

HOUSE No. 4226

Text of further amendment (Representatives Gregoire of Marlborough and Mahoney of Worcester) to the Senate amendments of the House Bill modernizing tobacco control (House, No. 4196, published as amended). November 20, 2019.

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause (inserted by amendment by the Senate) and inserting in place thereof the following:—

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,
7 has 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, paragraph (1) of
9 subsection (l) of said section 7E, section 34 or section 35 of said chapter 64C, the director of the
10 state lottery shall suspend any license to sell lottery tickets or shares issued to the retailer, cigar
11 retailer or electronic nicotine delivery system retailer pursuant to sections 26 and 27 for not more
12 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 4. 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 words:- section 6 of chapter 270

22 SECTION 5. 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, however, that covered persons shall have access to at
32 least 1 tobacco cessation product without prior authorization.

33 SECTION 6. Section 16 of chapter 62C of the General Laws, as appearing in the 2018
34 Official Edition, is hereby amended by inserting after subsection (c^{1/2}) the following subsection:-

35 (c^{3/4}) Not later than the twentieth day of each calendar month or not later than the
36 twentieth day of the month following each calendar quarter, as required by the commissioner,
37 every licensee under section 7E of chapter 64C shall file with the commissioner a return for each
38 place of business that the licensee maintains stating the quantity of electronic nicotine delivery
39 systems sold by the licensee in the commonwealth during the preceding calendar month or
40 quarter, as required by the commissioner. The return shall contain or be accompanied by any
41 additional information that the commissioner may require. If a licensee ceases to sell electronic
42 nicotine delivery systems, the licensee shall immediately file with the commissioner a return for
43 the period in which the cessation took place.

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

48 SECTION 8. Said section 67 of said chapter 62C, as so appearing, is hereby further
49 amended by striking out, in lines 33 and 35, the words “retailers and” and inserting in place
50 thereof, in each instance, the following words:- retailers, electronic nicotine delivery system
51 retailers and.

52 SECTION 9. Said section 67 of said chapter 62C, as so appearing, is hereby further
53 amended by inserting after the word “retailers”, in line 49, the following words:- , electronic
54 nicotine delivery system distributors, electronic nicotine delivery system retailers.

55 SECTION 10. Said section 67 of said chapter 62C, as so appearing, is hereby further
56 amended by inserting after the word “retailers”, in line 65, the first time it appears, the following
57 words:- ; electronic nicotine delivery system distributors; electronic nicotine delivery system
58 retailers.

59 SECTION 11. Said section 67 of said chapter 62C, as so appearing, is hereby further
60 amended by inserting after the word “wholesaler”, in lines 67 and 68, the following words:- ,
61 electronic nicotine delivery system distributor.

62 SECTION 12. Section 68 of said chapter 62C, as so appearing, is hereby amended by
63 inserting after the figure “64C”, in line 45, the following words:- , an electronic nicotine delivery
64 system retailer, as defined in subsection (a) of section 7E of said chapter 64C.

65 SECTION 13. Said section 68 of said chapter 62C, as so appearing, is hereby further
66 amended by inserting after the figure “64C”, in line 49, the following words:- , paragraph (1) of
67 subsection (1) of section 7E of said chapter 64C.

68 SECTION 14. Section 1 of chapter 64C of the General Laws, as so appearing, is hereby
69 amended by inserting after the word “cigarettes”, in line 8, the following words:- , an electronic
70 nicotine delivery system as defined in subsection (a) of section 7E.

71 SECTION 15. Subsection (a) of section 2C of said chapter 64C, as so appearing, is
72 hereby amended by striking out clause (3) and inserting in place thereof the following clause:-

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

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

- 76 (ii) style, light or ultra light;
- 77 (iii) length in millimeters;
- 78 (iv) circumference in millimeters;
- 79 (v) filter or non-filter;
- 80 (vi) package description, soft pack or box; and
- 81 (vii) the marking approved in accordance with this section.

82 SECTION 16. Said chapter 64C is hereby amended by inserting after section 7D the
83 following section:-

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

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

96 Administration for the sale of or use as a tobacco cessation product or for other medical purposes
97 and is marketed and sold or prescribed exclusively for that approved purpose.

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

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

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

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

112 “Untaxed electronic nicotine delivery system”, an electronic nicotine delivery system
113 upon which the excise has not been paid in full by the date on which payment was due or with
114 respect to which the return has not been completed, signed and filed with the commissioner by
115 the date on which the return was due pursuant to this section and section 16 of chapter 62C.

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

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

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

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

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

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

157 (f) A person outside the commonwealth who ships or transports electronic nicotine
158 delivery systems to electronic nicotine delivery system retailers in the commonwealth to be sold
159 by electronic nicotine delivery system retailers may apply for a license as a nonresident
160 electronic nicotine delivery system distributor. Upon the issuance of such a license, the licensee

161 shall be subject to this section and may act as an electronic nicotine delivery system distributor;
162 provided, however, that such person shall file proof with the person's application that the person
163 has appointed the state secretary as the person's agent for service of process relating to any
164 matter or issue arising under this section. The person shall also agree to submit the person's
165 books, accounts and records for examination in the commonwealth during reasonable business
166 hours upon request by the commissioner or the commissioner's authorized representative.

