

ILLEGAL TOBACCO TASK FORCE

Meeting Minutes #49

Meeting Date: Thursday, June 9, 2022

Meeting Time: 1:00 PM

Meeting Location: Via WebEx conferencing, dial (408) 418-9388, Meeting ID# 2335 614 5510

Board Member Present: John Hayes (Co-Chair), Detective Captain Brian Connors (Co-Chair), Anna Lumelsky, Mark William Bracken, Patricia Henley

Board Members Absent: Nicholas Ogden, Susan Terrey

Call to Order:

- Meeting was called to order at 1:05 PM by Mr. Hayes.
- Mr. Hayes informed all participants that this meeting will not be recorded by WebEx and that notes will be taken to complete the minutes. He reminded everyone to mute their phones and/or computers to limit background noise.
- Mr. Hayes welcomed board members and thanked Cole Doherty-Crestin for administrative support. Mr. Hayes asked members to introduce themselves.

Opening Remarks:

- Mr. Hayes thanked everyone for attending. Mr. Hayes indicated that today's meeting will primarily focus on discussing recommendations to legislation related to the tobacco and ENDS.

Approval of Minutes from Meeting #48 on April 9, 2022:

- Mr. Hayes emailed a copy of the minutes for Meeting #48 to Task Force members prior to this meeting. Mr. Hayes asked members if there were any recommended edits to be made and hearing none, he asked for a motion to approve. Detective Captain Brian Connors approved. Mark William Bracken seconded the motion. Mr. Hayes stated that with no objection, the minutes were approved.
- The Task Force requested public comment related to the below laws, but public comment will also be considered if related to other tobacco enforcement laws and/or regulations:
 - Chapter 62C, Section 16 (Timing of Tobacco Tax Payments)
 - Chapter 62C, Section 68 (Suspension/Revocation of Tobacco Licenses)
 - Chapter 62C, Section 73 (Obstruction of Tax Administration)
 - Chapter 64C, Section 1 (Definitions)
 - Chapter 64C, Section 5 (Tobacco Product Records Requirement)
 - Chapter 64C, Section 7B (Cigar/Smoking Tobacco Inspections) & 7E (ENDS Inspections)
 - Chapter 64C, Section 8 (Prosecution for Illegal Possession/Distribution of Tobacco Products)
 - Chapter 64C, Section 10 (Penalties)
 - Chapter 64C, Section 11 (Cigarette Record Keeping, Investigation, Examination & Search)
- Various departments and bureaus within DOR have been discussing potential changes to the tobacco laws during the past year. Mr. Hayes summarized the issues with the above laws and proposed some potential solutions for consideration and discussion. These proposals have not been officially approved by DOR but serve as a starting point for discussions.

Chapter 62C, Section 16 (c) [Filing of Returns]

- There is a discrepancy with the timing of the taxes to be paid for the various tobacco types. All wholesalers or distributors of smokeless tobacco, cigars, smoking tobacco and ENDS must file a return with DOR on the

20th of the month stating the quantity of tobacco products sold by the licensee during the preceding month. Currently, Section 16 (c) which covers smokeless tobacco exempts retailers and unclassified acquirers from the filing of the return on the 20th of the month and instead requires those licensees to file a return with the DOR upon importation of or acquisition of smokeless tobacco into the commonwealth. However, Section 16 (c ½) which covers cigars and smoking tobacco and Section 16 (c ¾) which covers ENDS does not exempt retailers so that retailers could technically import untaxed tobacco products into the commonwealth without having to file a return and pay taxes until the 20th of the following month. We are seeking to make the laws consistent with Section 16 (c) and require non-wholesalers of cigars and smoking tobacco and non-distributors of ENDS products to file a return with DOR upon importation of products from unlicensed non-resident tobacco distributors.

Chapter 62C, Section 68 [Suspension or Revocation of Tobacco Licenses]

- DOR seeking to clarify two issues with respect to the Commissioner's authority to suspend or revoke a tobacco license.
- In Section 68, subparagraph (4), the commissioner may suspend or revoke a license if the licensee has been convicted of a crime provided for under Chapter 62C. We are considering to also consider a federal conviction where the underlying conduct relates to tobacco products as basis for which the commissioner may suspend or revoke a license.
- In Section 68, we are considering the addition of another subparagraph so the commissioner may suspend or revoke a license if the licensee willfully refuses access to any portion of their premises where tobacco could be stored during an inspection by the commissioner or his/her agents. This has been an issue in the field during inspections and we are seeking to clarify the commissioner's authority in these cases.

Chapter 62C, Section 73 [Obstruction of Justice]

- DOR seeking to modify the obstruction of justice statute, so it matches the federal statute and applies to the administration of this chapter, to include routine administrative procedures.

Chapter 64C, Section 1 [Definitions]

- DOR seeking to update several definitions. For example, expanding the definition of tobacco products to include cigarettes, smokeless tobacco, cigars, smoking tobacco, and ENDS.

