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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 904 Session of  
2015

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INTRODUCED BY McGARRIGLE, TEPLITZ, HAYWOOD, AUMENT, FONTANA,  
SCHWANK, WILEY, VULAKOVICH, FOLMER, BREWSTER, DINNIMAN,  
RAFFERTY, MENSCH, COSTA, TARTAGLIONE, WARD, WILLIAMS AND  
ALLOWAY, JUNE 18, 2015

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REFERRED TO JUDICIARY, JUNE 18, 2015

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AN ACT

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

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

6 Section 1. Sections 6305 heading, (a), (a.1), (f) and (k)  
7 and 6306.1 heading, (a) and (d) of Title 18 of the Pennsylvania  
8 Consolidated Statutes are amended to read:

9 § 6305. Sale of tobacco, alternative nicotine products and  
10 vapor products.

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

13 (1) sells a tobacco product, alternative nicotine  
14 product or vapor product to any minor;

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

1 (4) locates or places a tobacco vending machine  
2 containing a tobacco product, alternative nicotine product or  
3 vapor product in a location accessible to minors;

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

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

17  
18 (a.1) Purchase.--A minor is guilty of a summary offense if  
19 the minor:

20 (1) purchases or attempts to purchase a tobacco product, alternative nicotine product or vapor product; or  
21 alternative nicotine product or vapor product;

22 (2) knowingly falsely represents himself to be at least  
23 18 years of age to a person for the purpose of purchasing or  
24 receiving a tobacco product, alternative nicotine product or  
25 vapor product.

26 \* \* \*

27 (f) Exceptions.--

28 (1) The following affirmative defense is available:

29 (i) It is an affirmative defense for a retailer to  
30 an offense under subsection (a) (1) and (2) that, prior to

1 the date of the alleged violation, the retailer has  
2 complied with all of the following:

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

7 (I) a requirement that an employee ask an  
8 individual who appears to be 25 years of age or  
9 younger for a valid photoidentification as proof  
10 of age prior to making a sale of tobacco  
11 products, alternative nicotine products or vapor  
12 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, alternative nicotine  
24 products or vapor products. A second  
25 photoidentification may be required to make the  
26 sale of tobacco products, alternative nicotine  
27 products or vapor products, with questions  
28 referred to the manager; and

29 (V) a disciplinary policy which includes  
30 employee counseling and suspension for failure to

1           require valid photoidentification and dismissal  
2           for repeat improper sales.

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

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

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

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

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

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

30          (iii) An affirmative defense under this paragraph

1           may be used by a retailer no more than three times at  
2           each retail location during any 24-month period.

3           (2) No more than one violation of subsection (a) per  
4           person arises out of separate incidents which take place in a  
5           24-hour period.

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

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

11           (ii) The minor is an employee, volunteer or an  
12           intern with:

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

14                   (B) the Department of Health or a primary  
15           contractor pursuant to Chapter 7 of the act of June  
16           26, 2001 (P.L.755, No.77), known as the Tobacco  
17           Settlement Act;

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

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

23                   (E) a retailer.

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

28           (iv) A minor shall not use or consume a tobacco  
29           product, alternative nicotine product or vapor product.

30           \* \* \*

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

4 "Alternative nicotine product." Any noncombustible product  
5 containing nicotine that is intended for human consumption,  
6 whether chewed, absorbed, dissolved or ingested by any other  
7 means. The term does not include any tobacco product, vapor  
8 product or any product regulated as a drug or device by the  
9 United States Food and Drug Administration under Chapter V of  
10 the Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301  
11 et seq.).

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

18 "Cigarette license." A license issued under section 203-A or  
19 213-A of the act of April 9, 1929 (P.L.343, No.176), known as  
20 The Fiscal Code.

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

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

23 "Pack of cigarettes." As defined in section 1201 of the act  
24 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
25 1971.

26 "Pipe tobacco." Any product containing tobacco made  
27 primarily for individual consumption that is intended to be  
28 smoked using tobacco paraphernalia.

