

## AMENDMENTS TO SENATE BILL NO. 473

Sponsor: REPRESENTATIVE DiGIROLAMO

Printer's No. 1190

1 Amend Bill, page 1, lines 1 through 5, by striking out all of  
2 said lines and inserting

3 Amending Titles 18 (Crimes and Offenses) and 53 (Municipalities  
4 Generally) of the Pennsylvania Consolidated Statutes, in  
5 minors, further providing for the offense of sale of tobacco  
6 and for the offense of use of tobacco in schools; and, in  
7 preemptions relating to municipalities, further providing for  
8 tobacco.

9 Amend Bill, page 1, lines 8 through 19; pages 2 through 6,  
10 lines 1 through 30; page 7, lines 1 through 18; by striking out  
11 all of said lines on said pages and inserting

12 Section 1. Section 6305 heading, (a)(4), (a.1), (f)(1)(i)(D)  
13 and (k) of Title 18 of the Pennsylvania Consolidated Statutes  
14 are amended to read:

15 § 6305. Sale of tobacco products.

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

18 \* \* \*

19 (4) locates or places a [tobacco] vending machine  
20 containing a tobacco product in a location accessible to  
21 minors;

22 \* \* \*

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

25 (1) purchases or attempts to purchase a tobacco product;  
26 or

27 (2) knowingly falsely represents himself to be at least  
28 [18] 21 years of age to a person for the purpose of  
29 purchasing or receiving a tobacco product.

30 \* \* \*

31 (f) Exceptions.--

32 (1) The following affirmative defense is available:

33 (i) It is an affirmative defense for a retailer to  
34 an offense under subsection (a)(1) and (2) that, prior to  
35 the date of the alleged violation, the retailer has

1 complied with all of the following:

2 \* \* \*

3 (D) trained all employees selling tobacco  
4 products to verify that the purchaser is at least  
5 [18] 21 years of age before selling tobacco products;

6 \* \* \*

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

10 "Cigarette." A roll for smoking made wholly or in part of  
11 tobacco, irrespective of size or shape and whether or not the  
12 tobacco is flavored, adulterated or mixed with any other  
13 ingredient, the wrapper or cover of which is made of paper or  
14 other substance or material except tobacco. The term does not  
15 include a cigar.

16 "Cigarette license." A license issued under section 203-A or  
17 213-A of the act of April 9, 1929 (P.L.343, No.176), known as  
18 The Fiscal Code.

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

20 "Electronic cigarette." An electronic device that delivers  
21 nicotine or other substances through vaporization and  
22 inhalation.

23 "Electronic nicotine delivery system" or "ENDS." A product  
24 or device used, intended for use or designed for the purpose of  
25 ingesting a nicotine product. The term includes an electronic  
26 cigarette.

27 "Minor." An individual under [18] 21 years of age.

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

31 "Pack of cigarettes." As defined in section 1201 of the act  
32 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
33 1971.

34 "Pipe tobacco." Any product containing tobacco made  
35 primarily for individual consumption that is intended to be  
36 smoked using tobacco paraphernalia.

37 "Retailer." A person licensed under section 203-A or 213-A  
38 of the act of April 9, 1929 (P.L.343, No.176), known as The  
39 Fiscal Code, or other lawful retailer of other tobacco products.

40 "Smokeless tobacco." Any product containing finely cut,  
41 ground, powdered, blended or leaf tobacco made primarily for  
42 individual consumption that is intended to be placed in the oral  
43 or nasal cavity and not intended to be smoked. The term  
44 includes, but is not limited to, chewing tobacco, dipping  
45 tobacco and snuff.

46 "Tobacco product." [A cigarette, cigar, pipe tobacco or  
47 other smoking tobacco product or smokeless tobacco in any form,  
48 manufactured for the purpose of consumption by a purchaser, and  
49 any cigarette paper or product used for smoking tobacco.] As  
50 follows:

51 (1) The term includes:

1       (i) Any product containing, made or derived from  
2 tobacco or nicotine that is intended for human  
3 consumption, whether smoked, heated, chewed, absorbed,  
4 dissolved, inhaled, snorted, sniffed or ingested by any  
5 other means, including, but not limited to, a cigarette,  
6 a cigar, a little cigar, chewing tobacco, pipe tobacco,  
7 snuff and snus.

8       (ii) Any electronic device that delivers nicotine or  
9 another substance to a person inhaling from the device,  
10 including, but not limited to, electronic nicotine  
11 delivery systems, an electronic cigarette, a cigar, a  
12 pipe and a hookah.

13       (iii) Any product containing, made or derived from  
14 either:

15           (A) tobacco, whether in its natural or synthetic  
16 form; or

17           (B) nicotine, whether in its natural or  
18 synthetic form, which is regulated by the United  
19 States Food and Drug Administration as a deemed  
20 tobacco product.

21       (iv) Any component, part or accessory of the product  
22 or electronic device under subparagraphs (i), (ii) and  
23 (iii), whether or not sold separately.

24       (2) The term does not include:

25           (i) A product that has been approved by the United  
26 States Food and Drug Administration for sale as a tobacco  
27 cessation product or for other therapeutic purposes where  
28 the product is marketed and sold solely for such approved  
29 purpose, so long as the product is not inhaled.

30           (ii) A device under paragraph (1)(ii) or (iii) if  
31 sold by a dispensary licensed under the act of April 17,  
32 2016 (P.L.84, No.16), known as the Medical Marijuana Act.

