

HOUSE No. 2118

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr., and others for legislation to prohibit the sale of tobacco products to and possession by persons under nineteen years of age. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Bradley H. Jones, Jr.	Elizabeth A. Poirier
Mary S. Rogeness	Karyn E. Polito
George N. Peterson, Jr.	Richard J. Ross
John A. Lepper	Susan Williams Gifford
Viriato Manuel deMacedo	Donald F. Humason, Jr.
Paul K. Frost	Todd M. Smola

In the Year Two Thousand and Seven.

AN ACT PROHIBITING THE SALE OF TOBACCO PRODUCTS TO AND POSSESSION BY PERSONS UNDER 19.

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 270 of the General Laws, as appearing in
- 2 the 2004 Official Edition, is hereby amended by inserting after
- 3 section five, the following section:—
- 4 Section 5A. As used in this section and section 6 the following
- 5 words shall, unless the context clearly requires otherwise, have
- 6 the following meanings:
- 7 “Tobacco Products”, cigarettes, bidis, cigars, chewing tobacco,
- 8 pipe tobacco, snuff, or tobacco in any of its forms.
- 9 “Retailer”, any establishment that sells tobacco products to
- 10 individuals for personal consumption.
- 11 “Person”, individual, employer, employee, retail store manager
- 12 or owner, or the owner or operator of any establishment engaged
- 13 in the sale of tobacco products.
- 14 “Proof of age”, a motor vehicle license issued pursuant to
- 15 section eight of chapter 90, a liquor purchase identification card

16 issued pursuant to section 34 B of chapter 138, a valid passport
17 issued by the United States government, or by the government,
18 recognized by the United States government, of a foreign country,
19 or a valid United States issued military identification card.

20 “Local Permit”, any permit that a retailer is required to obtain
21 by local ordinance, by-law or board of health regulation in order
22 to sell or distribute tobacco products.

23 “Smoking”, inhaling, exhaling, burning or carrying any lighted
24 cigar, cigarette, or other tobacco product in any form.

1 SECTION 2. Said chapter 270 is hereby further amended by
2 striking out section 6, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 6. (a) No person under 19 years of age shall smoke,
5 possess, or use any tobacco products in the commonwealth.

6 (b) No person shall sell tobacco products or permit tobacco
7 products to be sold to any person under 19 years of age nor shall
8 any person give a person under 19 years of age a tobacco product.

9 (c) Every retailer shall verify by means of proof of age that no
10 person purchasing tobacco products is under 19 years of age. No
11 person under 19 years of age shall misrepresent his or her age by
12 presenting false proof of age to purchase tobacco products. No
13 such verification is required for any person over 26 years of age.

14 (d) Nothing in this section shall prohibit persons under 19 years
15 of age from participating in compliance checks conducted in order
16 to enforce and monitor compliance with this section or any other
17 law governing the sale of tobacco products to minors or persons
18 under 19 years of age.

19 (e) Any retailer who violates any provision of this section shall
20 be fined \$100 for the first offense, \$200 for the second offense,
21 and \$300 for the third or subsequent offense. Any retailer who
22 violates this act four or more times within a three year period, cal-
23 culated from the date of the first offense, shall be subject to a fine
24 of \$300 for each offense and shall have his local permit suspended
25 for seven consecutive calendar days. The board of health shall
26 provide notice of the intent to suspend a tobacco permit, which
27 notice shall contain the reasons for the permit suspension and
28 establish a date and time for a hearing. The date of the hearing
29 shall be no earlier than seven days after the date of said notice.

30 The permittee shall have an opportunity to be heard at such
31 hearing and shall be notified of the Board's decision and reasons
32 in writing.

33 (f) Any person who is under 19 years of age who violates any
34 provision of this act may be required to perform 20 hours of com-
35 munity service and enroll in a tobacco education program; pro-
36 vided, however, that this section shall not apply to a person who is
37 under 19 years of age who possesses, transports, or carries on his
38 person tobacco products in the course of his employment.

