

Assembly Bill No. 384

CHAPTER 798

An act to amend Section 7596 of the Government Code, to amend Sections 308, 2762, 3326, and 5005 of, and to add Section 5030.1 to, the Penal Code, and to amend Section 1752.5 of, and to add Section 1712.5 to, the Welfare and Institutions Code, relating to tobacco products.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 384, Leslie. Tobacco products: correctional facilities.

Existing law allows the Director of the Department of Corrections to prescribe and amend rules and regulations for the administration of state prisons. Existing law includes tobacco products among the products that may be authorized for sale to inmates at state prison facilities.

Existing law allows the Director of the Department of the Youth Authority to make and enforce all rules appropriate to the proper accomplishment of the functions of the department, including the correction and rehabilitation of young persons who have committed public offenses. Existing law includes tobacco products among the products that may be authorized for sale to inmates at Youth Authority facilities.

This bill would prohibit the possession or use of tobacco products by inmates and wards under the jurisdiction of the Department of Corrections and the Department of the Youth Authority. It would require the directors of these departments to adopt regulations to implement this prohibition, and would require that these regulations include an exemption for departmentally approved religious ceremonies.

The bill would, in addition, prohibit the use of tobacco products by any person not included among those described above on the grounds of any institution or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority, with the exception of residential staff housing where inmates or wards are not present. It would eliminate tobacco products from the list of items that may be sold at those institutions and facilities.

The bill would provide that these provisions shall become operative on July 1, 2005.

The people of the State of California do enact as follows:

SECTION 1. Section 7596 of the Government Code is amended to read:

7596. As used in this chapter:

(a) “Public building” means a building owned and occupied, or leased and occupied, by the state, a county, a city, a city and county, or a California Community College district.

(1) “Inside a public building” includes all indoor areas of the building, except for covered parking lots and residential space. “Inside a public building” also includes any indoor space leased to the state, county, or city, except for covered parking lots and residential space.

(2) “Residential space” means a private living area, but it does not include common areas such as lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of a multicomplex building such as a dormitory.

(b) “State” or “state agency” means a state agency, as defined pursuant to Section 11000, the Legislature, the Supreme Court and the courts of appeal, and each campus of the California State University and the University of California.

(c) “Public employee” means an employee of a state agency or an employee of a county or city.

SEC. 2. Section 308 of the Penal Code is amended to read:

308. (a) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).



Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.

(c) Every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall upon conviction be punished by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

SEC. 3. Section 2762 of the Penal Code is amended to read:

2762. The Director of Corrections shall fix a daily rate to be expended for convict labor, and when so fixed, the Department of Transportation shall monthly set aside funds to the director to pay for this labor from funds appropriated in the Budget Act for this purpose, and



where no funds are available to the Department of Transportation the director may set aside the department's own funds to pay for this labor from funds appropriated in the Budget Act for this purpose. The Department of Corrections shall set up an account for each convict which shall be credited monthly with an amount computed by multiplying the daily rate by the number of days such convict actually performed labor during the month. Such account shall be debited monthly with the convict's proportionate share of expenses of camp maintenance, including the expenses for food, medicine, medical attendance, clerical and accounting personnel, and the expenses necessary to maintain care and welfare facilities such as camp hospital for first aid, barbershop and cobbler shop, and the convict's personal expenses covering his drawings from the commissary for clothing, toilet articles, candy, and other personal items. The charge for camp maintenance may be made at a standard rate determined by the department maintaining the camps to be adequate to cover expenses and shall be adjusted periodically at the discretion of the department as needs of the camp require. No charge shall be made against such account for the costs of transporting prisoners to and from prison and camp or for the expense of guarding prisoners, which items shall be paid by the Department of Corrections from appropriations made for the support of the department. The director, by regulation, may fix the maximum amount, over and above all deductions, that a convict may receive. The Department of Corrections, in computing the debits to be made to the convict's accounts, may add not to exceed 10 percent on all items.

SEC. 4. Section 3326 of the Penal Code is amended to read:

3326. The department is authorized to provide the necessary facilities, equipment, and personnel to operate a commissary at any institution under its jurisdiction for the sale of toilet articles, candy, gum, notions, and other sundries.

SEC. 5. Section 5005 of the Penal Code is amended to read:

5005. The department may maintain a canteen at any prison or institution under its jurisdiction for the sale to persons confined therein of toilet articles, candy, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for the canteen. The director shall specify what commodities shall be sold in the canteen. The sale prices of the articles offered for sale shall be fixed by the director at the amounts that will, as far as possible, render each canteen self-supporting. The department may undertake to insure against damage or loss of canteen and handicraft materials, supplies and equipment owned by the Inmate Welfare Fund of the Department of Corrections as provided in Section 5006.



The canteen operations at any prison or institution referred to in this section shall be audited biennially by the Department of Finance, and at the end of each intervening fiscal year, each prison or institution shall prepare a statement of operations. At least one copy of any audit report or statement of operations shall be posted at the canteen and at least one copy shall be available to inmates at the library of each prison or institution.

SEC. 6. Section 5030.1 is added to the Penal Code, to read:

5030.1. (a) The possession or use of tobacco products by inmates under the jurisdiction of the Department of Corrections is prohibited. The Director of Corrections shall adopt regulations to implement this prohibition, which shall include an exemption for departmentally approved religious ceremonies.

(b) The use of tobacco products by any person not included in subdivision (a) on the grounds of any institution or facility under the jurisdiction of the Department of Corrections is prohibited, with the exception of residential staff housing where inmates are not present.

SEC. 7. Section 1712.5 is added to the Welfare and Institutions Code, to read:

1712.5. (a) The possession or use of tobacco products by wards and inmates in all institutions and camps under the jurisdiction of the Department of the Youth Authority is prohibited. The Director of the Youth Authority shall adopt regulations to implement this prohibition, which shall include an exemption for departmentally approved religious ceremonies.

(b) The use of tobacco products by any person not included in subdivision (a) on the grounds of any institution or facility under the jurisdiction of the Department of the Youth Authority is prohibited, with the exception of residential staff housing where inmates or wards are not present.

SEC. 8. Section 1752.5 of the Welfare and Institutions Code is amended to read:

1752.5. The director may establish and maintain at any institution or camp under his jurisdiction a canteen for the sale to persons confined therein of candy, nutritional snacks, toilet articles, sundries, and other articles. The canteen shall operate on a nonprofit basis. However, if sales should exceed costs, the surplus shall be deposited in a special fund, to be designated "Benefit Fund." Any moneys contained in such fund shall be used for the benefit of the wards resident at the institution or camp.

SEC. 9. This act shall become operative on July 1, 2005.

