

Model Tobacco Vending Machine Restrictions Act

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Model Tobacco Vending Machine Restrictions Act Policy Statement

Most states ban the sale of tobacco products to those under the age of 18. However, tobacco vending machines allow adolescents the opportunity to purchase tobacco products without having to approach a salesperson or to ask an adult to buy tobacco products for them.

Eighteen states and a number of cities have banned or restricted the sale of tobacco through vending machines. Restrictions on tobacco vending machines either limit where such machines may be placed or ban them from certain places. Most of the current state statutes restrict vending machines to areas that fall under the supervision of an adult or to other areas where adults are more likely to frequent than adolescents, such as workplaces. These restrictions appear to rely on the intercession and monitoring of the machines by adults. With this legislation, based on a statute from the state of Hawaii, the Commission intends to go a step further, removing the responsibility of tobacco vending machine monitoring itself from adult supervision. By placing such vending machines only in areas where the minimum age of admission is 18 years old, the Commission hopes to reduce the accessibility of such machines to those under the age of 18.

Clearly, tobacco vending machines are but one small part of the larger tobacco use and distribution problem. However, tobacco vending machines are one aspect of the tobacco problem that governments can regulate realistically and in a cost-effective manner. It certainly is easier to limit the placement of tobacco vending machines than to keep older parents, siblings, and friends from purchasing tobacco products for underage smokers.

This legislation makes it slightly more difficult for underage persons to obtain tobacco products. The Commission hopes that this measure will prevent some youths from beginning to smoke and encourage others who have already begun to quit. Prevention, education, and treatment programs are needed to lower tobacco use rates further.

Highlights of the Model Tobacco Vending Machine Restrictions Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the vast majority of smokers (90 percent) begin to smoke before they turn 18 years old.
- Recognizes that more than 434,000 Americans died from health problems caused by smoking in 1988 alone.
- Recognizes that smoking is the number one cause of preventable death in the United States and is responsible for or contributes to approximately one-fifth of all deaths each year.
- Recognizes the cost of smoking-related illnesses and death to the nation, in terms of health care expenditures, lost hours of work due to smoking-related sicknesses and disease, and government costs.
- Provides for the state to produce and distribute warning stickers that shall be placed on every tobacco vending machine manufactured, owned, leased, or placed in the state.
- Provides penalties for those individuals and companies that violate this Act by placing vending machines, or allowing their placement, in unauthorized locations.

SPECIFIC RECOMMENDATIONS

- Prohibits the installation, placement, or authorization to place public cigarette vending machines, except where the vending machine is located in a bar, tavern, cabaret, club, or any other establishment in which the minimum age for admission is eighteen.

Model Tobacco Vending Machine Restrictions Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Tobacco Vending Machine Restriction Act.”

Section 2. Legislative Findings.

(a) Ninety percent (90%) of all smokers begin to smoke before they turn 18 years old, according to the American Cancer Society.

(b) More than 434,000 Americans died in 1988 from health problems caused by smoking, according to the Centers for Disease Control. Smoking is the number one cause of preventable death in the United States and is responsible for or contributes to approximately one-fifth of all deaths each year.

(c) The federal government estimates that the cost of smoking-related illnesses and death to the nation is approximately \$65 billion each year in terms of health care expenditures, lost hours of work due to smoking-related sickness and disease, and government costs.

Section 3. Purpose.

This [Act] is intended to restrict the sale and accessibility of cigarettes and other tobacco products through public vending machines to minors under the age of 18.

Section 4. Definitions.

As used in this [Act]:

(a) “Vending machine” means a self-service device that can dispense cigarettes, cigars, tobacco, chewing tobacco, or any other product containing tobacco.

(b) “Cigarette” means any roll of tobacco wrapped in paper or in any substance not containing tobacco, or any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of

tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.

Section 5. Prohibited Acts.

It is unlawful to install, place, or authorize the placement of a public vending machine for the purpose of selling cigarettes or other tobacco products unless the vending machine is located in a bar, tavern, cabaret, club, or any other establishment in which the minimum age for admission is eighteen.

COMMENT

In most states, the legal age for purchasing cigarettes is 18 years old. However, cigarette vending machines offer the opportunity for anyone to purchase cigarettes, regardless of age. Some state cigarette vending machine statutes allow the placement of vending machines in public places, provided they are under the supervision of an adult. It may be unreasonable to assume that an adult will supervise such machines at all times. Other state cigarette vending machine statutes allow the placement of vending machines in private locations, such as business workplaces. However, as more and more businesses become “smoke-free environments,” such legislation may become obsolete, in that context.

The Commission believes that the sale of cigarettes from public vending machines should be prohibited unless the vending machine is located in an establishment in which the minimum age for admission is 18 years old.

There is ample evidence that delaying the onset of tobacco use reduces the likelihood that tobacco use will begin later in life. Given the hundreds of thousands of deaths per year due to tobacco related diseases and ailments, the tens of thousands of deaths per year due to second-hand tobacco smoke-related diseases, the Commission believes that any steps taken to reduce the availability of such products to underage smokers and smokers in general are beneficial to society.

Section 6. Warning Notifications.

The [state agency that enforces tobacco and other health-related issues] shall produce and distribute warning stickers that shall be placed on every tobacco vending machine manufactured, owned, leased, or placed in this state.

(a) The sticker should read: "It is a violation for this machine to be accessible in any manner to youths under the age of 18. Please report any violation to the [state agency that enforces tobacco and other health-related issues]" and should provide a phone number for such reporting. Similar messages reflecting the intent of this [Act] may be substituted, provided they are approved by the [state agency that enforces tobacco and other health-related issues].

(b) The sticker should be permanently and prominently affixed to all tobacco vending machines manufactured, owned, leased, or placed in this state.

COMMENT

The tobacco vending machine warning stickers will allow the enforcing agency to monitor the placement of any tobacco vending machine in the state as well as to encourage the general public to report any violations of this Act.

Section 7. Fines.

(a) A person who violates Section 5 shall be fined no less than [\$100] per day and no more than [\$1,000] per day for each violation. The fine(s) shall begin on the day of unlawful installation or placement of the vending machine that is the subject of the violation.

(b) A person who violates Section 6 in addition to Section 5 shall be fined no less than [\$200] per day and no more than [\$2,000] per day for each violation. The fine(s) shall begin on the day of unlawful installation or placement of the vending machine that is the subject of the violation.

(c) A person who violates only Section 6 shall be fined no less than [\$50] per day and no more than [\$500] per day for each violation. The fine(s) shall begin on the day of unlawful installation of the vending machine that is the subject of the violation.

COMMENT

The person, organization, or company that installs, places, or authorizes the placement of a tobacco vending machine, whether or not the person, organization, or company manages or otherwise controls the premises are liable for any violations of Section 5 and/or Section 6 of this [Act] and are subject to the fines described in this section. In addition, the owner of any premises upon which a tobacco vending machine is placed also is liable for any violations of this [Act] and is subject to the fines.

Section 8. Enforcing Agency.

The [state agency that enforces tobacco and other health-related issues] shall be responsible for the enforcement of this [Act] and shall promulgate all rules and regulations applicable thereto.

Section 9. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 10. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].