

COUNTY OF ERIE

LOCAL LAW NO. ____ -2019

LOCAL LAW INTRO NO. 1-1 2019

THE YOUTH HEALTH PROMOTION ACT OF 2019

Be it enacted by the Legislature of the County of Erie as follows:

Section 1. Legislative Findings and Intent.

This law is intended to promote the public health of young people who are consuming tobacco and nicotine, and using electronic cigarettes or vaping devices.

Findings on Tobacco

According to the Institute of Health of the National Academies, over the past 50 years, tobacco control in the United States has led to an estimated 8 million fewer premature deaths. However, tobacco use continues to significantly affect public health, and more than 40 million Americans still smoke. In 2009, the Family Smoking Prevention and Tobacco Control Act granted the US Food and Drug Administration (“FDA”) broad authority over tobacco products, but it prohibited the FDA from establishing a nationwide minimum age of legal access for tobacco products above 18 years of age. This action does not preclude a state or local government from acting to raise the minimum legal age for tobacco use.

The federal law directed the FDA to convene a panel of experts to conduct a study on the public health implications of raising the minimum age to purchase tobacco products. At FDA’s request, the Institute of Medicine convened a committee in 2013 to conduct a study, and the resulting report entitled *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* was issued in 2015.

That report stated: “The initiation age of tobacco use is critical. Among adults who become daily smokers, approximately 90% report first use of cigarettes before reaching 19 years of age, and almost 100% report first use before age 26. As mentioned above, FDA cannot raise the MLA (Minimum Legal Age) nationwide. However, states and localities can set a higher minimum age for their communities. . . Based on its review of the literature, the committee concludes that overall, increasing the MLA for tobacco products will likely prevent or delay initiation of tobacco use by adolescents and young adults. The age group most impacted will be those age 15 to 17 years. The committee also concludes that the impact of raising the MLA to 21 will likely be substantially higher than raising it to 19. . . ”

The Institute of Medicine report also indicated: “The parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine. In addition, the majority of underage users rely on social sources—like

family and friends—to get tobacco. Raising the MLA to 19 will therefore not have much of an effect on reducing the social sources of those in high school. Raising the MLA to 21 will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students. . .”

The Institute reported: “Based on the modeling and backed up by the literature review, the committee concludes that raising the minimum age of legal access to tobacco products in the United States, particularly to ages 21 and 25, will likely lead to a substantial reduction in smoking prevalence. If the MLA were raised now, the models projected that by the time today’s teenagers were adults, there would be a 3% decrease in prevalence of tobacco use among those adults if the MLA were raised to 19, a 12% decrease if raised to 21.”

Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products found: “Given a decline in the initiation rates of tobacco use by adolescents and lower prevalence in the population, it follows that tobacco-related disease would also decrease in proportion to the reduction in tobacco use. It is generally known that smoking-related diseases like cancer and heart disease develop over decades, and therefore, it could take many years to lower rates of these diseases; however, there could be immediate decreases in other tobacco-related health effects. The committee concludes that raising the MLA will likely immediately improve the health of adolescents and young adults by reducing the number of those with adverse physiological effects such as increased inflammation and impaired immune functioning caused by smoking, as these could potentially lead to negative health consequences, including increased hospitalizations and lessened capacity to heal wounds. Adverse maternal, fetal, and infant outcomes—including preterm births, low birth weight, and sudden infant death—will also probably decrease due to reduced tobacco exposure in mothers and infants. Raising the MLA will also lessen the population’s exposure to secondhand smoke and its associated health effects, both now and in the future. Over time, the committee concludes that raising the MLA will likely lead to substantial reductions in smoking-related mortality. . . The CISNET model projected that if the MLA were raised now to 21 nationwide, there would be approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019.”

