CHAPTER 142A

TOBACCO USE PREVENTION AND CONTROL

Referred to in §135.11

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142A.1 Tobacco use prevention and control partnership — purpose and intent.

1. The purpose of this chapter is to establish a comprehensive partnership among the general assembly, the executive branch, communities, and the people of Iowa in addressing the prevalence of tobacco use in the state.

2. It is the intent of the general assembly that the comprehensive tobacco use prevention and control initiative established in this chapter will specifically address reduction of tobacco use by youth and pregnant women and enhancement of the capacity of youth to make healthy choices. The initiative shall allow extensive involvement of youth in attaining these results.

3. It is also the intent of the general assembly that the comprehensive tobacco use prevention and control initiative will foster a social and legal climate in which tobacco use becomes undesirable and unacceptable, in which role models and those who influence youth promote healthy social norms and demonstrate behavior that counteracts the glamorization of tobacco use, and in which tobacco becomes less accessible to youth. The intent of the general assembly shall be accomplished by engaging all who are affected by the use of tobacco in the state, including smokers and nonsmokers, youth, and adults.

2000 Acts, ch 1192, §1, 17; 2011 Acts, ch 63, §1
Referred to in §142A.4, 142A.6

142A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of tobacco use prevention and control.

2. *"Commission"* means the commission on tobacco use prevention and control established in this chapter.

3. *"Community partnership"* means a public agency or nonprofit organization implementing the tobacco use prevention and control initiative in a local area in accordance with this chapter.

4. *"Department"* means the Iowa department of public health.

5. *"Director"* means the director of public health.

6. *"Division"* means the division of tobacco use prevention and control of the Iowa department of public health, established pursuant to this chapter.

7. *"Initiative"* means the comprehensive tobacco use prevention and control initiative established in this chapter.

8. *"Manufacturer"* means manufacturer as defined in section 453A.1.

9. *"Pregnant woman"* means a female of any age who is pregnant.

10. *"School-age youth"* means a person attending school in kindergarten through grade twelve.

11. *"Tobacco"* means both cigarettes and tobacco products as defined in section 453A.1.

12. *"Youth"* means a person who is five through twenty-four years of age.

2000 Acts, ch 1192, §2, 17; 2011 Acts, ch 63, §2

142A.3 Tobacco use prevention and control — division — commission — created.

1. The department shall establish, as a separate and distinct division within the department, a division of tobacco use prevention and control. The division shall develop, implement, and administer the initiative established in this chapter and shall perform other duties as directed by this chapter or as assigned by the director of public health.

2. A commission on tobacco use prevention and control is established to develop policy, provide direction for the initiative, and perform all other duties related to the initiative and other tobacco use prevention and control activities as directed by this chapter or referred to the commission by the director of public health.

3. The membership of the commission shall include the following voting members who shall serve three-year, staggered terms:

a. Members, at least one of whom is a member of a racial minority, to be appointed by the governor, subject to confirmation by the senate pursuant to sections 2.32 and 69.19, and consisting of the following:

(1) Three members who are active with nonprofit health organizations that emphasize tobacco use prevention or who are active as health services providers, at the local level.

(2) Three members who are active with health promotion activities at the local level in youth education, nonprofit services, or other activities relating to tobacco use prevention and control.

b. Three voting members, to be selected by the participants in the annual statewide youth summit of the initiative's youth program, who shall not be subject to section 69.16 or 69.16A. However, the selection process shall provide for diversity among the members and at least one of the youth members shall be a female.

4. The commission shall also include the following ex officio, nonvoting members:

a. Four members of the general assembly, with not more than one member from each chamber being from the same political party. The majority leader of the senate and the minority leader of the senate shall each appoint one of the senate members. The majority leader of the house of representatives and the minority leader of the house of representatives shall each appoint one of the house members.

b. The presiding officer of the statewide youth executive body, selected by the delegates to the statewide youth summit.

5. In addition to the members of the commission, the following agencies, organizations, and persons shall each assign a single liaison to the commission to provide assistance to the commission in the discharge of the commission's duties:

a. The department of education.

b. The drug policy coordinator.

c. The department of justice, office of the attorney general.

d. The department of human services.

6. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Citizen members shall be paid a per diem as specified in section 7E.6. Legislative members are eligible for per diem and expenses as provided in section 2.10.

7. A member of the commission who is convicted of a crime relating to tobacco, alcohol, or controlled substances is subject to removal from the commission.

