

Chapter 7: Regulation of Tobacco Products

Subchapter 1: Tobacco Product Regulation Act

§ 17-701 Short title.

This subchapter shall be known and may be cited as the "Tobacco Product Regulation Act."

§ 17-702 Definitions.

For purposes of this subchapter, the following terms shall be defined as follows:

- a. "Affiliated company" means any business entity which is the holder of a right to place or display advertisements in or on a unit of advertising space and which has a relationship with a holder of a right to place or display advertisements in or on another unit of advertising space; such relationship shall be an identity of all principal owners or all directors; provided, however, that only entities which are holders of a right to place or display advertisements on the same type of units of advertising space shall be considered affiliated companies for purposes of this subchapter.
- b. "Authorizing agency" means the agency or other unit of local government of the city of New York which is (i) acting on behalf of the city with respect to a written agreement between the city and a private party which allows the placement or display of advertisements in or on a unit of advertising space; (ii) any agency designated by the mayor as having responsibility for a unit of advertising space that is the subject of a written agreement with the city which allows the placement or display of advertisements in or on such unit; or (iii) the issuer of a license or permit that expressly grants the right to place or display advertisements in or on a unit of advertising space. In the event that there is no authorizing agency as defined by this subdivision for a unit of advertising space, the authorizing agency for such unit shall be the agency with the primary expertise in the subject area covered by the written agreement with the city which allows the placement or display of advertisements in or on such unit.
- c. [Repealed.]
- d. "City of New York" or "city" means the city of New York or any of its agencies or other unit of local government.
- e. "Employee" means any person who provides services for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services without monetary compensation.
- f. "For-hire vehicle" means "for-hire vehicle" as defined in section 19-502 of the code.
- g. "For-hire vehicle base" means a place of business from which for-hire vehicles are dispatched.
- h. "Instrumentality of public transportation" means buses operated pursuant to a franchise or consent issued by or from the city of New York, ferries and ferry terminals owned or operated by the city of New York, trams and their appurtenances, bus stop shelters and licensed vehicles as defined in section 19-502 of the code.
- i. "Person" means any natural person, partnership, corporation, government agency, association or other legal entity.
- j. "Public health message" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, the primary purpose of which is to communicate the health risks of tobacco product use or the health benefits of not using tobacco products.
- k. "Retail dealer" means "retail dealer" as defined in section 20-201, and any employee or other agent of such retail dealer.
- l. "School premises" means the buildings, grounds or facilities, or any portion thereof, owned or occupied by public or private institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level.
- m. "Special event" means an event (i) for which a permit has been issued by the city of New York; (ii) which has a duration of no longer than seven days; and (iii) for which an agreement has been entered into with the city that provides for the placement or display of signage intended to discourage the use of tobacco products.
- n. "Taxicab" means "taxicab" as defined in section 19-502 of the code.
- o. "Taxicab fleet" means a corporate entity organized for the ownership or operation of twenty-five or more taxicabs, which taxicabs are dispatched from a single location serving as both garage and office of record, which location has been approved by the taxi and limousine commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs, and which location has a dispatcher on the premises at least eighteen hours every day who is responsible for assigning drivers to fleet taxicabs.
- p. "Taxicab minifleet" means a corporation licensed by the taxi and limousine commission to own and operate two or more taxicabs.
- q. "Tobacco advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.
- r. "Tobacco product" means any product which contains tobacco 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, or dissolvable tobacco product. Tobacco product shall not include cigarettes, electronic cigarettes or e-liquid 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.
- s. "Trademark" means any word, name, symbol, logo, emblem or device, or any combination thereof, used by a person to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.
- t. "Trade name" means any name used by a person to identify his or her business or vocation
- u. "Unit of advertising space" means any real property, space, facility or instrumentality of public transportation, or any portion thereof, (i) owned or operated by, or leased from or to the city, or which is located or operates on real property owned or operated by or leased from or to the city, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency; or (ii) with respect to which a license or permit has been issued by the city that expressly grants the right to place or display advertisements, but not including licenses or permits issued pursuant to the building code.
- v. "Wholesale dealer" means "wholesale dealer" as defined in section 11-1301 of the code, and any employee or other agent of such wholesale dealer.

w. "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.

x. "Cigar" means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

y. "Little cigar" means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

z. "Shisha" means any product made primarily of tobacco or other leaf, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe.

aa. "Herbal cigarette" means a product that is meant to be smoked like a cigarette but is composed of one or more herbs and does not contain tobacco.

bb. "Electronic cigarette" has the same meaning as such term is defined in section 20-560.

cc. "Non-tobacco smoking product" means any product that does not contain tobacco or nicotine and that is designed for human use or consumption by the inhalation of smoke, including but not limited to (i) pipes, water pipes, rolling papers, and any other component, part, or accessory of such product and (ii) shisha, as defined in subdivision (z) of this section, provided that such shisha does not contain tobacco or nicotine.

