

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 473 Session of 2019

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

SENATOR BAKER, JUDICIARY, AS AMENDED, JUNE 24, 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 SECTION 1. SECTION 6305 HEADING, (A.1), (F) (1) (I) (D) AND (K) <--  
21 OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE  
22 AMENDED TO READ:

23 § 6305. Sale of tobacco, ~~alternative nicotine products and~~ <--  
24 vapor products.

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

27 ~~(1) sells a tobacco product, alternative nicotine~~  
28 ~~product or vapor product to any minor;~~

29 ~~(2) furnishes, by purchase, gift or other means, a~~  
30 ~~tobacco product, alternative nicotine product or vapor~~

1 ~~product to a minor;~~

2 ~~(4) locates or places a tobacco vending machine-~~  
3 ~~containing a tobacco product, alternative nicotine product or~~  
4 ~~vapor product in a location accessible to minors;~~

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

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

19 \* \* \*

<--

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 ~~alternative nicotine product or vapor product; or~~

24 (2) knowingly falsely represents himself to be at least  
25 [18] 21 years of age to a person for the purpose of  
26 purchasing or receiving a tobacco product, <--  
27 ~~alternative nicotine product or vapor product.~~

28 \* \* \*

29 (f) Exceptions.--

30 (1) The following affirmative defense is available:

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

5 ~~(A) adopted and implemented a written policy~~ <--  
6 ~~against selling tobacco products, alternative~~  
7 ~~nicotine products or vapor products to minors which~~  
8 ~~includes:~~

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

15 ~~(II) a list of all types of acceptable~~  
16 ~~photoidentification;~~

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

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

1                   ~~(V) a disciplinary policy which includes~~  
2                   ~~employee counseling and suspension for failure to~~  
3                   ~~require valid photoidentification and dismissal~~  
4                   ~~for repeat improper sales.~~

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

11                   ~~(C) documented employee training indicating that~~  
12                   ~~all employees selling tobacco products, alternative~~  
13                   ~~nicotine products or vapor products have been~~  
14                   ~~informed of and understand the written policy~~  
15                   ~~referred to in clause (A); \* \* \*~~ <--

16                   (D) trained all employees selling tobacco  
17                   products, alternative nicotine products or vapor <--  
18                   products to verify that the purchaser is at least  
19                   [18] 21 years of age before selling tobacco products, <--  
20                   alternative nicotine products or vapor products;

21                   ~~(E) conspicuously posted a notice that selling~~ <--  
22                   ~~tobacco products, alternative nicotine products or~~  
23                   ~~vapor products to a minor is illegal, that the~~  
24                   ~~purchase of tobacco products, alternative nicotine~~  
25                   ~~products or vapor products by a minor is illegal and~~  
26                   ~~that a violator is subject to penalties; and~~

27                   ~~(F) established and implemented disciplinary~~  
28                   ~~sanctions for noncompliance with the policy under~~  
29                   ~~clause (A).~~

30                   ~~(ii) An affirmative defense under this paragraph~~

1           ~~must be proved by a preponderance of the evidence.~~

2           ~~(iii) An affirmative defense under this paragraph~~  
3           ~~may be used by a retailer no more than three times at~~  
4           ~~each retail location during any 24 month period.~~

5           ~~(2) No more than one violation of subsection (a) per~~  
6           ~~person arises out of separate incidents which take place in a~~  
7           ~~24 hour period.~~

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

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

13           ~~(ii) The minor is an employee, volunteer or an~~  
14           ~~intern with:~~

15           ~~(A) a State or local law enforcement agency;~~

16           ~~(B) the Department of Health or a primary~~  
17           ~~contractor pursuant to Chapter 7 of the act of June~~  
18           ~~26, 2001 (P.L.755, No.77), known as the Tobacco~~  
19           ~~Settlement Act;~~

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

24           ~~(D) a county or municipal health department; or~~

25           ~~(E) a retailer.~~

26           ~~(iii) The minor is acting within the scope of~~  
27           ~~assigned duties as part of an authorized investigation,~~  
28           ~~compliance check under subsection (g) or retailer~~  
29           ~~organized self compliance check.~~

30           ~~(iv) A minor shall not use or consume a tobacco~~

1 ~~product, alternative nicotine product or vapor product.~~

2 \* \* \*

3 \* \* \*

<--

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

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

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

21 "Cigarette license." A license issued under section 203-A or  
22 213-A of the act of April 9, 1929 (P.L.343, No.176), known as  
23 The Fiscal Code.