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

176 (h) No person shall act as an electronic nicotine delivery system distributor or electronic
177 nicotine delivery system retailer in the commonwealth unless licensed to do so under section 67
178 of chapter 62C. If an electronic nicotine delivery system distributor or electronic nicotine
179 delivery system retailer acts as both an electronic nicotine delivery system distributor and
180 electronic nicotine delivery system retailer at a single place of business, the electronic nicotine
181 delivery system distributor or electronic nicotine delivery system retailer shall procure a license
182 to act as an electronic nicotine delivery system distributor and a license to act as an electronic
183 nicotine delivery system retailer unless, upon application to the commissioner, the commissioner

184 determines otherwise. Each license so issued or a duplicate copy thereof shall be prominently
185 displayed on the premises covered by the license.

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

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

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

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

201 A person shall not, either as principal or agent, sell or solicit orders for electronic nicotine
202 delivery systems to be shipped, mailed or otherwise sent or brought into the commonwealth to
203 any person who is not a licensed electronic nicotine delivery system distributor or licensed
204 electronic nicotine delivery system retailer unless the same is to be sold to or through a licensed
205 electronic nicotine delivery system distributor or licensed electronic nicotine delivery system

206 retailer. A person who knowingly violates this paragraph shall, in addition to any other penalties
207 provided by chapter 62C or this chapter, be subject to a civil penalty of not more than \$5,000 for
208 the first offense and not more than \$25,000 for a second or subsequent offense.

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

212 (2) A person who knowingly: (i) has in the person's possession a shipping case or other
213 container of electronic nicotine delivery systems that does not bear the name and address of the
214 person receiving the electronic nicotine delivery systems from a manufacturer or such other
215 markings as the commissioner may require; or (ii) is in possession of a shipping case or other
216 container of electronic nicotine delivery systems from which the name and address of the person
217 receiving the electronic nicotine delivery systems from the manufacturer has been erased or
218 defaced shall, in addition to any other penalties provided by chapter 62C or this chapter, be
219 subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000
220 for a second or subsequent offense.

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

225 (4) When the commissioner or a police officer discovers an untaxed electronic nicotine
226 delivery system in the possession of a person who is not a licensed or commissioner-authorized

227 electronic nicotine delivery system distributor, the commissioner or police officer may seize and
228 take possession of the electronic nicotine delivery systems.

229 Any electronic nicotine delivery system seized by a police officer shall be turned over to
230 the commissioner and shall be forfeited to the commonwealth. The commissioner shall destroy
231 the electronic nicotine delivery systems.

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

235 (6) Not more than 30 per cent of the amounts collected pursuant to civil penalties
236 imposed pursuant to this section shall be appropriated to the department of public health's
237 tobacco and cessation and prevention program.

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

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

241 SECTION 17. Section 3A of chapter 64H of the General Laws, as appearing in the 2018
242 Official Edition, is hereby amended by inserting after the word "cigars", in line 4, the following
243 words:- , electronic nicotine delivery systems.

244 SECTION 18. Chapter 111 of the General Laws is hereby amended by adding the
245 following section:-

246 Section 239. The department of public health shall promulgate regulations concerning: (i)
247 the sale of tobacco products, as defined in section 6 of chapter 270, to persons under the age of

248 21; (ii) the sale of electronic nicotine delivery systems as defined in section 7E of chapter 64C;
249 (iii) the advertisement of and signage for tobacco products and electronic nicotine delivery
250 systems; and (iv) the operation of retail tobacco stores and smoking bars as defined in section 22
251 of chapter 270. The regulations may provide for penalties for violations of regulations
252 promulgated pursuant to this section. A violation of this section may be a civil violation.

253 Regulations shall include, but not be limited to: (i) a requirement that tobacco stores and
254 smoking bars conspicuously post signage as required by the department; and (ii) a prohibition of
255 the use of fraudulent or misleading statements in the advertisement of tobacco products.

256 This section shall not limit the right of an appropriate authority in a city or town to adopt
257 rules and regulations as may be necessary; provided, however, that such a rule or regulation shall
258 not conflict with regulations promulgated by the department or state or federal law.

259 The commissioner of public health shall send proposed regulations drafted pursuant to
260 this section to the house and senate committees on ways and means and the joint committee on
261 public health not less than 90 days before filing the proposed regulations with the state secretary;
262 provided, however, that in promulgating an emergency regulation, the commissioner shall send
263 notice of the changes, including the emergency regulation, to the house and senate committees
264 on ways and means and the joint committee on public health on the same day that the emergency
265 regulation is filed with the state secretary.”.

