



New York Association of Convenience Stores

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MEMORANDUM IN OPPOSITION

S.4517 a by Senator Fuschillo

A.7368 by Assemblywoman Paulin

AN ACT to amend the public health law, in relation to
prohibiting the sale of flavored cigarettes

The New York Association of Convenience Stores is a private, not-for-profit trade organization representing nearly 7,000 neighborhood mini-marts and convenience stores licensed by the State of New York to responsibly sell legal tobacco products to adult customers.

As parents, citizens and business owners, we share the sponsor's commitment to keeping cigarettes out of the hands of kids.

Our retailers pro-actively train their employees in preventing underage sales. Many have adopted a strict policy of immediately terminating any clerk caught selling to minors in violation of their training. Some have deployed electronic age verification devices to scan ID's, or register prompts that block the clerk from completing the transaction until he or she enters the date of birth from the ID. Their voluntary efforts, together with enforcement by state and local health departments, has cut the incidence of underage tobacco sales in half over the past six years.

Very few, if any, of our member convenience stores carry flavored cigarettes. In fact, reportedly less than 10% of retail stores statewide sell them. However, all convenience stores licensed to sell tobacco would be adversely impacted if the open-ended definition of "flavor" in this legislation were interpreted too restrictively, since virtually all cigarettes we do sell have some type of flavor.

S.4517/A.7368 would ban the sale of cigarettes containing any "natural or artificial constituent or additive that causes such cigarette or its smoke to have a characterizing flavor." It goes on to say characterizing flavor "shall include but not to be limited to any fruit, chocolate, vanilla, honey, candy, mint, cocoa, dessert, alcoholic beverage, herb or spice flavoring, but shall not include tobacco or menthol."

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Our main concern is that anti-smoking zealots could misuse this well-intentioned statute as a backdoor way to place further unwarranted restrictions on the licensed sale of cigarettes to adult smokers generally. Many convenience store operators depend on the responsible sale of tobacco products to adult customers for 25% or more of their total in-store sales.

Our concern about wild interpretations of seemingly straightforward tobacco regulations is well founded. In 2002, the Legislature mandated that retail stores display tobacco behind the counter in an area that is accessible only to employees. To comply, some stores with limited wall space moved their cigarettes to an overhead rack that could only be accessed by a clerk standing behind the counter. The New York State Department of Health subsequently issued a memo stating that overhead racks were illegal, because they are “above” the counter, not “behind” the counter as the new law required. I am not making this up.

Our second concern is enacting another double standard between licensed retailers who collect state and local taxes and comply with state and local tobacco regulations and unlicensed sellers who don't. A recent state Department of Health report showed that more than half of New York smokers purchase cigarettes from Native American outlets, the Internet, and bootleggers, all of which are beyond the reach of regulations like this one. To tell law-abiding retailers they can't sell a particular product while allowing unregulated dealers with a 50% market share to continue doing so exacerbates our existing competitive disadvantage – and defeats the public health policy objective.

To prevent the unintended overinterpretation of the vague “flavor” definition, and to avoid placing legitimate retailers at a further disadvantage against unlicensed, unregulated, untaxed competitors, NYACS opposes passage of this legislation.

James S. Calvin
President, NYACS
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