Findings on E-Cigarettes and Vaping Devices

The US Food and Drug Administration (“FDA”) has called the use of vapor devices (also known as “e-cigarettes”) by teens as an “epidemic”, with many minor persons aged under 18 years old using e-cigarettes or vaping devices to inhale nicotine and other unhealthy, dangerous or unknown additives (known as “vaping”). In November 2018, the FDA released a report from the National Youth Tobacco Survey which showed an alarming increase in the number of middle and high school aged children who had tried e-cigarettes. The National Institute on Drug Abuse recently found that among high school seniors, the number of students engaged in vaping has been climbing. Their “Monitoring the Future” annual survey of American teenagers’ drug use just found that the rise in nicotine vaping is the largest spike for any substance recorded by the survey in 44 years and many young users do not realize their vaping pods contain nicotine. 3.6 million American middle and high school students are now vaping regularly.

The US Surgeon General has declared e-cigarette use an epidemic four times over the last decade. In December 2018, the Surgeon General issued a national advisory and warned Americans about e-cigarettes, saying: “I, Surgeon General of the United States Public Health Service, Vice Admiral Jerome Adams, am emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks by immediately addressing the epidemic of youth e-cigarette use. The recent surge in e-cigarette use among youth, which has been fueled by new types of e-cigarettes that have recently entered the market, is a cause for great concern. We must take action now to protect the health of our nation’s young people.”

At the same time, US Health and Human Services Secretary Alex Azar said: “We have never seen use of any substance by America's young people rise this rapidly,” adding, “This is an unprecedented challenge.”

In February 2019, the Centers for Disease Control and Prevention (“CDC”) reported that from 2017 to 2018, the number of high school students reporting e-cigarette use within the past month nearly doubled from 11.7% to 20.8%, which pushed high school students’ overall tobacco use rate from 19.6% to 27.1% in 2018.

The CDC report found that high school students who use e-cigarettes are using them more frequently. The number of high school students who used e-cigarettes 20 or more days a month increased from 20% in 2017 to 27.7% in 2018. Responding, US Food and Drug Administration Commissioner Scott Gottlieb said these trends could force his agency “to make some tough decisions about the regulatory status of e-cigarettes.” In the past, Gottlieb has said that he would consider halting sales of e-cigarettes while companies go through the FDA review process.

One of the most popular vaping devices resembles a USB flash drive in size and shape. It can be easily hidden or concealed in a pocket, purchased over the Internet or through retail carriers, and increasingly is being illegally obtained by minors from adults who purchase the devices and sell them to minors and young people. Physicians and clinicians say that these devices and other e-cigarettes are responsible for addicting a new generation of smokers who have never actually used or lit a “traditional” tobacco cigarette.

Recently, researchers at Yale University found that vaping devices do little to help adults end their nicotine addiction, and that it is unclear whether or not most young people understand the danger of nicotine or even the content of what they are ingesting.

In fact, in a reflection of the blurring of the lines between tobacco companies and e-cigarette and vaping companies, in 2018 tobacco company Altria purchased 35% of the stock in leading vaping company Juul. In February 2019, US Food and Drug Administration Commissioner Scott Gottlieb said that since that action, Juul appears to be backtracking from previous statements about reducing youth use. In a letter to Juul’s chief executive requesting a meeting to discuss vaping issues and the company’s stated desire to limit youth vaping which seemingly contradict its public marketing, Gottlieb wrote: “Many of Juul’s public statements seem inconsistent with its previous representations to the FDA.”

Persons Vaping also Smoking “Traditional” Tobacco Products

In February 2019, the Centers for Disease Control and Prevention also reported that many adults who use liquid vaping nicotine products continue to use regular cigarettes, and new CDC data show the number of dual users appears to be on the rise among young people. The agency found that among tobacco users in high school, around 40% use two or more products and the most frequent combination was cigarettes and e-cigarettes. The CDC said that the report adds to evidence that youth e-cigarette use raises the risk of graduating to combustible cigarettes. A CDC official told media on February 11, 2019 that “E-cigarettes could be playing a role in the patterns of use we’re seeing among kids in terms of cigarette smoking,” he said, adding, “It is possible that we are reinforcing and perpetuating dependency.”

