

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 954 Session of 2015

INTRODUCED BY RAPP, KAUFFMAN, SONNEY, FEE, WARD, V. BROWN, D. COSTA, GIBBONS, DIAMOND, MCGINNIS, MILLARD, DUSH, ENGLISH, ZIMMERMAN, DAY, HEFFLEY, McNEILL, SCHREIBER, COHEN, GINGRICH, MURT, WATSON, MILNE, ORTITAY, DAVIS AND COX, APRIL 10, 2015

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 2, 2015

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. Section 6305(a), (a.1), (f) and (k) of Title 18 <--
8 of the Pennsylvania Consolidated Statutes are amended to read:

9 SECTION 1. SECTIONS 6305(A), (A.1), (F) AND (K) AND <--
10 6306.1(A) AND (D) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED
11 STATUTES ARE AMENDED TO READ:

12 § 6305. Sale of tobacco, NICOTINE PRODUCTS and nicotine <--
13 delivery products to minors.

14 (a) Offense defined.--Except as set forth in subsection (f),
15 a person is guilty of a summary offense if the person:

16 (1) sells a tobacco product, NICOTINE PRODUCT or <--
17 nicotine delivery product to any minor;

1 (2) furnishes, by purchase, gift or other means, a
2 tobacco product, NICOTINE PRODUCT or nicotine delivery <--
3 product to a minor;

4 (4) locates or places a [tobacco] vending machine
5 containing a tobacco product, NICOTINE PRODUCT or nicotine <--
6 delivery product in a location accessible to minors;

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

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

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

23 (1) purchases or attempts to purchase a tobacco product, <--
24 NICOTINE PRODUCT or nicotine delivery product; or

25 (2) knowingly falsely represents himself to be at least
26 18 years of age to a person for the purpose of purchasing or
27 receiving a tobacco product, NICOTINE PRODUCT or nicotine <--
28 delivery product.

29 * * *

30 (f) Exceptions.--

1 (1) The following affirmative defense is available:

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

6 (A) adopted and implemented a written policy
7 against selling tobacco products, NICOTINE PRODUCTS <--
8 or nicotine delivery products to minors which
9 includes:

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

16 (II) a list of all types of acceptable
17 photoidentification;

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

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

1 referred to the manager; and

2 (V) a disciplinary policy which includes
3 employee counseling and suspension for failure to
4 require valid photoidentification and dismissal
5 for repeat improper sales.

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

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

17 (D) trained all employees selling tobacco
18 products, NICOTINE PRODUCTS and nicotine delivery <--
19 products to verify that the purchaser is at least 18
20 years of age before selling tobacco products, <--
21 NICOTINE PRODUCTS and nicotine delivery products;

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

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

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

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

6 (2) No more than one violation of subsection (a) per
7 person arises out of separate incidents which take place in a
8 24-hour period.

9 (3) It is not a violation of subsection (a.1)(1) for a
10 minor to purchase or attempt to purchase a tobacco product, <--
11 NICOTINE PRODUCT or nicotine delivery product if all of the
12 following apply:

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

14 (ii) The minor is an employee, volunteer or an
15 intern with:

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

17 (B) the Department of Health or a primary
18 contractor pursuant to Chapter 7 of the act of June
19 26, 2001 (P.L.755, No.77), known as the Tobacco
20 Settlement Act;

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

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

26 (E) a retailer.

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

1 (iv) A minor shall not use or consume a tobacco
2 product, NICOTINE PRODUCT or nicotine delivery product. <--

3 * * *

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

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

13 "Cigarette license." A license issued under section 203-A or
14 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
15 The Fiscal Code.

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

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

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

21 "Nicotine delivery product." A product that contains or <--
22 consists of nicotine in a form that can be ingested by chewing,
23 smoking, inhaling or any other means and any product or device
24 used primarily for the purpose of ingesting nicotine. The term
25 includes an electronic cigarette. The term does not include any
26 drug or device regulated under the Federal Food, Drug, and
27 Cosmetic Act (52 Stat. 1040, 21 U.S.C § 301 et seq.). A PRODUCT <--
28 OR DEVICE USED, INTENDED FOR USE OR DESIGNED FOR THE PURPOSE OF
29 INGESTING A NICOTINE PRODUCT. THE TERM INCLUDES AN ELECTRONIC
30 CIGARETTE.

1 "NICOTINE PRODUCT." A PRODUCT THAT CONTAINS OR CONSISTS OF
2 NICOTINE IN A FORM THAT CAN BE INGESTED BY CHEWING, SMOKING,
3 INHALING OR ANY OTHER MEANS.

