

AMENDED IN SENATE JUNE 20, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 640

Introduced by Assembly Member Hall

February 20, 2013

An act to amend Section 22963 of the Business and Professions Code, relating to cigarettes and tobacco products add Section 6720 to the Labor Code, relating to employee safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 640, as amended, Hall. ~~Cigarettes and tobacco products: identification requirements.~~ *Employee safety: adult film industry: local regulation.*

Existing law, the California Occupational Safety and Health Act of 1973, establishes the Division of Occupational Safety and Health for the purpose of ensuring safe and healthful working conditions for all Californians.

This bill would, notwithstanding any other law, authorize a city, county, or city and county to adopt and enforce a local ordinance that protects against the exposure of workers to blood or other potentially infectious materials during the filming or production of an adult film, as defined.

~~Existing law prohibits the sale, distribution, or nonsale distribution of tobacco products directly or indirectly to any person under 18 years of age. A violation of these provisions may result in a criminal action or an assessment of civil penalties. Existing law requires a person selling or distributing, or engaging in the nonsale distribution of, tobacco~~

~~products directly to a consumer in the state through the United States Postal Service or package delivery service to verify that the purchaser or recipient of the product is 18 years of age or older. Under existing law, if the seller, distributor, or nonsale distributor is unable to verify that the purchaser or recipient is 18 years of age or older, he or she is required to require the purchaser or recipient to submit an age-verification kit, which includes a copy of a valid form of government identification, as specified.~~

~~This bill would provide that, for the purposes of these provisions, if a customer or recipient provides an identification card issued by the United States Armed Forces as proof of majority and the identification card lacks a physical description, but includes date of birth and a photo, further proof of majority is not required.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 6720 is added to the Labor Code, to read:
- 2 6720. (a) The Legislature finds and declares that the protection
- 3 of workers in the adult film industry is the responsibility of multiple
- 4 layers of government.
- 5 (b) Notwithstanding any other law, a city, county, or city and
- 6 county may adopt and enforce a local ordinance that protects
- 7 against the exposure of workers to blood or other potentially
- 8 infectious materials during the filming or production of an adult
- 9 film.
- 10 (c) For the purposes of this section, “adult film” means any
- 11 commercial film, video, multimedia, or other representation during
- 12 the production of which performers actually engage in sexual
- 13 intercourse, including, but not limited to, oral, vaginal, or anal
- 14 penetration, and including, but not limited to, any other sexual
- 15 activity that may result in the transmission of blood or any other
- 16 potentially infectious materials.
- 17 (d) Violations of ordinances adopted pursuant to this section
- 18 shall not be subject to penalties set forth in Chapter 4 (commencing
- 19 with Section 6423).
- 20 SECTION 1. ~~Section 22963 of the Business and Professions~~
- 21 ~~Code is amended to read:~~

1 ~~22963. (a) The sale, distribution, or nonsale distribution of~~
2 ~~tobacco products directly or indirectly to any person under 18 years~~
3 ~~of age through the United States Postal Service or through any~~
4 ~~other public or private postal or package delivery service at~~
5 ~~locations, including, but not limited to, public mailboxes and~~
6 ~~mailbox stores, is prohibited.~~

7 ~~(b) Any person selling or distributing, or engaging in the nonsale~~
8 ~~distribution of, tobacco products directly to a consumer in the state~~
9 ~~through the United States Postal Service or by any other public or~~
10 ~~private postal or package delivery service, including orders placed~~
11 ~~by mail, telephone, facsimile transmission, or the Internet, shall~~
12 ~~comply with the following provisions:~~

13 ~~(1) (A) Before enrolling a person as a customer, or distributing~~
14 ~~or selling, or engaging in the nonsale distribution of, the tobacco~~
15 ~~product through any of these means, the distributor or seller shall~~
16 ~~verify that the purchaser or recipient of the product is 18 years of~~
17 ~~age or older. The distributor or seller shall attempt to match the~~
18 ~~name, address, and date of birth provided by the customer to~~
19 ~~information contained in records in a database of individuals whose~~
20 ~~age has been verified to be 18 years of age or older by reference~~
21 ~~to an appropriate database of government records kept by the~~
22 ~~distributor, a direct marketing firm, or any other entity. In the case~~
23 ~~of a sale, the distributor or seller shall also verify that the billing~~
24 ~~address on the check or credit card offered for payment by the~~
25 ~~purchaser matches the address listed in the database.~~

26 ~~(B) If the seller, distributor, or nonsale distributor is unable to~~
27 ~~verify that the purchaser or recipient is 18 years of age or older~~
28 ~~pursuant to subparagraph (A), he or she shall require the customer~~
29 ~~or recipient to submit an age-verification kit consisting of an~~
30 ~~attestation signed by the customer or recipient that he or she is 18~~
31 ~~years of age or older and a copy of a valid form of government~~
32 ~~identification. For the purposes of this section, a valid form of~~
33 ~~government identification includes a driver's license, state~~
34 ~~identification card, a valid passport issued by the United States or~~
35 ~~by a foreign government, an official naturalization or immigration~~
36 ~~document, including an alien registration receipt card (commonly~~
37 ~~known as a "green card") or an immigrant visa, or military~~
38 ~~identification. In the event that a customer or recipient provides~~
39 ~~an identification card issued by the United States Armed Forces~~
40 ~~as proof of majority and the identification card lacks a physical~~

1 description, but includes date of birth and a photo, further proof
2 of majority shall not be required. In the case of a sale, the
3 distributor or seller shall also verify that the billing address on the
4 check or credit card provided by the consumer matches the address
5 listed in the form of government identification.

