

Laying a Solid Foundation

Tobacco Laws Pertaining to the
Commonwealth of Massachusetts

Second Edition

JUNE 2005

*Massachusetts Department of Public Health -
Tobacco Control Program in collaboration with the
Massachusetts Association of Health Boards -
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Acknowledgements:

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TABLE OF CONTENTS

INTRODUCTION	2
Chapter One	3
LAWS PROHIBITING SMOKING	4
STATEWIDE SMOKE-FREE WORKPLACE LAW (G.L. ch. 270, § 22)	4
EXECUTIVE SUMMARY AND TEXT OF THE LAW	4
EXECUTIVE SUMMARY	4
TEXT OF THE LAW	6
DEPARTMENT OF PUBLIC HEALTH REGULATIONS IMPLEMENTING G.L. ch. 270, § 22.....	16
FOOD HANDLING AND STORAGE AREAS AND PROCESSING ESTABLISHMENTS	19
BUSES TRAVELING ON MAJOR HIGHWAYS (NON-MASSACHUSETTS BAY TRANSPORTATION AUTHORITY BUSES).....	20
AIRPLANES & AIRPORTS	20
FEDERAL BUILDINGS.....	20
UNIVERSITY AND COLLEGE DORMITORIES.....	21
PUBLIC SCHOOLS	22
PRIVATE SCHOOLS	22
CHILD CARE FACILITIES	22
FAMILY CARE HOMES	23
MANUFACTURING AND STORAGE OF NON-FOOD ITEMS	25
PUBLIC POOLS.....	25
PARK AND RECREATIONAL BUILDINGS	26
NURSING HOMES	26
Chapter Two	28
TOBACCO PRODUCT SALE AND DISPLAY LAWS	29
NOTICE ABOUT THE MINIMUM AGE SALES LAW	30
SELF-SERVICE DISPLAYS.....	30
VENDING MACHINES.....	31
SINGLE CIGARETTE SALES.....	31

TOBACCO GIVE-AWAYS	32
RETAILER TRAINING	32
CONTAMINATED TOBACCO PRODUCTS.....	32
FOOD STAMPS.....	33
ROLLING PAPERS	33
Chapter Three	34
HEALTH WARNINGS LAWS	35
HEALTH WARNINGS FOR CIGARETTES	35
HEALTH WARNINGS FOR CIGARS.....	35
HEALTH WARNINGS FOR SMOKELESS TOBACCO PRODUCTS.....	36
Chapter Four	37
TOBACCO ADVERTISING AND PROMOTION	38
OUTDOOR ADVERTISING.....	38
ADVERTISING CONTENT	39
ADVERTISING SIGNIFICANTLY VIEWED BY CHILDREN	39
TELEVISION, RADIO AND OTHER SIMILAR ADVERTISING	40
BRAND NAME SPONSORSHIP OF PUBLIC EVENTS	40
BRAND NAME MERCHANDISE AND APPAREL	41
PRODUCT PLACEMENT	41
PROHIBITION ON STATE AND LOCAL ADVERTISING REGULATION OF TOBACCO ADVERTISEMENTS	42
Chapter Five	43
TOBACCO TAX AND PRICING	44
FEDERAL TAXES	44
MASSACHUSETTS TAXES.....	44
PRICING ON TOBACCO PRODUCTS.....	45
MASSACHUSETTS DEPARTMENT OF REVENUE TOBACCO RETAIL LICENSES	45
TAX ON INTERNET SALES.....	46
Chapter Six	47

LEGAL AUTHORITY TO REGULATE TOBACCO LOCALLY	48
LEGAL AUTHORITY FOR TOBACCO-RELATED BOARD OF HEALTH REGULATIONS.....	48
LEGAL AUTHORITY FOR TOBACCO-RELATED MUNICIPAL BYLAWS AND ORDINANCES	48

INTRODUCTION



INTRODUCTION

This booklet is designed to introduce public health professionals to tobacco-related laws affecting Massachusetts. It includes state statutes as well as statewide regulations promulgated by governmental agencies of Massachusetts. It also includes federal laws and provisions from the 1998 Master Settlement Agreement between most states Attorneys General and the vast majority of tobacco companies.

This booklet does not review town by-laws, city ordinances or board of health regulations. These local laws, however, play a substantial role in protecting the public from tobacco. (See Chapter Six of this booklet for a discussion of legal authority to regulate tobacco sale and use at the local level.) Indeed, Massachusetts created a national tobacco control and prevention model by initially focusing its efforts at the municipal level. Public health professionals should make every effort to contact local officials when addressing tobacco-related issues. Even if a tobacco-related issue is addressed by a state law, many times local laws will mirror it or further regulate it. This dual approach facilitates local enforcement efforts.

This booklet is comprised of six chapters:

1. Laws Prohibiting Smoking
2. Tobacco Product Sale and Display Laws
3. Health Warnings Laws
4. Tobacco Advertising & Promotion
5. Tobacco Taxes & Pricing
6. Legal Authority to Regulate Tobacco Locally

Each of the six chapters summarizes a comprehensive sampling of the laws pertaining to the section topic and lists the enforcement agency and penalties when clearly identified in the law. It is important to remember that officials wield broad discretion in the enforcement of the laws discussed in this booklet. A comprehensive examination of this discretion, however, is beyond the scope of this booklet. Full citations to the relevant laws are included so that a reader may locate the details necessary for enforcement as well as for legal analysis and teaching.

Please note that lawmaking is an ongoing and ever-changing process. Every effort has been made to reflect the current status of tobacco-related laws as of June 2005. This booklet may be downloaded from the Massachusetts Association of Health Boards website at www.mahb.org. Future updates to this booklet will also be found at www.mahb.org.

Chapter One



Laws Prohibiting Smoking

LAWS PROHIBITING SMOKING

STATEWIDE SMOKE-FREE WORKPLACE LAW (G.L. ch. 270, § 22)

EXECUTIVE SUMMARY AND TEXT OF THE LAW

EXECUTIVE SUMMARY*

Background:

The Massachusetts Smoke-Free Workplace Law is primarily intended to protect workers from health hazards resulting from exposure to secondhand smoke. Secondhand smoke is a Class A carcinogen as determined by the U.S. Environmental Protection Agency. The Centers for Disease Control and Prevention (CDC) warns people with an increased risk of coronary heart disease or with known coronary artery disease to avoid all indoor environments that permit smoking.

As of July 5, 2004, all enclosed workplaces that have one or more employees must be smoke-free. Designated smoking areas or smoking rooms are not permitted. Limited exceptions are noted below.

Section-by-Section Summary:

Section 1 repeals Massachusetts General Law Chapter 270, Sections 21 and 22 of the existing public smoking law.

Section 2 replaces the previous law governing smoking in public places. Key provisions include:

- The employer is responsible for providing a smoke-free environment for all employees working in an enclosed workplace.
- Smoking is prohibited in common work areas, hallways, conference and meeting rooms, offices, employee lounges, restrooms and staircases; auditoriums, theaters, concert halls and convention centers; museums, libraries, schools, colleges and classrooms; restaurants, bars, taverns, food courts and supermarkets; medical facilities, health facilities, child care centers, camps for school age children; public transportation such as trains, planes, taxis, buses, airports, train and bus stations, terminals and enclosed outdoor platforms; and public buildings owned by the commonwealth or a political subdivision, such as a city or town.
- Exemptions where smoking may be permitted if certain conditions are met (please see full text of law for exemption details, conditions and requirements):
 - (1) Private residences, except when the residence is being used to operate a group childcare center, school age day care center, school age day or overnight camp, a health care related office or a facility licensed by the office of child care services;

- (2) Membership Associations (Private Clubs), defined as non-profit voluntary groups, organized under M.G.L. Chapter 180, while not open to either the public or non-members who are not invited guests;
 - (3) Guest rooms in hotels, motels, or similar accommodations that have been designated as “smoking” rooms;
 - (4) Retail tobacco stores that prohibit entry to anyone under the age of 18;
 - (5) “Smoking” or “Cigar” bars that derive a majority of their revenue from tobacco sales and are granted permission to allow smoking from the Department of Revenue;
 - (6) Religious ceremonies where smoking is part of the ritual;
 - (7) Nursing homes and acute care substance abuse treatment centers under the jurisdiction of the commonwealth that have received approval from the local board of health may have a designated smoking area for permanent residents only; and
 - (8) Tobacco laboratories/tobacco testing facilities that conduct medical or scientific research on tobacco smoke.
- Signage is required to indicate where smoking is not permitted or for those areas exempt from the law.
 - Smoking in a place where it is prohibited may result in a \$100 civil fine to the smoker. Employers or business owners may receive fines ranging from \$100 to \$300 for permitting smoking. Local boards of health, municipal governments, the Alcoholic Beverages Control Commission and the Department of Public Health may enforce this law.
 - Cities and towns may have local laws that are stricter than this law.

