



# Tobacco Laws Affecting California

**2012**



Fully updated, user-friendly guide to laws regulating exposure to secondhand smoke and the sale and marketing of tobacco products, including the federal Tobacco Control Act



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ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance Legal Center (TALC). Any references to PHLP or TALC in this publication should now be understood to refer to ChangeLab Solutions.

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**OVERVIEW**

This booklet provides summaries of state and federal tobacco laws that affect California. It is designed as a resource for tobacco control advocates, government attorneys, local law enforcement agencies, and anyone who is working on tobacco control issues. The booklet includes information on California state laws and regulations related to tobacco, as well as federal laws and regulations that apply within California, such as the Family Smoking Prevention and Tobacco Control Act (known as the Tobacco Control Act).\* It also summarizes portions of the 1998 Master Settlement Agreement (MSA) between the attorneys general of 46 states (including California) and the major tobacco companies, and the 1998 Smokeless Tobacco Master Settlement Agreement (STMSA) between the attorneys general of 45 states (including California) and U.S. Smokeless Tobacco Company.

In some cases, there are multiple laws covering a particular topic. For example, both California and the federal government ban the sale of tobacco to minors. In that example, selling tobacco to a minor could violate both California and federal law. In other cases, the state and federal law may cover the same topic but have different restrictions. Readers will need to examine the scope of each law closely to determine what is prohibited.

The information in this booklet includes tobacco-related laws that are effective as of March 1, 2012. This booklet replaces all earlier editions and supplements.

This booklet does not contain information on the numerous *local* laws in California that regulate tobacco use, sales, or distribution. Many of these local laws are stricter than state or federal law. For example, local governments in California have passed laws to limit exposure to secondhand smoke in both indoor and outdoor areas where smoking is permitted by state law. Local governments in California also have enacted laws to supplement state laws regarding how tobacco products are sold. For instance, the state tobacco retailer licensing law focuses on protecting state revenue by targeting tax evasion, while numerous communities have local tobacco retailer licensing laws that focus on protecting the public’s health.

It is important to review local laws to determine whether a jurisdiction has adopted restrictions to supplement the laws described in this book.

**DISCLAIMERS**

This booklet is provided for general information only and is not offered or intended as legal advice. ChangeLab Solutions and its projects do not enter into attorney-client relationships. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform an independent evaluation of the issues raised in these materials. If you notice any inaccuracies or misstatements, please inform us.

\*This booklet does not include every instance in which the word *tobacco* is mentioned in state or federal law. However, the booklet contains information on the laws that are relevant to tobacco control implementation and enforcement efforts in California. If you note any omissions in the booklet, please contact us.

### FINDING THE ACTUAL LAWS

The full text of the laws and regulations described in this booklet can be found on the following websites:

- **California Laws**  
[www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)  
This website is the easiest place to find the California laws. To locate a particular code section, check the box next to the type of code (e.g., Penal Code), type the number of the section in the keyword(s) box, and click on the search button under the keyword(s) box. To browse an entire code (as opposed to a particular section), check the box next to the type of code and click on the search button without typing anything into the keyword(s) box.
- **California Regulations**  
<http://ccr.oal.ca.gov>  
This website provides access to the California Code of Regulations. To find a specific regulation, you can search by key word, by exact citation, or by browsing through the different Titles.
- **Federal Laws**  
<http://uscode.house.gov/search/criteria.shtml>  
This website contains the full text of the federal laws (the U.S. Code). To pinpoint a particular federal law, you can search by several methods, including keyword, title, and section.
- **Federal Regulations**  
[www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html)  
This website provides access to the Code of Federal Regulations (C.F.R.). The left bar contains several search options, and the center of the page has a Quick Search function.
- **FDA Guidance, Compliance and Regulatory Information**  
[www.fda.gov/tobaccoProducts/guidancecomplianceregulatoryInformation](http://www.fda.gov/tobaccoProducts/guidancecomplianceregulatoryInformation)  
This website provides access to FDA guidance and compliance information on the 2009 federal Family Smoking Prevention and Tobacco Control Act.
- **Master Settlement Agreement (MSA)**  
<http://ag.ca.gov/tobacco/msa.php>  
This website contains the entire MSA between the attorneys general of 46 states (including California) and the major tobacco companies.
- **Smokeless Tobacco Master Settlement Agreement (STMSA)**  
<http://ag.ca.gov/tobacco/ssa.php>  
This website contains the entire STMSA between the attorneys general of 45 states (including California) and U.S. Smokeless Tobacco Company.

### ADDITIONAL COPIES OF THIS BOOKLET

To order more copies of this booklet, contact us at (510) 302-3380 or [www.changelabsolutions.org/tobacco-control/tobaccoquestions](http://www.changelabsolutions.org/tobacco-control/tobaccoquestions). Alternatively, you may download a copy from our website at [www.changelabsolutions.org/tobacco-control/products/tobaccolawsca](http://www.changelabsolutions.org/tobacco-control/products/tobaccolawsca).



# SECONDHAND SMOKE

## 1. WORKPLACES

### *California Labor Code Section 6404.5*

**SCOPE:** It is against the law to smoke in an enclosed space at a place of employment. No employer shall knowingly or intentionally permit smoking in an enclosed space at a place of employment. *Enclosed space* includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building. A *place of employment* is any place where employment is carried on.

An employer who permits any nonemployee access to his or her place of employment on a regular basis must take reasonable steps to prevent smoking by a nonemployee, as specified.

**Note:** This law applies to places of employment at any time of day or night, regardless of whether any employees are present. (Legis. Counsel of Cal. Op. 16332, Question No. 18 (May 12, 1995))

**Note:** This law does not apply to a business that is operated solely by the owner(s) and has no employees because such a business is not considered a place of employment under the law.

**Note:** In many cases, volunteers may be considered employees for the purposes of determining whether a space is a place of employment. For instance, a person who provides unpaid services but who receives some other kind of benefit from these services (such as reduced-price admission) may be considered an employee. (Legis. Counsel of Cal. Op. 24807, Question No. 3 (Dec. 20, 1997))

**Note:** This law allows local governments to adopt local laws that impose stricter indoor smoking restrictions. (*City of San Jose v. Dep't of Health Services*, 66 Cal. App. 4th 35, 44 (1998))

**EXCEPTION:** The following places are exempt from the smoking ban:

- Up to 65 percent of hotel/motel guest rooms.
  - Note:** Hotels and motels may choose to be 100 percent smokefree.
- Up to 25 percent or 50 percent (depending on square footage) of hotel/motel lobbies.
  - Note:** *Lobby* is defined as a common public area, which has been interpreted to exclude the hotel bar area.
- Meeting and banquet rooms in a hotel/motel, except while food and beverage functions are taking place.
- Retail or wholesale tobacco shops (businesses whose main purpose is the sale of tobacco products) and private smokers' lounges (any enclosed area in or attached to a retail/wholesale tobacco shop dedicated to tobacco use).

**Note:** Businesses that serve alcoholic beverages do not qualify for this exception. (Cal. Atty Gen. Op. No. 09-507 (Dec. 21, 2011))

- Cabs of trucks or tractors, if nonsmoking employees are not present.
- Warehouse facilities (with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility), but not areas utilized as office space.
- Theatrical production sites, if smoking is an integral part of the story.
- Medical research and treatment sites, if smoking is integral to the research and treatment being conducted.
- Private residences, except for those licensed as family day care homes during hours of operation and in those areas where children are present.
- Patient smoking areas in long-term health facilities.
- Employee break rooms designated by employers for smoking, provided they meet all of the following criteria: (1) air from the room is exhausted directly to the outside by an exhaust fan; (2) the employer complies with applicable state and federal ventilation standards; (3) the room is located in a non-work area; and (4) there are sufficient nonsmoking break rooms to accommodate nonsmokers.
- Small businesses (with five or fewer full or part time employees) when all four of the following conditions are met: (1) the smoking area is not accessible to minors; (2) all employees who enter the smoking area consent to permit smoking; (3) air from the smoking area is exhausted directly to the outside by an exhaust fan; and (4) the employer complies with all applicable state and federal ventilation standards.

**Note:** This exception is extremely limited and difficult to meet. For example, it does not apply to bars. (82 Ops. Cal. Atty. Gen. 190 (Oct. 8, 1999)) In addition, minors may not be excluded arbitrarily in order to meet the first condition. (79 Ops. Cal. Atty. Gen. 8 (Feb. 15, 1996))

**ENFORCEMENT:** This section may be enforced by local law enforcement agencies, including local health departments, as determined by the local governing body. The enforcement agency may refer the violation to the California Occupational Safety and Health Administration (Cal/OSHA) for further enforcement; however, Cal/OSHA is not required to respond to a complaint until after a third conviction under California Labor Code Section 6404.5. In addition, under California Labor Code Section 2699, an aggrieved employee or former employee may bring a civil action if Cal/OSHA fails to act upon a complaint.

**PENALTY:** Violators are guilty of an infraction and subject to a fine of up to \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third or subsequent violation within one year.

**Note:** Cal/OSHA's fines are potentially much greater; Cal/OSHA has fined a violator over \$50,000.

## 2. MULTI-UNIT RESIDENCES

### *California Labor Code Section 6404.5*

**SCOPE:** In apartment and condominium complexes, the indoor common areas (including hallways, stairwells, laundry rooms, and recreation rooms) are subject to the workplace smoking prohibitions contained in Labor Code Section 6404.5 if these areas are places of employment. (See entry 1 for a summary of Labor Code Section 6404.5.)

**Note:** An indoor common area may be a place of employment if the complex has an employee, such as an on-site property manager, security guard, or maintenance worker, who works on the property at any time.

**Note:** Landlords and condominium associations may adopt policies further restricting where residents smoke. Such policies could prohibit smoking in indoor and outdoor common areas as well as in individual units.

**Note:** Tenants or condominium owners with certain disabilities relating to smoke sensitivity may have other legal remedies available to address the problem of drifting smoke entering their units. See entries 117 and 118 for more information on remedies available to people with disabilities.

**ENFORCEMENT:** See entry 1 for a summary of how the California Labor Code may be enforced.

**PENALTY:** See entry 1 for penalties available under the California Labor Code.

### *California Civil Code Section 1947.5*

**SCOPE:** A landlord may prohibit the smoking of cigarettes or other tobacco products on the property or in any portion of the building.

**Note:** Landlords who exercise their authority to prohibit smoking remain subject to all federal, state, and local laws regarding changes to the terms of a lease or rental agreement for all leases or rental agreements that were entered into before the smokefree policy was adopted (for example, notice requirements, local rent ordinances, etc.).

If a landlord prohibits smoking anywhere on the property, any lease or rental agreement entered into on or after January 1, 2012, must include a provision specifying where smoking is prohibited. For a lease or rental agreement entered into before January 2012, a prohibition against smoking in any portion of the property where smoking was previously allowed constitutes a change of the terms of tenancy, requiring adequate notice in writing.

**Note:** This law explicitly permits local governments to pass ordinances, regulations, and policies that prohibit smoking or tobacco product use in residential dwellings.

**ENFORCEMENT:** Not applicable.

**PENALTY:** Not applicable.

## 3. STATE, COUNTY, AND CITY BUILDINGS

### *California Government Code Sections 7596–7598*

**SCOPE:** Smoking is prohibited:

- inside a public building, which is a building owned and occupied, or leased and occupied, by the state, a county, a city, or a California community college district;
- in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building; and
- in a passenger vehicle owned by the state.

This law explicitly permits local governments and campuses (e.g., a campus of the University of California, the California State University, or the California community college system) to pass more restrictive ordinances, regulations, and policies.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**EXCEPTION:** The smoking prohibition does not apply to private living areas of public buildings (such as dormitories) or to the parking areas of covered public parking lots. Smoking may be allowed in any outdoor area of a public building unless otherwise prohibited by state or local law and a sign describing the prohibition is posted by the state, county, or city agency, or other appropriate entity.

**ENFORCEMENT:** The governing bodies of the University of California, the California State University, and each community college district have the authority to enforce their requirements by citation and fine. If a campus exercises its enforcement and fine authority, it must (and a campus of the University of California may) post signs stating its tobacco use policy and inform employees and students of the policy.

**PENALTY:** The governing bodies of the University of California, the California State University, and each community college district may impose a fine for each offense, with the amount to be determined by the local governing body. Funds shall be allocated to include, but not be limited to, the designated enforcement agency, education and promotion of the policy, and tobacco cessation treatment options. The civil penalty shall not exceed \$100.

#### 4. TOT LOTS AND PLAYGROUNDS

*California Health and Safety Code Section 104495*

**SCOPE:** Smoking of tobacco products is prohibited within 25 feet of a playground or tot lot sandbox area. The disposal of tobacco-related waste, such as cigar and cigarette butts, in these areas is also prohibited. A *playground* is defined as a park or recreational area specifically designed for use by children that has play equipment installed. This includes facilities located on public or private school grounds, or on city, county, or state park grounds. A *tot lot sandbox area* is a play area within a public park designated for use by children under five years of age. The law allows local governments to pass and enforce stricter laws.

**EXCEPTION:** The law does not apply to private property (except for private schools) or to public sidewalks within 25 feet of a playground or tot lot area.

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of an infraction and subject to a fine of \$250 per violation.

#### 5. SCHOOLS

*20 United States Code Section 6083*

**SCOPE:** It is illegal under federal law to permit smoking within any indoor facility utilized for kindergarten, elementary, or secondary education or library services for children.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**Note:** See entries 14 and 15 for summaries of tobacco possession and use restrictions relating to schools.

**ENFORCEMENT:** The U.S. Department of Education is authorized to enforce this law.

**Note:** A school or library may use its general power over its property to enforce no-smoking rules against visitors and its general power over its terms of employment to enforce no-smoking rules against employees. A school may use its normal disciplinary powers to enforce no-smoking rules against students.

