

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 587 Session of 2015

INTRODUCED BY PASHINSKI, THOMAS, BISHOP, D. COSTA, V. BROWN, DeLUCA, KINSEY, JAMES, CALTAGIRONE, MILLARD, CARROLL, BROWNLEE, MARSHALL, MULLERY, KORTZ, HARHAI, MURT, ROZZI, SCHREIBER, HARKINS, WATERS, STURLA, WATSON, TOOHL, BOBACK, READSHAW, DAVIS, MAHONEY AND GIBBONS, FEBRUARY 23, 2015

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 23, 2015

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 53 (Municipalities
2 Generally) of the Pennsylvania Consolidated Statutes, in
3 minors, further providing for the offense of sale of tobacco
4 by including alternative nicotine products; and making a
5 conforming amendment to Title 53.

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

8 Section 1. Section 6305 heading, (a), (a.1) and (f) of Title
9 18 of the Pennsylvania Consolidated Statutes are amended and
10 subsection (k) is amended by adding definitions to read:

11 § 6305. Sale of tobacco or alternative nicotine products.

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

14 (1) sells a tobacco product or alternative nicotine
15 product to any minor;

16 (2) furnishes, by purchase, gift or other means, a
17 tobacco product or alternative nicotine product to a minor;

18 (4) locates or places a tobacco vending machine

1 containing a tobacco product in a location accessible to
2 minors;

3 (4.1) locates or places a vending machine containing an
4 alternative nicotine product in a location accessible to
5 minors;

6 (5) displays or offers a cigarette for sale out of a
7 pack of cigarettes; [or]

8 (5.1) displays or offers an alternative nicotine product
9 for sale out of its original packaging; or

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

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

23 (1) purchases or attempts to purchase a tobacco product
24 or alternative nicotine product; or

25 (2) knowingly falsely represents himself to be at least
26 18 years of age to a person for the purpose of purchasing or
27 receiving a tobacco product or alternative nicotine product.

28 * * *

29 (f) Exceptions.--

30 (1) The following affirmative defense is available:

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

5 (A) adopted and implemented a written policy
6 against selling tobacco products or alternative
7 nicotine products to minors which includes:

8 (I) a requirement that an employee ask an
9 individual who appears to be 25 years of age or
10 younger for a valid photoidentification as proof
11 of age prior to making a sale of tobacco products
12 or alternative nicotine products;

13 (II) a list of all types of acceptable
14 photoidentification;

15 (III) a list of factors to be examined in
16 the photoidentification, including photo
17 likeness, birth date, expiration date, bumps,
18 tears or other damage and signature;

19 (IV) a requirement that, if the
20 photoidentification is missing any of the items
21 listed in subclause (III), it is not valid and
22 cannot be accepted as proof of age for the sale
23 of tobacco products or alternative nicotine
24 products. A second photoidentification may be
25 required to make the sale of tobacco products or
26 alternative nicotine products, with questions
27 referred to the manager; and

28 (V) a disciplinary policy which includes
29 employee counseling and suspension for failure to
30 require valid photoidentification and dismissal

1 for repeat improper sales.

2 (B) informed all employees selling tobacco
3 products or alternative nicotine products through an
4 established training program of the applicable
5 Federal and State laws regarding the sale of tobacco
6 products or alternative nicotine products to minors;

7 (C) documented employee training indicating that
8 all employees selling tobacco products or alternative
9 nicotine products have been informed of and
10 understand the written policy referred to in clause
11 (A);

12 (D) trained all employees selling tobacco
13 products or alternative nicotine products to verify
14 that the purchaser is at least 18 years of age before
15 selling tobacco products or alternative nicotine
16 products;

17 (E) conspicuously posted a notice that selling
18 tobacco products or alternative nicotine products to
19 a minor is illegal, that the purchase of tobacco
20 products or alternative nicotine products by a minor
21 is illegal and that a violator is subject to
22 penalties; and

23 (F) established and implemented disciplinary
24 sanctions for noncompliance with the policy under
25 clause (A).

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

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

1 (2) No more than one violation of subsection (a) per
2 person arises out of separate incidents which take place in a
3 24-hour period.

4 (3) It is not a violation of subsection (a.1)(1) for a
5 minor to purchase or attempt to purchase a tobacco product or
6 alternative nicotine product if all of the following apply:

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

8 (ii) The minor is an employee, volunteer or an
9 intern with:

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

11 (B) the Department of Health or a primary
12 contractor pursuant to Chapter 7 of the act of June
13 26, 2001 (P.L.755, No.77), known as the Tobacco
14 Settlement Act;

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

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

20 (E) a retailer.

21 (iii) The minor is acting within the scope of
22 assigned duties as part of an authorized investigation,
23 compliance check under subsection (g) or retailer-
24 organized self-compliance check.

25 (iv) A minor shall not use or consume a tobacco
26 product or alternative nicotine product.

27 * * *

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

1 "Alternative nicotine product." An electronic cigarette or
2 any other product that consists of or contains nicotine that can
3 be ingested into the body by chewing, smoking, absorbing,
4 dissolving, inhaling or any other means. The term includes any
5 cartridge or component of an electronic cigarette or such other
6 product. The term does not include:

7 (1) a cigarette or tobacco product; or

8 (2) a product that is a drug, a device or combination
9 product as defined in sections 201 and 503 of the Federal
10 Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §§ 321
11 and 353).

12 * * *

13 "Electronic cigarette." An electronic product or device that
14 produces a vapor that delivers nicotine or other substances to
15 the person inhaling from the device to simulate smoking and is
16 likely to be offered to or purchased by consumers as an
17 electronic cigarette, electronic cigar, electronic cigarillo or
18 electronic pipe. The term does not include:

19 (1) a cigarette or tobacco product; or

20 (2) a product that is a drug, a device or combination
21 product as defined in sections 201 and 503 of the Federal
22 Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §§ 321
23 and 353).

24 * * *

25 "Vending machine." A mechanical or electrical device from
26 which one or more alternative nicotine products are dispensed
27 for a consideration.

28 Section 2. Section 301 heading and (a) of Title 53 are
29 amended to read:

30 § 301. Tobacco and alternative nicotine products.

1 (a) General rule.--Except as set forth in subsection (b),
2 the provisions of 18 Pa.C.S. § 6305 (relating to sale of tobacco
3 or alternative nicotine products) shall preempt and supersede
4 any local ordinance or rule concerning the subject matter of 18
5 Pa.C.S. § 6305 and of section 206-A of the act of April 9, 1929
6 (P.L.343, No.176), known as The Fiscal Code.

7 * * *

8 Section 3. This act shall take effect in 60 days.