

By Mr. Durand, a petition (accompanied by bill, Senate, No. 38) of Robert A. Durand for legislation relative to the sale, distribution and promotion of tobacco products. Commerce and Labor.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Four

AN ACT RELATIVE TO THE SALE, DISTRIBUTION AND PROMOTION OF TOBACCO PRODUCTS.

*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. This legislation amends MGL Chapter 64C to  
2 strengthen existing prohibitions against the sale or distribution of  
3 tobacco products to persons under the age of eighteen, prohibit the  
4 fraudulent misrepresentation of age in connection with purchase  
5 or receipt of tobacco products, prohibit the sale of cigarettes or  
6 smokeless tobacco other than in unopened packages originating  
7 with the manufacturer, and ensure uniform regulations for the  
8 sale, distribution, advertising and promotion of tobacco products  
9 within the Commonwealth.

1 SECTION 2. Definitions. MGL Chapter 64C, Section 1 (ALM  
2 1990 Supp.) is hereby amended by inserting after "machines;" on  
3 line 30 the following definitions:  
4 "Proof of Age," a driver's license or other generally accepted  
5 means of identification that describes the individual as eighteen  
6 years or older and contains a photograph or other likeness of the  
7 individual and appears on its face to be valid.  
8 "Tobacco Product," any product that contains tobacco and is  
9 intended for human consumption.

1 SECTION 3. Selling or distributing to minors; fraudulent mis-  
2 representation of age; out-of-package sales; notice.  
3 A. MGL chapter 64C is amended by adding after Section 39  
4 a new Section 40 as follows:  
5 Section 40. Selling or distributing tobacco products to minors;  
6 fraudulent misrepresentation of age; out-of-package sales.  
7 (a) It shall be unlawful for any person to sell or distribute a

8 tobacco product to any person under the age of eighteen or to pur-  
9 chase a tobacco product on behalf of any person under the age of  
10 eighteen; provided, however, that it shall not be unlawful to dis-  
11 tribute a tobacco product to a family member or a personal  
12 acquaintance for non-commercial purposes, or to an employee  
13 when required in the performance of the employee's duties.

14 (b) It shall be unlawful for any person under the age of eighteen  
15 to purchase or accept receipt of a tobacco product through fraudu-  
16 lent misrepresentation of age by the use of altered or otherwise  
17 phony "proof of age";

18 (c) It shall be unlawful for any person to sell cigarettes or  
19 smokeless tobacco other than in an unopened package originating  
20 with the manufacturer that bears the health warning required by  
21 federal law.

22 B. MGL Chapter 64C is amended by adding after Section 40  
23 a new Section 41 as follows:

24 Section 41. Notice.

25 (a) The owner of any store or concession at which tobacco  
26 products are sold at retail shall post or cause to be posted conspic-  
27 uously on the premises of such establishment, and shall maintain  
28 or cause to be maintained, the following notice:

29 "NOTICE: The sale of tobacco products to persons under 18 is  
30 prohibited by law. If you are under 18, you could be fined for pur-  
31 chasing a tobacco product through fraudulent misrepresentation of  
32 age under Mass. Gen. Laws. Ch. 64C, Sec. 40; proof of age may  
33 be required."

34 (b) The notice required by this section shall be printed in bold-  
35 face capital letters in eighteen point type or larger, and signs bear-  
36 ing the notice shall measure not less than ninety-three and one-  
37 half square inches.

38 (c) A retailer shall post or cause to be posted a copy of the  
39 notice required by this section at each public entrance to the store  
40 or concession and at each cash register therein where tobacco  
41 products may be purchased.

42 (d) No notice regarding tobacco products, other than the notice  
42 required by this section, shall be required to be posted or main-  
43 tained in any store or concession licensed to sell tobacco products  
44 at retail.

1 SECTION 3. Remedies, defenses. MGL Chapter 64C is here-  
2 by amended by adding after section 41 a new Section 42 as fol-  
3 lows:

4 Section 42. Remedies; defenses.

5 (a) Enforcement; notice to commissioner.