Section 3 allowed one-time tax credits for corporations that purchased and installed “smoking accommodations” to real property. In order to qualify for this credit, the “smoking accommodations” must (1) be located in the commonwealth; (2) be depreciable under §167 of the Internal Revenue Code; (3) have been made pursuant to a board of health regulation, city ordinance, town by-law or other municipal provision currently in effect; and (4) have been made after January 1, 2000 and paid for by December 31, 2003.

Section 4 creates a special commission to assist businesses in implementing the new provisions. The commission will make a final report to both the Commissioner of Public Health and the Joint Committee on Health Care within 16 months of the state law’s effective date.

Section 5 indicates that the effective date of the new workplace smoking ban is July 5, 2004. The bill includes an emergency preamble that permits the effective date to be less than 90 days after the law’s enactment.

A specific municipality may have a local regulation that is stricter than the state law. For information about local regulations, contact the local Board of Health/Health Department.

*The Executive Summary is located at www.mass.gov/dph/mtcp.

TEXT OF THE LAW

AN ACT IMPROVING PUBLIC HEALTH IN THE COMMONWEALTH

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to protect the health of the employees of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

SECTION 1

Section 21 of chapter 270 of the General Laws is hereby repealed.

SECTION 2

Said chapter 270 is hereby further amended by striking out section 22, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:

Section 22

(a) As used in this section, the following words shall have the following meanings, unless the context requires otherwise:

“**Business Agent**”, an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

“**Compensation**”, money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

“**Customer Service Area**”, an area of the workplace that a business invitee may access.

“**Employee**”, an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.

“**Employer**”, an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees at 1 or more workplaces, at any 1 time, including the commonwealth or its agencies, authorities or political subdivisions.

"**Enclosed**", a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

"**Lodging Home**", a dwelling or part thereof which contains 1 or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons. The residential portion of boarding houses, rooming houses, dormitories, and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters, and assisted living homes are not included in this definition.

"**Membership Association**", a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

- (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or
- (ii) a corporation organized under chapter 180; or
- (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or
- (iv) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

"**Outdoor Space**", an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

"**Public Building**" a building owned by the commonwealth or any political subdivision thereof, or in an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

"**Public Transportation Conveyance**", a vehicle or vessel used in mass public transportation or in the transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority; state transportation department; or a vehicle or vessel open to the public that is owned by, or operated under the authority of a business, including tour vehicles or vessels, enclosed ski lifts or trams,

passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle or vessel not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or other vessel, shall not be considered a public transportation conveyance.

"**Residence**", the part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home; vacation home, cabin or cottage; a residential unit in a governmental public housing facility; and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered to be a residence; if the unit is an enclosed indoor space used exclusively as a residence, and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

"**Retail tobacco store**", an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located.

"**Smoking**" or "**smoke**", the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

"**Smoking Bar**", an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located; and, maintains a valid permit to operate a smoking bar issued by the department of revenue.

"**Workplace**", an indoor area, structure or facility or a portion thereof, at which 1 or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

"**Work space or work spaces**", an enclosed area occupied by an employee during the course of his employment.

(b)(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

(2) Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafés, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meals tax on the purchase; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in section 9C of chapter 112, group child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under section 38 of chapter 10 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

(3) A person shall not smoke in the state house or in a public building or in a vehicle or vessel, owned, leased, or otherwise operated by the commonwealth or a political subdivision thereof, or in a space occupied by a state agency or department of the commonwealth which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, or in a courtroom or courthouse. This subsection shall not apply to a resident or patient of a state hospital, the Soldiers' Home in Massachusetts located in the city of Chelsea or the Soldiers' Home in Holyoke.

(c) Notwithstanding subsection (b), smoking may be permitted in the following places and circumstances:

(1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the office of child care services or as a health care related office or facility;

(2)(i) premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

- (A) open to the public; or
- (B) occupied by a non-member who is not an invited guest of a member or an employee of the association; or
- (C) rented from the association for a fee or other agreement that compensates the association for the use of such space.

(ii) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection.

(3) A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to paragraph (1) of subsection (g).

(4) A retail tobacco store, if the store maintains a valid permit for the sale of tobacco products issued by the appropriate authority in the city or town in which the retail tobacco store is located. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(5) A smoking bar, if the smoking bar maintains a valid permit pursuant to this section. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(6) By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production, and if permission has been obtained from the appropriate local authority;

(7) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as defined by regulation of the department of public health;

(8) Religious ceremonies where smoking is part of the ritual; and

(9) A tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes; if the smoking is necessary to conduct the test.

(e) If the outdoor space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed, when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed work space. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of

smoke into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.

(f) (1) A nursing home, licensed pursuant to section 71 of chapter 111 and any acute care substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence.

(2) All applications shall designate the residential area of the facility. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees.

(3) The entire facility may not be designated as a residence.

(4) The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility.

(5) All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.

(6) The facility shall provide suitable documentation, acceptable to the local board of health, that the facility is the permanent domicile of the residents residing in that portion of the facility, that information on the hazards of smoking and second hand smoke have been provided to all residences and that smoking cessation aids are available to all residents who use tobacco products.

(7) The designated residential area shall be in conformance with the smoking restriction requirements of section 72X of chapter 111 and 105 CMR 150.015 (D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express approval of the local board of health.

(8) All areas of a nursing home not designated as a residence shall comply with this section.

(9) The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to tobacco smoke.

(10) Upon compliance with this section, submission of the required documentation and satisfactory inspection, the local board of health shall certify the designated portion of the facility as a residence. The certification shall be valid for 1 year from the date of issuance. No fewer than 30 days before the expiration of the certification, the facility may apply for re-certification. If the local board of health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time as the local board of health notifies the nursing home of its certification status.

(g)(1) A designated smoking room in a hotel, motel, inn, bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces; and in the interior of the room. Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with paragraph (4).

(2) A retail tobacco store that permits smoking on the premises shall, pursuant to paragraph (4), post in a clear and conspicuous manner, a sign at each entrance warning persons entering the establishment that smoking may be present on the premises; of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises.

(3) A smoking bar shall, pursuant to paragraph (4), post in a clear and conspicuous manner signs at all entrances which warn persons entering the establishment that smoking may be present on the premises; and, of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises.

(4) Every area in which smoking is prohibited by law shall have 'no smoking' signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.

(5) Additional signs may be posted in public areas such as, the following areas: lobbies; hallways; cafeterias; kitchens; locker rooms; customer service areas; offices where the public is invited; conference rooms; lounges; waiting areas; and elevators.

(6) Approved signs and templates for signage design may be obtained from the department of public health or the local boards of health.

(7) It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.

(h) (a) (1) A smoking bar operating in the commonwealth shall obtain a smoking bar permit from the department of revenue. A permit issued by the department shall be valid for a period of 2 years from date of issuance unless suspended or revoked. A valid permit that is not suspended at the time of its expiration may be renewed for consecutive 2-year periods.

(2) A non-refundable fee may be required with each permit and renewal application. Each permit issued by the department shall be non-transferable, for a specific location and business; and, only 1 permit may be issued to a business for a specific location during any permit period.

(3) The department shall not issue or renew a smoking bar permit to any business that has not filed all tax returns and paid all taxes due the commonwealth; or is delinquent in filing all declaration statements in connection with the smoking bar permit as required by the department.

(4) The department shall notify the local board of health or municipal health department in the city or town where the establishment is located of any permits issued, renewed, suspended, revoked or reinstated to a business.

