

# HOUSE . . . . . No. 2454

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Kimberly N. Ferguson***

*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 relative to the taxation of electronic smoking devices, cigars and smoking tobacco.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>1/16/2019</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>1/16/2019</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>1/16/2019</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	<i>1/17/2019</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/22/2019</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/1/2019</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>

# HOUSE . . . . . No. 2454

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By Mrs. Ferguson of Holden, a petition (accompanied by bill, House, No. 2454) of Kimberly N. Ferguson and others relative to the taxation of electronic smoking devices, cigars and smoking tobacco. Revenue.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-First General Court  
(2019-2020)  
\_\_\_\_\_

An Act relative to the taxation of electronic smoking devices, cigars and smoking tobacco.

*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 16 of chapter 62C of the General Laws, as appearing in the 2016  
2   Official Edition, is hereby amended by striking out, in lines 35-36 and 40, the words “cigars and  
3   smoking tobacco” and inserting in place thereof the words:—

4           cigars, smoking tobacco, and electronic smoking liquid

5           SECTION 2. Section 67 of said chapter 62C of the General Laws, as so appearing, is  
6   hereby amended by striking out, in lines 7-8, the words “cigar distributor or cigar retailer” and  
7   inserting in place thereof the following words:—

8           cigar distributor, cigar retailer, electronic smoking liquid distributor or electronic  
9   smoking liquid retailer

SECTION 3. Said section 67 of said chapter 62C of the General Laws, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:—

All licenses, other than licenses for retailers, cigar retailers and electronic smoking liquid retailers as defined in chapter 64C, shall expire annually on a date prescribed by the commissioner. Licenses for retailers, cigar retailers and electronic smoking liquid retailers shall expire every other year on a date prescribed by the commissioner. The commissioner may provide for combined forms of licenses and license applications.

SECTION 4. Section 7B of chapter 64C of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting in subsection (a) after the definition of “cigar retailer”, the following:—

“Electronic smoking liquid”, any product in liquid form for use in a device that can deliver nicotine to the user through inhalation of vapor. “Electronic smoking liquid”

includes any

such product, regardless of whether the liquid contains nicotine, and whether or not it is sold

separately. “Electronic smoking liquid” does not include any product that has been approved by

the United States Food and Drug Administration for sale as a tobacco cessation product and is

being marketed and sold solely for the approved purpose.

“Electronic smoking liquid distributor”, (i) any person who imports, or causes to be imported, into the commonwealth electronic smoking liquid for sale or who manufactures electronic smoking liquid in the commonwealth, and (ii) any person within or without the commonwealth who is authorized by the commissioner to make returns and pay the excise on electronic smoking liquid sold, shipped or delivered by such person to any person in the commonwealth.

"Electronic smoking liquid retailer", any person who sells or furnishes electronic smoking liquid in small quantities to consumers for individual use; provided, however, said electronic smoking liquid shall not be used for the purpose of resale.

SECTION 4. Said section 7B, as so appearing, is further amended by striking out subsection (b) and inserting in its place the following:—

(b) An excise shall be imposed on all cigars and smoking tobacco held in the commonwealth at the rate of 40 per cent of the wholesale price of such products; provided that, in the case of cigars, this excise shall not exceed one dollar (\$1.00) per cigar. An excise shall be imposed on all electronic smoking liquid held in the commonwealth at the rate of 20 percent of the wholesale price of such product. As applied to cigars or smoking tobacco, this excise shall be imposed on cigar distributors at the time the cigars or smoking tobacco are manufactured, purchased, imported, received or acquired in the commonwealth. This excise shall not be imposed on any cigars or tobacco products that (i) are exported from the commonwealth; or (ii) are not subject to taxation by the commonwealth pursuant to any law of the United States. As applied to electronic smoking liquid, the excise shall be imposed on the electronic smoking liquid distributors of such products at the time the product is purchased, received or acquired for

53 retail sale in the commonwealth in accordance with such regulations as may be promulgated by  
54 the commissioner.

