

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2742 Session of 2018

INTRODUCED BY McCARTER, READSHAW, DAVIS, HILL-EVANS, DRISCOLL,  
YOUNGBLOOD, DALEY, ENGLISH AND BRADFORD, OCTOBER 18, 2018

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 18, 2018

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in minors, providing for the offense  
3 of sale of nicotine products and nicotine delivery products  
4 to persons under 21 years of age.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 18 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a section to read:

9 § 6305.1. Sale of nicotine products and nicotine delivery  
10 products to persons under 21 years of age.

11 (a) Offense defined.--Except as set forth in subsection (f),  
12 a person is guilty of a summary offense if the person:

13 (1) sells a nicotine product or nicotine delivery  
14 product to anyone under the age of 21;

15 (2) furnishes, by purchase, gift or other means, a  
16 nicotine product or nicotine delivery product to a person  
17 under the age of 21;

18 (3) locates or places a vending machine containing a  
19 nicotine product or nicotine delivery product in a location

1 accessible to persons under the age of 21; or

2 (4) displays or offers for sale nicotine products or  
3 nicotine delivery products in any manner which enables an  
4 individual other than the retailer or an employee of the  
5 retailer to physically handle nicotine products or nicotine  
6 delivery products prior to purchase unless the nicotine  
7 products and nicotine delivery products are located within  
8 the line of sight or under the control of a cashier or other  
9 employee during business hours, except that this paragraph  
10 shall not apply to retail stores which derive 75% or more of  
11 sales revenues from nicotine products and nicotine delivery  
12 products.

13 (b) Purchase.--A person under the age of 21 is guilty of a  
14 summary offense if the person:

15 (1) purchases or attempts to purchase a nicotine product  
16 or nicotine delivery product; or

17 (2) knowingly falsely represents himself to be at least  
18 21 years of age to a person for the purpose of purchasing or  
19 receiving a nicotine product or nicotine delivery product.

20 (c) Penalty.--

21 (1) Except as set forth in paragraph (2), a person that  
22 violates subsection (a) shall be sentenced as follows:

23 (i) for a first offense, to pay a fine of not less  
24 than \$100 nor more than \$250;

25 (ii) for a second offense, to pay a fine of not less  
26 than \$250 nor more than \$500; or

27 (iii) for a third or subsequent offense, to pay a  
28 fine of not less than \$500 nor more than \$1,000.

29 (2) A retailer that violates subsection (a) shall be  
30 sentenced as follows:

1           (i) for a first offense, to pay a fine of not less  
2 than \$100 nor more than \$500;

3           (ii) for a second offense, to pay a fine of not less  
4 than \$500 nor more than \$1,000;

5           (iii) for a third offense, to pay a fine of not less  
6 than \$1,000 nor more than \$3,000; or

7           (iv) for a fourth or subsequent offense, to pay a  
8 fine of not less than \$3,000 nor more than \$5,000.

9           (3) A person under the age of 21 who violates subsection  
10 (b) shall be sentenced to any or all of the following:

11           (i) not more than 75 hours of community service;

12           (ii) a fine not to exceed \$200; or

13           (iii) a 30-day suspension of motor vehicle operating  
14 privileges.

15 (d) Notification.--

16           (1) Upon issuing or filing a citation charging a minor  
17 with a violation of subsection (b), the affiant shall notify  
18 the parent or guardian of the minor charged.

19           (2) Upon imposing a sentence under subsection (c)(1) or  
20 (2), a court shall notify the department of the violation  
21 committed by the person if the person is a retailer or an  
22 employee of a retailer and the person committed the violation  
23 in the course of the person's employment.

24 (e) Nature of offense.--

25           (1) An offense under subsection (b) shall not be a  
26 criminal offense of record, shall not be reportable as a  
27 criminal act and shall not be placed on the criminal record  
28 of the offender. The failure of a minor to comply with a  
29 sentence under subsection (c)(3) shall not constitute a  
30 delinquent act under 42 Pa.C.S. Ch. 63 (relating to juvenile

1 matters).

2 (2) A record of participation in an adjudication  
3 alternative program under subsection (f) shall be maintained  
4 for purposes of determining subsequent eligibility for such a  
5 program.

6 (3) Except as provided in subsection (g)(1), a retailer  
7 is liable for the acts of its agents as permitted by section  
8 307 (relating to liability of organizations and certain  
9 related persons).

