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DETERMINING FLAVOR ENHANCERS

Amended 4/12/22

By the end of 2019, approximately 148 cities and towns across the Commonwealth enacted a local policy limiting the sale of flavored tobacco and vape products. In 2019, the Massachusetts Legislature enacted a law, later signed by Governor Baker, which expanded this policy statewide. One major addition, compared to the typical local policy, includes the addition of "Tobacco Product Flavor Enhancer" (hereinafter referred to "Enhancer") to the newly-edited state law (MGL Ch. 270, §6). Including Enhancers as banned products is intended to thwart retailers from selling products aimed to flavor plain tobacco and plain vape that a customer might buy, as it negates the public health goals of the new state law.

At General Tobacco Retailers:

Does the packaging say right on it that it is (1) flavored and (2) intended to be used with tobacco and/or vape products?

If it says it is flavored, but is silent on #2 above, see what the manufacturer's and consumer websites say about the product.

If it claims to be unflavored, or has a concept flavor name that does not describe its flavor, purchase the product, open it up and smell it, or depending on the product, you can assume it is flavored if it would not otherwise be sold unless it was flavored. An example would be a small dropper bottle with the name Birthday Cake.

If it says #2 above, but is hard to determine if it is flavored, think about if the product were unflavored, would a customer bother to buy and use it. An example would be a nicotine-free, unflavored ENDS product.

Has the retailer obtained a manufacturer's letter attesting that the product is not flavored? A number of these companies will be small and may only be in business to sell enhancers so may not be able to produce a letter. Enforcement agents may choose to give the retailers a couple of days to obtain the letter, require that the product be removed from the store until that letter is obtained, and/or assess a penalty for selling the product. State law requires an escalated set of fines - \$1000/\$2000/\$5000 within a 36-month tolling period.

At Adult-Only Retail Tobacco Stores (AORTS):

In addition to the above:

AORTS can only sell unflavored vape products and/or unflavored tobacco products. The majority of other products should be these products or paraphernalia to use with these products. There is an assumption that if they sell it, it is highly likely to be for tobacco or vape delivery.

They should be getting their products from manufacturers – not from other retailers for them to resell. However, regardless, the retailer needs to obtain a letter attesting that the products being sold are not flavored from the manufacturer of the product.

It is true that non-AORTS can sell products, such as vanilla extract, and claim it is not for tobacco/vape use. However, an AORTS selling vanilla extract, likely means the retailer intends to sell it to customers because the extract is flavored and that it is intended to be used for tobacco or vape use.

The definition for AORTS is:

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food, beverages or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the **[city/town]** Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.