

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
18 a location accessible to minors;

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

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

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

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

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

21 * * *

22 (f) Exceptions.--

23 (1) The following affirmative defense is available:

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

28 (A) adopted and implemented a written policy
29 against selling tobacco products or nicotine delivery
30 products to minors which includes:

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

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

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

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

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

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

30 (C) documented employee training indicating that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (E) a retailer.

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

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

20 * * *

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

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

30 "Cigarette license." A license issued under section 203-A or

1 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
2 The Fiscal Code.

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

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

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

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

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

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

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

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

30 "Tobacco product." A cigarette, cigar, pipe tobacco or other

1 smoking tobacco product or smokeless tobacco in any form,
2 manufactured for the purpose of consumption by a purchaser, and
3 any cigarette paper or product used for smoking tobacco.

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

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