

## Legislation Text

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**File #:** 140096, **Version:** 0

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Amending Chapter 9-600 of The Philadelphia Code, entitled “Service and Other Businesses,” by clarifying penalties for violations of Section 9-622, entitled “Cigarettes and Tobacco Products,” and by adding a new section to prohibit sales of electronic smoking devices and unapproved nicotine delivery products to minors, under certain terms and conditions.

WHEREAS, An e-cigarette is an electronic smoking device that simulates tobacco smoking; generally consists of a cartridge containing nicotine, a vaporizer or atomizer, a battery, and an indicator light; and may resemble a cigarette, cigar, pipe, pen or USB memory stick; and

WHEREAS, E-cigarettes can contain carcinogenic compounds, and their vapor can contain nicotine, heavy metals, and silicates; and

WHEREAS, E-cigarettes are not regulated by the Food and Drug Administration, and therefore the levels of their ingredients, including nicotine, are not readily known; and

WHEREAS, E-cigarettes mimic the burning end of a conventional cigarette when being used and are available in a variety of flavors, including fruit and candy flavors; and

WHEREAS, E-cigarettes are being marketed through mass media, social media, and celebrity endorsements and may re-normalize and glamorize smoking behaviors; and

WHEREAS, The percentage of youths who have used e-cigarettes doubled, from 3.3% to 6.8%, from 2011 to 2012; and

WHEREAS, E-cigarettes may hasten nicotine addiction and serve as a gateway for youth use of conventional cigarettes; and

WHEREAS, Philadelphia has been successful in reducing rates of youth smoking to 10% through restrictions on tobacco sales to minors, clean indoor air policies, and anti-smoking media campaigns; and

WHEREAS, There are currently no City or State restrictions on businesses selling e-cigarettes to minors or displaying them in a manner accessible to minors; now, therefore

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Chapter 9-600 of The Philadelphia Code is hereby amended to read as follows:

### CHAPTER 9-600. SERVICE AND OTHER BUSINESSES.

\* \* \*

§ 9-622. Cigarettes and Tobacco Products.

\* \* \*

(6) Enforcement and Penalties.

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(b) Any person who receives a notice of violation may, within ten (10) days, pay 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. *Payment of the fine alone shall constitute admission of the violation, whether or not the violator signs the statement.*

\* \* \*

(e) Upon a finding of a third cigarette-sales violation, *or of a combination of three or more violations of this Section and § 9-633(2)-(4)*, committed at a single location or within a single business establishment:

\* \* \*

(.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, *electronic smoking devices and unauthorized nicotine delivery products*; 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.

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§ 9-633. *Sale of Electronic Smoking Devices and Unapproved Nicotine Delivery Products.*

(1) *Definitions.*

(a) *“Electronic smoking device” means an electronic device that delivers nicotine or other substances via vapor for inhalation. The term includes e-cigarettes, e-cigars, e-pipes and any other such products; and includes all component parts, such as e-cigarette batteries, atomizers, vaporizers, replacement cartridges and any solution manufactured for use with such a device. It does not include any product approved or certified for sale by the United States Food and Drug Administration as a tobacco use cessation product, or for other medical purposes. It may also be referred to herein as “e-cigarette.”*

(b) *“Specialty e-cigarette establishment.” An establishment which derives 50% or more of its gross annual revenue from the sale of e-cigarettes and related products, including e-cigarette atomizers, vaporizers, batteries, replacement cartridges and any solution manufactured for use with such devices; or, with respect to such establishments that have been open for less than one full year, on such other basis as the Department of Licenses and Inspections shall by regulation provide.*

(c) *“Unapproved Nicotine Delivery Product.” A product, other than an electronic smoking device or a tobacco product, containing or delivering nicotine intended or expected for human consumption, or any part of such a product, that has not been approved or otherwise certified for sale by the United States Food and Drug Administration as a tobacco use cessation product, or for other medical purposes.*

(2) *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 electronic smoking device or unapproved nicotine delivery product to any person under the age of eighteen (18) years.*

(b) *No person shall sell any electronic smoking device or unapproved nicotine delivery product unless the purchaser either:*

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

(.2) *reasonably appears to be at least 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.*

(.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-seven years of age.*

(d) *Warning Signs.*

(.1) *Every retail outlet that sells electronic smoking devices or unapproved nicotine delivery products shall post in a conspicuous place, clearly visible from any point of sale, a Warning Sign, as described below.*

(.2) *The Warning Sign shall state the following: "SALE OF ELECTRONIC SMOKING DEVICES AND UNAUTHORIZED NICOTINE DELIVERY PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. PHOTO I.D. WILL BE REQUIRED. THIS LAW WILL BE STRICTLY ENFORCED." Such sign shall be printed on a white card in red letters at least one-quarter inch in height, or in such other format as the Department of Licenses and Inspections shall allow by regulation. This warning may be combined with the warning required by § 9-622(d), in a single statement.*

(3) *Out-of-package sales prohibited. It shall be unlawful for any person, including any retail dealer, to sell or offer for sale any electronic smoking device or unapproved nicotine delivery product, other than in the package, box, carton or other container provided by the manufacturer, importer or packager which bears all applicable health warnings required by federal law.*

*(4) Self-service sales prohibited.*

*(a) Any person, including any retail dealer, who sells any electronic smoking devices or unapproved nicotine delivery products, shall store or display such products in a locked case or in a storage case or display accessible only to the seller.*

*(.1) This subsection shall not apply to open or free standing counter-top displays, provided that the counter-top display is within three (3) feet of a staffed and operational check out register.*

*(b) No person selling electronic smoking devices or unapproved nicotine delivery products shall allow anyone other than the seller or the seller's agent to physically remove any such product or its package from its storage or display case.*

*(5) Specialty e-cigarette establishment. Notwithstanding the foregoing, subsection (3) relating to out-of-package sales and subsection (4) relating to self-service sales shall not apply to any retail store known as a Specialty e-cigarette establishment.*

*(6) Enforcement and Penalties.*

*(a) Whenever any officer with authority to enforce ordinances, including for purposes of this Section any Department of Public Health or Department of Licenses and Inspections inspector, becomes aware of a violation of this Section, such officer shall hand or deliver to the violator a printed notice of violation. If the violator is a retail outlet, the officer shall hand or deliver the notice to the manager of the outlet or an on-site supervisor. Such notice shall bear the date, time and nature of the violation, when known; the identity and address of the violator; the amount to be remitted in response to the notice; and the penalty which can be imposed by the court for the violation; and shall be signed by the person issuing the notice and shall bear the badge number or other official identification number of the officer issuing the notice.*

*(b) Any person who receives a notice of violation may, within ten (10) days, pay 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. Payment of the fine alone shall constitute admission of the violation, whether or not the violator signs the statement.*

*(c) If a person who receives a notice of violation fails to make the prescribed payment within ten (10) days of the issuance of the notice of violation, a code enforcement complaint shall be issued for such violation in such manner as provided by law.*

*(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 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 willfulness 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 violation of this Section committed at a single location or within a single business establishment, or of a combination of three or more violations of this Section or § 9-*

*622(1)-(4), 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 electronic smoking devices, unapproved nicotine delivery products, and 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 matter added.