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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 765 Session of  
2019

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INTRODUCED BY BARTOLOTTA, BREWSTER, K. WARD AND KILLION,  
JUNE 27, 2019

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REFERRED TO JUDICIARY, JUNE 27, 2019

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AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 35 (Health and  
2 Safety) of the Pennsylvania Consolidated Statutes, in minors,  
3 providing for sale of e-liquids and vapor products to minors  
4 prohibited; in trade and commerce, providing for the offense  
5 of illegal sales of e-liquids and vapor products; and  
6 providing for vapor products regulation and licensing and  
7 establishing the Vapor Products Compliance Fund.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Title 18 of the Pennsylvania Consolidated  
11 Statutes is amended by adding sections to read:

12 § 6306.2. Sale of e-liquids and vapor products to minors  
13 prohibited.

14 (a) Verification of age.--

15 (1) Before a retailer sells an e-liquid or vapor product  
16 to another individual, the individual selling, offering for  
17 sale, giving or furnishing the e-liquid or vapor product  
18 shall verify that the individual is of legal age by:

19 (i) examining from an individual that appears to be  
20 under 27 years of age a government-issued photographic

1 identification that establishes that the individual is of  
2 legal age; or

3 (ii) for sales made through a delivery sales method,  
4 performing an age verification through an independent,  
5 third-party age verification service that compares  
6 information available from public records to the personal  
7 information entered by the individual during the ordering  
8 process that establishes that the individual is of legal  
9 age.

10 (2) A minor may not possess an e-liquid or vapor  
11 product.

12 (3) A minor who violates this section commits a summary  
13 offense and shall, upon conviction, be sentenced:

14 (i) To pay a fine of \$50 and 25 hours of community  
15 service for a first violation.

16 (ii) To pay a fine of \$75 and 50 hours of community  
17 service for a second violation by a minor that occurs  
18 within 12 months after the first violation.

19 (iii) To pay a fine of \$200, 50 hours of community  
20 service and a suspension of the minor's driver's license  
21 for a period not to exceed six months, if applicable, for  
22 a third or subsequent violation by a minor that occurs  
23 within 12 months after the first violation.

24 (b) Retailer.--A retailer who knowingly and intentionally  
25 sells e-liquid or vapor products to a minor or knowingly,  
26 intentionally or negligently fails to verify the age of an  
27 individual who appears to be less than 27 years of age by  
28 checking a government-issued photographic identification and  
29 sells the individual an e-liquid or a vapor product violates  
30 this section and shall, upon conviction, be sentenced to:

1       (1) pay a fine of \$250 for the first violation in 24-  
2       month period;

3       (2) pay a fine of \$2,500 for a second violation in a 24-  
4       month period;

5       (3) pay a fine of \$5,000 for a third violation in a 24-  
6       month period; and

7       (4) have the retailer's license permanently revoked for  
8       a fourth violation in a 24-month period.

9       (c) Employee.--An employee who knowingly and intentionally  
10      sells e-liquid or vapor products to a minor or knowingly,  
11      intentionally or negligently fails to verify the age of an  
12      individual who appears to be less than 27 years of age by  
13      checking a government-issued photographic identification and  
14      sells the individual an e-liquid or a vapor product violates  
15      this section and shall, upon conviction, be sentenced to:

16      (1) pay a fine of \$150 for the first violation in a 24-  
17      month period;

18      (2) pay a fine of \$300 for a second violation in a 24-  
19      month period; or

20      (3) pay a fine of \$1,000 for a third violation in a 24-  
21      month period.

22      (d) Invalid defense.--It is not a defense that the  
23      individual to whom e-liquid or a vapor product was sold or  
24      distributed did not inhale or otherwise consume the e-liquid or  
25      use the vapor product.

26      (e) Defense.--The following defenses are available to a  
27      retail license holder accused of selling or distributing e-  
28      liquids or vapor products to a minor:

29      (1) The buyer or recipient produced a driver's license  
30      bearing the purchaser's or recipient's photograph showing

1 that the purchaser or recipient was of legal age to make the  
2 purchase.

3 (2) The buyer or recipient produced a photographic  
4 identification card issued or a similar card issued under the  
5 laws of the Federal Government or another state or showing  
6 that the purchaser or recipient was of legal age to make the  
7 purchase.

8 (3) The appearance of the purchaser or recipient was  
9 such that an ordinary prudent individual would believe that  
10 the purchaser does not appear to be under 27 years of age.

11 (f) Fund.--Fines collected under this section shall be  
12 deposited into the Vapor Products Compliance Fund.

13 (g) Definitions.--As used in this section, the following  
14 words and phrases shall have the meanings given to them in this  
15 subsection unless the context clearly indicates otherwise:

16 "E-liquid." As defined in 35 Pa.C.S. § 5602 (relating to  
17 definitions).

