
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 697 Session of
2019

INTRODUCED BY McCARTER, ISAACSON, MILLARD, McNEILL, NEILSON,
HILL-EVANS, MULLERY, FRANKEL, MIZGORSKI, DeLUCA AND SIMS,
MARCH 5, 2019

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 5, 2019

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in minors, providing for the offense
3 of sale of nicotine products and nicotine delivery products
4 to persons under 21 years of age.

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

7 Section 1. Title 18 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 6305.1. Sale of nicotine products and nicotine delivery
10 products to persons under 21 years of age.

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 nicotine product or nicotine delivery
14 product to anyone under 21 year of age;

15 (2) furnishes, by purchase, gift or other means, a
16 nicotine product or nicotine delivery product to a person
17 under 21 years of age;

18 (3) locates or places a vending machine containing a

1 nicotine product or nicotine delivery product in a location
2 accessible to persons under 21 years of age; or

3 (4) displays or offers for sale nicotine 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 nicotine products or nicotine
7 delivery products prior to purchase unless the nicotine
8 products and nicotine delivery products are located within
9 the 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 nicotine products and nicotine delivery
13 products.

14 (b) Purchase.--A person under 21 years of age is guilty of a
15 summary offense if the person:

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

18 (2) knowingly falsely represents himself to be at least
19 21 years of age to a person for the purpose of purchasing or
20 receiving a nicotine product or nicotine delivery product.

21 (c) Penalty.--

22 (1) Except as set forth in paragraph (2), a person that
23 violates subsection (a) shall be sentenced as follows:

24 (i) for a first offense, to pay a fine of not less
25 than \$100 nor more than \$250;

26 (ii) for a second offense, to pay a fine of not less
27 than \$250 nor more than \$500; or

28 (iii) for a third or subsequent offense, to pay a
29 fine of not less than \$500 nor more than \$1,000.

30 (2) A retailer that violates subsection (a) shall be

1 sentenced as follows:

2 (i) for a first offense, to pay a fine of not less
3 than \$100 nor more than \$500;

4 (ii) for a second offense, to pay a fine of not less
5 than \$500 nor more than \$1,000;

6 (iii) for a third offense, to pay a fine of not less
7 than \$1,000 nor more than \$3,000; or

8 (iv) for a fourth or subsequent offense, to pay a
9 fine of not less than \$3,000 nor more than \$5,000.

10 (3) A person under 21 years of age who violates
11 subsection (b) shall be sentenced to any or all of the
12 following:

13 (i) not more than 75 hours of community service;

14 (ii) a fine not to exceed \$200; or

15 (iii) a 30-day suspension of motor vehicle operating
16 privileges.

17 (d) Notification.--

18 (1) Upon issuing or filing a citation charging a minor
19 with a violation of subsection (b), the affiant shall notify
20 the parent or guardian of the minor charged.

21 (2) Upon imposing a sentence under subsection (c)(1) or
22 (2), a court shall notify the department of the violation
23 committed by the person if the person is a retailer or an
24 employee of a retailer and the person committed the violation
25 in the course of the person's employment.

26 (e) Nature of offense.--

27 (1) An offense under subsection (b) shall not be a
28 criminal offense of record, shall not be reportable as a
29 criminal act and shall not be placed on the criminal record
30 of the offender. The failure of a minor to comply with a

1 sentence under subsection (c)(3) shall not constitute a
2 delinquent act under 42 Pa.C.S. Ch. 63 (relating to juvenile
3 matters).

4 (2) A record of participation in an adjudication
5 alternative program under subsection (f) shall be maintained
6 for purposes of determining subsequent eligibility for such a
7 program.

8 (3) Except as provided in subsection (g)(1), a retailer
9 is liable for the acts of its agents as permitted by section
10 307 (relating to liability of organizations and certain
11 related persons).

12 (f) Preadjudication disposition.--If a person is charged
13 with violating this section, the court may admit the offender to
14 the adjudication alternative program as authorized in 42 Pa.C.S.
15 § 1520 (relating to adjudication alternative program) or any
16 other preadjudication disposition if the offender has not
17 previously received a preadjudication disposition for violating
18 this section. Accelerated Rehabilitative Disposition or any
19 other preadjudication alternative for a violation of subsection
20 (a) shall be considered an offense for the purposes of imposing
21 criminal penalties under subsection (c)(1) and (2).

22 (g) 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 nicotine products and nicotine
30 delivery products to persons under 21 years of age,

1 which includes:

2 (I) A requirement that an employee ask an
3 individual who appears to be 25 years of age or
4 younger for a valid photo identification as proof
5 of age prior to making a sale of nicotine
6 products or nicotine delivery products.

7 (II) A list of all types of acceptable photo
8 identification.

9 (III) A list of factors to be examined in
10 the photo identification, including photo
11 likeness, birth date, expiration date, bumps,
12 tears or other damage and signature.

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

22 (V) A disciplinary policy, which includes
23 employee counseling and suspension for failure to
24 require valid photo identification and dismissal
25 for repeat improper sales.

26 (B) Informed all employees selling nicotine
27 products and nicotine delivery products through an
28 established training program of the applicable
29 Federal and State laws regarding the sale of nicotine
30 products and nicotine delivery products.

1 (C) Documented employee training indicating that
2 all employees selling nicotine products and nicotine
3 delivery products have been informed of and
4 understand the written policy referred to in clause
5 (A).

