

SENATE No. 1364

The Commonwealth of Massachusetts

PRESENTED BY:

Ryan C. Fattman

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 to repeal the state menthol ban.

PETITION OF:

NAME:

Ryan C. Fattman

DISTRICT/ADDRESS:

Worcester and Hampden

SENATE No. 1364

By Mr. Fattman, a petition (accompanied by bill, Senate, No. 1364) of Ryan C. Fattman for legislation to repeal the state menthol ban. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1433 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to repeal the state menthol ban.

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 2020 Official Edition,
2 is hereby amended by striking out section 28 and inserting in place thereof the following
3 section:-

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

6 “Characterizing flavor”, a distinguishable taste or aroma, other than the taste or aroma of
7 tobacco, imparted or detectable before or during consumption of an electronic nicotine delivery
8 system, including, but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla,
9 honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice;
10 provided, however, that no electronic nicotine delivery system shall be determined to have a

11 characterizing flavor solely because of the provision of ingredient information or the use of
12 additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

13 “Constituent”, any ingredient, substance, chemical or compound, other than tobacco,
14 water or reconstituted tobacco sheet, that is added by the manufacturer to an electronic nicotine
15 delivery system during the processing, manufacturing or packaging of the electronic nicotine
16 delivery system; provided, however, that “constituent” shall include a smoke constituent.

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

18 “Electronic nicotine delivery system”, shall have the same meaning as in section
19 29. “Flavored electronic nicotine delivery system”, any electronic nicotine delivery system that
20 contains a constituent that has or produces a characterizing flavor.

21 “Manufacturer”, a person that manufactures or produces an electronic nicotine delivery
22 system.

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

25 “Retail establishment”, a physical place of business or a section of a physical place of
26 business in which an electronic nicotine delivery system is offered for sale to consumers.

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

28 “Smoke constituent”, any chemical or chemical compound in mainstream or sidestream
29 smoke that transfers from any component of the electronic nicotine delivery system to the smoke
30 or that is formed by the heating of additives or other component of the electronic nicotine
31 delivery system.

32 “Electronic nicotine delivery system flavor enhancer”, any product designed,
33 manufactured, produced, marketed or sold to produce a characterizing flavor when added to any
34 electronic nicotine delivery system.

35 “(b) No person, retailer or manufacturer shall sell, distribute, cause to be sold or
36 distributed, offer for sale any flavored tobacco product or tobacco product flavor enhancer in any
37 retail establishment, online or through any other means to any consumer in the commonwealth;
38 provided, however, that this subsection shall not apply to the sale or distribution (i) by a smoking
39 bar, as defined in section 22, of flavored tobacco products or tobacco product flavor enhancers
40 for on-site consumption, or (ii) to any tobacco product that receives an order from the United
41 States Food and Drug Administration under 21 U.S.C. § 387j, or an order under § 387k(g). No
42 person, retailer or manufacturer shall market or advertise a proposed sale or distribution that is
43 prohibited herein.”

44 (c) A person, retailer or manufacturer may make a sale of flavored electronic nicotine
45 delivery systems by online, phone, or other means for delivery to a consumer located in another
46 State.

47 (d) Public statements, claims or indicia made or disseminated by a manufacturer or by
48 any person authorized or permitted by the manufacturer to make or disseminate public
49 statements, claims or indicia concerning such electronic nicotine delivery system, that such
50 electronic nicotine delivery system has or produces a characterizing flavor shall constitute
51 presumptive evidence that the electronic nicotine delivery system is a flavored electronic
52 nicotine delivery system.

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

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

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

59 SECTION 2. Section 29 of chapter 270 of the General Laws is hereby amended by
60 striking out subsection (b) and inserting in place thereof the following subsection:-

61 (b) No person shall sell an electronic nicotine delivery system with nicotine content
62 greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply
63 to retail tobacco stores or smoking bars. This subsection shall not apply to the sale of any product
64 that receives a marketing order from the United States Food and Drug Administration under 21
65 U.S.C. § 387j.

66 SECTION 3. Notwithstanding any general or special law to the contrary, the department
67 of revenue shall study and report on the impact to the Commonwealth's tax revenue by the
68 passage of this act. Said study shall analyze and compare the Commonwealth's tax revenues, as
69 impacted by Chapter 133 of the Acts of 2019 and this act, over a duration of time that allows for
70 a comparison of each act's impact. The department shall report its findings and recommendations
71 by filing the same with the clerks of the senate and house of representatives, the respective chairs
72 of the joint committee on revenue and the respective chairs of the committees on ways and
73 means not later than July 2025.

SECTION 4. This act shall take effect on July 2024.