

No. 2019-111

AN ACT

SB 473

Amending Titles 18 (Crimes and Offenses) and 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, in minors, further providing for the offense of sale of tobacco and for the offense of use of tobacco in schools; and, in preemptions relating to municipalities, further providing for tobacco.

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

Section 1. Section 6305 heading, (a)(4), (a.1), (f)(1)(i)(D) and (k) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 6305. Sale of tobacco *products*.

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

* * *

(4) locates or places a [**tobacco**] vending machine containing a tobacco product in a location accessible to minors;

* * *

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

(1) purchases or attempts to purchase a tobacco product; or

(2) knowingly falsely represents himself to be at least [**18**] **21** years of age *or if the minor is a member of the active or reserve components of any branch or unit of the armed forces of the United States or a veteran who received an honorable discharge from any branch or unit of the active or reserve components of the armed forces of the United States, at least 18 years of age* to a person for the purpose of purchasing or receiving a tobacco product.

* * *

(f) Exceptions.—

(1) The following affirmative defense is available:

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

* * *

(D) trained all employees selling tobacco products to verify that the purchaser is at least [**18**] **21** years of age *or if the minor is a member of the active or reserve components of any branch or unit of the armed forces of the United States or a veteran who received an honorable discharge from any branch or unit of the active or reserve components of the armed forces of the United States, at least 18 years of age* before selling tobacco products;

* * *

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

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

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

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

"Electronic cigarette." An electronic device that delivers nicotine or other substances through vaporization and inhalation.

"Electronic nicotine delivery system" or "ENDS." A product or device used, intended for use or designed for the purpose of ingesting a nicotine product. The term includes an electronic cigarette.

"Minor." [An] *As follows:*

(1) Except as provided under paragraph (2), an individual under [18] 21 years of age.

(2) A member of the active or reserve components of any branch or unit of the armed forces of the United States under 18 years of age or a veteran who received an honorable discharge from any branch or unit of the active or reserve components of the armed forces of the United States under 18 years of age.

"Nicotine product." A product that contains or consists of nicotine in a form that can be ingested by chewing, smoking, inhaling or any other means.

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

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

"Retailer." A person licensed under section 203-A or 213-A of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, ***or other lawful retailer of other tobacco products.***

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

"Tobacco product." [A cigarette, cigar, pipe tobacco or other smoking tobacco product or smokeless tobacco in any form, manufactured for the purpose of consumption by a purchaser, and any cigarette paper or product used for smoking tobacco.] As follows:

(1) The term includes:

(i) Any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to, a cigarette, a cigar, a little cigar, chewing tobacco, pipe tobacco, snuff and snus.

(ii) *Any electronic device that delivers nicotine or another substance to a person inhaling from the device, including, but not limited to, electronic nicotine delivery systems, an electronic cigarette, a cigar, a pipe and a hookah.*

(iii) *Any product containing, made or derived from either:*

(A) *tobacco, whether in its natural or synthetic form; or*

(B) *nicotine, whether in its natural or synthetic form, which is regulated by the United States Food and Drug Administration as a deemed tobacco product.*

(iv) *Any component, part or accessory of the product or electronic device under subparagraphs (i), (ii) and (iii), whether or not sold separately.*

(2) *The term does not include:*

(i) *A product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such approved purpose, so long as the product is not inhaled.*

(ii) *A device under paragraph (1)(ii) or (iii) if sold by a dispensary licensed under the act of April 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act.*

"Tobacco vending machine." A mechanical or electrical device from which one or more tobacco products are dispensed for a consideration.

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

§ 6306.1. Use of tobacco *products* in schools prohibited.

(a) [Offense defined] *Pupils.*—A pupil [who] *commits a summary offense if the pupil* possesses or uses [tobacco] *a tobacco product:*

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

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

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

(a.1) *Other persons.*—

(1) *Any person, other than a pupil, commits a summary offense if the person uses a tobacco product:*

(i) *in a school building;*

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

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

(2) *The board of school directors may designate certain areas on property owned by, leased by or under the control of the school district where tobacco product use by persons other than pupils is permitted. The areas must be no less than 50 feet from school buildings, stadiums or bleachers.*

(a.2) *Policy.*—

(1) *The board of school directors shall establish a policy to enforce the prohibition of tobacco product use under this section and may*

further establish policy relating to tobacco product use at school-sponsored events that are held off school premises.

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

*** * ***

(c.1) Preemption.—This section preempts any municipal ordinance or school board regulation to the contrary.

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

"Electronic cigarette." An electronic device that delivers nicotine or other substances through vaporization and inhalation.

"Electronic nicotine delivery system" or "ENDS." A product or device used, intended for use or designed for the purpose of ingesting a nicotine product. The term includes an electronic cigarette.

"Nicotine product." A product that contains or consists of nicotine in a form that can be ingested by chewing, smoking, inhaling or any other means.

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

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

"Tobacco product." [A lighted or unlighted cigarette, cigar, pipe or other lighted smoking product and smokeless tobacco in any form.] As follows:

(1) The term includes:

(i) Any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to, a cigarette, a cigar, a little cigar, chewing tobacco, pipe tobacco, snuff and snus.

(ii) Any electronic device that delivers nicotine or another substance to a person inhaling from the device, including, but not limited to, electronic nicotine delivery systems, an electronic cigarette, a cigar, a pipe and a hookah.

(iii) Any product containing, made or derived from either:

(A) tobacco, whether in its natural or synthetic form; or

(B) nicotine, whether in its natural or synthetic form, which is regulated by the United States Food and Drug Administration as a deemed tobacco product.

(iv) Any component, part or accessory of the product or electronic device under subparagraphs (i), (ii) and (iii), whether or not sold separately.

(2) The term does not include:

(i) A product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such approved purpose, so long as the product is not inhaled.

(ii) A device under paragraph (1)(ii) or (iii) if sold by a dispensary licensed under the act of April 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act.

Section 3. Section 301 of Title 53 is amended to read:

§ 301. Tobacco **product**.

(a) General rule.—Except as set forth in subsection (b), the provisions of 18 Pa.C.S. § 6305 (relating to sale of tobacco **products**) shall preempt and supersede any local ordinance or rule concerning the subject matter of 18 Pa.C.S. § 6305 and of section 206-A of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(b) Exception.—This section does not prohibit:

(1) Local regulation authorized by the act of April 27, 1927 (P.L.465, No.299), referred to as the Fire and Panic Act.

(2) Local regulation enacted prior to January 1, 2002.

Section 4. Repeals are as follows:

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

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

Section 5. This act shall take effect July 1, 2020, or immediately, whichever is later.

APPROVED—The 27th day of November, A.D. 2019

TOM WOLF