

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, M. QUINN, MILNE, D. MILLER, BOBACK, SCHLOSSBERG AND BRIGGS, APRIL 9, 2018

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 5, 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 HEADING, (a), (a.1), (f) and (k) <--
8 and 6306.1 HEADING, (a) and (d) of Title 18 of the Pennsylvania <--
9 Consolidated 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

1 product to a minor;

2 (4) locates or places a [tobacco] vending machine
3 containing a tobacco product, nicotine product or nicotine
4 delivery product in a location accessible to minors;

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

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

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

21 (1) purchases or attempts to purchase a tobacco product, nicotine
22 product or nicotine delivery product; or

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

27 * * *

28 (f) Exceptions.--

29 (1) The following affirmative defense is available:

30 (i) It is an affirmative defense for a retailer to

1 an offense under subsection (a) (1) and (2) that, prior to
2 the date of the alleged violation, the retailer has
3 complied with all of the following:

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

8 (I) a requirement that an employee ask an
9 individual who appears to be 25 years of age or
10 younger for a valid photoidentification as proof
11 of age prior to making a sale of tobacco
12 products, nicotine products or nicotine delivery
13 products;

14 (II) a list of all types of acceptable
15 photoidentification;

16 (III) a list of factors to be examined in
17 the photoidentification, including photo
18 likeness, birth date, expiration date, bumps,
19 tears or other damage and signature;

20 (IV) a requirement that, if the
21 photoidentification is missing any of the items
22 listed in subclause (III), it is not valid and
23 cannot be accepted as proof of age for the sale
24 of tobacco products, nicotine products or
25 nicotine delivery products. A second
26 photoidentification may be required to make the
27 sale of tobacco products, nicotine products or
28 nicotine delivery products, with questions
29 referred to the manager; and

30 (V) a disciplinary policy which includes

1 employee counseling and suspension for failure to
2 require valid photoidentification and dismissal
3 for repeat improper sales.

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

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

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

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

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

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

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

4 (2) No more than one violation of subsection (a) per
5 person arises out of separate incidents which take place in a
6 24-hour period.

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

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

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

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

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

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

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

24 (E) a retailer.

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

29 (iv) A minor shall not use or consume a tobacco
30 product, nicotine product or nicotine delivery product.

1 * * *

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

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

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

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

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

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

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

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

25 "Pack of cigarettes." As defined in section 1201 of the act
26 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
27 1971.

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

1 "Retailer." A person licensed under section 203-A or 213-A
2 of the act of April 9, 1929 (P.L.343, No.176), known as The
3 Fiscal Code, or other lawful dealer in tobacco products,
4 nicotine products and nicotine delivery products.

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

11 "Tobacco product." A cigarette, cigar, pipe tobacco or other
12 smoking tobacco product or smokeless tobacco in any form,
13 manufactured for the purpose of consumption by a purchaser, and
14 any cigarette paper or product used for smoking tobacco.

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

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

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

26 * * *

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

30 "Electronic cigarette." An electronic device that delivers

1 nicotine or other substances through vaporization and
2 inhalation.

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

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

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

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

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

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