

Intro. Res. No. 1039-2019

Laid on Table 2/13/2019

Introduced by Legislators Spencer, Sunderman, Anker, Hahn, Gonzalez, Donnelly, Berland, Krupski, Calarco and Gregory

**RESOLUTION NO. 267-2019, ADOPTING LOCAL LAW
NO. 13-2019, A LOCAL LAW TO PROHIBIT THE SALE OF
TOBACCO PRODUCTS IN PHARMACIES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on February 13, 2019, a proposed local law entitled, "**A LOCAL LAW TO PROHIBIT THE SALE OF TOBACCO PRODUCTS IN PHARMACIES**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 13 -2019, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROHIBIT THE SALE OF TOBACCO
PRODUCTS IN PHARMACIES**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that tobacco use is conclusively linked to a number of health problems, including cancer, cardiovascular disease, respiratory disease and negative birth outcomes.

This Legislature also finds and determines that the United States Department of Health and Human Services has stated that nicotine, the addictive substance in tobacco products, is as addictive in nature as cocaine or heroin.

This Legislature further finds and determines that nicotine is known to affect cognitive function, increase blood pressure, respiration and heart rate, and is a known contributor to cardiovascular disorders, including cardiomyopathy, peripheral vascular disease, atherosclerosis, hypertension, direct coronary spasm and ischemia.

This Legislature finds that pharmacies exist to aid communities in maintaining health and wellness by providing individuals with necessary prescription medications and over the counter treatments for common maladies like headaches, colds and indigestion.

This Legislature determines that selling tobacco products is directly at odds with a pharmacy's mission as a health-oriented business.

This Legislature also finds that, in July of 2009, the Pharmacist Society of the State of New York, House of Delegates, passed a resolution supporting efforts to end the sale of tobacco products in pharmacies.

This Legislature further finds that many large-scale pharmacy operations have already ceased the sale of tobacco products as a means to align their businesses with the healthcare role they serve in the community.

This Legislature also determines that in order to promote the health, safety and well-being of County residents, all pharmacies and retail establishments containing a pharmacy should be prohibited from selling tobacco products in Suffolk County.

Therefore, the purpose of this law is to prohibit the sale of tobacco products at pharmacies in Suffolk County.

Section 2. Definitions.

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

ACCESSORY – any product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery system; 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.

COMMISSIONER – the Suffolk County Commissioner of the Department of Health Services.

COMPONENT OR PART – any software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product's or Electronic Aerosol Delivery System'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. Part excludes anything that is an Accessory, and includes, but is not limited to, e-liquids, cartridges, certain batteries, heating coils, programmable software, rolling papers, and flavorings for Tobacco Products or Electronic Aerosol Delivery Systems.

PHARMACY – any place registered as a pharmacy pursuant to New York Education Law §6802.

TOBACCO PRODUCTS – Any product made or derived from tobacco that is intended for human consumption, including, but not limited to, any component, part or accessory of a tobacco product, whether or not the product contains nicotine, cigarettes, loose tobacco, chewing tobacco, cigars, powdered tobacco, shisha, herbal cigarettes, electronic cigarettes, electronic liquids, rolling paper and smoking paraphernalia. Tobacco Product does not include drugs, devices, or combinations of products authorized for sale by the state or United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act as nicotine replacement therapies.

Section 3. Prohibitions.

No pharmacy located in Suffolk County shall sell or offer for sale tobacco products.

Section 4. Enforcement.

This law shall be enforced by the Department of Health Services.

Section 5. Penalties.

- A. Violation of this law shall be subject to a civil penalty of up to \$2,000 per violation.
- B. No civil penalty shall be imposed under this law until after a hearing has been held before the Commissioner, or his designee, upon at least seven business days' notice to the pharmacy. Such notice shall be served either personally or by certified mail, return receipt requested, to the address of the pharmacy and shall state the date, time and place of the hearing as well as enumerate the grounds constituting the alleged violation by the pharmacy. The pharmacy may produce witnesses in his or her own behalf. A record of the hearing shall be taken and preserved. For the purpose of such hearing, the Commissioner or his designee may administer oaths, subpoena witnesses and compel the production of books, papers, records and other documents deemed pertinent to the subject of the hearing.

Section 6. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 7. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, 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, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 8. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 9. Effective Date.

This law shall take effect 180 days subsequent to its filing in the Office of the Secretary of State.

DATED: April 9, 2019

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: April 26, 2019

After a public hearing duly held on April 25, 2019
Filed with the Secretary of State on May 9, 2019