**PENALTY:** Violators may be liable for a civil penalty of up to \$1,000 for each violation and/or may be subject to an administrative compliance order. Each day a violation continues constitutes a separate violation.

#### 6. DAY CARE FACILITIES

*California Health and Safety Code Sections 1596.795, 1596.890*

**SCOPE:** California law prohibits smoking on the premises of a licensed day care center and in a licensed family day care home (e.g., a day care for children based in the home of the provider) during the hours of operation as a family day care home and in those areas of the family day care home where children are present. The law allows for more stringent local laws.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**EXCEPTION:** This law does not prohibit smoking in family day care homes before or after hours of operation as a day care facility, but smoking in areas where children are present, even after hours, is still prohibited.

**ENFORCEMENT:** This law may be enforced by the California Department of Social Services or by local law enforcement agencies.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a \$1,000 fine and/or imprisonment for no more than 180 days.

*20 United States Code Section 6083*

**SCOPE:** It is illegal under federal law to permit smoking within any indoor facility that is used for federally funded health care, day care, or Head Start services for children or that is used by the employees of the provider of such services.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**EXCEPTION:** This law does not apply to any private residence or to areas used for inpatient hospital treatment for drug or alcohol addiction.

**Note:** California Health and Safety Code Section 1596.795 prohibits smoking in family day care homes during hours of operation.

**ENFORCEMENT:** The U.S. Department of Education is authorized to enforce this law.

**Note:** The facilities covered by this law may use their general power over their property to enforce no-smoking rules against visitors and their general power over their terms of employment to enforce no-smoking rules against employees.

**PENALTY:** Violators may be liable for a civil penalty of up to \$1,000 for each violation and/or may be subject to an administrative compliance order. Each day a violation continues constitutes a separate violation.

## 7. SMOKING IN VEHICLES WITH CHILDREN

*California Health and Safety Code Sections 118947–118949*

**SCOPE:** It is illegal to smoke or possess a lighted pipe, cigar, or cigarette containing tobacco or any other plant in any motor vehicle in which there is a minor (under 18 years of age), regardless of whether the vehicle is in motion or at rest.

**ENFORCEMENT:** A law enforcement officer may not stop a vehicle for the sole purpose of determining whether the driver is violating this prohibition.

**PENALTY:** Violation of this section is an infraction punishable by a fine not exceeding \$100 per violation.

## 8. PUBLIC TRANSIT SYSTEMS

*California Health and Safety Code Sections 118925–118945*

**SCOPE:** Smoking is prohibited on public transportation systems and in any vehicle of an entity receiving transit assistance from the state. A notice prohibiting smoking, displayed as a symbol and in English, must be posted in such vehicles or aircraft, in addition to other sign posting requirements. The law allows for more restrictive local laws.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of an infraction and subject to a fine of up to \$100 for a first violation, up to \$200 for a second violation within one year, and up to \$500 for a third subsequent violation within one year.

*California Penal Code Section 640*

**SCOPE:** Smoking is not allowed on public transportation in areas where it is prohibited by that system.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of an infraction and subject to a fine of up to \$250 and 48 hours of community service.

## 9. AIRPLANES AND TRAINS

*California Health and Safety Code Sections 118925–118945*

**SCOPE:** Smoking is prohibited on any aircraft or Amtrak train, except to the extent permitted by federal law. The law contains sign posting requirements.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of an infraction and subject to a fine of up to \$100 for a first violation, up to \$200 for a second violation within one year, and up to \$500 for a third or subsequent violation within one year.

*49 United States Code Section 41706, 14 C.F.R. 252*

**SCOPE:** Smoking is prohibited on domestic U.S. airline flights. Smoking also is prohibited in foreign air travel arriving in or departing from the United States.

**Note:** The U.S. Department of Transportation (DOT) has stated that it views the prohibition on smoking on aircraft to include the use of electronic cigarettes and has also proposed amending the regulatory language to explicitly clarify that e-cigarette use is prohibited on aircraft. (76 Fed. Reg. 57008-57012 (September 15, 2011).)

**EXCEPTION:** If a foreign government objects to the prohibition of smoking during foreign air travel, the Secretary of Transportation shall negotiate an alternative.

**ENFORCEMENT:** The Secretary of Transportation shall prescribe regulations necessary to carry out this section.

**PENALTY:** Not specified.

## 10. YOUTH BUSES AND PUBLIC PARATRANSIT VEHICLES

*California Vehicle Code Sections 336, 680, 12523(d)(2), 12523.5(d)(2), 13369(c)(3)*

**SCOPE:** Drivers of a *youth bus* (a bus other than a school bus used to transport children) may not smoke while operating the bus. Operators of *general public paratransit vehicles* (motor vehicles designed to carry no more than 24 persons that provide local transportation to the public, including students at or below the 12th-grade level to or from a public or private school or school activity) may not smoke.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**ENFORCEMENT:** The California Department of Motor Vehicles is authorized to enforce this law.

**PENALTY:** A violator may be subject to the denial, suspension, or revocation of a certificate to drive a youth bus or general paratransit vehicle.

### 11. ADOPTION OF LOCAL SECONDHAND SMOKE LAWS

#### *California Health and Safety Code Section 118910*

**SCOPE:** A local governing body may completely ban the smoking of tobacco or may regulate smoking in any manner not inconsistent with state law.

**Note:** Several state laws explicitly permit cities and counties to pass secondhand smoke laws that have stricter restrictions than those imposed by the state laws. (See entries 1, 2, 3, 4, 6, and 8 for summaries of those state laws.) Some cities and counties have passed local laws banning smoking in areas not covered by state law, including parks, beaches, outdoor dining areas, bus stops, and areas within 20 feet of commercial building entryways. These local laws are enforced by various local agencies and impose various penalties.

**ENFORCEMENT:** Not applicable.

**PENALTY:** Not applicable.



# POSSESSION AND USE

## 12. STATE MENTAL HEALTH HOSPITALS

### *Welfare and Institutions Code Sections 4138, 4139*

**SCOPE:** Upon receiving a request from the director of a state mental hospital, the state Director of Mental Health may prohibit the possession and use of tobacco products on the grounds of the requesting facility following a phase-in period. The Director must provide an implementation plan to effectuate the prohibition, and must provide any requesting patient with smoking cessation information and assistance. At hospitals where possession and use of tobacco products is prohibited, the store or canteen at the facility may not sell tobacco products. This law applies to California's five state mental hospitals: Atascadero State Hospital, Coalinga State Hospital, Metropolitan State Hospital, Napa State Hospital, and Patton State Hospital.

**EXCEPTION:** The prohibition shall not apply on the premises of residential staff housing where patients are not present. Also, departmentally approved religious ceremonies are exempt.

**ENFORCEMENT:** Not specified, but the state mental hospitals are under the jurisdiction of the Department of Mental Health.

**PENALTY:** In a state hospital where the possession of tobacco products by a patient has been prohibited by law or regulation, delivery of tobacco products to a patient or possession of tobacco with the intent to deliver to a patient is a misdemeanor, punishable by a fine not to exceed \$1,000 for each item. If a person visiting a patient in a state hospital is found with an item prohibited for patient possession, the item is subject to confiscation but must be returned on the same day unless the item is held as evidence.

## 13. YOUTH PURCHASE AND POSSESSION

### *California Penal Code Section 308(b)*

**SCOPE:** It is unlawful for any person under the age of 18 years to purchase, receive, or possess any tobacco product or paraphernalia. Penal Code Section 308(e) states that no city or county shall adopt any law or regulation inconsistent with this law.

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are subject to a fine of \$75 or 30 hours of community service.

## 14. STUDENT POSSESSION AND USE

### *California Education Code Section 48901*

**SCOPE:** No elementary or secondary school shall permit its students to smoke or use tobacco or nicotine products (including but not limited to cigarettes, cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel) while the students are on campus,

attending school-sponsored activities, or under the supervision and control of school district employees.

**EXCEPTION:** This provision does not prohibit students' use or possession of their own prescription products.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**Note:** See entry 5 for a summary of the no-smoking law that applies to schools.

**ENFORCEMENT:** Not specified except to say that the governing board of any school district maintaining a high school shall take all steps it deems practical to discourage high school students from smoking.

**Note:** A school may use its normal disciplinary powers to enforce no-tobacco-use rules against students.

**PENALTY:** Not specified.

### *California Education Code Sections 48900(h), 48900(s)*

**SCOPE:** A student who possesses or uses tobacco or nicotine products, may be suspended or expelled if the act is related to school activity or attendance (for instance, while on school grounds, while going to or coming from school or a school-sponsored activity, or during the on- or off-campus lunch period). Prohibited products include but are not limited to cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel.

**EXCEPTION:** This provision does not prohibit students' use or possession of their own prescription products.

**ENFORCEMENT:** The superintendent or principal of the school is authorized to enforce this law.

**PENALTY:** The student may be suspended or expelled.

## 15. TOBACCO-FREE CAMPUS POLICIES

### *California Health and Safety Code Section 104420(n)(2)*

**SCOPE:** Each school district and county office of education that receives Proposition 99 tobacco control funding from the State of California must adopt and enforce a tobacco-free campus policy. The policy shall prohibit the use of tobacco products at all times in district-owned/leased buildings, on district property, and in district vehicles. Under the policy, signs stating Tobacco Use Is Prohibited shall be prominently displayed at all entrances to school property.

**Note:** See entry 5 for a summary of the no-smoking law that applies to schools.

**ENFORCEMENT:** The California Department of Education monitors the school districts and county offices of education that receive Proposition 99 funding.

**Note:** A school may use its normal disciplinary powers to enforce no-tobacco-use rules against students, its general power over its property to enforce no-tobacco-use rules against visitors, and its general power over its terms of employment to enforce no-tobacco-use rules against employees.

**PENALTY:** Any school district or county office of education that does not have a tobacco-free policy on July 1 of any given year is not eligible to apply for Proposition 99 funds for that fiscal year. (See entry 88 for a summary of Proposition 99.)

## 16. POSSESSION AND USE IN PRISONS

*California Penal Code Section 5030.1*

*California Code of Regulations, Title 15, Sections 3006(c)(18), 3187–3189*

**SCOPE:** The possession or use of tobacco products, or tobacco cessation products that contain nicotine, by inmates under the jurisdiction of the California Department of Corrections and Rehabilitation is prohibited. The possession or use of tobacco products by anyone on the grounds of any facility under the jurisdiction of the California Department of Corrections and Rehabilitation is prohibited. Tobacco products are considered to be contraband when possessed or used by inmates or by anyone where inmates are housed or detained.

**EXCEPTION:** Inmates may use tobacco products in departmentally approved religious ceremonies. A non-inmate may use tobacco products in certain residential staff housing where inmates are not present. A non-inmate may possess tobacco products in a locked private vehicle for personal use off facility grounds. Tobacco cessation products such as a patch, inhaler, or lozenges are permitted for immediate personal use by staff.

**ENFORCEMENT:** California Department of Corrections and Rehabilitation officials are authorized to enforce this law.

**PENALTY:** Possession of tobacco products by inmates may result in disciplinary action and the confiscation of the tobacco products.

**Note:** A prison may use its general power over its property to enforce no-tobacco rules against visitors and its general power over its terms of employment to enforce no-tobacco rules against employees.

## 17. POSSESSION AND USE IN YOUTH CORRECTIONAL FACILITIES

*California Welfare and Institutions Code Section 1712.5*

**SCOPE:** 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 use of tobacco products by anyone on the grounds of any institution or facility under the jurisdiction of the Department of the Youth Authority is prohibited.

**EXCEPTION:** Inmates and wards may use tobacco products in departmentally approved religious ceremonies. Tobacco products may be used in residential staff housing where inmates or wards are not present.

**ENFORCEMENT:** Division of Juvenile Facilities officials are authorized to enforce this law.

**PENALTY:** Not specified.

**Note:** A facility may use its normal disciplinary powers to enforce no-tobacco rules against inmates and wards, its general power over its property to enforce no-tobacco rules against visitors, and its general power over its terms of employment to enforce no-tobacco rules against employees.

## 18. POSSESSION IN LOCAL CORRECTIONAL FACILITIES

*California Penal Code Section 4575*

**SCOPE:** The possession of any tobacco product by a person housed in a local correctional facility is prohibited if the local board of supervisors has adopted an ordinance or resolution banning tobacco products in its correctional institutions.

**Note:** See entry 16 for prohibitions and restrictions on tobacco use and possession in state prisons under the jurisdiction of the California Department of Corrections.

**EXCEPTION:** Possession of tobacco products is not prohibited in local correctional institutions in counties where the board of supervisors has not adopted an ordinance banning tobacco products in those facilities.

**PENALTY:** Violation of this section is an infraction, punishable by a fine not to exceed \$250.

## 19. USE IN FOOD SERVICE FACILITIES

*California Health and Safety Code Sections 113953.3(a)(5), 113977, 113978, 114390, 114395, 114405*

**SCOPE:** Food service employees may use tobacco only in designated areas where contamination of food and equipment cannot result. Food service employees shall wash their hands after using tobacco. Owners, managers, and operators are responsible for violations by employees. Food facilities shall have a “No Smoking” sign posted in the food preparation, food storage, and dishwashing areas.

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply. (See entry 1.)

**ENFORCEMENT:** State and local environmental health services officials are authorized to enforce this law. Local law enforcement agencies have the general authority to enforce the misdemeanor penalty under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of \$25 to \$1,000 and/or imprisonment for up to six months. A violator may be subject to the suspension or revocation of a permit to operate a food facility.

### 20. EMPLOYMENT AND OFF-DUTY USE

*California Labor Code Sections 98.6, 98.7*

**SCOPE:** It is illegal for an employer to discriminate against an employee or applicant on the basis of off-duty lawful conduct.