8. A vacancy on the commission other than for the youth members shall be filled in the same manner as the original appointment for the balance of the unexpired term. A youth member vacancy shall be filled by the presiding officer of the statewide executive body as selected by the delegates to the statewide youth summit.

9. The commission shall elect a chairperson from among its voting members and may select other officers from among its voting members, as determined necessary by the commission. The commission shall meet regularly as determined by the commission, upon the call of the chairperson, or upon the call of a majority of the voting members.

10. The commission may designate an advisory council. The commission shall determine the membership and representation of the advisory council and members of the council shall serve at the pleasure of the commission. The advisory council may include representatives

of health care provider groups, parent groups, antitobacco advocacy programs and organizations, research and evaluation experts, and youth organizers.

2000 Acts, ch 1192, §3, 17; 2004 Acts, ch 1176, §6; 2009 Acts, ch 133, §42; 2010 Acts, ch 1061, §30; 2011 Acts, ch 63, §3, 4; 2012 Acts, ch 1021, §46

142A.4 Commission duties.

The commission shall do all of the following:

1. Develop and implement the comprehensive tobacco use prevention and control initiative as provided in this chapter.

2. Provide a forum for the discussion, development, and recommendation of public policy alternatives in the field of tobacco use prevention and control.

3. Develop an educational component of the initiative. Educational efforts provided through the school system shall be developed in conjunction with the department of education.

4. Develop a plan for implementation of the initiative in accordance with the purpose and intent specified in section 142A.1.

5. Provide for technical assistance, training, and other support under the initiative.

6. Take actions to develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

7. Manage and coordinate the provision of funding and other moneys available to the initiative by combining all or portions of appropriations or other revenues as authorized by law.

8. Assist with the linkage of the initiative with child welfare and juvenile justice decategorization projects, education programming, early childhood Iowa areas, and other programs and services directed to youth at the state and community level.

9. *a.* Coordinate and respond to any requests from a community partnership relating to any of the following:

(1) Removal of barriers to community partnership efforts.

(2) Pooling and redirecting of existing federal, state, or other public or private funds available for purposes that are consistent with the initiative.

(3) Seeking of federal waivers to assist community partnership efforts.

b. In coordinating and responding to the requests, the commission shall work with state agencies, the governor, and the general assembly as necessary to address requests deemed appropriate by the commission.

10. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of the initiative and the implementation of this chapter. The commission shall provide for community partnership and youth program input in the rules adoption process. The rules shall include but are not limited to all of the following:

a. Performance indicators for initiative programs, community partnerships, and the services provided under the auspices of community partnerships. The performance indicators shall be developed with input from communities.

b. Minimum standards to further the provision of equal access to services.

11. Monitor and evaluate the effectiveness of performance measures utilized under the initiative.

12. Submit a report to the governor and the general assembly on a periodic basis, during the initial year of operation, and on an annual basis thereafter, regarding the initiative, including demonstrated progress based on performance indicators. The commission shall report more frequently if requested by the joint appropriations subcommittee that makes recommendations concerning the commission's budget. Beginning July 1, 2005, the commission shall also perform a comprehensive review of the initiative and shall submit a report of its findings to the governor and the general assembly on or before December 15, 2005.

13. Represented by the chairperson of the commission, annually appear before the joint appropriations subcommittee that makes recommendations concerning the commission's budget to report on budget expenditures and division operations relative to the prior fiscal year and the current fiscal year.

14. Advise the director in evaluating potential candidates for the position of administrator, consult with the director in the hiring of the administrator, and review and advise the director on the performance of the administrator in the discharge of the administrator's duties.

15. Prioritize funding needs and the allocation of moneys appropriated and other resources available for the programs and activities of the initiative.

16. Review fiscal needs of the initiative and make recommendations to the director in the development of budget requests.

17. Solicit and accept any gift of money or property, including any grant of money, services, or property from the federal government, the state, a political subdivision, or a private source that is consistent with the goals of the initiative. The commission shall adopt rules prohibiting the acceptance of gifts from a manufacturer of tobacco products.

18. Advise and make recommendations to the governor, the general assembly, the director, and the administrator, relative to tobacco use, treatment, intervention, prevention, control, and education programs in the state.

19. Evaluate the work of the division and the department relating to the initiative. For this purpose, the commission shall have access to any relevant department records and documents, and other information reasonably obtainable by the department.

