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18 Pages (including cover)

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VIA FACSIMILE

July 5, 1991

MEMORANDUM

Attached is a revised draft of the California legislation. For reasons I will be glad to explain on Monday, I elected to omit those provisions of the earlier draft that would have reenacted in modified form existing prohibitions against the sale and distribution of tobacco products to persons under 18.

David H. Remes

jsb

cc: Messrs. Blynn
Chilcote (via messenger)
Murray
Parrish
Riley
Stevens (via Federal Express)

DRAFT 7/5/91

An ACT to add Division 10 (commencing with Section 30000) to the Business and Professions Code, and to repeal Sections 1234 and 1286 and Chapter 10.8 (commencing with Section 25940) of Division 20 of the Health and Safety Code, relating to tobacco products.

SECTION 1. This Act shall be known and may be cited as the Comprehensive Tobacco Products Act.

SECTION 2. Division 10 (commencing with Section 30000) is added to the Business and Professions Code, to read:

DIVISION 10. TOBACCO PRODUCTS

CHAPTER 1. DEFINITIONS

30000. "Board" means the State Board of Equalization.

30005. "License" means a license authorized to be issued by the Board pursuant to this division.

30010. "Licensee" means a holder of a license issued by the Board pursuant to this division.

30015. "Person" means a person as defined in Section 6005 of the Revenue and Taxation Code.

30020. "Retail sale" means a sale for any purpose other than resale in the regular course of business of any tobacco product, either over the counter or through a vending machine, as well as the over-the-counter redemption of coupons or other vouchers that entitle a lawful bearer to receive tobacco products at reduced cost or no cost.

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30025. "Sample" means a tobacco product distributed to members of the general public at no cost for purposes of promoting the product.

30030. "Sampling" means the distribution of tobacco product samples, other than pursuant to a coupon or other voucher.

30035. "Tobacco product" means any cigarette as defined by Section 3003 of the Revenue and Taxation Code and any tobacco products as defined by Section 30121 of the Revenue and Taxation Code, or any other product that contains tobacco and is intended for human consumption.

CHAPTER 2. LICENSES AND FEES

30200. No person shall engage in the retail sale of tobacco products on or after January 1, 1993, unless such person is authorized to do so by a license issued pursuant to this chapter, or is an employee or agent of a person who has obtained such a license. For purposes of this chapter, the person deemed to be engaged in the retail sale of tobacco through a vending machine shall be the owner or lessee of the place of business in which the vending machine is located.

30205. The annual license fee for the retail sale of tobacco is as follows:

(a) Fifty dollars (\$50.00) for each place of business where tobacco is sold over the counter at retail. Such license shall be evidenced by a stamp affixed to the

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permit issued for the place or business by the Board pursuant to article 2 of chapter 2 of part 1 of division 2 of the Revenue and Taxation Code. A separate license shall be required for each place of business where tobacco is sold over the counter at retail.

(b) Twenty-five dollars (\$25.00) for each vending machine. Such license shall be evidenced by a stamp affixed to the machine where the name and address of the owner of the vending machine are provided pursuant to Section 17570 of the Business and Professions Code. A separate license shall be required for each vending machine through which tobacco is sold at retail.

30210. Every application for a license under this chapter shall be made upon a form provided by the Board and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, and such other identifying information as the Board may require.

30215. Every license issued by the Board pursuant to this chapter shall be valid for one year from the date of issuance and shall be renewed upon application except as otherwise provided in this chapter. Upon such notification of a change of address as the Board may require, a license shall be reissued for the new address without the filing of a new application.

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30220. On or before July 1, 1992, the Board shall notify every person who engages in the retail sale of tobacco, including retail sale through vending machines, of the license requirements imposed by this chapter.

30225. The Board shall issue a license or renewal of a license within thirty (30) days of receiving a properly completed application and the applicable license fee. A license or renewal thereof shall not be withheld or denied except pursuant to chapter 5 of this division. The Board shall not impose any condition for the issuance or renewal of a license under this chapter in addition to the conditions specified in this division.