Chapter 64C, Section 5 [Records & Statements Requirements]

- DOR considering the addition of a subparagraph whereby the commissioner or his authorized representatives, have the means, facilities, and opportunity to investigate, examine, and search any licensee's premises to determine whether the provisions of this chapter are being obeyed. In addition to other remedies provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for the first offense or not more than \$10,000 for each subsequent offense against any person who hinders, obstructs, or prevents the commissioner or his authorized representative from making the examinations or inspections authorized by this section, or who otherwise violates any provision of this section. This addition clarifies the authority of the Commissioner to conduct inspections and for the assessment of a civil penalty for those that violate this section.

Chapter 64C, Section 7(B) [Cigars & Smoking Tobacco]

- DOR considering the addition of a subparagraph whereby the commissioner and his authorized representatives may examine the cigar and smoking tobacco inventory and books, papers and records of any licensee in the commonwealth upon demand, for the purpose of determining whether the excise imposed by this chapter has been fully paid, and may investigate, examine and search any premises where cigars or smoking tobacco are possessed, stored or sold for the purpose of determining whether the

provisions of this chapter are being obeyed. This is an attempt to make the authority of the commissioner consistent between the tobacco types. DOR also looking to include cigars and smoking tobacco as part of the definition of tobacco products for enforcement purposes.

Chapter 64C, Section 7(E) [ENDS]

- DOR considering the addition of a subparagraph whereby the commissioner and his authorized representatives may examine the ENDS inventory and books, papers, and records of any licensee in the commonwealth upon demand, for the purpose of determining whether the excise imposed by this chapter has been fully paid, and may investigate, examine and search any premises where ENDS are possessed, stored or sold for the purpose of determining whether the provisions of this chapter are being obeyed. This is an attempt to make the authority of the commissioner consistent between the tobacco types. DOR also looking to include ENDS as part of the definition of tobacco products for enforcement purposes.

Chapter 64C, Section 8 [Prosecution for Illegal Possession]

- DOR considering the addition of a subparagraph expanding the existing arrest, administrative search warrant, and forfeiture authority to all tobacco products, to include cigarettes, smokeless tobacco, cigars, smoking tobacco, and ENDS.

Chapter 64C, Section 10 [Penalties for Offenses]

- There is currently only a \$50 criminal fine for individuals or businesses who sell cigarettes without a license and there is limited, if any, criminal penalties for individuals or business who sell other tobacco products without a license. DOR considering the addition of a subparagraph creating a felony and misdemeanor crime for dealing in any tobacco products without a license. The felony would require certain product quantity thresholds to be met – similar to the existing criminal charge for possessing or transporting 12,000 cigarettes.
- This next provision has been previously proposed by the task force. DOR considering the addition of a subparagraph so that the payments for all tobacco products, purchased for resale, shall only be made in the form of a check from the purchaser's operating account made payable to the seller of the tobacco products, an electronic funds transfer from the purchaser's operating account directed to an account in the name of the seller of the tobacco products, a debit card linked to the purchaser's operating account, or the purchaser's business or corporate credit card. Payments in cash for tobacco products purchased for resale are prohibited. Any person who willfully violates the provisions of this paragraph shall be punished by a fine and/or imprisonment for not more than five years.
- DOR considering the addition of a subparagraph so that in addition to the existing and/or new criminal penalty provided by this chapter or chapter 62C, the commissioner may impose a civil penalty for a violation of any provision of this section of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.

Chapter 64C, Section 11 [Record Keeping, Investigation, Examination & Search]

- Similar to the changes proposed in Section 7(B) related to cigars/smoking tobacco and 7(E) related to ENDS, DOR is attempting to make the authority of the commissioner consistent related to inspection and examination between the tobacco types by having the same requirements for cigarette and smokeless tobacco licensees.

Chapter 64C, Section 34 [Possession of Sale of Unstamped Cigarettes]

- DOR seeking to make this criminal penalty consistent with newly proposed dealing without a license provision in Section 10 and make civil penalty assessment amounts provisions consistent.

Chapter 64C, Section 35 [Possession of Transportation of Unstamped Cigarettes]

- DOR seeking to make this criminal penalty consistent with newly proposed dealing without a license provision in Section 10 as well as Section 34 and make civil penalty assessment amounts provisions consistent.
- The Illegal Tobacco Task Force did not have any comment on the potential recommended changes presented by Mr. Hayes.

Member Agency Updates

- Detective Captain Brian Connors stated the Massachusetts State Police storage facility is up and running at full capacity. He reported everything is operating smoothly. Mr. Hayes expressed DOR is looking into obtaining a similar storage facility for confiscated tobacco and ENDS products.
- Patricia Henley mentioned there is an FDA proposal to ban menthol cigarettes and cigars.

