

# HOUSE . . . . . No. 4196

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House bill No. 4183, as changed by the House committee on Bills in the Third Reading and as amended and passed to be engrossed by the House. November 13, 2019.

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## 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 modernizing tobacco control.

*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 10 of the General Laws is hereby amended by striking out section  
2   30B, as appearing in the 2018 Official Edition, and inserting in place thereof the following  
3   section:-

4           Section 30B. Upon receiving notice from the commissioner of revenue that a retailer as  
5   defined in section 1 of chapter 64C, a cigar retailer as defined in section 7B of said chapter 64C  
6   or an electronic nicotine delivery system retailer as defined in section 7E of said chapter 64C has  
7   had a cigar, electronic nicotine delivery system or tobacco license suspended or revoked for a  
8   knowing violation of paragraph (1) of subsection (l) of said section 7B of said chapter 64C,  
9   paragraph (1) of subsection (l) of said section 7E of said chapter 64C or section 34 or 35 of said  
10   chapter 64C, the director of the state lottery shall suspend any license to sell lottery tickets or  
11   shares issued to the retailer, cigar retailer or electronic nicotine delivery system retailer pursuant  
12   to sections 26 and 27 for not more than 60 days.

SECTION 2. Section 6 of chapter 14 of the General Laws, as so appearing, is hereby amended by striking out, in line 93, the first time it appears, the word “or”.

SECTION 3. Said section 6 of said chapter 14, as so appearing, is hereby further amended by inserting after the figure “64C”, in line 94, the following words:- or electronic nicotine delivery system distributor or electronic nicotine delivery system retailer as defined in section 7E of said chapter 64C.

SECTION 3A. Subsection (b) of section 5I of chapter 18 of the General Laws, as so appearing, is hereby amended by striking out, in line 35, the words “section 1 of chapter 64C” and inserting in place thereof the following:- section 6 of chapter 270.

SECTION 4. Chapter 32A of the General Laws is hereby amended by adding the following section:-

Section 29. (a) The commission shall provide to any active or retired employee of the commonwealth who is insured under the group insurance commission coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States Food and Drug Administration-approved tobacco cessation products without cost sharing when prescribed by a health care provider.

(b) The commission may employ reasonable managed care techniques consistent with state and federal law to determine the frequency, method, treatment or setting for the recommended item or service, provided that covered persons have access to at least 1 tobacco cessation product without prior authorization.

SECTION 5. Section 16 of chapter 62C of the General Laws is hereby amended by inserting after subsection (c<sup>1</sup>/<sub>2</sub>), as appearing in the 2018 Official Edition, the following subsection:-

(c<sup>3</sup>/<sub>4</sub>) Every licensee under section 7E of chapter 64C shall, on or before the twentieth day of each calendar month or on or before the twentieth day of the month following each calendar quarter, as the commissioner shall require, file with the commissioner a return for each place of business that the licensee maintains stating the quantity of electronic nicotine delivery systems sold by the licensee in the commonwealth during the preceding calendar month or quarter, as the case may be. The return shall contain or be accompanied by any additional information that the commissioner may require. If a licensee ceases to sell electronic nicotine delivery systems, the licensee shall immediately file with the commissioner a return for the period in which the cessation took place.

SECTION 6. Section 67 of said chapter 62C, as so appearing, is hereby amended by striking out, in lines 7 and 23, the words “retailer, cigar” and inserting in place thereof, in each instance, the following words:- retailer, electronic nicotine delivery system distributor or electronic nicotine delivery system retailer, cigar.

SECTION 7. Said section 67 of said chapter 62C, as so appearing, is hereby further amended by striking out, in lines 33 and 35, the words “retailers and” and inserting in place thereof, in each instance, the following words:- retailers, electronic nicotine delivery system retailers and.

SECTION 8. Said section 67 of said chapter 62C, as so appearing, is hereby further amended by inserting after the word “retailers”, in line 49, the following words:- , electronic nicotine delivery system distributors, electronic nicotine delivery system retailers.

SECTION 9. Said section 67 of said chapter 62C, as so appearing, is hereby further amended by inserting after the word “retailers”, in line 65, the first time it appears, the following words:- ; electronic nicotine delivery system distributors; electronic nicotine delivery system retailers.

SECTION 10. Said section 67 of said chapter 62C, as so appearing, is hereby further amended by inserting after the word “wholesaler”, in lines 67 and 68, the following words:- , electronic nicotine delivery system distributor.