1 SECTION 3. Section 6A of said chapter 270 is hereby amended
2 by striking out in line 2 the word "eighteen" and inserting in place
3 thereof the following:— "19".

1 SECTION 4. Said chapter 270 is hereby further amended by
2 inserting after section 7, the following section:—

3 Section 7A. (a) Police officers, school officials and their agents
4 shall have the authority to confiscate any tobacco products from
5 any person under 19 years of age and may return the confiscated
6 tobacco products to said person's parent or legal guardian upon
7 written request within 30 days. If the tobacco product is not
8 claimed within 30 days, the police officers, school officials and
9 their agents shall destroy the tobacco product.

10 (b) In addition to the penalties provided in section six of
11 chapter 270 upon petition of a board of health to the commis-
12 sioner of revenue that a retailer has been cited in violation of said
13 section six, four or more times within a three year period, calcu-
14 lated from the date of the first offense, the commissioner of rev-
15 enue shall, after providing the retailer with notice and opportunity
16 to be heard, suspend for 30 days the retailer's license, issued in
17 accordance with section 67 of chapter 62C. The commissioner
18 shall provide notice of the intent to suspend said license, which
19 notice shall contain the reasons for the suspension and establish a
20 date and time for a hearing. The date of the hearing shall be no
21 earlier than seven days after the date of said notice. The licensee
22 shall have an opportunity to be heard at such hearing and shall be
23 notified of the commissioner's decision and reasons in writing.
24 Any person aggrieved by the commissioner's suspension of said
25 license may within 60 days of the date of notice of such suspen-

26 sion appeal to the appellate tax board, whose decision shall be
27 final.

28 (c) Police officers, school officials and their agents shall have
29 the authority to confiscate any tobacco products from any person
30 who is under 19 years of age; the commonwealth of Massachu-
31 setts or its agents, including but not limited to the department of
32 public health, the attorney general, and the state police; any city
33 or town or its agent, any board of health or its agent, and any city
34 or town police department, any school official or its agent may
35 enforce all other provisions of this act. If the enforcing authority
36 is a board of health or its authorized agent, any violation of this
37 section may be disposed of by the non-criminal method of dispo-
38 sition procedures contained in section 21D of chapter 40 without
39 an enabling ordinance or bylaw. If the enforcing authority is any
40 city or town or its agent, any board of health or its agent, or any
41 city or town police department, fines that are assessed pursuant to
42 section six of chapter 270 may be payable to the city or town in
43 which the violation of this section occurs. Any city or town may,
44 by ordinance or bylaw, establish a fund for the disposition of any
45 revenues received from fines levied in accordance with the provi-
46 sions of section six of chapter 270, in which case, the municipal
47 health department or board of health shall expend said funds for
48 the purpose of enforcing this act or any local law that regulates
49 the sale of tobacco products.

1 SECTION 5. Nothing in any of the sections of this act shall be
2 construed to preempt any existing law, ordinance, bylaw or regu-
3 lation which requires a permit or license for the sale of tobacco
4 products, or which regulates the sale, use, or distribution of
5 tobacco products. Nothing in any of the sections of this act shall
6 prohibit any city, town, or board of health from enacting or
7 enforcing any law, ordinance, bylaw or regulation which requires
8 a permit for the sale of tobacco products or which regulates the
9 sale, use, or distribution of tobacco products.

1 SECTION 6. If the age restriction of this act is preempted
2 under Section 360(k)(a) of Title XXI of the United States code,
3 the governor shall, within 30 days of the effective date of this act,
4 apply to the commissioner of the federal food and drug adminis-

5 tration for a waiver pursuant to Section 360(k)(b) of Title XXI of
6 the United States code.

1 SECTION 7. If any paragraph or provision of this regulation is
2 found to be illegal or against public policy or unconstitutional, it
3 shall not affect the legality of any remaining paragraphs or
4 provisions being in force.