

HOUSE No. 4183

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 12, 2019.

The committee on Ways and Means, to whom was referred the Bill regulating flavored tobacco products (House, No. 4089), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4183).

For the committee,

AARON MICHLEWITZ.

HOUSE No. 4183

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act modernizing tobacco control.

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 10 of the General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by striking out section 30B and inserting in place thereof the following
3 section:-

4 Section 30B. Upon receiving notice from the commissioner of revenue that a retailer as
5 defined in section 1 of chapter 64C, a cigar retailer as defined in section 7B of said chapter 64C
6 or an electronic nicotine delivery system retailer as defined in section 7E of said chapter 64C has
7 had a cigar, electronic nicotine delivery system or tobacco license suspended or revoked for a
8 knowing violation of paragraph (1) of subsection (l) of said section 7B of said chapter 64C,
9 paragraph (1) of subsection (l) of said section 7E of said chapter 64C or section 34 or 35 of said
10 chapter 64C, the director of the state lottery shall suspend any license to sell lottery tickets or
11 shares issued to the retailer, cigar retailer or electronic nicotine delivery system retailer pursuant
12 to sections 26 and 27 for not more than 60 days.

CORRECTED

13 SECTION 2. Section 6 of chapter 14 of the General Laws, as so appearing, is hereby
14 amended by striking out, in line 93, the first time it appears, the word “or”.

15 SECTION 3. Said section 6 of said chapter 14, as so appearing, is hereby further
16 amended by inserting after the figure “64C”, in line 94, the following words:- or electronic
17 nicotine delivery system distributor or electronic nicotine delivery system retailer as defined in
18 section 7E of said chapter 64C.

19 SECTION 4. Chapter 32A of the General Laws is hereby amended by inserting after
20 section 28 the following section:-

21 Section 29. (a) The commission shall provide to any active or retired employee of the
22 commonwealth who is insured under the group insurance commission coverage for: (i) tobacco
23 use cessation counseling; and (ii) all generic United States Food and Drug Administration-
24 approved tobacco cessation products without cost sharing when prescribed by a health care
25 provider.

26 (b) The commission may employ reasonable managed care techniques consistent with
27 state and federal law to determine the frequency, method, treatment or setting for the
28 recommended item or service, provided that covered persons have access to at least 1 tobacco
29 cessation product without prior authorization.

30 SECTION 5. Section 16 of chapter 62C of the General Laws is hereby amended by
31 inserting after subsection (c¹/₂), as appearing in the 2018 Official Edition, the following
32 subsection:-

CORRECTED

33 (c^{3/4}) Every licensee under section 7E of chapter 64C shall, on or before the twentieth day
34 of each calendar month or on or before the twentieth day of the month following each calendar
35 quarter, as the commissioner shall require, file with the commissioner a return for each place of
36 business that the licensee maintains stating the quantity of electronic nicotine delivery systems
37 sold by the licensee in the commonwealth during the preceding calendar month or quarter, as the
38 case may be. The return shall contain or be accompanied by any additional information that the
39 commissioner may require. If a licensee ceases to sell electronic nicotine delivery systems, the
40 licensee shall immediately file with the commissioner a return for the period in which the
41 cessation took place.

42 SECTION 6. Section 67 of said chapter 62C, as so appearing, is hereby amended by
43 striking out, in lines 7 and 23, the words “retailer, cigar” and inserting in place thereof, in each
44 instance, the following words:- retailer, electronic nicotine delivery system distributor or
45 electronic nicotine delivery system retailer, cigar.

46 SECTION 7. Said section 67 of said chapter 62C, as so appearing, is hereby further
47 amended by striking out, in lines 33 and 35, the words “retailers and” and inserting in place
48 thereof, in each instance, the following words:- retailers, electronic nicotine delivery system
49 retailers and.

50 SECTION 8. Said section 67 of said chapter 62C, as so appearing, is hereby further
51 amended by inserting after the word “retailers”, in line 49, the following words:- , electronic
52 nicotine delivery system distributors, electronic nicotine delivery system retailers.

53 SECTION 9. Said section 67 of said chapter 62C, as so appearing, is hereby further
54 amended by inserting after the word “retailers”, in line 65, the first time it appears, the following

CORRECTED

55 words:- ; electronic nicotine delivery system distributors; electronic nicotine delivery system
56 retailers.