29 "Retailer." A person licensed to sell cigarettes under  
30 section 203-A or 213-A of the act of April 9, 1929 (P.L.343,

1 No.176), known as The Fiscal Code, or a lawful retailer of other  
2 tobacco products, alternative nicotine products or vapor  
3 products.

4 "Smokeless tobacco." Any product containing finely cut,  
5 ground, powdered, blended or leaf tobacco made primarily for  
6 individual consumption that is intended to be placed in the oral  
7 or nasal cavity and not intended to be smoked. The term  
8 includes, but is not limited to, chewing tobacco, dipping  
9 tobacco and snuff.

10 "Tobacco product." A cigarette, cigar, pipe tobacco or other  
11 smoking tobacco product or smokeless tobacco in any form,  
12 manufactured for the purpose of consumption by a purchaser, and  
13 any cigarette paper or product used for smoking tobacco. The  
14 term does not include any alternative nicotine product, vapor  
15 product or product regulated as a drug or device by the United  
16 States Food and Drug Administration under Chapter V of the Food,  
17 Drug, and Cosmetic Act.

18 "Tobacco vending machine." A mechanical or electrical device  
19 from which one or more tobacco products, alternative nicotine  
20 products or vapor products are dispensed for a consideration.

21 "Vapor product." Any noncombustible product containing  
22 nicotine that employs a heating element, power source,  
23 electronic circuit or other electronic, chemical or mechanical  
24 means, regardless of shape or size, that can be used to produce  
25 vapor from nicotine in a solution or other form. The term  
26 includes any electronic cigarette, electronic cigar, electronic  
27 cigarillo, electronic pipe or similar product or device and any  
28 vapor cartridge or other container of nicotine in a solution or  
29 other form that is intended to be used with or in an electronic  
30 cigarette, electronic cigar, electronic cigarillo, electronic

1 pipe or similar product or device. The term does not include any  
2 product regulated as a drug or device by the United States Food  
3 and Drug Administration under Chapter V of the Food, Drug, and  
4 Cosmetic Act.

5 § 6306.1. Use of tobacco, alternative nicotine products and  
6 vapor products in schools prohibited.

7 (a) Offense defined.--A pupil who possesses or uses tobacco,  
8 alternative nicotine products or vapor products in a school  
9 building, a school bus or on school property owned by, leased by  
10 or under the control of a school district commits a summary  
11 offense.

12 \* \* \*

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

16 "Alternative nicotine product." Any noncombustible product  
17 containing nicotine that is intended for human consumption,  
18 whether chewed, absorbed, dissolved or ingested by any other  
19 means. The term does not include any tobacco product, vapor  
20 product or any product regulated as a drug or device by the  
21 United States Food and Drug Administration under Chapter V of  
22 the Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301  
23 et seq.).

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

26 "School." A school operated by a joint board, board of  
27 directors or school board where pupils are enrolled in  
28 compliance with Article XIII of the act of March 10, 1949  
29 (P.L.30, No.14), known as the Public School Code of 1949,  
30 including area vocational schools and intermediate units.

1 "Tobacco." A lighted or unlighted cigarette, cigar, pipe or  
2 other lighted smoking product and smokeless tobacco in any form.  
3 The term does not include any alternative nicotine product,  
4 vapor product or product regulated as a drug or device by the  
5 United States Food and Drug Administration under Chapter V of  
6 the Food, Drug, and Cosmetic Act.

7 "Vapor product." Any noncombustible product containing  
8 nicotine that employs a heating element, power source,  
9 electronic circuit or other electronic, chemical or mechanical  
10 means, regardless of shape or size, that can be used to produce  
11 vapor from nicotine in a solution or other form. The term  
12 includes any electronic cigarette, electronic cigar, electronic  
13 cigarillo, electronic pipe or similar product or device and any  
14 vapor cartridge or other container of nicotine in a solution or  
15 other form that is intended to be used with or in an electronic  
16 cigarette, electronic cigar, electronic cigarillo, electronic  
17 pipe or similar product or device. The term does not include any  
18 product regulated as a drug or device by the United States Food  
19 and Drug Administration under Chapter V of the Food, Drug, and  
20 Cosmetic Act.

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