



COALITION for RESPONSIBLE RETAILING

We comply because we care

Mr. William Rossi
Chilmark Town Hall
401 Middle Road
Chilmark, MA 02525

APR 17 2015

Dear Mr. Rossi,

Massachusetts retailers are committed to keeping tobacco out of the hands of minors. Yet, 4 of 5 minors get their tobacco from sources other than retailers, so we cannot do it alone.

We want to partner with you to implement regulations to effectively reduce minors' access to tobacco. The four major trade organizations, representing tobacco permit holders throughout Massachusetts, have united together under the Coalition for Responsible Retailing to pursue adoption of regulations that would help stop the flow of non-retail sources that provide minors with the vast majority of tobacco. We would like the opportunity to meet with you to discuss our model regulations and how we think they can impact minors' access to tobacco and smoking rates in your community.

We are parents, neighbors, and community members who are invested in the prosperity of our communities and protecting against the illegal sale and use of tobacco products. As local business owners, our members contribute significantly to the local economy and quality of life in our communities. We are concerned with loopholes in Massachusetts state and local laws that allow parents and guardians to provide tobacco products to minors in their care without penalty. There are no laws that hold enabling adults who provide tobacco products to minors accountable like we see with alcohol. Also, current laws allow minors to share and use tobacco products – privately or in public - without any repercussions.

We are calling upon local officials to stand with us and pass common sense regulations to help keep tobacco and nicotine products out of the hands of minors and stop them from using tobacco if they possess it. Our proposal includes the following provisions:

1. Apply the minimum legal age of purchase for tobacco products to electronic nicotine vapor products.
2. Remove the exception for parents and legal guardians to give tobacco products to their children who are under the legal age of purchase.
3. Impose a fine on enabling adults that provide tobacco products to persons under the minimum legal sales age.



COALITION for RESPONSIBLE RETAILING

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4. Add language to local regulations that specifically makes it illegal for minors to purchase tobacco products.
5. Implement civil fines for underage minors in possession of tobacco or nicotine delivery products.

We are confident that closing these loopholes in local and Massachusetts state laws will be effective. The 2014 Journal of School Health reports that 86% of underage smokers get access to tobacco products from sources other than purchase at retail stores¹; It's critical that we tackle this problem of obtaining tobacco through social sources. In addition, a 2012 Surgeon General study found that "Social influences are among the most robust and consistent predictors of adolescent smoking"². The FDA reports a 91.8% compliance rate by retailers in Massachusetts based on over 200,000 checks nationwide³. Local compliance rates are frequently higher. We will continue to work hard to do even better. Knowing there are consequences when mistakes are made is important for us, as well as adults and minors.

We hope you will take swift action so that your community has the most effective tools to fight against tobacco use by minors. These regulations combined with our continued diligence and compliance with the existing laws makes us confident our proposal will significantly impact and reduce the use of tobacco by minors. To learn more about our organization and the facts that support adoption of these regulations please visit www.responsibleretailing.com. We will be reaching out in the next couple of weeks to schedule a time that we can come and present to you.

Sincerely,

Stephen Ryan
Executive Director
New England Convenience Store Association

Jon Hurst
President
Retailers Association of Massachusetts

Thomas Briant
Executive Director
National Association of Tobacco Outlets

Matt LeLacheur
Co-Director
New England Service Station and Auto Repair Assoc.

¹ Everett Jones S, Caraballo RS. Usual source of cigarettes and alcohol among US high school students. J Sch Health. 2014; 84: 493-501.

² U.S. Department of Health and Human Services. "Social, Environmental, Cognitive, and Genetic Influences on the Use of Tobacco Among Youth" Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. (2012) Pg. 458

³ Food and Drug Administration. "Compliance And Enforcement Report" (2013): Pg. 27.



