FILED ON: 7/18/2018

HOUSE . . . . . No. 4784

Text of a further amendment, offered by Ms. Hogan of Stow, to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2585) of the House Bill protecting youth from the health risks of tobacco and nicotine addiction (House, No. 4486). July 18, 2018.

The Commonwealth of Massachusetts

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

Text of a further amendment, offered by Ms. Hogan of Stow, to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2585) of the House Bill protecting youth from the health risks of tobacco and nicotine addiction (House, No. 4486). July 18, 2018..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 64C of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 3, the words “meanings:—” and inserting in place thereof the following words:- meanings:— “commissioner”, the commissioner of revenue;.

SECTION 2. Section 10 of said chapter 64C, as so appearing, is hereby amended by striking out, in lines 46 and 50, the word “eighteen” and inserting in place thereof, in each instance, the following figure:- 21.

SECTION 3. Said section 10 of said chapter 64C, as so appearing, is hereby amended by striking out the eighth sentence.

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

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

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

SECTION 5. Chapter 74 of the General Laws is hereby amended by adding the following section:-

Section 58. No person shall use a tobacco product, as defined in section 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a public or private vocational school or at a vocational school-sponsored event.

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

SECTION 6. Chapter 94 of the General Laws is hereby amended by striking out section 307C, as appearing in the 2016 Official Edition, and inserting in place thereof the following section:-

Section 307C. The department of public health may, in consultation with the attorney general and the department of revenue, establish regulations for persons engaged in the sale or

shipment of a tobacco product, as defined in section 6 of chapter 270, to prevent the sale or delivery of tobacco products to a person under 21 years of age.

SECTION 7. Section 72X of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Using tobacco products, as defined in section 6 of chapter 270, by any employee of such nursing homes is hereby prohibited in all patient care areas.

SECTION 8. Chapter 112 of the General Laws is hereby amended by inserting after section 61 the following section:-

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

"Health care institution", (i) an individual, partnership, association, corporation or trust or a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or (ii) a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. For the purpose of this section, a retail establishment shall be considered a health care institution if it operates at a health care institution or has a health care institution located on or within its premises; provided, however, a retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution.

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

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

SECTION 9. Chapter 270 of the General Laws is hereby amended by striking out sections 6 to 7, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the following 3 sections:-

Section 6. (a) As used in this section and sections 6A and 7, the following words shall have the following meanings unless the context clearly requires otherwise:

"Manufacturer", a person that manufactures or produces a tobacco product.

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

"Retail establishment", a physical place of business or a section of a physical place of business wherein a tobacco product is offered for sale to consumers.

"Retailer", a person that operates a retail establishment.

"Tobacco product", a product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization; provided, however, that "tobacco product" shall also include any component, part or accessory of a tobacco product; and provided further, that "tobacco product"' shall not include a product that has been approved by the United States Food and Drug

Administration for the sale or use as a tobacco cessation product and is marketed and sold exclusively for the approved purpose.

(b) No person shall sell or provide a tobacco product to a person who is under 21 years of age.

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

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

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

Section 6A. A person who sells tobacco rolling papers to a person under the age of 21 shall be punished by a fine of $25 for the first offense, $50 for the second offense and $100 for a third or subsequent offense.

Section 7. (a) A copy of sections 6 and 6A shall be posted conspicuously in a retail establishment.

(b) The department of public health shall develop signage that shall disclose referral information for smoking cessation resources. Retailers shall conspicuously post such signage in their retail establishments.

(c) Whoever violates this section shall be punished by a fine of not more than $50. Any person unlawfully removing a copy of the aforementioned signage on the premises of a retail establishment shall be punished by a fine of $10.

SECTION 10. Section 22 of said chapter 270 is hereby amended by striking out, in lines 90, 276 and 281, as so appearing, the figure “18” and inserting in place thereof, in each instance, the following figure:- 21.

SECTION 11. Subsection (a) of said section 22 of said chapter 270, as amended by section 46 of chapter 55 of the acts of 2017, is hereby further amended by striking out the definitions of “Smoking” or “smoke” and “Smoking bar” and inserting in place thereof the following 3 definitions:-

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

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

the establishment is located; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

"Tobacco product", a tobacco product as defined in section 6.

SECTION 12. Said section 22 of said chapter 270 is hereby further amended by striking out the word "tobacco" in line 249, as appearing in the 2016 Official Edition.

SECTION 13. Said chapter 270 is hereby further amended by adding the following section:-

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

"Child-resistant packaging", packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C. 1471 to 1476, inclusive as amended from time to time.

