

SENATE No. 2269

Senate, April 28, 2016 -- Text of the Senate Bill to protect youth from the health risks of tobacco and nicotine addiction (Senate, No. 2269) (being the text of Senate, No. 2234, printed as amended)

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to protect youth from the health risks of tobacco and nicotine addiction.

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 71 of the General Laws is hereby amended by striking out section
2 2A, as appearing in the 2014 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 2A. No person shall use tobacco products as defined in section 6 of chapter 270
5 within the school buildings or facilities or on the grounds or school buses of a primary or
6 secondary school, including public and private schools, or at any school-sponsored event.

7 Each school committee or board of trustees shall establish a policy regarding violations
8 of this section. The policy may include, but shall not be limited to, mandatory education classes
9 on the hazards of using tobacco products.

10 SECTION 2. Section 37H of said chapter 71, as so appearing, is hereby amended by
11 inserting after the word “products”, in line 4, the following words:- , as defined in section 6 of
12 chapter 270.

SECTION 3. Chapter 74 of the General Laws is hereby amended by adding the following section:-

Section 57. No person shall use tobacco products as defined in section 6 of chapter 270 within the school buildings or facilities or on the grounds or school buses of a vocational school or at any school-sponsored event at a vocational school.

Each school committee or board of trustees shall establish a policy regarding violations of this section. The policy may include, but shall not be limited to, mandatory education classes on the hazards of using of tobacco products.

SECTION 4. Chapter 94 of the General Laws is hereby amended by striking out section 307C, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

Section 307C. The department of public health may, in consultation with the attorney general, the department of revenue and the multi-agency illegal tobacco task force established in section 40 of chapter 64C, establish regulations for persons engaged in the sale or shipment of tobacco products as defined in section 6 of chapter 270 to prevent the sale or delivery of tobacco products to individuals under 21 years of age.

SECTION 5. Chapter 112 of the General Laws is hereby amended by inserting after section 61 the following section:-

Section 61A. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

33 “Health care institution”, an individual, partnership, association, corporation or trust or a
34 person or group of persons that: (i) provides health care services and employs health care
35 providers subject to licensing under this chapter; or (ii) a retail establishment that sells
36 pharmaceutical goods and services and is subject to regulation by the board of registration in
37 pharmacy.

38 “Retail establishment”, a store that sells goods to the public.

39 “Tobacco product”, a tobacco product as defined in section 6 of chapter 270.

40 (b) No health care institution shall sell or authorize the sale of tobacco products within
41 the buildings or facilities or on the grounds of the health care institution. For the purposes of this
42 section, a retail establishment shall be considered a health care institution if it operates at a health
43 care institution or has a health care institution located on or within its premises; provided,
44 however, a retail establishment that provides optician, optometric, hearing aid or audiology
45 services but is not subject to regulation by the board of registration in pharmacy shall not be
46 considered a health care institution.

47 SECTION 6. Chapter 270 of the General Laws is hereby amended by striking out
48 sections 6 and 6A, as appearing in the 2014 Official Edition, and inserting in place thereof the
49 following 3 sections:-

50 Section 6. (a) As used in this section and section 6A, the following words shall have the
51 following meanings unless the context clearly requires otherwise:

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

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

55 "Retail establishment", a physical place of business or a section of a physical place of
56 business where a tobacco product is offered for sale to consumers.

57 "Retail tobacco store", an establishment: (i) that is not required to possess a retail food
58 permit; (ii) whose primary purpose is to sell or offer for sale to consumers, but not for resale, a
59 tobacco product and related paraphernalia in which the sale of other products is merely
60 incidental; (iii) that prohibits the entry of persons under the age of 21; and (iv) that maintains a
61 valid permit for the retail sale of a tobacco product as required to be issued by the appropriate
62 authority in the city or town in which the establishment is located.

63 "Retailer", a person or entity that operates a store or premises that offers a tobacco
64 product for sale.

