

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2312 Session of 2014

INTRODUCED BY PASHINSKI, NEILSON, SCHREIBER, KOTIK, CALTAGIRONE, BISHOP, FEE, THOMAS, STERN, FREEMAN, MILLARD, FLYNN, JAMES, MULLERY, DeLUCA, LUCAS, D. COSTA, COHEN, MILNE, SWANGER, GINGRICH, CARROLL, MATZIE, MURT, D. MILLER, McCARTER, WATSON, BROWNLEE, MIRANDA, KORTZ, TOOHIL, McNEILL AND CLYMER, JUNE 4, 2014

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 4, 2014

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for sale of tobacco.

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

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

8 § 6305. Sale of tobacco or e-cigarette.

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

11 (1) sells a tobacco product or an e-cigarette to any
12 minor;

13 (2) furnishes, by purchase, gift or other means, a
14 tobacco product or e-cigarette to a minor;

15 (4) locates or places a [tobacco] vending machine
16 containing a tobacco product or an e-cigarette in a location

1 accessible to minors;

2 (5) displays or offers a cigarette for sale out of a
3 pack of cigarettes; or

4 (6) displays or offers for sale tobacco products or e-
5 cigarettes in any manner which enables an individual other
6 than the retailer or an employee of the retailer to
7 physically handle tobacco products or e-cigarettes prior to
8 purchase unless the tobacco products or e-cigarettes are
9 located within the line of sight or under the control of a
10 cashier or other employee during business hours, except that
11 this paragraph shall not apply to retail stores which derive
12 75% or more of sales revenues from tobacco products or e-
13 cigarettes.

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

16 (1) purchases or attempts to purchase a tobacco product
17 or an e-cigarette; or

18 (2) knowingly falsely represents himself to be at least
19 18 years of age to a person for the purpose of purchasing or
20 receiving a tobacco product or an e-cigarette.

21 * * *

22 (f) 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 tobacco products or e-cigarettes to
30 minors which includes:

1 (I) a requirement that an employee ask an
2 individual who appears to be 25 years of age or
3 younger for a valid photoidentification as proof
4 of age prior to making a sale of tobacco products
5 or e-cigarettes;

6 (II) a list of all types of acceptable
7 photoidentification;

8 (III) a list of factors to be examined in
9 the photoidentification, including photo
10 likeness, birth date, expiration date, bumps,
11 tears or other damage and signature;

12 (IV) a requirement that, if the
13 photoidentification is missing any of the items
14 listed in subclause (III), it is not valid and
15 cannot be accepted as proof of age for the sale
16 of tobacco products or e-cigarettes. A second
17 photoidentification may be required to make the
18 sale of tobacco products or e-cigarettes, with
19 questions referred to the manager; and

20 (V) a disciplinary policy which includes
21 employee counseling and suspension for failure to
22 require valid photoidentification and dismissal
23 for repeat improper sales.

24 (B) informed all employees selling tobacco
25 products or e-cigarettes through an established
26 training program of the applicable Federal and State
27 laws regarding the sale of tobacco products or e-
28 cigarettes to minors;

29 (C) documented employee training indicating that
30 all employees selling tobacco products or e-

1 cigarettes have been informed of and understand the
2 written policy referred to in clause (A);

3 (D) trained all employees selling tobacco
4 products or e-cigarettes to verify that the purchaser
5 is at least 18 years of age before selling tobacco
6 products or e-cigarettes;

7 (E) conspicuously posted a notice that selling
8 tobacco products or e-cigarettes to a minor is
9 illegal, that the purchase of tobacco products or e-
10 cigarettes by a minor is illegal and that a violator
11 is subject to penalties; and

12 (F) established and implemented disciplinary
13 sanctions for noncompliance with the policy under
14 clause (A).

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

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

20 (2) No more than one violation of subsection (a) per
21 person arises out of separate incidents which take place in a
22 24-hour period.

23 (3) It is not a violation of subsection (a.1)(1) for a
24 minor to purchase or attempt to purchase a tobacco product or
25 an e-cigarette if all of the following apply:

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

27 (ii) The minor is an employee, volunteer or an
28 intern with:

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

30 (B) the Department of Health or a primary

1 contractor pursuant to Chapter 7 of the act of June
2 26, 2001 (P.L.755, No.77), known as the Tobacco
3 Settlement Act;

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

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

9 (E) a retailer.

10 (iii) The minor is acting within the scope of
11 assigned duties as part of an authorized investigation,
12 compliance check under subsection (g) or retailer-
13 organized self-compliance check.

14 (iv) A minor shall not use or consume a tobacco
15 product or an e-cigarette.

16 * * *

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

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

26 "Cigarette license." A license issued under section 203-A or
27 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
28 The Fiscal Code.

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

30 "E-cigarette." Any electronic smoking device composed of a

1 mouthpiece, heating element, battery and electronic circuits
2 that provides a vapor of pure nicotine or any other substance to
3 the user as the user simulates smoking. The term includes
4 devices whether they are manufactured, distributed, marketed or
5 sold as e-cigarettes, e-cigars, e-cigarillos, e-pipes or under
6 any other product name.

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

8 "Pack of cigarettes." As defined in section 1201 of the act
9 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
10 1971.

11 "Pipe tobacco." Any product containing tobacco made
12 primarily for individual consumption that is intended to be
13 smoked using tobacco paraphernalia.

14 "Retailer." A person licensed under section 203-A or 213-A
15 of the act of April 9, 1929 (P.L.343, No.176), known as The
16 Fiscal Code.

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

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

27 "[Tobacco vending] Vending machine." A mechanical or
28 electrical device from which one or more tobacco products or e-
29 cigarettes are dispensed for a consideration.

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