

SENATE No. 1633

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 minimize youth vaping and support addiction prevention services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>

SENATE No. 1633

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1633) of Julian Cyr, Jack Patrick Lewis and Harriette L. Chandler for legislation to minimize youth vaping and support addiction prevention services. Revenue.

The Commonwealth of Massachusetts

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

An Act to minimize youth vaping and support addiction prevention services.

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 64C is hereby amended by adding the following new section:-

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

4 “Electronic smoking device” any device that can be used to deliver aerosolized or
5 vaporized nicotine to the person inhaling from the device, including, but not limited to an e-
6 cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any
7 component, part, or accessory of such a device, whether or not sold separately, that is used
8 during the operation of the device. Electronic smoking device does not include any battery or
9 battery charger that is sold separately. In addition, electronic smoking device does not include
10 drugs, devices, or combination products approved for sale by the U.S. Food and Drug
11 Administration.”

12 “Tobacco product”, a product containing, made or derived from tobacco or nicotine, or
13 other non-nicotine containing substance that is intended for human consumption via an electronic
14 smoking device, as defined by this section.

15 “Electronic smoking device or tobacco product distributor”, (i) any person who imports,
16 or causes to be imported, into the commonwealth electronic smoking devices or tobacco
17 products, as defined by this section, for sale or who manufactures electronic smoking devices or
18 tobacco products, as defined by this section, in the commonwealth, and (ii) any person within or
19 without the commonwealth who is authorized by the commissioner to make returns and pay the
20 excise on electronic smoking devices or tobacco products, as defined by this section, sold,
21 shipped or delivered by him to any person in the commonwealth.

22 "Person", a natural person, corporation, association, partnership or other legal entity.

23 “Electronic smoking device or tobacco product retailer”, any person who sells or
24 furnishes electronic smoking devices or tobacco products, as defined by this section, in small
25 quantities to consumers for individual use; provided, however, said electronic smoking devices
26 or tobacco products, as defined by this section, shall not be used for the purpose of resale.

27 'Wholesale price", (i) in the case of a manufacturer of electronic smoking devices or
28 tobacco products, as defined by this section, the price set for such products or, if no price has
29 been set, the wholesale value of these products; (ii) in the case of a distributor who is not a
30 manufacturer of electronic smoking devices or tobacco products, as defined by this section, the
31 price at which the distributor purchased these products; or (iii) in the case of a retailer or a
32 consumer, the price at which he purchased these products.

33 "Taxed electronic smoking device or tobacco product", electronic smoking device or
34 tobacco product, as defined by this section, upon which the excise has been paid in full by the
35 date on which payment is due, and with respect to which the return has been completed, signed
36 and filed with the commissioner by the date on which the return is due, in accordance with this
37 section and with section 16 of chapter 62C.

38 "Untaxed electronic smoking device or tobacco product", electronic smoking device or
39 tobacco product, as defined by this section, upon which the excise has not been paid in full by
40 the date on which payment is due, or with respect to which the return has not been completed,
41 signed and filed with the commissioner by the date on which the return is due, in accordance
42 with this section and with section 16 of chapter 62C.

43 "Wholesale dealer", any person who sells electronic smoking devices or tobacco
44 products, as defined by this section, to retail dealers or other persons for purposes of resale,

45 (b) An excise shall be imposed on all electronic smoking devices or tobacco products, as
46 defined by this section, held in the commonwealth at the rate of 75 per cent of the wholesale
47 price of such products. This excise shall be imposed on electronic smoking device or tobacco
48 product distributors at the time electronic smoking devices or tobacco products, as defined by
49 this section, are manufactured, purchased, imported, received or acquired in the commonwealth.

50 (c) Every electronic smoking device or tobacco product retailer shall be liable for the
51 collection of the excise on all electronic smoking devices or tobacco products, as defined by this
52 section, in his possession at any time, upon which the excise has not been paid by a electronic
53 smoking device or tobacco product distributor, and the failure of any electronic smoking device
54 or tobacco product retailer to produce or exhibit to the commissioner or his authorized

55 representative, upon demand, an invoice by an electronic smoking device or tobacco product
56 distributor for any electronic smoking devices or tobacco products, as defined by this section, in
57 his possession, shall be presumptive evidence that the excise thereon has not been paid and that
58 such electronic smoking device or tobacco product retailer is liable for the collection of the
59 excise thereon.

60 (d) The amount of the excise advanced and paid by an electronic smoking device or
61 tobacco product distributor or electronic smoking device or tobacco product retailer, as provided
62 in this section, shall be added to and collected as part of, the sales price of the electronic smoking
63 devices or tobacco products, as defined by this section.

