

HOUSE No. 4196

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.

The Commonwealth of Massachusetts

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

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.

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

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

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

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

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

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

33 SECTION 5. Section 16 of chapter 62C of the General Laws is hereby amended by
34 inserting after subsection (c^{1/2}), as appearing in the 2018 Official Edition, the following
35 subsection:-

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

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

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

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

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

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

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

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

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

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

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

76 (i) brand, the trade name on the package;

77 (ii) style, light or ultra light;

78 (iii) length in millimeters;

79 (iv) circumference in millimeters;

80 (v) filter or non-filter;

81 (vi) package description, soft pack or box; and

82 (vii) the marking approved in accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187 (i) Except as otherwise provided in this section, the provisions of this chapter and chapter
188 62C relative to the assessment, collection, payment, abatement, verification and administration
189 of taxes, including penalties, shall apply to the excise imposed by this section.

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

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

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

202 A person who knowingly purchases or possesses an electronic nicotine delivery system
203 not manufactured, purchased or imported by a licensed electronic nicotine delivery system
204 distributor or licensed electronic nicotine delivery system retailer shall, in addition to any other
205 penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than
206 \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

304 (b) Carriers shall be permitted to employ reasonable managed care techniques consistent
305 with state and federal law to determine the frequency, method, treatment or setting for the
306 recommended item or service, provided that covered persons have access to at least 1 tobacco
307 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 .

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

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

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

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

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

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

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

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

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

399 “Smoking bar”, as defined in section 22.

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

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

405 SECTION 24. Sections 1, 2, 3, 5 to 16, inclusive, and 23 shall take effect on June 1,
406 2020.