18 "Minor." An individual who is under 18 years of age.

19 "Vapor product." As defined in 35 Pa.C.S. § 5602.  
20 § 7332. Illegal sales of e-liquids and vapor products.

21 (a) Offense defined.--The sale of an e-liquid or a vapor  
22 product by an individual without a proper license constitutes a:

23 (1) Misdemeanor of the third degree if the offense is a  
24 first offense. A fine of not less than \$1,000 and not more  
25 than \$5,000 shall be imposed for a violation under this  
26 paragraph.

27 (2) Misdemeanor of the second degree if the offense is a  
28 second offense. A fine of not less than \$5,000 and not more  
29 than \$10,000 shall be imposed for a violation under this  
30 paragraph.

1           (3) Misdemeanor of the third degree if the offense is a  
2 third or subsequent offense. A fine of not less than \$10,000  
3 and not more than \$15,000 shall be imposed for a violation  
4 under this paragraph.

5 (b) Aggravating circumstance.--

6           (1) A person 18 years of age or older who is convicted  
7 in any court of this Commonwealth of a violation of this  
8 section shall, if the sale of the e-liquid or vapor product  
9 occurred within 1,000 feet of the real property on which is  
10 located a public, private or parochial school or a college or  
11 university or within 250 feet of the real property on which  
12 is located a recreation center or playground or on a school  
13 bus, be sentenced to a minimum sentence of at least two years  
14 of total confinement, notwithstanding any other provision of  
15 this title or other statute to the contrary. The maximum term  
16 of imprisonment shall be four years for any offense subject  
17 to this section.

18           (2) If the sentencing court finds that the delivery or  
19 possession with intent to deliver or the sale of the e-liquid  
20 or vapor product was to an individual under 18 years of age,  
21 this section shall not apply and the offense shall be subject  
22 to section 6306.2 (relating to sale of e-liquids and vapor  
23 products to minors prohibited).

24 (c) Deposit.--Fines collected under this section shall be  
25 deposited into the Vapor Products Compliance Fund.

26 (d) Definitions.--As used in this section, the following  
27 words and phrases shall have the meanings given to them in this  
28 subsection unless the context clearly indicates otherwise:

29 "E-liquid." As defined in 35 Pa.C.S. § 5602 (relating to  
30 definitions).

1 "Vapor product." As defined in 35 Pa.C.S. § 5602.

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

3 CHAPTER 56

4 VAPOR PRODUCTS REGULATION AND LICENSING

5 Sec.

6 5601. Scope of chapter.

7 5602. Definitions.

8 5603. Duties.

9 5604. License requirements and application.

10 5605. License transfer and notice of changes.

11 5606. Issuance and denial of licenses.

12 5607. Manufacturing, labeling, marketing and safety  
13 requirements.

14 5608. Record requirements and prohibitions.

15 5609. Delivery sales.

16 5610. Vapor Products Compliance Fund.

17 5611. Penalties, suspension and compliance with Federal law.

18 § 5601. Scope of chapter.

19 This chapter relates to vapor products regulation and  
20 licensing.

21 § 5602. Definitions.

22 The following words and phrases when used in this chapter  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Applicant." A person who applies for a license under this  
26 chapter.

27 "Delivery sale." As follows:

28 (1) A sale of e-liquids or vapor products to a consumer  
29 in this Commonwealth in which the consumer submits the order  
30 for the sale in one of the following methods and the e-

1 liquids or vapor products are shipped through a delivery  
2 service:

3 (i) by telephone;

4 (ii) over the Internet; or

5 (iii) through the mail or another delivery system.

6 (2) The term does not include a sale of e-liquids or  
7 vapor products not for personal consumption to a person who  
8 is a manufacturer, distributor or retailer.

9 "Delivery service." A person, including the United States  
10 Postal Service, that is engaged in the delivery of letters,  
11 packages or containers.

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

13 "Distributor." A person who has a license that:

14 (1) distributes, sells, barter or exchanges e-liquid or  
15 vapor products in this Commonwealth for the purpose of  
16 resale; or

17 (2) purchases e-liquid or vapor products directly from a  
18 manufacturer or distributor for the purpose of resale in this  
19 Commonwealth.

20 "E-liquid." As follows:

21 (1) A substance that meets all of the following:

22 (i) May or may not contain nicotine.

23 (ii) Is intended to be vaporized and inhaled using a  
24 vapor product.

25 (iii) Is a legal substance under Federal and State  
26 law.

27 (2) The term does not include cannabis or cannabidiol  
28 (CBD).

29 "Employee." An individual who works directly in the service  
30 of another person under an express or implied contract of hire,

1 and the employer has the direct right to control the details of  
2 work performance. The term does not include an individual who  
3 works for an independent subcontractor, temporary service  
4 provider or a person not under the direct full control of the  
5 employer.