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

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

26 "Pack of cigarettes." As defined in section 1201 of the act  
27 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
28 1971.

29 "Pipe tobacco." Any product containing tobacco made  
30 primarily for individual consumption that is intended to be

1 smoked using tobacco paraphernalia.

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

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

13 "Tobacco product." [A cigarette, cigar, pipe tobacco or <--  
14 other smoking tobacco product or smokeless tobacco in any form,  
15 manufactured for the purpose of consumption by a purchaser, and  
16 any cigarette paper or product used for smoking tobacco. The <--  
17 term does not include an alternative nicotine product, vapor  
18 product or product regulated as a drug or device by the United  
19 States Food and Drug Administration under Chapter V of the  
20 Federal Food, Drug, and Cosmetic Act.] AS FOLLOWS: <--

21 (1) THE TERM INCLUDES:

22 (I) ANY PRODUCT CONTAINING, MADE OR DERIVED FROM  
23 TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN  
24 CONSUMPTION, WHETHER SMOKED, HEATED, CHEWED, ABSORBED,  
25 DISSOLVED, INHALED, SNORTED, SNIFFED OR INGESTED BY ANY  
26 OTHER MEANS, INCLUDING, BUT NOT LIMITED TO, A CIGARETTE,  
27 A CIGAR, A LITTLE CIGAR, CHEWING TOBACCO, PIPE TOBACCO,  
28 SNUFF AND SNUS.

29 (II) ANY ELECTRONIC DEVICE THAT DELIVERS NICOTINE OR  
30 ANOTHER SUBSTANCE TO A PERSON INHALING FROM THE DEVICE,



1 INCLUDING, BUT NOT LIMITED TO, AN ELECTRONIC CIGARETTE,  
2 CIGAR, PIPE AND HOOKAH.

3 (III) ANY COMPONENT, PART OR ACCESSORY OF THE  
4 PRODUCT OR ELECTRONIC DEVICE UNDER SUBPARAGRAPHS (I) AND  
5 (II), WHETHER OR NOT SOLD SEPARATELY.

6 (2) THE TERM DOES NOT INCLUDE A PRODUCT THAT HAS BEEN  
7 APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
8 FOR SALE AS A TOBACCO CESSATION PRODUCT OR FOR OTHER  
9 THERAPEUTIC PURPOSES WHERE THE PRODUCT IS MARKETED AND SOLD  
10 SOLELY FOR SUCH APPROVED PURPOSE.

11 "Tobacco vending machine." A mechanical or electrical device  
12 from which one or more tobacco products, ~~alternative nicotine~~ <--  
13 ~~products or vapor products~~ are dispensed for a consideration.

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

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

1 § 6306.1. Use of tobacco, ~~alternative nicotine products and~~ <--  
2 ~~vapor products~~ in schools prohibited.

3 (a) Offense defined.--A pupil [who] commits a summary  
4 offense if the pupil possesses or uses [tobacco, an alternative <--  
5 nicotine product or a vapor product] A TOBACCO PRODUCT: <--

6 (1) in a school building[,];  
7 (2) on a school bus or other vehicle owned by, leased by  
8 or under the control of a school district; or  
9 (3) on school property owned by, leased by or under the  
10 control of a school district [commits a summary offense].