US Food and Drug Administration Commissioner Scott Gottlieb also said in February 2019: “The kids using e-cigarettes are children who rejected conventional cigarettes, but don’t see the same stigma associated with the use of e-cigarettes.” He added: “But now, having become exposed to nicotine through e-cigs, they will be more likely to smoke.”

Legislative Intent

Based on these facts and trends, the Erie County Legislature finds and determines that the sale of tobacco and related e-cigarettes and nicotine or vapor-based products to individuals under twenty-one years of age in Erie County should be prohibited in order to:

- a) Further the goals of New York State’s tobacco use prevention and control program, as identified in New York State Public Health Law §1399-ii;
- b) Respond to the fact that tobacco is the leading cause of preventable death and disease in New York State;
- c) Respond to findings made by the Institute of Medicine in their 2015 report entitled *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, concluding that:
 - i. Adolescent brains are uniquely vulnerable to the effects of nicotine;
 - ii. A younger age of initiation is strongly associated with greater nicotine dependence and is also associated with greater intensity and persistence of smoking beyond adolescence and into adulthood;
 - iii. Almost one in five high school seniors is a current cigarette smoker;
 - iv. Underage users rely primarily on social sources, such as friends and family, to acquire tobacco, and most of these sources are likely to be between eighteen and twenty years old;
 - v. Raising the minimum legal age to twenty-one will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students;
 - vi. Delaying initiation rates will likely decrease the prevalence of tobacco users in the US population; and
 - vii. Raising the minimum legal age will likely immediately improve the health of adolescents and young adults by reducing the number of those with adverse physiological effects;

- d) Address the fact that as reported by the Erie County Department of Health in its *Community Health Assessment for 2017-2019*, 19.2% of adults in Erie County smoke, compared to a New York state average of 15.9%;
- e) Respond to findings that most (nearly 90%) of those addicted to tobacco, start using tobacco before twenty-one years of age;
- f) Respond to the growing rates of e-cigarette and vaping device use among youth, which expose users to unhealthy levels of nicotine and other unknown harmful or dangerous chemicals;
- g) Reduce the exposure of our youth to disease-causing toxins in secondhand smoke and in chemicals emitted from electronic cigarettes, liquid nicotine, shisha, herbal cigarettes, vaping devices, pods, and other Prohibited Products as defined herein;
- h) Apply evidence-based strategies to address the public health issues that result from tobacco use including but not limited to cancer, heart disease, and lung disease;
- i) Prevent exposure of youth, who are particularly susceptible to addiction, to the chemically addictive effects of tobacco and related products, in an effort to improve public wellness and reduce health insurance expenditures; and
- j) Protect young County residents from the unregulated and unknown effects of electronic cigarettes, herbal cigarettes, vaping devices, and other Prohibited Products.

Section 2. Definitions.

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

- a) “Prohibited Products” means:
 - i. Cigarettes, cigars, chewing tobacco, powdered tobacco, shisha, bidis, gutka, other tobacco products, nicotine water, herbal cigarettes, electronic cigarettes, vaping devices, liquid nicotine, pods, snuff, rolling papers, and smoking paraphernalia, as those terms are defined in New York State Public Health Law Article 13-F and, when not so defined, as commonly understood to be defined; and
 - ii. All other products which are prohibited from being sold to minors by New York State Public Health Law Article 13-F, as the same may be amended from time to time.
- b) “Enforcement Officer” means the Erie County Department of Health.

Section 3. Prohibitions and Policy.

- a) The sale of Prohibited Products to those under the age of twenty-one is prohibited in Erie County to the same extent that sale of such products to those under eighteen years of age is prohibited by New York State Public Health Law Article 13-F, as the same may be amended from time to time.
- b) The identification requirements contained in New York State Public Health Law Article 13-F Section 1399-cc(3), as the same may be amended from time to time, are hereby incorporated into this law by reference, except that the age to be proven by such identification shall be twenty-one.
- c) Prohibited Products may not be sold in vending machines located in Erie County.

