

## Bill Text for HB3639 (HD3836) of 2013-2014 Session

# An Act modernizing tobacco control and protecting the health of minors

Prime sponsor: **Representative Jeffrey Sanchez (D)**

An Act modernizing tobacco control and protecting the health of minors.

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

SECTION 1. [Section 2A of chapter 71](#) of the General Laws is hereby amended by inserting after the word "products" , in line 3, the following words: -

or nicotine delivery products, as such terms are defined in [section 6 of chapter 270](#), in any of their forms,

SECTION 2. [Section 37H of chapter 71](#) of the General Laws is hereby amended by inserting after the word "products" , in line 3, the following words: -

or nicotine delivery products, as such terms are defined in [section 6 of chapter 270](#), in any of their forms,

SECTION 3. [Chapter 94](#) of the General Laws is hereby amended by striking out section 307C, as appearing in the 2012 Official Edition, and inserting in place thereof the following section: -

Section 307C. The department of public health may, in consultation with the attorney general and the department of revenue, establish regulations for persons engaged in the sale or shipment of nicotine delivery products or tobacco products, as such terms are defined in [section 6 of chapter 270](#), in any of their forms, to prevent the sale or delivery of nicotine delivery products or tobacco products in any of their forms to children under 18 years of age in the commonwealth.

SECTION 4. [Chapter 270](#) of the General Laws is hereby amended by striking out section 6, as appearing in the 2012 Official Edition, and inserting in place thereof the following section: -

Section 6. (a) As used in this section, the following terms shall have the following meanings:

"E-cigarette" , any electronic device that can be used to deliver liquid nicotine vapor to the user, or release on vaporization of any liquid or solid, and shall include such devices whether manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

"Manufacturer" , any person who manufactures or produces nicotine delivery products or tobacco products.

"Nicotine delivery product" , any manufactured article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, but not including a tobacco substitute prescribed by a licensed medical provider or a product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

"Retail establishment" , any physical place of business or section of a physical place of business where tobacco products or nicotine delivery products are offered to consumers, and which also includes portions of any physical place of business where vending machines that dispense tobacco products or nicotine delivery products are located.

"Retail tobacco store" , an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products or nicotine delivery products and paraphernalia, including e-cigarettes, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products or nicotine delivery products as required to be issued by the appropriate authority in the city or town where the establishment is located.

"Retailer" , any person who operates a store or concession for the purposes of making sales of tobacco products at retails, and any person selling tobacco products through vending machines.

"Smoking bar" , an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products or nicotine delivery products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products or nicotine delivery products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products or nicotine delivery products as required to be issued by the appropriate authority in the city or town where the establishment is located; and, maintains a valid permit to operate a smoking bar issued by the department of revenue.

"Tobacco product" , a cigarette, cigar, little cigar, chewing tobacco, pipe tobacco, snuff, or other tobacco in any form intended for human consumption.

(b) No person shall sell nicotine delivery products or tobacco products in any of their forms to any person under the age of 18 or, not being his parent or guardian, give a nicotine delivery product or tobacco product in any of their forms to any person under the age of 18.

(c) No manufacturer or retailer shall distribute or cause to be distributed any free samples of nicotine delivery products or tobacco products in any retail establishment, excluding retail tobacco stores and smoking bars.

(d) Anyone in violation of the provisions of this section shall be punished by a fine of not less than 100 dollars for the first offense, not less than 200 dollars for a second offense and not less than 300 dollars for any third or subsequent offense.

(e) The Department of Public Health shall promulgate regulations for implementation of the provisions of this section.

SECTION 5. [Section 22 of chapter 270](#) of the General Laws is hereby amended by striking out, in subsection (a) in lines 82 to 104, as appearing in the 2012 Official Edition, the definitions for "Retail tobacco store" , "Smoking" or "Smoke" , and "Smoking Bar" and inserting in place thereof the following definitions:-

"Retail tobacco store" , an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products or nicotine delivery products and paraphernalia, including e-cigarettes, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products or nicotine delivery products as required to be issued by the appropriate authority in the city or town where the establishment is located.

"Smoking" or "smoke" , the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe, or other tobacco or non-tobacco product designed to be combusted or inhaled.

"Smoking bar" , an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products or nicotine delivery products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products or nicotine delivery products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products or nicotine delivery products as required to be issued by the appropriate authority in the city or town where the establishment is located; and, maintains a valid permit to operate a smoking bar issued by the department of revenue.

SECTION 6. [Section 22 of chapter 270](#) of the General Laws is hereby further amended by adding, in subsection (a) in line 10, the following definition:-

"E-cigarette" , any electronic device that can be used to deliver liquid nicotine vapor to the user, or release on vaporization of any liquid or solid, and shall include such devices whether manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

SECTION 7. [Section 22 of chapter 270](#) of the General Laws is hereby further amended by adding the following subsection:-

(p) The provisions within this section pertaining to smoking shall also apply to use of e-cigarettes.