
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1994 Session of
2019

INTRODUCED BY PASHINSKI, MALAGARI, SCHLOSSBERG, FREEMAN,
HANBIDGE, WEBSTER, ZABEL, ULLMAN, McNEILL, POLINCHOCK,
DeLUCA, RABB, THOMAS, HILL-EVANS, T. DAVIS, MOUL, JOHNSON-
HARRELL, CIRESI, FRANKEL, ROEBUCK, HOWARD, SNYDER, DEASY,
KINSEY, MULLERY, JOZWIAK, VITALI, CARROLL, McCARTER,
ISAACSON, CALTAGIRONE, SAPPEY, KENYATTA, SCHWEYER, McCLINTON
AND READSHAW, OCTOBER 25, 2019

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 25, 2019

AN ACT

1 Amending Titles 18 (Crimes and Offenses), 35 (Health and Safety)
2 and 53 (Municipalities Generally) of the Pennsylvania
3 Consolidated Statutes, providing for flavored vapor products;
4 providing for labeling of vapor products; and, in
5 preemptions, further providing for tobacco.

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

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

10 CHAPTER 78

11 FLAVORED VAPOR PRODUCTS

12 Sec.

13 7801. Definitions.

14 7802. Flavored vapor products prohibited.

15 § 7801. Definitions.

16 The following words and phrases when used in this chapter

17 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Characterizing flavor." As follows:

3 (1) A distinguishable taste or aroma, other than the
4 taste or aroma of tobacco, imparted or detectable either
5 prior to or during consumption of a tobacco product or
6 component part of a tobacco product, including, but not
7 limited to, a taste or aroma relating to any fruit,
8 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
9 beverage, menthol, mint, wintergreen, herb or spice.

10 (2) A tobacco product shall not be determined to have a
11 characterizing flavor solely because of the provision of
12 ingredient information or the use of additives or flavorings
13 that do not contribute to the distinguishable taste or aroma
14 of the product.

15 "Cigarette license." As defined in section 6305(k) (relating
16 to sale of tobacco).

17 "Constituent." An ingredient, substance, chemical or
18 compound, other than tobacco, water or reconstituted tobacco
19 sheet, that is added to a tobacco product during the processing,
20 manufacturing or packaging of the tobacco product.

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

22 "Distributor." A person that lawfully sells or furnishes, by
23 purchase, gift or other means, vapor products for the purpose of
24 resale.

25 "Flavored vapor product." A vapor product containing a
26 constituent that has or produces a characterizing flavor.

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

28 "Retailer." As defined in section 6305(k).

29 "Tobacco product." As defined in section 6305(k).

30 "Vapor product." As follows:

1 (1) a noncombustible product containing nicotine that
2 employs a heating element, power source, electronic circuit
3 or other electronic, chemical or mechanical means, regardless
4 of shape or size, that can be used to produce vapor from
5 nicotine in a solution or other form.

6 (2) The term shall include an electronic cigarette,
7 electronic cigar, electronic cigarillo, electronic pipe or
8 similar product or device and a vapor cartridge or other
9 container of nicotine in a solution or other form that is
10 intended to be used with or in an electronic cigarette,
11 electronic cigar, electronic cigarillo, electronic pipe or
12 similar product or device.

13 (3) The term shall not include a product regulated as a
14 drug or device by the United States Food and Drug
15 Administration under Chapter V of the Federal Food, Drug, and
16 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

17 "Vending machine." A mechanical or electrical device from
18 which one or more vapor products are dispensed for a
19 consideration.

20 § 7802. Flavored vapor products prohibited.

21 (a) Offense defined.--A person is guilty of a summary
22 offense if the person does any of the following:

23 (1) Sells a flavored vapor product to an individual.

24 (2) Furnishes, by purchase, gift or other means, a
25 flavored vapor product to an individual.

26 (3) Purchases flavored vapor products directly from a
27 manufacturer or distributor for the purpose of resale in this
28 Commonwealth.

29 (4) Manufactures flavored vapor products in this
30 Commonwealth.

1 (5) Locates or places a vending machine containing a
2 flavored vapor product in a location accessible to
3 purchasers.

4 (6) Displays, advertises, promotes, markets or offers
5 for sale a flavored vapor product to an individual.

6 (7) Takes any action primarily intended to initiate,
7 maintain or increase the incidence of the use of flavored
8 vapor products by individuals, including, but not limited to,
9 the placement of flavored vapor products in media aimed at
10 minors.

11 (b) Purchase.--A person is guilty of a summary offense if
12 the person purchases or attempts to purchase a flavored vapor
13 product.

14 (c) Penalty.--

15 (1) Except as provided in paragraph (2), a person that
16 violates subsection (a) shall be sentenced as follows:

17 (i) For a first offense, to pay a fine of not less
18 than \$100 nor more than \$250.

19 (ii) For a second offense, to pay a fine of not less
20 than \$250 nor more than \$500.

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

23 (2) A retailer that violates subsection (a) shall be
24 sentenced as follows:

25 (i) For a first offense, to pay a fine of not less
26 than \$100 nor more than \$500.

27 (ii) For a second offense, to pay a fine of not less
28 than \$500 nor more than \$1,000.

29 (iii) For a third offense, to pay a fine of not less
30 than \$1,000 nor more than \$3,000.

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

3 (3) A person who violates subsection (b) shall be
4 sentenced to any or all of the following:

5 (i) Not more than 75 hours of community service.