- d) No person operating a place of business wherein Prohibited Products are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any Prohibited Product in any manner, unless such Product is stored for sale (a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container; provided, however, such restriction shall not apply to tobacco businesses as defined in subdivision eight of §1399-aa of New York State Public Health Law Article 13-F, as the same may be amended from time to time, and to places to which admission is restricted to persons twenty-one years of age or older.
- e) No business or entity shall provide, market, sell, distribute, or promote the sale or consumption of a Prohibited Product via the Internet to anyone under 21 years of age in Erie County.
- f) No person, business or entity shall provide, offer, cause to provide, or promote the sale or consumption of a Prohibited Product to any person under the age of 21 in Erie County.

Section 4. Posting of Signs.

Vendors of Prohibited Products shall post a sign in a conspicuous place imprinted with the following statement:

“THE SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA, BIDIS, GUTKA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, PODS, VAPING DEVICES, ROLLING PAPERS, OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY ERIE COUNTY LOCAL LAW.”

Such sign shall be printed on a white card in red letters at least one-half inch in height. Signs shall be protected from tampering, damage, removal, or concealment. In the event additional sign language is required due to changes to New York State Public Health Law Article 13-F, vendors shall add such additional language to their signs, including, but not limited to, reference to additional products which may become prohibited for sale to minors.

Section 5. Enforcement.

- a) The Enforcement Officer is charged with ensuring compliance with this Local Law.
- b) In the event a violation of this Law also constitutes a violation of New York State Public Health Law, as the same may be amended from time to time, the Enforcement Officer shall take enforcement action pursuant to and in accordance with New York State Public Health Law Article 13-F §1399-ee, as the same may be amended from time to time.
- c) For a violation of this Local Law which does not constitute a violation of New York State Public Health Law:

- i. The Enforcement Officer may issue and serve upon the person complained against a written hearing notice, in accordance with the provisions of the Erie County Sanitary Code, together with the complaint made against him or her. The Complaint shall specify the provision(s) of this Local Law of which such person is alleged to be in violation, accompanied by a statement of the manner in which that person is alleged to have violated it, and shall require the person so complained against to answer the charges of such complaint at a public hearing before the Erie County Commissioner of Health or his/her designated hearing officer, at a specified location, date, and time, not fewer than fifteen (15) days after the date of service of the notice;
- ii. Notwithstanding the above, the Commissioner of Health or his/her designee may, in their discretion, offer a proposed stipulation to the person complained against, in which case the person complained against will have the option of executing the proposed stipulation within any time frame specified, or proceeding with a formal hearing;
- iii. When the Enforcement Officer determines after a hearing that a violation of this Local Law has occurred, a civil penalty may be imposed by the Enforcement Officer pursuant to Section 6 of this Local Law. Nothing herein shall be construed as prohibiting an Enforcement Officer from commencing a proceeding for injunctive relief to compel compliance with this Local Law;
- iv. Any person who desires to register a complaint under this Local Law may do so through the Enforcement Officer;
- iv. The decision of the Enforcement Officer shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules; and
- v. The Enforcement Officer, subsequent to any appeal having been finally determined, may bring an action in a court of proper jurisdiction to recover the civil penalty assessed in accordance with Section 6 of this Local Law.

Section 6. Violations and Penalties.

Violation of any provision of this Local Law shall be punishable by a civil penalty in an amount determined by the Erie County Commissioner of Health, within the parameters of the minimum and maximum penalties set forth in New York State Public Health Law §1399-ee(2), as the same may be amended from time to time.

Section 7: Effective Date

This Local Law shall take effect upon filing with the New York State Secretary of State.

Section 8: Severability

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or business 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 specific application.

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