(b) A smoking bar shall demonstrate on a quarterly basis that revenue generated from the sale of tobacco products are equal to or greater than 51 per cent of the total combined revenue generated by the sale of tobacco products, food and beverages. The department shall require each business that has been issued a smoking bar permit to submit a quarterly declaration for each 3 month period that the business is in operation; notwithstanding, the first declaration may include a period of not to exceed 4 months. A declaration submitted to the department in connection with a smoking bar permit shall be signed by the owner or business agent under the pains and penalties of perjury. A declaration received by the department shall be confidential and the financial information contained therein shall not be disclosed to the public or any other state governmental agency or department except the attorney general. In the event a business has not filed a required declaration statement, the department shall give written notice to the business that the statement is delinquent and, shall suspend the permit of a business that does not submit the required report after 21 days of the date of notice; but the department shall reinstate the suspended permit within 5 days after receiving the delinquent report.

(3) The department of revenue shall promulgate regulations to implement this section.

(i) Companies which sell ownership rights to owners of time share properties shall distinguish between smoking and non-smoking time share properties. Companies shall disclose to potential buyers whether the unit they are purchasing is a smoking or non-smoking property and post signs accordingly.

(j) Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth.

(k) An individual, person, entity or organization subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation, to a person, entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint or furnishing information during any period of work or time of employment, shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about such place of work or to the public.

(l) An owner, manager or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100 for the first violation; \$200 for a second violation occurring within 2 years of the date of the first offense; and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a

separate offense. If an owner, manager or other person in control of a building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the department of public health, the local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the department of public health. The department of public health shall promulgate regulations to implement this section including, but not limited to notice, collection, and reporting of the fines or license action, and defining uniform standards that warrant license suspension or revocation.

(m) (1) The local board of health, the department of public health, the local inspection department or the equivalent, a municipal government or its agent, and the alcoholic beverages control commission shall enforce this section. In addition, in the city of Boston, the commissioner of health and his authorized agents shall enforce this section.

(2) An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation. As an alternative to criminal prosecution, a violation of subsection (1) may also be considered a civil violation. Each enforcing agency under paragraph (1) shall dispose of a civil violation of this section by the non-criminal method of disposition procedures contained in section 21D of chapter 40, without an enabling ordinance or by-law, or by the equivalent of these procedures by a state agency under regulations of the department of public health. The disposition of fines assessed under this section shall be subject to section 188 of chapter 111. Fines assessed by the commonwealth or its agents shall be subject to section 2 of chapter 29. In a city or town having an ordinance or by-law that imposes a fine greater than the fine imposed by this section, the ordinance or by-law shall prevail over this section.

(3) Any person may register a complaint to initiate an investigation and enforcement with the local board of health, the department of public health, or the local inspection department or the equivalent.

(4) The supreme judicial court or the superior court shall issue appropriate orders to enforce this section and any regulation under it, at the request of any agency mentioned in paragraph (1).

(5) A fine or fee collected by the commonwealth under this section shall be used for the enforcement or for educational programs on the harmful effects of tobacco.

(n) Each local board of health, each local inspection department or its equivalent, and the alcoholic beverages control commission shall report annually to the commissioner of public health, beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines. The department of public health shall file a copy of the report with the clerks of the House of Representatives and the Senate.

(o) The department of public health may issue regulations to implement this section.

SECTION 3

(a) In determining the net income subject to tax under chapter 63 of the General Laws for a taxable year beginning on or after January 1, 2003 and ending not later than December 31, 2004, a domestic or foreign corporation may deduct the total amount paid for the purchase and installation of smoking accommodations to real property. This deduction shall be allowed only for smoking accommodations:

- (i) that are tangible property that is depreciable pursuant to section 167 of the Internal Revenue Code, having a situs in the commonwealth and used by the corporation in its trade or business;
- (ii) that were made pursuant to any board of health regulation, city ordinance, town by-law, or any other municipal provision, variance or exemption in effect on the effective date of this act; and
- (iii) for which the construction, reconstruction, erection or improvement of such smoking accommodations was initiated on or after January 1, 2000 and the expenditures for such smoking accommodations were paid before December 31, 2003.

Any such deduction shall also be subject to the limitations that the amount of the deduction shall be reduced by any prior deduction taken for depreciation for the expenses of the same property in any preceding taxable year, and that the net income of the corporation for any succeeding taxable year shall not be computed with any deduction for such expenditures or for depreciation of the property that was deducted under this section.

(b) The term “smoking accommodations” as used in this section shall mean any materials directly and necessarily used in the construction to install or modify a dedicated smoking area that is designed exclusively to reduce the presence of smoke in any interior space of a building, but only if the building where such an area is situated was built before January 1, 2000. These materials shall include, but are not limited to, a mechanical ventilation system, air duct and related heating and air conditioning system, wall, door, glass, or other barrier, plumbing, wiring, or gas line.

SECTION 4

There shall be a special commission to assist in the efficient implementation and compliance of this act. The commission shall consist of a representative from the Boston public health commission, the Massachusetts Restaurant Association, the Massachusetts Association of Health Boards, the Massachusetts Municipal Association, Massachusetts AFL-CIO, Associated Industries of Massachusetts, the Massachusetts chapter of the National Federation of Independent Business, the alcoholic beverages control commission, the Massachusetts Public Health Association, the department of public health, the department of public safety, and representatives from 15 local boards of health appointed by the commissioner of public health in which the commissioner shall take into account the size of the city or town and other unique factors to ensure diversity on the commission. The commissioner of public health may appoint additional members of the commission.

The commission shall review the compliance, outcomes and the impact of this act and report to the joint committee on health care and the commissioner of public health not later than 16 months after the effective date of this act.

SECTION 5

Section 4 shall take effect upon its passage; sections 1, 2, and 3 shall take effect on July 5, 2004.

Enforcement Agency: Local boards of health and health agents are the primary enforcing agents.

Penalty: An owner, manager or other person in control of a workplace where smoking is taking place shall be fined \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. An individual smoking in violation of the law shall be subject to a civil penalty of \$100. All fine assessed pursuant to this law may be disposed of civilly, utilizing the non-criminal method of disposition.

Additional information about the Statewide Smoke-Free Workplace Law, including fact sheets and answers to frequently asked questions, is available at www.mass.gov/dph/mtcp.

105 CMR 661.000: REGULATIONS IMPLEMENTING CHAPTER 270, §22

661.001: Purpose

The purpose of 105 CMR 661.000 is to provide standards for the implementation of c. 270, s.22, which establishes restrictions on smoking in the workplace. The requirements in the regulations are intended to clarify or supplement the statutory requirements. Nothing in these regulations shall be interpreted as limiting or preempting further restrictions on smoking by any local by-law, ordinance or regulation.

661.002: Authority

105 CMR 661.000 is authorized and in part mandated by c. 270, s.22.

661.003: Definitions

Membership Association shall be as defined in c.270, s.22.

Outdoor space shall be as defined in c.270, s.22.

661.100: Smoking Restrictions in Membership Associations

(A) Smoking shall be prohibited in an enclosed indoor space of a membership

association during the time that the space is:

- (1) open to the public. A membership organization shall be regarded as open to the public when it has signs or advertising inviting or encouraging non-members to enter the premises or takes other action that may reasonably be regarded as inviting or allowing non-members to enter the premises;
- (2) occupied by a non-member who is not a guest. A non-member shall be regarded as a guest if entering the premises:
 - (a) accompanied by a member, provided the member remains on the premises while the guest is present; and
 - (b) signing a guest register that clearly specifies the name and address of the guest and the inviting member;
- (3) rented from the association for a fee or other compensation; or
- (4) occupied by a contract employee, temporary employee or independent contractor.

(B) Smoking may be permitted if the premises are occupied solely by the following:

- (1) members of the association. A person shall not be regarded as a member if entering the premises under terms of a membership that differ in duration, cost or privileges from the terms of a full membership in the association;
- (2) one or more salaried employees of the association;
- (3) invited guests of the members, as determined in accordance with 105.661.100(A); and
- (4) visiting members of an affiliated chapter or branch of a fraternal lodge organization.

(C) Smoking may be permitted in a distinct part of the premises of a membership association, provided that this part:

- (1) is physically separated from any area open to the public or occupied by a non-member who is not a guest. The separation shall be sufficient to prevent any migration of smoke into the public area. Any doors separating the areas shall be self closing;
- (2) is occupied solely by those persons specified in 105 CMR 661.100(B). The membership association shall adopt and effectively implement a policy that ensures only such persons are permitted to enter the part of the premises where smoking is permitted; and
- (3) there are no signs inviting or encouraging the public or non-members who are not guests to enter.