6 The provisions of sections three and four, section ten A, and  
7 sections forty and forty-one of this chapter, inclusive, shall be  
8 enforced through actions brought in any court of competent juris-  
9 diction by the attorney for the county in which the alleged viola-  
10 tion occurred. Any fine collected for a violation of said provisions  
11 shall be paid to the clerk of the city or town in which the violation  
12 occurred. Upon receipt of a fine for any violation of said provi-  
13 sions, the clerk shall promptly notify the commissioner of the vio-  
14 lation.

15 (b) Civil fines; liability defenses.

16 (1) Any person who sells or distributes a tobacco product to  
17 any person under the age of eighteen or who purchases a tobacco  
18 product on behalf of any person under the age of eighteen in vio-  
19 lation of sub-section (a) of section forty of this chapter, or who  
20 sells cigarettes or smokeless tobacco other than in an unopened  
21 package in violation of subsection (c) of said section forty, shall  
22 be punished by a civil fine of less than one hundred dollars for  
23 the first violation within a two-year period, not less than two hun-  
24 dred dollars for a second violation within a two-year period, and  
25 not less than three hundred dollars for any third or subsequent  
26 violation within a two-year period. Reasonable reliance on proof  
27 of age or on the appearance of the purchaser or recipient shall be  
28 a defense to any action for such violations.

29 If the sale is made by an employee of the owner of a store or  
30 concession at which tobacco products are sold at retail, the  
31 employee shall be guilty of the violation and be subject to the  
32 civil fine.

33 (2) Any person under the age of eighteen who purchases or  
34 accepts receipt of a tobacco product through fraudulent misrepre-  
35 sentation of age in violation of subsection (b) of section 40 shall  
36 be punished by a civil fine not to exceed one hundred dollars.

37 (3) Any owner of a store or concession at which tobacco prod-  
38 ucts are sold at retail who fails to post or cause to be posted a  
39 notice required by section forty-one shall be punished by a civil

40 fine not to exceed one hundred dollars.

41 (C) License Suspension.

42 (1) Upon notification pursuant to subsection (a) of this section  
43 that a person licensed to sell tobacco products at retail, or an  
44 employee of such a licensee, has been convicted of violating sub-  
45 section (a) or subsection (c) of section forty, or subsection (a) of  
46 section forty-one, the commissioner may suspend the person's  
47 license to sell tobacco products at retail at the store or concession  
48 where the violation occurred for a period not to exceed one week  
49 for the first violation within a two-year period, a period not to  
50 exceed one month for a second violation within a two-year period,  
51 and a period not to exceed three months for any third or sub-  
52 sequent violation within a two-year period.

53 (2) If the violation is by an employee of a licensee, the com-  
54 missioner shall not suspend any license under this section upon  
55 showing by the licensee that the licensee had taken reasonable  
56 steps to prevent violations by employees.

1 SECTION 4. Applicability. MGL Chapter 64C is hereby  
2 amended by adding after Section 42 the following new  
3 Section 43:

4 Section 43. Applicability.

5 No city, town, department, board, or other political subdivision  
6 or agency of the Commonwealth may limit competition (by  
7 means of coupons, discounts, promotional allowances, premiums  
8 or otherwise) between or among tobacco products manufacturers  
9 and retailers that is lawful under the laws of the United States and  
10 the laws of the Commonwealth; provided however, that free-  
11 standing displays of cigarettes not to be sold in cartons shall be  
12 placed not more than twenty feet from a cash register and within  
13 full view of a clerk or retail operator. Notwithstanding any other  
14 law, all ordinances, by-laws and regulations of a city, town,  
15 department, board or other political subdivisions or agency of the  
16 Commonwealth regulating such activity shall be null and void;  
17 provided however that this section shall not apply to any other-  
18 wise valid ordinance, by-law, or regulation as in effect on  
19 November 1, 1993.