453E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business"* means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products and devices in this state.

2. *"Consumer"* means any person who has title to or possession of devices in storage, for use or other consumption in this state.

3. *"Controlled substance"* means controlled substance as defined in section 124.101.

4. *"Delivery sale"* means any sale of a device to a purchaser in this state where the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, mail or any other delivery service, or the internet or other online service and the device is delivered by use of mail or a delivery service. The sale of a device shall constitute a delivery sale regardless of whether the seller is located in this state. *"Delivery sale"* does not include a sale to a distributor or retailer of a device not for personal use.

5. *"Department"* means the department of revenue.

6. *a.* *"Device"* means any equipment or product, made in whole or in part of glass or metal, that is designed for use in inhaling through combustion tobacco, hemp, other plant materials, or a controlled substance. *"Device"* does not include a vapor product or a tobacco smoking product made of briar, meerschaum, clay, or corn cob and not having a surface, aperture, or other feature consisting of metal or glass.

b. In determining whether any particular item constitutes a *"device"*, the following factors may be considered:

(1) The instructions, oral or written, provided with the item concerning its use.

(2) Any descriptive materials accompanying the item which explain or depict its use.

(3) National and local advertising concerning the item's use.

(4) The manner in which the item is displayed for sale.

(5) Whether the owner of the place of business, or anyone in control of the item at the place of business, is a legitimate supplier of like or related items to the community, such as a licensed distributor, manufacturer, or subjobber.

(6) Direct or circumstantial evidence of the ratio of sales of the item to the total sales of the place of business.

(7) The existence and scope of legitimate uses of the item in the community.

(8) Expert testimony concerning the item's use.

c. A particular item may constitute a device notwithstanding any lawful use of the item.

7. *"Device retailer"* means a person engaged in the retail sale of tangible personal property who is also engaged in selling devices to the ultimate consumer.

8. *"Director"* means the director of revenue.

9. *"Distributor"* means the same as defined in section 453A.42.

10. *"Manufacturer"* means the same as defined in section 453A.42.

11. *"Place of business"* means any place where tobacco products and devices are sold, stored, or kept for the purpose of sale or consumption; or for a business within or without the state that conducts delivery sales, any place where tobacco products and devices are sold or are kept for the purpose of sale, including delivery sales.

12. *"Retail outlet"* means each place of business from which tobacco products and devices are sold to consumers.

13. *"Sale"* means any transfer, exchange, or barter, in any manner or by any means whatsoever, for consideration, and includes and means all sales made by any person.

14. *"Subjobber"* means the same as defined in section 453A.42.

15. *"Tobacco products"* means cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 453A.1.

16. *"Tobacco retailer"* means a retailer as defined in section 453A.42.

17. *"Use"* means the exercise of any right or power incidental to the ownership of tobacco products or devices.

18. *"Vapor product"* means the same as defined in section 453A.1.

2024 Acts, ch 1165, §1, 8

Section effective January 1, 2025; 2024 Acts, ch 1165, §8

NEW section