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December 11, 2019

Dear Public Health Colleagues:

On Wednesday, November 27, 2019, Governor Baker signed An Act Modernizing Tobacco Control into law. This legislation substantially restricts the sale of e-cigarette and nicotine vaping products (referred to in the law collectively as “electronic nicotine delivery systems”) and flavored tobacco products.

Certain sections of the new legislation became effective immediately upon signing. The Massachusetts Department of Public Health (DPH) has promulgated an emergency regulation, 105 CMR 665: Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems, to implement these sections. The emergency regulation is effective as of December 11, 2019 and the Department of Public Health and Boards of Health have the authority to enforce the emergency regulation. As a result, there are important new requirements for retail establishments that sell tobacco. These requirements differ depending on what kind of retail establishment you work with and are summarized below. The full text of the regulation is available at: [mass.gov/NewTobaccoLaw](http://mass.gov/NewTobaccoLaw).

**Pursuant to 105 CMR 665:**

**Non-age-restricted establishments (such as convenience and liquor stores):**

- Cannot sell any tobacco products, including cigarettes and e-cigarettes to anyone under the minimum legal sales age.
- Cannot sell any flavored electronic nicotine delivery systems such as flavored e-cigarettes and flavored vaping products.
- Cannot sell electronic nicotine delivery systems with nicotine content greater than 35 milligrams per milliliter.
- Cannot advertise tobacco products that they cannot sell, use fraudulent or misleading statements in advertising, or display advertisements with celebrities, cartoons, or similar endorsements.
- Can sell non-flavored electronic nicotine delivery systems with nicotine content 35 milligrams or less per milliliter.
  - Must maintain records obtained by the manufacturer that validate the nicotine content of electronic nicotine delivery systems available for sale on the premises.
    - This documentation may be provided to the retailer by a distributor, but must have originally come from the manufacturer.
- Must keep all tobacco products, including cigarettes and e-cigarettes for sale behind the counter where sales are made, out of reach of consumers and not on the counter.

- Must display all of the following signs in plain view by a person standing at the cash register (establishments must use the signs developed and provided by DPH available at [mass.gov/NewTobaccoLaw](http://mass.gov/NewTobaccoLaw)):
  - The text of Massachusetts General Law Chapter 270, Sections 6 and 6A
  - A statement that the sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age is prohibited
  - Notice that the sale of flavored electronic nicotine delivery systems is prohibited
  - A warning about the health impacts of vaping
  - Information on tobacco cessation services

*Retail Tobacco Stores* (retail establishments whose primary purpose is the sale of tobacco products and paraphernalia, and who restrict the entry for people under the age of 21. These include tobacconists, smoke shops, and vape shops):

- Must have a municipal permit for sale or distribution of tobacco products, unless in operation before December 11, 2019 in a municipality that has not previously required a permit for operation.
- Cannot sell any tobacco products, including cigarettes and e-cigarettes to anyone under the minimum legal sales age.
- Cannot sell any flavored electronic nicotine delivery system, such as flavored e-cigarettes and flavored vaping products.
- Cannot advertise tobacco products that they cannot sell, use fraudulent or misleading statements in advertising, or display advertisements with celebrities, cartoons or similar endorsements.
- Must display the following signs in plain view of a person standing at the cash register (all signs are developed by the Department of Public Health and are available at [mass.gov/NewTobaccoLaw](http://mass.gov/NewTobaccoLaw)):
  - The text of Massachusetts General Law Chapter 270, Sections 6 and 6A
  - A statement that the sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age is prohibited
  - Notice that the sale of flavored electronic nicotine delivery systems is prohibited
  - A warning about the health impacts of vaping
  - Information on tobacco cessation services
- Must display the following signs on the exterior of the entrance door (establishments must use the signs developed and provided by DPH available at [mass.gov/NewTobaccoLaw](http://mass.gov/NewTobaccoLaw)):
  - A warning that smoking and vaping may be present on the premises
  - Information concerning the health risks of second hand smoke and vaping
  - A statement that no person under the age of 21 is allowed on the premises at any time

*Smoking Bars*: (a retail establishment that exclusively occupies an enclosed indoor space, limits entry to persons over the age of 21, and primarily sells tobacco products for onsite consumption.):

- Must have a municipal permit for sale or distribution of tobacco products, unless in operation before December 11, 2019 in a municipality that has not previously required a permit for operation.
- Cannot advertise tobacco products that they cannot sell, use fraudulent or misleading statements in advertising, or display advertisements with celebrities, cartoons or similar endorsements.

- Can sell flavored electronic nicotine delivery systems such as flavored e-cigarettes and flavored vaping products for on-site consumption only.
- Must display the following signs in plain view of a person standing at the cash register (all signs are developed by the Department of Public Health and are available at [mass.gov/NewTobaccoLaw](http://mass.gov/NewTobaccoLaw)):
  - The text of Massachusetts General Law Chapter 270, Sections 6 and 6A
  - A statement that the sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age is prohibited
  - A warning about the health impacts of vaping
  - Information on tobacco cessation services
- Must display the following signs on the exterior of the entrance door (establishments must use the signs developed and provided by DPH available at [mass.gov/NewTobaccoLaw](http://mass.gov/NewTobaccoLaw)):
  - A warning that smoking and vaping may be present on the premises
  - Information concerning the health risks of second hand smoke and vaping
  - A statement that no person under the age of 21 is allowed on the premises at any time

Other sections of the new legislation, An Act Modernizing Tobacco Control, go into effect on June 1, 2020. DPH has summarized those sections that pertain to DPH. Please note that there are additional sections of An Act Modernizing Tobacco Control, including sections pertaining to the regulation of insurance and taxation. Those sections are not summarized here.

**Beginning on June 1, 2020:**

*Non-age-restricted establishments:*

- Cannot sell any tobacco products that have a characterizing flavor (e.g. menthol cigarettes and flavored cigars and chewing tobacco) or tobacco product flavor enhancer.

*Retail Tobacco Stores:*

- Cannot sell any tobacco products that have a characterizing flavor (e.g. menthol cigarettes and flavored cigars and chewing tobacco) or tobacco product flavor enhancer.

*Smoking Bars:*

- Can sell tobacco products that have a characterizing flavor (e.g. menthol cigarettes and flavored cigars and chewing tobacco) or tobacco product flavor enhancer for consumption on-site.

The following resources are available to assist you in educating your retailers and helping them to comply with the new legislation and DPH regulation:

- Standard Retailer Inspection form
- Chart of required signage and what can be sold by retailer
- Link to the [Massachusetts Health Promotion Clearinghouse](#)

The Massachusetts Tobacco Cessation and Prevention Program will be conducting a webinar to further assist you on December 12, 2019 at 3:00 pm.