

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 954 Session of  
2015

INTRODUCED BY RAPP, KAUFFMAN, SONNEY, FEE, WARD, V. BROWN,  
D. COSTA, GIBBONS, DIAMOND, MCGINNIS, MILLARD, DUSH, ENGLISH,  
ZIMMERMAN, DAY, HEFFLEY, McNEILL, SCHREIBER, COHEN, GINGRICH  
AND MURT, APRIL 10, 2015

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 10, 2015

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in minors, further providing for the  
3 offense of sale of tobacco.

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

6 Section 1. Section 6305(a), (a.1), (f) and (k) of Title 18  
7 of the Pennsylvania Consolidated Statutes are amended to read:

8 § 6305. Sale of tobacco and nicotine delivery products to  
9 minors.

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

12 (1) sells a tobacco product or nicotine delivery product  
13 to any minor;

14 (2) furnishes, by purchase, gift or other means, a  
15 tobacco product or nicotine delivery product to a minor;

16 (4) locates or places a [tobacco] vending machine  
17 containing a tobacco product or nicotine delivery product in

1 a location accessible to minors;

2 (5) displays or offers a cigarette for sale out of a  
3 pack of cigarettes; or

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

15 (a.1) Purchase.--A minor is guilty of a summary offense if  
16 the minor:

17 (1) purchases or attempts to purchase a tobacco product  
18 or nicotine delivery product; or

19 (2) knowingly falsely represents himself to be at least  
20 18 years of age to a person for the purpose of purchasing or  
21 receiving a tobacco product or nicotine delivery product.

22 \* \* \*

23 (f) Exceptions.--

24 (1) The following affirmative defense is available:

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

29 (A) adopted and implemented a written policy  
30 against selling tobacco products or nicotine delivery

1           products to minors which includes:

2                   (I) a requirement that an employee ask an  
3                   individual who appears to be 25 years of age or  
4                   younger for a valid photoidentification as proof  
5                   of age prior to making a sale of tobacco products  
6                   or nicotine delivery products;

7                   (II) a list of all types of acceptable  
8                   photoidentification;

9                   (III) a list of factors to be examined in  
10                  the photoidentification, including photo  
11                  likeness, birth date, expiration date, bumps,  
12                  tears or other damage and signature;

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

22                  (V) a disciplinary policy which includes  
23                  employee counseling and suspension for failure to  
24                  require valid photoidentification and dismissal  
25                  for repeat improper sales.

26                  (B) informed all employees selling tobacco  
27                  products and nicotine delivery products through an  
28                  established training program of the applicable  
29                  Federal and State laws regarding the sale of tobacco  
30                  products and nicotine delivery products to minors;

1 (C) documented employee training indicating that  
2 all employees selling tobacco products and nicotine  
3 delivery products have been informed of and  
4 understand the written policy referred to in clause  
5 (A);

6 (D) trained all employees selling tobacco  
7 products and nicotine delivery products to verify  
8 that the purchaser is at least 18 years of age before  
9 selling tobacco products and nicotine delivery  
10 products;

11 (E) conspicuously posted a notice that selling  
12 tobacco products or nicotine delivery products to a  
13 minor is illegal, that the purchase of tobacco  
14 products or nicotine delivery products by a minor is  
15 illegal and that a violator is subject to penalties;  
16 and

17 (F) established and implemented disciplinary  
18 sanctions for noncompliance with the policy under  
19 clause (A).

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

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

25 (2) No more than one violation of subsection (a) per  
26 person arises out of separate incidents which take place in a  
27 24-hour period.

28 (3) It is not a violation of subsection (a.1)(1) for a  
29 minor to purchase or attempt to purchase a tobacco product  
30 or nicotine delivery product if all of the following apply:

1 (i) The minor is at least 14 years of age.

2 (ii) The minor is an employee, volunteer or an  
3 intern with:

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

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

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

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

14 (E) a retailer.

15 (iii) The minor is acting within the scope of  
16 assigned duties as part of an authorized investigation,  
17 compliance check under subsection (g) or retailer-  
18 organized self-compliance check.

19 (iv) A minor shall not use or consume a tobacco  
20 product or nicotine delivery product.

21 \* \* \*

22 (k) Definitions.--As used in this section, the following  
23 words and phrases shall have the meanings given to them in this  
24 subsection:

25 "Cigarette." A roll for smoking made wholly or in part of  
26 tobacco, irrespective of size or shape and whether or not the  
27 tobacco is flavored, adulterated or mixed with any other  
28 ingredient, the wrapper or cover of which is made of paper or  
29 other substance or material except tobacco. The term does not  
30 include a cigar.

1 "Cigarette license." A license issued under section 203-A or  
2 213-A of the act of April 9, 1929 (P.L.343, No.176), known as  
3 The Fiscal Code.

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

5 "Electronic cigarette." An electronic device that delivers  
6 nicotine or other substances through vaporization and  
7 inhalation.

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

9 "Nicotine delivery product." A product that contains or  
10 consists of nicotine in a form that can be ingested by chewing,  
11 smoking, inhaling or any other means and any product or device  
12 used primarily for the purpose of ingesting nicotine. The term  
13 includes an electronic cigarette. The term does not include any  
14 drug or device regulated under the Federal Food, Drug, and  
15 Cosmetic Act (52 Stat. 1040, 21 U.S.C § 301 et seq.).

16 "Pack of cigarettes." As defined in section 1201 of the act  
17 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
18 1971.

19 "Pipe tobacco." Any product containing tobacco made  
20 primarily for individual consumption that is intended to be  
21 smoked using tobacco paraphernalia.

22 "Retailer." A person licensed under section 203-A or 213-A  
23 of the act of April 9, 1929 (P.L.343, No.176), known as The  
24 Fiscal Code.

25 "Smokeless tobacco." Any product containing finely cut,  
26 ground, powdered, blended or leaf tobacco made primarily for  
27 individual consumption that is intended to be placed in the oral  
28 or nasal cavity and not intended to be smoked. The term  
29 includes, but is not limited to, chewing tobacco, dipping  
30 tobacco and snuff.

1        "Tobacco product." A cigarette, cigar, pipe tobacco or other  
2 smoking tobacco product or smokeless tobacco in any form,  
3 manufactured for the purpose of consumption by a purchaser, and  
4 any cigarette paper or product used for smoking tobacco.

5        ["Tobacco vending] "Vending machine." A mechanical or  
6 electrical device from which one or more tobacco products or  
7 nicotine delivery products are dispensed for a consideration.

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