SECTION 11. Section 68 of said chapter 62C, as so appearing, is hereby amended by inserting after the figure “64C”, in line 45, the following words:- , an electronic nicotine delivery system retailer, as defined in subsection (a) of section 7E of said chapter 64C.

SECTION 12. Said section 68 of said chapter 62C, as so appearing, is hereby further amended by inserting after the figure “64C”, in line 49, the following words:- , paragraph (1) of subsection (l) of section 7E of said chapter 64C.

SECTION 13. Section 1 of chapter 64C of the General Laws, as so appearing, is hereby amended by inserting after the word “cigarettes”, in line 8, the following words:- , an electronic nicotine delivery system as defined in subsection (a) of section 7E.

SECTION 14. Subsection (a) of section 2C of said chapter 64C, as so appearing, is hereby amended by striking out clause (3) and inserting in place thereof the following clause:-

(3) each cigarette listed in the certification shall be described with the following information:

- (i) brand, the trade name on the package;
- (ii) style, light or ultra light;
- (iii) length in millimeters;
- (iv) circumference in millimeters;
- (v) filter or non-filter;
- (vi) package description, soft pack or box; and
- (vii) the marking approved in accordance with this section.

SECTION 15. Said chapter 64C is hereby further amended by inserting after section 7D the following section:-

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

“Electronic nicotine delivery system”, an electronic device, whether for 1-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include

any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; and provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

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

“Electronic nicotine delivery system retailer”, a person who sells or furnishes electronic nicotine delivery systems to consumers for individual use; provided, however, that the electronic nicotine delivery systems shall not be used for the purpose of resale.

“Person”, a natural person, corporation, association, partnership or other legal entity.

“Taxed electronic nicotine delivery system”, an electronic nicotine delivery system upon which the excise has been paid in full by the date on which payment was due and with respect to which the return has been completed, signed and filed with the commissioner by the date on which the return was due pursuant to this section and section 16 of chapter 62C.

“Untaxed electronic nicotine delivery system”, an electronic nicotine delivery system upon which the excise has not been paid in full by the date on which payment was due or with

respect to which the return has not been completed, signed and filed with the commissioner by the date on which the return was due pursuant to this section and section 16 of chapter 62C.

“Wholesale price”, in the case of: (i) a manufacturer of electronic nicotine delivery systems, the price set for such products or, if no price has been set, the wholesale value of the electronic nicotine delivery system; (ii) an electronic nicotine delivery system distributor who is not a manufacturer of electronic nicotine delivery systems, the price at which the electronic nicotine delivery system distributor purchased the electronic nicotine delivery system; or (iii) an electronic nicotine delivery system retailer or a consumer, the price at which the electronic nicotine delivery system retailer or consumer purchased the electronic nicotine delivery system.

(b) There shall be an excise on an electronic nicotine delivery system held in the commonwealth at a rate of 75 per cent of the wholesale price. The excise shall be imposed on an electronic nicotine delivery system distributor at the time that the electronic nicotine delivery system is manufactured, purchased, imported, received or acquired in the commonwealth. The excise shall not be imposed on an electronic nicotine delivery system that is exported from the commonwealth.

(c) An electronic nicotine delivery system retailer shall be liable for the collection of the excise on all electronic nicotine delivery systems that are in the electronic nicotine delivery system retailer’s possession at any time and upon which the excise has not been paid by an electronic nicotine delivery system distributor. There shall be a presumption that the excise on the electronic nicotine delivery system has not been paid and that the electronic nicotine delivery system retailer is liable for the collection of the excise on the electronic nicotine delivery system if, upon demand, an electronic nicotine delivery system retailer fails to produce or exhibit to the

commissioner or the commissioner's authorized representative an invoice by an electronic nicotine delivery system distributor for an electronic nicotine delivery system in the electronic nicotine delivery system retailer's possession.

(d) The amount of the excise advanced and paid by an electronic nicotine delivery system distributor or electronic nicotine delivery system retailer under this section shall be added to and collected as part of the sales price of the electronic nicotine delivery system.