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

(b) No person shall knowingly sell, distribute or import for sale:

(i) a liquid or gel substance containing nicotine unless the substance is contained in child-resistant packaging; or

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

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

(d) Local boards of health, departments of public health, inspection departments or equivalent local authorities or their agents shall enforce this section through the noncriminal disposition of violations.

SECTION 14. Section 43A of chapter 272 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 4, the words “cigar, cigarette, or pipe” and inserting in place thereof the following words:- pipe or tobacco product as defined in section 6 of chapter 270.

SECTION 15. Section 206 of chapter 139 of the acts of 2012, as amended by section 24A of chapter 118 of the acts of 2013 and section 166 of chapter 133 of the acts of 2016, is hereby further amended by inserting after the word “designee”, in line 10, the following words:-, who shall serve as chair.

SECTION 16. Said section 206 of said chapter 139 as amended by section 166 of chapter 133 of the acts of 2016 is hereby further amended by striking out, in line 6, the figure “2017” and inserting in place thereof the following figure:- 2018.

SECTION 17. The commissioner of public health may promulgate regulations to restrict the sale of tobacco products to persons under the age of 21. The commissioner shall send a notice of proposed changes, including proposed draft regulations, to the house and senate committees on ways and means and the joint committee on public health not less than 90 days before filing any such draft regulations with the secretary of state.

SECTION 18. On the effective date of this act, a retail establishment, as defined in section 6 of chapter 270 of the General Laws, that sells a tobacco product, as defined in said section 6 of said chapter 270, shall conspicuously post a notice produced by the department of public health that states the minimum age for a person to purchase a tobacco product. The notice shall include the date that the minimum sales age to purchase tobacco products shall go into effect. Retail establishments shall continuously post the notice until January 1, 2022.

SECTION 19. Notwithstanding subsection (b) of section 6 of chapter 270 of the General Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not prohibit such sales to persons who attained the age of 18 before December 31, 2018; provided, however, notwithstanding section 22, that a person who attained the age of 18 before December 31, 2018 shall be subject to any municipal ordinance, by-law or other regulation that prohibited sales of tobacco products to persons under the age of 19, 20 or 21 in effect on December 30, 2018.

SECTION 20. The center for health information and analysis, in collaboration with the division of insurance, the department of public health, the group insurance commission and the office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance plan and compare the tobacco cessation benefits to the United States Preventive Services Task

Force recommendations for tobacco smoking cessation in adults. The center shall provide a report of its findings on its website and also forward a copy of the report to the clerks of the house of representatives and the senate, the joint committee on public health, the joint committee on healthcare financing and the house and senate committees on ways and means not later than July 1, 2019.

SECTION 21. Notwithstanding any general or special law to the contrary, there shall be a special legislative commission established and governed by section 2A of chapter 4 of the General Laws to study and provide recommendations regarding the vaping industry.

The special legislative commission shall examine the use of vapes, juuls, and other e-cigarettes, particularly among teens and young adults, and investigate how minors are achieving access to such devices. The special legislative commission shall also study the potential negative health effects of using different e-cigarette devices. The study shall include, but not be limited to, considering ways to regulate the vaping industry, identifying opportunities to educate students on the dangers of e-cigarettes and related devices in comparison to regular cigarettes, and developing best practices for restricting the use of e-cigarette devices in and near schools.

The special legislative commission shall consist of 15 members, including the house and senate chairs of the joint committee of public health, who shall be the co-chairs; the speaker of the house of representatives or a designee; the president of the senate or a designee; the house minority leader or a designee; the senate minority leader or a designee; the commissioner of public health or a designee; and 8 members to be appointed by the governor; provided that, 1 shall be from the Massachusetts Cancer Action Center; 2 shall be representatives from the Massachusetts Health and Hospital Association; 1 shall have experience as a school resource

officer; 2 shall be school administrators; and 2 shall be representatives from the tobacco or vaping industry.

The special legislative commission shall submit its report and findings, along with any recommendations, to the house and senate committees on ways and means, the joint committee on public health, and the clerks of the house of representatives and senate no later than January 1, 2020.

SECTION 22. This act shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law relating to the minimum sales age to purchase tobacco products; provided, that this act shall neither preempt, supersede nor nullify any inconsistent, contrary or conflicting local law in effect on December 30, 2018 that prohibits the sale of tobacco products to persons under the age of 19, 20, or 21 as applied to persons who attained the age of 18 before December 31, 2018. This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.

SECTION 23. This act shall take effect on December 31, 2018.