57 SECTION 10. Said section 67 of said chapter 62C, as so appearing, is hereby further
58 amended by inserting after the word “wholesaler”, in lines 67 and 68, the following words:- ,
59 electronic nicotine delivery system distributor.

60 SECTION 11. Section 68 of said chapter 62C, as so appearing, is hereby amended by
61 inserting after the figure “64C”, in line 45, the following words:- , an electronic nicotine delivery
62 system retailer, as defined in subsection (a) of section 7E of said chapter 64C.

63 SECTION 12. Said section 68 of said chapter 62C, as so appearing, is hereby further
64 amended by inserting after the figure “64C”, in line 49, the following words:- , paragraph (1) of
65 subsection (l) of section 7E of said chapter 64C.

66 SECTION 13. Section 1 of chapter 64C of the General Laws, as so appearing, is hereby
67 amended by inserting after the word “cigarettes”, in line 8, the following words:- , an electronic
68 nicotine delivery system as defined in subsection (a) of section 7E.

69 SECTION 14. Subsection (a) of section 2C of said chapter 64C, as so appearing, is
70 hereby amended by striking out clause (3) and inserting in place thereof the following clause:-

71 (3) each cigarette listed in the certification shall be described with the following
72 information:

73 (i) brand, the trade name on the package;

74 (ii) style, light or ultra light;

CORRECTED

- 75 (iii) length in millimeters;
- 76 (iv) circumference in millimeters;
- 77 (v) filter or non-filter;
- 78 (vi) package description, soft pack or box; and
- 79 (vii) the marking approved in accordance with this section.

80 SECTION 15. Said chapter 64C is hereby amended by inserting after section 7D the
81 following section:-

82 Section 7E. (a) As used in this section, the following words shall, unless the context
83 clearly requires otherwise, have the following meanings:

84 “Electronic nicotine delivery system”, an electronic device, whether for 1-time use or
85 reusable, that can be used to deliver nicotine or another substance to a person inhaling from the
86 device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos,
87 electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or
88 aerosolization; provided, however, that “electronic nicotine delivery system” shall also include
89 any noncombustible liquid or gel that is manufactured into a finished product for use in such
90 electronic device; provided further, that “electronic nicotine delivery system” shall also include
91 any component, part or accessory of a device used during the operation of the device even if the
92 part or accessory was sold separately; and provided further, that “electronic nicotine delivery
93 system” shall not include a product that has been approved by the United States Food and Drug
94 Administration for the sale of or use as a tobacco cessation product or for other medical purposes
95 and is marketed and sold or prescribed exclusively for the approved purpose.

CORRECTED

96 “Electronic nicotine delivery system distributor”, (i) a person who imports or causes to be
97 imported into the commonwealth electronic nicotine delivery systems for sale or who
98 manufactures electronic nicotine delivery systems in the commonwealth; or (ii) a person within
99 or without the commonwealth who is authorized by the commissioner to make returns and pay
100 the excise on electronic nicotine delivery systems sold, shipped or delivered by the person to a
101 person in the commonwealth.

102 “Electronic nicotine delivery system retailer”, a person who sells or furnishes electronic
103 nicotine delivery systems to consumers for individual use; provided, however, that the electronic
104 nicotine delivery systems shall not be used for the purpose of resale.

105 “Person”, a natural person, corporation, association, partnership or other legal entity.

106 “Taxed electronic nicotine delivery system”, an electronic nicotine delivery system upon
107 which the excise has been paid in full by the date on which payment was due and with respect to
108 which the return has been completed, signed and filed with the commissioner by the date on
109 which the return was due pursuant to this section and section 16 of chapter 62C.

110 “Untaxed electronic nicotine delivery system”, an electronic nicotine delivery system
111 upon which the excise has not been paid in full by the date on which payment was due or with
112 respect to which the return has not been completed, signed and filed with the commissioner by
113 the date on which the return was due pursuant to this section and section 16 of chapter 62C.

114 “Wholesale price”, in the case of: (i) a manufacturer of electronic nicotine delivery
115 systems, the price set for such products or, if no price has been set, the wholesale value of the
116 electronic nicotine delivery system; (ii) an electronic nicotine delivery system distributor who is
117 not a manufacturer of electronic nicotine delivery systems, the price at which the electronic

CORRECTED

118 nicotine delivery system distributor purchased the electronic nicotine delivery system; or (iii) an
119 electronic nicotine delivery system retailer or a consumer, the price at which the electronic
120 nicotine delivery system retailer or consumer purchased the electronic nicotine delivery system.

