

# SENATE . . . . . No. 2585

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Senate, June 28, 2018 – Text of the Senate amendment to the House Bill protecting youth from the health risks of tobacco and nicotine addiction (House, No. 4486)

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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1           SECTION 1. Section 6 of chapter 14 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out, in lines 91 and 92, the words “, vending  
3 machine operator”.

4           SECTION 2. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby  
5 amended by striking out, in lines 6 and 22, each time they appear, the words “, vending machine  
6 operator”.

7           SECTION 3. Said section 67 of said chapter 62C, as so appearing, is hereby further  
8 amended by striking out, in lines 48 and 49, and in lines 63 and 64, each time they appear, the  
9 words “, vending machine operators”.

10          SECTION 4. Said section 67 of said chapter 62C, as so appearing, is hereby further  
11 amended by striking out, in line 68, the words “, cigar distributor or vending machine operator”  
12 and inserting in place thereof the following words:- or cigar distributor.

13          SECTION 5. Section 1 of chapter 64C of the General Laws, as so appearing, is hereby  
14 amended by striking out the first paragraph and inserting in place thereof the following  
15 paragraph:-

16           Section 1. For the purposes of this chapter, the following words shall have the following  
17 meanings unless the context clearly requires otherwise:

18           “Cigarette”, (i) a roll of tobacco wrapped in paper or any other substance not containing  
19 tobacco; (ii) little cigars, which shall include rolls of tobacco wrapped in leaf tobacco or any  
20 substance containing tobacco and as to which 1,000 units weigh not more than 3 pounds; and  
21 (iii) a roll of tobacco wrapped in a substance containing tobacco which, because of its  
22 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be  
23 offered to or purchased by consumers as a cigarette.

24           “Commissioner”, the commissioner of revenue.

25           “Licensee”, a person licensed as a manufacturer, wholesaler, unclassified acquirer,  
26 transportation company or retailer pursuant to section 67 of chapter 62C.

27           “Manufacturer”, a person who manufactures or produces cigarettes within or without the  
28 commonwealth.

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

31           “Place of business”, a place where tobacco products are sold or where tobacco products  
32 are brought or kept for the purpose of sale or consumption, including in a vessel, vehicle,  
33 airplane or train.

34           “Retailer”, a person, other than a transportation company, who operates a store or  
35 concession for the purpose of making sales of tobacco products at retail.

36           “Sale”, in addition to its ordinary meaning, “sale” shall include usage, gifting,  
37 exchanging and bartering.

38           “Stamper”, a person authorized by the commissioner to purchase and affix adhesive or  
39 meter stamps under this chapter.

40           “Tobacco products”, cigarettes and smokeless tobacco.

41           “Transportation company”, a person operating or supplying to a common carrier, cars,  
42 boats or other vehicles for the transportation or accommodation of passengers and engaged in the  
43 sale of tobacco products at retail.

44           “Unclassified acquirer”, a person, other than a transportation company or a purchaser  
45 who purchases at retail from a licensed retailer, who imports or acquires tobacco products from  
46 anyone other than a licensed manufacturer or wholesaler.

47           “Wholesaler”, a person who purchases directly from the manufacturer at least 75 per cent  
48 of all tobacco products purchased by the wholesaler and who sells at least 75 per cent of those  
49 tobacco products and any other person who purchases from a manufacturer or other person so  
50 purchasing and selling and licensed as a wholesaler; provided, however, that such other person  
51 shall maintain an established place of business where substantially all of the business is the sale  
52 of tobacco products and related merchandise at wholesale to licensees and where, at all times, a  
53 substantial stock of tobacco products and related merchandise is available to retailers for resale  
54 and a chain of stores retailing tobacco products to the consumer if 75 per cent of its purchases are  
55 made directly from the manufacturer.

56 SECTION 6. Said chapter 64C is hereby further amended by striking out section 2, as so  
57 appearing, and inserting in place there of the following section:-

58 Section 2. No person shall sell tobacco products or act as a manufacturer, wholesaler,  
59 unclassified acquirer, transportation company or retailer unless licensed to do so in accordance  
60 with section 67 of chapter 62C. If a manufacturer, wholesaler or unclassified acquirer acts in  
61 more than 1 of these capacities at any 1 place of business, such manufacturer, wholesaler or  
62 unclassified acquirer shall obtain a license for each such capacity. Each license so issued or a  
63 duplicate copy thereof shall be prominently displayed on the premises covered by the license.

64 SECTION 7. Section 2A of said chapter 64C, as so appearing, is hereby amended by  
65 striking out, the definition of “Wholesale dealer” and inserting in place thereof the following  
66 definition:-

67 “Wholesale dealer”, a person who sells cigarettes or tobacco products to retail dealers or  
68 other persons for the purposes of resale.