661.200: Smoking in Outdoor Spaces

Smoking may be permitted in an outdoor space, provided that the outdoor space is physically separated from an enclosed work space and there is no migration of smoke into the work space, in accordance with the following

requirements.

- (A) As provided in c.270, s.22, any outdoor space that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or covers, shall be regarded as an enclosed space when the walls or covers are in place.
- (B) The outdoor space shall be open to the air at all times. For purposes of 105 CMR 661.000, this shall mean that the space has thorough, unobstructed circulation of outside air to all parts of the outdoor space. An outdoor space shall be presumed to meet this test if:
 - (1) the space has a ceiling and at least one half of the total surface area of the walls and other vertical boundaries of the space permits unobstructed flow of outside air into the space; or
 - (2) the space has no ceiling and no more than two walls or other vertical boundaries of the space that obstruct the flow of air into the space exceed eight feet in height.
- (C) For purposes of 105 CMR 661.000, a ceiling shall include any top or covering that is placed or may be placed over a space, or any other structure or arrangement above the space (including substantial coverage by umbrellas or awnings) that may impede the flow of air into the space, regardless of the type or nature of the materials or the partial or removable nature of the covering.
- (D) The local board of health shall be notified in writing prior to initiating construction or renovation of an outdoor space for the purpose of permitting smoking, if such construction or renovation requires notification of the local building department or a licensing authority.

661.300: Professional Testing Laboratories

Medical or scientific research on tobacco products may be conducted in a professional testing laboratory, provided that the laboratory notifies the Department of its activities, in accordance with policies and procedures established by the Department, and provides such documentation as specified by the Department of compliance with federal regulations on Protection of Human Subjects, 34 CFR Part 97.

661.400: Enforcement

- (A) The Department and the Alcoholic Beverages Control Commission is hereby authorized to enforce the provisions of c.270, s.22 through use of the non-criminal disposition procedures specified in c.40, s.21D.

(1) The fine imposed pursuant to this section shall be \$100 for the first violation, \$200 for a second violation occurring within 2 years of the date of the first violation, and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a separate violation.

(2) The disposition of fines assessed in accordance with 105 CMR 661.400 shall be in accordance with c.29, s.2.

(3) As specified in c.270, s.22, each city or town shall file with the Department, on an annual basis in accordance with procedures established by the Department, a report indicating the number of citations issued for non-compliance with c.270, s.22 and these regulations, the basis for the citations, fines assessed and collected, and such addition information about enforcement as specified by the Department.

(B) In accordance with c.270, s.22, local boards of health shall have the authority to revoke or suspend a license of a building, vehicle or vessel to operate if an owner, manager or other person in control is found to repeatedly violate the requirements of c.270, s.22 (“egregious non-compliance”). For purposes of 105 CMR 661.000, 5 or more citations from enforcing authorities within 2 years of the first citation, or such violations as specified in regulations of the board of health, shall constitute egregious non-compliance. Such action shall be taken in accordance with local board of health regulations for the suspension or revocation of a license or permit.

In addition to this statewide law, the following laws address smoking in other venues.

FOOD HANDLING AND STORAGE AREAS AND PROCESSING ESTABLISHMENTS

General Rule: Massachusetts prohibits smoking in all commercial food preparation and storage areas including food preparation and storage areas in prisons, long-term care facilities, restaurants, bars, sandwich stands, caterers’ kitchens, bakeries, grocery stores, and more. *105 CMR 150.009; 451.214; 590.001; 590.009.* Massachusetts prohibits smoking in food processing and distributing facilities where there is exposed food or food ingredients. *105 CMR 500.070.*

Massachusetts prohibits smoking in virtually all food and beverage processing areas including areas used to process seafood, poultry, meat, dairy, water, nonalcoholic beverages, and more. *105 CMR 530.017(y); 530.020(N); 541.020(B)(7); 590.001; 532.049.*

Enforcement Agency: Local boards of health and health agents are the enforcing agents.

Penalty: Penalties include fines of up to \$500, and suspension or revocation of permits needed for the commercial handling and storage of food. *105 CMR 590.014; 590.019.*

BUSES TRAVELING ON MAJOR HIGHWAYS (NON-MASSACHUSETTS BAY TRANSPORTATION AUTHORITY BUSES)

General Rule: The Federal Government prohibits smoking on all buses transporting passengers on interstate service. *49 U.S.C. §374.201.*

Enforcement Agency: The United States Department of Transportation is the enforcing agency.

Penalty: Penalties are not specified.

AIRPLANES & AIRPORTS

General Rule: The Federal Government prohibits smoking on all domestic airline flights and all international airline flights arriving or departing from the United States. Massachusetts prohibits smoking in all enclosed areas of airports. *49 U.S.C. §41706; G.L. ch. 270, §22.*

Enforcement Agency: The United States Department of Transportation is the enforcing agency for the violation of smoking on airlines. The Massachusetts Port Authority is the enforcing agency for smoking in their enclosed facilities.

Penalties: Penalties are not specified for smoking on airlines. An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).*

FEDERAL BUILDINGS

General Rule: The Federal Government prohibits smoking in all offices owned or used by the executive branch of the Federal Government, including office space for essentially all of the departments and agencies of the executive branch, with some exceptions. *41 C.F.R. § 101-20.105-3.*

Smoking is permitted in designated areas that are physically enclosed and properly ventilated to ensure all tobacco smoke is immediately removed to the outside. A second exception allows smoking in those federally owned buildings leased to private citizens or businesses. Also, people may smoke in federal residential facilities, and people may smoke in privately owned offices that house “duty stations” for one or more federal employees.

The head of a federal agency may allow narrow exceptions for smoking where it is necessary to accomplish an agency’s mission. *41 C.F.R. §101-20.105-3*.

U.S. Postal Service prohibits smoking in all buildings and office space, including service lobbies, owned or leased by the U.S. Postal Service. No indoor smoking is permitted by any occupant of any space on U.S. Postal Service property.

Enforcement Agency: The director of the federal government agency or department on whose property the violation has occurred is the enforcing agency.

Penalty: No penalty is specified.

UNIVERSITY AND COLLEGE DORMITORIES

General Rule: The Smoke-Free Workplace Law exempts dormitory rooms because they are considered residences. *G.L. ch. 270, §22(a)*. However it does prohibit smoking in non-residential portions of dormitories, including, common areas, staircases and restrooms. *G.L. ch. 270, §22(b)(2)*. In addition, Massachusetts requires that public (as opposed to private) colleges and universities allot an adequate number of nonsmoking rooms in their dormitories for students who prefer a smoke-free room. *G.L. ch. 15A, §27*.

Enforcement Agency: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m)*. The dean of the college or university enforces *G.L. ch. 15A, §27*.

Penalties: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l)*. Penalties for violating *G.L. ch.15A, §27* are not specified.

PUBLIC SCHOOLS

General Rule: The Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including public and private schools. In addition, Massachusetts requires that all public schools through high school prohibit the use of tobacco products of any kind, including smokeless tobacco on school grounds, on school buses, and at school sponsored events. The law is commonly referred to as the “Education Reform Act.” *G.L. ch. 270, §22(b)(2); G.L. c. 71, §§2A, 37H.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).* The superintendent for the school district is responsible for publishing the district’s policies prohibiting tobacco use. The principal of each school building is responsible for enforcing the school district’s policies.

Penalties: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).* Individual smokers may also be assessed a civil fine of \$100 for each offense. Penalties are not specified for a violation of the Education Reform Act.

PRIVATE SCHOOLS

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including private schools. *G.L. ch. 270, §22(b)(2).* The outside grounds of private schools are not addressed in this law. *G.L. ch. 270, §22.*

Enforcement Agent: Local boards of health are the primary enforcement agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).*

Penalty: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).* Individual smokers may also be assessed a civil fine of \$100 for each offense.

CHILDCARE FACILITIES

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including childcare facilities. In addition, Massachusetts prohibits smoking in all childcare facilities during hours of operation, including private residences when used as childcare facilities. A childcare facility is defined as any regularly operated facility that receives children of other parents, one of which child is at least under the age of seven years (or sixteen years if the child has special needs) and over the age of one month. Childcare facilities do not include informal arrangements amongst neighbors or relatives. *G.L. ch. 270, §22(b)(2); 102 CMR 7.02 and 7.05.*

The Federal Government prohibits smoking in any facility for early childhood development services (such as Head Start), if the facility accepts certain federal funding or yields certain control to the Secretary of Health and Human Services. *20 U.S.C. 6083.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).* The Massachusetts Office of Childcare Services enforces *102 CMR 7.02 and 7.05.* The United States Secretary of Health and Human Services enforces the federal law.

