
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 191 Session of
2017

INTRODUCED BY McGARRIGLE, MARTIN, WARD, HAYWOOD, RAFFERTY AND
FOLMER, JANUARY 26, 2017

REFERRED TO JUDICIARY, JANUARY 26, 2017

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in minors, further providing for sale
3 of tobacco and for use of tobacco in schools prohibited.

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

6 Section 1. Sections 6305 heading, (a), (a.1), (f) and (k)
7 and 6306.1 heading, (a) and (d) of Title 18 of the Pennsylvania
8 Consolidated Statutes are amended to read:

9 § 6305. Sale of tobacco, alternative nicotine products and
10 vapor products.

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 tobacco product, alternative nicotine
14 product or vapor product to any minor;

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

18 (4) locates or places a tobacco vending machine

1 containing a tobacco product, alternative nicotine product or
2 vapor product in a 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, alternative nicotine products or vapor products
6 alternative nicotine products or vapor products in any manner
7 which enables an individual other than the retailer or an
8 employee of the retailer to physically handle tobacco
9 products, alternative nicotine products or vapor products
10 prior to purchase unless the tobacco products, alternative
11 nicotine products or vapor products are located within the
12 line of sight or under the control of a cashier or other
13 employee during business hours, except that this paragraph
14 shall not apply to retail stores which derive 75% or more of
15 sales revenues from tobacco products, alternative nicotine
16 products or vapor products.

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

19 (1) purchases or attempts to purchase a tobacco product, alternative nicotine product or vapor product; or
20 alternative nicotine product or vapor product;

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

25 * * *

26 (f) Exceptions.--

27 (1) The following affirmative defense is available:

28 (i) It is an affirmative defense for a retailer to
29 an offense under subsection (a) (1) and (2) that, prior to
30 the date of the alleged violation, the retailer has

1 complied with all of the following:

2 (A) adopted and implemented a written policy
3 against selling tobacco products, alternative
4 nicotine products or vapor products to minors which
5 includes:

6 (I) a requirement that an employee ask an
7 individual who appears to be 25 years of age or
8 younger for a valid photoidentification as proof
9 of age prior to making a sale of tobacco
10 products, alternative nicotine products or vapor
11 products;

12 (II) a list of all types of acceptable
13 photoidentification;

14 (III) a list of factors to be examined in
15 the photoidentification, including photo
16 likeness, birth date, expiration date, bumps,
17 tears or other damage and signature;

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

28 (V) a disciplinary policy which includes
29 employee counseling and suspension for failure to
30 require valid photoidentification and dismissal

1 for repeat improper sales.

2 (B) informed all employees selling tobacco
3 products, alternative nicotine products or vapor
4 products through an established training program of
5 the applicable Federal and State laws regarding the
6 sale of tobacco products, alternative nicotine
7 products or vapor products to minors;

8 (C) documented employee training indicating that
9 all employees selling tobacco products, alternative
10 nicotine products or vapor products have been
11 informed of and understand the written policy
12 referred to in clause (A);

13 (D) trained all employees selling tobacco
14 products, alternative nicotine products or vapor
15 products to verify that the purchaser is at least 18
16 years of age before selling tobacco products,
17 alternative nicotine products or vapor products;

18 (E) conspicuously posted a notice that selling
19 tobacco products, alternative nicotine products or
20 vapor products to a minor is illegal, that the
21 purchase of tobacco products, alternative nicotine
22 products or vapor products by a minor is illegal and
23 that a violator is subject to penalties; and

24 (F) established and implemented disciplinary
25 sanctions for noncompliance with the policy under
26 clause (A).

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

29 (iii) An affirmative defense under this paragraph
30 may be used by a retailer no more than three times at

1 each retail location during any 24-month period.

2 (2) No more than one violation of subsection (a) per
3 person arises out of separate incidents which take place in a
4 24-hour period.

5 (3) It is not a violation of subsection (a.1)(1) for a
6 minor to purchase or attempt to purchase a tobacco product,
7 alternative nicotine product or vapor product if all of the
8 following apply:

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

10 (ii) The minor is an employee, volunteer or an
11 intern with:

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

13 (B) the Department of Health or a primary
14 contractor pursuant to Chapter 7 of the act of June
15 26, 2001 (P.L.755, No.77), known as the Tobacco
16 Settlement Act;

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

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

22 (E) a retailer.