Other Business

- Mr. Hayes proposed the use of social media platforms created by and used by member agencies to promote and publicize tobacco task force meetings to increase public awareness and participation. Detective Brian Connors stated he will consult with his media relations staff to assist with this initiative. Hearing no objections, the motion will carry.
- Mr. Hayes proposed requesting ATF to provide training to the Task Force on federal tobacco laws and violations during the next meeting. Hearing no objections, the motion will carry.

Closing Remarks

- Mr. Hayes reported updates made to the Illegal Tobacco Task Force website. All materials from 2016 and forward related to the Task Force have been uploaded to the website. Hayes kindly asked board members to review these updates.
- Mr. Hayes asked whether there was a motion to end the meeting. With no objections, Mr. Hayes thanked everyone for attending and concluded the meeting at 1:42 PM.

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact DOR Human Capital Development at 617-626-2355.

Illegal Tobacco Task Force
John Hayes
Via email ITTF@dor.state.ma.us

The American Heart Association (AHA) is the nation's oldest and largest voluntary organization dedicated to fighting heart disease and stroke, whose mission is to be a relentless force for a world of longer, healthier lives. The use of tobacco products remains the nation's number one cause of preventable death. Tobacco use is responsible for nearly 1 in 5 deaths nationwide. In Massachusetts an estimated 9,300 adults die each year from smoking¹. 13.7% of adults and 6.4% of high school students smokeⁱ and 20.1% of high school students use e-cigarettesⁱ. 2,100 kids under 18 become new daily smokers each yearⁱ and if smoking continues at the current rate among youth, 103,000 of today's kids will die prematurely from smokingⁱ. Tobacco-related illnesses are expensive and harmful for all of us. In Massachusetts, smoking is estimated to cost \$4.08 billion in direct health care costs, including \$1.26 billion in Medicaid costsⁱ. Additionally, Massachusetts experiences \$2.4 billion in smoking-caused productivity losses annuallyⁱ. We continue to be supportive of a comprehensive approach to tobacco control aimed at protecting our kids from all tobacco products.

We are so thankful for the leadership of the Massachusetts legislature when they took the first in the nation step to protect our kids from deadly nicotine products by eliminate all flavors in all tobacco products and these bill's roll back these lifesaving efforts. From the start in Massachusetts there was strong bipartisan support in eliminating flavors and putting the health of our residents over profits from deadly product. The legislature knew the biggest beneficiaries of the law would be future generations who do not start smoking because they are not bombarded with menthol ads and other flavored products in stores. The illegal tobacco task force was legislatively created to look at the loss of tax revenue that the Commonwealth maybe be losing and to work to implement the current laws. We believe strongly that the charge of this task force remains unchanged and would ask that unless there are technically changes needed that no current law is changes.

We look forward to continuing to work with the task force and the legislature to continue to support our current laws and look at new strong laws to keep our communities healthy and safe against the harms from tobacco. We will look to make any additional comments if the tobacco industry ask for any roll backs so that we continue to protect the health and welfare of our resident so the Commonwealth.

Sincerely,
Allyson Perron Drag
American Heart Association/ Stroke Association
Government Relations Director
300 5th Avenue, Suite 6
Waltham, MA 02451-8750

ⁱ Campaign for Tobacco Free Kids. The Toll of Tobacco in Massachusetts. Updated November 15, 2018
https://www.tobaccofreekids.org/facts_issues/toll_us/Massachusetts



June 10, 2022

John Hayes, Co-Chair
Illegal Tobacco Task Force
Commonwealth of Massachusetts

Re: Response to Request for Public Comments

Dear Co-Chair John Hayes:

The Public Health Advocacy Institute, Inc. (“PHAI”) applauds the members of the Illegal Tobacco Task Force and their organizations in their work addressing the illegal trade in tobacco products.

Tobacco is the largest preventable cause of death in the United States, leading to the death of approximately 480,000 Americans annually. Cigarette smoking causes about one of every five deaths in the United States each year. The recent surge in electronic nicotine delivery device (“ENDS”) use among children is an alarming new problem. Nationally, about 1 of every 20 middle school students, and about 1 of every 5 high school students reported in 2020 using ENDS in the last 30 days.

PHAI in general supports changes to Massachusetts law that would facilitate compliance and enforcement of tobacco product taxes. The Institute of Medicine, World Health Organization, Community Preventive Services Task Force, US Surgeon General, and Centers for Disease Control and Prevention all describe tobacco taxation as an essential component of public health policy. Tobacco taxes reduce consumption. For example, in Massachusetts, when ENDS flooded Massachusetts schools in recent years, a tax was established largely in order to dissuade youth, who are particularly price sensitive, from purchasing ENDS.

PHAI believes it is important to recognize that nicotine addicted individuals should be provided support for cessation and not punished for their addictions. Thus, laws around

possession of tobacco products should be designed and implemented with this concern in mind.

PHAI looks forward to the opportunity to review and comment on drafts of proposed changes to Massachusetts law that were outlined at the June 9, 2022 meeting of the Task Force.

Respectfully,

Public Health Advocacy Institute, Inc.