69 SECTION 8. Section 5 of said chapter 64C, as so appearing, is hereby amended by  
70 striking out, in lines 1 and 2, and in line 48, the words “, vending machine operator”, each time  
71 they appear.

72 SECTION 9. Said section 5 of said chapter 64C, as so appearing, is hereby further  
73 amended by striking out the fifth and sixth sentences.

74 SECTION 10. Subsection (l) of section 7B of said chapter 64C, as so appearing, is  
75 hereby amended by striking out paragraph (4) and inserting in place thereof the following  
76 paragraph:-

77 (4) Whenever the commissioner or a police officer discovers a person who is not a  
78 licensed cigar distributor or one authorized by the commissioner to be in possession of untaxed  
79 cigars or smoking tobacco, the commissioner or the police officer may seize and take possession  
80 of those cigars and smoking tobacco and any receptacle in which they are contained or in which  
81 they are transported; provided, however, that for the purposes of this paragraph, "receptacle"  
82 shall include, but not be limited to, a motor vehicle, boat or airplane. Such cigars, smoking  
83 tobacco or receptacle so seized shall be turned over to the commissioner and shall be forfeited to  
84 the commonwealth. The commissioner shall destroy the seized cigars or smoking tobacco and  
85 shall destroy or otherwise dispose of the receptacle; provided, however, that the commissioner  
86 may, within a reasonable time after any such seizure, sell the receptacle at public sale and deposit  
87 the proceeds in the General Fund; and provided further, that the commissioner shall provide  
88 public notice of any such sale at least 5 days prior to the day of sale.

89 SECTION 11. Section 8 of said chapter 64C, as so appearing, is hereby amended by  
90 striking out, in line 9, the words ", the vending machines".

91 SECTION 12. Said chapter 64C is hereby further amended by striking out section 10, as  
92 so appearing, and inserting in place thereof the following section:-

93 Section 10. A person who sells, offers for sale or possesses with intent to sell cigarettes  
94 or who otherwise acts as a manufacturer, wholesaler, transportation company or retailer without  
95 being licensed so to do shall, in addition to any other penalty provided in this chapter, be  
96 punished by a civil penalty of not more than \$250 for a first violation, not more than \$500 for a  
97 second violation and not more than \$1,000 for a third or subsequent violation. A person who is  
98 convicted of acting as an unclassified acquirer without being licensed as provided in section 2

99 shall be punished by a fine of not less than \$500 but not more than \$1,000 or by imprisonment  
100 for not more than 1 year or by both such fine and imprisonment. Any person who knowingly  
101 purchases or possesses cigarettes not manufactured, purchased or imported by a licensed  
102 manufacturer, wholesaler, unclassified acquirer or transportation company shall be punished by a  
103 fine of not less than \$50 but not more than \$1,000. A person who knowingly possesses a  
104 shipping case or other container of cigarettes and such shipping case or container does not bear  
105 the name and address of the person receiving the cigarettes from a manufacturer or such other  
106 markings as the commissioner may prescribe and any person who knowingly possesses a  
107 shipping case or other container of cigarettes from which such name and address has been erased  
108 or defaced shall be punished by a civil penalty of not more than \$250 for a first violation, not  
109 more than \$500 for a second violation and \$1,000 for a third or subsequent violation. No person,  
110 either as principal or agent, shall sell or solicit orders for cigarettes to be shipped, mailed or  
111 otherwise sent or brought into the commonwealth to a person who is not a licensed manufacturer,  
112 wholesaler, unclassified acquirer or transportation company unless the cigarettes are to be sold to  
113 or through a licensed wholesaler. Each violation of this chapter shall constitute a separate  
114 offense. A person who files a false return, affidavit or statement or who otherwise violates this  
115 chapter and no other penalty has been provided shall be punished by a fine of not more than  
116 \$1,000 dollars or by imprisonment for not more than 1 year or by both such fine and  
117 imprisonment. The department of state police and local police departments may enforce this  
118 chapter; provided, however, that at the request of the commissioner or a duly authorized agent,  
119 the department of state police and local police departments shall enforce of this section.

120 SECTION 13. Section 11 of said chapter 64C, as so appearing, is hereby amended by  
121 striking out the third to sixth sentences, inclusive.

122 SECTION 14. Section 13 of said chapter 64C, as so appearing, is hereby amended by  
123 striking out, in lines 50 and 51, the words “or any vending machine operator who operates  
124 vending machines in twenty-five or more locations”.

125 SECTION 15. Said section 13 of said chapter 64C, as so appearing, is hereby further  
126 amended by striking out, in line 78, the words “, vending machine operator”.