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

7 "Pipe tobacco." Any product containing tobacco made
8 primarily for individual consumption that is intended to be
9 smoked using tobacco paraphernalia.

10 "Retailer." A person licensed under section 203-A or 213-A
11 of the act of April 9, 1929 (P.L.343, No.176), known as The
12 Fiscal Code, OR OTHER LAWFUL DEALER IN TOBACCO PRODUCTS, <--
13 NICOTINE PRODUCTS AND NICOTINE DELIVERY PRODUCTS.

14 "Smokeless tobacco." Any product containing finely cut,
15 ground, powdered, blended or leaf tobacco made primarily for
16 individual consumption that is intended to be placed in the oral
17 or nasal cavity and not intended to be smoked. The term
18 includes, but is not limited to, chewing tobacco, dipping
19 tobacco and snuff.

20 "Tobacco product." A cigarette, cigar, pipe tobacco or other
21 smoking tobacco product or smokeless tobacco in any form,
22 manufactured for the purpose of consumption by a purchaser, and
23 any cigarette paper or product used for smoking tobacco.

24 ["Tobacco vending] "Vending machine." A mechanical or
25 electrical device from which one or more tobacco products, <--
26 NICOTINE PRODUCTS or nicotine delivery products are dispensed
27 for a consideration.

28 § 6306.1. USE OF TOBACCO, NICOTINE PRODUCTS OR NICOTINE <--
29 DELIVERY PRODUCTS IN SCHOOLS PROHIBITED.

30 (A) OFFENSE DEFINED.--A PUPIL WHO POSSESSES OR USES TOBACCO, <--

1 NICOTINE PRODUCTS OR NICOTINE DELIVERY PRODUCTS IN A SCHOOL
2 BUILDING, A SCHOOL BUS OR ON SCHOOL PROPERTY OWNED BY, LEASED BY
3 OR UNDER THE CONTROL OF A SCHOOL DISTRICT COMMITS A SUMMARY
4 OFFENSE.

5 * * *

6 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
7 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
8 SUBSECTION:

9 "ELECTRONIC CIGARETTE." AN ELECTRONIC DEVICE THAT DELIVERS
10 NICOTINE OR OTHER SUBSTANCES THROUGH VAPORIZATION AND
11 INHALATION.

12 "NICOTINE DELIVERY PRODUCT." A PRODUCT OR DEVICE USED,
13 INTENDED FOR USE OR DESIGNED FOR THE PURPOSE OF INGESTING A
14 NICOTINE PRODUCT. THE TERM INCLUDES AN ELECTRONIC CIGARETTE.

15 "NICOTINE PRODUCT." A PRODUCT THAT CONTAINS OR CONSISTS OF
16 NICOTINE IN A FORM THAT CAN BE INGESTED BY CHEWING, SMOKING,
17 INHALING OR ANY OTHER MEANS. THE TERM SHALL NOT INCLUDE, WITH
18 RESPECT TO POSSESSION OR USE BY A STUDENT WHO IS 18 YEARS OF AGE
19 OR OLDER, ANY SMOKING CESSATION PRODUCT SPECIFICALLY APPROVED BY
20 THE UNITED STATES FOOD AND DRUG ADMINISTRATION FOR USE IN
21 REDUCING, TREATING OR ELIMINATING NICOTINE OR TOBACCO
22 DEPENDENCE.

23 "PUPIL." A PERSON BETWEEN THE AGES OF 6 AND 21 YEARS WHO IS
24 ENROLLED IN SCHOOL.

25 "SCHOOL." A SCHOOL OPERATED BY A JOINT BOARD, BOARD OF
26 DIRECTORS OR SCHOOL BOARD WHERE PUPILS ARE ENROLLED IN
27 COMPLIANCE WITH ARTICLE XIII OF THE ACT OF MARCH 10, 1949
28 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949,
29 INCLUDING AREA VOCATIONAL SCHOOLS AND INTERMEDIATE UNITS.

30 "TOBACCO." A LIGHTED OR UNLIGHTED CIGARETTE, CIGAR,

1 CIGARILLO, LITTLE CIGAR, PIPE OR OTHER LIGHTED SMOKING PRODUCT
2 AND SMOKELESS TOBACCO IN ANY FORM, INCLUDING CHEWING TOBACCO,
3 SNUFF, DIP OR DISSOLVABLE TOBACCO PIECES.

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