

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend An act to prohibit the sale of tobacco to minors under sixteen years of age in the District of Columbia to prohibit the sale and distribution of flavored tobacco products, prohibit the sale and distribution of electronic smoking devices within one quarter mile of a middle school or high school, exempt certain hookah bars from the prohibitions contained in the bill, and provide that law enforcement officers shall not be involved in the enforcement of the civil infractions contained in An act to prohibit the sale of tobacco to minors under sixteen years of age in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Flavored Tobacco Product Prohibition Amendment Act of 2021”.

Sec. 2. An act to prohibit the sale of tobacco to minors under sixteen years of age in the District of Columbia, approved February 7, 1891 (26 Stat. 736; D.C. Official Code § 7-1721.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 7-1721.01) is amended as follows:

(1) Paragraph (1) is redesignated as paragraph (2A).

(2) New paragraphs (1), (1A), (1B), (1C), and (1D) are added to read as follows:

“(1) “Characterizing flavor” means a distinguishable taste or aroma other than tobacco, including fruit, chocolate, vanilla, candy, dessert, alcoholic beverage, menthol, mint, or wintergreen.

“(1A) “Electronic smoking device” shall have the same meaning as provided in section 4915(1) of the Department of Health Functions Clarification Act of 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.01(1)).

“(1B) “Flavored tobacco product” means any tobacco product or synthetic nicotine product that imparts a characterizing flavor.”.

“(1C) “Hookah” means a type of waterpipe used to smoke shisha or other tobacco products with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

“(1D) “Hookah bar” means a restaurant, tavern, brew pub, club, or nightclub that:

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“(A) Generates revenue from the sale for on-site consumption of tobacco products used with a hookah, excluding sales from vending machines or the rental of on-site humidors; provided, that the restaurant, tavern, brew pub, club, or nightclub has a valid smoking exemption from the Department of Health pursuant to section 4917(a)(2) or (3) of the Department of Health Functions Clarification Act of 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.03(a)(2) or (3)); and

“(B) Does not permit any person under 21 years of age to be present or enter the premises at any time.”.

(3) The newly designated paragraph (2A) is amended by striking the phrase “, as that term is defined in section 4915(1) of the Department of Health Functions Clarification Act of 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.01(1)).” and inserting a period in its place.

(b) Section 3 (D.C. Official Code § 7-1721.02) is amended as follows:

(1) Subsection (b)(1) is amended by striking the phrase “his or her age” and inserting the phrase “the purchaser’s age” in its place.

(2) Subsection (c) is repealed.

(c) Section 4 (D.C. Official Code § 7-1721.03) is amended as follows:

(1) Subsection (a)(2) is amended by striking the phrase “his or her employment” and inserting the phrase “the person’s employment” in its place.

(2) Subsection (b) is amended by striking the phrase “his or her age” and inserting the phrase “the person’s age” in its place.

(3) Subsection (c) is repealed.

(d) Section 5(c) (D.C. Official Code § 7-1721.04(c)) is repealed.

(e) Section 6(c) (D.C. Official Code § 7-1721.05(c)) is repealed.

(f) Section 7(d) (D.C. Official Code § 7-1721.06(d)) is repealed.

(g) Section 8 (D.C. Official Code § 7-1721.07) is amended to read as follows

“Sec. 8. Civil penalties.

“(a)(1) A violation of section 3, 5, 6, or 7 shall be subject to a civil penalty of not less than \$100 and not more than \$500 for the first violation. For a subsequent violation, a person shall be subject to a civil penalty of not less than \$500 and not more than \$1,000.

“(2) Any person who violates section 4(a) may be subject to a civil penalty of \$25.

“(3) Any person who violates section 4(b) may be subject to a civil penalty of:

“(A) \$100 the first time the offense or offenses occurred;

“(B) \$200 the second time the offense or offenses occurred; and

“(C) \$300 the third and subsequent times the offense or offenses occurred.

“(4) A person who violates section 9 shall be subject to a civil penalty of:

“(A) Not more than \$25 per violation, if the person committing the violation is an individual; and

“(B) Not more than \$10,000 per violation, if the person committing the violation is a person other than an individual.

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“(5) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to increase the amount of the fine for a violation of section 4(a) or (b).

“(b) A violation of the provisions described in subsection (a) of this section shall be a civil infraction for the purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). Adjudication of any such civil infractions shall be pursuant to the Civil Infractions Act.

“(c)(1) Law enforcement officers shall not be involved in the enforcement of the provisions described in subsection (a) of this section.

“(2) For the purposes of this subsection, the term “law enforcement officer” means:

“(A) A sworn member of the Metropolitan Police Department;

“(B) A sworn member of the District of Columbia Protective Services;

“(C) The Director, deputy directors, and officers of the District of Columbia Department of Corrections;

“(D) Any probation, parole, supervised release, community supervision, or pretrial services officer of the Court Services and Offender Supervision Agency or the Pretrial Services Agency; and

“(E) Metro Transit police officers.”.

(h) A new section 9 is added to read as follows:

“Sec. 9. Prohibitions on flavored tobacco products and electronic smoking devices.

“(a) No person shall sell, offer for sale, receive for sale, distribute, purchase, or facilitate the sale of:

“(1) A flavored tobacco product; or

“(2) An electronic smoking device within one quarter mile of any middle or high school in the District.

“(b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their agency or employment, has:

“(1) Made a public statement or claim directed to the public regarding a characterizing flavor;

“(2) Used text or images on the tobacco product’s packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or

“(3) Taken action directed to consumers that would be reasonably expected to cause consumers to believe that the tobacco product imparts a characterizing flavor.

“(c) Any license to sell tobacco products issued pursuant to D.C. Official Code § 47-2404:

“(1) May be suspended, after a hearing, for a first or second violation of subsection (a) of this section; and

“(2) Shall be revoked, after a hearing, for a third or subsequent violation of subsection (a) of this section.

“(d) In addition to the penalties described in section 8(a)(4), a violation of subsection (a) of this section shall constitute a violation of D.C. Official Code § 28-3904. The Attorney General for the District of Columbia may use the Attorney General’s investigatory powers pursuant to D.C. Official Code § 28-3910 and enforcement authority pursuant to D.C. Official Code § 28-3909 to investigate or prosecute suspected violations of subsection (a) of this section.”.

“(e)(1) Notwithstanding the provisions of this section, the sale for on-site consumption of flavored tobacco products intended to be used with a hookah shall be permitted for any hookah bar doing business in the District as of September 30, 2021. All flavored tobacco products sold pursuant to this subsection shall be consumed on site and may not be taken off premises.

“(2) A hookah bar doing business in the District as of September 30, 2021, shall not need to relocate to be in compliance with this section.”.

Sec. 3. Section 47-2404 of the District of Columbia Official Code is amended by adding a new subsection (h-1) to read as follows:

“(h-1) The Mayor may, after a hearing, suspend any license issued under this section for a first or second violation of section 9(a) of An act to prohibit the sale of tobacco to minors under sixteen years of age in the District of Columbia, passed on 2nd reading on June 29, 2021 (Enrolled version of Bill 24-20). The Mayor shall, after a hearing, revoke any license issued under this section for a third or subsequent violation of section 9(a) of An act to prohibit the sale of tobacco to minors under sixteen years of age in the District of Columbia, passed on 2nd reading on June 29, 2021 (Enrolled version of Bill 24-20).”.

Sec. 4. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia