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New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

MEMBER UPDATE

New York Health Panel Extends, Revises E-Cigarette Flavor Ban

- DOES NOT Change Status Quo; Sales May Continue
- Revises Language to Include Menthol Flavor
- Addresses Warehouse Out-of-State Conundrum
- Requirement for Hideous Sign Extended As Well

At its regular meeting today, the state Public Health and Health Planning Council approved an extension of its previous emergency order banning the sale of flavored e-cigarettes, even though that order remains on indefinite hold under a court injunction.

Today's action does not change the status quo. For now, e-cigarettes can still be sold to adult customers in New York State by registered retailers.

The health panel extended the original order because its temporary 90-day run was about to expire, keeping it on the books so that it will automatically become effective should the existing court injunction blocking implementation be lifted, which is viewed as unlikely in the near term.

The PHHPC also used the opportunity to clarify and revise certain provisions in the original order, most notably:

- It added menthol to the list of flavors that would be banned. The original order would have permitted menthol e-cigarettes to be sold; the revised one would ban all flavors other than tobacco.
- Prodded by NYACS, it addressed the issue of New York-based wholesale distributors that supply stores in other states where the banned product remains legal. The clumsy wording of the original order would have made it technically illegal for them to warehouse the banned products for interstate commerce purposes. The revised one clarifies that it would be “unlawful for anyone to possess manufacture, distribute, sell or offer for sale any flavored e-liquid or product containing the same, *for purposes of retail sale in New York State.*” (emphasis added)

In addition, the PHHPC extended the expiring executive order requiring retailers of vaping products to continue displaying a hideous sign screaming “Vaping Can Kill You.”