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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1055 Session of  
2013

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INTRODUCED BY SOLOBAY, STACK, WASHINGTON, GREENLEAF, RAFFERTY,  
ERICKSON, FONTANA, WOZNIAK, WILEY AND HUGHES, JULY 19, 2013

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REFERRED TO JUDICIARY, JULY 19, 2013

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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 the offense of sale of tobacco  
4 by including alternative nicotine products; and making a  
5 conforming amendment to Title 53.

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

8 Section 1. Section 6305 heading, (a), (a.1) and (f) of Title  
9 18 of the Pennsylvania Consolidated Statutes are amended and  
10 subsection (k) is amended by adding definitions to read:

11 § 6305. Sale of tobacco or alternative nicotine products.

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

14 (1) sells a tobacco product or alternative nicotine  
15 product to any minor;

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

18 (4) locates or places a tobacco vending machine  
19 containing a tobacco product in a location accessible to

1 minors;

2 (4.1) locates or places a vending machine containing an  
3 alternative nicotine product in a location accessible to  
4 minors;

5 (5) displays or offers a cigarette for sale out of a  
6 pack of cigarettes; [or]

7 (5.1) displays or offers an alternative nicotine product  
8 for sale out of its original packaging; or

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

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

22 (1) purchases or attempts to purchase a tobacco product  
23 or alternative nicotine product; or

24 (2) knowingly falsely represents himself to be at least  
25 18 years of age to a person for the purpose of purchasing or  
26 receiving a tobacco product or alternative nicotine product.

27 \* \* \*

28 (f) Exceptions.--

29 (1) The following affirmative defense is available:

30 (i) It is an affirmative defense for a retailer to

1 an offense under subsection (a) (1) and (2) that, prior to  
2 the date of the alleged violation, the retailer has  
3 complied with all of the following:

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

7 (I) a requirement that an employee ask an  
8 individual who appears to be 25 years of age or  
9 younger for a valid photoidentification as proof  
10 of age prior to making a sale of tobacco products  
11 or alternative nicotine 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 or alternative nicotine  
23 products. A second photoidentification may be  
24 required to make the sale of tobacco products or  
25 alternative nicotine products, with questions  
26 referred to the manager; and

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

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

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

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

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

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

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

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

30 (2) No more than one violation of subsection (a) per

1 person arises out of separate incidents which take place in a  
2 24-hour period.

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

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

7 (ii) The minor is an employee, volunteer or an  
8 intern with:

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

10 (B) the Department of Health or a primary  
11 contractor pursuant to Chapter 7 of the act of June  
12 26, 2001 (P.L.755, No.77), known as the Tobacco  
13 Settlement Act;

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

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

19 (E) a retailer.

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

24 (iv) A minor shall not use or consume a tobacco  
25 product or alternative nicotine product.

26 \* \* \*

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

30 "Alternative nicotine product." An electronic cigarette or

1 any other product that consists of or contains nicotine that can  
2 be ingested into the body by chewing, smoking, absorbing,  
3 dissolving, inhaling or any other means. The term includes any  
4 cartridge or component of an electronic cigarette or such other  
5 product. The term does not include:

6 (1) a cigarette or tobacco product; or

7 (2) a product that is a drug, a device or combination  
8 product as defined in sections 201 and 503 of the Federal  
9 Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §§ 321  
10 and 353).

11 \* \* \*

12 "Electronic cigarette." An electronic product or device that  
13 produces a vapor that delivers nicotine or other substances to  
14 the person inhaling from the device to simulate smoking and is  
15 likely to be offered to or purchased by consumers as an  
16 electronic cigarette, electronic cigar, electronic cigarillo or  
17 electronic pipe. The term does not include:

18 (1) a cigarette or tobacco product; or

19 (2) a product that is a drug, a device or combination  
20 product as defined in sections 201 and 503 of the Federal  
21 Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §§ 321  
22 and 353).

23 \* \* \*

24 "Vending machine." A mechanical or electrical device from  
25 which one or more alternative nicotine products are dispensed  
26 for a consideration.

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

29 § 301. Tobacco and alternative nicotine products.

30 (a) General rule.--Except as set forth in subsection (b),

1 the provisions of 18 Pa.C.S. § 6305 (relating to sale of tobacco  
2 or alternative nicotine products) shall preempt and supersede  
3 any local ordinance or rule concerning the subject matter of 18  
4 Pa.C.S. § 6305 and of section 206-A of the act of April 9, 1929  
5 (P.L.343, No.176), known as The Fiscal Code.

6 \* \* \*

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