6 "Fund." The Vapor Products Compliance Fund established under  
7 section 5610 (relating to Vapor Products Compliance Fund).

8 "License." A written authorization issued by the department  
9 entitling the holder to manufacture, distribute, sell or  
10 otherwise deal in e-liquid or vapor products under this chapter.

11 "License holder." A person who holds a valid license under  
12 this chapter, including an agent, employee or other person  
13 acting on behalf of a license holder.

14 "Manufacturer." A person located within this Commonwealth  
15 that is engaged in manufacturing e-liquid or vapor products.

16 "Manufacturing." The process by which an e-liquid is mixed,  
17 bottled and packaged or the process by which a vapor product is  
18 packaged.

19 "Minor." An individual who is under 18 years of age.

20 "Retailer." A person, other than a manufacturer or  
21 distributor, who in the ordinary course of the person's regular  
22 trade or business does all of the following:

23 (1) Acquires any form of e-liquid or vapor products for  
24 the purpose of resale to a final end consumer.

25 (2) Transfers an e-liquid or a vapor product to another  
26 person for money or other consideration.

27 "Sale" or "sell." To give away, barter, exchange or furnish  
28 an e-liquid or vapor product to an individual of legal age.

29 "Tamper evident package." A package having at least one  
30 indicator or barrier to entry that, if breached or missing, can



1 reasonably be expected to provide visible evidence to consumers  
2 that tampering has occurred.

3 "Vapor product." A powered vaporizer that converts e-liquid  
4 to a vapor intended for inhalation.

5 § 5603. Duties.

6 The department shall have the following powers and duties:

7 (1) To require the submission of information necessary  
8 to implement this chapter.

9 (2) To issue licenses.

10 (3) To charge fees under this chapter. Fees charged  
11 under this chapter may not exceed the actual costs incurred  
12 by the department.

13 (4) To approve or deny a license application.

14 § 5604. License requirements and application.

15 (a) License required.--A manufacturer, distributor or  
16 retailer may not sell e-liquid or vapor products in this  
17 Commonwealth without a license issued by the department under  
18 this chapter.

19 (b) Manufacturer license.--

20 (1) A manufacturing license issued by the department  
21 shall be valid for five years from the date of issuance.

22 (2) An application for a manufacturing license shall  
23 include the following:

24 (i) The name, telephone number and address of the  
25 applicant.

26 (ii) The name, telephone number and address of the  
27 manufacturing facility.

28 (iii) The name, telephone number, title and address  
29 of the individual responsible for the manufacturing  
30 facility.

1           (iv) Verification that the facility will comply with  
2 tobacco products good manufacturing practices promulgated  
3 under section 906(e) of the Federal Food, Drug, and  
4 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 387f(e)).

5           (v) Verification that the manufacturer will comply  
6 with the ingredient listing required under section 904(a)  
7 (1) of the Federal Food, Drug, and Cosmetic Act (52 Stat.  
8 1040, 21 U.S.C. § 387d(a)(1)).

9           (vi) A nonrefundable initial application fee of  
10 \$1,000.

11           (3) The fees collected under this subsection shall be  
12 deposited into the fund.

13 (c) Distributor license.--

14           (1) A distributor license issued by the department shall  
15 be valid for one year from the date of issuance.

16           (2) An application for a distributor license shall  
17 include the following:

18           (i) The name, telephone number and address of the  
19 applicant.

20           (ii) The name, telephone number and address of the  
21 distribution facility.

22           (iii) The name, telephone number, title and address  
23 of the individual responsible for the distribution  
24 facility.

25           (iv) A nonrefundable initial application fee of  
26 \$500.

27           (3) The fees collected under this subsection shall be  
28 deposited into the fund.

29 (d) Retailer license.--

30           (1) A retailer license issued by the department shall be

1 valid for one year from the date of issuance.

2 (2) An application for a retailer license shall include  
3 the following:

4 (i) The name, telephone number and address of the  
5 applicant.

6 (ii) The name, telephone number and address of the  
7 retail facility.

8 (iii) The name, telephone number, title and address  
9 of the individual responsible for the retail location.

10 (iv) A nonrefundable initial application fee of  
11 \$150.

12 (3) The fees collected under this subsection shall be  
13 deposited into the fund.

14 § 5605. License transfer and notice of changes.

15 (a) Prohibition.--Unless approved by the department, a  
16 manufacturer, distributor or retailer license may not be  
17 transferred:

18 (1) from the license holder to another person; or

19 (2) from the location where the license was approved or  
20 renewed to another location.

21 (b) Transfer of license.--The department shall allow a  
22 license to be transferred under subsection (a) if the license  
23 has not been suspended or revoked and the new license holder or  
24 location meets the requirements under this chapter.

