



Legislation Text

File #: 250213-A, Version: 2

Amending Section 9-633 of The Philadelphia Code, entitled "Sale of Electronic Smoking Devices and Unapproved Nicotine Delivery Products," to update definitions and to provide for additional penalties, enforcement, and compliance options, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS

Section 1. Section 9-633 of The Philadelphia Code is hereby amended to read as follows:

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

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(1) Definitions.

(a) *Department* means the Department of Public Health and its contractors.

[a] (b) \*\*\*

[b] (c) \*\*\*

[c] (d) \*\*\*

(2) Sales to Minors Prohibited; Mandatory Identification; Warning Signs.

(a) It shall be unlawful for any person[, including] *or* 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 *twenty-one (21)* years.

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

\* \* \*

(c) Defenses.

(.1) It shall be a defense to a charge of unlawful sale to person under *twenty-one (21)* 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 *twenty-one (21)* years of age that the purchaser reasonably appeared to be at least twenty-seven years of age.

(d) Warning Signs.

(1) Every retail *business* [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 21 [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 subsection [9-622](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-277402) [\(1\)\(d\)](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-277402), in a single statement.

(3) *Out-of-Package Sales Prohibited.* It shall be unlawful for any person[, including] *or* any retail *business* [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] *or* retail *business* [dealer, who] *that* 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 *or* retail *business* 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 *business* [store known as a] *that meets the definition of* 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 (code*

*violation notice*). If the violator is a retail *business* [outlet], the officer shall hand or deliver the notice to the manager of the *retail business* [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 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) *Any retail business that receives a notice of violation may, within ten (10) days, pay the amounts below, 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.*

(i) *First offense: five hundred dollars (\$500).*

(ii) *Second offense: one thousand dollars (\$1,000).*

(iii) *Third or subsequent offense: two thousand dollars (\$2,000).*

[(c)] (d) If a [person] *retail business* [who] *that* 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)] (e) If the [person] *retail business* 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] *retail business* 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)] (f) Upon a finding of a third violation of this Section committed at a single *retail business* location [or within a single business establishment], or of a combination of three or more violations of this Section or subsections 9-622(1) - (4), within a two-year period, the *retail business* [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 (f), multiple violations shall be considered to have occurred at a single *retail business* location [or within a single business

establishment], even if ownership of the location or *retail* 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.

(g) *Fifty percent (50%) of all fines collected under this Section shall be allocated to youth vaping prevention and education programs within the City of Philadelphia. The Department of Public Health shall oversee the distribution of these funds to school-based and community-led initiatives focused on nicotine addiction prevention and youth education.*

(7) *Severability. If any provision of this Section or its application is held invalid, the validity of the remainder of this Section and the application of such provision to other persons and circumstances shall not be affected.*

SECTION 2. This Ordinance shall take effect in thirty (30) days.

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Explanation:

[Brackets] indicate matter to be deleted.

*Italics* indicate new matter added.