Penalty: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).* Offenders may face fines of up to \$250 or suspension or revocation of childcare licenses for violations of *102 CMR 7.02 and 7.05.* Violations of the federal law are subject to fines of up to \$1,000, but may not exceed the amount the facility received in federal funding. *102 CMR 1.07; 20 U.S.C. §6083.*

FAMILY CARE HOMES

General Rule: Massachusetts prohibits caregivers from smoking in the presence of a temporarily placed child who is under seven years of age (or sixteen years if the child has special needs) in family care homes. Additionally, caregivers in family care homes must disclose whether they use tobacco products to prospective clients. A family care home is defined as regular, compensated baby sitting services. It does not include informal baby sitting arrangements amongst neighbors or relatives. *102 CMR 8.02 and 8.12. (See above, "CHILDCARE FACILITIES").*

Enforcement Agent: The Massachusetts Office of Child Services is the enforcing agent.

Penalty: Violators may face fines of up to \$250, and may temporarily or permanently lose their family-care licenses. *102 CMR 1.07.*

MANUFACTURING AND STORAGE OF NON-FOOD ITEMS

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including establishments that manufacture and store non-food items. The Board of Fire Prevention has also established smoking regulations for a variety of manufacturing and servicing facilities where potential fire hazards exist. For example, smoking at dry cleaning facilities is strictly restricted. Some similar restrictions can be found at the federal level. *G.L. ch. 270, §22(b)(2); 527 CMR 15.04; 454 CMR 22.11; 30 Code Fed. Regs. §75.1702; 57.5041.*

Smoking is banned in factories workshops, mercantile establishment and warehouses where the material being handled in and about such structure is of a flammable nature or where such structures are of a combustible construction which may, in the opinion of the head of the fire department, constitute a fire hazard. *527 CMR 10.07.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).* The local fire department enforces the Board of Fire Prevention Regulations.

Penalties: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).* No penalties are specified for violations of the Board of Fire Prevention Regulations.

PUBLIC POOLS

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including enclosed pool areas. In addition, Massachusetts prohibits smoking in enclosed or unenclosed pool areas of public pools operated by any subdivision of the Department of Environmental Management. *G.L. ch. 270, §22(b)(2); 304 CMR 12.33.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).* Additionally, any person failing to comply with a reasonable request of a duly authorized employee of the Division of Forests and Parks would be subject to a fine and/or an eviction. *G.L. ch. 270, §22; 304 CMR §12.05.*

Penalty: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).* Violations of the Division of Forests and

Park regulations are punishable by fines (of unspecified amounts), evictions, or temporary denial of access to the facility, or any combination of these. *G.L. ch. 270, §22; 304 CMR 12.05.*

PARK AND RECREATIONAL BUILDINGS

General Rule: The Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including enclosed park and recreational buildings. *G.L. ch. 270, §22(b)(2).* In addition, Massachusetts prohibits smoking in any building owned or operated by the Division of Forests and Parks and the Department of Environmental Management, including skating arenas, except in designated areas. *304 CMR 12.14.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).* In addition, any person failing to comply with a reasonable request of a duly authorized employee of the Division of Forests and Parks would be subject to a fine and/or an eviction. *G.L. ch. 270, §22; 304 CMR 12.05.*

Penalties: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l).* Violations of the Division of Forests and Parks regulations are punishable by fines (of unspecified amounts), evictions, or temporary denial of access to the facility, or any combination of these. *G.L. ch. 270, §22; 304 CMR 12.05.*

NURSING HOMES

General Rule: The Massachusetts Smoke-Free Workplace Law provides that nursing homes and acute care substance abuse treatment centers under the jurisdiction of the commonwealth that have received approval from the local board of health may have a designated smoking area for permanent residents only. The process for local board of health approval is outlined in *G.L. ch. 270, §22(f)(1) – (10).* The area cannot be an employee workspace, such as an office, restroom or other area used primarily by employees. All patient care areas must be smoke-free. In addition, smoking is prohibited in rooms where oxygen is administered or adjacent areas. *G.L. ch. 270, §22(f)(1) – (10); G.L. c. 111; §72X; 105 CMR 150.015(D)(11).*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *G.L. ch. 270, §22(m).* The Department of Public Health enforces the laws prohibiting smoking in patient care areas and in rooms where oxygen is administered.

Penalties: An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. ch. 270, §22(l)*. Specific penalties are not listed for laws prohibiting smoking in patient care areas or in rooms where oxygen is administered; however, the Department of Public Health has discretion to suspend or revoke nursing home licenses.

Chapter Two



Tobacco Product Sale and Display Laws

TOBACCO PRODUCT SALE AND DISPLAY LAWS

This section deals with laws designed to reduce youth access to tobacco products. Massachusetts has reduced illegal tobacco sales to children through aggressive enforcement of local youth access laws. Studies, however, indicate that children continue to obtain substantial amounts of tobacco products from lax or unscrupulous retailers.

Public health professionals should remember to check local laws addressing youth access to tobacco. Several state and local laws in Massachusetts work in concert. For example, state law prohibits giving or selling tobacco to a minor (*G.L. ch. 270, §6*). However, many local laws are more stringent, requiring retailers to possess a tobacco sales permit that can be suspended if repeated sales to minors occur. These laws are enforced by local boards of health. **Public health professionals should investigate local as well as state laws when addressing youth access issues.**

MINIMUM AGE SALES LAWS

General Rule: The vast majority of cities and towns in Massachusetts have local regulations that prohibit selling or giving tobacco products to minors. These laws are enforced locally, by boards of health. Local penalties vary from municipality to municipality. (*See above*).

State Statute: A Massachusetts state statute prohibits the selling or giving of tobacco products to any person under the age of 18 years. The sole exception is for parents and legal guardians who want to give their child a tobacco product. *G.L. ch. 270, §6*.

Enforcement Agent: The local District Attorney's Office and police departments enforce this law.

Penalty: Fines for violating this law range from no less than \$100 for the first offense to no less than \$300 for the third and subsequent offenses.

State Regulation: Pursuant to regulations promulgated by the Massachusetts Attorney General, retailers must card anyone who appears to be 26 years of age or younger before selling him or her tobacco; and the retailer must only accept a currently valid government-issued, photographic identification to verify a purchaser's age. No verification is required for any person who appears 27 years of age or older. *940 CMR 21.04(2); 22.06(2)*.

Enforcement Agent: The Massachusetts Attorney General enforces these regulations.

Penalty: Pursuant to the Massachusetts Attorney General’s regulations, violators may be subject to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4.*

REQUIRED SIGNAGE ABOUT THE MINIMUM AGE SALES LAWS

General Rule: Massachusetts requires that notice of the minimum legal age sales law be posted at retail establishments selling tobacco. State law provides detailed instruction on when and how to post notices about the minimum legal age sales law. At retail establishments that sell tobacco products, proprietors must display a sign at each cash register, informing customers that state law prohibits the sale of tobacco products to any person under the age of 18 years. A forty-eight square inch sign created by either the Massachusetts Department of Public Health or local board of health must be posted at the cash register that handles the greatest volume of tobacco product sales. The sign must face customers at a height of between four to nine feet from the ground. All other cash registers in a retail establishment must display the same message in a smaller nine square inch sign facing the customer. *G.L. ch. 270, §7; 105 CMR 590.009(f).*

A similar sign must be posted on the front of all vending machines reading “Persons under eighteen are prohibited from using this machine.” The sign must be obtained from the Massachusetts Department of Revenue. *G.L. ch. 64C, §10; 940 CMR 21.04; 22.06(4).*

Enforcement Agent: Local boards of health, the Massachusetts Department of Revenue concerning vending machines and the Massachusetts Attorney General are the enforcement agents.

Penalty: A retailer who sells tobacco may face a fine of up to \$50 for failing to post a sign regarding the minimum age sales law. Any person who removes the sign may be fined \$10.