6 (D) Trained all employees selling nicotine
7 products and nicotine delivery products to verify
8 that the purchaser is at least 21 years of age before
9 selling nicotine products and nicotine delivery
10 products.

11 (E) Conspicuously posted a notice that selling
12 nicotine products and nicotine delivery products to a
13 person under 21 years of age is illegal, that the
14 purchase of nicotine products and nicotine delivery
15 products by a person under 21 years of age is illegal
16 and that a violator is subject to penalties.

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 (b) (1) for a
29 person under 21 years of age to purchase or attempt to
30 purchase a nicotine product or nicotine delivery product if

1 all of the following apply:

2 (i) The person is at least 14 years of age.

3 (ii) The person is an employee, volunteer or intern

4 with:

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

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

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

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

14 (E) a retailer.

15 (iii) The person under 21 years of age is acting
16 within the scope of assigned duties as part of an
17 authorized investigation, compliance check under
18 subsection (h) or retailer-organized self-compliance
19 check.

20 (iv) The person under 21 years of age does not use
21 or consume a nicotine product or nicotine delivery
22 product.

23 (h) Compliance checks.--This subsection shall apply to
24 compliance checks conducted by the Department of Health, or a
25 county or municipal health department, for the purpose of
26 conducting retailer education, assessing compliance with Federal
27 or State law and enforcing the provisions of this section.
28 Compliance checks shall be conducted, at a minimum, in
29 accordance with all of the following:

30 (1) Compliance checks shall only be conducted in

1 consultation with the Department of Health and the law
2 enforcement agency providing primary police services to the
3 municipality where the compliance check is being conducted.

4 (2) A minor participating in a compliance check must be
5 at least 14 years of age, complete a course of training
6 approved by the Department of Health and furnish the
7 Department of Health with a signed, written parental consent
8 agreement allowing the minor to participate in the compliance
9 check.

10 (3) A retailer that is found to be in compliance with
11 this section during a compliance check shall be notified in
12 writing of the compliance check and the determination of
13 compliance.

14 (4) Compliance checks conducted under this subsection
15 shall be in a manner consistent with this subsection and the
16 regulations as promulgated by the Department of Health.

17 (5) The Department of Health, or a county or municipal
18 health department, shall conduct a compliance check under
19 this subsection no more than once every 30 days at any one
20 retail location. This paragraph may not preclude the law
21 enforcement agency providing primary police services to the
22 municipality in which the retail store is located from
23 otherwise enforcing this section.

24 (6) Individuals participating in compliance checks under
25 this subsection may not be deemed employees under the act of
26 July 23, 1970 (P.L.563, No.195), known as the Public Employe
27 Relations Act, nor shall participating individuals be
28 considered policemen under the act of June 24, 1968 (P.L.237,
29 No.111), referred to as the Policemen and Firemen Collective
30 Bargaining Act.

1 (i) Administrative action.--

2 (1) Upon receiving notice, in accordance with subsection
3 (d) or otherwise, of a third conviction of a retailer during
4 any 24-month period, the department may, after an opportunity
5 for a hearing, suspend the retailer's license issued under
6 sections 1223-A and 1224-A of the act of March 4, 1971
7 (P.L.6, No.2), known as the Tax Reform Code of 1971, for up
8 to 30 days. The department, in a hearing held under this
9 paragraph, has jurisdiction only to determine whether or not
10 the retailer was convicted of a violation of subsection (a).
11 The introduction of a certified copy of a conviction for a
12 violation of subsection (a) shall be sufficient evidence for
13 the suspension of the license issued under sections 1223-A
14 and 1224-A of the Tax Reform Code of 1971.

15 (2) Upon receiving notice, in accordance with subsection
16 (d) or otherwise, of a fourth conviction of a retailer during
17 any 24-month period, the department may, after an opportunity
18 for a hearing, revoke the retailer's license issued under
19 sections 1223-A and 1224-A of the Tax Reform Code of 1971 for
20 up to 60 days. The department, in a hearing held under this
21 paragraph, has jurisdiction only to determine whether or not
22 the retailer was convicted of a violation of subsection (a).
23 The introduction of a certified copy of a conviction for a
24 violation of subsection (a) shall be sufficient evidence for
25 the revocation of the license issued under sections 1223-A
26 and 1224-A of the Tax Reform Code of 1971.

27 (j) Enforcement.--An employee of the Department of Health, a
28 single county authority created under the Pennsylvania Drug and
29 Alcohol Abuse Control Act, a county or municipal health
30 department or a primary contractor under Chapter 7 of the

1 Tobacco Settlement Act may institute a proceeding to enforce the
2 provisions of this section in accordance with any means
3 authorized by the Rules of Criminal Procedure. The enforcement
4 authority granted under this subsection may not be delegated.

5 (k) Other penalties.--Notwithstanding any other law to the
6 contrary, prosecution or conviction under this section may not
7 constitute a bar to any prosecution, penalty or administrative
8 action under any other applicable statutory provision.

9 (l) Definitions.--As used in this section, the following
10 words and phrases shall have the meanings given to them in this
11 subsection unless the context clearly indicates otherwise:

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

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

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

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

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

23 "Vending machine." A mechanical or electrical device from
24 which one or more tobacco products, nicotine products or
25 nicotine delivery products are dispensed for a consideration.

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