

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 473 Session of 2019

INTRODUCED BY SCAVELLO, HUTCHINSON, COSTA, LAUGHLIN, BLAKE, HAYWOOD, BREWSTER AND ARGALL, MARCH 22, 2019

AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 24, 2019

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 53 (Municipalities
2 Generally) of the Pennsylvania Consolidated Statutes, in
3 minors, further providing for sale of tobacco and for use of
4 tobacco in schools prohibited; making a conforming amendment
5 to Title 53; and making a related repeal.

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

8 Section 1. Section 6305 heading, (a.1), (f)(1)(i)(D) and (k)
9 of Title 18 of the Pennsylvania Consolidated Statutes are
10 amended to read:

11 § 6305. Sale of tobacco products.

12 * * *

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

15 (1) purchases or attempts to purchase a tobacco product;

16 or

17 (2) knowingly falsely represents himself to be at least

18 [18] 21 years of age to a person for the purpose of

19 purchasing or receiving a tobacco product.

1 * * *

2 (f) Exceptions.--

3 (1) The following affirmative defense is available:

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

8 * * *

9 (D) trained all employees selling tobacco
10 products to verify that the purchaser is at least
11 [18] 21 years of age before selling tobacco products;

12 * * *

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

16 "Cigarette." A roll for smoking made wholly or in part of
17 tobacco, irrespective of size or shape and whether or not the
18 tobacco is flavored, adulterated or mixed with any other
19 ingredient, the wrapper or cover of which is made of paper or
20 other substance or material except tobacco. The term does not
21 include a cigar.

22 "Cigarette license." A license issued under section 203-A or
23 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
24 The Fiscal Code.

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

26 "Minor." An individual under [18] 21 years of age.

27 "Pack of cigarettes." As defined in section 1201 of the act
28 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
29 1971.

30 "Pipe tobacco." Any product containing tobacco made

1 primarily for individual consumption that is intended to be
2 smoked using tobacco paraphernalia.

3 "Retailer." A person licensed to sell cigarettes under
4 section 203-A or 213-A of the act of April 9, 1929 (P.L.343,
5 No.176), known as The Fiscal Code, or a lawful retailer of other
6 tobacco products.

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

13 "Tobacco product." [A cigarette, cigar, pipe tobacco or
14 other smoking tobacco product or smokeless tobacco in any form,
15 manufactured for the purpose of consumption by a purchaser, and
16 any cigarette paper or product used for smoking tobacco.] As
17 follows:

18 (1) The term includes:

19 (i) Any product containing, made or derived from
20 tobacco or nicotine that is intended for human
21 consumption, whether smoked, heated, chewed, absorbed,
22 dissolved, inhaled, snorted, sniffed or ingested by any
23 other means, including, but not limited to, a cigarette,
24 a cigar, a little cigar, chewing tobacco, pipe tobacco,
25 snuff and snus.

26 (ii) Any electronic device that delivers nicotine or
27 another substance to a person inhaling from the device,
28 including, but not limited to, an electronic cigarette,
29 cigar, pipe and hookah.

30 (iii) Any component, part or accessory of the

1 product or electronic device under subparagraphs (i) and
2 (ii), whether or not sold separately.

3 (2) The term does not include a product INCLUDE: <--

4 (I) A PRODUCT that has been approved by the United
5 States Food and Drug Administration for sale as a tobacco
6 cessation product or for other therapeutic purposes where
7 the product is marketed and sold solely for such approved
8 purpose.

9 (II) A DEVICE UNDER PARAGRAPH (1) (II) OR (III) IF <--
10 SOLD BY A DISPENSARY LICENSED UNDER THE ACT OF APRIL 17,
11 2016 (P.L.84, NO.16), KNOWN AS THE MEDICAL MARIJUANA ACT.

12 "Tobacco vending machine." A mechanical or electrical device
13 from which one or more tobacco products are dispensed for a
14 consideration.

15 Section 2. Section 6306.1 heading, (a) and (d) of Title 18
16 are amended and the section is amended by adding subsections to
17 read:

18 § 6306.1. Use of tobacco products in schools prohibited.

