

A LOCAL LAW amending Chapter 535 of the Laws of Westchester County to prohibit the sale of camouflaged vaping devices in Westchester County.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Section 535.11 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 535.11. Definitions.

1. "Bar" means any indoor area open to the public devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than forty (40) percent of total annual gross sales. Any bar that generates forty (40) percent or more of the total annual gross sales from the sale of food for on-premises consumption shall be a food service establishment.
2. "Cigarette rolling paper" means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.
3. "Electronic cigarette" or "e-cigarette" means an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge, or any other component of such a device. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.
- ~~3.4.~~ "Food service establishment" means any indoor area open to the public or portion thereof in which the business is the sale of food for on-premises consumption and which has an indoor seating capacity of greater than fifty (50) persons including, but not limited to

restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment.

- ~~4.5.~~ “Lockout device” means a token or other type of device which enables the operator of a vending machine containing tobacco products to directly regulate the sale of said items by limiting access to the vending machines to authorized adults.
- ~~5.6.~~ “Point-of-sale advertising” means all printed or graphical materials bearing the brand name, but not the cigarettes packs and cartons, which alone or in conjunction with any other word, logo, symbol, motto, selling message or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes, smokeless tobacco, electronic cigarettes, or other tobacco product which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.
7. “Sell” means to sell, exchange, give, or dispose of to another, or offer or agree to sell, exchange, give, or dispose of to another.
- ~~6.8.~~ “Tobacco business” means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.
- ~~7.9.~~ “Tobacco products” means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, vapor product, cigar, pipe, or

hookah. "Tobacco products" includes any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

8.10. "Token" means a facsimile coin made available by an establishment for the purpose of use in vending machines.

11. "Vapor product" means any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured into a finished product for use in an electronic cigarette, including any device that contains such noncombustible liquid or gel. "Vapor product" does not include any device, or any component thereof, that does not contain such noncombustible liquid or gel, or any product approved by the United States Food and Drug Administration as a drug or medical device, or manufactured and dispensed.

Section 2. Chapter 535 of the Laws of Westchester County is hereby amended include a new Section 535.21-a, to read as follows:

Sec. 535.21-a. Sale of Camouflaged E-Cigarettes or Vaping Products Prohibited

It shall be unlawful to sell, offer for sale, and/or permit the sale or transfer to any person of any age e-cigarettes or vaping products, regardless of the presence of nicotine therein, that resemble or are designed to resemble school supplies, common personal items including, but not limited to, highlighters, USB drives, ballpoint pens, smartphone cases, smartwatches, toys, drink containers and/or backpacks.

Section 3. Section 535.81 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 535.81. Enforcement and penalties.

1. The Westchester County Board of Health is authorized to enforce the provisions of this chapter.
2. Any person who violates any provision of this chapter:
 - ~~a. — Shall be subject to a fine or civil penalty of a minimum of \$300.00, but not to exceed \$1,000.00 for a first violation within a two-year period;~~
 - ~~b. — Shall be subject to a fine or civil penalty of a minimum of \$500.00, but not to exceed \$1,500.00 for each subsequent violation within a two-year period; and~~
 - ~~a.e. Shall also be subject to the any penalties provided for under New York State Public Health Law § 1399-ee and § 1399-ff unless such penalty is expressly provided for herein.~~
 - ~~b.d. If an individual violates this provision three times or more within a two-year period, then, in addition to any other penalty permitted by this section, the New York State Commissioner of Taxation and Finance shall be contacted in order to suspend the individual's applicable registration in accordance with New York State Public Health Law § 1399-dd.~~
3. A person shall be guilty of a Class B misdemeanor and subject to penalty as prescribed by law if he or she has violated any provision of this chapter, except that a person may only be guilty of a B misdemeanor for violating sections 535.21(1), 535.21-a, 535.41(3) or 535.61, if said person has violated those provisions more than once.

4. This chapter shall not be construed to exclude any other remedy provided by law.

Section 4. *Effective Date.* This Local Law shall take effect immediately.