
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2226 Session of
2018

INTRODUCED BY RAPP, REESE, HAGGERTY, PICKETT, FEE, TOEPEL,
MILLARD, B. MILLER, J. McNEILL, STAATS, WATSON, MURT,
STEPHENS, DRISCOLL, ENGLISH, BRADFORD, WARD, WHEELAND, COX
AND M. QUINN, APRIL 9, 2018

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 9, 2018

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 and for the offense of use of
4 tobacco in schools.

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

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

10 § 6305. Sale of tobacco, nicotine products and nicotine
11 delivery products to minors.

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, nicotine product or
15 nicotine delivery product to any minor;

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

1 (4) locates or places a [tobacco] vending machine
2 containing a tobacco product, nicotine product or nicotine
3 delivery 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, nicotine
7 products or nicotine delivery products in any manner
8 which enables an individual other than the retailer or an
9 employee of the retailer to physically handle tobacco
10 products, nicotine products or nicotine delivery products
11 prior to purchase unless the tobacco products, nicotine
12 products or nicotine delivery products are located within the
13 line of sight or under the control of a cashier or other
14 employee during business hours, except that this paragraph
15 shall not apply to retail stores which derive 75% or more of
16 sales revenues from tobacco products, nicotine products or
17 nicotine delivery products.

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, nicotine
21 product or nicotine delivery product; or

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, nicotine product or nicotine
25 delivery 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, nicotine products
5 or nicotine delivery 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, nicotine products or nicotine delivery
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, nicotine products or
24 nicotine delivery products. A second
25 photoidentification may be required to make the
26 sale of tobacco products, nicotine products or
27 nicotine delivery 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, nicotine products and nicotine delivery
5 products through an established training program of
6 the applicable Federal and State laws regarding the
7 sale of tobacco products, nicotine products and
8 nicotine delivery products to minors;

9 (C) documented employee training indicating that
10 all employees selling tobacco products, nicotine
11 products and nicotine delivery 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, nicotine products and nicotine delivery
16 products to verify that the purchaser is at least 18
17 years of age before selling tobacco products, nicotine products and nicotine delivery products;

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

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

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

29 (iii) An affirmative defense under this paragraph
30

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 nicotine product or nicotine delivery 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, nicotine product or nicotine delivery 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 "Cigarette." A roll for smoking made wholly or in part of
5 tobacco, irrespective of size or shape and whether or not the
6 tobacco is flavored, adulterated or mixed with any other
7 ingredient, the wrapper or cover of which is made of paper or
8 other substance or material except tobacco. The term does not
9 include a cigar.

10 "Cigarette license." A license issued under section 203-A or
11 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
12 The Fiscal Code.

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

14 "Electronic cigarette." An electronic device that delivers
15 nicotine or other substances through vaporization and
16 inhalation.

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

18 "Nicotine delivery product." A product or device used,
19 intended for use or designed for the purpose of ingesting a
20 nicotine product. The term includes an electronic cigarette.

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

24 "Pack of cigarettes." As defined in section 1201 of the act
25 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
26 1971.

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

30 "Retailer." A person licensed under section 203-A or 213-A

1 of the act of April 9, 1929 (P.L.343, No.176), known as The
2 Fiscal Code, or other lawful dealer in tobacco products,
3 nicotine products and nicotine delivery 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.

14 ["Tobacco vending] "Vending machine." A mechanical or
15 electrical device from which one or more tobacco products,
16 nicotine products or nicotine delivery products are dispensed
17 for a consideration.

18 § 6306.1. Use of tobacco, nicotine products or nicotine
19 delivery products in schools prohibited.

20 (a) Offense defined.--A pupil who possesses or uses tobacco,
21 nicotine products or nicotine delivery products in a school
22 building, a school bus or on school property owned by, leased by
23 or under the control of a school district commits a summary
24 offense.

25 * * *

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

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

1 inhalation.

2 "Nicotine delivery product." A product or device used,
3 intended for use or designed for the purpose of ingesting a
4 nicotine product. The term includes an electronic cigarette.

5 "Nicotine product." A product that contains or consists of
6 nicotine in a form that can be ingested by chewing, smoking,
7 inhaling or any other means. The term shall not include, with
8 respect to possession or use by a student who is 18 years of age
9 or older, any smoking cessation product specifically approved by
10 the United States Food and Drug Administration for use in
11 reducing, treating or eliminating nicotine or tobacco
12 dependence.

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

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

20 "Tobacco." A lighted or unlighted cigarette, cigar,
21 cigarillo, little cigar, pipe or other lighted smoking product
22 and smokeless tobacco in any form, including chewing tobacco,
23 snuff, dip or dissolvable tobacco pieces.

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