**Note:** This law applies to off-duty tobacco use so long as the tobacco use is lawful.

**EXCEPTION:** An employer may discriminate against an applicant on the basis of off-duty lawful conduct if the conduct is actually in direct conflict with the essential enterprise-related interest of the employer and if the conduct is prohibited in an employment contract or collective bargaining agreement. An employer may discriminate on the basis of off-duty tobacco use against an applicant for a position as a firefighter. Local and state law enforcement agencies, certain media organizations, and religious associations may discriminate against employees and applicants on the basis of off-duty lawful conduct.

**ENFORCEMENT:** Anyone who believes that he or she has suffered discrimination in violation of the law may file a complaint with the Division of Labor Standards enforcement of the California Department of Industrial Relations within six months of the alleged occurrence. In addition, under California Labor Code Section 2699, an aggrieved individual may bring a civil action if the California Labor and Workforce Development Agency declines to act upon a complaint.

**PENALTY:** The Division of Labor Standards enforcement shall order a violator to cease and desist from the violation and may order the violator to take any action deemed necessary to remedy the violation.



# TOBACCO SALES

## 21. SALES TO MINORS: PENAL CODE 308

### *California Penal Code Section 308(a)*

**SCOPE:** It is unlawful for any person, firm, or corporation to sell, give, or in any way furnish to a minor any tobacco product or paraphernalia if that person, firm, or corporation knows or should otherwise have grounds to know that the recipient is a minor. This law may be enforced against a business owner or an employee who sold the tobacco product or paraphernalia. Penal Code Section 308(e) states that cities and counties may not adopt any law or regulation that is inconsistent with this law.

**Note:** A local licensing law that suspends or revokes a license based on a violation of California Penal Code Section 308 is not legally inconsistent with this law, and such local licensing laws are expressly permitted under California Business and Professions Code Section 22971.3. (See entry 94.)

**EXCEPTION:** A valid defense to an action under this law is proof that the person who sold or furnished the tobacco products or paraphernalia demanded, was shown, and reasonably relied upon evidence of legal age (such as a driver's license).

**ENFORCEMENT:** A city attorney, county counsel, or district attorney may bring a civil action to enforce the law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**Note:** Local law enforcement agencies do not need to use the STAKE Act protocol described in entry 22 when enforcing this law.

**PENALTY:** Violators are subject to either a criminal action for misdemeanor or a civil action punishable by a fine of \$200 for a first offense, \$500 for a second offense, and \$1,000 for a third offense. Each individual franchise or location of a business is treated as a separate entity for purposes of determining liability for the second and subsequent violations of the law.

The prosecuting agency receives 25 percent of penalties collected. Another 25 percent goes to the city or county for the administration and cost of the community-service penalty that applies to minors who purchase, receive, or possess tobacco products or paraphernalia (summarized in entry 13).

A business may not be penalized under both California Penal Code Section 308 and the STAKE Act for the same incident. (See entry 22 for a summary of the STAKE Act sales-to-minors law.) See entry 96 for license-related penalties that attach to Section 308 violations.

**Note:** Under California Penal Code Section 308(b), minors who purchase, receive, or possess tobacco products or paraphernalia may be punished by a fine of \$75 or 30 hours of community service work. (See entry 13).

## 22. SALES TO MINORS: THE STAKE ACT

### *California Business and Professions Code Sections 22952, 22957, 22958 (STAKE Act) California Code of Regulations, Title 17, Section 6903*

**SCOPE:** It is unlawful for any person, firm, or corporation to sell, give, or in any way furnish any tobacco product or paraphernalia to a person under the age of 18. This law may be enforced only against a business owner and not against an employee who sold the tobacco product or paraphernalia.

**EXCEPTION:** A valid defense to an action under this law is that a youth decoy's appearance was not that which could be generally expected of a person under 18 years of age or that the undercover operation was not carried out in reasonable compliance with the detailed protocol specified in the law. Any failure on the part of the person under 18 years of age to provide true and correct identification, if verbally asked for it, is also a valid defense.

**ENFORCEMENT:** The STAKE Act may be enforced by any defined "enforcing agency," which includes the California Department of Public Health, Attorney General's office, and local law enforcement agencies. The law instructs enforcing agencies to use youth decoys in on-site inspections to determine if retailers are making illegal sales of tobacco products to minors. The law authorizes enforcing agencies to use youth decoys to investigate illegal sales to minors by telephone, mail, or the internet.

An enforcing agency may conduct such inspections at random, in response to public complaints (e.g., on the 1-800-5ASK-4-ID phone line), or at retail sites where violations have previously occurred. The law contains a detailed protocol for an enforcing agency to follow in its undercover operations (the STAKE Act protocol).

**PENALTY:** Violators are subject to a civil penalty of \$400-\$600 for a first violation; \$900-\$1000 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; and \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period.

Violations by one retail location are not counted against other retail locations of the same corporation or business. Violations against a prior owner of a single franchise location are not counted against a new owner of the same single franchise location.

A business owner may not be penalized under both the STAKE Act and California Penal Code Section 308 for the same incident. (See entry 21 for a summary of the California Penal Code Section 308 sales-to-minors law.)

**Note:** If an employee sells tobacco to a minor, the business owner can be penalized under the STAKE Act and the employee can be penalized under California Penal Code Section 308 because the owner and employee are not legally the same violator.

See entry 96 for license-related penalties that attach to STAKE Act violations.

### 23. SALES TO MINORS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387a-1, 387f(d)*

*21 Code of Federal Regulations Section 1140.14(a)*

**SCOPE:** It is unlawful for any tobacco retailer to sell cigarettes or smokeless tobacco to any person under the age of 18.

**Note:** The FDA may not establish a minimum age of sale older than 18, although states are free to establish a minimum age of 19 years and older.

**ENFORCEMENT:** The U.S. Department of Health and Human Services (HHS) is authorized to enforce this provision with the help of other federal agencies and state governments. In California, HHS has contracted with the California Department of Public Health's Food and Drug Branch to enforce this provision.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

### 24. SALES TO MINORS: THE SYNAR AMENDMENT

*42 United States Code Section 300x-26*

*45 Code of Federal Regulations Section 96.130*

**SCOPE:** In order to receive the annual Substance Abuse Prevention and Treatment federal block grant, a state must have and enforce a law prohibiting the sale of tobacco products to individuals under the age of 18. The state must conduct annual youth purchase surveys to ensure compliance with the law and must report the results of these inspections to the U.S. Department of Health and Human Services (HHS).

**Note:** California enacted the STAKE Act to comply with the Synar Amendment.

**ENFORCEMENT:** HHS is authorized to monitor states' compliance and to reduce the amount of the block grant upon noncompliance.

**PENALTY:** For a state that reports more than a 20 percent rate of illegal sales to youth, the annual Substance Abuse Prevention and Treatment federal block grant will be reduced by up to 40 percent of the amount originally allocated to the state, if the Secretary determines that the state is not in substantial compliance with the law.

### 25. ID CHECK REQUIREMENT: THE STAKE ACT

*California Business and Professions Code Sections 22956, 22957 (STAKE Act)*

*California Code of Regulations, Title 17, Section 6902(b)*

**SCOPE:** Retailers must check the identification of tobacco purchasers who reasonably appear to be under 18 years of age.

**ENFORCEMENT:** This requirement may be enforced by any "enforcing agency" authorized to enforce the STAKE Act, including the California Department of Public Health, California Attorney General's office, and local law enforcement agencies.

**PENALTY:** Not specified.

### 26. ID CHECK REQUIREMENT: THE TOBACCO CONTROL ACT

*21 United States Code Section 333, 372, 387a-1, 387f(d)*

*21 Code of Federal Regulations Section 1140.14(b)*

**SCOPE:** Tobacco retailers must verify that a purchaser of cigarettes or smokeless tobacco is 18 years of age or older through a photo identification card containing the individual's date of birth.

**EXCEPTION:** Verification is not required for any person over the age of 26.

**ENFORCEMENT:** The U.S. Department of Health and Human Services (HHS) is authorized to enforce this provision with the help of other federal agencies and state governments. In California, HHS has contracted with the California Department of Public Health’s Food and Drug Branch to enforce this provision.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

## 27. SIGN POSTING REQUIREMENT: THE STAKE ACT

*California Business and Professions Code Sections 22952(b), 22957, 22958(c) (STAKE Act)*  
*California Code of Regulations, Title 17, Section 6902(a)*  
*California Penal Code Section 308(c)*

**SCOPE:** Every store that sells tobacco must post a boldly printed, contrasting-color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors.

The sign must contain the following words with initial letters capitalized in the following manner: “The Sale of Tobacco Products to Persons Under 18 Years of Age Is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale, Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.” The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (at least 3.66 inches by 8.5 inches), and the required notice must meet specified font sizes and typefaces.

**ENFORCEMENT:** This requirement may be enforced by any “enforcing agency” authorized to enforce the STAKE Act, including the California Department of Public Health, California Attorney General’s office, and local law enforcement agencies.

**PENALTY:** The STAKE Act authorizes a \$200 civil fine for the first violation for failure to post the required signage, and a \$500 civil fine for each subsequent violation.

Under Penal Code Section 308(c), violators who fail to post the sign are subject to a fine of \$50 for a first offense, \$100 for a second offense, \$250 for a third offense, and \$500 for a fourth or subsequent offense, or by imprisonment for not more than 30 days.

A business owner may not be penalized under both the STAKE Act and California Penal Code Section 308 for the same incident.

See entry 96 for license-related penalties that attach to STAKE Act violations.

## 28. VENDING MACHINES: THE STAKE ACT

*California Business and Professions Code Sections 22960, 22958, 22957 (STAKE Act)*

**SCOPE:** Tobacco products shall not be sold, offered for sale, or distributed from vending machines. This law may be enforced against a business owner only and not against an employee. A local government may pass a law completely banning tobacco vending machines.

**EXCEPTION:** Vending machines may be located where an on-sale public premises license to sell alcoholic beverages (usually a bar) has been issued, provided that the machine is inside the premises and at least 15 feet away from the entrance.

**ENFORCEMENT:** This requirement may be enforced by any “enforcing agency” authorized to enforce the STAKE Act, including the California Department of Public Health, Attorney General’s office, and local law enforcement agencies.

**PENALTY:** Violators are subject to a civil penalty of \$400-\$600 for a first violation; \$900-\$1,000 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; and \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period.

Violations by one retail location are not counted against other retail locations of the same corporation or business. Violations against a prior owner of a single franchise location are not counted against a new owner of the same single franchise location.

See entry 96 for license-related penalties that attach to STAKE Act violations.

## 29. SELF-SERVICE DISPLAYS: THE STAKE ACT

*California Business and Professions Code Sections 22958, 22960, 22962 (STAKE Act)*

**SCOPE:** It is unlawful to sell, offer for sale, or display any tobacco product or paraphernalia through a *self-service display*, which is an open display of cigarettes that is accessible to the public without the assistance of the clerk. This law may be enforced against a business owner only and not against an employee. The law allows local governments to pass and enforce laws that are stricter than state law.

**EXCEPTION:** Tobacco stores may make available by self-service display pipe tobacco, snuff, chewing tobacco, dipping tobacco, and certain cigars (those that are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing fewer than six cigars). Self-service displays of cigarettes and tobacco paraphernalia are never permitted in a tobacco store. A *tobacco store* is defined as a business that (1) primarily sells tobacco products; (2) generates more than 60 percent of its gross revenue annually from the sale of tobacco products and paraphernalia; (3) prohibits minors unless accompanied by a parent or guardian; and (4) does not sell alcohol or food for consumption on the premises.

**Note:** This law does not affect the state law allowing tobacco to be sold through vending machines in limited circumstances. (See entry 28.)

**ENFORCEMENT:** The state Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this law.

**PENALTY:** Violators are subject to a civil penalty of \$400-\$600 for a first violation; \$900-\$1,000 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; and \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period.

Violations by one retail location are not counted against other retail locations of the same corporation or business. Violations against a prior owner of a single franchise location are not counted against a new owner of the same single franchise location.

See entry 96 for license-related penalties that attach to STAKE Act violations.

## 30. SELF-SERVICE DISPLAYS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387a-1, 387f(d)*

*21 Code of Federal Regulations Sections 1140.14(c), 1140.16(c)*

**SCOPE:** Cigarettes and smokeless tobacco may only be sold via a direct, face-to-face exchange. The use of vending machines and self-service displays is not permitted.

**EXCEPTION:** Mail-order sales are permitted. (Mail-order redemption of coupons and distribution of free samples through the mail do not fall within the exception and are prohibited.) Vending machines and self-service displays are permitted in facilities where the retailer ensures that no person under the age of 18 is present or allowed to enter at any time.

**ENFORCEMENT:** The U.S. Department of Health and Human Services (HHS) is authorized to enforce this provision with the help of other federal agencies and state governments. In California, HHS has contracted with the California Department of Public Health's Food and Drug Branch to enforce this provision.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

### 31. BIDIS

#### *California Penal Code Section 308.1*

**SCOPE:** It is unlawful to sell, offer to sell, distribute, or import *bidis* (also known as *beedies*), defined as products containing tobacco wrapped in temburni leaf or tendu leaf, or products that are marketed and sold as “bidis” or “beedies.”

**Note:** Bidis are hand-rolled filterless cigarettes that are imported primarily from India and some Southeast Asian countries. They are available in a variety of candylike flavors and often are sold in packs of fewer than 20, which makes them more affordable.

**EXCEPTION:** The law does not apply to businesses that legally prohibit minors.

**ENFORCEMENT:** The state Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of a misdemeanor and also subject to a civil penalty of \$2,000 per violation.