30230. A person who engages in the retail sale of tobacco without a license as required by this chapter, or after a license issued pursuant to this chapter has been suspended or revoked, is subject to an action by the Board for a civil money penalty of one hundred dollars (\$100) for a first violation and two hundred (\$200) for any second or subsequent violation within a one-year period. No person shall be liable for more than one violation per day.

30235. A license under this chapter is not assignable and is valid only for the person in whose name it is issued and for the retail sale of tobacco at the place designated therein. No license other than the license required

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under this chapter shall be required for the retail sale of tobacco.

CHAPTER 3. VENDING MACHINES

30240. A license shall not be issued pursuant to chapter 2 to sell tobacco products at retail through a vending machine unless such vending machine is located:

(a) in an area of a factory, business, office or other place that is not open to the general public;

(b) on the premises of an establishment with an on-sale alcoholic beverage license issued pursuant to section 23039, from which persons under the age of 21 are denied access pursuant to section 25663;

(c) on other premises to which persons under the age of 18 are not permitted access;

(d) on premises where the vending machine is under the continuous supervision of the licensee or of an employee of the licensee; or

(e) in any other place, but only if the machine can be operated only by the activation of an electronic switch by the licensee or by an employee of the licensee prior to each purchase.

30245. In any place where supervision of a vending machine is required by this chapter, the person responsible for such supervision shall require proof of age from a prospective purchaser if an ordinary person would conclude on

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the basis of appearance that the prospective purchaser may be under the age of 18.

CHAPTER 4. SAMPLING AND PROMOTION

30300. No person shall engage in tobacco product sampling on or after January 1, 1993, unless such person is authorized to do so by a license issued pursuant to this chapter, or is an employee or agent of a person who has obtained such a license. If a person contracts with a tobacco product manufacturer to distribute samples of the manufacturer's products, such person shall be deemed to be the person engaged in sampling for purposes of this chapter. An employee of a tobacco product manufacturer may obtain a license pursuant to this chapter authorizing that employee to engage in tobacco product sampling.

30305. The annual license fee for a tobacco product sampling license shall be fifty dollars (\$50.00). Every application for a license under this chapter shall be made upon a form provided by the Board and shall set forth the name, address, and telephone number of the applicant. Every license issued by the Board pursuant to this chapter shall be valid for one year from the date of issuance, shall entitle the holder to engage in tobacco product sampling at any lawful location in this state, and shall be renewed upon application except as otherwise provided in this chapter. A tobacco product sampling license shall not be required to

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distribute tobacco product samples in a place of business for which a license has been issued pursuant to chapter 2 of this division.

30310. The Board shall issue a license or renewal of a license within thirty (30) days of receiving a properly completed application and the applicable license fee. A license or renewal thereof shall not be withheld or denied except pursuant to chapter 5 of this division. The Board shall not impose any condition for the issuance or renewal of a license under this chapter in addition to the conditions specified in this division.

30315. A person who engages in tobacco product sampling without a license as required by this chapter, or after a license issued pursuant to this chapter has been suspended or revoked, is subject to an action by the Board for a civil money penalty of one hundred dollars (\$100) for a first violation and two hundred (\$200) for any second or subsequent violation within a one-year period. No person shall be liable for more than one violation per day.

30320. A license under this chapter is not assignable and is valid only for the person in whose name it is issued. No license other than the license required under this chapter shall be required for tobacco product sampling.

30325. (a) No person shall distribute tobacco product samples on any public street, sidewalk or park,

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except in places to which persons under the age of 18 are denied admission.

(b) No person shall distribute tobacco product samples on any public street, sidewalk or park within 500 feet of any school or playground when such facility is being used primarily by persons under the age of 18.

(c) No person shall distribute any coupon, voucher, or other promotional material that may be redeemed or exchanged for tobacco products unless such coupon, voucher, or other promotional material states that the offer is available only to persons 18 years of age or older.

(d) No person shall distribute tobacco product samples by mail without written, signed certification that the addressee is 18 years of age or older.

(e) Subsection (a) shall not apply to locations adjacent to factories, warehouses, wholesale distribution facilities or construction sites.