121 (b) There shall be an excise on an electronic nicotine delivery system held in the
122 commonwealth at a rate of 75 per cent of the wholesale price. The excise shall be imposed on an
123 electronic nicotine delivery system distributor at the time that the electronic nicotine delivery
124 system is manufactured, purchased, imported, received or acquired in the commonwealth. The
125 excise shall not be imposed on an electronic nicotine delivery system that is exported from the
126 commonwealth.

127 (c) An electronic nicotine delivery system retailer shall be liable for the collection of the
128 excise on all electronic nicotine delivery systems that are in the electronic nicotine delivery
129 system retailer's possession at any time and upon which the excise has not been paid by an
130 electronic nicotine delivery system distributor. There shall be a presumption that the excise on
131 the electronic nicotine delivery system has not been paid and that the electronic nicotine delivery
132 system retailer is liable for the collection of the excise on the electronic nicotine delivery system
133 if, upon demand, an electronic nicotine delivery system retailer fails to produce or exhibit to the
134 commissioner or the commissioner's authorized representative an invoice by an electronic
135 nicotine delivery system distributor for an electronic nicotine delivery system in the electronic
136 nicotine delivery system retailer's possession.

137 (d) The amount of the excise advanced and paid by an electronic nicotine delivery system
138 distributor or electronic nicotine delivery system retailer under this section shall be added to and
139 collected as part of the sales price of the electronic nicotine delivery system.

CORRECTED

140 (e)(1) An electronic nicotine delivery system distributor shall be liable for the payment of
141 the excise on electronic nicotine delivery systems that the electronic nicotine delivery system
142 distributor imports or causes to be imported into the commonwealth or that the electronic
143 nicotine delivery system distributor manufactures in the commonwealth. An electronic nicotine
144 delivery system distributor authorized by the commissioner to make returns and pay the excise
145 on electronic nicotine delivery systems sold, shipped or delivered by the electronic nicotine
146 delivery system distributor to a person in the commonwealth shall be liable for the collection and
147 payment of the excise on all of the electronic nicotine delivery systems so sold, shipped or
148 delivered.

149 (2) A person who does not acquire untaxed electronic nicotine delivery systems but
150 acquires taxed electronic nicotine delivery systems for sale at retail shall not be licensed as an
151 electronic nicotine delivery system distributor under this section; provided, however, that the
152 person shall be required to be licensed as an electronic nicotine delivery system retailer during
153 the period that the person is an electronic nicotine delivery system retailer of taxed electronic
154 nicotine delivery systems.

155 (f) A person outside the commonwealth who ships or transports electronic nicotine
156 delivery systems to electronic nicotine delivery system retailers in the commonwealth to be sold
157 by electronic nicotine delivery system retailers may apply for a license as a nonresident
158 electronic nicotine delivery system distributor. Upon the issuance of such a license, the licensee
159 shall be subject to this section and may act as an electronic nicotine delivery system distributor;
160 provided, however, that such person shall file proof with the person's application that the person
161 has appointed the state secretary as the person's agent for service of process relating to any
162 matter or issue arising under this section. The person shall also agree to submit the person's

CORRECTED

163 books, accounts and records for examination in the commonwealth during reasonable business
164 hours upon request by the commissioner or the commissioner's authorized representative.

165 (g) A resident of the commonwealth shall be liable for the collection of the excise on all
166 electronic nicotine delivery systems that are in the resident's possession at any time and upon
167 which the excise has not been paid by an electronic nicotine delivery system distributor or
168 electronic nicotine delivery system retailer. There shall be a presumption that the excise on the
169 electronic nicotine delivery system has not been paid and that the resident is liable for such
170 excise if a resident, upon demand, fails to produce or exhibit to the commissioner or the
171 commissioner's authorized representative an invoice or sales receipt by an electronic nicotine
172 delivery system distributor or electronic nicotine delivery system retailer for an electronic
173 nicotine delivery system in the resident's possession.

174 (h) No person shall act as an electronic nicotine delivery system distributor or electronic
175 nicotine delivery system retailer in the commonwealth unless licensed to do so under section 67
176 of chapter 62C. If an electronic nicotine delivery system distributor or electronic nicotine
177 delivery system retailer acts as both an electronic nicotine delivery system distributor and
178 electronic nicotine delivery system retailer at 1 place of business, the electronic nicotine delivery
179 system distributor or electronic nicotine delivery system retailer shall procure a license to act as
180 an electronic nicotine delivery system distributor and a license to act as an electronic nicotine
181 delivery system retailer unless, upon application to the commissioner, the commissioner
182 determines otherwise. Each license so issued or a duplicate copy thereof shall be prominently
183 displayed on the premises covered by the license.