19 (a) Offense defined.--A pupil [who] commits a summary
20 offense if the pupil possesses or uses [tobacco] a tobacco
21 product:

22 (1) in a school building[,];

23 (2) on a school bus or other vehicle owned by, leased by
24 or under the control of a school district; or

25 (3) on school property owned by, leased by or under the
26 control of a school district [commits a summary offense].

27 (a.1) Additional offense defined.--

28 (1) Any person other than a pupil commits a summary
29 offense if the person uses a tobacco product:

30 (i) in a school building;

1 (ii) on a school bus or other vehicle owned by,
2 leased by or under the control of a school district; or
3 (iii) on school property owned by, leased by or
4 under the control of a school district.

5 (2) The board of school directors may designate certain
6 areas on property owned by, leased by or under the control of
7 the school district where tobacco product use by persons
8 other than pupils is permitted. The areas shall be no less
9 than 50 feet from school buildings, stadiums or bleachers.

10 (a.2) Policy.--

11 (1) The board of school directors shall establish a
12 policy to enforce the prohibition of tobacco product use
13 under this section and may further establish policy relating
14 to tobacco product use at school-sponsored events which are
15 held off school premises.

16 (2) The board of school directors shall notify
17 employees, pupils and parents of the policy developed in
18 paragraph (1) by publishing the information in a student
19 handbook and parent newsletter and on posters or other
20 efficient means.

21 * * *

22 (c.1) Construction.--This section supersedes any municipal
23 ordinance or school board regulation to the contrary.

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

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

29 "School." A school operated by a joint board, board of
30 directors or school board where pupils are enrolled in

1 compliance with Article XIII of the act of March 10, 1949
2 (P.L.30, No.14), known as the Public School Code of 1949,
3 including area vocational schools and intermediate units.

4 ["Tobacco." A lighted or unlighted cigarette, cigar, pipe or
5 other lighted smoking product and smokeless tobacco in any
6 form.]

7 "Tobacco product." As follows:

8 (1) The term includes:

9 (i) Any product containing, made or derived from
10 tobacco or nicotine that is intended for human
11 consumption, whether smoked, heated, chewed, absorbed,
12 dissolved, inhaled, snorted, sniffed or ingested by any
13 other means, including, but not limited to, a cigarette,
14 a cigar, a little cigar, chewing tobacco, pipe tobacco,
15 snuff and snus.

16 (ii) Any electronic device that delivers nicotine or
17 another substance to a person inhaling from the device,
18 including, but not limited to, an electronic cigarette,
19 cigar, pipe and hookah.

20 (iii) Any component, part or accessory of the
21 product or electronic device under subparagraphs (i) and
22 (ii), whether or not sold separately.

23 (2) The term does not include a product INCLUDE: <--

24 (I) A PRODUCT that has been approved by the United
25 States Food and Drug Administration for sale as a tobacco
26 cessation product or for other therapeutic purposes where
27 the product is marketed and sold solely for such approved
28 purpose.

29 (II) A DEVICE UNDER PARAGRAPH (1) (II) OR (III) IF <--
30 SOLD BY A DISPENSARY LICENSED UNDER THE ACT OF APRIL 17,

1 2016 (P.L.84, NO.16), KNOWN AS THE MEDICAL MARIJUANA ACT.

2 Section 3. Section 301 heading and (a) of Title 53 are
3 amended to read:

4 § 301. Tobacco product.

5 (a) General rule.--Except as set forth in subsection (b),
6 the provisions of 18 Pa.C.S. § 6305 (relating to sale of tobacco
7 products) shall preempt and supersede any local ordinance or
8 rule concerning the subject matter of 18 Pa.C.S. § 6305 and of
9 section 206-A of the act of April 9, 1929 (P.L.343, No.176),
10 known as The Fiscal Code.

11 * * *

12 Section 4. Repeals are as follows:

13 (1) The General Assembly declares that the repeal under
14 paragraph (2) is necessary to effectuate the amendment or
15 addition of 18 Pa.C.S. § 6306.1(a), (a.1), (a.2) and (c.1).

16 (2) Section 3.5 of the act of April 27, 1927 (P.L.465,
17 No.299), referred to as the Fire and Panic Act, is repealed.

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