30330. The distribution of tobacco product samples, coupons, vouchers or other promotional materials in violation of any requirement or prohibition of Section 30325 is a nuisance within the meaning of Section 3479 of the Civil Code. Nothing in this chapter shall be construed to impose any liability on any employee of the United States Postal Service for actions performed in the scope of his employment by the United States Postal Service.

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CHAPTER 5. SUSPENSION, CANCELLATION, AND NONRENEWAL
OF LICENSES

30400. (a) Upon finding that the holder, or an employee or agent of the holder, of any license issued pursuant to this division has been determined by courts of competent jurisdiction to have committed two or more violations of this division, Section 308 or Section 308b of the Penal Code, or Section 17537.3 of the Business and Professions Code, the Board shall notify the licensee in writing that any subsequent violation thereof may result in an administrative action to suspend such license for a period not to exceed 30 days.

(b) Upon finding that such further violation has occurred notwithstanding the notice provided under subsection (a), the Board may initiate the administrative action described therein. If such administrative action is initiated, the Board shall immediately notify the licensee in writing of the initiation of the action and the reasons therefor, and permit the licensee an opportunity to show why suspension of the license would be unwarranted or unjust.

(c) The Board may initiate an administrative action to cancel a license that has been suspended under subsection (b) if within two years of the most recent violation giving rise to the suspension a further violation of the Act is committed involving the same place or business or

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vending machine for which the license was issued, or the same holder of a tobacco sampling license.

(d) The Board may refuse to grant or renew a license under this division to any person determined by a court of competent jurisdiction to have violated the provisions of this division, Section 308 or Section 308b of the Penal Code, or Section 17537.3 of the Business and Professions Code. Before refusing to grant or to renew a license under this division, the Board shall give the applicant an opportunity to show why such denial or nonrenewal would be unwarranted or unjust.

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

(f) The Board shall not suspend or cancel any license issued under this division, or deny renewal of any such license, on the ground of unlawful sale or distribution of tobacco products to persons under 18 years of age unless the Board shall determine after notice and hearing, based on a preponderance of the evidence, that the licensee has been engaged in a pattern or practice of selling or otherwise distributing tobacco products to persons under 18 years of age in this state.

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(g) A licensee shall not be subject to any fine, civil penalty, or suspension, cancellation, or nonrenewal of a license by reason of violations of the statutes specified in subsection (a) that are committed by employees or agents of the licensee if the licensee affirmatively demonstrates that the licensee had in place at the time of such violations a policy to prevent such violations by employees or agents.

(h) Any action by the Board to suspend, cancel, refuse to renew or deny a license shall be subject to judicial review.

30450. Every person who has obtained a license to sell tobacco products at retail over the counter shall post and maintain in a conspicuous place at any location where tobacco products are sold at retail a sign, not smaller than 8 1/2 by 11 inches, stating the following:

STATE LAW WARNING:
IT IS ILLEGAL TO SELL TOBACCO PRODUCTS
TO ANYONE UNDER THE AGE OF 18
IT IS ILLEGAL FOR ANYONE UNDER THE AGE OF 18
TO PURCHASE TOBACCO PRODUCTS

CHAPTER 6. BILLBOARD ADVERTISING

30500. No person shall advertise or cause to be advertised tobacco products on any outdoor billboard located within 500 feet of any elementary school, junior high school or high school; provided, that this prohibition shall not apply to advertisements erected or maintained at street

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level and affixed to business establishments licensed to sell tobacco products at retail pursuant to this division.

30505. Any who who advertises or causes to be advertised tobacco products in violation of Section 30350 shall be punished by a civil fine not to exceed five thousand dollars.

CHAPTER 7. SMOKING IN PUBLIC PLACES AND WORK PLACES

30600. (a) For purposes of this chapter, the following terms shall have the meaning indicated:

(1) "Bar" means an area that is devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food, if any, is incidental to the consumption of alcoholic beverages. The service of food shall be considered incidental if such food service accounts for less than twenty-five (25) percent of the annual gross sales of the particular establishment. When a bar is operated within a building in conjunction with another use, including but not limited to a restaurant, only the area used primarily for the consumption of alcoholic beverages shall constitute a bar. The dining area shall not constitute a bar, even though alcoholic beverages may be served therein.