10 (f) Preadjudication disposition.--If a person is charged  
11 with violating this section, the court may admit the offender to  
12 the adjudication alternative program as authorized in 42 Pa.C.S.  
13 § 1520 (relating to adjudication alternative program) or any  
14 other preadjudication disposition if the offender has not  
15 previously received a preadjudication disposition for violating  
16 this section. Accelerated Rehabilitative Disposition or any  
17 other preadjudication alternative for a violation of subsection  
18 (a) shall be considered an offense for the purposes of imposing  
19 criminal penalties under subsection (c)(1) and (2).

20 (g) Exceptions.--

21 (1) The following affirmative defense is available:

22 (i) It is an affirmative defense for a retailer to  
23 an offense under subsection (a)(1) and (2) that, prior to  
24 the date of the alleged violation, the retailer has  
25 complied with all of the following:

26 (A) Adopted and implemented a written policy  
27 against selling nicotine products and nicotine  
28 delivery products to persons under the age of 21,  
29 which includes:

30 (I) A requirement that an employee ask an

1 individual who appears to be 25 years of age or  
2 younger for a valid photo identification as proof  
3 of age prior to making a sale of nicotine  
4 products or nicotine delivery products.

5 (II) A list of all types of acceptable photo  
6 identification.

7 (III) A list of factors to be examined in  
8 the photo identification, including photo  
9 likeness, birth date, expiration date, bumps,  
10 tears or other damage and signature.

11 (IV) A requirement that, if the photo  
12 identification is missing any of the items listed  
13 in subclause (III), the photo identification is  
14 not valid and cannot be accepted as proof of age  
15 for the sale of nicotine products or nicotine  
16 delivery products. A second photo identification  
17 may be required to make the sale of nicotine  
18 products or nicotine delivery products, with  
19 questions referred to the manager.

20 (V) A disciplinary policy, which includes  
21 employee counseling and suspension for failure to  
22 require valid photo identification and dismissal  
23 for repeat improper sales.

24 (B) Informed all employees selling nicotine  
25 products and nicotine delivery products through an  
26 established training program of the applicable  
27 Federal and State laws regarding the sale of nicotine  
28 products and nicotine delivery products.

29 (C) Documented employee training indicating that  
30 all employees selling nicotine products and nicotine

1 delivery products have been informed of and  
2 understand the written policy referred to in clause  
3 (A).

4 (D) Trained all employees selling nicotine  
5 products and nicotine delivery products to verify  
6 that the purchaser is at least 21 years of age before  
7 selling nicotine products and nicotine delivery  
8 products.

9 (E) Conspicuously posted a notice that selling  
10 nicotine products and nicotine delivery products to a  
11 person under the age of 21 is illegal, that the  
12 purchase of nicotine products and nicotine delivery  
13 products by a person under the age of 21 is illegal  
14 and that a violator is subject to penalties.

15 (F) Established and implemented disciplinary  
16 sanctions for noncompliance with the policy under  
17 clause (A).

18 (ii) An affirmative defense under this paragraph  
19 must be proved by a preponderance of the evidence.

20 (iii) An affirmative defense under this paragraph  
21 may be used by a retailer no more than three times at  
22 each retail location during any 24-month period.

23 (2) No more than one violation of subsection (a) per  
24 person arises out of separate incidents which take place in a  
25 24-hour period.

26 (3) It is not a violation of subsection (b) (1) for a  
27 person under the age of 21 to purchase or attempt to purchase  
28 a nicotine product or nicotine delivery product if all of the  
29 following apply:

30 (i) The person is at least 14 years of age.

1           (ii) The person is an employee, volunteer or intern  
2 with:

3           (A) a State or local law enforcement agency;

4           (B) the Department of Health or a primary  
5 contractor under Chapter 7 of the act of June 26,  
6 2001 (P.L.755, No.77), known as the Tobacco  
7 Settlement Act;

8           (C) a single county authority created under the  
9 act of April 14, 1972 (P.L.221, No.63), known as the  
10 Pennsylvania Drug and Alcohol Abuse Control Act;

11           (D) a county or municipal health department; or

12           (E) a retailer.

13           (iii) The person under the age of 21 is acting  
14 within the scope of assigned duties as part of an  
15 authorized investigation, compliance check under  
16 subsection (h) or retailer-organized self-compliance  
17 check.

18           (iv) The person under the age of 21 does not use or  
19 consume a nicotine product or nicotine delivery product.

20           (h) Compliance checks.--This subsection shall apply to  
21 compliance checks conducted by the Department of Health, or a  
22 county or municipal health department, for the purpose of  
23 conducting retailer education, assessing compliance with Federal  
24 or State law and enforcing the provisions of this section.  
25 Compliance checks shall be conducted, at a minimum, in  
26 accordance with all of the following:

27           (1) Compliance checks shall only be conducted in  
28 consultation with the Department of Health and the law  
29 enforcement agency providing primary police services to the  
30 municipality where the compliance check is being conducted.