CORRECTED

184 (i) Except as otherwise provided in this section, the provisions of this chapter and chapter
185 62C relative to the assessment, collection, payment, abatement, verification and administration
186 of taxes, including penalties, shall apply to the excise imposed by this section.

187 (j) For the purposes of section 5, electronic nicotine delivery systems shall be tobacco
188 products, an electronic nicotine delivery system distributor shall be a wholesaler and an
189 electronic nicotine delivery system retailer shall be a retailer.

190 (k) For the purposes of section 8, untaxed electronic nicotine delivery systems found in
191 the commonwealth shall be cigarettes, which have not been returned and are not returnable under
192 section 16 of chapter 62C or section 6 as applicable.

193 (l)(1) A person who sells, offers for sale or possesses with intent to sell an electronic
194 nicotine delivery system or otherwise acts as an electronic nicotine delivery system distributor or
195 electronic nicotine delivery system retailer without being licensed as such shall, in addition to
196 any other penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not
197 more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent
198 offense.

199 A person who knowingly purchases or possesses an electronic nicotine delivery system
200 not manufactured, purchased or imported by a licensed electronic nicotine delivery system
201 distributor or licensed electronic nicotine delivery system retailer shall, in addition to any other
202 penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than
203 \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

204 A person shall not, either as principal or agent, sell or solicit orders for electronic nicotine
205 delivery systems to be shipped, mailed or otherwise sent or brought into the commonwealth to

CORRECTED

206 any person who is not a licensed electronic nicotine delivery system distributor or licensed
207 electronic nicotine delivery system retailer unless the same is to be sold to or through a licensed
208 electronic nicotine delivery system distributor or licensed electronic nicotine delivery system
209 retailer. A person who knowingly violates this paragraph shall, in addition to any other penalties
210 provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for
211 the first offense and not more than \$25,000 for a second or subsequent offense.

212 An electronic nicotine delivery system shall be presumed to be subject to the excise under
213 this section unless the person on whose premises the electronic nicotine delivery system was
214 found establishes otherwise.

215 (2) A person who knowingly: (i) has in the person's possession a shipping case or other
216 container of electronic nicotine delivery systems that does not bear the name and address of the
217 person receiving the electronic nicotine delivery systems from a manufacturer or such other
218 markings as the commissioner may require; or (ii) is in possession of a shipping case or other
219 container of electronic nicotine delivery systems from which the name and address of the person
220 receiving the electronic nicotine delivery systems from the manufacturer has been erased or
221 defaced shall, in addition to any other penalties provided by this chapter or chapter 62C, be
222 subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000
223 for a second or subsequent offense.

224 (3) A person who files a false return, affidavit or statement or who violates a provision of
225 this section for which no other penalty has been provided shall, in addition to any other penalty
226 provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for
227 the first offense and not more than \$25,000 for a second or subsequent offense.

CORRECTED

228 (4) When the commissioner or a police officer discovers an untaxed electronic nicotine
229 delivery system in the possession of a person who is not a licensed or commissioner-authorized
230 electronic nicotine delivery system distributor, the commissioner or police officer may seize and
231 take possession of the electronic nicotine delivery systems and any vending machine or other
232 receptacle including, but not limited to, a motor vehicle, boat or airplane in which the electronic
233 nicotine delivery systems are contained or transported.

234 Any electronic nicotine delivery system, vending machine or other receptacle seized by a
235 police officer shall be turned over to the commissioner and shall be forfeited to the
236 commonwealth. The commissioner shall destroy the electronic nicotine delivery system and shall
237 destroy or otherwise dispose of the vending machine or other receptacle. The commissioner may,
238 within a reasonable time after the seizure and by a public notice of not less than 5 days before the
239 day of sale, sell the vending machine or other receptacle at public sale and deposit the proceeds
240 in the General Fund.

241 (5) The state police and local police departments may and, at the request of the
242 commissioner or the commissioner's duly authorized agent, shall enforce this section. Each
243 violation of this section shall be a separate offense.

244 (m) Marijuana products as defined in section 1 of chapter 94G shall not be subject to the
245 excise imposed under this section.

246 (n) The commissioner may promulgate regulations to implement this section.

