

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 97 Session of 2019

INTRODUCED BY RAPP, REESE, KAUFFMAN, LAWRENCE, MIZGORSKI, TOEPEL, PICKETT, NEILSON, HILL-EVANS, MULLERY, STEPHENS, MILLARD, FREEMAN, WARREN, CIRESI, STAATS, DeLUCA, HAHN AND HERSHEY, JANUARY 28, 2019

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 28, 2019

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 electronic  
 11 nicotine delivery systems 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 ENDS to  
 15 any minor;

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

18 (4) locates or places a [tobacco] vending machine

1 containing a tobacco product, nicotine product or ENDS in a  
2 location accessible to minors;

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

5 (6) displays or offers for sale tobacco products, nicotine products or ENDS in any manner which enables an  
6 individual other than the retailer or an employee of the  
7 retailer to physically handle tobacco products, nicotine products or ENDS prior to purchase unless the tobacco  
8 products, nicotine products or ENDS 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, nicotine products or ENDS.  
13  
14  
15

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

18 (1) purchases or attempts to purchase a tobacco product, nicotine product or ENDS; or  
19

20 (2) knowingly falsely represents himself to be at least  
21 18 years of age to a person for the purpose of purchasing or  
22 receiving a tobacco product, nicotine product or ENDS.

23 \* \* \*

24 (f) Exceptions.--

25 (1) The following affirmative defense is available:

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

30 (A) adopted and implemented a written policy

1 against selling tobacco products, nicotine products  
2 or ENDS to minors which includes:

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

8 (II) a list of all types of acceptable  
9 photoidentification;

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

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

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

27 (B) informed all employees selling tobacco  
28 products, nicotine products and ENDS through an  
29 established training program of the applicable  
30 Federal and State laws regarding the sale of tobacco

1 products, nicotine products and ENDS to minors;

2 (C) documented employee training indicating that  
3 all employees selling tobacco products, nicotine  
4 products and ENDS have been informed of and  
5 understand the written policy referred to in clause  
6 (A);

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

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

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

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

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

25 (2) No more than one violation of subsection (a) per  
26 person arises out of separate incidents which take place in a  
27 24-hour period.

28 (3) It is not a violation of subsection (a.1)(1) for a  
29 minor to purchase or attempt to purchase a tobacco product, nicotine product or ENDS if all of the following apply:  
30

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

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

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

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

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

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

14 (E) a retailer.

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

19 (iv) A minor shall not use or consume a tobacco  
20 product, nicotine product or ENDS.

21 \* \* \*

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

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

1 "Cigarette license." A license issued under section 203-A or  
2 213-A of the act of April 9, 1929 (P.L.343, No.176), known as  
3 The Fiscal Code.

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

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

8 "Electronic nicotine delivery system" or "ENDS." A product  
9 or device used, intended for use or designed for the purpose of  
10 ingesting a nicotine product. The term includes an electronic  
11 cigarette.

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

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

16 "Pack of cigarettes." As defined in section 1201 of the act  
17 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
18 1971.

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

22 "Retailer." A person licensed under section 203-A or 213-A  
23 of the act of April 9, 1929 (P.L.343, No.176), known as The  
24 Fiscal Code, or other lawful dealer in tobacco products,  
25 nicotine products, nicotine delivery products and electronic  
26 nicotine delivery systems.

27 "Smokeless tobacco." Any product containing finely cut,  
28 ground, powdered, blended or leaf tobacco made primarily for  
29 individual consumption that is intended to be placed in the oral  
30 or nasal cavity and not intended to be smoked. The term

1 includes, but is not limited to, chewing tobacco, dipping  
2 tobacco and snuff.

3 "Tobacco product." A cigarette, cigar, pipe tobacco or other  
4 smoking tobacco product or smokeless tobacco in any form,  
5 manufactured for the purpose of consumption by a purchaser, and  
6 any cigarette paper or product used for smoking tobacco.

7 ["Tobacco vending"] "Vending machine." A mechanical or  
8 electrical device from which one or more tobacco products,  
9 nicotine products or ENDS are dispensed for a consideration.

10 § 6306.1. Use of tobacco, nicotine products or ENDS in schools  
11 prohibited.

12 (a) Offense defined.--A pupil who possesses or uses tobacco,  
13 nicotine products or ENDS in a school building, a school bus or  
14 on school property owned by, leased by or under the control of a  
15 school district commits a summary offense.

16 \* \* \*

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

20 "Electronic cigarette." An electronic device that delivers  
21 nicotine or other substances through vaporization and  
22 inhalation.

23 "Electronic nicotine delivery system" or "ENDS." A product  
24 or device used, intended for use or designed for the purpose of  
25 ingesting a nicotine product. The term includes an electronic  
26 cigarette.

27 "Nicotine product." A product that contains or consists of  
28 nicotine in a form that can be ingested by chewing, smoking,  
29 inhaling or any other means. The term shall not include, with  
30 respect to possession or use by a student who is 18 years of age

1 or older, any smoking cessation product specifically approved by  
2 the United States Food and Drug Administration for use in  
3 reducing, treating or eliminating nicotine or tobacco  
4 dependence.

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

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

13 "Tobacco." A lighted or unlighted cigarette, cigar,  
14 cigarillo, little cigar, pipe or other lighted smoking product  
15 and smokeless tobacco in any form, including chewing tobacco,  
16 snuff, dip or dissolvable tobacco pieces.

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