

SENATE No. 2407

Senate, November 14, 2019 – Text of the Senate amendment (Senator Keenan) to the House Bill modernizing tobacco control (House, No. 4196)

The Commonwealth of Massachusetts

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

1 SECTION 1. Chapter 10 of the General Laws is hereby amended by striking out section
2 30B, as appearing in the 2018 Official Edition, 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,
7 has 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, paragraph (1) of
9 subsection (l) of said section 7E, section 34 or section 35 of said chapter 64C, the director of the
10 state lottery shall suspend any license to sell lottery tickets or shares issued to the retailer, cigar
11 retailer or electronic nicotine delivery system retailer pursuant to sections 26 and 27 for not more
12 than 60 days.

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 adding the
20 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, however, that covered persons shall have access to at
29 least 1 tobacco cessation product without prior authorization.

30 SECTION 5. Section 16 of chapter 62C of the General Laws, as appearing in the 2018
31 Official Edition, is hereby amended by inserting after subsection (c^{1/2}) the following subsection:-

32 (c^{3/4}) Not later than the twentieth day of each calendar month or not later than the
33 twentieth day of the month following each calendar quarter, as required by the commissioner,
34 every licensee under section 7E of chapter 64C shall file with the commissioner a return for each
35 place of business that the licensee maintains stating the quantity of electronic nicotine delivery
36 systems sold by the licensee in the commonwealth during the preceding calendar month or

37 quarter, as required by the commissioner. The return shall contain or be accompanied by any
38 additional information that the commissioner may require. If a licensee ceases to sell electronic
39 nicotine delivery systems, the licensee shall immediately file with the commissioner a return for
40 the period in which the cessation took place.

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

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

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

52 SECTION 9. Said section 67 of said chapter 62C, as so appearing, is hereby further
53 amended by inserting after the word “retailers”, in line 65, the first time it appears, the following
54 words:- ; electronic nicotine delivery system distributors; electronic nicotine delivery system
55 retailers.

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

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

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

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

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

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

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

73 (ii) style, light or ultra light;

74 (iii) length in millimeters;

75 (iv) circumference in millimeters;

76 (v) filter or non-filter;

77 (vi) package description, soft pack or box; and

78 (vii) the marking approved in accordance with this section.

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

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

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

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

99 the excise on electronic nicotine delivery systems sold, shipped or delivered by the person to a
100 person in the commonwealth.

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

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

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

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

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

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

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

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

139 (e)(1) An electronic nicotine delivery system distributor shall be liable for the payment of
140 the excise on electronic nicotine delivery systems that the electronic nicotine delivery system
141 distributor imports or causes to be imported into the commonwealth or that the electronic

142 nicotine delivery system distributor manufactures in the commonwealth. An electronic nicotine
143 delivery system distributor authorized by the commissioner to make returns and pay the excise
144 on electronic nicotine delivery systems sold, shipped or delivered by the electronic nicotine
145 delivery system distributor to a person in the commonwealth shall be liable for the collection and
146 payment of the excise on all of the electronic nicotine delivery systems so sold, shipped or
147 delivered.

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

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

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

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

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

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

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

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

198 A person shall not, either as principal or agent, sell or solicit orders for electronic
199 nicotine delivery systems to be shipped, mailed or otherwise sent or brought into the
200 commonwealth to any person who is not a licensed electronic nicotine delivery system
201 distributor or licensed electronic nicotine delivery system retailer unless the same is to be sold to
202 or through a licensed electronic nicotine delivery system distributor or licensed electronic
203 nicotine delivery system retailer. A person who knowingly violates this paragraph shall, in
204 addition to any other penalties provided by chapter 62C or this chapter, be subject to a civil
205 penalty of not more than \$5,000 for the first offense and not more than \$25,000 for a second or
206 subsequent offense.