SELF-SERVICE DISPLAYS

General Rule: The Attorney General’s tobacco sales regulations prohibit self-service displays from which customers may grasp a tobacco product or tobacco product package without assistance from a store worker. Tobacco must be kept beyond the reach of all customers. However, self-service displays are allowed in adult-only facilities. *940 CMR 21.04(2); 22.06 (2).*

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: A violation of this Consumer Protection Regulation may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4.*

VENDING MACHINES

General Rule: The Attorney General's tobacco sales regulations ban vending machines containing tobacco products, except in establishments licensed to sell alcohol for consumption on the premises. There are three requirements for all vending machines containing tobacco products. First, they must feature lock-out devices requiring an employee to unlock the vending machine for each sale. Second, they must be located where all sales are easily observed by an employee. Third, they must display a sign stating that minors are not permitted to purchase tobacco and notifying customers of the lock-out device. *940 CMR 21.04(4); 22.06(4).*

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: A violation of these Consumer Protection Regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4.*

SINGLE CIGARETTE SALES

General Rule: A Massachusetts state statute and Attorney General Consumer Protection Regulations prohibit any person from selling single unpackaged cigarettes. In addition, Attorney General Consumer Protection Regulations prohibit breaking or otherwise opening any cigarette pack, little cigar package, or smokeless tobacco container to sell or distribute. *G.L. ch. 94, §307A; 940 CMR 21.04(1)(b) and 22.06(1)(b).*

Enforcement Agent: Massachusetts Attorney General is the enforcing agent.

Penalty: A violation of these Consumer Protections Regulations may subject the violator to a civil penalty of not less than \$200 and not more than \$500. In some cases, a violation of this law may subject the violator to a fine of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 94, §307A; G.L. ch. 93A, §4.*

TOBACCO GIVE-AWAYS

General Rule: The Attorney General's Consumer Protection Regulations prohibit free distribution of all tobacco products. In adult-only facilities, however, one free sample per day per individual of the smallest package available is allowed. *940 CMR 21.04(1) and 22.06(1)*.

Enforcement Agency: The Massachusetts Attorney General is the enforcing agent.

Penalty: A violation of these Consumer Protection Regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4*.

RETAILER TRAINING

General Rule: Retailers who sell tobacco must implement all measures that are reasonably necessary to prevent the sale of tobacco products to customers younger than 18 years of age. Such preventive measures are presumed to be in place, if a retailer implements and operates a training program for all employees who handle tobacco products regarding compliance with laws prohibiting sales to minors, and implements a secret shopper program if six or more people are employed. *940 CMR 21.04(3); 22.06(3)*.

Enforcement Agency: The Massachusetts Attorney General is the enforcing agent.

Penalty: A violation of these Consumer Protection Regulations may subject the violator to a civil penalty of up to \$5000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4*.

CONTAMINATED TOBACCO PRODUCTS

General Rule: No one may deliver, sell, offer to sell, or have in his or her possession with the intent to sell any tobacco products or implements used for smoking that have been contaminated by fire, smoke or water, without authority from the Massachusetts Department of Public Health. *G.L. ch. 94, §307*.

Enforcement Agent: Massachusetts Department of Public Health is the enforcing agent.

Penalty: Violations are punishable by a fine from \$200 to \$500, or by imprisonment for up to six months.

FOOD STAMPS

General Rule: Food stamps may not be used to buy tobacco products. *106 CMR 376.000*.

Enforcement Agent: Massachusetts Department of Transitional Services is the enforcing agent.

Penalty: Violations may affect eligibility for the food stamp program.

ROLLING PAPERS

General Rule: Cigarette rolling papers may not be sold to any person under the age of 18 years. No town by-law, city ordinance, or board of health regulation may impose any additional requirement regarding rolling papers, except that local requirements in force before November 1995 may be enforced. *G.L. ch. 270, §6A*.

Enforcement Agent: Police are the enforcing agents.

Penalty: The first violation is punishable by a fine of not less than \$25. The second violation is punishable by a fine of not less than \$50. Third and subsequent violations are punishable by fines of no less than \$100.

Chapter Three



Health Warnings Laws

HEALTH WARNINGS LAWS

Federal lawmakers have exclusive authority over tobacco-related health warnings for tobacco packaging and advertisements. Under the doctrine of preemption, which derives from the U.S. Constitution, the Federal Government specifically prohibits states and local governments from imposing new or additional health warnings for tobacco packaging and advertising.

HEALTH WARNINGS FOR CIGARETTES

General Rule: Federal law requires that cigarette retail packages display a government-mandated health warning. Also, under federal law, cigarette manufacturers and importers may not advertise their products without displaying a mandated health warning in the ad. Neither state nor local governments may impose additional health warnings for cigarette packaging or advertising. *15 U.S.C. §1333.*

Enforcement Agent: The Federal Trade Commission or the United States Department of Justice are the enforcing agents.

Penalty: Failure to display the cigarette health warning or to display the warning properly is a misdemeanor, and punishable by a fine of up to \$10,000. *13 U.S.C. §1338.*

HEALTH WARNINGS FOR CIGARS

General Rule: In January 2000, the Federal Trade Commission ordered, through a Consent Order, the seven largest cigar companies, comprising 95% of the U.S. cigar market, to start to display government-developed health warnings on all of their product packages and advertisements. The health warnings must appear on the principal display surface. For premium cigars displayed in open boxes, the principal display surface is the interior box top. As with cigarette warnings, neither state nor local governments may impose additional health warnings for cigar packages or advertising. *In the Matter of Swisher International, Inc. et. al, Federal Trade commission Docket Nos. C-3964 - 70 (Agreement Containing Consent Orders 2000).*

Pursuant to regulations of the Massachusetts Attorney General, any retailer who sells hand rolled cigars, or who displays for purchase manufactured cigars outside of their original package must display a state-mandated warning about cigar consumption in a sign at least 50 square inches in size. *940 CMR 22.06 (2).*

Enforcement Agent: The Federal Trade Commission enforces the federal law, and the Massachusetts Attorney General enforces its regulations.

Penalty: No penalty is specified for a violation of the federal law. A violation of the Massachusetts Attorney General's Consumer Protection Regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4.*

HEALTH WARNINGS FOR SMOKELESS TOBACCO PRODUCTS

General Rule: Federal law requires that retail packages of smokeless tobacco products - which includes any finely cut, ground, powdered or leaf tobacco that is intended to be placed in the mouth or nose - display a government-mandated health warning on the package's primary display surface. Additionally, under federal law, smokeless tobacco manufacturers, importers and packagers may not advertise their products without including one of the federally mandated health warnings in the ad. Neither state nor local governments may impose additional health warnings for smokeless tobacco product packages or advertisements. *15 U.S.C. §4402.*

The Massachusetts Commissioner of Public Health has determined that snuff, which is a finely ground or cut tobacco mixture that is intended to be placed in the oral cavity, is classified as a hazardous substance. As such, containers of snuff must bear the federally mandated health warning discussed above. *105 CMR 650.001-650.990.*

Enforcement Agency: The Federal Trade Commission or the United States Department of Justice enforces the federal health warning. The Massachusetts Department of Public Health enforces the Massachusetts requirement.

Penalty: Failure to display a smokeless tobacco product health warning or to display it properly is a misdemeanor, and punishable by a fine of up to \$10,000 under federal law. *15 U.S.C. §4404.* No penalties are specified for violations of the Massachusetts law.

Chapter Four



Tobacco Advertising and Promotion

TOBACCO ADVERTISING AND PROMOTION

Tobacco advertising is one of the most contentious areas of public health law. In Massachusetts, there are two main bodies of law that feature tobacco-related advertising requirements: federal law and requirements of the 1998 Multistate Master Settlement Agreement. The Multistate Master Settlement Agreement, or MSA for short, contains several court-approved marketing requirements by which the cigarette industry has agreed to abide in exchange for 46 states dismissing legal suits filed to recover the cost of paying for tobacco caused illness.

Local laws do not address tobacco advertising and promotion. However, for public safety reasons, local laws may exist that regulate the amount of signage on buildings and sidewalks adjacent to buildings.

Because of the detailed rules and laws for tobacco advertising, this section includes an “Exception” part to the “General Rule.”