(2) "Public place" means any enclosed indoor area to which the general public has access, including theatres, educational facilities, health facilities, public transpor-

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tation facilities, retail establishments, gymnasiums, health spas, libraries, museums and galleries.

(3) "Workplace" means any enclosed indoor area in which two or more individuals are employed on a full-time basis and to which the public does not have access.

(4) "Nonsmoking area" means any area within a building where smoking is prohibited.

(5) "Smoking area" means any area within a building where smoking is permitted.

(6) "Smoking" means the burning of a lighted cigar, cigarette, pipe or other matter or substance that contains tobacco.

(7) "Restaurant" means any place designated as a restaurant by Section 28522 of the Health and Safety Code.

(8) "Industrial facility" means any factory, warehouse or distribution facility.

30605. Except as provided in this chapter, smoking is prohibited in all public places and workplaces in this state.

30610. Smoking areas may be designated in up to twentyfive (25) percent of the concourse and seating areas of indoor arenas, the concourse area of any bowling alley, and the public areas of office buildings, hotels, motels and shopping malls.

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30615. The provisions of this chapter do not apply to the following places:

- (a) Bars.
- (b) Private residences, except when used as a child or health care facility.
- (c) Hotel and motel rooms rented to guests, unless they are designed nonsmoking rooms.
- (d) Industrial facilities.
- (e) Establishments devoted primarily to the retail sale of tobacco products.
- (f) Restaurants, hotel and motel conference or meeting rooms and other private meeting places while those places are being used for private social or business functions.
- (g) Gaming clubs registered pursuant to Chapter 5 (commencing with Section 19800) of Division B.
- (h) Private boxes in indoor sports arenas.

30620. The owner, operator or other person in charge of any restaurant may designate not more than fifty (50) percent of the seating area as a smoking area.

30625. (a) Smoking shall be banned in all airports and bus depots, except in any clearly designated smoking areas that are specified by the pertinent airport or bus authorities.

(b) Not more than twenty-five (25) percent of the seating area of any airport or bus depot may be designated as a smoking area.

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30630. (a) Smoking may be permitted in private enclosed offices, conference rooms and lecture rooms in which all present consent to smoking, in company vehicles with the consent of all those present in the vehicle, and in designated smoking lounges.

(b) Not more than twenty-five (25) percent of the seating area of an employee cafeteria may be designated as a smoking area.

(c) Nothing in this chapter shall affect the rights of employees under any collective bargaining agreement.

30635. No employer shall fail or refuse to employ any person on the ground that such person is a user or a nonuser of tobacco products, shall discriminate against an employee in any manner with respect to terms or conditions of employment on the ground that such employee is a user or a nonuser of tobacco products, or shall discharge any employee on the ground that such employee is a user or a nonuser of tobacco products.

30640. Smoking and nonsmoking areas designated pursuant to this chapter shall be clearly so indicated by the posting of signs. Existing physical barriers and ventilation systems shall be used, to the extent practicable, to minimize the drifting of smoke from smoking to nonsmoking areas.

30645. Nothing in this chapter shall be construed to prevent the owner, operator or other person in charge of any

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public place, or the owner of any business or place of employment, from prohibiting smoking entirely in any establishment under his or her control, including establishments enumerated in Section 30420.

30650. A violation of this chapter shall be an infraction punishable by a fine not to exceed one hundred dollars (\$100) for a first violation and, if occurring within any twelve (12) month period, a fine not to exceed two hundred dollars (\$200) for a second violation and a fine not to exceed five hundred dollars (\$500) for a third and any subsequent violation.

SECTION 3. All fees, civil penalties and fines collected pursuant to this division shall be deposited in the General Fund.

SECTION 4. Section 1234 of the Health and Safety Code is repealed.

SECTION 5. Section 1286 of the Health and Safety Code is repealed.

SECTION 6. Chapter 10.8 (commencing with Section 25940) of the Health and Safety Code is repealed.

SECTION 7. SEVERABILITY

If any provision of this Act or application thereof is held to be invalid, that invalidity shall not affect other provisions of this Act or any applications thereof.