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Int. No. 609

By Council Members Joseph, Narcisse, Krishnan, Brooks-Powers, Schulman, Restler, Feliz, Stevens, Louis, Banks, Lee, Gutiérrez, Brewer, Aldebol, Salaam, Cabán, Epstein and Morano (in conjunction with the Bronx Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the sale of flavored cigarettes

Be it enacted by the Council as follows:

Section 1. Section 17-713 of title 17 of the administrative code of the city of New York is amended to read as follows:

Characterizing flavor. The term "characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product, cigarette, electronic cigarette or e-liquid, including, but not limited to, tastes or aromas relating to any menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, spice, or any imparted cooling or numbing sensation, or any concept flavor that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

Cigarette. The term "cigarette" means any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

Electronic cigarette. The term "electronic cigarette" has the same meaning as such term is defined in

section 20-560.

E-liquid. The term "e-liquid" has the same meaning as such term is defined in section 20-560.

Flavored cigarette. The term “flavored cigarette” means any cigarette that imparts a characterizing flavor. Any communication, public statement or claim made or disseminated by the manufacturer or retailer of a flavored cigarette, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such cigarette, that such cigarette has or produces a characterizing flavor, or that the cigarette imparts a taste or smell or a cooling or numbing sensation, other than the taste or smell of tobacco, shall constitute presumptive evidence that the cigarette is a flavored cigarette.

Flavored electronic cigarette. The term "flavored electronic cigarette" means any electronic cigarette that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer or retailer of an electronic cigarette, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such electronic cigarette, that such electronic cigarette has or produces a characterizing flavor shall constitute presumptive evidence that such electronic cigarette is a flavored electronic cigarette.

Flavored e-liquid. The term "flavored e-liquid" means any e-liquid that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer or retailer of an e-liquid, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such e-liquid, that such e-liquid has or produces a characterizing flavor shall constitute presumptive evidence that such e-liquid is a flavored e-liquid.

Flavored tobacco product. The term "flavored tobacco product" means any tobacco product that imparts a characterizing flavor [other than menthol, mint and wintergreen]. A public statement or claim made or disseminated by the manufacturer or retailer of a tobacco product, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor, [other than menthol, mint and wintergreen,] shall

constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Person. The term "person" means any natural person, partnership, firm, joint stock company, corporation, or employee thereof, or other legal entity.

Tobacco bar. The term "tobacco bar" has the meaning as such term is defined in subdivision jj of section 17-502.

Tobacco product. The term "tobacco product" means any product which contains tobacco or nicotine that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco-containing shisha, dissolvable tobacco product, or nicotine pouch. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

§ 2. The heading of subchapter 2 of chapter 7 of title 17 of the administrative code of the city of New York, as amended by local law number 228 for the year 2019 and by local law number 187 for the year 2017, is amended to read as follows:

REGULATION OF THE SALE OF FLAVORED TOBACCO PRODUCTS, <u>FLAVORED CIGARETTES,</u> FLAVORED ELECTRONIC CIGARETTES AND FLAVORED E-LIQUID, AND REGULATION OF AGE OF ENTRY TO NON-TOBACCO HOOKAH ESTABLISHMENTS

§ 3. Section 17-715 of title 17 of the administrative code of the city of New York is amended by adding a new subdivision c and new subdivision d to read as follows:

a. 1. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product except in a tobacco bar.

2. There shall be a presumption that a retail dealer, as defined in section 17-702, in possession of four or more flavored tobacco products, which shall include individual tobacco products, packages of tobacco

products, or any combination thereof, possesses such tobacco products with intent to sell or offer for sale.

b. 1. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette or flavored e-liquid.

2. There shall be a presumption that an electronic cigarette retail dealer, as defined in section 20-560, in possession of six or more flavored electronic cigarettes, or more than 12 fluid ounces (354.882 mL) of flavored e-liquid, possesses such flavored electronic cigarettes or flavored e-liquid with intent to sell or offer for sale.

c. 1. It shall be unlawful for any person to sell or offer for sale any flavored cigarette.

2. There shall be a presumption that a retail dealer, as defined in section 17-702, in possession of 400 or more flavored cigarettes, sells or offers for sale such flavored cigarettes.

d. Nothing contained in this subchapter shall be construed to penalize the purchase, use, or possession of a flavored cigarette by any person that is not engaged in business as a retail dealer as defined in section 17-702.

§ 3. Subdivision a of section 17-716 of title 17 of the administrative code of the city of New York is amended to read as follows:

§ 17-716 Violations and penalties. a. Any person who violates subdivision a or c of section 17-715 shall be liable for a civil penalty of not more than one thousand dollars for the first violation, and not more than one thousand dollars for each additional violation found on that day; and not more than two thousand dollars for the second violation at the same place of business within a three-year period, and not more than two thousand dollars for each additional violation found on that day; and not more than five thousand dollars for the third and all subsequent violations at the same place of business within a three-year period. In addition, for a third violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a three-year period, any person who engages in business as a retail dealer, as such term is defined in section 20-201, shall be subject to the mandatory suspension of his or her license, issued pursuant to section 20-202, for such place of business, for a period not to exceed one year. Such license shall be

suspended at the same hearing at which a retail dealer is found liable for a third violation or subsequent violations at the same place of business within a three-year period.

§ 4. This local law takes effect 90 days after it becomes law. CP/SOS

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