(Am. L.L. 2017/144, 8/28/2017, eff. 1/25/2018; Am. L.L. 2017/145, 8/28/2017, eff. 6/1/2018; Am. L.L. 2017/146, 8/28/2017, eff. 2/24/2018; Am. L.L. 2017/191, 10/16/2017, eff. 4/14/2018; Am. L.L. 2019/228, 12/16/2019, eff. 7/1/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/144, L.L. 2017/145, L.L. 2017/146, and L.L. 2019/228.

§ 17-703 License Required.

It shall be unlawful for a person to engage in any act as a wholesale dealer without a license as prescribed in section 11-1303 of the code, or engage in any act as a retail dealer without a license as prescribed in section 20-202 of the code.

§ 17-703.1 Sign required.

A retail dealer shall post a sign in a conspicuous place at the point of sale of cigarettes or at the place where cigarettes are displayed or offered for sale stating that cigarettes sold in the city of New York must be in packages bearing valid tax stamps.

§ 17-703.2 Requirements for retail dealers concerning cigarette tax.

a. Any package containing cigarettes sold or offered for sale by a retail dealer shall bear a valid tax stamp as required by section 11-1302 of the code. Except as provided in subdivision b of section 11-1305 of the code, any cigarettes possessed or transported in the city by a retail dealer shall be in a package bearing a valid tax stamp.

b. No retail dealer shall engage in a sale or purchase prohibited by subdivision e of section 11-1303 or section 20-205 of the code.

c. No retail dealer shall sell, offer for sale, possess or transport any affixed or unaffixed false, altered or counterfeit cigarette tax stamp, imprint or impression.

d. No retail dealer shall engage in any act to hide or conceal:

- (1) any cigarettes in unstamped or unlawfully stamped packages;
- (2) any affixed or unaffixed false, altered or counterfeit cigarette tax stamp, imprint or impression; or
- (3) any cigarettes that are outside of a package in violation of subdivision a of this section.

§ 17-704 Minimum package sizes.

a. No retail dealer shall sell or offer for sale any cigarettes or tobacco products unless such cigarettes or tobacco products are sold in the package, box, carton or other container provided by the manufacturer, importer or packager which bears any such health warning as may be required by federal statute, rule or consent order.

a-1. No retail dealer shall sell or offer for sale cigarettes unless the cigarettes are sold in a package of at least twenty cigarettes.

b. [Reserved.]

c. No retail dealer shall sell or offer for sale a little cigar unless the little cigar is sold in a package of at least twenty little cigars.

d. No retail dealer shall sell or offer for sale snus unless it is sold in a package of at least 0.32 ounces, and any other smokeless tobacco unless it is sold in package of at least 1.2 ounces.

e. No retail dealer shall sell or offer for sale shisha or non-tobacco shisha unless any such shisha is sold in a package of at least 3.5 ounces.

f. No retail dealer shall sell or offer for sale loose tobacco unless the loose tobacco is sold in a package of at least 1.5 ounces.

(Am. L.L. 2017/145, 8/28/2017, eff. 6/1/2018)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/145.

§ 17-704.1 Prohibition on delivery.

a. No retail dealer shall deliver cigarettes or tobacco products by foot, bicycle or any motor vehicle to any location outside its place of business.

b. No electronic cigarette retail dealer, as defined in section 20-560, shall deliver electronic cigarettes by foot, bicycle or any motor vehicle to any location outside its place of business.

(L.L. 2017/145, 8/28/2017, eff. 6/1/2018)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/145.

§ 17-705 Age restriction on handling.

It shall be unlawful for a retail dealer to permit an employee or other agent of the retail dealer to sell, dispense or otherwise handle cigarettes or a tobacco product unless such employee or other agent is (1) at least eighteen years of age; or (2) under the direct supervision of the retail dealer or an

employee or other agent of the retail dealer who is at least eighteen years of age, and who is present on the premises.