64 (e)(1) An electronic smoking device or tobacco product distributor shall be liable for the
65 payment of the excise on electronic smoking devices or tobacco products, as defined by this
66 section, that he imports or causes to be imported into the commonwealth or that he manufactures
67 in the commonwealth, and every electronic smoking device or tobacco product distributor
68 authorized by the commissioner to make returns and pay the excise on electronic smoking
69 devices or tobacco products, as defined by this section, sold, shipped or delivered by him to any
70 person in the commonwealth shall be liable for the collection and payment of the excise on all
71 electronic smoking devices or tobacco products, as defined by this section, sold, shipped or
72 delivered.

73 (2) Every person who does not acquire untaxed electronic smoking devices or tobacco
74 products, as defined by this section, but acquires taxed electronic smoking devices or tobacco
75 products, as defined by this section, for sale at retail, shall not be licensed as an electronic
76 smoking device or tobacco product distributor under this section, but shall be required, during

77 the period that such person is an electronic smoking device or tobacco product retailer of taxed
78 electronic smoking devices or tobacco products, as defined by this section, to be licensed as an
79 electronic smoking device or tobacco product retailer.

80 (f) A person outside the commonwealth who ships or transports electronic smoking
81 devices or tobacco products, as defined by this section, to electronic smoking device or tobacco
82 product retailers in the commonwealth, to be sold by those electronic smoking device or tobacco
83 product retailers, may apply for a license as a nonresident electronic smoking device or tobacco
84 product distributor and, if the commissioner issues such a license to him, he shall thereafter be
85 subject to all the provisions of this section and be entitled to act as an electronic smoking device
86 or tobacco product distributor, provided he files proof with his application that he has appointed
87 the state secretary as his agent for service of process relating to any matter or issue arising under
88 this section. Such a nonresident person shall also agree to submit his books, accounts and records
89 for examination in the commonwealth during reasonable business hours by the commissioner or
90 his authorized representative.

91 (g) Every resident of the commonwealth shall be liable for the collection of the excise on
92 all electronic smoking devices or tobacco products, as defined by this section, in his possession
93 at any time, upon which the excise has not been paid by an electronic smoking device or tobacco
94 product distributor or electronic smoking device or tobacco product retailer, and the failure of
95 any such consumer to produce or exhibit to the commissioner or his authorized representative,
96 upon demand, an invoice or sales receipt by an electronic smoking device or tobacco product
97 distributor or electronic smoking device or tobacco product retailer for any electronic smoking
98 devices or tobacco products, as defined by this section, in his possession, shall be presumptive

99 evidence that the excise thereon has not been paid and that such consumer is liable for the
100 collection of the excise thereon.

101 (h) No person shall act as an electronic smoking device or tobacco product distributor or
102 electronic smoking device or tobacco product retailer in the commonwealth unless licensed to do
103 so in accordance with section 67 of chapter 62C. If an electronic smoking device or tobacco
104 product distributor or electronic smoking device or tobacco product retailer acts in more than 1
105 of said capacities at any 1 place of business, he shall procure a license for every capacity in
106 which he acts, unless, upon application to the commissioner, the commissioner determines
107 otherwise. Each license so issued or a duplicate copy thereof shall be prominently displayed on
108 the premises covered by the license.

109 (i) Except as this section expressly provides to the contrary, the provisions of this chapter
110 and of chapter 62C relative to the assessment, collection, payment, abatement, verification and
111 administration of taxes, including penalties, shall so far as pertinent, apply to the excise tax
112 imposed by this section.

113 (j) For the purposes of section 5, electronic smoking devices and tobacco products shall
114 be tobacco products, electronic smoking device or tobacco product distributors shall be
115 wholesalers and electronic smoking device or tobacco product retailers shall be retailers.

116 (k) For the purposes of section 8, untaxed electronic smoking devices or tobacco
117 products, found in the commonwealth shall be cigarettes, which have not been returned and are
118 not returnable under section 16 of chapter 62C or section 6 as the context requires.

119 (l)(1) Any person who sells, offers for sale or possesses with intent to sell any electronic
120 smoking devices or tobacco products, as defined by this section, or otherwise acts as an

121 electronic smoking device or tobacco product distributor or electronic smoking device or tobacco
122 product retailer without being licensed so to do, shall, in addition to any other penalty provided
123 by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first
124 offense and not more than \$25,000 for each subsequent offense. Any person who knowingly
125 purchases or possesses any electronic smoking devices or tobacco products, as defined by this
126 section, not manufactured, purchased or imported by a licensed electronic smoking device or
127 tobacco product distributor or licensed electronic smoking device or tobacco product retailer
128 shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a
129 civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each
130 subsequent offense.

131 No person, either as principal or agent, shall sell or solicit orders for electronic smoking
132 devices or tobacco products, as defined by this section, to be shipped, mailed or otherwise sent or
133 brought into the commonwealth to any person not a licensed electronic smoking device or
134 tobacco product distributor or licensed electronic smoking device or tobacco product retailer,
135 unless the same is to be sold to or through a licensed electronic smoking device or tobacco
136 product distributor or licensed electronic smoking device or tobacco product retailer. Any person
137 who knowingly violates this provision shall, in addition to any other penalty provided by this
138 chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense
139 and not more than \$25,000 for each subsequent offense.