(e)(1) An electronic nicotine delivery system distributor shall be liable for the payment of the excise on electronic nicotine delivery systems that the electronic nicotine delivery system distributor imports or causes to be imported into the commonwealth or that the electronic nicotine delivery system distributor manufactures in the commonwealth. An electronic nicotine delivery system distributor authorized by the commissioner to make returns and pay the excise on electronic nicotine delivery systems sold, shipped or delivered by the electronic nicotine delivery system distributor to a person in the commonwealth shall be liable for the collection and payment of the excise on all of the electronic nicotine delivery systems so sold, shipped or delivered.

(2) A person who does not acquire untaxed electronic nicotine delivery systems but acquires taxed electronic nicotine delivery systems for sale at retail shall not be licensed as an electronic nicotine delivery system distributor under this section; provided, however, that the person shall be required to be licensed as an electronic nicotine delivery system retailer during the period that the person is an electronic nicotine delivery system retailer of taxed electronic nicotine delivery systems.



(f) A person outside the commonwealth who ships or transports electronic nicotine delivery systems to electronic nicotine delivery system retailers in the commonwealth to be sold by electronic nicotine delivery system retailers may apply for a license as a nonresident electronic nicotine delivery system distributor. Upon the issuance of such a license, the licensee shall be subject to this section and may act as an electronic nicotine delivery system distributor; provided, however, that such person shall file proof with the person's application that the person has appointed the state secretary as the person's agent for service of process relating to any matter or issue arising under this section. The person shall also agree to submit the person's books, accounts and records for examination in the commonwealth during reasonable business hours upon request by the commissioner or the commissioner's authorized representative.

(g) A resident of the commonwealth shall be liable for the collection of the excise on all electronic nicotine delivery systems that are in the resident's possession at any time and upon which the excise has not been paid by an electronic nicotine delivery system distributor or electronic nicotine delivery system retailer. There shall be a presumption that the excise on the electronic nicotine delivery system has not been paid and that the resident is liable for such excise if a resident, upon demand, fails to produce or exhibit to the commissioner or the commissioner's authorized representative an invoice or sales receipt by an electronic nicotine delivery system distributor or electronic nicotine delivery system retailer for an electronic nicotine delivery system in the resident's possession.

(h) No person shall act as an electronic nicotine delivery system distributor or electronic nicotine delivery system retailer in the commonwealth unless licensed to do so under section 67 of chapter 62C. If an electronic nicotine delivery system distributor or electronic nicotine delivery system retailer acts as both an electronic nicotine delivery system distributor and

electronic nicotine delivery system retailer at 1 place of business, the electronic nicotine delivery system distributor or electronic nicotine delivery system retailer shall procure a license to act as an electronic nicotine delivery system distributor and a license to act as an electronic nicotine delivery system retailer unless, upon application to the commissioner, the commissioner determines otherwise. Each license so issued or a duplicate copy thereof shall be prominently displayed on the premises covered by the license.

(i) Except as otherwise provided in this section, the provisions of this chapter and chapter 62C relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall apply to the excise imposed by this section.

(j) For the purposes of section 5, electronic nicotine delivery systems shall be tobacco products, an electronic nicotine delivery system distributor shall be a wholesaler and an electronic nicotine delivery system retailer shall be a retailer.

(k) For the purposes of section 8, untaxed electronic nicotine delivery systems found in the commonwealth shall be cigarettes, which have not been returned and are not returnable under section 16 of chapter 62C or section 6 as applicable.

(l)(1) A person who sells, offers for sale or possesses with intent to sell an electronic nicotine delivery system or otherwise acts as an electronic nicotine delivery system distributor or electronic nicotine delivery system retailer without being licensed as such shall, in addition to any other penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

A person who knowingly purchases or possesses an electronic nicotine delivery system not manufactured, purchased or imported by a licensed electronic nicotine delivery system distributor or licensed electronic nicotine delivery system retailer shall, in addition to any other penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

A person shall not, either as principal or agent, sell or solicit orders for electronic nicotine delivery systems to be shipped, mailed or otherwise sent or brought into the commonwealth to any person who is not a licensed electronic nicotine delivery system distributor or licensed electronic nicotine delivery system retailer unless the same is to be sold to or through a licensed electronic nicotine delivery system distributor or licensed electronic nicotine delivery system retailer. A person who knowingly violates this paragraph shall, in addition to any other penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

An electronic nicotine delivery system shall be presumed to be subject to the excise under this section unless the person on whose premises the electronic nicotine delivery system was found establishes otherwise.