§ 17-706 Sale of cigarettes, tobacco products, liquid nicotine, electronic cigarettes, or non-tobacco smoking products to minors and young adults prohibited.

a. Any person operating a place of business wherein cigarettes, tobacco products, or liquid nicotine are sold or offered for sale is prohibited from selling such cigarettes, tobacco products, or liquid nicotine to individuals under twenty-one years of age. Sale of cigarettes, tobacco products, or liquid nicotine in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of cigarettes, tobacco products, or liquid nicotine to an individual under twenty-one years of age.

a-1. Any person operating a place of business wherein electronic cigarettes are sold or offered for sale is prohibited from selling such electronic cigarettes to individuals under twenty-one years of age. Sales of electronic cigarettes in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of electronic cigarettes to an individual under twenty-one years of age.

b. Any person operating a place of business wherein non-tobacco smoking products are sold or offered for sale is prohibited from selling such non-tobacco smoking products to individuals under twenty-one years of age. Sale of non-tobacco smoking products in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of non-tobacco smoking products to an individual under twenty-one years of age.

c. Any person operating a place of business wherein cigarettes, tobacco products, liquid nicotine, electronic cigarettes, or non-tobacco smoking products are sold or offered for sale shall post in a conspicuous place a sign, in accordance with the rules of the department, advising persons about the minimum age requirements for the purchase of such items.

(Am. L.L. 2017/144, 8/28/2017, eff. 1/25/2018; Am. L.L. 2017/191, 10/16/2017, eff. 4/14/2018)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/144.

§ 17-707 Public health messages required where tobacco advertisements appear on certain properties. [Repealed]

§ 17-708 Use of tobacco products on school premises prohibited.

It shall be unlawful for any person to use a tobacco product, including chewing tobacco, on school premises at any time.

§ 17-709 Enforcement.

The department of health and mental hygiene and the department of finance shall enforce the provisions of this subchapter. The department of consumer and worker protection shall enforce sections 17-703, 17-703.1, 17-704, 17-704.1, 17-705 and 17-706. In addition, designated enforcement employees of any authorizing agency shall have the power to enforce the provisions of this subchapter.

(Am. L.L. 2017/145, 8/28/2017, eff. 6/1/2018; Am. L.L. 2020/080, 8/28/2020, eff. 8/28/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/145 and L.L. 2020/080.

§ 17-709.1 Rules.

The commissioner of the department and the commissioner of finance shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this subchapter.

§ 17-710 Violations and penalties.

a. Civil penalties and license revocation for a person found to be in violation of the provisions of this subchapter shall be as follows:

(1) Any person found to be in violation of section 17-703 shall be liable for a civil penalty of not more than five thousand dollars for the first violation, and not more than five thousand dollars for each additional violation found on that day; and not more than ten thousand dollars for the second violation and each subsequent violation by that person.

(2) Any person found to be in violation of section 17-703.1 shall be liable for a civil penalty of not more than five hundred dollars in any single day.

(3) In addition to any penalty that may be imposed pursuant to subdivision b of section 11-1317 of the code, any person found to be in violation of section 17-703.2 of the code shall be liable for a civil penalty of not more than two thousand dollars for the first violation, and not more than two thousand dollars for each additional violation found on that day, and not more than five thousand dollars for the second violation and each subsequent violation at the same place of business within a three-year period.

(4) Any person found to be in violation of section 17-704, 17-704.1, 17-705 or subdivision a, a-1 or b of section 17-706 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 and each subsequent violation at the same place of business within a three-year period. Any person found to be in violation of subdivision c of section 17-706 shall be liable for a civil penalty of not more than five hundred dollars in any single day.

(5) In addition, for a second violation of any of section 17-703, section 17-703.2, subdivision a of section 17-704, subdivision a of section 17-704.1, section 17-705 or subdivision a or b of section 17-706 occurring on a different day and any 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 shall be subject to the mandatory revocation of such dealer's retail tobacco dealer license for such place of business. Any violation of section 17-703, section 17-703.2, subdivision a of section 17-704, subdivision a of section 17-704.1, section 17-705 or subdivision a or b of section 17-706 by any license holder at a place of business shall be included in determining the number of violations by such license holder and by any subsequent license holder at the same place of business unless the subsequent license holder provides the commissioner of the department that has commenced the proceeding to recover a civil penalty pursuant to subdivision b of this section with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision e of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises. A retail tobacco dealer license shall be revoked at the same hearing at which a retail dealer is found liable for a second violation or subsequent violations at the same place of business within a three-year period.

