

LOCAL LAW NO. "B" FOR 2011

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING THE SALE OF TOBACCO PRODUCTS IN LICENSED HEALTH CARE INSTITUTIONS, PHARMACIES AND RETAIL ESTABLISHMENTS CONTAINING A PHARMACY IN ALBANY COUNTY

Introduced: 5/9/11
By Ms. Willingham:

BE IT ENACTED by the Albany County Legislature as follows:

SECTION 1. Legislative Intent and Purpose.

This Legislature finds and determines that for the health, safety and welfare of the residents of the County of Albany that the laws designed to prohibit the sale of "Tobacco Products" in "Licensed Health Care Institutions", "Pharmacies" or "Retail Establishments" containing a "Pharmacy" within Albany County should be strengthened.

This Legislature also finds that each year about 13,000 New Yorkers are diagnosed with lung cancer and about 9,400 men and women in New York State die each year of this disease. Smoking is the most common cause of lung cancer and "second-hand smoke" increases the risk for lung cancer.

This Legislature further finds that the sale of "Tobacco Products" is inconsistent with the mission of "Licensed Health Care Institutions" because it is detrimental to public health and mitigates efforts to educate patients on the safe and effective use of medication.

This Legislature also finds that in 2010 the Top Three violators of illegal solicitation of "Tobacco Products" to Minors were Wal-Mart, CVS and Walgreens.

This Legislature further finds that packs of cigarettes are available for sale for approximately \$9.57 and cartons of cigarettes for approximately \$88.60 in Albany County.

Accordingly, the purpose of the Local Law is to prohibit the sale of "Tobacco Products" in "Licensed Health Care Institutions", "Pharmacies" or "Retail Establishments" containing a "Pharmacy" within Albany County.

Section 2. Definitions

As used in this law, the following terms shall have the meanings indicated:

- A. As used in this local law, the term “Tobacco Products” shall mean any product in any form containing tobacco, including, but not limited to, cigarettes, chewing tobacco, snuff, dip, cigars, pipe tobacco, blunt wraps, and bidis; or any product comprised wholly or in part of tobacco that is manufactured as a wrap or a hollow tub designed to be filled by the consumer with loosed tobacco or other fillers and then combusted and inhaled.
- B. “Licensed Health Care Institution” shall mean any facility or institution engaged principally in providing services by or under the supervision of a physician or, in the case of a dental clinic or dental dispensary, of a dentist, for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, public health center, diagnostic center, treatment center, dental clinic, dental dispensary; or Nursing Home, Residential Health Care Facility, Out-patient Lodge, General Hospital or any entity subject to licensing by the New York State Department of Health pursuant to New York Public Health- Article 28 §2801.
- C. “Pharmacy”, for the purposes of this Local Law shall mean any place in which drugs, prescriptions or poisons are possessed for the purpose of compounding, preserving, dispensing or retailing, or in which drugs, prescriptions or poisons are compounded, preserved, dispensed or retailed, or in which such drugs, prescriptions or poisons are by advertising or otherwise offered for sale at retail as defined by and pursuant to New York Education Law – §6802.
- D. “Retail Establishment” shall mean an establishment 75% of whose annual dollar volume of sales is not for resale and is recognized as retail in the particular industry. Some examples of establishments which may be retail are: automobile repair shops, bowling alleys, gasoline stations, appliance service and repair shops, department stores and restaurants. Some examples of establishments which are not retail are: accounting firms, medical and dental clinics, construction companies, radio, and television stations.

Section 3. Prohibitions.

No Licensed Health Care Institution located in Albany County shall sell or cause to be sold Tobacco Products. In addition, no Pharmacy or Retail Establishment that contains a Pharmacy within it shall sell or cause to be sold Tobacco Products.

Section 4. Violation and Penalties.

- I. A violator of this Regulation may receive:
 - A. In the case of a first violation a fine of two hundred dollars (\$200.00);
 - B. In the case of a second violation within 24 months of the first violation a fine of seven hundred dollars (\$700.00); and
 - C. In the case of a three or more violations within 24 months of the second or current violation, a fine of one thousand dollars (\$1000.00) for each violation.
- II. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

Section 5. Severability.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm, or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 6. Effective Date.

This law shall take effect immediately.

Referred to Health and Audit and Finance Committees. 5/9/11