65 "Tobacco product", a product containing, made or derived from tobacco or nicotine that
66 is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,
67 snorted, sniffed or ingested by any other means including, but not limited to: cigarettes, cigars,
68 little cigars, chewing tobacco, pipe tobacco and snuff and electronic cigarettes, electronic cigars,
69 electronic pipes or other similar products that rely on vaporization or aerosolization; provided,
70 however, that "tobacco product" shall include any component, part or accessory of a tobacco
71 product; and provided further, that "tobacco product" shall not include a product that has been
72 approved by the United States Food and Drug Administration for the sale as a tobacco cessation
73 product and is marketed and sold exclusively for the approved purpose.

74 (b) No person shall sell a tobacco product to a person under the age of 21 or give a
75 tobacco product to a person under the age of 21.

76 (c) No manufacturer or retailer shall distribute or cause to be distributed a free sample of
77 a tobacco product in a retail or other commercial establishment; provided, however, that this
78 subsection shall not apply to retail tobacco stores and smoking bars as defined in section 22.

79 (d) A person who violates this section shall be punished by a fine of \$100 for the first
80 offense, \$200 for a second offense and \$300 for a third or subsequent offense.

81 (e) The department of public health may promulgate regulations to implement this
82 section.

83 Section 6A. (a) For purposes of this section, “tobacco vending machine”, shall mean an
84 automated or mechanical self-service device which, upon insertion of money or other form of
85 payment, dispenses or creates a tobacco product.

86 (b) No person shall use a tobacco vending machine for the commercial distribution of
87 tobacco products or to otherwise sell tobacco products.

88 (c) A person who sells tobacco rolling papers to a person under the age of 21 shall be
89 punished by a fine of \$25 for the first offense, \$50 for the second offense and \$100 for a third or
90 subsequent offense.

91 Section 6B. (a) No person under 21 years of age shall knowingly purchase, possess,
92 transport or carry on the person a tobacco product as defined in section 6 or tobacco rolling
93 papers; provided, however, this section shall not apply to a person who knowingly possesses,

94 transports or carries a tobacco product or tobacco rolling papers in the course of the person's
95 employment.

96 (b) A law enforcement officer shall provide notice of a violation, by telephone or by first-
97 class mail, to a parent or guardian of a person 17 years of age or under who violates this section
98 within a reasonable time period after the violation occurs if the contact information of a parent or
99 guardian is reasonably ascertainable by the officer. No record of such notification shall be logged
100 in any report or file or kept in a person's record by a law enforcement officer and no violation
101 under this section shall be used in the furtherance of an ongoing or future criminal investigation.

102 (c) A person who violates this section shall forfeit the tobacco product or tobacco rolling
103 papers in that person's possession upon the request of a law enforcement officer.

104 SECTION 6A. Section 7 of said chapter 270, as so appearing, is hereby amended by
105 adding the following paragraph:-

106 The owner or other person in charge of a shop or other place used to sell any tobacco
107 products at retail shall conspicuously post signage provided by the department of public health
108 that discloses current referral information about smoking cessation which may include, but shall
109 not be limited to, the website of the Massachusetts Tobacco Cessation and Prevention Program
110 (www.makesmokinghistory.org) and the Massachusetts Smokers' Helpline at 1-800-Quit-Now
111 (1-800-784-8669).

112 SECTION 7. Subsection (a) of section 22 of said chapter 270, as appearing in the 2014
113 Official Edition, is hereby amended by striking out the definitions of "Smoking or smoke" and
114 "Smoking bar" and inserting in place thereof the following 3 definitions:-

115 “Smoking”, the inhaling, exhaling, burning or carrying of a lighted or heated cigar,
116 cigarette, pipe or other tobacco product or plant product intended for inhalation in any manner or
117 form; provided, however, that “smoking” shall include the use of electronic cigarettes, electronic
118 cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

119 “Smoking bar”, an establishment that: (i) exclusively occupies an enclosed indoor space
120 and is primarily engaged in the retail sale of tobacco products as defined in section 6 for
121 consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or
122 other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person
123 under 21 years of age; (iii) prohibits any food or beverage not sold directly by the business from
124 being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco
125 product as required to be issued by the appropriate authority in the city or town in which the
126 establishment is located; and (v) maintains a valid permit to operate a smoking bar issued by the
127 department of revenue.