20. Develop the structure for the statewide youth summit to be held annually.

21. Approve the content of any materials distributed by the youth program pursuant to section 142A.9, prior to distribution of the materials.

2000 Acts, ch 1192, §4, 17; 2004 Acts, ch 1176, §7; 2005 Acts, ch 179, §57; 2009 Acts, ch 41, §263; 2010 Acts, ch 1031, §293; 2011 Acts, ch 63, §5

Referred to in §142A.5

142A.5 Director and administrator duties.

1. The director shall do all of the following:

a. Establish and maintain the division of tobacco use prevention and control.

b. Employ a separate division administrator, in accordance with the requirements of section 142A.4, subsection 14, in a full-time equivalent position whose sole responsibility and duty shall be the administration and oversight of the division. The division administrator shall report to and shall serve at the pleasure of the director. The administrator shall be exempt from the merit system provisions of chapter 8A, subchapter IV.

c. Coordinate all tobacco use prevention and control programs and activities under the purview of the department.

d. Receive and review budget recommendations from the commission. The director shall consider these recommendations in developing the budget request for the department.

2. The administrator shall do all of the following:

a. Implement the initiative, coordinate the activities of the commission and the initiative, and coordinate other tobacco use prevention and control activities as assigned by the director.

b. Monitor and evaluate the effectiveness of performance measures.

c. Provide staff and administrative support to the commission.

d. Administer contracts entered into under this chapter.

e. Coordinate and cooperate with other tobacco use prevention and control programs within and outside of the state.

f. Provide necessary information to the commission to assist the commission in making its annual report to the joint appropriations subcommittee pursuant to section 142A.4, subsection 13, and in fulfilling other commission duties pursuant to section 142A.4.

2000 Acts, ch 1192, §5, 17; 2003 Acts, ch 145, §190; 2004 Acts, ch 1176, §8, 9; 2011 Acts, ch 63, §6, 7

142A.6 Comprehensive tobacco use prevention and control initiative established — purpose — results.

1. A comprehensive tobacco use prevention and control initiative is established. The division shall implement the initiative as provided in this chapter.

2. The purpose of the initiative is to attain the following results:

a. Reduction of tobacco use by youth.

b. Strong, active youth involvement in activities to prevent youth tobacco use and to promote cessation of youth tobacco use.

c. Enhanced capacity of youth to make healthy choices.

d. Reduction of tobacco use by pregnant women.

3. Success in achieving the initiative's desired results may be demonstrated by a minimum of the following:

a. Data demonstrating consistent progress in reducing the prevalence of tobacco use among youth and adults.

b. Survey results indicating widespread support among youth for the initiative's tobacco use prevention and control activities; for programs that enhance the ability of youth to make healthy choices including those related to use of tobacco, alcohol, and other substances; and for the media, marketing, and communications efforts supporting the initiative's desired results. Any survey conducted may also include an assessment of the effectiveness of tobacco use prevention and control activities in affecting other unhealthy youth behaviors including sexual activity and violent behavior.

4. The division shall implement the initiative in a manner that ensures that youth are extensively involved in the decision making for the programs implemented under the initiative. The initiative shall also involve parents, schools, and community members in activities to achieve the results desired for the initiative. The division shall encourage collaboration at the state and local levels to maximize available resources and to provide flexibility to support community efforts.

5. Procurement of goods and services necessary to implement the initiative is subject to approval of the commission. Notwithstanding chapter 8A, subchapter III, or any other provision of law to the contrary, such procurement may be accomplished by the commission under its own competitive bidding process which shall provide for consideration of such factors as price, bidder competence, and expediency in procurement.

6. In order to promote the tobacco use prevention and control partnership established in section 142A.1, the following persons shall comply with the following, as applicable:

a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not provide free articles, products, commodities, gifts, or concessions in any exchange for the purchase of cigarettes or tobacco products.

c. The prohibitions in this section do not apply to transactions between manufacturers, distributors, wholesalers, or retailers.

d. For the purpose of this subsection, manufacturer, distributor, wholesaler, retailer, and distributing agent mean as defined in section 453A.1.

2000 Acts, ch 1192, §6, 17; 2003 Acts, ch 145, §191; 2011 Acts, ch 63, §8, 9

[P] See also §453A.39

142A.7 Initiative components.