APR 17 2015

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Summary of Model Regulations

The Coalition for Responsible Retailing (CRR) has endorsed a set of model regulations to be incorporated into Massachusetts municipalities' tobacco regulations. In summary, the regulations would do the following:

1. Apply the minimum legal age of purchase for tobacco products to electronic nicotine vapor products.
2. Remove the exception for parents and legal guardians to give tobacco products to their children who are under the legal age of purchase.
3. Impose a fine on enabling adults that provide tobacco products to persons under the minimum legal sales age.
4. Add language to local regulations that specifically makes it illegal for minors to purchase tobacco products.
5. Implement civil fines for underage minors in possession of tobacco or nicotine delivery products.

Model Regulations

We are requesting that the local Boards of Health make the following specific amendments to their existing tobacco regulations:

Amend the minimum legal age definition to include electronic nicotine products.

Also, insert the following sections:

Purchase for or providing tobacco products to minors.

(1) Civil Violation. It shall be unlawful for any individual to purchase any tobacco product on behalf of, or to give any tobacco product to, any person under the minimum legal sales age. The terms of this section shall not apply to an employee who, in the course of their employment and as a part of their employment duties, sells tobacco products.

(2) Civil Penalty. Any individual who violates subsection (A) shall be liable for a civil penalty of:

- a. [\$_____] for the first violation of such subsection by such individual;



COALITION for RESPONSIBLE RETAILING

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- b. [\$_____] for the second violation of such subsection by such individual within [time period]; or
- c. [\$_____] for the third or a subsequent violation of such subsection by such individual within [time period].

Purchase or possession of tobacco products by persons under the minimum legal sales age; use of false identification.

(1) Civil Violation. It shall be unlawful for any person under the minimum legal sales age to purchase a tobacco product, possess a tobacco product, or to attempt to purchase or possess a tobacco product. This subdivision shall not apply to any person under the minimum legal sales age engaged in law enforcement activity in accordance with enforcement of minimum age laws, or to any person under the minimum legal sales age who is handling or transporting a tobacco product under the terms of his or her employment.

(2) Civil Violation. It shall be unlawful for any minor to present or offer to another individual a purported proof of age which is false, fraudulent or not actually his or her own proof of age, for the purpose of attempting to purchase or possess a tobacco product.

(3) Civil Penalty. An individual who violates subsection (1) and/or (2) shall forfeit any tobacco products and/or forfeit such proof of age in his or her possession to any law enforcement officer upon request, and/or and such individual also shall be liable for a civil penalty of:

- a. [\$_____] and/or [#] hours of community service work for the first violation of such subsection by such individual;
- b. [\$_____] and/or [#] hours of community service work for the second violation of such subsection by such individual; or
- c. [\$_____] and/or [#] hours of community service work for the third or any subsequent violation of such subsection by such individual.

Develop a Tobacco Awareness Program.

(1) In General. On a finding of liability of an individual for a violation Under the purchase or possession of tobacco products by persons under the legal sales age, the court shall require such individual to attend a tobacco awareness and cessation program approved by the local Board of Health. The court may require the parent or guardian of such individual to attend the tobacco awareness and



COALITION for RESPONSIBLE RETAILING

We comply because we care

cessation program with that individual. On request, such program may be taught in languages other than English. If such individual resides in an area of this state in which access to a tobacco awareness and cessation program is not readily available, the court shall require such individual to perform [#] hours of community service in lieu of attending the tobacco awareness and cessation program.

(2) Violation Expunged From Record. Not later than [#] days after the date of a finding of liability under Section [# /letter], the individual found liable shall present to the court, in the manner required by the court, evidence of satisfactory completion of the tobacco awareness and cessation program, and/or evidence of the performance of any community service required under this section or the false identification section. On receipt of the evidence required under this section, the court shall waive any fine imposed under the false identification section and shall expunge such individual's record of liability for the violation, whereupon such individual shall be released from all penalties and disabilities resulting from the violation, except if, after the date of such release, such individual is subsequently found liable for a violation under the false identification section, any preceding violation of such sections shall be reinstated in such individual's record.