

City of Philadelphia



(Bill No. 100634)

AN ORDINANCE

Amending Section 9-622 of The Philadelphia Code, entitled “Cigarettes and Tobacco Products,” by revising the acceptable forms of identification; and by increasing the penalties for violations; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 9-622 of The Philadelphia Code is hereby amended to read as follows:

§ 9-622. Cigarettes and Tobacco Products.

(1) Sales to minors prohibited; mandatory identification; warning signs.

(a) It shall be unlawful for any person, including any retail business, to sell or furnish by gift, purchase or other means any cigarette or other tobacco product to any person under the age of eighteen (18) years.

(b) No person shall sell any cigarette or other tobacco product unless the purchaser either:

(.1) demonstrates proof of legal age by means of a photographic identification card issued by a government entity [or school]; or

(.2) reasonably appears to be at least [twenty-five (25)] *twenty-seven* years of age.

(c) Defenses.

(.1) It shall be a defense to a charge of unlawful sale to a person under eighteen (18) years of age that the seller reasonably relied on photographic identification pursuant to the preceding subsection (b), notwithstanding the fact the identification relied upon is subsequently proven to be fake. *Reliance will be presumed not reasonable if the identification does not contain all of the following: a photo likeness, birth date, expiration date and signature; or if it contains bumps, tears or other damage.*

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(.2) It shall not be a defense to a charge of unlawful sale to a person under eighteen (18) years of age that the purchaser reasonably appeared to be at least [twenty-five (25)] *twenty-seven* years of age.

* * *

(6) Enforcement and Penalties.

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(b) Any person who receives a notice of violation may, within ten (10) days, pay [one hundred (100)] *two hundred and fifty* dollars (\$250), admit the violation, and waive appearance before a Municipal Court Judge. The notice of violation shall contain an appropriate statement for signature by the violator for the purpose of admitting the violation and waiving a hearing, and shall be returned by the violator when the stipulated payment is remitted.

* * *

(d) If the person named in a code enforcement complaint is found to have violated any provision of this Section or fails to appear on the date set for hearing, such person shall be subject to a *maximum* fine of [three hundred (300) dollars] *two thousand dollars (\$2,000)* for each such violation, *or such lesser fine (not less than three hundred dollars (\$300)) as the court deems appropriate given the relative wilfulness or repetitiveness of the violation*, plus the imposition of court costs. Such a complaint may be issued irrespective of whether a notice of violation was previously issued for such violation.

(e) Upon a finding of a third cigarette-sales violation committed at a single location or within a single business establishment[, any]:

(.1) *Any* and all cigarette vending machines located at such location or within such establishment shall be removed by the owner of such machine, and no person shall install or maintain any cigarette vending machine at such location or in such establishment. For purposes of this subsection, a cigarette-sales violation shall be any violation of this Section; or any violation of Section 9-2102, relating to cigarette vending machines. The Department of Licenses and Inspections may remove any machine maintained in violation of this Section and may bill the owner of the establishment where such machine is located or the owner of the machine for the cost of removal.

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(.2) If the violations occurred within a two year period, the person shall also be subject, depending on the severity of the violations, to an order of the Department to either (A) cease the sale of cigarettes; or (B) cease operations. Such order shall be for a period not less than forty-eight (48) hours and not to exceed one year, at the Department's discretion, based on the severity of the violations.

For purposes of this subsection (e), multiple violations shall be considered to have occurred at a single location or within a single business establishment, even if ownership of the location or business has been transferred between the time of violations, unless the transfer was pursuant to an arm's length transaction for fair market value between two unrelated persons or unaffiliated companies.

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Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 2, 2010. The Bill was Signed by the Mayor on December 15, 2010.



Michael A. Decker
Chief Clerk of the City Council