(6) Any person who violates section 17-708 shall be liable for a civil penalty of not more than fifty dollars for each violation.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-704.1, 17-705 or 17-706 shall be commenced by the service of a notice of violation which shall be returnable to the office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter where the department of health and mental hygiene issues such notice, the office of administrative trials and hearings acting pursuant to section 2203 and subdivision 2 of section 1048 of the charter where the department of consumer and worker protection or a designated employee of any authorizing agency issues such notice, or an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. Such notice shall contain a statement that any hearing for a second violation or subsequent violation of any of the provisions described in paragraph (5) of subdivision a of this section at the same place of business within a three-year period shall also constitute a hearing for the revocation of a retail dealer's tobacco license where the retail dealer is found to be in violation of any such sections. The department of health and mental hygiene, the department of consumer and worker protection and the department of finance shall notify each other within thirty days of a final determination that a retail dealer has been found to be in violation of section 17-703, 17-703.2, 17-704, 17-704.1, 17-705 or subdivision a or b of section 17-706. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-708 shall be returnable to the office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section. The office of administrative trials and hearings acting pursuant to section 558 or section 2203 of the charter, in addition to subdivision 2 of section 1048 of the charter and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-704.1, 17-705 or 17-706.

c. The penalties provided by subdivision a of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

d. Whenever any person has engaged in any acts or practices which constitute a violation of any provision of this subchapter or of any rule promulgated thereunder, the city may make application to a court of competent jurisdiction for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order or other order enjoining such acts or practices.

e. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises, such as a sale or lease entered into while there are violations pending against the original licensee that could result in revocation or suspension of the license.

f. Notwithstanding the provisions of subdivision a of this section, the mandatory revocation of a license for a second offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the mandatory revocation acted against the licensee's will in committing such violations, the licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-704, 17-705 and 17-706 of this code, and the licensee has terminated any financial or employment relationship with each person who committed the violations which are the basis of the mandatory revocation of its license or has taken other significant disciplinary action against such persons. The commissioner shall not determine that a licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-704, 17-705 and 17-706 of this code unless the licensee submits satisfactory proof demonstrating that the licensee had, prior to the second violation which is the basis for the mandatory revocation of its license, done the following:

(1) implemented a clear policy requiring all persons working in the place of business to strictly comply with the provisions of sections 17-704, 17-705 and 17-706 of this code and permitting persons working in the place of business to complete a tobacco product sales transaction only after establishing the age of a prospective purchaser of tobacco products through identification that has been verified for authenticity or through photographic identification as required by section 17-706 of this code; and

(2) trained all persons working in the place of business to comply with any such policy before they are allowed to sell tobacco products to the public; and

(3) monitored the performance of persons working in the place of business to ensure that they adhere to such policy, or, in accordance with rules promulgated by the commissioner, conducted periodic retraining of persons working in the place of business.

g. Any retail dealer who fails to pay (1) any civil penalty imposed under chapter thirteen of title eleven of the code for the violation of any provision thereunder, or (2) any civil penalty imposed under this chapter for any violation thereof or under section 17-176.1 or section 17-177 of this title for any violation of such sections, shall be subject to suspension of his or her retail dealer license for the place of business where the violation occurred until such retail dealer pays all such civil penalties. Such retail dealer license shall not be renewed until such retail dealer pays all such civil penalties. A proceeding to suspend a retail dealer license pursuant to this subdivision may be commenced by the department to which payment of the penalty is due, in the same manner as a proceeding pursuant to subdivision b of this section to recover a civil penalty. The office of administrative trials and hearings acting pursuant to section 2203 and subdivision 2 of section 1048 of the charter, the office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to suspend a retail dealer's license pursuant to this subdivision.

(Am. L.L. 2017/144, 8/28/2017, eff. 6/1/2018; Am. L.L. 2017/145, 8/28/2017, eff. 6/1/2018; Am. L.L. 2020/080, 8/28/2020, eff. 8/28/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/144, L.L. 2017/145, and L.L. 2020/080.

§ 17-711 Report.

Not later than twelve months after the effective date of the local law that added this section and each year thereafter, the department shall submit a report to the mayor and the city council concerning the administration and enforcement of this subchapter.

§ 17-712 Construction.

Nothing contained in this subchapter shall be construed to preclude the city of New York from prohibiting the placement or display of tobacco advertisements in or on units of advertising space.

Subchapter 2: Regulation of the Sale of Flavored Tobacco Products, Flavored Electronic Cigarettes and Flavored E-liquid, and Regulation of Age of Entry to Non-Tobacco Hookah Establishments

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2019/228.

§ 17-713 Definitions.

Whenever used in this subchapter, the following terms shall be defined 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, 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 "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, electronic cigarette or e-liquid 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 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 of an electronic cigarette, or by any person authorized or permitted by the manufacturer 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 of an e-liquid, or by any person authorized or permitted by the manufacturer 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 of a tobacco product, or by any person authorized or permitted by the manufacturer 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 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, or dissolvable tobacco product. Tobacco product shall not include cigarettes, electronic cigarettes or e-liquid 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.