6 (2) In the case of a sale, the distributor or seller shall impose a
7 two-carton minimum on each order of cigarettes, and shall require
8 payment for the purchase of any tobacco product to be made by
9 personal check of the purchaser or the purchaser's credit card. No
10 money order or cash payment shall be received or permitted. The
11 distributor or seller shall submit to each credit card acquiring
12 company with which it has credit card sales identification
13 information in an appropriate form and format so that the words
14 "tobacco product" may be printed in the purchaser's credit card
15 statement when a purchase of a tobacco product is made by credit
16 card payment.

17 (3) In the case of a sale, the distributor or seller shall make a
18 telephone call after 5 p.m. to the purchaser confirming the order
19 prior to shipping the tobacco products. The telephone call may be
20 a person-to-person call or a recorded message. The distributor or
21 seller is not required to speak directly with a person and may leave
22 a message on an answering machine or by voice mail.

23 (4) The nonsale distributor shall deliver the tobacco product to
24 the recipient's verified mailing address, or in the case of a sale,
25 the seller or distributor shall deliver the tobacco product to the
26 purchaser's verified billing address on the check or credit card
27 used for payment. No delivery described under this section shall
28 be permitted to any post office box.

29 (c) Notwithstanding subdivisions (a) and (b), if a seller,
30 distributor, or nonsale distributor, complies with all of the
31 requirements of this section and a minor obtains a tobacco product
32 by any of the means described in subdivision (b), the seller,
33 distributor, or nonsale distributor is not in violation of this section.

34 (d) For the purposes of the enforcement of this section pursuant
35 to Section 22958, the acts of the United States Postal Service or
36 other common carrier when engaged in the business of transporting
37 and delivering packages for others, and the acts of a person,
38 whether compensated or not, who transports or delivers a package
39 for another person without any reason to know of the package's
40 contents, are not unlawful and are not subject to civil penalties.

1 ~~(e) (1) (A) For the purposes of this section, a “distributor” is~~
2 ~~any person or entity, within or outside the state, who agrees to~~
3 ~~distribute tobacco products to a customer or recipient within the~~
4 ~~state. The United States Postal Service or any other public or~~
5 ~~private postal or package delivery service are not distributors within~~
6 ~~the meaning of this section.~~

7 ~~(B) A “nonsale distributor” is any person inside or outside of~~
8 ~~this state who, directly or indirectly, knowingly provides tobacco~~
9 ~~products to any person in this state as part of a nonsale transaction.~~
10 ~~“Nonsale distributor” includes the person or entity who provides~~
11 ~~the tobacco product for delivery and the person or entity who~~
12 ~~delivers the product to the recipient as part of a nonsale transaction.~~

13 ~~(C) “Nonsale distribution” means to give smokeless tobacco or~~
14 ~~cigarettes to the general public at no cost, or at nominal cost, or~~
15 ~~to give coupons, coupon offers, gift certificates, gift cards, or other~~
16 ~~similar offers, or rebate offers for smokeless tobacco or cigarettes~~
17 ~~to the general public at no cost or at nominal cost. Distribution of~~
18 ~~tobacco products, coupons, coupon offers, gift certificates, gift~~
19 ~~cards, or other similar offers, or rebate offers in connection with~~
20 ~~the sale of another item, including tobacco products, cigarette~~
21 ~~lighters, magazines, or newspapers shall not constitute nonsale~~
22 ~~distribution.~~

23 ~~(2) For the purpose of this section, a “seller” is any person or~~
24 ~~entity, within or outside the state, who agrees to sell tobacco~~
25 ~~products to a customer within the state. The United States Postal~~
26 ~~Service or any other public or private postal or package delivery~~
27 ~~service are not sellers within the meaning of this section.~~

28 ~~(3) For the purpose of this section, a “carton” is a package or~~
29 ~~container that contains 200 cigarettes.~~

30 ~~(f) A district attorney, a city attorney, or the Attorney General~~
31 ~~may assess civil penalties against any person, firm, corporation,~~
32 ~~or other entity that violates this section, according to the following~~
33 ~~schedule:~~

34 ~~(1) A civil penalty of not less than one thousand dollars (\$1,000)~~
35 ~~and not more than two thousand dollars (\$2,000) for the first~~
36 ~~violation.~~

37 ~~(2) A civil penalty of not less than two thousand five hundred~~
38 ~~dollars (\$2,500) and not more than three thousand five hundred~~
39 ~~dollars (\$3,500) for the second violation.~~

- 1 ~~(3) A civil penalty of not less than four thousand dollars (\$4,000)~~
- 2 ~~and not more than five thousand dollars (\$5,000) for the third~~
- 3 ~~violation within a five-year period.~~
- 4 ~~(4) A civil penalty of not less than five thousand five hundred~~
- 5 ~~dollars (\$5,500) and not more than six thousand five hundred~~
- 6 ~~dollars (\$6,500) for the fourth violation within a five-year period.~~
- 7 ~~(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth~~
- 8 ~~or subsequent violation within a five-year period.~~