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

12 (1) Any person other than a pupil commits a summary  
13 offense if the person uses A tobacco, an alternative nicotine <--  
14 product or a vapor product:

15 (i) in a school building;  
16 (ii) on a school bus or other vehicle owned by,  
17 leased by or under the control of a school district; or  
18 (iii) on school property owned by, leased by or  
19 under the control of a school district.

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

26 (a.2) Policy.--

27 (1) The board of school directors shall establish A <--  
28 policy to enforce the prohibition of tobacco, alternative <--  
29 nicotine product and vapor product use under this section and  
30 may further establish policy relating to tobacco, alternative <--

1 ~~nicotine product and vapor product use at school-sponsored~~  
2 ~~events which are held off school premises.~~

3 (2) The board of school directors shall notify  
4 employees, pupils and parents of the policy developed in  
5 paragraph (1) by publishing the information in a student  
6 handbook and parent newsletter and on posters or other  
7 efficient means.

8 \* \* \*

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

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

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

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

24 "School." A school operated by a joint board, board of  
25 directors or school board where pupils are enrolled in  
26 compliance with Article XIII of the act of March 10, 1949  
27 (P.L.30, No.14), known as the Public School Code of 1949,  
28 including area vocational schools and intermediate units.

29 ["Tobacco." A lighted or unlighted cigarette, cigar, pipe or <--  
30 other lighted smoking product and smokeless tobacco in any

<--

1 ~~form.] The term does not include an alternative nicotine~~  
2 ~~product, vapor product or product regulated as a drug or device~~  
3 ~~by the United States Food and Drug Administration under Chapter~~  
4 ~~V of the Federal Food, Drug, and Cosmetic Act.~~

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

<--

19 "TOBACCO PRODUCT." AS FOLLOWS:

20 (1) THE TERM INCLUDES:

21 (I) ANY PRODUCT CONTAINING, MADE OR DERIVED FROM  
22 TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN  
23 CONSUMPTION, WHETHER SMOKED, HEATED, CHEWED, ABSORBED,  
24 DISSOLVED, INHALED, SNORTED, SNIFFED OR INGESTED BY ANY  
25 OTHER MEANS, INCLUDING, BUT NOT LIMITED TO, A CIGARETTE,  
26 A CIGAR, A LITTLE CIGAR, CHEWING TOBACCO, PIPE TOBACCO,  
27 SNUFF AND SNUS.

28 (II) ANY ELECTRONIC DEVICE THAT DELIVERS NICOTINE OR  
29 ANOTHER SUBSTANCE TO A PERSON INHALING FROM THE DEVICE,  
30 INCLUDING, BUT NOT LIMITED TO, AN ELECTRONIC CIGARETTE,

1           CIGAR, PIPE AND HOOKAH.  
2           (III) ANY COMPONENT, PART OR ACCESSORY OF THE  
3           PRODUCT OR ELECTRONIC DEVICE UNDER SUBPARAGRAPHS (I) AND  
4           (II), WHETHER OR NOT SOLD SEPARATELY.  
5           (2) THE TERM DOES NOT INCLUDE A PRODUCT THAT HAS BEEN  
6           APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
7           FOR SALE AS A TOBACCO CESSATION PRODUCT OR FOR OTHER  
8           THERAPEUTIC PURPOSES WHERE THE PRODUCT IS MARKETED AND SOLD  
9           SOLELY FOR SUCH APPROVED PURPOSE.

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

12 § 301. Tobacco, ~~alternative nicotine products and vapor~~ <--  
13           product.

14          (a) General rule.--Except as set forth in subsection (b),  
15 the provisions of 18 Pa.C.S. § 6305 (relating to sale of  
16 tobacco, ~~alternative nicotine products and vapor product~~ <--  
17 PRODUCTS) shall preempt and supersede any local ordinance or <--  
18 rule concerning the subject matter of 18 Pa.C.S. § 6305 and of  
19 section 206-A of the act of April 9, 1929 (P.L.343, No.176),  
20 known as The Fiscal Code.

21          \* \* \*

22          Section 4. Repeals are as follows:

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

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

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