(2) A person who knowingly: (i) has in the person's possession a shipping case or other container of electronic nicotine delivery systems that does not bear the name and address of the person receiving the electronic nicotine delivery systems from a manufacturer or such other markings as the commissioner may require; or (ii) is in possession of a shipping case or other container of electronic nicotine delivery systems from which the name and address of the person receiving the electronic nicotine delivery systems from the manufacturer has been erased or

defaced shall, in addition to any other penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

(3) A person who files a false return, affidavit or statement or who violates a provision of this section for which no other penalty has been provided shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

(4) When the commissioner or a police officer discovers an untaxed electronic nicotine delivery system in the possession of a person who is not a licensed or commissioner-authorized electronic nicotine delivery system distributor, the commissioner or police officer may seize and take possession of the electronic nicotine delivery systems and any vending machine or other receptacle including, but not limited to, a motor vehicle, boat or airplane in which the electronic nicotine delivery systems are contained or transported.

Any electronic nicotine delivery system, vending machine or other receptacle seized by a police officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall destroy the electronic nicotine delivery system and shall destroy or otherwise dispose of the vending machine or other receptacle. The commissioner may, within a reasonable time after the seizure and by a public notice of not less than 5 days before the day of sale, sell the vending machine or other receptacle at public sale and deposit the proceeds in the General Fund.

(5) The state police and local police departments may and, at the request of the commissioner or the commissioner's duly authorized agent, shall enforce this section. Each violation of this section shall be a separate offense.

(m) Marijuana products as defined in section 1 of chapter 94G shall not be subject to the excise imposed under this section.

(n) The commissioner may promulgate regulations to implement this section.

SECTION 15A. Notwithstanding the provisions of section twenty-eight, thirty per cent of revenues received pursuant to this section, together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, all as determined by the commissioner of revenue according to his best information and belief, shall be credited to the Community Behavioral Health Promotion and Prevention Trust Fund.

SECTION 16. Section 3A of chapter 64H of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word "cigars", in line 4, the following words:- , electronic nicotine delivery systems.

SECTION 17. Chapter 118E of the General Laws is hereby amended by inserting after section 10L the following section:-

Section 10M. (a) The division and its contracted health insurers, health plans, health maintenance organizations, behavioral health management firms and third-party administrators under contract to a Medicaid managed care organization or primary care clinician plan shall provide coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States

Food and Drug Administration-approved tobacco cessation products without cost sharing when prescribed by a health care provider.

(b) The division shall be permitted to employ reasonable managed care techniques consistent with state and federal law to determine the frequency, method, treatment or setting for the recommended item or service, provided that covered persons have access to at least 1 tobacco cessation product without preauthorization.

SECTION 18. Chapter 175 of the General Laws is hereby amended by inserting after section 47KK the following section:-

Section 47LL. (a) An individual policy of accident and sickness insurance issued under section 108 that provides benefits for hospital expenses and surgical expenses and any group blanket policy of accident and sickness insurance issued under section 110 that provides benefits for hospital expenses and surgical expenses delivered, issued or renewed by agreement between the insurer and the policyholder, within or outside the commonwealth, shall provide benefits for residents of the commonwealth and all group members having a principal place of employment in the commonwealth coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States Food and Drug Administration-approved tobacco cessation products without cost sharing when prescribed by a health care provider.

(b) Carriers shall be permitted to employ reasonable managed care techniques consistent with state and federal law to determine the frequency, method, treatment or setting for the recommended item or service, provided that covered persons have access to at least 1 tobacco cessation product without prior authorization.

SECTION 19. Chapter 176A of the General Laws is hereby amended by inserting after section 8MM the following section:-

Section 8NN. (a) Any contract between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued or renewed within the commonwealth shall provide coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States Food and Drug Administration-approved tobacco cessation products without cost sharing when prescribed by a health care provider.

(b) Carriers shall be permitted to employ reasonable managed care techniques consistent with state and federal law to determine the frequency, method, treatment or setting for the recommended item or service, provided that covered persons have access to at least 1 tobacco cessation product without preauthorization.

SECTION 20. Chapter 176B of the General Laws is hereby amended by inserting after section 4MM the following section:-

Section 4NN. (a) Any subscription certificate under an individual or group medical service agreement delivered, issued or renewed within the commonwealth shall provide coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States Food and Drug Administration-approved tobacco cessation products without cost sharing when prescribed by a health care provider.

(b) Carriers shall be permitted to employ reasonable managed care techniques consistent with state and federal law to determine the frequency, method, treatment or setting for the recommended item or service, provided that covered persons have access to at least 1 tobacco cessation product without prior authorization.

