

LOCAL LAW INTRO. NO. -2022

A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 539 in relation to prohibiting the sale or distribution of flavored tobacco products.

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

Section 1. The Laws of Westchester County are hereby amended to include a new Chapter 539 to read as follows:

CHAPTER 539

BAN ON SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS

Sec. 539.01 Definitions.

Sec. 539.11 Sale or Distribution of Flavored Tobacco Products Prohibited.

Sec. 539.21 Enforcement and Penalties.

Sec. 539.31 Severability.

Sec. 532.41 Reverse Preemption.

Section 539.01 Definitions.

1. “Characterizing Flavor” means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a Characterizing Flavor.

2. “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.
3. “Distinguishable” means perceivable by either the sense of smell or taste.
4. “Establishment” means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.
5. “Flavored Tobacco Product” means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.
6. “Labeling” means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.
7. “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.
8. “Tobacco Product” 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, little cigars (“cigarillos”), chewing tobacco, or 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. “Tobacco Product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. For purposes of this chapter, “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.

Section 539.11 Sale or Distribution of Flavored Tobacco Products Prohibited.

1. The sale or distribution by an Establishment of any Flavored Tobacco Product is prohibited.
2. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their

agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

Section 539.21 Enforcement and Penalties.

1. The Westchester County Board of Health and the Westchester County Department of Public Safety are authorized to enforce 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
 - (c) Shall also be subject to any penalty provided for under New York State Public Health Law § 1399-ee and § 1399-ff unless such penalty is expressly provided for herein.
 - (d) If an individual violates a provision of this chapter 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-ee.
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 section 539.11(1) of this chapter more than once.

Section 539.31 Severability.

If any clause, sentence, paragraph, or section of this chapter shall be held invalid by any court of competent jurisdiction, or the application of this chapter to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or

operation of this chapter directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this chapter are hereby declared to be severable.

Section 532.41 Reverse Preemption.

This local law shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The Board of Legislators may determine via resolution whether or not identical or substantially similar statewide or federal legislation has been enacted, or pertinent state or federal regulations have been promulgated, for the purposes of triggering the provisions of this section.

Section 2. This local law shall take effect 30 days after enactment.