127 SECTION 16. Section 30 of said chapter 64C, as so appearing, is hereby amended by  
128 striking out, in lines 20 and 21, the words “and licensed vending machine operators”.

129 SECTION 17. Section 33 of said chapter 64C, as so appearing, is hereby amended by  
130 striking out, in lines 6 and 7, the words “and licensed vending machine operator”.

131 SECTION 18. Section 35 of said chapter 64C, as so appearing, is hereby amended by  
132 striking out, in line 12, the words “, the vending machines”.

133 SECTION 19. Said section 35 of said chapter 64C, as so appearing, is hereby further  
134 amended by striking out, in line 20, the word “, machines”.

135 SECTION 20. Said chapter 64C is hereby further amended by striking out section 38A,  
136 as so appearing, and inserting in place thereof the following section:-

137 Section 38A. Whenever the commissioner or a police officer discovers a person who is  
138 not a stamper, licensed transportation company or one authorized by the commissioner to be in  
139 possession of any cigarettes subject to tax under this chapter that do not have affixed to them the  
140 required Massachusetts stamps showing the payment of excise or in possession of any smokeless  
141 tobacco on which the tax has not been paid, the commissioner or the police officer may seize

142 and take possession of those cigarettes or smokeless tobacco and any receptacle in which they  
143 are contained or in which they are transported; provided, however, that , that for the purposes of  
144 this section, “receptacle” shall include, but not be limited to, a motor vehicle, boat or airplane.  
145 Such cigarettes, smokeless tobacco or receptacle so seized by a police officer shall be turned  
146 over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall  
147 destroy the seized cigarettes or smokeless tobacco and shall destroy or otherwise dispose of the  
148 receptacle; provided, however, that the commissioner may, within a reasonable time after any  
149 such seizure, sell the receptacle at public sale and deposit the proceeds in the General Fund; and  
150 provided further, that , the commissioner shall provide public notice of any such sale at least 5  
151 days prior to the day of sale.

152 SECTION 21. Chapter 71 of the General Laws is hereby amended by striking out section  
153 2A, as so appearing, and inserting in place thereof the following section:-

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

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

160 SECTION 22. Chapter 74 of the General Laws is hereby amended by adding the  
161 following section:-



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

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

168 SECTION 23. Chapter 94 of the General Laws is hereby amended by striking out section  
169 307C, as appearing in the 2016 Official Edition, and inserting in place thereof the following  
170 section:-

171 Section 307C. The department of public health may, in consultation with the attorney  
172 general and the department of revenue and the multi-agency illegal tobacco task force  
173 established in section 40 of chapter 64C, establish regulations for persons engaged in the sale or  
174 shipment of a tobacco product as defined in section 6 of chapter 270 to prevent the sale or  
175 delivery of any such tobacco product to a person under 21 years of age.

176 SECTION 24. Chapter 112 of the General Laws is hereby amended by inserting after  
177 section 61 the following section:-

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

180 “Health care institution”, (i) an individual, partnership, association, corporation or trust or  
181 a person or group of persons who provides health care services and employs health care  
182 providers subject to licensing under this chapter; or (ii) a retail establishment that sells

183 pharmaceutical goods and services and is subject to regulation by the board of registration in  
184 pharmacy; provided, however that, “health care institution” shall include a retail establishment if  
185 the retail establishment operates at a health care institution or has a health care institution located  
186 on or within its premises; and provided further, that a retail establishment that provides optician,  
187 optometric, hearing aid or audiology services but is not subject to regulation by the board of  
188 registration in pharmacy shall not be considered a health care institution.

189 “Retail establishment”, a store that sells goods to the public.

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

192 SECTION 25. Chapter 270 of the General Laws is hereby amended by striking out  
193 sections 6 to 7, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof  
194 the following 3 sections:-

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

197 “Manufacturer”, a person that manufactures or produces a tobacco product.

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

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

202 “Retailer”, a person that operates a retail establishment.

203           “Tobacco product”, a product containing, made or derived from tobacco or nicotine that  
204 is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,  
205 snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars,  
206 little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars,  
207 electronic pipes, electronic nicotine delivery systems or any other similar products that rely on  
208 vaporization or aerosolization; provided, however, that “tobacco product” shall also include any  
209 component, part or accessory of a tobacco product; and provided further, that “tobacco product”  
210 shall not include a product that has been approved by the United States Food and Drug  
211 Administration for the sale as a tobacco cessation product and is marketed and sold exclusively  
212 for the approved purpose.