247 SECTION 16. Section 3A of chapter 64H of the General Laws, as appearing in the 2018
248 Official Edition, is hereby amended by inserting after the word "cigars", in line 4, the following
249 words:- , electronic nicotine delivery systems.

CORRECTED

250 SECTION 17. Chapter 118E of the General Laws, as so appearing, is hereby amended by
251 inserting after section 10L the following section:-

252 Section 10M. (a) The division and its contracted health insurers, health plans, health
253 maintenance organizations, behavioral health management firms and third-party administrators
254 under contract to a Medicaid managed care organization or primary care clinician plan shall
255 provide coverage for: (i) tobacco use cessation counseling; and (ii) all generic United States
256 Food and Drug Administration-approved tobacco cessation products without cost sharing when
257 prescribed by a health care provider.

258 (b) The division shall be permitted to employ reasonable managed care techniques
259 consistent with state and federal law to determine the frequency, method, treatment or setting for
260 the recommended item or service, provided that covered persons have access to at least 1 tobacco
261 cessation product without preauthorization.

262 SECTION 18. Chapter 175 of the General Laws, as so appearing, is hereby amended by
263 inserting after section 47KK the following section:-

264 Section 47LL. (a) An individual policy of accident and sickness insurance issued under
265 section 108 that provides benefits for hospital expenses and surgical expenses and any group
266 blanket policy of accident and sickness insurance issued under section 110 that provides benefits
267 for hospital expenses and surgical expenses delivered, issued or renewed by agreement between
268 the insurer and the policyholder, within or outside the commonwealth, shall provide benefits for
269 residents of the commonwealth and all group members having a principal place of employment
270 in the commonwealth coverage for: (i) tobacco use cessation counseling; and (ii) all generic

CORRECTED

271 United States Food and Drug Administration-approved tobacco cessation products without cost
272 sharing when prescribed by a health care provider.

273 (b) Carriers shall be permitted to employ reasonable managed care techniques consistent
274 with state and federal law to determine the frequency, method, treatment or setting for the
275 recommended item or service, provided that covered persons have access to at least 1 tobacco
276 cessation product without prior authorization.

277 SECTION 19. Chapter 176A of the General Laws, as so appearing, is hereby amended by
278 inserting after section 8MM the following section:-

279 Section 8NN. (a) Any contract between a subscriber and the corporation under an
280 individual or group hospital service plan which is delivered, issued or renewed within the
281 commonwealth shall provide coverage for: (i) tobacco use cessation counseling; and (ii) all
282 generic United States Food and Drug Administration-approved tobacco cessation products
283 without cost sharing when prescribed by a health care provider.

284 (b) Carriers shall be permitted to employ reasonable managed care techniques consistent
285 with state and federal law to determine the frequency, method, treatment or setting for the
286 recommended item or service, provided that covered persons have access to at least 1 tobacco
287 cessation product without preauthorization.

288 SECTION 20. Chapter 176B of the General Laws, as so appearing, is hereby amended by
289 inserting after section 4MM the following section:-

290 Section 4NN. (a) Any subscription certificate under an individual or group medical
291 service agreement delivered, issued or renewed within the commonwealth shall provide coverage

CORRECTED

292 for: (i) tobacco use cessation counseling; and (ii) all generic United States Food and Drug
293 Administration-approved tobacco cessation products without cost sharing when prescribed by a
294 health care provider.

295 (b) Carriers shall be permitted to employ reasonable managed care techniques consistent
296 with state and federal law to determine the frequency, method, treatment or setting for the
297 recommended item or service, provided that covered persons have access to at least 1 tobacco
298 cessation product without prior authorization.

299 SECTION 21. Chapter 176G of the General Laws, as so appearing, is hereby amended by
300 inserting after section 4EE the following section:-

301 Section 4FF. (a) An individual or group health maintenance contract that is issued or
302 renewed within or without the commonwealth shall provide coverage for: (i) tobacco use
303 cessation counseling; and (ii) all generic United States Food and Drug Administration-approved
304 tobacco cessation products without cost sharing when prescribed by a health care provider.

305 (b) Carriers shall be permitted to employ reasonable managed care techniques consistent
306 with state and federal law to determine the frequency, method, treatment or setting for the
307 recommended item or service, provided that covered persons have access to at least 1 tobacco
308 cessation product without prior authorization.