OUTDOOR ADVERTISING

General Rule: The MSA provides two outdoor advertising rules. First, the MSA prohibits cigarette advertising out-of-doors, in enclosed arenas, stadiums, shopping malls, video game arcades, and advertising facing outwards on the inside surface of a window. Second, the MSA prohibits cigarette advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any similar location. *MSA III (d)*.

Exceptions: There are several exceptions to these two MSA rules. First, cigarette manufacturers may advertise in adult-only facilities. Second, cigarette manufacturers may advertise outside of their manufacturing facilities. Third, cigarettes may be advertised inside retail establishments if the ads are not posted on the inside surface of a window facing outward. Fourth, cigarettes may be advertised outside at the site of an adult-only-event up to two weeks before the event. Fifth, cigarette manufacturers may advertise their products outside cigarette retailers, provided the ad is no larger than fourteen square feet. *MSA II (ii)*.

Enforcement Agent: Massachusetts Attorney General is the enforcing agent.

Penalties: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

ADVERTISING CONTENT

General Rule: The MSA prohibits cigarette manufacturers from using cartoons or cartoon-like qualities in their product advertisements. *MSA III (b)*.

Exception: None.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

ADVERTISING SIGNIFICANTLY VIEWED BY CHILDREN

GENERAL RULE: The MSA bans cigarette manufacturers from targeting youth in the advertising, promotion or marketing of tobacco products through forums with significant youth exposure. Unfortunately, the MSA fails to define the phrase “significant youth exposure.” The California Attorney General filed suit claiming R.J. Reynolds was violating this rule by advertising in magazines with youth readership rates of almost twice the percentage of kids present in California’s population. *MSA III (a)*. The lower court found in favor of the State of California. The California Appeals Court found that R.J. Reynolds had targeted youth in violation of the MSA. Ultimately, California and R.J. Reynolds entered into a court approved settlement wherein RJR was prohibited from advertising if a publication’s teen audience comprises 15% or more of its total readership. RJR agreed to pay California more than \$11.4 million in civil penalties and about \$5.85 million to cover costs of litigation.

On June 20, 2005, an agreement was reached between Time, Inc. and Newsweek, Inc. and the National Association of Attorneys General. Time, Inc. publishes People and Sports Illustrated as well as Time. The publishers have agreed to stop tobacco advertising in those publications that are sent to school libraries.

Exception: None.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

TELEVISION, RADIO AND OTHER SIMILAR ADVERTISING

General Rule: Cigarettes, smokeless tobacco products, and little cigars approximately the size of a typical cigarette or smaller may not be advertised on any medium of electronic communication under the jurisdiction of the Federal Communication Commission. For example, these tobacco products may not be advertised on television. *15 U.S.C. §§1335; 4402.*

Exception: Regular to large sized cigars may be advertised on any medium of electronic communication under the jurisdiction of the Federal Communication Commission, including television and radio. *In the Matter of Swisher International, Inc. et. al., Federal Trade Commission Docket Nos. C-3964 - 70 (Agreement Containing Consent Orders 2000).*

Enforcement Agency: The Department of Justice, and the Federal Trade Commission in some situations are the enforcing agents.

Penalty: The violation of this ban is a misdemeanor and it carries a fine of up to \$10,000. *15 U.S.C. §§1338; 4404.*

BRAND NAME SPONSORSHIP OF PUBLIC EVENTS

General Rule: Each cigarette manufacture may sponsor (in the name of one of its product brands) only one public event per year. For example, R.J. Reynolds has chosen to sponsor the Winston Cup NASCAR series as its one event per year. R.J. Reynolds may not sponsor other events to promote one of its brands. With some limited exception, the one event may not include concerts; an event in which the intended audience is comprised of a significant percentage of youth; events in which any paid participants or contestants are youth; or any athletic event between opposing teams in any football, basketball, baseball, soccer or hockey league. *MSA III (C).*

Exceptions: There are several exceptions to this brand name sponsorship restriction, the largest in scope of which are as follows. First, events at adult-only facilities are exempted, allowing R.J. Reynolds, for example, to sponsor hundreds of “Camel Nights” at local adult-only facilities each year. Second, cigarette manufactures may use their corporate names to sponsor any type and number of public events. Third, billboards advertising the brand name sponsorship may be placed at the site of the event for 90 days before and 10 days after the date of the event. *MSA III (j) & (c).*

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: The Attorney General must first try to resolve the alleged violations. If unsuccessful, the Attorney General may seek monetary civil contempt or criminal sanctions through the courts.

BRAND NAME MERCHANDISE AND APPAREL

General Rule: Under the Multistate Master Settlement Agreement of 1998, cigarette manufacturers may not sell or distribute merchandise or apparel that bears the name of any of their tobacco products. *MSA III (f) & (c)*.

Massachusetts prohibits retailers from selling or distributing any tobacco product, if any apparel or other merchandise (apart from the actual tobacco product) which bears a tobacco product's brand name is also offered as part of the purchase. *940 CMR 21.04(a)(b); 22.06 (1)(d)*.

Exceptions: There are several exceptions to the requirement of the Multistate Master Settlement Agreement. First, this restriction does not apply to merchandise or apparel distributed at brand name sponsored events such as Winston Cup NASCAR events. Second, this restriction does not apply to merchandise solely used to advertise tobacco products, such as a poster, but not a jacket or mug. Third, cigarette manufacturers are not required to collect the merchandise and apparel they distributed in the past before the MSA. Lastly, workers at adult-only facilities may wear brand name apparel, and any brand name merchandise may be used in adult-only facilities. *MSA III (f)*.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalties: The Attorney General may seek monetary, civil or criminal contempt charges to enforce the Multistate Master Settlement Agreement should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

A violation of the Massachusetts Attorney General's Consumer Protection Regulation regarding brand name merchandise and apparel may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. ch. 93A, §4*.

PRODUCT PLACEMENT

General Rule: Cigarette manufacturers may not pay to place their tobacco products in the movies, television, theater, video games or other performances. *MSA III (e)*.

Exceptions: There are at least two exceptions to this MSA restriction. First, cigarette manufacturers may pay to place products in movie television, theater, video games or other performances at adult-only facilities. Second, cigarette manufacturers may pay to place their

tobacco products in videos not distributed to the general public. For example, cigarette manufacturers may place their products in instructional videos that they distribute only to tobacco retailers. *MSA III (e)*.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve alleged violation before turning to the courts.

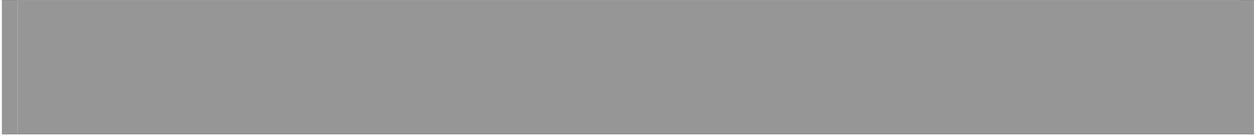
PROHIBITION OF STATE AND LOCAL ADVERTISING REGULATION OF TOBACCO ADVERTISEMENTS

General Rule: No state or local governmental body may establish requirements regulating the content, placement or frequency of tobacco cigarette advertising, if the law or regulation seeks to advance the government interest in smoking reduction and health. The U.S. Supreme Court decided that only the Federal Government is allowed to regulate cigarette advertising. Additionally, the ability of any state or local government body to regulate the advertising of cigars and smokeless tobacco is very limited. The advertising rules listed in this booklet are not affected by the U.S. Supreme Court's ruling. *Lorillard Tobacco Co. v. Reilly 121 S. Ct 2404 (2001)*.

Enforcement Agent: Federal courts are the enforcing agents.

Penalty: Invalidation of the law.

Chapter Five



Tobacco Tax and Pricing

TOBACCO TAX AND PRICING

Federal and State Governments tax tobacco to dissuade tobacco use and to raise government funds. The United States Surgeon General recently determined that tobacco taxes are relatively easy to collect and can generate significant revenues. Additionally, numerous studies confirm a fundamental principle of economics: increasing tobacco prices will reduce tobacco use.

This section outlines the taxes imposed on tobacco products purchased in Massachusetts. This section also reviews minimum pricing requirements of the Massachusetts Department of Revenue.

