

This document is for guidance purposes only.

## **ENFORCEMENT OF STATE LAW VIOLATION WHEN RETAILER REFUSES TO PAY FOR AN OFFENSE**

Amended 6.14.22

For purely local policies, municipalities may still use the non-criminal disposition type tickets which require retailer appeals to a Clerk Magistrate in District Court. For violations now covered by the state law, non-criminal disposition cannot be used as the dollar amounts exceed the \$300 cap imposed by state law on non-criminal disposition. Therefore, an administrative order called a “correction/cease and desist order” must be issued. The following is the suggested procedure for a municipality to obtain a court’s assistance in compelling payment. Please note this is an evolving portion of the new state law:

1. Issue Correction/Cease and Desist Order to retailer:
  - a. Ideally, an order should be issued as soon as possible, but within 15 days, similar to that of a non-criminal disposition ticket;
  - b. Following the non-criminal disposition process, the retailer has 21 days to pay.
  - c. If the retailer has not paid within 21 days and has not requested a board of health hearing.
  - d. A template exists for the Correction/Cease and Desist Order.
  - e. The municipality should utilize their usual course of action to prompt the retailer to pay. For instance, the board might send another letter to the retailer.
2. If the retailer still fails to pay, the board of health can file an Application for a Criminal Complaint in District Court.
  - a. State in the Application that the time to request a hearing as described in the Correction/Cease and Desist Order has passed.
  - b. Hearing will be scheduled by Clerk’s office.
  - c. Attend hearing and present testimony.
  - d. Clerk rules in favor of board of health and upholds fine. (If Clerk rules in favor of retailer, close the case).
    - i. Clerk might lower the fine, but this does not excuse the violation.
3. Retailer still refuses to pay as ordered by the Clerk:
  - a. Clerk will issue the Criminal Complaint and schedule an arraignment.
  - b. Court will schedule a pre-trial conference.
  - c. Assistant District Attorney tries the case.
  - d. Judge decides – guilty or not guilty.
4. Judge finds the retailer guilty and orders that the fine be paid.
5. Retailer still refuses to pay.

6. File Complaint for Contempt for refusal to comply with Court Order.
7. The board might instead file a civil contempt proceeding in District or Superior Court for violating an administrative order. This is new, uncharted territory in tobacco control; and as such, the board should consult with their municipal attorney and contact the courts with jurisdiction over these matters.