### 32. SINGLE CIGARETTES

#### *California Penal Code Section 308.2*

**SCOPE:** No person may sell one or more cigarettes, other than in a sealed and properly labeled package. A sealed and properly labeled package means the original packaging of the manufacturer or importer which meets federal labeling requirements.

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of an infraction.

### 33. MINIMUM PACKAGE SIZE

#### *California Penal Code Section 308.3*

**SCOPE:** Cigarettes may not be manufactured, distributed, sold, or offered for sale in packages of fewer than 20 cigarettes. Roll-your-own tobacco may not be manufactured, distributed, sold, or offered for sale in a package containing less than 0.60 ounces of tobacco.

**ENFORCEMENT:** A civil action to enforce the law may be brought by the state Attorney General, a district attorney, a county counsel, or a city attorney. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are liable for a civil penalty of \$200 for a first violation, \$500 for a second violation, and \$1,000 for each subsequent violation or are guilty of an infraction.

### 34. SINGLE ITEMS AND MINIMUM PACKAGE SIZE: THE TOBACCO CONTROL ACT

#### *21 United States Code Sections 333, 372, 387a-1, 387f(d)*

#### *21 Code of Federal Regulations Sections 1140.14(d), 1140.16(b)*

**SCOPE:** A tobacco retailer may not sell any quantity of cigarettes or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use. Additionally, cigarettes may not be manufactured, sold, or distributed in packages containing fewer than 20 cigarettes.

**ENFORCEMENT:** The U.S. Department of Health and Human Services (HHS) is authorized to enforce this provision with the help of other federal agencies and state governments. In California, HHS has contracted with the California Department of Public Health’s Food and Drug Branch to enforce the provisions that create obligations for tobacco retailers.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

### 35. MAIL ORDER/INTERNET SALES: THE STAKE ACT

#### *California Business and Professions Code Section 22963 (STAKE Act)*

**SCOPE:** No person may sell, distribute, or engage in the nonsale distribution of tobacco products to minors via public or private postal services. The law includes directives designed to ensure that people who order by mail, fax, phone, or the internet are 18 years of age or older. For example, distributors or sellers must either (1) match the name, address, and date of birth provided by the customer to information contained in a database of individuals verified to be 18 or older, or (2) require the customer to submit verification of age, including a copy of a valid form of government identification. The law establishes a two-carton minimum on each order of cigarettes. It also mandates that all applicable purchases must be made by personal check or credit card and that the distributor or seller must call purchasers to confirm their orders.

*Nonsale distribution* is defined as giving smokeless tobacco or cigarettes to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution of tobacco products, coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers in connection with the sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers shall not constitute nonsale distribution.

**EXCEPTION:** The U.S. Postal Service and other common carriers are exempt from penalties when they deliver a package without any reason to know the package's contents.

**ENFORCEMENT:** A district attorney, city attorney, or the state Attorney General may assess civil penalties against any person or entity that violates this law.

**PENALTY:** Violators who make prohibited sales or distributions are liable for a civil penalty of \$1,000-\$2,000 for a first violation; \$2,500-\$3,500 for a second violation; \$4,000-\$5,000 for a third violation within a five-year period; \$5,500-\$6,500 for a fourth violation within a five-year period; and \$10,000 for a fifth or subsequent violation within a five-year period.

### 36. MAIL ORDER/INTERNET SALES: THE PACT ACT

#### *15 United States Code Sections 375, 376, 377*

#### *18 United States Code Section 1716e*

**SCOPE:** The Prevent All Cigarette Trafficking Act (the PACT Act) prohibits the delivery of sales of cigarettes (including roll-your-own tobacco) and smokeless tobacco via the U.S. Postal Service. Other common carriers (e.g., UPS, FedEx) may deliver a package containing cigarettes or smokeless tobacco if the package weighs less than ten pounds and bears stamps and signs verifying that all appropriate local, state, and federal taxes have been paid. Upon delivery, the age and identity of the buyer must be confirmed, and the recipient must be of minimum legal age to purchase tobacco products.

**EXCEPTION:** The U.S. Postal Service restrictions do not apply to sales shipments that begin and end entirely within Alaska or Hawaii and to certain APO/FPO military addresses. Infrequent, lightweight shipments can still be sent via U.S. mail by age-verified adults as long as certain restrictions are met. Additional exceptions apply for authorized business/regulatory purposes, as well as for consumer testing and public health purposes.

**ENFORCEMENT:** The USPS provision is enforced by the Postmaster General with the cooperation of any other federal agency or agency of any state, local, or tribal government, whenever appropriate. The common carrier provisions are enforced by the Attorney General of the United States, state attorneys general, and state tobacco tax administrators.

**PENALTY:** Violators are subject to criminal penalties of up to three years imprisonment. Retailers who violate the law are also subject to civil penalties in an amount not to exceed the greater of \$5,000 for a first violation and \$10,000 for a subsequent violation, or 2 percent of their gross sales of cigarettes or smokeless tobacco during the one-year period ending on the date of the violation. Common carriers or other delivery services that knowingly violate the new law are subject to civil penalties in an amount not to exceed \$2,500 for a first violation and \$5,000 for any violation within one year of a prior violation.

Any person found delivering cigarettes or smokeless tobacco through the U.S. Postal Service is subject to an additional civil penalty in the amount equal to ten times the retail value of the nonmailable cigarettes or smokeless tobacco, including all federal, state, and local taxes.

Any cigarettes or smokeless tobacco that are deposited in the mails shall be subject to seizure and forfeiture. Any tobacco products seized and forfeited under this subsection shall be destroyed or retained by the federal government for the detection or prosecution of crimes or related investigations and then destroyed.

### 37. MAIL ORDER/INTERNET SALES: THE TOBACCO CONTROL ACT

#### *21 United States Code Sections 333, 372, 387f(d)*

**SCOPE:** The Tobacco Control Act directed the U.S. Department of Health and Human Services (HHS) to issue regulations regarding the remote sale and distribution of tobacco products, such as via the internet or mail order, by December 22, 2010. The Tobacco Control Act also directed HHS to issue regulations regarding the promotion and marketing of tobacco products sold or distributed remotely by June 22, 2011.

**Note:** In March 2010, Congress enacted the Prevent All Cigarette Trafficking (PACT) Act of 2009, which regulates the remote sale and distribution of tobacco products via the internet or mail order, and made a new HHS regulation largely unnecessary. Specifically, the PACT Act largely prohibits the U.S. Postal Office from shipping tobacco products. See entry 36 for additional information on the PACT Act.

In September 2011, the FDA issued an advanced notice of proposed rulemaking and requested comments, data, research, or other information related to the non-face-to-face

sale and distribution of tobacco products; the advertising, promotion, and marketing of such products; and the advertising of tobacco products via the internet, email, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients. (76 Fed. Reg. 55835 (Sept. 9, 2011))

**ENFORCEMENT:** HHS is authorized to enforce the regulations it issues under this provision with the help of other federal agencies and state governments.

**PENALTY:** At the time of this publication, regulations had not yet been issued by the FDA. Once regulations go into effect, the following penalties will apply:

Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

## 38. HOME DELIVERY OF UNSOLICITED TOBACCO PRODUCTS

### *California Penal Code Section 308b*

**SCOPE:** It is unlawful for a person to knowingly deliver or cause to be delivered any unsolicited tobacco products to any residence in California. (See entry 72 for more information on mailing unsolicited samples of smokeless tobacco products.)

**EXCEPTION:** It is a defense to a violation of this section that the recipient of the tobacco products is personally known to the sender at the time of the delivery. The law does not impose liability on any U.S. Postal Service employee for actions performed in the scope of his/her employment.

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1. Local governments may seek to enforce the nuisance penalty provision using the administrative nuisance abatement procedures commonly found in local laws.

**PENALTY:** Violators are guilty of a misdemeanor, and violations constitute a nuisance within the meaning of California Civil Code Section 3479.

## 39. FIRE SAFE CIGARETTES

### *California Health and Safety Code Sections 14950–14960*

**SCOPE:** It is illegal to sell, offer to sell, or possess for sale cigarettes unless they meet fire safety standards modeled on standards currently in place in New York. Specifically, manufacturers must certify to the state Fire Marshal that their cigarettes have been tested in accordance with standards established by the American Society of Testing and Materials, and that no more than 25 percent of the cigarettes tested in a trial exhibit full-length burns. Cigarettes in compliance with this law shall be marked by the manufacturer on the packaging and case.

**EXCEPTION:** Distributors, wholesalers, or retailers may sell their existing inventory of cigarettes after January 1, 2007, if certain conditions are met.

**ENFORCEMENT:** The state Attorney General may bring a civil action to enforce the law. Any law enforcement agency may seize cigarettes sold, offered for sale, or possessed for sale in violation of the law.

**PENALTY:** Manufacturers or others who knowingly sell or offer cigarettes in violation of these provisions other than through retail sale are subject to a civil penalty of up to \$10,000 for each sale. Retailers, distributors and wholesalers who knowingly sell cigarettes in violation of these provisions are subject to a civil penalty of up to \$500 for each sale of up to 50 packages of cigarettes and a civil penalty of up to \$1,000 for each sale of more than 50 packages of cigarettes. Cigarettes that are sold in violation of these provisions are subject to seizure.

## 40. ELECTRONIC CIGARETTES

### *California Health and Safety Code Section 119405*

**SCOPE:** It is illegal to sell or otherwise furnish an electronic cigarette (e-cigarette) to a person under 18 years of age. An *electronic cigarette* is a device that can deliver an inhalable dose of nicotine to the user through a vaporized solution.

**Note:** Local governments are allowed to pass and enforce laws regulating the distribution of electronic cigarettes that are stricter than state law, provided they are not otherwise prohibited by federal law.

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are subject to a fine of up to \$200 for a first violation; \$500 for a second violation; and \$1,000 for a third or subsequent violation.

**Note:** Before this law passed, the California Attorney General entered into settlement agreements with two national retailers of electronic cigarettes—Smoking Everywhere and Sottera—in which the companies agreed to:

- make their websites age-restricted and not to sell flavors attractive to young people;
- stop making false or misleading claims concerning the safety or effectiveness of their products;
- put in place systems for quality control and to place warnings on their products in compliance with Proposition 65 (summarized in entry 119); and
- pay to the state monetary penalties, attorneys' fees, and costs.

(Settlements are available on the website for the office of the Attorney General:  
<http://oag.ca.gov/tobacco/highlights>.)

## 41. TOBACCO PRODUCT STANDARDS: THE TOBACCO CONTROL ACT

### *21 United States Code Sections 333, 372, 387g*

**SCOPE:** The U.S. Department of Health and Human Services (HHS) may establish tobacco product standards for the protection of public health. Tobacco manufacturers may no longer use tobacco that contains an unsafe level of pesticide chemical residue, as determined by federal law.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Manufacturers who intentionally misrepresent that they meet tobacco product standards may be subject to civil penalties of up to \$250,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after HHS provides written notice of violation, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days thereafter that the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding.

## 42. PRE-MARKET REVIEW OF NEW TOBACCO PRODUCTS: THE TOBACCO CONTROL ACT

### *21 United States Code Sections 333, 372, 387e, 387j*

**SCOPE:** Tobacco products or modified tobacco products not commercially marketed in the United States as of February 15, 2007, must be approved by the FDA prior to commercial release. Applications for new products shall be made available to the public. Approval may be withdrawn as information changes and new findings are made.

**EXCEPTION:** A new or modified tobacco product may be exempted from this requirement if the U.S. Department of Health and Human Services (HHS) Secretary issues an order stating that the product is:

- substantially equivalent to a tobacco product commercially marketed in the United States as of February 15, 2007; and
- otherwise in compliance with the law.

A modified tobacco product may be exempted from this requirement if the Secretary determines that:

- the modification would be a minor modification of a tobacco product that can be legally sold; and
- a report is not necessary to ensure that allowing the tobacco product to be marketed would be appropriate for protection of public health.

A tobacco product that was first introduced into the commercial market between February 15, 2007, and March 22, 2011, may be exempted from this requirement if the manufacturer submitted a report during that period claiming that the product is substantially equivalent to a tobacco product commercially marketed as of February 15, 2007, and if the Secretary does not issue an order to the contrary.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Civil penalty of up to \$250,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after the HHS provides written notice, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days thereafter that the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding.

### 43. MISBRANDED TOBACCO PRODUCTS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387c*

**SCOPE:** A tobacco product is deemed to be misbranded if the package label does not contain all of the following:

1. The name and address of the manufacturer, packer, or distributor;
2. An accurate net quantity statement;
3. The percentage of tobacco that is foreign versus domestic; and
4. The statement “Sale only allowed in the United States.”

A tobacco product is also misbranded if its labeling is false or misleading. The U.S. Department of Health and Human Services (HHS) may issue regulations requiring prior approval of statements made on the label of a tobacco product.

**EXCEPTION:** Under this provision, HHS shall establish regulations to permit “reasonable variations” and exemptions for “small packages.”

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

### 44. MODIFIED RISK TOBACCO PRODUCTS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387k*

**SCOPE:** No person may introduce a “modified risk” tobacco product into interstate commerce or commercially market such a product without approval from the U.S. Department of Health and Human Services (HHS). Approval is limited to a five-year term but may be renewed. The agency shall approve modified risk products only after determining that the product, as it is actually used by consumers, (1) significantly reduces harm and the risk of tobacco-related disease to individual tobacco users, and (2) benefits the health of the population as a whole.

Approval is conditioned on the applicant’s agreement to conduct postmarket surveillance and studies and to submit the results to HHS annually so that the agency may determine the impact of such marketing on consumer perception, behavior, and health. HHS may also impose additional marketing and label restrictions. Approval may be withdrawn if requirements are not met.

