

HOUSE No. 2369

The Commonwealth of Massachusetts

PRESENTED BY:

Joan Meschino

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the sale of electronic nicotine delivery systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>2/16/2021</i>

HOUSE No. 2369

By Ms. Meschino of Hull, a petition (accompanied by bill, House, No. 2369) of Joan Meschino relative to the sale of electronic nicotine delivery systems. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the sale of electronic nicotine delivery systems.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 270 of the General Laws, as appearing in the 2018 Official Edition
2 as changed by chapter 133 of the Acts of 2019, is hereby amended by adding the following two
3 sections:-

4 Section 30. Illicit Trade

5 (a) For the purposes of this section, the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Counterfeit electronic nicotine delivery system” means any electronic nicotine delivery
8 system that has a false manufacturing label or is not manufactured by the manufacturer indicated
9 on the product packaging, label, or container.

10 “Electronic nicotine delivery system”, an electronic device, whether for 1-time use or
11 reusable, that can be used to deliver nicotine or another substance to a person inhaling from the
12 device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos,

13 electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or
14 aerosolization; provided, however, that “electronic nicotine delivery system” shall also include
15 any noncombustible liquid or gel that is manufactured into a finished product for use in such
16 electronic device; provided further, that “electronic nicotine delivery system” shall also include
17 any component, part or accessory of a device used during the operation of the device even if the
18 part or accessory was sold separately; provided further, that “electronic nicotine delivery system”
19 shall not include a product that has been approved by the United States Food and Drug
20 Administration for the sale of or use as a tobacco cessation product or for other medical purposes
21 and is marketed and sold or prescribed exclusively for that approved purpose.

22 "Illicit electronic nicotine delivery system" means: (i) any counterfeit electronic nicotine
23 delivery system or (ii) any electronic nicotine delivery system that was not manufactured,
24 prepared, compounded, or processed by a person registered with the U.S. Food and Drug
25 Administration pursuant to 21 U.S.C. § 387e.

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

28 (b) It shall be unlawful for any person knowingly, directly or indirectly, to manufacture,
29 distribute, sell, barter, or furnish an illicit electronic nicotine delivery system.

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

32 Section 31. Electronic Nicotine Delivery System Directory

33 (a) For the purposes of this section, the following words shall have the following
34 meanings unless the context clearly requires otherwise:

35 "Electronic Nicotine Delivery System Directory" means a list prepared by the attorney
36 general of all manufacturers that have provided attestations that comply with subsection (b) and
37 every electronic nicotine delivery system that is listed in such certifications.

38 "Manufacturer" means an entity that manufactures an electronic nicotine delivery
39 system.

40 "Person", an individual, firm, fiduciary, partnership, corporation, trust or association,
41 however formed, or a club, trustee, agency or receiver.

42 (b) Every manufacturer of an electronic nicotine delivery system that is sold or intended
43 to be sold, whether directly or through a distributor, retailer, or similar intermediary or
44 intermediaries, shall execute and deliver an attestation under the penalty of perjury to the
45 attorney general certifying that, as of the date of such attestation:

46 (i) the electronic nicotine delivery system was on the U.S. market as of August 8,
47 2016, and the manufacturer has applied for a marketing order for such product by submitting a
48 Premarket Tobacco Product Application on or before September 9, 2020 to the U.S. Food &
49 Drug Administration; or

50 (ii) the manufacturer has received a marketing order or other authorization under the
51 21 U.S.C § 387j for such product from the U.S. Food & Drug Administration.

52 The manufacturer shall notify the attorney general within 30 days of any material change
53 to the attestation, including if the U.S. Food & Drug Administration has issued a market order or

54 other authorization, issued a no marketing order, or has ordered the manufacturer to remove such
55 product, either temporarily or permanently, from the U.S. market.

56 (c) The attorney general shall develop an electronic nicotine delivery system directory as
57 defined in subsection (a), make the directory available for public inspection on the attorney
58 general's website, and update the directory as necessary in order to correct mistakes and to add
59 or remove manufacturers or electronic nicotine delivery systems to keep the directory in
60 conformity with the requirements of this section.

61 (d) It shall be unlawful for any person knowingly, directly or indirectly, to manufacture,
62 distribute, sell, barter, or furnish any electronic nicotine delivery system that is not included in
63 the electronic nicotine delivery system directory.

64 (e) A person who violates this section shall be subject to a civil penalty of \$1,000 for a
65 first violation, \$2,000 for a second violation, and \$5,000 for a third or subsequent violation.

66 SECTION 2. The manufacturer attestation required by this act shall be submitted to the
67 attorney general within 30 days of the passage of this act. The attorney general shall make the
68 electronic nicotine delivery system directory available on the attorney general's website within
69 60 days of the passage of this act. It shall be unlawful for any person knowingly, directly or
70 indirectly, to manufacture, distribute, sell, barter, or furnish any electronic nicotine delivery
71 system that is not included in the electronic nicotine delivery system directory within 90 days of
72 the passage of this act.