
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 473 Session of
2019

INTRODUCED BY SCAVELLO, HUTCHINSON, COSTA, LAUGHLIN, BLAKE,
HAYWOOD AND BREWSTER, MARCH 22, 2019

REFERRED TO JUDICIARY, MARCH 22, 2019

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 corruption of
4 minors, for sale of tobacco and for use of tobacco in schools
5 prohibited; making a conforming amendment to Title 53; and
6 making a related repeal.

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

9 Section 1. Sections 6301(a)(1) and 6305 heading, (a), (a.1),
10 (f) and (k) of Title 18 of the Pennsylvania Consolidated
11 Statutes are amended to read:

12 § 6301. Corruption of minors.

13 (a) Offense defined.--

14 (1) (i) Except as provided in subparagraph (ii) or
15 (iii), whoever, being of the age of 18 years and upwards,
16 by any act corrupts or tends to corrupt the morals of any
17 minor less than 18 years of age, or who aids, abets,
18 entices or encourages any such minor in the commission of
19 any crime, or who knowingly assists or encourages such
20 minor in violating his or her parole or any order of

1 court, commits a misdemeanor of the first degree.

2 (ii) Whoever, being of the age of 18 years and
3 upwards, by any course of conduct in violation of Chapter
4 31 (relating to sexual offenses) corrupts or tends to
5 corrupt the morals of any minor less than 18 years of
6 age, or who aids, abets, entices or encourages any such
7 minor in the commission of an offense under Chapter 31
8 commits a felony of the third degree.

9 (iii) Whoever, being of the age of 21 years and
10 upwards, by any course of conduct in violation of
11 sections 6305 (relating to sale of tobacco, alternative
12 nicotine products and vapor products) or 6306.1 (relating
13 to use of tobacco, alternative nicotine products and
14 vapor products in schools prohibited) corrupts or tends
15 to corrupt the morals of any minor less than 21 years of
16 age, or who aids, abets, entices or encourages any such
17 minor in the commission of an offense under section 6305
18 or 6306.1 commits a misdemeanor of the first degree.

19 * * *

20 § 6305. Sale of tobacco, alternative nicotine products and
21 vapor products.

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

24 (1) sells a tobacco product, alternative nicotine
25 product or vapor product to any minor;

26 (2) furnishes, by purchase, gift or other means, a
27 tobacco product, alternative nicotine product or vapor
28 product to a minor;

29 (4) locates or places a tobacco vending machine
30 containing a tobacco product, alternative nicotine product or

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

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

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

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

24 * * *

25 (f) Exceptions.--

26 (1) The following affirmative defense is available:

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

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

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

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

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

17 (IV) a requirement that, if the
18 photoidentification is missing any of the items
19 listed in subclause (III), it is not valid and
20 cannot be accepted as proof of age for the sale
21 of tobacco products, alternative nicotine
22 products or vapor products. A second
23 photoidentification may be required to make the
24 sale of tobacco products, alternative nicotine
25 products or vapor 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, alternative nicotine products or vapor
3 products through an established training program of
4 the applicable Federal and State laws regarding the
5 sale of tobacco products, alternative nicotine
6 products or vapor products to minors;

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

12 (D) trained all employees selling tobacco
13 products, alternative nicotine products or vapor
14 products to verify that the purchaser is at least
15 [18] 21 years of age before selling tobacco products,
16 alternative nicotine products or vapor products;

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

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

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

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

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

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

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

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

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

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

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

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

21 (E) a retailer.

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

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

28 * * *

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

1 subsection:

2 "Alternative nicotine product." A product, not consisting of
3 or containing tobacco, that provides for the ingestion into the
4 body of nicotine, whether by chewing, absorbing, dissolving,
5 inhaling, snorting or sniffing or by any other means. The term
6 does not include a tobacco product, vapor product or a product
7 regulated as a drug or device by the United States Food and Drug
8 Administration under Chapter V of the Federal Food, Drug, and
9 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

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

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

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

20 "Minor." An individual under [18] 21 years of age.