**EXCEPTION:** In some cases a modified risk tobacco product can be introduced into interstate commerce and yet may not be commercially marketed.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Civil penalty for intentionally purporting to meet tobacco product standards of up to \$250,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after the agency provides written notice, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days thereafter that the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding.

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

### 45. “LIGHT,” “LOW,” AND “MILD” TOBACCO PRODUCTS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387k*

**SCOPE:** Descriptors similar to and including “light,” “low,” and “mild” are prohibited in all advertising, labeling, and marketing of cigarettes and smokeless tobacco products manufactured on or later than June 22, 2010.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Civil penalty for intentionally purporting to meet tobacco product standards of up to \$250,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after the agency provides written notice, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days thereafter that the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding.

### 46. BAN ON FLAVORED CIGARETTES OR CIGARETTE COMPONENTS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387g*

**SCOPE:** Cigarettes and their component parts (including the tobacco, filter, or paper) must not contain any artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. The Secretary of the U.S. Department of Health and Human Services (HHS) has the authority to ban menthol or any artificial or natural flavor, herb, or spice not specified in this list.

**EXCEPTION:** Tobacco flavor and menthol are excluded from this provision. This provision does not apply to tobacco products other than cigarettes.

**Note:** The Tobacco Control Act required the FDA Tobacco Products Scientific Advisory Committee (TPSAC) (see entry 115) to submit a report and recommendation to the Secretary on the public health impacts of the use of menthol in cigarettes, including use among children, African Americans, Hispanics, and other racial/ethnic minorities. The TPSAC submitted its report and recommendations to the FDA in March 2011. At the time of this publication, the FDA was considering the TPSAC report and public comments, as well as other evidence, in considering possible actions related to the public health impact of menthol in cigarettes. See the FDA's Tobacco Products webpage for more information: [www.fda.gov/TobaccoProducts](http://www.fda.gov/TobaccoProducts).

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

### 47. ORIGIN LABELING: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387t*

**SCOPE:** All tobacco products must bear the statement “sale only allowed in the United States” on all labels, packaging, and shipping containers. This requirement went into effect on July 22, 2010, for non-cigarette tobacco products (or tobacco products other than cigarettes). The Tobacco Control Act stipulated that this requirement will become effective for cigarettes 15 months after the U.S. Department of Health and Human Services (HHS) issues cigarette label and advertising regulations.

**Note:** This requirement was scheduled to take effect on September 22, 2012. However, as a result of an ongoing lawsuit, enforcement is on hold until the case has been resolved.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** At the time of this publication, this provision is not being enforced. When the provision is enforced, the following penalties will apply:

Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

 In August 2011, the graphic warning labels proposed by the FDA (see entry 81) were challenged in court. *R.J. Reynolds Tobacco Co. v. United States Food and Drug Administration*, No. 11-1482 (D.D.C. Feb. 29, 2012), appeal docketed, No. 12-5063 (D.C. Cir. March 6, 2012). As a result, at the time of this publication, enforcement of the new warning label requirements and related provisions, including the origin labeling requirement, is on hold until this lawsuit is resolved.



# ADVERTISING

## 48. OUTDOOR ADVERTISING: THE MSA

**Master Settlement Agreement (MSA) Sections II(ii), II(xx), III(c), III(d), VII(c)**  
**Smokeless Tobacco Master Settlement Agreement (STMSA) Sections II(dd), II(rr), III(c), III(d), VII(c)**

**SCOPE:** Under the MSA and STMSA, the settling tobacco companies are prohibited from engaging in *outdoor advertising* of tobacco products, defined as (1) billboards; (2) signs and placards in arenas, stadiums, shopping malls, and video game arcades; and (3) any other tobacco advertisements that are outdoors, or on the inside surface of a window but facing outward.

**EXCEPTION:** The MSA and STMSA do not restrict:

- advertisements that are smaller than 14 square feet, and are either outside a tobacco retail store but on store property, or on the window of a tobacco retail store facing outward;
- advertisements inside a tobacco retail store that are not placed on a window facing outward;
- advertisements located inside an adult-only facility (where the operator ensures that no minors are present);
- outside Advertisements at the site of an adult-only facility advertising the event with a brand name for the duration of the event, and no more than 14 days before the event;
- billboards advertising a tobacco brand-sponsored event at the site of the event for 90 days before the initial sponsored event and ten days after the last sponsored event; and
- advertisements outside a tobacco manufacturing facility.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 49. OUTDOOR ADVERTISING: THE STAKE ACT

**California Business and Professions Code Sections 22957, 22958, 22961 (STAKE Act)**

**SCOPE:** No tobacco advertising on any outdoor billboard located within 1,000 feet of any public or private elementary, junior high, or high school, or public playground.

**Note:** This law currently is not being enforced and is largely superseded by the broader limits on outdoor advertising in the MSA and STMSA. Moreover, the law may be preempted

by federal law in light of the U.S. Supreme Court decision, *Lorillard Tobacco Company v. Reilly*, 533 U.S. 525 (2001). See entry 51 for more information about this decision.

**EXCEPTION:** This law does not prohibit a message or advertisement opposing the use of tobacco products.

**ENFORCEMENT:** The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

**PENALTY:** Violators are subject civil penalties according to Section 22958(d).

## 50. OUTDOOR ADVERTISING: THE TOBACCO CONTROL ACT

**21 United States Code Sections 333, 372, 387a-1, 387f(d)**

**SCOPE:** The Tobacco Control Act directed the FDA to issue a rule regulating outdoor advertising for cigarettes or smokeless tobacco by June 22, 2010. The FDA was instructed to consider any necessary modifications to its proposed 1996 rule prohibiting advertising (i.e., billboards, posters, placards) within 1,000 feet of any public playground or playground areas on public property (e.g., swings, seesaws, baseball diamonds, basketball courts, public schools).

**Note:** At the time of this publication, the FDA had not yet issued rules about outdoor advertising; in March 2010, the FDA issued an advanced notice of proposed rulemaking and request for comments. 75 Fed. Reg. 13241 (March 19, 2010).

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** At the time of this publication, regulations have not yet been issued by the FDA. Once regulations go into effect, any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

## 51. FEDERAL PREEMPTION OF STATE AND LOCAL REGULATION OF CIGARETTE ADVERTISING AND PROMOTION

**15 United States Code Sections 1331–1341**

**SCOPE:** The Federal Cigarette Labeling and Advertising Act (FCLAA) establishes a comprehensive federal program governing cigarette labeling and advertising. (For a summary of the FCLAA's warning label requirements and its ban on television advertising, see entries 80 and 59, respectively.) The FCLAA also contains a preemption clause that prohibits state and local laws and regulations from imposing any requirements or

prohibitions based on smoking and health with respect to the advertising or promotion of cigarettes. 15 U.S.C. Section 1334(b). In 2009, the Tobacco Control Act amended FCLAA's preemption clause adding a section expressly allowing state or local governments to impose "specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes." 15 U.S.C. Section 1334(c).

**Note:** In the 1990s tobacco companies sued various state and local governments for passing laws that allegedly imposed requirements or prohibitions with respect to the advertising or promotion of cigarettes that are based on smoking and health. In *Lorillard Tobacco Company v. Reilly*, 533 U.S. 525 (2001), the U.S. Supreme Court struck down Massachusetts regulations banning cigarette advertising within 1,000 feet of schools because it found that the state regulations were preempted by the FCLAA. At the time of this publication, no court case has been heard since the amendment to the FCLAA allowing time, place, or manner restrictions on cigarette advertising or promotion.

**Note:** The FCLAA only applies to cigarettes. It does not preempt state and local governments from passing laws on the basis of smoking and health that regulate the advertising or promotion of other tobacco products (e.g., cigars, smokeless tobacco, etc.). However, the First Amendment of the U.S. Constitution remains an important consideration regarding the legality of any such law.

**Note:** The preemption provision of the FCLAA does not apply to the Master Settlement Agreement (MSA) because the MSA is not a state law but instead is a contract to which the tobacco companies have voluntarily agreed to be bound.

**ENFORCEMENT:** Aggrieved private parties (e.g., tobacco companies or retailers) may bring a civil action against state or local governments in court.

**PENALTY:** A court will invalidate a law that it finds to be preempted by the FCLAA.

## 52. STOREFRONT ADVERTISING

**California Business and Professions Code Sections 25612.5(c)(7), 25617, 25619**

**SCOPE:** No more than 33 percent of the square footage of windows and clear (e.g., glass) doors of an alcohol retailer may have advertising signs of any sort, including tobacco.

**Note:** This law is sometimes referred to as the Lee Law after its original sponsor, Assembly Member Barbara Lee.

This law is not preempted by the Federal Cigarette Labeling and Advertising Act (see entry 51) because it applies generally to advertising of all types, not specifically to advertising of cigarettes.

**EXCEPTION:** The law applies only to retailers with an off-sale premises license to sell alcoholic beverages.

**ENFORCEMENT:** This law may be enforced by the California Department of Alcoholic Beverage Control and by local law enforcement agencies.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of up to \$1,000 and/or imprisonment for up to six months.

**Note:** An officer who refuses or neglects to diligently prosecute persons whom they have reasonable cause to believe have violated this provision is guilty of a misdemeanor under Section 25619.

## 53. BLUNT WRAPS ADVERTISING

**California Business and Professions Code Sections 22958(a), 22962 (STAKE Act)  
California Penal Code Section 308**

**SCOPE:** No person or business may place advertising for blunt wraps lower than four feet above the floor. No person or business offering blunt wraps for sale may place blunt wrap advertising within two feet of a candy, snack, or nonalcoholic beverage display. This law may be enforced against a business owner only and not against an employee.

**Note:** *Blunt wraps* are defined as cigar papers or cigar wrappers that are designed for smoking or ingestion of tobacco products and contain less than 50 percent tobacco.

**ENFORCEMENT:** The state Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this law.

**PENALTY:** Violators are subject to a civil penalty of \$400-\$600 for a first violation; \$900-\$1,000 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; and \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period.

Violations by one retail location are not counted against other retail locations of the same corporation or business. Violations against a prior owner of a single franchise location are not counted against a new owner of the same single franchise location.

See entry 96 for license-related penalties that attach to STAKE Act violations.

## 54. STATE BUILDING ADVERTISING

**California Government Code Section 19994.35**

**SCOPE:** No tobacco product advertising shall be allowed in any building owned and occupied by the state.

**EXCEPTION:** This law does not apply to tobacco advertising contained in a program, leaflet, newspaper, magazine, or other written material lawfully sold, brought, or distributed within a state building.

**ENFORCEMENT:** Not specified.

**PENALTY:** Not specified.

## 55. TRANSIT ADVERTISING

*Master Settlement Agreement Sections II(xx), III(d), III(c)(3)(E), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections II(rr), III(d), III(c)(3)(E), VII(c)*

**SCOPE:** The settling tobacco companies are prohibited from placing tobacco *transit advertisements*, defined as advertisements on or within private or public vehicles, and placed at, on, or within a bus stop, taxi stand, transportation waiting area, train station, airport, or similar location.

**EXCEPTION:** This prohibition does not apply to advertisements inside an adult-only facility (where the operator ensures that no minors are present and that the advertisements are not visible to persons outside the facility) or to outside advertisements on the site of an adult-only facility advertising a brand-sponsored event, no more than 14 days before the event, or to vehicles bearing a tobacco brand name used in a brand-sponsored event.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 56. CARTOON CHARACTERS

*Master Settlement Agreement Sections II(l), III(b), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections II(j), III(b), VII(c)*

**SCOPE:** The settling tobacco companies are prohibited from using cartoons in tobacco advertising, promoting, labeling, and packaging.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 57. YOUTH TARGETING

*Master Settlement Agreement Sections III(a), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections III(a), VII(c)*

**SCOPE:** The settling tobacco companies are prohibited from directly or indirectly targeting youth in tobacco advertising, promotion, and marketing, and from taking any action primarily intended to initiate, maintain, or increase the incidence of youth smoking.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 58. VIDEO GAMES

*California Penal Code Section 308.5*

**SCOPE:** This law prohibits paid commercial advertising for tobacco (e.g., tobacco product brand names, trademarks, or copyrighted slogans) and alcohol in video games intended for either private use or use in a public establishment, and intended primarily for use by any person under the age of 18 years.

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under Penal Code Section 830.1.

**PENALTY:** Violators are guilty of a misdemeanor.

## 59. TELEVISION/RADIO CIGARETTE ADVERTISING

*15 United States Code Sections 1335, 1338, 1339*

**SCOPE:** This law prohibits advertising cigarettes or little cigars (defined by weight) on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission (FCC) (such as television and radio).

**EXCEPTION:** This law does not apply to regular-size cigars.

**ENFORCEMENT:** The U.S. Attorney General may seek an injunction in federal court against violators to prevent future violations of this law.

**Note:** Information on filing complaints to the FCC is located on the FCC's website: <http://esupport.fcc.gov/complaints.htm>.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of not more than \$10,000.

## 60. TELEVISION/RADIO SMOKELESS TOBACCO ADVERTISING

*15 United States Code Sections 4402, 4404, 4405*

**SCOPE:** This law prohibits advertising smokeless tobacco on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission (FCC), such as television and radio.

**ENFORCEMENT:** The U.S. Attorney General and the Federal Trade Commission may seek an injunction in federal court against violators to prevent future violations of this law.

**Note:** Information on filing complaints to the FCC is located on the FCC's website: <http://esupport.fcc.gov/complaints.htm>.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of not more than \$10,000.

