

# TOBACCO & OTHER DRUGS: WHAT'S COMING DOWN THE PIKE

---

CHERYL SBARRA, JD

EXECUTIVE DIRECTOR AND SENIOR STAFF ATTORNEY, MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS

LISA STEVENS-GOODNIGHT, ESQ.

DIRECTOR OF TOBACCO CONTROL, MASSACHUSETTS MUNICIPAL ASSOCIATION

# DISCLAIMER

---

- **This information is provided for educational purposes only. It is not to be construed as legal advice.**

# TOPICS

---

- Flavor ban: Industry efforts to circumvent
- New tobacco and nicotine products to watch out for
- Other drugs: Non-tobacco products seen during tobacco enforcement and if/how/when to regulate
- Local policy ideas

# THE FLAVOR BAN

## & INDUSTRY EFFORTS TO CIRCUMVENT

---

Industry Tactics; Legal Standard; Concept Flavors; “Loop Hole” Products

# INDUSTRY TACTICS

---



- “Loop hole” Products: Redefine “taste” through confusion & complication.
  - Use a scientific, neurochemical definition of “taste”.
  - Overwhelm with science to override common sense understanding.
- Expense: Cost to municipality for litigation.
- Deceptive naming and manufacturer letters

# “LOOP HOLE” PRODUCTS: EXAMPLE

---



## LEGAL STANDARD: DEFINING “TASTE”

---

- A Distinguishing taste or aroma, other than the taste or aroma of tobacco imparted or detectable before or during consumption of a tobacco product” (105 CMR 665.000)
- The law “**does not state or intimate anywhere that any specialized criteria or standard must be used** to determine whether a particular tobacco product is a ‘[f]lavored tobacco product.’” Instead, “**[C]ommon experience and common sense**” can be used to determine whether a product is flavored. (Cumberland Farms, Inc. v. Board of Health of Yarmouth, 97 Mass. App. Ct. 1111 (2020))

# EXPENSE: LITIGATION

---

- Have been doing this for years.
  - Tri-Nel Management case
  - Athol case
  - Cumberland Farms case



# CONCEPT FLAVORS

---



# NEW TOBACCO PRODUCTS

---

Pouches; Nicotine Salts

# NEW PRODUCTS TO WATCH OUT FOR: ZYN

---



- Rapid increase in convenience store shelf space in last year
- Discrete
- High nicotine content
- Low cost

# NEW PRODUCTS TO WATCH OUT FOR: ELF BAR

---



- **Being sold illegally – not FDA approved.**
  - Only 23 electronic cigarette products have been approved.
  - FDA issued more than 570 warning letters.
- Two recent studies published last week in CDC's *Morbidity & Mortality Weekly Report* regarding e-cigarettes:
  - Elf Bar – most popular disposable e-cigarette sold in U.S.
  - Elf Bar – most popular disposable e-cigarette report among persons 16 to 19 (Legal age – 21).
- Thousands of e-cigarette exposure cases reported to U.S. poison centers in the past year.
  - Most of which were among kids younger than 5 years old.
  - Elf Bar was cited more than all other brands combined, nearly all among children younger than 5 years old.

# & OTHER DRUGS:

---

Non-tobacco products

# KRATOM

---

- Description:
- Bottom Line: Board of Health can regulate
  - MAHB has drafted model regulations, reach out to Cheryl for more information

# DELTA-8, DELTA-10, SYNTHETICS

---

- Farm Bill: federal loop hole
- MDAR
- Bottom Line:

# LOCAL POLICIES

---





# UNIQUELY LOCAL POLICIES: TOBACCO & NICOTINE

---

- Blunt wrap regulation/ban
- Smoking bar ban
- Minimum pricing for cigars
- No sales in educational institutions
- Ban on non-residential roll-your-own machines
- Capping number of local tobacco sales permits
- Selling without a local permit for general tobacco retailers
- Retailers cannot possess, hold or keep prohibited flavor products on premises.

# UNIQUELY LOCAL POLICIES: OTHER DRUGS

---

- Delta-8, Delta-10
- Kratom
- Marijuana Accessories

# CONTACT INFORMATION

---

- Cheryl Sbarra, JD  
Executive Director and Senior Staff Attorney, Massachusetts Association of Health boards  
Email: [sbarra@mahb.org](mailto:sbarra@mahb.org)  
Tel: (781)572-5639
- Lisa Stevens-Goodnight, Esq.  
Director of Tobacco Control, Massachusetts Municipal Association  
Email: [lstevensgoodnight@mma.org](mailto:lstevensgoodnight@mma.org)  
Tel: (617)426-7272 ext. 152
- Sarah McColgan  
Tobacco Control Program Director, Massachusetts Health Officers Association  
Email: [smccolgan@mhoa.com](mailto:smccolgan@mhoa.com)  
Tel: (413)636-6418