

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 97

PRINTER NO. 2890

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

January 28, 2019

PRIME SPONSOR

Representative Rapp

DESCRIPTION

House Bill 97 amends Titles 18 (Crimes and Offenses) and 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, in minors, further providing for the offense of sale of tobacco and for the offense of use of tobacco in schools.

This legislation amends Section 6305 (relating to sale of tobacco products) and Section 6306.1 (relating to use of tobacco products in schools prohibited) to include nicotine products and electronic devices that deliver nicotine or another substance to a person inhaling from the device, including, but not limited to, electronic nicotine delivery systems, an electronic cigarette, a cigar, a pipe and a hookah.

§ 6305 provides that a person is guilty of a summary offense if the person sells, offers for sale, furnishes or purchases a tobacco product for a minor or locates a vending machine containing a tobacco product in a location accessible to minor.

§ 6306.1 provides that a pupil is guilty of a summary offense if the pupil possesses or uses a tobacco product:

- 1) In a school building;
- 2) On a school bus or other vehicle owned or leased by the school district;
- 3) On school property owned by, leased by or under the control of a school district.

Any person, other than a pupil, commits a summary offense if the person uses a tobacco product:

- 1) In a school building;
- 2) On a school bus or other vehicle owned or leased by the school district;
- 3) On school property owned by, leased by or under the control of a school district.

The board of school directors may designate certain areas on the property where tobacco product use by persons other than pupils is permitted. The areas must be no less than 50 feet from school buildings, stadiums or bleachers.

“Electronic nicotine delivery systems (ENDS)” is defined as a product or device used, intended for use or designed for the purpose of ingesting a nicotine product. The term includes an electronic cigarette.

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“Electronic cigarette” is defined as an electronic device that delivers nicotine or other substances through vaporization and inhalation.

“Nicotine product” is defined as a product that contains or consists of nicotine in a form that can be ingested by chewing, smoking, inhaling or any other means.

“Pupil” is currently defined in Title 18 as a person between the ages of 6 and 21 years who is enrolled in school.

“School” is defined to include, but not limited to, career and technical schools, charter schools and intermediate units.

“Tobacco product” is defined to include, but not limited to electronic cigarettes and nicotine products. The term does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such approved purpose, so long as the product is not inhaled. Additionally, the term does not include a device sold by a dispensary licensed under the Medical Marijuana Act (P.L.84, No. 16).

This act shall take effect in 60 days.

FISCAL IMPACT:

According to the Administrative Office of Pennsylvania Courts (AOPC), there were 156 offenses of 18 Pa. C.S. § 6305 and 2,600 offenses of 18 Pa. C.S. § 6306.1 in 2018. Many of these cases are disposed of through ARD or dismissed by ordering the defendant to perform community service.

The federal Family Smoking Prevention and Tobacco Control Act (Pub.L. 111-31) puts in place specific restrictions on marketing tobacco products to children and gives the U.S. Food and Drug Administration (FDA) authority to take further action in the future to protect public health. These provisions ban the following:

- sales to minors;
- vending machine sales, except in adult-only facilities;
- the sale of packages of fewer than 20 cigarettes;
- tobacco-brand sponsorships of sports and entertainment events or other social or cultural events; and
- free giveaways of sample cigarettes and brand-name non-tobacco promotional items.

In 2016, the FDA officially adopted regulations that prohibit the sale of electronic cigarettes, hookah tobacco and other vaping related products to minors.

Additionally, many school districts in the Commonwealth have adopted policies regulating and/or banning the use of tobacco, electronic cigarettes and other vaping related devices. Therefore, enactment of this legislation will have no fiscal impact on Commonwealth funds.