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

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

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

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

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

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

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

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

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

245 SECTION 17. Chapter 118E of the General Laws is hereby amended by inserting after
246 section 10L the following section:-

247 Section 10M. (a) The division and its contracted health insurers, health plans, health
248 maintenance organizations, behavioral health management firms and third-party administrators
249 under contract to a Medicaid managed care organization or primary care clinician plan shall

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

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

257 SECTION 18. Chapter 175 of the General Laws is hereby amended by inserting after
258 section 47KK the following section:-

259 Section 47LL. (a) An individual policy of accident and sickness insurance issued under
260 section 108 that provides benefits for hospital expenses and surgical expenses and any group
261 blanket policy of accident and sickness insurance issued under section 110 that provides benefits
262 for hospital expenses and surgical expenses delivered, issued or renewed by agreement between
263 the insurer and the policyholder, within or outside the commonwealth, shall provide benefits for
264 residents of the commonwealth and all group members having a principal place of employment
265 in the commonwealth for: (i) tobacco use cessation counseling; and (ii) all generic United States
266 Food and Drug Administration-approved tobacco cessation products without cost sharing when
267 prescribed by a health care provider.

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

272 SECTION 19. Chapter 176A of the General Laws is hereby amended by inserting after
273 section 8MM the following section:-

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

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

283 SECTION 20. Chapter 176B of the General Laws is hereby amended by inserting after
284 section 4MM the following section:-

285 Section 4NN. (a) Any subscription certificate under an individual or group medical
286 service agreement delivered, issued or renewed within the commonwealth shall provide coverage
287 for: (i) tobacco use cessation counseling; and (ii) all generic United States Food and Drug
288 Administration-approved tobacco cessation products without cost sharing when prescribed by a
289 health care provider.

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

294 SECTION 21. Chapter 176G of the General Laws is hereby amended by inserting after
295 section 4EE the following section:-

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

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

304 SECTION 22. Section 6 of chapter 270 of the General Laws, as appearing in the 2018
305 Official Edition, is hereby amended by striking out subsection (d) and inserting in place thereof
306 the following subsection:-

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

309 SECTION 23. Said chapter 270 is hereby further amended by adding the following 2
310 sections:-

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

313 “Characterizing flavor”, a distinguishable taste or aroma, other than the taste or aroma of
314 tobacco, imparted or detectable before or during consumption of a tobacco product, including,

315 but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa,
316 dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that
317 no tobacco product shall be determined to have a characterizing flavor solely because of the
318 provision of ingredient information or the use of additives or flavorings that do not contribute to
319 the distinguishable taste or aroma of the product.

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

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

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

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

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

330 “Retail establishment”, a physical place of business or a section of a physical place of
331 business in which a tobacco product is offered for sale to consumers.

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

333 “Smoke constituent”, any chemical or chemical compound in mainstream or sidestream
334 tobacco smoke that transfers from any component of the tobacco product to the smoke or that is

335 formed by the combustion or heating of tobacco, additives or other component of the tobacco
336 product.

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

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

350 (b) No person, retailer or manufacturer shall sell, distribute, cause to be sold or
351 distributed, offer for sale or market or advertise any flavored tobacco product or tobacco product
352 flavor enhancer in any retail establishment, online or through any other means to any consumer
353 in the commonwealth; provided, however, that this subsection shall not apply to the sale or
354 distribution by a smoking bar, as defined in section 22, of flavored tobacco products or tobacco
355 product flavor enhancers for on-site consumption.

356 (c) A person, retailer or manufacturer may make a sale of flavored tobacco products as it
357 applies to electronic nicotine delivery systems by online, phone, or other means for delivery to a
358 consumer located in another State.

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

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

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

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

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

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 that 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”, shall have the same meaning as in section 22.

387 “Smoking bar”, shall have the same meaning as 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 and 5 to 16, inclusive, and section 23 as it applies to all
394 tobacco products except for electronic nicotine delivery systems shall take effect on June 1,
395 2020.”

396 And by inserting before the enacting clause the following emergency preamble:-

397 “Whereas, The deferred operation of this act would tend to defeat its purpose, which is to
398 modernize tobacco control, therefore it is hereby declared to be an emergency law, necessary for
399 the immediate preservation of the public health.”