1       (2) A minor participating in a compliance check must be  
2 at least 14 years of age, complete a course of training  
3 approved by the Department of Health and furnish the  
4 Department of Health with a signed, written parental consent  
5 agreement allowing the minor to participate in the compliance  
6 check.

7       (3) A retailer that is found to be in compliance with  
8 this section during a compliance check shall be notified in  
9 writing of the compliance check and the determination of  
10 compliance.

11       (4) Compliance checks conducted under this subsection  
12 shall be in a manner consistent with this subsection and the  
13 regulations as promulgated by the Department of Health.

14       (5) The Department of Health, or a county or municipal  
15 health department, shall conduct a compliance check under  
16 this subsection no more than once every 30 days at any one  
17 retail location. This paragraph shall not preclude the law  
18 enforcement agency providing primary police services to the  
19 municipality in which the retail store is located from  
20 otherwise enforcing this section.

21       (6) Individuals participating in compliance checks under  
22 this subsection shall not be deemed employees under the act  
23 of July 23, 1970 (P.L.563, No.195), known as the Public  
24 Employe Relations Act, nor shall participating individuals be  
25 considered policemen under the act of June 24, 1968 (P.L.237,  
26 No.111), referred to as the Policemen and Firemen Collective  
27 Bargaining Act.

28       (i) Administrative action.--

29       (1) Upon receiving notice, in accordance with subsection  
30 (d) or otherwise, of a third conviction of a retailer during

1 any 24-month period, the department may, after an opportunity  
2 for a hearing, suspend the retailer's license issued under  
3 sections 1223-A and 1224-A of the act of March 4, 1971  
4 (P.L.6, No.2), known as the Tax Reform Code of 1971, for up  
5 to 30 days. The department, in a hearing held under this  
6 paragraph, shall have jurisdiction only to determine whether  
7 or not the retailer was convicted of a violation of  
8 subsection (a). The introduction of a certified copy of a  
9 conviction for a violation of subsection (a) shall be  
10 sufficient evidence for the suspension of the license issued  
11 under sections 1223-A and 1224-A of the Tax Reform Code of  
12 1971.

13 (2) Upon receiving notice, in accordance with subsection  
14 (d) or otherwise, of a fourth conviction of a retailer during  
15 any 24-month period, the department may, after an opportunity  
16 for a hearing, revoke the retailer's license issued under  
17 sections 1223-A and 1224-A of the Tax Reform Code of 1971 for  
18 up to 60 days. The department, in a hearing held under this  
19 paragraph, has jurisdiction only to determine whether or not  
20 the retailer was convicted of a violation of subsection (a).  
21 The introduction of a certified copy of a conviction for a  
22 violation of subsection (a) shall be sufficient evidence for  
23 the revocation of the license issued under sections 1223-A  
24 and 1224-A of the Tax Reform Code of 1971.

25 (j) Enforcement.--An employee of the Department of Health, a  
26 single county authority created under the Pennsylvania Drug and  
27 Alcohol Abuse Control Act, a county or municipal health  
28 department or a primary contractor under Chapter 7 of the  
29 Tobacco Settlement Act may institute a proceeding to enforce the  
30 provisions of this section in accordance with any means

1 authorized by the Rules of Criminal Procedure. The enforcement  
2 authority granted under this subsection may not be delegated.

3 (k) Other penalties.--Notwithstanding any other law to the  
4 contrary, prosecution or conviction under this section shall not  
5 constitute a bar to any prosecution, penalty or administrative  
6 action under any other applicable statutory provision.

7 (l) Definitions.--As used in this section, the following  
8 words and phrases shall have the meanings given to them in this  
9 subsection unless the context clearly indicates otherwise:

10 "Department." The Department of Revenue of the Commonwealth.

11 "Electronic cigarette." An electronic device that delivers  
12 nicotine or other substances through vaporization and  
13 inhalation.

14 "Minor." An individual under 18 years of age.

15 "Nicotine delivery product." A product or device used,  
16 intended for use or designed for the purpose of ingesting a  
17 nicotine product. The term includes an electronic cigarette.

18 "Nicotine product." A product that contains or consists of  
19 nicotine in a form that can be ingested by chewing, smoking,  
20 inhaling or any other means.

21 "Vending machine." A mechanical or electrical device from  
22 which one or more tobacco products, nicotine products or  
23 nicotine delivery products are dispensed for a consideration.

24 Section 2. This act shall take effect in 60 days.