

## LOCAL LAW NO. "A" FOR 2018

### A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING THE SALE OF TOBACCO AND OTHER NICOTINE DELIVERY PRODUCTS IN PHARMACIES IN THE COUNTY OF ALBANY, NEW YORK

Introduced: 2/12/18

By Messrs. Miller, Commisso, Higgins, Mayo, Touchette, Fein, Mss. Cunningham, Plotsky, Lekakis, Messrs. A. Joyce, Ward, Clay, O'Brien, Simpson, Feeney, Beston, Mss. Chapman, Willingham, McKnight, Messrs. Reinhardt, R. Joyce and Domalewicz:

BE IT ENACTED, by the Legislature of the County of Albany as Follows:

#### SECTION 1 Legislative Findings and Intent

This Legislature finds that cigarettes, tobacco products, and electronic cigarettes contain nicotine and various carcinogens and toxic chemicals that present a public health risk to residents of Albany County.

There exists conclusive evidence that tobacco smoking causes cancer, cardiovascular disease, myocardial infarction, asthma and other respiratory diseases, negative birth outcomes, hypertension, and irritation to the eyes, nose and throat.

In New York State, smoking kills 28,000 adults per year and 750,000 adults live with serious smoking-related illnesses. Nationally, 480,000 people die each year from smoking and another 41,000 from second hand smoke exposure bringing the total to over half a million.

The U.S Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin.

In July of 2009, the Pharmacist Society of the State of New York (PSSNY), House of Delegates passed a resolution supporting efforts to end the sale of tobacco products in pharmacies.

The co-location of the sale of products that are deadly and addictive when used as directed runs counter to the services provided by pharmacists to improve health. Studies show that when pharmacies have stopped selling tobacco products, tobacco sales in the affected area have declined significantly. Also easy access to tobacco retailers makes it harder for smokers to quit particularly in low-income areas. Accordingly, in order to promote the health, safety and well being of Albany County residents, the purpose of this law is to prohibit the sale of tobacco and other nicotine delivery products in pharmacies and retail establishments containing a pharmacy in the County of Albany.

## SECTION 2 Definitions

**TOBACCO PRODUCT** means any product made or derived from tobacco or which contains nicotine marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco product includes but is not limited to smoking paraphernalia and any component, part or accessory of a tobacco product whether or not the product contains nicotine. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug administration, as these terms are defined in the Federal Food, Drug and Cosmetic Act.

**PHARMACY** shall mean any place registered as a pharmacy pursuant to Section 6802 of the New York State Education Law. This includes facilities and retailers that maintain a pharmacy within their establishment.

**COMMISSIONER** shall mean the Albany County Commissioner of Health.

**DEPARTMENT** shall mean the Albany County Department of Health.

**ELECTRONIC AEROSOL DELIVERY SYSTEM** means an electronic device that, when activated, produces an aerosol that may be inhaled. Electronic Aerosol Delivery System includes any Component or Part but not Accessory, and any liquid or other substance to be aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**COMPONENT OR PART** means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product's performance, composition, Constituents, or characteristics; or (2) to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System. Component or Part excludes anything that is an Accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for Electronic Aerosol Delivery Systems.

**ACCESSORY** means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, Constituents, or characteristics of a tobacco product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, Constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

### SECTION 3 Restrictions on the sale of tobacco products

No Pharmacy located in the County of Albany shall sell or cause to be sold Tobacco Products or Electronic Aerosol Delivery Systems.

### SECTION 4 Enforcement and Penalties

The Commissioner shall have sole jurisdiction to enforce the provisions of this local law.

If the Commissioner determines after notice and a hearing that a violation of Section 3 of this local law has occurred, the Commissioner may impose a civil penalty of up to \$500 for each day the pharmacy remains in violation of this local law. Nothing herein shall be construed to prohibit the Commissioner from commencing a proceeding for injunctive relief to compel compliance with this local law.

The Albany County Attorney may bring an action in the name of Albany County or the Albany County Commissioner of Health to recover the civil penalty provided by this local law in any court of competent jurisdiction

### SECTION 5 No retaliation

No person or employer shall discharge, refuse to hire , refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer, or person because such employee, applicant, customer, or person takes any action in furtherance of the enforcement of this local law.

### SECTION 6 Severability

If any clause, sentence, paragraph, section, sub-division or other part of this Local Law or it's applications shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or otherwise invalidate the remainder of this Local Law which shall remain in full force and effect except as limited by such order or judgment.

### SECTION 7

This local law shall be effective 3 months after filing with the Office of the Secretary of State in order to allow affected businesses to liquidate their product.

*Referred to Law and Health Committees – 2/12/18*

*Favorable Recommendation Law Committee – 4/23/18*

*Favorable Recommendation Health Committee – 4/25/18*

*On roll call vote the following voted in favor: Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Commisso, Ms. Cunningham, Messrs. Dawson,*

*Domalewicz, Ethier, Feeney, Fein, Higgins, A. Joyce, R. Joyce, Ms. Lekakis, Mr. Mayo, Ms. McKnight, Messrs. Miller, O'Brien, Ms. Plotsky, Messrs. Reinhardt, Simpson, Touchette, Ward and Ms. Willingham – 26*

*Those opposed: Burgdorf, Drake, Grimm, Hogan, Ms. Lockart, Messrs. Mauriello, Mendick, Signoracci, Smith, Stevens and Tunny - 11*

*Mr. Crouse abstained.*

*The Local Law was adopted - 5/14/18*