266 SECTION 19. Chapter 118E of the General Laws is hereby amended by inserting after
267 section 10L the following section:-

268 Section 10M. (a) The division and its contracted health insurers, health plans, health
269 maintenance organizations, behavioral health management firms and third-party administrators

270 under contract to a Medicaid managed care organization or primary care clinician plan shall
271 provide coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States
272 Food and Drug Administration-approved tobacco cessation products without cost sharing when
273 prescribed by a health care provider.

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

278 SECTION 20. Chapter 175 of the General Laws is hereby amended by inserting after
279 section 47KK the following section:-

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

289 (b) Carriers shall be permitted to employ reasonable managed care techniques consistent
290 with state and federal law to determine the frequency, method, treatment or setting for the

291 recommended item or service; provided, however, that covered persons shall have access to at
292 least 1 tobacco cessation product without prior authorization.

293 SECTION 21. Chapter 176A of the General Laws is hereby amended by inserting after
294 section 8MM the following section:-

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

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

304 SECTION 22. Chapter 176B of the General Laws is hereby amended by inserting after
305 section 4MM the following section:-

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

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

315 SECTION 23. Chapter 176G of the General Laws is hereby amended by inserting after
316 section 4EE the following section:-

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

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

325 SECTION 24. Section 6 of chapter 270 of the General Laws, as appearing in the 2018
326 Official Edition, is hereby amended by striking out subsection (d) and inserting in place thereof
327 the following subsection:-

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

330 SECTION 25. Said chapter 270 is hereby further amended by adding the following 2
331 sections:-

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

334 “Characterizing flavor”, a distinguishable taste or aroma, other than the taste or aroma of
335 tobacco, imparted or detectable before or during consumption of a tobacco product, including,
336 but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa,
337 dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that
338 no tobacco product shall be determined to have a characterizing flavor solely because of the
339 provision of ingredient information or the use of additives or flavorings that do not contribute to
340 the distinguishable taste or aroma of the product.

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

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

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

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

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

351 “Retail establishment”, a physical place of business or a section of a physical place of
352 business in which a tobacco product is offered for sale to consumers.

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

354 “Smoke constituent”, any chemical or chemical compound in mainstream or sidestream
355 tobacco smoke that transfers from any component of the tobacco product to the smoke or that is
356 formed by the combustion or heating of tobacco, additives or other component of the tobacco
357 product.

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

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

371 (b) No person, retailer or manufacturer shall sell, distribute, cause to be sold or
372 distributed, offer for sale any flavored tobacco product or tobacco product flavor enhancer in any
373 retail establishment, online or through any other means to any consumer in the commonwealth;
374 provided, however, that this subsection shall not apply to the sale or distribution by a smoking

375 bar, as defined in section 22, of flavored tobacco products or tobacco product flavor enhancers
376 for on-site consumption. No person, retailer or manufacturer shall market or advertise a proposed
377 sale or distribution that is prohibited herein

378 (c) A person, retailer or manufacturer may make a sale of flavored tobacco products as it
379 applies to electronic nicotine delivery systems by online, phone, or other means for delivery to a
380 consumer located in another State.

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

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

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

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

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

394 “Electronic nicotine delivery system”, an electronic device, whether for 1-time use or
395 reusable, that can be used to deliver nicotine or another substance to a person inhaling from the

396 device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos,
397 electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or
398 aerosolization; provided, however, that “electronic nicotine delivery system” shall also include
399 any noncombustible liquid or gel that is manufactured into a finished product for use in such
400 electronic device; provided further, that “electronic nicotine delivery system” shall also include
401 any component, part or accessory of a device used during the operation of the device even if the
402 part or accessory was sold separately; provided further, that “electronic nicotine delivery system”
403 shall not include a product that has been approved by the United States Food and Drug
404 Administration for the sale of or use as a tobacco cessation product or for other medical purposes
405 and is marketed and sold or prescribed exclusively for that approved purpose.

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

408 “Retail tobacco store”, shall have the same meaning as in section 22.

409 “Smoking bar”, shall have the same meaning as in section 22.

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

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

415 SECTION 26. Section 4 and sections 18 to 21, inclusive, shall apply to policies, contracts
416 and subscription certificates that are delivered, issued or renewed in the commonwealth on or
417 after January 1, 2020.

418 SECTION 27. Notwithstanding section 28, 30 per cent of revenues received pursuant to
419 this section, together with any penalties, forfeitures, interest, costs of suits and fines collected in
420 connection therewith, less all amounts refunded or abated in connection therewith, all as
421 determined by the commissioner of revenue according to his best information and belief, shall be
422 credited to the Community Behavioral Health Promotion and Prevention Trust Fund.

423 SECTION 28. Sections 1, 2, 3 and 6 to 17, inclusive, and section 25 as it applies to all
424 tobacco products except for electronic nicotine delivery systems shall take effect on June 1,
425 2020.