

**SENATE . . . . . No. 1528**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

*Ryan C. Fattman*

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*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 repealing the state menthol ban.**

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PETITION OF:

NAME:

*Ryan C. Fattman*

DISTRICT/ADDRESS:

*Worcester and Hampden*

**SENATE . . . . . No. 1528**

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By Mr. Fattman, a petition (accompanied by bill, Senate, No. 1528) of Ryan C. Fattman for legislation to repeal the state menthol ban. Public Health.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1364 OF 2023-2024.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Fourth General Court  
(2025-2026)**  
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An Act repealing 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 2022 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 2027.

SECTION 4. This act shall take effect on July 2026.