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HEALTH AND SAFETY CODE - HSC

DIVISION 104. ENVIRONMENTAL HEALTH [106500 - 119406] (*Division 104 added by Stats. 1995, Ch. 415, Sec. 6.*)

PART 15. MISCELLANEOUS REQUIREMENTS [118375 - 119406] (*Part 15 added by Stats. 1995, Ch. 415, Sec. 6.*)

CHAPTER 4. Indoor Air Quality [118875 - 118950] (*Chapter 4 added by Stats. 1995, Ch. 415, Sec. 6.*)

ARTICLE 3. Tobacco Distribution [118950- 118950.] (*Article 3 added by Stats. 1995, Ch. 415, Sec. 6.*)

118950. (a) The Legislature hereby finds and declares the following:

- (1) Smoking is the single most important source of preventable disease and premature death in California.
- (2) Smoking is responsible for one-quarter of all death caused by fire.
- (3) Tobacco-related disease places a tremendous financial burden upon the persons with the disease, their families, the health care delivery system, and society as a whole.
- (4) Despite laws in at least 44 states prohibiting the sale of tobacco products to minors, each day 3,000 children start using tobacco products in this nation. Children under the age of 18 years consume 947 million packages of cigarettes in this country yearly.
- (5) The earlier a child begins to use tobacco products, the more likely it is that the child will be unable to quit.
- (6) More than 60 percent of all smokers begin smoking by the age of 14 years, and 90 percent begin by the age of 19 years.
- (7) Use of smokeless tobacco products among minors in this state is increasing.
- (8) Smokeless tobacco or chewing tobacco is harmful to the health of individuals and may cause gum disease, mouth or oral cancers, increased tooth decay and leukoplakia.
- (9) Tobacco product advertising and promotion are an important cause of tobacco use among children. More money is spent advertising and promoting tobacco products than any other consumer product.
- (10) Distribution of tobacco product samples, coupons, coupon offers, gift certificates, gift cards, or other similar offers is a recognized source by which minors obtain tobacco products, beginning the addiction process.
- (11) It is the intent of the Legislature that keeping children from beginning to use tobacco products in any form and encouraging all persons to quit tobacco use shall be among the highest priorities in disease prevention for the State of California.

(b) It is unlawful for any person, agent, or employee of a person in the business of selling or distributing smokeless tobacco or cigarettes to engage in the nonsale distribution of any smokeless tobacco or cigarettes to any person in any public building, park or playground, or on any public sidewalk, street, or other public grounds, or on any private property that is open to the general public.

(c) For purposes of this section:

- (1) "Nonsale distribution" means to give smokeless tobacco or cigarettes to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution of tobacco products, coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers in connection with the sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers shall not constitute nonsale distribution.

(2) "Smokeless tobacco" means (A) a loose or flat, compressed cake form of tobacco that may be chewed or held in the mouth or (B) a shredded, powdered, or pulverized form of tobacco that may be inhaled through the nostrils, chewed, or held in the mouth.

(3) "Public building, park, playground, sidewalk, street, or other public grounds" means any structure or outdoor area that is owned, operated, or maintained by any public entity, including, but not limited to: city and county streets and sidewalks, parade grounds, fair grounds, public transportation facilities and terminals, public reception areas, public health facilities, public recreational facilities, and public office buildings.

(4) "Private property that is open to the general public" means any structure or outdoor area that is owned, operated, or maintained by any private entity and that is open for entry or use by the general public, whether or not a fee or charge is imposed for entry or use.

(d) Any person who violates this section shall be liable for a civil penalty of not less than two hundred dollars (\$200) for one act, five hundred dollars (\$500) for two acts, and one thousand dollars (\$1,000) for each subsequent act constituting a violation. Each distribution of a single package, coupon, coupon offer, gift certificates, gift cards, or other similar offers, or rebate offer to an individual member of the general public in violation of this section shall be considered a separate violation.

(e) Neither this section nor any other provision of law shall invalidate an ordinance of, or prohibit the adoption of an ordinance by, a city or county regulating distribution of smokeless tobacco or cigarette samples within its boundaries that is more restrictive than this section. An ordinance that imposes greater restrictions on the sale or distribution of tobacco than this section shall govern, to the extent of any inconsistency between it and this section.

(f) Subdivisions (a) to (e), inclusive, do not apply to any public building, park, playground, sidewalk, street, or other public grounds, or any private property that is open to the general public where minors are prohibited by law. Subdivisions (a) to (e), inclusive, do not apply to any public building, park, playground, sidewalk, street, or other public grounds open to the general public and leased for private functions where minors are denied access by a peace officer or licensed security guard on the premises.

(g) Subdivisions (a) to (e), inclusive, do not apply to any private property that is open to the general public where minors are denied access to a separate nonsale distribution area by a peace officer or licensed security guard stationed at the entrance of the separate nonsale distribution area and the separate nonsale distribution area is enclosed so as to prevent persons outside the separate nonsale distribution area from seeing the nonsale distribution unless they undertake unreasonable efforts to see inside the area.

(Amended by Stats. 2007, Ch. 445, Sec. 2. Effective January 1, 2008.)