## 61. BAN ON MISLEADING CONSUMERS ABOUT FDA ENDORSEMENTS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 331(tt), 333, 372*

**SCOPE:** It is illegal to make any express or implied statement to consumers in tobacco product labeling or through the media or advertising that would mislead consumers into believing that a tobacco product is:

1. Approved by the FDA;
2. Endorsed by the FDA;
3. Deemed safe by the FDA; or
4. Less harmful due to FDA regulation.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

## 62. CONTENT DISCLOSURES TO THE PUBLIC: THE TOBACCO CONTROL ACT

*21 United States Code Sections 387d, 387n*

*15 United States Code Sections 1333, 1336, 1338, 1339*

**SCOPE:** The U.S. Department of Health and Human Services (HHS) will determine whether tar and nicotine yields of cigarette and tobacco products must be disclosed on all product packages and advertisements. If the HHS decides that the levels of any other cigarette or tobacco constituents should be disclosed to benefit the public health, the disclosure may be required through a product package or advertisement insert, or by another approved means. HHS will establish a list of harmful and potentially harmful tobacco product constituents by June 22, 2011, which will be shared with the public by June 22, 2012, and maintained by HHS. This list will be republished annually thereafter.

**EXCEPTION:** Mandatory disclosures of yields of cigarette or tobacco constituents, other than tar or nicotine, cannot appear directly on the face of any cigarette package or advertisement.

**ENFORCEMENT:** The U.S. Attorney General is authorized to enforce this provision, acting through several U.S. attorneys. A violation is also considered an unfair or deceptive act or practice and subject to enforcement under the Federal Trade Commission Act.

**PENALTY:** A violation is considered a misdemeanor, and a conviction will subject the violator to a fine of \$10,000 or less.

## 63. PERMISSIBLE FORMS OF LABELING AND ADVERTISING: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387a-1, 387f(d)*

*21 Code of Federal Regulations Section 1140.30(a)*

**SCOPE:** A manufacturer, distributor, or retailer must notify the FDA 30 days in advance if it seeks to advertise cigarettes or smokeless tobacco in a medium other than: in periodicals or other publications; on billboards, posters, and placards; or in promotional material such as direct mail or point-of-sale material, including audio or video presented at the point of sale. The notice to the FDA must discuss the extent to which the advertising or labeling may be seen by people under the age of 18.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

## 64. BLACK-AND-WHITE ADVERTISING: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387a-1, 387f(d)*  
*21 Code of Federal Regulations Section 1140.32*

**SCOPE:** All cigarette or smokeless tobacco labeling and advertising, including video formats, must use only black text on a white background. Audio formats, including audio combined with video, must only contain words; music or sound effects are not permitted.

**EXCEPTION:** This provision does not apply to advertising in facilities where anyone under the age of 18 is not permitted to enter, as long as the advertising is affixed to a wall or fixture and not visible from outside the facility. This provision also does not apply to advertising in a newspaper, magazine, periodical or other publication proven to be an adult publication (i.e., 15 percent or less of the total readership is under the age of 18, and fewer than 2 million people under the age of 18 read the publication).

**Note:** At the time of this publication, enforcement of this provision is on hold until a pending lawsuit (see below) is resolved.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments. A violation is

also considered an unfair or deceptive act or practice and subject to enforcement under the Federal Trade Commission Act.

**PENALTY:** At the time of this publication, this provision is not being enforced. When the provision is enforced, the following penalties will apply:

Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012). The court ordered the FDA not to enforce this provision against the tobacco companies participating in the lawsuit until the case is resolved. The FDA subsequently decided to suspend enforcement of this provision against all other tobacco companies as well, until the lawsuit is resolved.

**65. EQUAL TREATMENT OF RETAIL OUTLETS:  
THE TOBACCO CONTROL ACT**

*21 United States Code Sections 333, 372, 387m*

**SCOPE:** The U.S. Department of Health and Human Services (HHS) must issue rules requiring that retail establishments whose primary business is the sale of tobacco products must comply with all advertising restrictions that apply to retail establishments accessible to people under 18 years of age.

**Note:** This provision ensures that tobacco stores are subject to the same advertising restrictions as other retailers, such as supermarkets and convenience stores.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.



**SPONSORSHIP,  
BRANDING, AND  
SAMPLING**

## 66. SPONSORSHIP

*Master Settlement Agreement (MSA) Sections II(j), III(c), VII(c)*

*Smokeless Tobacco Master Settlement Agreement (STMSA) Sections II(h), III(c), VII(c)*

**SCOPE:** Under the MSA and STMSA, each settling tobacco company may engage in only one brand name sponsorship in any 12-month period. A national or multistate series or tour (e.g., Skoal Racing) will count as one brand name sponsorship. The MSA and STMSA prohibit brand name sponsorship of events in which the intended audience is comprised of a significant percentage of youth (*significant percentage* is not defined); events in which paid contestants are under the age of 18; concerts; and football, basketball, soccer, baseball, or hockey games.

The MSA and STMSA prohibit naming a stadium or arena with a brand name and prohibit tobacco companies from paying football, basketball, baseball, soccer, or hockey leagues in exchange for use of a brand name.

**EXCEPTION:** The MSA and STMSA exempt the following sponsorship activities:

- Events at adult-only facilities (where minors are not present and cannot see inside)
- Vehicles bearing a brand name used in a brand-sponsored event
- Billboards for the brand-sponsored event at the site of the event for 90 days before and ten days after the event
- Corporate name sponsorship

**Note:** The corporate name sponsorship exception allows sponsorship in the name of the parent company (e.g., Altria) but not in the name of the brand (e.g., Marlboro).

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 67. SPONSORSHIP: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387a-1, 387f(d)*

*21 Code of Federal Regulations Section 1140.34(c)*

**SCOPE:** Manufacturers, distributors, or retailers may not directly or indirectly sponsor any athletic, social, or cultural event, or any entry or team in any event, in the brand name, logo, symbol, motto, selling message, recognizable color or pattern of colors, or anything identifiable with any brand of cigarettes or smokeless tobacco.

**EXCEPTION:** Manufacturers, distributors, or retailers are allowed to sponsor events in the name of the corporation that manufactures the tobacco product if: 1) both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995; and 2) the corporate name does not include anything identifiable with any brand of cigarettes or smokeless tobacco.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

**68. BRAND NAME MERCHANDISE**

*Master Settlement Agreement Sections III(f), III(c)(3)(C), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections III(f), III(c)(3)(D), VII(c)*

**SCOPE:** The settling tobacco companies are prohibited from selling or distributing apparel (e.g., hats, T-shirts) or other merchandise that bears a tobacco product brand name.

**EXCEPTION:** These provisions do not apply to apparel or other merchandise distributed or sold by a third party at the site of a brand name sponsorship, under limited circumstances. These provisions do not apply to coupons or other items used by adults solely in connection with the purchase of tobacco products; or apply to apparel or other merchandise used within an adult-only facility that is not distributed (by sale or otherwise) to any member of the general public.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

**69. BRAND NAME LIMITATIONS**

*Master Settlement Agreement Sections III(j), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections III(j), VII(c)*

**SCOPE:** Brands of the settling tobacco companies may not be named after any nationally recognized brand or trade name of a non-tobacco product or any nationally recognized sports team, entertainment group, or celebrity.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

**70. BRAND NAME LIMITATIONS: THE TOBACCO CONTROL ACT**

*21 United States Code Sections 333, 372, 387a-1*  
*21 Code of Federal Regulations Section 1140.16(a)*

**SCOPE:** Brands of cigarettes or smokeless tobacco may not include a trade or brand name of a non-tobacco product.

**EXCEPTION:** This provision does not apply to a tobacco product whose trade or brand name was both a tobacco product and a non-tobacco product that were sold in the United States on January 1, 1995.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

**Note:** At the time of this publication, the FDA was considering amending this rule in response to public concerns. The FDA voluntarily suspended enforcement of this provision while the rule is under consideration as long as (1) the trade or brand name of the cigarettes or smokeless tobacco product was registered, or the product was marketed, in the United States on or before June 22, 2009; or (2) the first marketing or registration in the United States of the tobacco product occurs before the first marketing or registration in the United States of the non-tobacco product bearing the same name, as long as the tobacco and non-tobacco product are not owned, manufactured, or distributed by the same, related, or affiliated entities. Further information is available at [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm210762.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm210762.htm).

**71. PRODUCT PLACEMENT**

*Master Settlement Agreement Sections III(e), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections III(e), VII(c)*

**SCOPE:** The settling tobacco companies may not pay for product placement in movies, television, theater, video games, music videos, concerts, or other performances.

**EXCEPTION:** These provisions do not apply to media shown in an adult-only facility (where the operator ensures that no minors are present), media not intended for distribution to the public, or instructional media concerning non-conventional cigarettes if viewed only by adult smokers.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 72. SAMPLES, COUPONS, AND PROMOTIONAL OFFERS: CALIFORNIA LAW

*California Health and Safety Code Section 118950*  
*California Code of Regulations Title 18, Section 4081*

**SCOPE:** Free or nominal-cost cigarettes or smokeless tobacco products (or coupons, coupon offers, rebate offers, gift certificates, gift cards, or “other similar offers” for such products) may not be distributed on public grounds or on private grounds that are open to the public.

**Note:** An example of *public grounds* is a state-owned or county-owned fairground. Examples of *private grounds that are open to the public* are most race tracks or retail outlets.

**Note:** Every package of legally issued samples must be clearly marked as a sample and must contain the wording “Not for sale. Applicable state tax has been paid.” Local governments may pass local laws that are stricter than the state law.

**EXCEPTION:** This law applies only to cigarettes and smokeless tobacco products (e.g., it does not apply to cigars). The law exempts product samples, coupons, coupon offers, rebate offers, gift certificates and gift cards in connection with the sale of another item, including tobacco products, lighters, magazines, or newspapers.

The law does not apply to locations where minors are prohibited by law or to public grounds leased for a private function where minors are denied access to the private function by a peace officer or licensed security guard. Nor does the law apply to a separate distribution area on private property that is open to the public where minors are denied access by a peace officer or licensed security guard. However, the area must be enclosed so as to prevent persons outside the area from seeing the distribution unless they undertake unreasonable efforts to see inside the area.

**ENFORCEMENT:** The state Attorney General may enforce this law.

**PENALTY:** Violators are liable for a civil penalty of not less than \$200 for a first item distributed, \$500 for a second item, and \$1,000 for each item after that. Each distribution of a single package, coupon, coupon offer, gift certificates, gift cards, or other similar offers, or rebate offer to an individual member of the general public in violation of this section shall be considered a separate violation.

*California Business and Professions Code Sections 17534, 17535, 17537.3*

**SCOPE:** Free samples of smokeless tobacco products may not be distributed within a two-block radius of any premises or facility whose primary purpose is directed toward people

under the age of 18, including schools, clubhouses, and youth centers, when those premises are being used for their primary purposes.

Promotional offers of smokeless tobacco that require proof of purchase are prohibited unless the offer states that it is not available to minors. Mail-in and telephone requests for promotional offers must include appropriate efforts to ensure that the person is at least 18 years old, such as asking for the purchaser’s birth date.

Mailing unsolicited samples of smokeless tobacco as part of an advertising program is prohibited. (See entry 38 for more information on home delivery of unsolicited tobacco products.)

**ENFORCEMENT:** Local law enforcement agencies have the general authority to enforce this law under Penal Code Section 830.1. Actions for injunction may be brought by the state Attorney General, district attorney, county counsel, city attorney, or city prosecutor, or by a private individual.

**PENALTY:** Violators (which can be a person, firm, corporation, partnership or association or any employee or agent thereof) are guilty of a misdemeanor.

## 73. SAMPLES, COUPONS, AND PROMOTIONAL OFFERS: MSA/STMSA

*Master Settlement Agreement Sections III(g), VII(c)*  
*Smokeless Tobacco Master Settlement Agreement Sections III(g), VII(c)*

**SCOPE:** The settling tobacco companies are prohibited from distributing free samples of tobacco products.

**EXCEPTION:** This prohibition does not apply to the distribution of tobacco products in an adult-only facility (where the operator ensures that no minors are present). Nor does this prohibition apply to tobacco products provided to adults in exchange for proof of purchase or through special promotions such as “two-for-one” offers, or for consumer testing.

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

#### 74. SAMPLES, COUPONS, AND PROMOTIONAL OFFERS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387a-1, 387f(d)*

*21 Code of Federal Regulations Section 1140.16(d)*

**SCOPE:** Manufacturers, distributors, and retailers may not distribute (or cause to be distributed) free samples of cigarettes or smokeless tobacco.

**Note:** The FDA has stated that the regulations do not cover other tobacco products. Specifically, the regulations do not apply to cigars, little cigars or pipe tobacco. Further information is available at [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm214425.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm214425.htm).

**EXCEPTION:** This prohibition does not apply to the distribution of free samples of smokeless tobacco in a qualified adult-only facility (QAF), but an adult consumer may only leave with one package (15 grams) of smokeless tobacco. A QAF must:

- have a law enforcement officer present to check photo ID and ensure that access is limited only to adults;
- be a temporary structure created for the purpose of distributing free samples of smokeless tobacco;
- be enclosed by a barrier that prevents people from outside the facility from seeing inside the facility unless they make an unreasonable effort to do so;
- not sell, serve, or distribute alcohol;
- not be located adjacent to or immediately across from an area used primarily for youth-oriented marketing, promotional, or other activities; and
- not have exterior advertising other than brand names in conjunction with a word to identify the QAF.

QAFs are not permitted at any football, basketball, baseball, soccer, or hockey event. The Secretary has the authority to add additional types of events to this list in the future.

**Note:** This provision does not affect the authority of a state or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

#### 75. PROOF-OF-PURCHASE GIFTS

*Master Settlement Agreement Sections III(h), VII(c)*

*Smokeless Tobacco Master Settlement Agreement Sections III(h), VII(c)*

**SCOPE:** The settling tobacco companies are prohibited from giving gifts in exchange for the purchase of a tobacco product (including coupons or credits for a purchase) unless the recipient provides sufficient proof that he or she is an adult (e.g., a photocopy of a driver's license or other government-issued ID card).