308           SECTION 21. Chapter 176G of the General Laws is hereby amended by inserting after  
309 section 4EE the following section:-

310           Section 4FF. (a) An individual or group health maintenance contract that is issued or  
311 renewed within or without the commonwealth shall provide coverage for: (i) tobacco use  
312 cessation counseling; and (ii) all generic United States Food and Drug Administration-approved  
313 tobacco cessation products without cost sharing when prescribed by a health care provider.

314           (b) Carriers shall be permitted to employ reasonable managed care techniques consistent  
315 with state and federal law to determine the frequency, method, treatment or setting for the  
316 recommended item or service, provided that covered persons have access to at least 1 tobacco  
317 cessation product without prior authorization.

318           SECTION 22. Section 6 of chapter 270 of the General Laws, as appearing in the 2018  
319 Official Edition, is hereby amended by striking out subsection (d) and inserting in place thereof  
320 the following subsection:-

321           (d) A person who violates this section shall be punished by a fine of \$1,000 for the first  
322 offense, \$2,000 for a second offense and \$5,000 for a third or subsequent offense.

323           SECTION 23. Said chapter 270 is hereby further amended by inserting after section 27  
324 the following 2 sections:-

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

327           “Characterizing flavor”, a distinguishable taste or aroma, other than the taste or aroma of  
328 tobacco, imparted or detectable either prior to or during consumption of a tobacco product,



329 including but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey,  
330 candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided,  
331 however, that no tobacco product shall be determined to have a characterizing flavor solely  
332 because of the provision of ingredient information or the use of additives or flavorings that do  
333 not contribute to the distinguishable taste or aroma of the product.

334 “Constituent”, any ingredient, substance, chemical or compound, other than tobacco,  
335 water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product  
336 during the processing, manufacturing or packaging of the tobacco product; provided that  
337 “constituent” shall include a smoke constituent.

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

339 “Flavored tobacco product”, any tobacco product that contains a constituent that has or  
340 produces a characterizing flavor.

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

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

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

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

347 “Smoke constituent”, any chemical or chemical compound in mainstream or sidestream  
348 tobacco smoke that either transfers from any component of the tobacco product to the smoke or

349 that is formed by the combustion or heating of tobacco, additives or other component of the  
350 tobacco product.

351 “Tobacco product”, a product containing, made or derived from tobacco or nicotine that  
352 is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,  
353 snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars,  
354 little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars,  
355 electronic pipes, electronic nicotine delivery systems or any other similar products that rely on  
356 vaporization or aerosolization regardless of nicotine content in the product; provided, however,  
357 that “tobacco product” shall also include any component, part or accessory of a tobacco product;  
358 and provided further, that “tobacco product” shall not include a product that has been approved  
359 by the United States Food and Drug Administration for the sale of or use as a tobacco cessation  
360 product or for other medical purposes and is marketed and sold or prescribed exclusively for the  
361 approved purpose.

362 “Tobacco product flavor enhancer”, any product designed, manufactured, produced,  
363 marketed or sold to produce a characterizing flavor when added to any tobacco product.

364 (b) No person, retailer or manufacturer shall sell, distribute, cause to be sold or  
365 distributed, offer for sale, or market or advertise any flavored tobacco product or tobacco product  
366 flavor enhancer in any retail establishment, online or through any other means to any consumer  
367 in the commonwealth; provided, however, that this subsection shall not apply to the sale or  
368 distribution by a smoking bar, as defined in section 22, of flavored tobacco products or tobacco  
369 product flavor enhancers for on-site consumption

370 .

(c) Public statements, claims or indicia made or disseminated by a manufacturer or by any person authorized or permitted by the manufacturer to make or disseminate public statements, claims or indicia concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

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

(e) Marijuana or marijuana products as defined in section 1 of chapter 94G shall not be subject to this section.

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

Section 29. (a) For the purposes of this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Electronic nicotine delivery system”, an electronic device, whether for 1-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; and provided further, that “electronic nicotine delivery

system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

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

“Retail tobacco store”, as defined in section 22.

“Smoking bar”, as defined in section 22.

(b) No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to retail tobacco stores or smoking bars.

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

SECTION 24. Sections 1, 2, 3, 5 to 16, inclusive, and 23 shall take effect on June 1, 2020.