(Am. L.L. 2017/191, 10/16/2017, eff. 4/14/2018; Am. L.L. 2019/228, 12/16/2019, eff. 7/1/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2019/228.

§ 17-714 Sale of herbal cigarettes to minors prohibited. [Repealed]

(Repealed L.L. 2017/191, 10/16/2017, eff. 4/14/2018)

§ 17-715 Sale of flavored tobacco products, flavored electronic cigarettes and flavored e-liquid prohibited.

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.

(Am. L.L. 2019/228, 12/16/2019, eff. 7/1/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2019/228.

§ 17-716 Violations and penalties.

a. Any person who violates subdivision a 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.

a-1. Any person who violates subdivision b 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 an electronic cigarette retail dealer, as such term is defined in section 20-560, shall be subject to the mandatory suspension of his or her license, issued pursuant to section 20-561, for such place of business, for a period not to exceed one year. Such license shall be suspended at the same hearing at which an electronic cigarette retail dealer is found liable for a third violation or subsequent violations at the same place of business within a three-year period.

b. Any person who violates subdivision a of section 17-719 shall be liable for a civil penalty of two hundred dollars for the first violation, and not more than two hundred dollars for each additional violation found on the same day; and five hundred dollars for the second violation and each subsequent violation at the same place of business. A proceeding to recover any such civil penalty shall be commenced by the service of a notice of violation returnable to the office of administrative trials and hearings or any tribunal established within any agency of the city designated to conduct such proceedings. When a person has been found to be in violation of subdivision a of section 17-719 on two or more occasions at a non-tobacco hookah establishment, the commissioner shall revoke the non-tobacco hookah establishment permit issued to such person pursuant to section 17-513.5.

c. Any person found to be in violation of subdivision b of section 17-719 shall be liable for a civil penalty of one hundred dollars for the first violation and not more than one hundred dollars for each additional violation found on the same day, and two hundred dollars for each subsequent violation at the same place of business. A proceeding to recover any such civil penalty shall be commenced by the service of a notice of violation returnable to the office of administrative trials and hearings or any tribunal established within any agency of the city designated to conduct such proceedings.

(Am. L.L. 2017/146, 8/28/2017, eff. 2/24/2018; Am. L.L. 2017/191, 10/16/2017, eff. 4/14/2018; Am. L.L. 2019/228, 12/16/2019, eff. 7/1/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/146 and L.L. 2019/228.

§ 17-717 Enforcement.

The department, the department of consumer and worker protection and the department of finance shall enforce the provisions of this subchapter. A proceeding to recover any civil penalty authorized pursuant to section 17-716 shall be commenced by the service of a notice of violation returnable to the office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter where the department issues such a notice or to the office of administrative trials and hearings acting pursuant to section 2203 and subdivision 2 of section 1048 of the charter where the department of consumer and worker protection issues such a notice or to an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged. Such notice shall contain a statement that any hearing for a third violation or subsequent violation of section 17-715 at the same place of business within a three-year period shall also constitute a hearing for the suspension of a retail dealer's license where the retail dealer is found to be in violation of such section. The office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter, the office of administrative trials and hearings acting pursuant to section 2203 and subdivision 2 of section 1048 of the charter and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to render decisions and to impose the remedies and penalties provided for in section 17-716, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings. The department, the department of consumer and worker protection and the department of finance shall notify each other within 30 days of finding that a retail dealer has been found liable for any section of this subchapter.

(Am. L.L. 2017/146, 8/28/2017, eff. 2/24/2018; Am. L.L. 2020/080, 8/28/2020, eff. 8/28/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/146 and L.L. 2020/080.

§ 17-718 Rules.

The commissioner of the department, the commissioner of consumer and worker protection and the commissioner of finance shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this subchapter.

(Am. L.L. 2020/080, 8/28/2020, eff. 8/28/2020)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2020/080.

§ 17-719 Requirements relating to non-tobacco hookah establishments.

a. It shall be unlawful for a person to permit an individual under 21 years of age to enter a non-tobacco hookah establishment during operating hours. Entry into such non-tobacco hookah establishment shall be permitted only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least 21 years of age. Such identification need not be required of any individual who reasonably appears to be at least 30 years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the granting of permission to enter such an establishment to an individual under 21 years of age.

b. Non-tobacco hookah establishments, as defined in section 17-502, shall clean and sanitize the interior of the bowl, stem, hose, base, and any other part of paraphernalia provided to customers for smoking non-tobacco smoking products, as defined in section 17-502, in accordance with rules promulgated by the department.

(L.L. 2017/187, 10/16/2017, eff. 4/14/2018)

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2017/187.