1. The initiative shall include but is not limited to all of the following:

a. Youth programs, designed to achieve the initiative's desired results, that are directed by youth participants for youth.

b. A media, marketing, and communications program to achieve the initiative's desired results. Advertising shall not include the name, voice, or likeness of any elected or appointed public official or of any candidate for elective office.

c. Independent evaluation of each component of the statewide initiative.

d. Ongoing statewide assessment of data, review of indicators used in assessing the effectiveness of the initiative, and evaluation of the initiative, its programs, and its marketing strategy. The initial baseline used to measure the effectiveness of the initiative shall be developed using existing, available indicators. Following development of the initial baseline, indicators of the effectiveness of the initiative shall be reviewed on at least an annual basis to ensure that the indicators used most accurately provide for measurement of such effectiveness. Primary emphasis in data assessment shall be on data relating to tobacco usage and may include data demonstrating the prevalence of tobacco use among youth and

pregnant women, and the prevalence of the use of alcohol and other substances among youth. Sources of data considered shall include but are not limited to the centers for disease control and prevention of the United States department of health and human services and the Iowa youth tobacco survey, and may include the Iowa youth risk survey conducted by the department or the youth risk behavior survey.

e. A tobacco use prevention and control education program.

2. Administrative costs associated with each program of the initiative and program provider shall be established at a reasonable level consistent with effective management practices.

3. Requests for information or for proposals shall emphasize that performance measures are required for any contract or allocation of funding under the initiative.

2000 Acts, ch 1192, §7, 17; 2011 Acts, ch 63, §10

142A.8 Community partnerships.

1. A community partnership is a public agency or nonprofit organization operating in a local area under contract with the department to implement the initiative in that local area utilizing broad community involvement. The community partnership or its designee shall act as the fiscal agent for moneys administered by the community partnership.

2. A community partnership area shall encompass a county or multicounty area, school district or multischool district area, economic development enterprise zone that meets the requirements of an urban or rural enterprise community under Tit. XIII of the federal Omnibus Budget Reconciliation Act of 1993, or early childhood Iowa area, in accordance with criteria adopted by the commission for appropriate population levels and size of geographic areas.

3. The commission shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community partnership areas and for subsequent changes to the initially designated areas.

4. The requirements for contracts entered into by a community partnership and the department shall include but are not limited to all of the following:

a. Administrative functions.

b. Fiscal provisions.

c. Community and youth involvement in program and administrative decisions.

d. Evaluation of the program.

2000 Acts, ch 1192, §8, 17; 2010 Acts, ch 1031, §294; 2010 Acts, ch 1061, §180; 2011 Acts, ch 63, §11

142A.9 Youth program.

1. A youth program component shall be implemented in each community partnership area to achieve the purposes of the initiative.

2. The youth program shall include but is not limited to all of the following:

a. A structure for program participants to interact with other participating youth within the community partnership area and in other areas of the state.

b. A structure for formal youth involvement in youth program governance at the community partnership area level and in a statewide youth summit or summits consisting of participation by representatives of the community partnership area level.

c. A structure for participation in a statewide executive body consisting of participants selected by the delegates to the statewide youth summit of the youth program.

d. Youth activities that are character-based and focused on rewarding appropriate values, behavior, and healthy choices by participants.

3. To the greatest extent possible, the youth program shall be directed by youth for youth participants. State and local administrators associated with the initiative shall consult with and utilize the youth program participants in the media, marketing, and communications program; education efforts; and other aspects of the initiative including evaluation and collaboration.

2000 Acts, ch 1192, §9, 17; 2011 Acts, ch 63, §12

Referred to in §142A.4

142A.10 Funding of programs delivered through community partnerships.

1. The commission shall develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

2. The system shall provide for equitable allocation of funding for initiative programs among the state's community partnership areas, based upon school-age population and other criteria established by the commission.

3. The specific programs, distribution provisions, and other provisions approved by the commission for expenditure of the maximum allocation amount established for a community partnership area shall be outlined in the written contract with the community partnership.

4. Any allocation received by a community partnership shall be matched with local funding, in-kind services, office support, or other tangible support or offset of costs.

2000 Acts, ch 1192, §10, 17

142A.11 Application for services — minors.

A minor who is twelve years of age or older shall have the legal capacity to act and give consent to the provision of tobacco cessation coaching services pursuant to a tobacco cessation telephone and internet-based program approved by the department. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

2013 Acts, ch 81, §5

[T] NEW section