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

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

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

1 products.

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

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

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

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

1 and Drug Administration under Chapter V of the Federal Food,
2 Drug, and Cosmetic Act.

3 Section 2. Section 6306.1 heading, (a) and (d) of Title 18
4 are amended and the section is amended by adding subsections to
5 read:

6 § 6306.1. Use of tobacco, alternative nicotine products and
7 vapor products in schools prohibited.

8 (a) Offense defined.--A pupil [who] commits a summary
9 offense if the pupil possesses or uses tobacco, an alternative
10 nicotine product or a vapor product:

11 (1) in a school building[,];

12 (2) on a school bus or other vehicle owned by, leased by
13 or under the control of a school district; or

14 (3) on school property owned by, leased by or under the
15 control of a school district [commits a summary offense].

16 (a.1) Additional offense defined.--

17 (1) Any person other than a pupil commits a summary
18 offense if the person uses tobacco, an alternative nicotine
19 product or a vapor product:

20 (i) in a school building;

21 (ii) on a school bus or other vehicle owned by,
22 leased by or under the control of a school district; or

23 (iii) on school property owned by, leased by or
24 under the control of a school district.

25 (2) The board of school directors may designate certain
26 areas on property owned by, leased by or under the control of
27 the school district where tobacco, alternative nicotine
28 product and vapor product use by persons other than pupils is
29 permitted. The areas shall be no less than 50 feet from
30 school buildings, stadiums or bleachers.

1 (a.2) Policy.--

2 (1) The board of school directors shall establish policy
3 to enforce the prohibition of tobacco, alternative nicotine
4 product and vapor product use under this section and may
5 further establish policy relating to tobacco, alternative
6 nicotine product and vapor product use at school-sponsored
7 events which are held off school premises.

8 (2) The board of school directors shall notify
9 employees, pupils and parents of the policy developed in
10 paragraph (1) by publishing the information in a student
11 handbook and parent newsletter and on posters or other
12 efficient means.

13 * * *

14 (c.1) Construction.--This section supersedes any municipal
15 ordinance or school board regulation to the contrary.

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

19 "Alternative nicotine product." A product, not consisting of
20 or containing tobacco, that provides for the ingestion into the
21 body of nicotine, whether by chewing, absorbing, dissolving,
22 inhaling, snorting or sniffing or by any other means. The term
23 does not include a tobacco product, vapor product or a product
24 regulated as a drug or device by the United States Food and Drug
25 Administration under Chapter V of the Federal Food, Drug, and
26 Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

27 "Pupil." A person between the ages of 6 and 21 years who is
28 enrolled in school.

29 "School." A school operated by a joint board, board of
30 directors or school board where pupils are enrolled in

1 compliance with Article XIII of the act of March 10, 1949
2 (P.L.30, No.14), known as the Public School Code of 1949,
3 including area vocational schools and intermediate units.

4 "Tobacco." A lighted or unlighted cigarette, cigar, pipe or
5 other lighted smoking product and smokeless tobacco in any form.
6 The term does not include an alternative nicotine product, vapor
7 product or 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.

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

24 Section 3. Section 301 heading and (a) of Title 53 are
25 amended to read:

26 § 301. Tobacco, alternative nicotine products and vapor
27 product.

28 (a) General rule.--Except as set forth in subsection (b),
29 the provisions of 18 Pa.C.S. § 6305 (relating to sale of
30 tobacco, alternative nicotine products and vapor product) shall

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

5 * * *

6 Section 4. Repeals are as follows:

7 (1) The General Assembly declares that the repeal under
8 paragraph (2) is necessary to effectuate the amendment or
9 addition of 18 Pa.C.S. § 6306.1(a), (a.1), (a.2) and (c.1).

10 (2) Section 3.5 of the act of April 27, 1927 (P.L.465,
11 No.299), referred to as the Fire and Panic Act, is repealed.

12 Section 5. This act shall take effect in 60 days.