Act.

90 (b) No person shall sell a tobacco product or a vapor product to a person under the age of
91 21 or give a tobacco product or vapor product to a person under the age of 21.

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

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

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

100 Section 6A. (a) For purposes of this section, the term “vending machine”, shall mean an
101 automated or mechanical self-service device which, upon insertion of money or other form of
102 payment, dispenses or creates a vapor product.

103 (b) No person shall use a vending machine for the commercial distribution of vapor
104 products or to otherwise sell vapor products.

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

108 SECTION 12. Section 7 of said chapter 270, as so appearing, is hereby amended by
109 striking out section 7 and inserting in place thereof the following section:-

110 Section 7. (a) A copy of sections 6 and 6A shall be posted conspicuously by a retailer, as
111 defined in section 6 of this chapter, in the retail establishment, as defined in section 6 of this
112 chapter.

113 (b) The department of public health shall develop signage that discloses current referral
114 information about smoking cessation resources. Retailers, as defined in section 6, shall
115 conspicuously post such signage in the retail establishment, as defined in said section 6.

116 (c) Whoever violates the provisions in this section shall be punished by a fine of not more
117 than \$50. Any person unlawfully removing a copy of the aforementioned signage on the
118 premises of a retail tobacco store shall be punished by a fine of \$10.

119 SECTION 13. Said section 22 of said chapter 270, as so appearing, is hereby amended by
120 striking out, in lines 90, 276 and 281, the figure “18” and inserting in place thereof, in each
121 instance, the following figure:- 21.

122 SECTION 14. Subsection (a) of said section 22 of said chapter 270, is hereby amended
123 by striking out the definitions of “Smoking or smoke” and “Smoking bar” and inserting in place
124 thereof the following 4 definitions:-

125 “Smoking” or “smoke”, the inhaling, exhaling, burning or carrying of a lighted or heated
126 cigar, cigarette, pipe or other tobacco product, plant product or vapor product intended for
127 inhalation in any manner or form.

128 “Smoking bar”, an establishment that: (i) exclusively occupies an enclosed indoor space
129 and is primarily engaged in the retail sale of tobacco products as defined in section 6 for
130 consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or
131 other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person
132 under 21 years of age; (iii) prohibits any food or beverage not sold directly by the business from
133 being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco
134 product as required to be issued by the appropriate authority in the city or town in which the
135 establishment is located; and (v) maintains a valid permit to operate a smoking bar issued by the
136 department of revenue.

137 “Tobacco product”, a tobacco product as defined in section 6.

138 “Vapor product”, a vapor product as defined in section 6.

139 SECTION 15. Said section 22 of said chapter 270, as so appearing, is hereby amended by
140 inserting after the words “tobacco products”, in line 195, the following words:- or vapor
141 products.

142 SECTION 16. Said section 22 of said chapter 270, as so appearing, is hereby amended by
143 inserting after the words “tobacco products”, in line 239, the following words:- or vapor
144 products.

145 SECTION 17. Said section 22 of said chapter 270, as so appearing, is hereby amended by
146 inserting after the word “smoke”, in line 249, the following words:- or vapors.

147 SECTION 18. Said chapter 270 is hereby further amended by adding the following
148 section:-

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

151 “Child-resistant packaging”, packaging intended to reduce the risk of children ingesting
152 nicotine that meets the minimum standards as set forth in 16 CFR §1700 et seq., pursuant to 15
153 U.S.C. §§1471 to 1476, inclusive.

154 “Electronic liquid container”, a package that is used to hold, in any concentration: (i)
155 nicotine in a solution or other form; or (ii) any other liquid or substance that can be used to
156 produce vapor from consumable material intended for human consumption; provided, however,
157 that the term “electronic liquid container” shall not include a sealed, prefilled and disposable
158 container of nicotine in a solution or other form in which such container is inserted directly into
159 an electronic cigarette, electronic nicotine delivery system or other similar product.

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

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

164 (ii) an electronic liquid container unless that container includes child-resistant packaging
165 as part of its design.

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

168 (d) The local board of health, the local department of public health, the local inspection
169 department or equivalent local authority or its agent shall enforce this section through the
170 noncriminal disposition of violations.

171 SECTION 19. Section 43A of chapter 272 of the General Laws, as appearing in the 2016
172 Official Edition, is hereby amended by striking out, in line 4, the words “or pipe shall” and
173 inserting in place thereof the following words:- pipe, tobacco product or vapor product, as
174 defined in section 6 of chapter 270, shall.

175 SECTION 20. Section 166 of chapter 133 of the acts of 2016 is hereby amended by
176 striking out, in line 6, the words “December 31, 2017” and inserting in place thereof the
177 following words:- December 31, 2018.

178 SECTION 21. Section 206 of chapter 139 of the acts of 2012 is hereby amended by
179 inserting after the word “designee”, in line 10, the following words:-, who shall serve as chair.

180 SECTION 22. The commissioner of public health may promulgate regulations to restrict
181 the sale of tobacco products and vapor products to individuals under the age of 21. The
182 commissioner shall send a notice of proposed changes, including proposed draft regulations, to
183 the house and senate committees on ways and means and the joint committee on public health
184 not less than 90 days before filing draft regulations with the state secretary.

185 SECTION 23. On the effective date of this act, a retail establishment that sells tobacco
186 products or vapor products as those terms are defined in section 6 of chapter 270 of the General
187 Laws shall conspicuously post a notice produced by the department of public health that states
188 the minimum legal age to purchase tobacco products and vapor products. The notice shall
189 include the dates that the minimum age to purchase tobacco products and vapor products shall go
190 into effect. Retail establishments shall continuously post the notice until January 1, 2022.

191 SECTION 24. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
192 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
193 prohibit such sales to persons who attained the age of 18 before December 31, 2018, provided,
194 however, notwithstanding section 26 of this act, that persons who attained the age of 18 before
195 December 31, 2018 shall be subject to any municipal ordinance, by-law or other regulation that
196 prohibited sales of tobacco products or vapor products to persons under the age of 19, 20, or 21
197 in effect on January 1, 2019.

198 SECTION 25. The center for health information and analysis, in collaboration with the
199 division of insurance, department of public health, the group insurance commission and the
200 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance

201 plan and compare the tobacco cessation benefits to the United States Preventive Services Task
202 Force recommendations for tobacco smoking cessation in adults.

203 SECTION 26. This act shall preempt, supersede or nullify any inconsistent, contrary or
204 conflicting state or local law relating to the minimum age for the sale or delivery of tobacco
205 products or vapor products. This act shall not otherwise preempt the authority of any city or town
206 to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the
207 purchase of tobacco products or vapor products.

208 SECTION 27. This act shall take effect on December 31, 2018.