309 SECTION 22. Section 6 of chapter 270 of the General Laws, as so appearing, is hereby
310 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

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

CORRECTED

313 SECTION 23. Said chapter 270, as so appearing, is hereby further amended by inserting
314 after section 27 the following 2 sections:-

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

317 “Characterizing flavor”, a distinguishable taste or aroma, other than the taste or aroma of
318 tobacco, imparted or detectable either prior to or during consumption of a tobacco product,
319 including but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey,
320 candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided,
321 however, that no tobacco product shall be determined to have a characterizing flavor solely
322 because of the provision of ingredient information or the use of additives or flavorings that do
323 not contribute to the distinguishable taste or aroma of the product.

324 “Constituent”, any ingredient, substance, chemical or compound, other than tobacco,
325 water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product
326 during the processing, manufacturing or packaging of the tobacco product; provided that
327 “constituent” shall include a smoke constituent.

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

329 “Flavored tobacco product”, any tobacco product that contains a constituent that has or
330 produces a characterizing flavor.

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

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

CORRECTED

334 “Retail establishment”, a physical place of business or a section of a physical place of
335 business wherein a tobacco product is offered for sale to consumers.

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

337 “Smoke constituent”, any chemical or chemical compound in mainstream or sidestream
338 tobacco smoke that either transfers from any component of the tobacco product to the smoke or
339 that is formed by the combustion or heating of tobacco, additives or other component of the
340 tobacco product.

341 “Tobacco product”, a product containing, made or derived from tobacco or nicotine that
342 is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,
343 snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars,
344 little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars,
345 electronic pipes, electronic nicotine delivery systems or any other similar products that rely on
346 vaporization or aerosolization regardless of nicotine content in the product; provided, however,
347 that “tobacco product” shall also include any component, part or accessory of a tobacco product;
348 and provided further, that “tobacco product” shall not include a product that has been approved
349 by the United States Food and Drug Administration for the sale of or use as a tobacco cessation
350 product or for other medical purposes and is marketed and sold or prescribed exclusively for the
351 approved purpose.

352 “Tobacco product flavor enhancer”, any product designed, manufactured, produced,
353 marketed or sold to produce a characterizing flavor when added to any tobacco product.

354 (b) No person, retailer or manufacturer shall sell, distribute, cause to be sold or
355 distributed, offer for sale, or market or advertise any flavored tobacco product or tobacco product

CORRECTED

356 flavor enhancer in any retail establishment, online or through any other means to any consumer
357 in the commonwealth; provided, however, that this subsection shall not apply to smoking bars, as
358 defined in section 22.

359 (c) Public statements, claims or indicia made or disseminated by a manufacturer or by
360 any person authorized or permitted by the manufacturer to make or disseminate public
361 statements, claims or indicia concerning such tobacco product, that such tobacco product has or
362 produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is
363 a flavored tobacco product.

364 (d) A person who violates this section shall be subject to the same fines established for
365 violations of section 6.

366 (e) Marijuana or marijuana products as defined in section 1 of chapter 94G shall not be
367 subject to this section.

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

370 Section 29. (a) For the purposes of this section the following words shall, unless the
371 context clearly requires otherwise, have the following meanings:-

372 “Electronic nicotine delivery system”, an electronic device, whether for 1-time use or
373 reusable, that can be used to deliver nicotine or another substance to a person inhaling from the
374 device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos,
375 electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or
376 aerosolization; provided, however, that “electronic nicotine delivery system” shall also include

CORRECTED

377 any noncombustible liquid or gel that is manufactured into a finished product for use in such
378 electronic device; provided further, that “electronic nicotine delivery system” shall also include
379 any component, part or accessory of a device used during the operation of the device even if the
380 part or accessory was sold separately; and provided further, that “electronic nicotine delivery
381 system” shall not include a product that has been approved by the United States Food and Drug
382 Administration for the sale of or use as a tobacco cessation product or for other medical purposes
383 and is marketed and sold or prescribed exclusively for the approved purpose.

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

386 “Retail tobacco store”, as defined in section 22.

387 “Smoking bar”, as defined in section 22.

388 (b) No person shall sell an electronic nicotine delivery system with nicotine content
389 greater than 20 milligrams per milliliter; provided, however, that this subsection shall not apply
390 to retail tobacco stores or smoking bars.

391 (c) A person who violates this section shall be subject to the same fines established for
392 violations of section 6.

393 SECTION 24. Sections 1, 2, 3, 5 to 16, inclusive, and 23 shall take effect on June 1,
394 2020.