140 It shall be presumed that the electronic smoking devices or tobacco products, as defined
141 by this section, are subject to the excise until the contrary is established and the burden of proof
142 that they are not shall be upon the person on whose premises the electronic smoking devices or
143 tobacco products, as defined by this section, were found.

144 (2) Any person who knowingly has in his possession a shipping case or other container of
145 electronic smoking devices or tobacco products, as defined by this section, not bearing the name
146 and address of the person receiving the electronic smoking devices or tobacco products, as
147 defined by this section, from a manufacturer or such other markings as the commissioner may
148 prescribe and any person knowingly in possession of such a shipping case or other container of
149 electronic smoking devices or tobacco products, as defined by this section, from which this name
150 and address has been erased or defaced shall, in addition to any other penalty provided by this
151 chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense
152 or not more than \$25,000 for each subsequent offense.

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

157 (4) Whenever the commissioner or a police officer discovers, in the possession of any
158 person not being a licensed electronic smoking device or tobacco products distributor or one
159 authorized by the commissioner, any untaxed electronic smoking devices or tobacco products, as
160 defined by this section, he may seize and take possession of those electronic smoking devices or
161 tobacco products, as defined by this section, together with any vending machine or other
162 receptacle, which shall include, without limitation, a motor vehicle, boat or airplane, in which
163 they are contained or in which they are transported. Such electronic smoking devices or tobacco
164 products, as defined by this section, vending machine or other receptacle seized by a police
165 officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The
166 commissioner shall destroy such electronic smoking devices or tobacco products, as defined by

167 this section, and shall destroy or otherwise dispose of such vending machine or other receptacle.
168 The commissioner may, within a reasonable time after the seizure, by a public notice at least 5
169 days before the day of sale, sell the vending machine or other receptacle at public sale and
170 deposit the proceeds in the General Fund.

171 (5) The state police and all local police authorities may, and at the request of the
172 commissioner or his duly authorized agent shall, enforce this section. Each violation of this
173 section shall be a separate offense.

174 SECTION 2. Section 16 of chapter 62C of the General Laws, as so appearing, is hereby
175 amended by adding after subsection (c1/2) the following new subsection:-

176 (c3/4) Every licensee under section 7E of chapter 64C shall, on or before the twentieth
177 day of each calendar month or on or before the twentieth day of the month following each
178 calendar quarter, as the commissioner shall require, file with the commissioner a return for each
179 place of business maintained, stating the quantity of electronic smoking devices or tobacco
180 products, as defined by said Section 7E of Chapter 64C, sold by such licensee in the
181 commonwealth during the preceding calendar month or quarter, as the case may be, and such
182 return shall contain or be accompanied by such further information as the commissioner shall
183 require. If a licensee ceases to sell electronic smoking devices or tobacco products, as defined by
184 said Section 7E of Chapter 64C, within the commonwealth, he shall immediately file with the
185 commissioner a return for the period ending with such cessation.

186 SECTION 3. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby
187 amended in the first sentence of paragraph 1 by adding after the words “chapter 64C” the
188 following:-

189 “as an electronic smoking device or tobacco product distributor or electronic smoking
190 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

191 And said Section 67 of Chapter 62C is further amended in the first sentence of paragraph
192 2 by adding after the words “as defined in chapter sixty-four C” the following:-

193 “as an electronic smoking device or tobacco product distributor or electronic smoking
194 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

195 And said Section 67 of Chapter 62C is further amended in the first sentence of paragraph
196 5 by adding after the words “cigar retailers” the following:-

197 “as an electronic smoking device or tobacco product distributor or electronic smoking
198 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

199 And said Section 67 of Chapter 62C is further amended in the first sentence of paragraph
200 by adding after the words “cigar retailers” the following:-

201 “as an electronic smoking device or tobacco product distributor or electronic smoking
202 device or tobacco product retailer as defined by Section 7E of Chapter 64C”

203 SECTION 4. Notwithstanding any general or special law to the contrary, advertising
204 which promotes the sale or use of, or depicts, tobacco products, as defined in Section 6 of
205 Chapter 270 of the Massachusetts General Laws, products that simulate smoking or are modeled
206 on tobacco products shall not be permitted on property owned or managed by the
207 commonwealth.

208 SECTION 5. Notwithstanding the provisions of section twenty-eight, thirty per cent of
209 revenues received pursuant to this section, together with any penalties, forfeitures, interest, costs

210 of suits and fines collected in connection therewith, less all amounts refunded or abated in
211 connection therewith, all as determined by the commissioner of revenue according to his best
212 information and belief, shall be credited to the Community Behavioral Health Promotion and
213 Prevention Trust Fund.