55 SECTION 5. Said section 7B, as so appearing, is further amended by striking out  
56 subsection (c) and inserting in its place the following:—

57 (c) Every cigar retailer shall be liable for the collection of the excise on all cigars or  
58 smoking tobacco in his possession at any time, upon which the excise has not been paid by a  
59 cigar distributor, and the failure of any cigar retailer to produce or exhibit to the commissioner or

60 his authorized representative, upon demand, an invoice by a cigar distributor for any  
61 cigars or

62 smoking tobacco in his possession, shall be presumptive evidence that the excise thereon  
63 has not

64 been paid and that such cigar retailer is liable for the collection of the excise thereon.

65 Every

66 retailer of electronic smoking liquid shall be liable for the collection of the excise on all  
67 such

68 products in his possession at any time, upon which the excise has not been paid by an  
69 electronic smoking liquid distributor, and the failure of any such retailer to produce or exhibit to  
70 the commissioner or his authorized representative, upon demand, an invoice by an electronic  
71 smoking liquid distributor or for any electronic smoking liquid in his possession, shall be  
72 presumptive evidence that the excise thereon has not been paid and that such retailer is liable for  
73 the collection of the excise thereon.

SECTION 6. Said section 7B, as so appearing, is further amended by striking out subsection (d) and inserting in its place the following:—

(d) The amount of the excise advanced and paid, as provided in this section, shall be added to and collected as part of, the sales price of the products subject to the excise.

SECTION 7. Said section 7B, as so appearing, is further amended by striking out paragraph (1) of subsection (e) and inserting in its place the following:—

(e)(1) A cigar distributor shall be liable for the payment of the excise on cigars and smoking tobacco that he imports or causes to be imported into the commonwealth or that he manufactures in the commonwealth, and every cigar distributor authorized by the commissioner to make returns and pay the excise on cigars or smoking tobacco sold, shipped or delivered by him to any person in the commonwealth shall be liable for the collection and payment of the excise on all cigars and smoking tobacco sold, shipped or delivered. An electronic smoking liquid distributor shall be liable for the payment of the excise on all such product that he imports or causes to be imported into the commonwealth or that he manufactures in the commonwealth, and every such electronic smoking liquid distributor authorized by the commissioner to make returns and pay the excise on electronic smoking liquid sold, shipped or delivered by him to any person in the commonwealth shall be liable for the collection and payment of the excise on all such product sold, shipped or delivered.

SECTION 6. Said section 7B, as so appearing, is further amended by striking out subsection (g) and inserting in its place the following:—

(g) Every resident of the commonwealth shall be liable for the collection of the excise on all cigars or smoking tobacco or electronic smoking liquid in his possession at any time, upon

which the excise has not been paid in accordance with this section. The failure of any such consumer to produce or exhibit to the commissioner or his authorized representative, upon demand, an invoice or sales receipt by a cigar distributor or cigar retailer for any cigars or smoking tobacco in his possession or an invoice or sales receipt by an electronic smoking liquid distributor or electronic smoking liquid retailer for any such product in his possession, shall be presumptive evidence that the excise thereon has not been paid and that such consumer is liable for the collection of the excise thereon.

SECTION 7. Said chapter 64C of the General Laws is hereby amended by inserting after section 40 the following section:-

Section 41. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Cigar", shall have the same meaning assigned to it in section 7B.

"Cigarette", shall have the same meaning assigned to it in section 2A.

"Electronic smoking liquid", shall have the same meaning assigned to it in section 7B.

"Smoking tobacco", shall have the same meaning assigned to it in section 7B.

(b) No person shall cause cigars, cigarettes, electronic smoking liquid, smoking tobacco or smokeless tobacco ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a person licensed under section 67 of chapter 62C as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, transportation company, retailer, cigar distributor, cigar retailer, electronic smoking

117 liquid distributor or electronic smoking liquid retailer as defined in this chapter.

118 (c) No person shall, with knowledge or reason to know of the violation, assist or aid a  
119 person in violation of this section.

120 (d) Whoever knowingly or intentionally violates this section shall be punished by a fine  
121 of not more than \$1,000 or by imprisonment in state prison for not more than 1 year, or both.  
122 For the purposes of this subsection, each shipment or transport of cigarettes, cigars, smoking  
123 tobacco or smokeless tobacco shall constitute a separate violation.

124 (e) A person who violates this section engages in an unfair and deceptive trade practice in  
125 violation chapter 93A.

126 (f) The commissioner shall promulgate regulations to implement and enforce this section.