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

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

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

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

222           Section 6A. (a) No person shall use a vending machine for the sale or distribution of  
223 tobacco products. A person who violates this subsection shall be punished by a fine of not more  
224 than \$1,000.

225 (b) No person shall sell tobacco rolling papers to a person who is under the age of 21.  
226 Any person who violates this section shall be punished by a fine of \$25 for the first offense, \$50  
227 for a second offense and \$100 for a third or subsequent offense.

228 (c) For the purposes of this section, “vending machine”, shall mean an automated or  
229 mechanical self-service device which, upon insertion of money or other form of payment by a  
230 purchaser, dispenses or creates a tobacco product.

231 Section 7. (a) A copy of section 6 and subsection (b) of section 6A shall be posted  
232 conspicuously in a retail establishment.

233 (b) The department of public health shall develop signage that shall disclose referral  
234 information for smoking cessation resources which may include, but shall not be limited to  
235 including, the website of the Massachusetts Tobacco Cessation and Prevention Program at  
236 [www.makesmokinghistory.org](http://www.makesmokinghistory.org) and the Massachusetts Smokers' Helpline at 1-800-Quit-Now or  
237 1-800-784-8669. Such signage shall be conspicuously posted in a retail establishment.

238 (c) Whoever violates this section shall be punished by a fine of not more than \$50.

239 SECTION 26. Section 22 of said chapter 270, as so appearing, is hereby amended by  
240 striking out, in lines 90, 276 and 281, the figure “18” and inserting in place thereof, in each  
241 instance, the following figure:- 21.

242 SECTION 27. Subsection (a) of said section 22 of said chapter 270, as so appearing, is  
243 hereby amended by striking out the definitions of “Smoking” or “smoke” and “Smoking bar” and  
244 inserting in place thereof the following 3 definitions:-

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

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

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

259 SECTION 28. Said chapter 270 is hereby further amended by adding the following  
260 section:-

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

263 “Child-resistant packaging”, packaging intended to reduce the risk of a child ingesting  
264 nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C.  
265 1471 to 1476, inclusive.

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

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

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

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

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

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

284 SECTION 29. Section 43A of chapter 272 of the General Laws, as appearing in the 2016  
285 Official Edition, is hereby amended by striking out, in line 4, the words “cigar, cigarette, or pipe”

286 and inserting in place thereof the following words:- pipe or tobacco product as defined in section  
287 6 of chapter 270.

288 SECTION 30. Section 206 of chapter 139 of the acts of 2012, as amended by section 24A  
289 of chapter 118 of the acts of 2013, is hereby further amended by inserting after the word  
290 “designee”, in line 10, the following words:-, who shall serve as chair.

291 SECTION 31. Section 166 of chapter 133 of the acts of 2016 is hereby amended by  
292 striking out, in line 6, the figure “2017” and inserting in place thereof the following figure:-  
293 2018.

294 SECTION 32. The commissioner of public health may promulgate regulations to restrict  
295 the sale of tobacco products to persons under the age of 21. The commissioner shall send a notice  
296 of proposed changes, including proposed draft regulations, to the house and senate committees  
297 on ways and means and the joint committee on public health not less than 90 days before filing  
298 any such draft regulations with the secretary of state.

299 SECTION 33. On the effective date of this act, a retail establishment as defined in section  
300 6 of chapter 270 of the General Laws that sells a tobacco product as defined in said section 6 of  
301 said chapter 270 shall conspicuously post a notice produced by the department of public health  
302 that states the minimum age for a person to purchase a tobacco product. The notice shall include  
303 the effective date that the minimum sales age to purchase a tobacco product was raised to 21  
304 years of age. Retail establishments shall continuously post the notice until January 1, 2022.

305 SECTION 34. Notwithstanding subsection (b) of section 6 of chapter 270 of the General  
306 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not  
307 prohibit such sales to persons who attained the age of 18 before December 31, 2018; provided,

308 however, that a person who attained the age of 18 before December 31, 2018 shall be subject to  
309 any municipal ordinance, by-law or other regulation that prohibited sales of tobacco products to  
310 persons under the age of 19, 20 or 21 in effect on December 30, 2018.

311 SECTION 35. The center for health information and analysis, in collaboration with the  
312 division of insurance, the department of public health, the group insurance commission and the  
313 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance  
314 plan and compare the tobacco cessation benefits to the United States Preventive Services Task  
315 Force recommendations for tobacco smoking cessation in adults. The center shall provide a  
316 report of its findings on its website and also forward a copy of the report to the clerks of the  
317 senate and house of representatives and the joint committee on public health, the joint committee  
318 on healthcare financing and senate and house committees on ways and means not later than July  
319 1, 2019.

320 SECTION 36. This act shall take effect on December 31, 2018.