25 (c) Change in information.--If the information required for  
26 the initial license or renewal license changes, the license  
27 holder shall notify the department within 10 business days of  
28 the change. If a change in the information required for an  
29 application results in a violation of this chapter, the  
30 department may impose a penalty as provided under this chapter.

1 § 5606. Issuance and denial of licenses.

2 (a) Approval or denial.--The department shall grant or deny  
3 a completed application for a license within 60 days of receipt  
4 of the application. The department shall approve the application  
5 for issuance of a license if the department determines that the  
6 requirements under this chapter have been met.

7 (b) Reason for denial.--If the completed application for a  
8 license is denied, the department shall state the reasons for  
9 the denial. If a completed application is denied under  
10 subsection (a), the applicant may reapply within 30 days after  
11 the date of the denial. An application fee for a reapplication  
12 under this subsection may not be imposed.

13 § 5607. Manufacturing, labeling, marketing and safety  
14 requirements.

15 (a) Compliance.--Manufacturers shall comply with the  
16 following:

17 (1) An e-liquid container shall use a child-proof cap  
18 that has the child-resistant effectiveness specified under 16  
19 CFR 1700.15(b)(1) (relating to poison prevention packaging  
20 standards).

21 (2) An e-liquid container shall use a tamper evident  
22 package. The tamper evident package feature shall be designed  
23 to remain intact when handled in a reasonable manner during  
24 the manufacture, distribution and retail display of the e-  
25 liquid container.

26 (3) The label on an e-liquid container shall meet the  
27 nicotine addictiveness warning statement requirements under  
28 21 CFR 1143.3 (relating to required warning statement  
29 regarding addictiveness of nicotine).

30 (4) Retailers in this Commonwealth shall display signage

1 that states "Unaccompanied Minors are not Allowed on the  
2 Premises," "Products are not for Sale to Minors" or "Underage  
3 Sales Prohibited."

4 (5) Each retailer selling vapor products shall display  
5 vapor products behind a counter or in an enclosed display  
6 that is not accessible without the assistance of a sales  
7 representative.

8 (b) (Reserved).

9 § 5608. Record requirements and prohibitions.

10 (a) License required.--A person selling e-liquids or vapor  
11 products to a consumer in this Commonwealth shall have a valid  
12 retailer license under this chapter.

13 (b) Invoices.--A license holder under this chapter shall  
14 retain each invoice for at least two years.

15 § 5609. Delivery sales.

16 (a) Retailer license required.--A retailer may not make a  
17 delivery sale of e-liquid or vapor products without a retail  
18 license under this chapter.

19 (b) Age verification before sale.--A retailer may not ship  
20 e-liquids or vapor products without first making a good faith  
21 effort to verify the age of the purchaser of the e-liquids or  
22 vapor products.

23 (c) Payment.--Before e-liquids or vapor products are shipped  
24 in a delivery sale, a retailer must be fully paid for the  
25 purchase and shall accept payment from the purchaser:

26 (1) by a check drawn on an account in the purchaser's  
27 name;

28 (2) by a credit card issued in the purchaser's name; or

29 (3) by a debit card issued in the purchaser's name.

30 (d) Shipment to purchase.--A retailer may ship e-liquids or

1 vapor products only to a purchaser.

2 (e) E-mail address.--A retailer taking a delivery sale order  
3 may request the electronic mail address of the purchaser.

4 § 5610. Vapor Products Compliance Fund.

5 (a) Establishment.--The Vapor Products Compliance Fund is  
6 established as a special fund in the State Treasury.

7 (b) Utilization.--The fund shall be utilized by the  
8 department for enforcement of this chapter.

9 § 5611. Penalties, suspension and compliance with Federal law.

10 (a) Penalties.--If a manufacturer, distributor or retailer  
11 violates this chapter, the manufacturer, distributor or retailer  
12 may be reprimanded, assessed a civil penalty or have the  
13 manufacturer's license, distributor's license or retailer's  
14 license revoked.

15 (b) Compliance with Federal law.--A provision in this  
16 chapter that requires a manufacturer to comply with the Federal  
17 Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et  
18 seq.) or a Federal rule promulgated under the Federal Food,  
19 Drug, and Cosmetic Act is under the sole jurisdiction of the  
20 United States Food and Drug Administration. If the United States  
21 Food and Drug Administration seeks court enforcement of a  
22 section of the Federal Food, Drug, and Cosmetic Act cited in  
23 this chapter and a civil monetary penalty is assessed against  
24 the manufacturer, the act or omission for which the penalty was  
25 assessed constitutes a violation of this chapter.

26 (c) Civil penalty.--The department may assess a civil  
27 penalty against a manufacturer, distributor or retailer for a  
28 violation of this chapter in an amount not to exceed \$10,000. A  
29 civil penalty may be assessed in addition to other penalties or  
30 finances allowed under this chapter.

1 Section 3. This act shall take effect in 60 days.