23 (iii) The minor is acting within the scope of
24 assigned duties as part of an authorized investigation,
25 compliance check under subsection (g) or retailer-
26 organized self-compliance check.

27 (iv) A minor shall not use or consume a tobacco
28 product, alternative nicotine product or vapor product.

29 * * *

30 (k) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

3 "Alternative nicotine product." A noncombustible product
4 containing nicotine that is intended for human consumption,
5 whether chewed, absorbed, dissolved or ingested by any other
6 means. The term does not include a tobacco product, vapor
7 product or a product regulated as a drug or device by the United
8 States Food and Drug Administration under Chapter V of the
9 Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §
10 301 et seq.).

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

17 "Cigarette license." A license issued under section 203-A or
18 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
19 The Fiscal Code.

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

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

22 "Pack of cigarettes." As defined in section 1201 of the act
23 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
24 1971.

25 "Pipe tobacco." Any product containing tobacco made
26 primarily for individual consumption that is intended to be
27 smoked using tobacco paraphernalia.

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

1 tobacco products, alternative nicotine products or vapor
2 products.

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

9 "Tobacco product." A cigarette, cigar, pipe tobacco or other
10 smoking tobacco product or smokeless tobacco in any form,
11 manufactured for the purpose of consumption by a purchaser, and
12 any cigarette paper or product used for smoking tobacco. The
13 term does not include an alternative nicotine product, vapor
14 product or product regulated as a drug or device by the United
15 States Food and Drug Administration under Chapter V of the
16 Federal Food, Drug, and Cosmetic Act.

17 "Tobacco vending machine." A mechanical or electrical device
18 from which one or more tobacco products, alternative nicotine
19 products or vapor products are dispensed for a consideration.

20 "Vapor product." A noncombustible product containing
21 nicotine that employs a heating element, power source,
22 electronic circuit or other electronic, chemical or mechanical
23 means, regardless of shape or size, that can be used to produce
24 vapor from nicotine in a solution or other form. The term
25 includes an electronic cigarette, electronic cigar, electronic
26 cigarillo, electronic pipe or similar product or device and a
27 vapor cartridge or other container of nicotine in a solution or
28 other form that is intended to be used with or in an electronic
29 cigarette, electronic cigar, electronic cigarillo, electronic
30 pipe or similar product or device. The term does not include a

1 product regulated as a drug or device by the United States Food
2 and Drug Administration under Chapter V of the Federal Food,
3 Drug, and Cosmetic Act.

4 § 6306.1. Use of tobacco, alternative nicotine products and
5 vapor products in schools prohibited.

6 (a) Offense defined.--A pupil who possesses or uses tobacco,
7 alternative nicotine products or vapor products in a school
8 building, a school bus or on school property owned by, leased by
9 or under the control of a school district commits a summary
10 offense.

11 * * *

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

15 "Alternative nicotine product." A noncombustible product
16 containing nicotine that is intended for human consumption,
17 whether chewed, absorbed, dissolved or ingested by any other
18 means. The term does not include a tobacco product, vapor
19 product or a product regulated as a drug or device by the United
20 States Food and Drug Administration under Chapter V of the
21 Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §
22 301 et seq.).

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, pipe or

1 other lighted smoking product and smokeless tobacco in any form.
2 The term does not include an alternative nicotine product, vapor
3 product or product regulated as a drug or device by the United
4 States Food and Drug Administration under Chapter V of the
5 Federal Food, Drug, and Cosmetic Act.

6 "Vapor product." A noncombustible product containing
7 nicotine that employs a heating element, power source,
8 electronic circuit or other electronic, chemical or mechanical
9 means, regardless of shape or size, that can be used to produce
10 vapor from nicotine in a solution or other form. The term
11 includes an electronic cigarette, electronic cigar, electronic
12 cigarillo, electronic pipe or similar product or device and a
13 vapor cartridge or other container of nicotine in a solution or
14 other form that is intended to be used with or in an electronic
15 cigarette, electronic cigar, electronic cigarillo, electronic
16 pipe or similar product or device. The term does not include a
17 product regulated as a drug or device by the United States Food
18 and Drug Administration under Chapter V of the Federal Food,
19 Drug, and Cosmetic Act.

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