128 “Tobacco product”, a tobacco product as defined in section 6.

129 SECTION 8. Said section 22 of said chapter 270, as so appearing, is hereby further
130 amended by striking out, in lines 90, 276 and 281, the figure “18” and inserting in place thereof,
131 in each instance, the following figure:- 21.

132 SECTION 9. Said chapter 270 is hereby further amended by adding the following
133 section:-

134 Section 27. (a) As used in this section, the following words shall have the following
135 meanings unless the context clearly requires otherwise:

136 “Child-resistant packaging”, packaging intended to reduce the risk of children ingesting
137 nicotine that meets the minimum standards as set forth in 15 U.S.C. §§ 1471 to 1476, inclusive,
138 and 16 CFR § 1700 et seq.

139 “Liquid nicotine container”, a package: (i) from which nicotine in a solution or other
140 form is accessible through normal and foreseeable use by a consumer; and (ii) that is used to
141 hold soluble nicotine in any concentration; provided, however, that the term “liquid nicotine
142 container” shall not include a sealed, prefilled and disposable container of nicotine in a solution
143 or other form in which such container is inserted directly into an electronic cigarette, electronic
144 nicotine delivery system or other similar product if the nicotine in the container is inaccessible
145 through customary or reasonably foreseeable handling or use, including reasonably foreseeable
146 ingestion or other contact by children, as amended from time to time.

147 (b) No person shall knowingly sell, distribute or import for sale within the
148 commonwealth:

149 (i) a liquid or gel substance containing nicotine unless that product is contained in
150 child-resistant packaging; or

151 (ii) a nicotine liquid container unless that container includes child-resistant
152 packaging as part of its design.

153 (c) A person who violates this section shall be subject to a civil penalty of \$250 for a
154 first violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.

155 (d) The local board of health, the local department of public health, the local inspection
156 department or equivalent local authority or its agent shall enforce this section through the

157 noncriminal disposition of violations. In the city of Boston, the commissioner of health and the
158 commissioner's authorized agents shall enforce this section through the noncriminal disposition
159 of violations.

160 SECTION 10. The commissioner of public health may promulgate regulations to restrict
161 the sale of products containing nicotine to individuals under the age of 21; provided, however,
162 that a regulated product shall contain nicotine and be primarily manufactured or used to deliver
163 nicotine to the user. The commissioner shall send a notice of proposed changes, including
164 proposed draft regulations, to the house and senate committees on ways and means and the joint
165 committee on public health at least 90 days before filing draft regulations with the secretary of
166 state.

167 SECTION 11. On the effective date of this act, a retail establishment that sells tobacco
168 products as those terms are defined in section 6 of chapter 270 of the General Laws shall
169 conspicuously post a notice produced by the department of public health that states the minimum
170 legal sales age to purchase tobacco products. The notice shall include the dates that the minimum
171 age for purchase of tobacco products shall go into effect. Retail establishments shall
172 continuously post the notice until January 1, 2019.

173 SECTION 12. Notwithstanding subsection (b) of section 6 of chapter 270 of the General
174 Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not
175 prohibit such sales to persons who attained the age of 18 before January 1, 2017.

176 SECTION 13. The center for health information and analysis, in collaboration with the
177 division of insurance, department of public health, the group insurance commission and the
178 office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance

179 plan and compare the tobacco cessation benefits to the United States Preventive Services Task
180 Force recommendations for best practices for comprehensive tobacco cessation treatment.

181 SECTION 14. The special commission established in section 206 of chapter 139 of the
182 acts of 2012, and extended by section 24A of chapter 118 of the acts of 2013 is hereby revived
183 and continued. The commission shall file a report of its recommendations to the clerks of the
184 senate and house of representatives, the joint committee on public health, the joint committee on
185 health care financing and the house and senate committees on ways and means not later than
186 December 31, 2017.

187 SECTION 15. This act shall take effect on January 1, 2017.