33       "Tobacco vending machine." A mechanical or electrical device  
34 from which one or more tobacco products are dispensed for a  
35 consideration.

36       Section 2. Section 6306.1 heading, (a) and (d) of Title 18  
37 are amended and the section is amended by adding subsections to  
38 read:

39       § 6306.1. Use of tobacco products in schools prohibited.

40       (a) [Offense defined] Pupils.--A pupil [who] commits a  
41 summary offense if the pupil possesses or uses [tobacco] a  
42 tobacco product:

43           (1) in a school building[,];

44           (2) on a school bus or other vehicle owned by, leased by  
45 or under the control of a school district; or

46           (3) on school property owned by, leased by or under the  
47 control of a school district [commits a summary offense].

48       (a.1) Other persons.--

49           (1) Any person, other than a pupil, commits a summary  
50 offense if the person uses a tobacco product:

51           (i) in a school building;

1           (ii) on a school bus or other vehicle owned by,  
2           leased by or under the control of a school district; or  
3           (iii) on school property owned by, leased by or  
4           under the control of a school district.

5           (2) The board of school directors may designate certain  
6           areas on property owned by, leased by or under the control of  
7           the school district where tobacco product use by persons  
8           other than pupils is permitted. The areas must be no less  
9           than 50 feet from school buildings, stadiums or bleachers.

10          (a.2) Policy.--

11           (1) The board of school directors shall establish a  
12           policy to enforce the prohibition of tobacco product use  
13           under this section and may further establish policy relating  
14           to tobacco product use at school-sponsored events that are  
15           held off school premises.

16           (2) The board of school directors shall notify  
17           employees, pupils and parents of the policy developed in  
18           accordance with paragraph (1) by publishing the information  
19           in a student handbook and parent newsletter and on posters or  
20           other efficient means.

21          \* \* \*

22          (c.1) Preemption.--This section preempts any municipal  
23          ordinance or school board regulation to the contrary.

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

27          "Electronic cigarette." An electronic device that delivers  
28          nicotine or other substances through vaporization and  
29          inhalation.

30          "Electronic nicotine delivery system" or "ENDS." A product  
31          or device used, intended for use or designed for the purpose of  
32          ingesting a nicotine product. The term includes an electronic  
33          cigarette.

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

37          "Pupil." A person between the ages of 6 and 21 years who is  
38          enrolled in school.

39          "School." A school operated by a joint board, board of  
40          directors or school board where pupils are enrolled in  
41          compliance with Article XIII of the act of March 10, 1949  
42          (P.L.30, No.14), known as the Public School Code of 1949,  
43          including [area vocational schools and intermediate units] a  
44          career and technical school, charter school and intermediate  
45          unit.

46          "Tobacco product." [A lighted or unlighted cigarette, cigar,  
47          pipe or other lighted smoking product and smokeless tobacco in  
48          any form.] As follows:

49           (1) The term includes:

50           (i) Any product containing, made or derived from  
51           tobacco or nicotine that is intended for human

1 consumption, whether smoked, heated, chewed, absorbed,  
2 dissolved, inhaled, snorted, sniffed or ingested by any  
3 other means, including, but not limited to, a cigarette,  
4 a cigar, a little cigar, chewing tobacco, pipe tobacco,  
5 snuff and snus.

6 (ii) Any electronic device that delivers nicotine or  
7 another substance to a person inhaling from the device,  
8 including, but not limited to, electronic nicotine  
9 delivery systems, an electronic cigarette, a cigar, a  
10 pipe and a hookah.

11 (iii) Any product containing, made or derived from  
12 either:

13 (A) tobacco, whether in its natural or synthetic  
14 form; or

15 (B) nicotine, whether in its natural or  
16 synthetic form, which is regulated by the United  
17 States Food and Drug Administration as a deemed  
18 tobacco product.

19 (iv) Any component, part or accessory of the product  
20 or electronic device under subparagraphs (i), (ii) and  
21 (iii), whether or not sold separately.

22 (2) The term does not include:

23 (i) A product that has been approved by the United  
24 States Food and Drug Administration for sale as a tobacco  
25 cessation product or for other therapeutic purposes where  
26 the product is marketed and sold solely for such approved  
27 purpose, so long as the product is not inhaled.

28 (ii) A device under paragraph (1)(ii) or (iii) if  
29 sold by a dispensary licensed under the act of April 17,  
30 2016 (P.L.84, No.16), known as the Medical Marijuana Act.

31 Section 3. Section 301 of Title 53 is amended to read:

32 § 301. Tobacco product.

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

39 (b) Exception.--This section does not prohibit:

40 (1) Local regulation authorized by the act of April 27,  
41 1927 (P.L.465, No.299), referred to as the Fire and Panic  
42 Act.

43 (2) Local regulation enacted prior to January 1, 2002.

44 Section 4. Repeals are as follows:

45 (1) The General Assembly declares that the repeal under  
46 paragraph (2) is necessary to effectuate the amendment or  
47 addition of 18 Pa.C.S. § 6306.1(a), (a.1), (a.2) and (c.1).

48 (2) Section 3.5 of the act of April 27, 1927 (P.L.465,  
49 No.299), referred to as the Fire and Panic Act, is repealed.

50 Section 5. This act shall take effect July 1, 2020, or  
51 immediately, whichever is later.