



Memorandum

Jewel Williams Johnson

Legislator, District 8

Michaelian Office Building

To: Sunday Vanderburgh

From: Jewel Williams Johnson

Date: April 16, 2026

Re.: Establish a rebuttable presumption in regards to the possession of flavored nicotine vapor products

Please place the attached proposal, the adoption of “A LOCAL LAW amending Chapter 535 of the Laws of Westchester County to establish a rebuttable presumption in regards to the possession of flavored nicotine vapor products in the County of Westchester”, on the agenda for the April 20, 2026 meeting of the Westchester County Board of Legislators so that it may be referred to the appropriate committees.

Thank you.

cc: James Silverberg, Legislative Director
Dylan Tragni, Chief of Staff

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of “A LOCAL LAW amending Chapter 535 of the Laws of Westchester County to establish a rebuttable presumption in regards to the possession of flavored nicotine vapor products in Westchester County.”

Your Committee recognizes that, in 2020, New York State banned the sale of flavored nicotine vapor products across the State, with the exception of unflavored and tobacco-flavored products, as well as nicotine vapor products approved by the federal government. The New York State Commissioner of Health had noted prior to the passage of the ban that:

Flavors are largely responsible for the dramatic increase in use of e-cigarettes by youth and are a principal reason that youth initiate and maintain e-cigarette use. According to Department of Health data, nearly 40 percent of 12th grade students and 27 percent of high school students in New York State are now using e-cigarettes, and this increase is largely driven by flavored e-liquids. High school use in 2018 (27.4%) is 160 percent higher than it was in 2014 (10.5%). While New York's high school student cigarette smoking rate dropped from 27.1% in 2000 to a record low of 4.3% in 2016, aggressive marketing strategies promoting flavored e-cigarettes are primed to reverse that trend.

NYS Department of Health, https://health.ny.gov/press/releases/2020/2020-05-18_fl_nicotine_vapor_products_ban.htm. The Commissioner also noted that flavoring had been a “key youth marketing strategy of the vaping/aerosol industry.”

Your Committee further recognizes that the challenge with the New York State law prohibition is that it does not outright ban the possession of flavored nicotine vapor products. Retail dealers are still permitted to sell these products to consumers online and/or in other states or jurisdictions where their sale is legal. According to the County’s Health Department, where a retail dealer is caught in possession of flavored nicotine vapor products, the retail dealer will simply claim that they possess them for purposes of out-of-state or online sales, without any proof thereof, and thereby flouting the New York State ban on the sale of nicotine vapor products. This leaves the Health Department in the position where it is required to not only prove possession, but to prove intent, despite there being no evidence to support the retail dealer’s position.

Your Committee is advised that, this proposed amendment to Chapter 535 of the Laws of Westchester County would close this loophole. If a retail dealer is found to be in possession of flavored nicotine vapor products, there would be a presumption of an intent to sell those products. The retail dealer would have an opportunity to rebut that presumption by a preponderance of the evidence that their possession was only with the intent to sell those products either on-line or out-of-state (where the sale of which is legal) and not in New York State or Westchester County.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act (“SEQRA”). The proposed amendment does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 9, 2026, which is on file with the Clerk of the Board of Legislators.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2026
White Plains, New York

COMMITTEE ON

RESOLUTION NO. ____ – 2026

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2026, entitled, “A LOCAL LAW amending Chapter 535 of the Laws of Westchester County to establish a rebuttable presumption in regards to the possession of flavored nicotine vapor products in Westchester County.” The public hearing will be held at __.m. on the ____ day of _____, 2026 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.