

# **HOUSE . . . . . No. 4089**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, September 26, 2019.

The committee on Public Health to whom was referred the petition (accompanied by bill, House, No. 1902) of Danielle W. Gregoire and others relative to the sale or distribution of flavored tobacco products, reports recommending that the accompanying bill (House, No. 4089) ought to pass.

For the committee,

JOHN J. MAHONEY.

FILED ON: 9/25/2019

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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An Act regulating flavored tobacco products.

*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 270 of the General Laws, as amended by chapter 157 of the acts of  
2   2018, is hereby amended by inserting after section 27 the following section:-

3           Section 28. (a) As used in this section, the following words shall have the following  
4   meanings unless the context clearly requires otherwise:

5           “Characterizing Flavor”, a distinguishable taste or aroma, other than the taste or aroma of  
6   tobacco, imparted or detectable either prior to or during consumption of a tobacco product or  
7   component part thereof, including but not limited to, a taste or aroma relating to any fruit,  
8   chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen,  
9   herb or spice; provided, however, that no tobacco product shall be determined to have a  
10   characterizing flavor solely because of the provision of ingredient information or the use of  
11   additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

12           “Component part”, any element of a tobacco product, including, but not limited to, the  
13   tobacco, filter and paper, but not including any constituent.

14 “Constituent”, any ingredient, substance, chemical or compound, other than tobacco,  
15 water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product  
16 during the processing, manufacturing or packaging of the tobacco product. Such term shall  
17 include a smoke constituent.

18 “Distinguishable”, perceivable by either the sense of smell or taste.

19 “Flavored tobacco product enhancer”, any product designed, manufactured, produced,  
20 marketed or sold to produce a characterizing flavor when added to any tobacco product or vapor  
21 product, as defined in section 6, or to any other similar product that relies on vaporizations or  
22 aerosolization regardless of nicotine content in the product.

23 “Flavored tobacco product”, any tobacco product as defined in section 6, or any  
24 component part thereof, that contains a constituent that has or produces a characterizing flavor;  
25 and “Flavored tobacco product” shall also include any vapor product as defined in section 6 or  
26 any other similar product that relies on vaporizations or aerosolization that produces a  
27 characterizing flavor regardless of nicotine content in the product. A public statement, claim or  
28 indicia made or disseminated by the manufacturer of a flavored tobacco product, or by any  
29 person authorized or permitted by the manufacturer to make or disseminate public statements  
30 concerning such flavored tobacco product, that such flavored tobacco product has or produces a  
31 characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored  
32 tobacco product. “Flavored tobacco product” does not include any product that has been  
33 approved by the United States Food and Drug Administration for the sale or use as a tobacco  
34 cessation product and is marketed and sold exclusively for the approved purpose.

35           “Smoke Constituent”, any chemical or chemical compound in mainstream or sidestream  
36 tobacco smoke that either transfers from any component of the tobacco product to the smoke or  
37 that is formed by the combustion or heating of tobacco, additives or other component of the  
38 tobacco product.

39           (b) No retailer, retail establishment, or other person or entity shall sell or distribute or  
40 cause to be sold or distributed or offer for sale any flavored tobacco product or flavored tobacco  
41 product enhancer to any consumer, except in a smoking bar as defined in section 22 and only for  
42 use in the smoking bar.

43           (c) A person who violates this section shall be subject to the same fines established for  
44 violations of section 6.

45           (d) Nothing in this section shall preempt further restriction by the commonwealth or any  
46 department, agency or political subdivision of the commonwealth.

47           (e) The department of public health may promulgate such procedures, rules or regulations  
48 as it deems necessary to implement the provisions of this section.