FEDERAL TAXES

General Rule: The Federal Government imposes an excise tax of 39 cents per pack of cigarettes, 19.5 cents per pound of chewing tobacco, 58.5 cents per pound of snuff tobacco, and \$1.09 per pound of pipe tobacco. *26 U.S.C. §5701.*

Enforcement Agency: United States Internal Revenue Service, and the Bureau of Alcohol, Tobacco and Firearms are the enforcing agencies.

Penalty: Substantial civil and criminal penalties are imposed for violation of federal taxation laws. Depending on the seriousness of the offense, violators are subject to fines of \$1,000 to \$10,000. In some cases, the violator is required to pay five times the tax liability on contraband tobacco products. Up to five years of jail time may be imposed in certain cases. Lastly, forfeiture of contraband tobacco products is required. *26 U.S.C. §§5761; 5762; 5763.*

MASSACHUSETTS TAXES

General Rule: Massachusetts imposes an excise tax on tobacco products. The Commonwealth's excise tax for cigarettes is \$1.51 per pack of cigarettes, 90 percent of the wholesale price of smokeless tobacco products, and 30 percent of the wholesale price of cigars and smoking tobacco. Additionally, the Massachusetts sales tax of 5 percent also applies to the purchase of tobacco products. *G.L. ch. 64c, §§6, 7A, 7B, 7C.*

The state excise tax on cigarettes and smokeless tobacco products is collected from the stamper (generally a wholesaler) who must purchase proof-of-tax payment stamps to be affixed to product packaging. *G.L. ch. 64C, §29.* The state excise tax on smokeless tobacco is also

collected from the stamper, although no stamp is affixed to the package. The excise tax on cigars and smoking tobacco is collected by the retailer and sent to the Department of Revenue. *G.L. ch. 64C, §§ 6, 7B.*

Enforcement Agency: Massachusetts Department of Revenue is the enforcing agency.

Penalty: Fines are imposed for the transportation and unauthorized possession of cigarettes for which excise taxes have not been paid. Sanctions include fines of up to \$1,000, jail for not more than one year or both, and civil penalties up to \$5,000. *G.L. ch. 64, §§34, 35.*

PRICING OF TOBACCO PRODUCTS

General Rule: A retailer generally may not sell cigarettes for less than 125% of his or her base cost in acquiring the cigarettes minus any trade discounts. The base cost includes \$1.51 in excise taxes. There are some exceptions, such as the discount sale of cigarettes during the final business liquidation of a retail establishment. *G.L. ch. 64C, §15, 830 CMR 64C.14.1.* Other exceptions include the sale of cigarettes at a price set in good faith to meet the price of a competitor. *G.L. ch. 64C, §16.* Retailers may also demonstrate to the Department that their actual cost of selling cigarettes is less than the statutory presumptive cost. *830 CMR 64C.14.1.*

The Department has published a written statement dealing with the effect of manufacturer promotional programs (“buydowns”) on the cost of cigarettes. *Department Directive 02-2.* Additionally, *Department Directive 03-14* addresses the circumstances under which manufacturer coupons may be accepted.

Enforcement Agency: Massachusetts Department of Revenue is the enforcing agency.

Penalty: Violations are subject to a fine of up to \$500 and suspension or revocation of a Department of Revenue tobacco license.

MASSACHUSETTS DEPARTMENT OF REVENUE TOBACCO RETAIL LICENSES

General Rule: Those involved in the commercial distribution of tobacco products must obtain a license from the Department of Revenue. Licensees may include manufacturers, wholesalers, unclassified acquirers, transportation companies and retailers. Each retailer who sells tobacco products, including through vending machines, must obtain a license. The licensees must display their licenses or in the case of vending machines, a decal, furnished by the Department of Revenue. *G.L. ch. 62C, §67; G.L. ch. 64C, §10.*

Enforcement Agency: Massachusetts Department of Revenue is the enforcing agency.

Penalty: Failure to obtain a proper license for the distribution of tobacco products may lead to substantial penalties for both the seller and buyer of cigarettes. Fines start at \$50 and can reach a year in prison and a \$1,000 fine in some cases. Purchasing tobacco products from an unlicensed distributor may lead to fines of up to \$1,000. *G.L. ch. 64C, §10.*

TAX ON INTERNET SALES

General Rule: Federal Law requires that internet tobacco retailers who wish to sell cigarettes in the Commonwealth file with the Massachusetts Department of Revenue. The internet tobacco retailers must also inform the Massachusetts Department of Revenue about the quantity and brand of cigarettes sold in the Commonwealth as well as to whom these shipments were made. The Department of Revenue may then collect the cigarette excise taxes from the purchaser. *15 U.S.C. §375, et seq.; G.L. ch. 64C, §5A.*

Enforcement Agent: Bureau of Alcohol, Tobacco and Firearms and Massachusetts Department of Revenue are the enforcing agents.

Penalty: The internet tobacco retailer is subject to \$1,000 and up to 6 months imprisonment, or both. The customer is subject to collection of state taxes (including penalties and interest) on cigarettes as described in Department Directive 02-14 and Form CT-11.

Additional information, including Forms and Regulations, may be found at <http://www.dor.state.ma.us/cigarette/cigarette.htm>.

A form that may be used to submit complaints about cigarette licensees and their prices and practices (Form CCRF) is also found at the above website address.

Chapter Six



Legal Authority to Regulate Tobacco Locally

LEGAL AUTHORITY TO REGULATE TOBACCO LOCALLY

This booklet does not discuss local board of health regulations, city ordinances or town by-laws concerning tobacco sale and use, although these types of local laws are used extensively in Massachusetts. Most communities in the Commonwealth have enacted, and currently enforce local laws to control the sale and use of tobacco. Legal authority for board of health regulations is addressed separately from legal authority for city ordinances and town by-laws. Most of these local laws are board of health regulations.

LEGAL AUTHORITY FOR TOBACCO-RELATED BOARD OF HEALTH REGULATIONS

General Rule: Section 31 of Chapter 111 of the Massachusetts General Laws provides broad authority for local boards of health to pass and enforce reasonable health regulations. Tobacco-related regulations have been upheld by the Supreme Judicial Court as reasonable health regulations. *Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass 217 (2001). Regulations promulgated under this authority frequently address the manner in which tobacco products are sold and where they may be used. For example, prior to the statewide smoke-free workplace law, several municipalities prohibited smoking in public places and workplaces, including restaurants and bars.

Enforcement Agent: Local health agents or others authorized by the board of health to enforce its regulations. Enforcement should be addressed within the body of the local regulation.

Penalty: The body of the regulation specifies penalties, which may include fines of up to \$300 per offense pursuant to non-criminal disposition ticketing procedures, as well as suspension of locally issued permits. If the non-criminal method of disposition is not utilized, fines cannot be more than \$1,000. *G.L. ch. 111, §31*.

LEGAL AUTHORITY FOR TOBACCO-RELATED MUNICIPAL BY-LAWS AND ORDINANCES

General Rule: The Home Rule Amendment to the Massachusetts Constitution authorizes cities and towns to pass ordinances and by-laws relative to health, safety and welfare. Local laws that address tobacco sale and use have been upheld by the Supreme Judicial Court. For example, a town by-law promulgated pursuant to Home Rule authority prohibiting the use of vending machines to sell cigarettes was upheld as reasonably related to protecting the public's health, safety and welfare. *Take Five Vending LTD v. Town of Provincetown* 415 Mass 741 (1993).

Enforcement Agent: Local health agents or others authorized by the municipality to enforce the by-law or ordinance. Enforcement should be addressed within the body of the town by-law or city ordinance.

Penalty: No penalty is specified in the Home Rule Amendment. The body of the town by-law or city ordinance specifies penalties which may include fines of up to \$300 per offense under non-criminal disposition ticketing procedures and suspension of permits. If the non-criminal method of disposition is not utilized, the fine is not limited to \$300.

The Massachusetts Association of Health Boards (MAHB) is a non-profit organization serving all elected and appointed Boards of Health in the Commonwealth of Massachusetts. Pursuant to Massachusetts General Laws, state and local regulations and community directives, Boards of Health are responsible for disease prevention and control, health and environmental protection, and promoting a healthy community. Since 1982, MAHB has assisted Boards of Health and related governmental and community agencies by providing technical assistance, legal education, training and resource development. MAHB has been providing technical assistance and legal education relative to tobacco control issues since 1994.

For additional information about MAHB, visit our website at www.mahb.org. You may also contact Cheryl Sbarra, J.D., the primary author of this second edition.

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