6 (ii) Complete a flavored vapor use prevention and
7 cessation program approved by the Department of Health.

8 (iii) A fine not to exceed \$200.

9 (d) Notification.--

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

13 (2) Upon imposing a sentence under subsection (c) (1) or
14 (2), a court shall notify the department of the violation
15 committed by the person if the person is a retailer or an
16 employee of a retailer and the person committed the violation
17 in the course of the person's employment.

18 (e) Nature of offense.--The following shall apply:

19 (1) An offense under subsection (b) shall not be:

20 (i) a criminal offense of record;

21 (ii) reportable as a criminal act; and

22 (iii) be placed on the criminal record of the
23 offender.

24 (2) The failure of a minor to comply with a sentence
25 under subsection (c) (3) shall not constitute a delinquent act
26 under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

27 (3) A record of participation in an adjudication
28 alternative program under subsection (f) shall be maintained
29 for purposes of determining subsequent eligibility for such a
30 program.

1 (4) A retailer is liable for the acts of the retailer's
2 agents as permitted by section 307 (relating to liability of
3 organizations and certain related persons).

4 (f) Preadjudication disposition.--If a person is charged
5 with violating this section, the court may admit the offender to
6 the adjudication alternative program as authorized in 42 Pa.C.S.
7 § 1520 (relating to adjudication alternative program) or any
8 other preadjudication disposition if the offender has not
9 previously received a preadjudication disposition for violating
10 this section. Accelerated Rehabilitative Disposition or any
11 other preadjudication alternative for a violation of subsection
12 (a) shall be considered an offense for the purposes of imposing
13 criminal penalties under subsection (c) (1) and (2).

14 (g) Administrative action.--

15 (1) 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, suspend the retailer's cigarette license for
19 up to 30 days. The department, in a hearing held in
20 accordance with this paragraph, has jurisdiction only to
21 determine whether or not the retailer was convicted of a
22 violation of subsection (a). The introduction of a certified
23 copy of a conviction for a violation of subsection (a) shall
24 be sufficient evidence for the suspension of the cigarette
25 license.

26 (2) Upon receiving notice, in accordance with subsection
27 (d) or otherwise, of a fifth conviction of a retailer during
28 any 24-month period, the department may, after an opportunity
29 for a hearing, revoke the retailer's cigarette license for up
30 to 60 days. The department, in a hearing held under this

1 paragraph, has jurisdiction only to determine whether or not
2 the retailer was convicted of a violation of subsection (a).
3 The introduction of a certified copy of a conviction for a
4 violation of subsection (a) shall be sufficient evidence for
5 the revocation of the cigarette license.

6 (h) Enforcement.--An employee of the Department of Health, a
7 single county authority created under the Pennsylvania Drug and
8 Alcohol Abuse Control Act, a county or municipal health
9 department or a primary contractor under Chapter 7 of the
10 Tobacco Settlement Act may institute a proceeding to enforce the
11 provisions of this section in accordance with any means
12 authorized by the Pennsylvania Rules of Criminal Procedure. The
13 enforcement authority granted under this subsection may not be
14 delegated.

15 (i) Other penalties.--Notwithstanding any other law to the
16 contrary, prosecution or conviction under this section shall not
17 constitute a bar to any prosecution, penalty or administrative
18 action under any other applicable statutory provision.

19 Section 2. Title 35 is amended by adding a chapter to read:

20 CHAPTER 56

21 LABELING OF VAPOR PRODUCTS

22 Sec.

23 5601. Scope of chapter.

24 5602. Definitions.

25 5603. Labeling.

26 5604. Rules and regulations.

27 § 5601. Scope of chapter.

28 This chapter relates to the labeling of vapor products.

29 § 5602. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Department." The Department of Health of the Commonwealth.

4 "Minor." As defined in 18 Pa.C.S. § 7801 (relating to
5 definitions).

6 "Retailer." As defined in 18 Pa.C.S. § 7801.

7 "Vapor product." As defined in 18 Pa.C.S. § 7801.

8 § 5603. Labeling.

9 Each vapor product that is sold to a final end customer by a
10 retailer shall contain a label that provides the following
11 information:

12 (1) A warning of the potential harmful effects of the
13 vapor product.

14 (2) The required age of an individual to legally
15 purchase or attempt to purchase the vapor product.

16 (3) The prohibition against selling or furnishing, by
17 purchase, gift or other means, the vapor product to a minor.

18 (4) A warning to keep the vapor product away from
19 minors.

20 (5) A disclosure of the ingredients contained in the
21 vapor product.

22 § 5604. Rules and regulations.

23 The department shall promulgate rules and regulations as
24 necessary to implement the provisions of this chapter.

25 Section 3. Section 301(a) of Title 53 is amended to read:

26 § 301. Tobacco.

27 (a) General rule.--Except as set forth in subsection (b),
28 the provisions of 18 Pa.C.S. § 6305 (relating to sale of
29 tobacco) and Chapter 78 (relating to flavored vapor products)
30 shall preempt and supersede any local ordinance or rule

1 concerning the subject matter of 18 Pa.C.S. § 6305 and Chapter
2 78 and of section 206-A of the act of April 9, 1929 (P.L.343,
3 No.176), known as The Fiscal Code.

4 * * *

5 Section 4. This act shall take effect in 60 days.