**ENFORCEMENT:** The state Attorney General (AG) is authorized to enforce these provisions. Suspected violations can be reported to the AG by calling (916) 565-6486 or by completing an online complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

**PENALTY:** The AG may seek a court order to enforce these provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## 76. PROOF-OF-PURCHASE GIFTS: THE TOBACCO CONTROL ACT

**21 United States Code Sections 333, 372, 387a-1, 387f(d)**  
**21 Code of Federal Regulations Section 1140.34(b)**

**SCOPE:** Manufacturers, distributors, or retailers may not directly or indirectly offer gifts or items in exchange for the purchase of a tobacco product, including through coupons or other proofs of purchase.

**EXCEPTION:** This provision does not prohibit cigarettes or smokeless tobacco offered in exchange for the purchase of cigarettes or smokeless tobacco, such as “buy one, get one free” offers.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Retailers who violate this provision and have a training program in place that complies with standards developed by the FDA shall be subject to the following penalties, not to exceed:

- a warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place shall be subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,000 for a third violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$10,000 for a sixth or subsequent violation within a 48-month period.

**Note:** At the time of this publication, the FDA had not yet established standards for retailer training programs. Until the FDA establishes standards for retailer training programs, all retailers who violate this provision will be treated as though they have an approved retailer training program in place. *Guidance for FDA and Tobacco Retailers* (March 2011), [www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm](http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm252810.htm).

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

## 77. LOTTERY

**26 United States Code Sections 5723(c), 5762(b)**

**SCOPE:** Nothing that is or represents a ticket, chance, share, or an interest in a lottery shall be placed in or on any package of tobacco products or cigarette papers.

**ENFORCEMENT:** Not specified.

**PENALTY:** For each offense, violators are subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

## 78. SALE AND DISTRIBUTION OF NON-TOBACCO ITEMS OR SERVICES: THE TOBACCO CONTROL ACT

**21 United States Code Sections 333, 372, 387a-1**  
**21 Code of Federal Regulations Section 1140.34(a)**

**SCOPE:** Manufacturers and distributors of imported cigarettes or smokeless tobacco may not directly or indirectly market, license, distribute, or sell any item or service bearing anything identifiable with any brand of cigarettes or smokeless tobacco, such as the brand name, logo, symbol, motto, or recognizable color or pattern of colors.

**EXCEPTION:** This provision does not apply to the marketing of cigarettes, smokeless tobacco, or roll-your-own tobacco. This provision does not apply to manufacturers of domestic cigarettes or smokeless tobacco.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

## 79. JOINT MARKETING: THE TOBACCO CONTROL ACT

*21 United States Code Sections 321(rr), 333, 372*

**SCOPE:** A tobacco product may not be marketed with any other product regulated by the FDA, including a drug, food, cosmetic, medical device, or dietary supplement.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).



# WARNING LABELS

## 80. CIGARETTE WARNING LABELS

*15 United States Code Sections 1333, 1334, 1338, 1339*

**SCOPE:** Under the Federal Cigarette Labeling and Advertising Act, cigarettes may not be manufactured, packaged, or imported for sale or distribution unless they bear one of the Surgeon General's warning labels. It is also unlawful for manufacturers or importers to advertise cigarettes without one of the warning labels.

**Note:** State and local governments may not create additional cigarette label warning requirements beyond those required by federal law.

**ENFORCEMENT:** The Federal Trade Commission is responsible for approving labeling plans. The U.S. Attorney General may seek an injunction in federal court against violators to prevent future violations of this law or restrain current violations.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of not more than \$10,000.

## 81. CIGARETTE LABEL AND ADVERTISING WARNINGS: THE TOBACCO CONTROL ACT

*21 United States Code Section 387n*

*15 United States Code Sections 1333, 1336, 1338, 1339*

**SCOPE:** All cigarette packages made, sold, or distributed within the United States, and all related advertising and marketing, are required to bear one of nine specified warnings regarding associated health risks. The warning labels must adhere to placement and typography restrictions. (For example, the warnings must cover 50 percent of the top front and rear panels of cigarette packages, and must cover at least 20 percent of a newspaper, magazine, or poster advertisement and be in the predominant language of the publication.) The U.S. Department of Health and Human Services (HHS) can make changes to the warning label requirements upon a finding that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.

**EXCEPTION:** This provision does not apply to tobacco products other than cigarettes or to foreign distribution of cigarettes. A retailer of cigarettes will not be in violation if the packaging contains a warning label, was supplied by a licensed manufacturer or distributor, and was not materially altered by the retailer.

**Note:** HHS issued regulations on June 22, 2011, specifying that the warning labels include nine specific graphic images and nine printed warnings depicting the negative consequences of smoking. The proposed warning labels can be found at: [www.fda.gov/TobaccoProducts/Labeling/CigaretteWarningLabels/default.htm](http://www.fda.gov/TobaccoProducts/Labeling/CigaretteWarningLabels/default.htm). The new graphic warning label requirements were scheduled to go into effect in September 2012; however, an ongoing lawsuit (see note below) has made the implementation date uncertain.

**ENFORCEMENT:** The U.S. Attorney General is authorized to enforce this provision, acting through several U.S. attorneys. A violation is also considered an unfair or deceptive act or practice and subject to enforcement under the Federal Trade Commission Act.

**PENALTY:** A violation is considered a misdemeanor, and a conviction will subject the violator to a fine of \$10,000 or less.

 At the time of this publication, this provision is the subject of two lawsuits. A number of tobacco companies challenged the warning labels requirement of the Tobacco Control Act in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012). Additionally, in August 2011, several tobacco companies challenged the specific warning label images required by the FDA's regulation in federal court. *R.J. Reynolds Tobacco Co. v. United States Food and Drug Administration*, Civil Case No. 11-1482 (D.D.C.) appeal docketed, No. 12-5063 (D.C. Cir. March 6, 2012). This decision ordered the FDA to postpone enforcement of the regulation requiring the new warning labels until the lawsuit is resolved.

## 82. SMOKELESS TOBACCO WARNING LABELS

*15 United States Code Sections 4402, 4404, 4405*

**SCOPE:** Smokeless tobacco products may not be manufactured, packaged, or imported for sale or distribution unless they bear one of the warning labels listed in the law. It is also unlawful for manufacturers, packagers, or importers to advertise smokeless tobacco products without one of the warning labels.

**ENFORCEMENT:** The Federal Trade Commission (FTC) is responsible for approving labeling plans. The U.S. Attorney General or the FTC may seek an injunction in federal court against violators to prevent future violations of this law.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of not more than \$10,000.

## 83. SMOKELESS TOBACCO LABEL AND ADVERTISING WARNINGS: THE TOBACCO CONTROL ACT

*21 United States Code Section 387n*

*15 United States Code Sections 4402, 4404, 4405*

**SCOPE:** All smokeless tobacco product packages made, sold, or distributed within the United States must bear one of four specified warnings regarding associated health risks:

- WARNING: This product can cause mouth cancer.
- WARNING: This product can cause gum disease and tooth loss.
- WARNING: This product is not a safe alternative to cigarettes.
- WARNING: Smokeless tobacco is addictive.

The warning labels must adhere to placement and typography restrictions. (For example, the warning labels must cover 30 percent of each of the two principal display panels of the product. For press and poster advertisements, the warning labels must cover at least 20 percent of the advertisement. Warning labels in a newspaper, magazine, or poster advertisement must be in the predominant language of the publication.) The U.S. Department of Health and Human Services can make changes to the warning label requirements upon a finding that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.

**EXCEPTION:** This provision does not apply to tobacco products other than smokeless tobacco or to foreign distribution of smokeless tobacco products. A retailer of smokeless tobacco will not be in violation if the packaging contains a warning label, was supplied by a licensed manufacturer or distributor, and was not materially altered by the retailer.

**ENFORCEMENT:** The U.S. Attorney General is authorized to enforce this provision, acting through several U.S. attorneys. A violation is also considered an unfair or deceptive act or practice and subject to enforcement under the Federal Trade Commission Act.

**PENALTY:** A violation is considered a misdemeanor, and a conviction will subject the violator to a fine of \$10,000 or less.

 At the time of this publication, a number of tobacco companies were challenging this provision in federal court. See *Discount Tobacco City & Lottery, Inc. v. United States*, Nos. 10-5234 & 10-5235 (6th Cir. March 19, 2012).

## 84. CIGAR WARNING LABELS

### *FTC Agreements, File Numbers 0023199–00023205*

**SCOPE:** Pursuant to agreements between the Federal Trade Commission (FTC) and the seven largest cigar companies (comprising approximately 95 percent of the U.S. cigar market), every signing company's cigar packages and advertisements in the United States must clearly and prominently display one of five Surgeon General's health warnings listed in the agreement.

**Note:** For more information about this agreement, see the FTC's website at: [www.ftc.gov/opa/2000/06/cigars.htm](http://www.ftc.gov/opa/2000/06/cigars.htm).

**ENFORCEMENT:** The FTC is charged with enforcing this agreement.

**PENALTY:** Not specified.

### *California Health and Safety Code Sections 104550–104552*

**SCOPE:** Cigar manufacturers or importers must label each retail package of cigars with one of the warnings listed in the law. Display boxes or containers used to sell individual cigars must be clearly labeled.

**Note:** The state Attorney General (AG) has agreed that any cigar company that signed an agreement with the FTC regarding warning labels and that remains in compliance with terms of that agreement is deemed to be in compliance with California Health and Safety Sections 104550–104552.

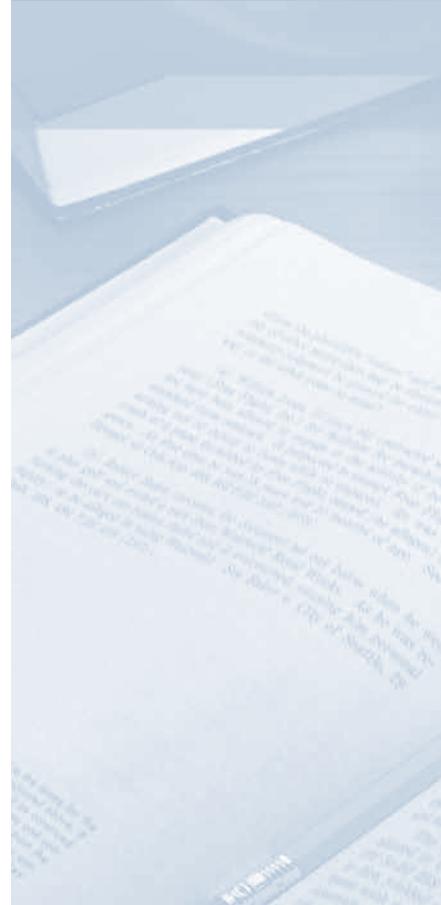
**EXCEPTION:** Warning labels are not required on the cellophane wrappers, tubes, or similar wrappings in which individual cigars are sold.

**ENFORCEMENT:** Actions to enforce this section may be brought by the AG, by any district attorney, by any city attorney of a city with a population greater than 750,000, or, with permission of the district attorney, by a city prosecutor in any city having a full-time city prosecutor.

**PENALTY:** Violators are subject to a civil penalty up to \$2,500 per day for each violation.



# TAXATION, LICENSING, AND REPORTING



**85. FEDERAL TOBACCO TAX***26 United States Code Sections 5701–5704, 5761–5763*

**SCOPE:** The manufacturer or importer of tobacco manufactured or imported into the United States shall pay taxes in the amount specified for each type of tobacco product. The tax on all tobacco products increased on April 1, 2009. The federal tax on cigarettes is now \$1.01 per package. The federal taxes on cigars and smokeless tobacco are calculated according to weight.

**EXCEPTION:** There are four categories of exemptions from the federal tobacco tax: tobacco furnished for employee use or experimental purposes; certain tobacco products transferred or removed from domestic factories and export warehouses; certain tobacco products released from customs custody; and tobacco products exported and returned.

**ENFORCEMENT:** The federal tax laws are enforced by federal law enforcement agencies.

**PENALTY:** There are a range of civil and criminal penalties that attach to a failure to comply with the federal tobacco tax laws. In addition, any property intended for use in violating the federal tobacco tax laws is subject to forfeiture.

**86. REPORTING REQUIREMENTS: THE JENKINS ACT***15 United States Code Sections 375–378*

**SCOPE:** The Jenkins Act applies to cigarette sellers who ship or advertise to buyers in another state who are not distributors. These sellers must make two filings with the state into which they are shipping or advertising. First, they must file their name and address. Second, they must file a monthly report documenting every shipment into the state. The report must include the name and address of each buyer, the brand, and the quantity shipped.

**ENFORCEMENT:** The Jenkins Act may be enforced by federal law enforcement agencies.

**Note:** Courts in two states have held that state law enforcement agencies may bring a civil action to enforce the Jenkins Act reporting requirements. (See *Washington v. WWW. Dirtcheapcigs.com, Inc.*, 260 F. Supp. 2d 1048, 1053-55 (W.D. Wash. 2003); *Angelica Co. v. Goodman*, 276 N.Y.S.2d 766, 769 (1966).) California Code of Civil Procedure Section 1021.10 authorizes the state of California to sue to enforce the Jenkins Act to the extent not expressly prohibited by federal law.

**PENALTY:** Violators are subject to criminal penalties of up to three years imprisonment. Violators are also subject to civil penalties in an amount not to exceed the greater of \$5,000 for a first violation and \$10,000 for a subsequent violation, or 2 percent of their gross sales of cigarettes or smokeless tobacco during the one-year period ending on the date of the violation.

**87. REPORTING REQUIREMENTS: THE PACT ACT***15 United States Code Sections 375, 376a, 377, 378**18 United States Code Section 1716e*

**SCOPE:** The Prevent All Cigarette Trafficking Act (the PACT Act) requires cigarette or smokeless tobacco product sellers to make the filings specified in the Jenkins Act with the U.S. Attorney General, who will compile a list of delivery sellers that have not registered or not complied with this law. Common carriers (e.g., UPS, FedEx) will be prohibited from delivering packages for delivery sellers that are on the list.

**ENFORCEMENT:** The Attorney General of the United States shall administer and enforce this chapter.

**PENALTY:** Violators are subject to criminal penalties of up to three years imprisonment. Violators are also subject to civil penalties in an amount not to exceed the greater of \$5,000 for a first violation and \$10,000 for a subsequent violation, or 2 percent of their gross sales of cigarettes or smokeless tobacco during the one-year period ending on the date of the violation.

Common carriers or other delivery services that intentionally violate the new law are subject to civil penalties in an amount not to exceed \$2,500 for a first violation and \$5,000 for any violation within one year of a prior violation.

**88. CALIFORNIA STATE TOBACCO TAX***California Revenue and Taxation Code Sections 30001–30483**California Health and Safety Code Sections 104350–104480, 104500–104545, 130100–130155*

**SCOPE:** Under the Cigarette and Tobacco Products Tax Law, California imposes three taxes on the distribution of cigarettes:

- A tax of 12 cents per package of 20 cigarettes, of which two cents are earmarked for breast cancer research and control.
- A Proposition 99 surtax of 25 cents per package of 20 cigarettes (with an equivalent surtax on other tobacco products), all of which is allocated to the Cigarette and Tobacco Products Surtax Fund. The revenues are earmarked for health education against tobacco, tobacco related disease research, health care for medically indigent families, and certain types of environmental programs. The revenues are deposited according to the following formula: 20 percent in the Health Education Account; 35 percent in the Hospital Services Account; 10 percent in the Physician Services Account; 5 percent in the Research Account; 5 percent in the Public Resources Account; and 25 percent in the Unallocated Account. This surtax became effective on January 1, 1989. Proposition 99 funds are allocated to school-based programs through a single competitive grant process for tobacco education and cessation programs for grades six through 12.

- A Proposition 10 surtax of 50 cents per package of 20 cigarettes (with an equivalent surtax on other tobacco products), all of which is allocated to the California Children and Families Program to support early childhood development programs. This surtax became effective on January 1, 1999.

Distributors are responsible for paying state cigarette taxes through the use of tax stamps or meter impressions. (See entry 89.) In total, each tax stamp or meter impression costs 87 cents per package of cigarettes. Non-cigarette tobacco products are subject to a surtax that is set annually by the state Board of Equalization (BOE). The surtax rate is calculated to be equivalent to the total tax on cigarettes. Distributors are responsible for paying state tobacco taxes.

**EXCEPTION:** Tobacco taxes do not apply to:

- sales to armed services;
- sales to the United States Veterans' Administration;
- distributions that are exempt from taxation under federal tax law;
- distributions by a manufacturer to a licensed distributor;
- sales to a law enforcement agency for use in criminal investigations;
- sales to a common carrier engaged in interstate or foreign commerce;
- sales by the original importer to a licensed distributor;
- certain sales or gifts to veterans; and
- use or consumption of untaxed cigarettes brought into the state in a single lot of not more than 400 cigarettes (e.g., two cartons) by an individual for his own use or consumption.

**ENFORCEMENT:** The BOE is authorized to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Anyone who intentionally engages in tax evasion under the Cigarette and Tobacco Products Tax Law is guilty of a misdemeanor if the amount of tax liability is less than \$25,000 in any one-year period and is guilty of a felony if the amount of tax liability is \$25,000 or more in any one-year period. (California Revenue and Taxation Code Sections 30477, 30480) Each felony offense is punishable by imprisonment and/or a fine of not less than \$5,000 and not more than \$20,000. See entries 89–93, 102–103, and 105 for other penalties associated with the violation of state tobacco tax laws.

**Note:** State law expressly preempts local governments from imposing additional taxes on cigarettes and tobacco products. (See Cal. Revenue and Taxation Code Sections 30111, 30462.)

## 89. CIGARETTE TAX STAMPS/METER IMPRESSIONS

*California Revenue and Taxation Code Sections 30161–30165*

*California Code of Regulations Title 18, Sections 4048, 4054, 4081*

**SCOPE:** Distributors pay cigarette taxes through the use of stamps or meter impressions. The state Board of Equalization (BOE) sells stamps and meter register settings for approved metering machines. A stamp or meter impression must appear on each package of cigarettes prior to distribution. Stamps shall be affixed to the bottom end of each standard package of 20 cigarettes or to the lid or top of each individual package of flats or rounds. Stamps may not be affixed to cartons or larger containers of cigarettes. Meter impressions shall be clearly imprinted on the bottom end of each standard package of 20 cigarettes. Meter impressions may not be imprinted on any other size of package, carton, or container of cigarettes. Stamps and meter impressions may not be affixed to any package of cigarettes if any one of the following occurs:

- The package does not comply with federal laws requiring health warnings. (See entry 80.)
- The package is labeled with wording indicating that the manufacturer did not intend that the product be sold in the United States.
- The package has been altered by adding or deleting federal warnings or labels.
- The package was imported into the United States after January 1, 2000, in violation of federal tobacco importation law. (See 26 U.S.C. Section 5754.)
- The package bears a brand name of a participating manufacturer in the Master Settlement Agreement (MSA) and is imported by an entity other than the participating manufacturer.

**EXCEPTION:** Stamps or meter impressions need not appear on tobacco products legally given away as samples. However, the manufacturer giving away such samples must notify the BOE in advance of the sampling, report the distribution, and pay the tax due. Each package of samples must be clearly marked as a sample and must contain the wording “Not for sale. Applicable state tax has been paid.”

**Note:** Sampling is restricted under California and federal law. (See entries 72–74.)

**ENFORCEMENT:** The BOE is authorized to enforce this law.

**PENALTY:** The BOE shall revoke the license issued to a distributor under the California Revenue and Taxation Code if the distributor violates this law. See entries 91–93, 102, and 105 for penalties that attach to various violations relating to tax stamps and meter impressions. In addition, the penalties listed in entry 103 may apply.

**90. MAIL ORDER/INTERNET CIGARETTE TAXATION****California Revenue and Taxation Code Section 30101.7**

**SCOPE:** In order to sell tobacco products to a person in California over the internet, on the phone, or via any other non-“face-to-face” sales method, the seller must meet all of the following conditions: (1) it must fully comply with all of the requirements of the Jenkins Act (see entry 86); (2) it must obtain and maintain any applicable license under the California Business and Professions Code, as if the delivery sales occurred entirely within California; and (3) it must comply with any applicable state law that imposes escrow or other payment obligations on tobacco product manufacturers.

The state Board of Equalization must provide information to the state Attorney General (AG) regarding a seller’s failure or attempt to comply with the Jenkins Act. The AG must provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the Jenkins Act. The AG may require a seller to report its delivery sales of cigarettes and tobacco products to consumers within California.

**EXCEPTION:** This law does not apply to cigars.

**ENFORCEMENT:** The AG, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this law.

**PENALTY:** Any violation of the above requirements is a misdemeanor, punishable by a maximum fine of \$5,000, imprisonment of up to one year in county jail, or both. Violators are also liable for a civil penalty of between \$1,000-\$2,000 for a first violation; \$2,500-\$3,500 for a second violation within a five-year period; \$4,000-\$5,000 for a third violation within a five-year period; \$5,500-\$6,500 for a fourth violation within a five-year period; and \$10,000 for a fifth or subsequent violation within a five-year period.

**91. BLACK MARKET AND COUNTERFEIT CIGARETTES****California Revenue and Taxation Code Sections 30474, 30474.5**

**SCOPE:** It is illegal to knowingly hold for sale, offer for sale, or sell any packages of cigarettes without the required tax stamp or meter impression. (See entry 89 for a summary of the tax stamp and meter impression requirements.)

**ENFORCEMENT:** The state Board of Equalization (BOE) and local law enforcement agencies are authorized to enforce this law.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine of no more than \$25,000 and/or imprisonment for up to one year. Moreover, violators shall pay two fines, each amounting to \$100 per violating carton of 200 cigarettes or portion thereof. The first fine shall be divided evenly between the local prosecuting jurisdiction and the BOE. The second fine shall be deposited in the Unlawful Sales Reduction Fund, which shall be used to support local grantees in multi-agency efforts to reduce sales of untaxed cigarettes. In addition, the penalties listed in entry 103 may apply.

**California Revenue and Taxation Code Section 30474.1**

**SCOPE:** Notwithstanding any other provision of law, the sale or possession for sale of counterfeit tobacco products is illegal. Counterfeit tobacco products include tobacco products with false manufacturing labels and/or fraudulent tax stamps or meter impressions.

**ENFORCEMENT:** The state Board of Equalization and local law enforcement agencies are authorized to enforce this law.

**PENALTY:** The illegal products are subject to seizure and forfeiture, and violators are guilty of a misdemeanor. If less than two cartons are seized, violators are subject to a fine of up to \$5,000 and/or imprisonment not to exceed one year, as well as revocation of a distributor, wholesaler, or manufacturer license. If two or more cartons are seized, violators are subject to a fine of up to \$50,000 and/or imprisonment not to exceed one year, as well as revocation of a distributor, wholesaler, or manufacturer license. (See entries 97 and 99 for more information on distributor, wholesaler, and manufacturer licenses.) In addition, the penalties listed in entry 103 may apply.

**California Business and Professions Code Sections 22974.3(a), 22978.2(a)**

**SCOPE:** It is illegal to possess, store, own, or sell a package of cigarettes that bears a counterfeit tax stamp or meter impression or that lacks a tax stamp or meter impression. (See entry 89 for more information on tax stamps and meter impressions.)

**ENFORCEMENT:** The state Board of Equalization and local law enforcement agencies are authorized to enforce this law.

**PENALTY:** The unstamped packages are subject to seizure and forfeiture, and violators are guilty of a misdemeanor punishable by the following:

- If fewer than 20 packages are seized: For a first violation, a fine of \$1,000 and/or imprisonment not to exceed one year; for a second or subsequent violation within five years, a fine of \$2,000-\$5,000 and/or imprisonment not to exceed one year, and revocation of a retailer, distributor, or wholesaler license. (See entries 94 and 97 for more information on retailer, distributor, and wholesaler licenses.)
- If 20 or more packages are seized: For a first violation, a fine of \$2,000 and/or imprisonment not to exceed one year; for a second or subsequent violation within 5 years, a fine of \$5,000- \$50,000 and/or imprisonment not to exceed one year, and revocation of a retailer, distributor, or wholesaler license. (See entries 94 and 97 for more information on retailer, distributor, and wholesaler licenses.)
- In addition, the penalties listed in entry 103 may apply.

**California Business and Professions Code Sections 22974.3(b), 22978.2(b), 22981**

**SCOPE:** It is illegal to possess, store, own, or sell a tobacco product on which tax is due. Retailers, distributors, wholesalers, and others in possession of tobacco products have the burden of proving that the tax has been paid.

**ENFORCEMENT:** The state Board of Equalization and local law enforcement agencies are authorized to enforce this law.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. Illegal packages are subject to seizure and forfeiture. In addition, the penalties listed in entries 102 and 103 may apply.

## 92. FORGERY OF FALSE STAMPS/METER IMPRESSIONS

### *California Revenue and Taxation Code Section 30473*

**SCOPE:** It is illegal to fraudulently make, forge, alter, reuse, or counterfeit any tax stamp or meter impression. (See entry 89 for more information on tax stamps and meter impressions.)

**ENFORCEMENT:** The state Board of Equalization and local law enforcement agencies are authorized to enforce this law.

**PENALTY:** Violators are guilty of a felony and subject to imprisonment for two, three, or four years, and/or to a fine of not less than \$1,000 and not more than \$25,000. In addition, the penalties listed in entry 103 may apply.

## 93. POSSESSION OR SALE OF FALSE STAMPS/METER IMPRESSIONS

### *California Revenue and Taxation Code Section 30473.5*

**SCOPE:** It is illegal to possess, sell, or offer to sell or to buy or offer to buy any false or fraudulent tax stamps or meter impressions. (See entry 89 for more information on tax stamps and meter impressions.)

**ENFORCEMENT:** The state Board of Equalization (BOE) and local law enforcement agencies are authorized to enforce this law.

**PENALTY:** Violators are guilty of a misdemeanor punishable by: (1) for false or fraudulent tax stamps or meter impressions in a quantity of less than 2,000, a fine not to exceed \$5,000 and/or imprisonment not to exceed one year; (2) for false or fraudulent tax stamps or meter impressions in a quantity of 2,000 or greater, a fine not to exceed \$50,000 and/or imprisonment not to exceed one year. The BOE shall destroy any stamps seized under this law. In addition, the penalties listed in entry 103 may apply.

## 94. TOBACCO RETAILER LICENSE

### *California Business and Professions Code Sections 22971–22971.5, 22972–22973.1, 22980.2, 22981*

**SCOPE:** Tobacco retailers must be licensed by the state Board of Equalization (BOE) for each tobacco retail location. For the purposes of this law, a *retailer* is someone who sells tobacco products from a building or a vending machine. Each retailer must pay a onetime license fee of \$100 for each retail location, and an additional fee of \$100 to reinstate an expired license.

The license is not assignable or transferable, and it must be renewed annually for no fee. A retailer may not obtain a license if the retailer has been issued a license that is currently suspended or revoked. Licenses will not be issued for any location where a license has been revoked in the last five years, unless a new owner obtained the property in an arms-length transaction.

The state licensing law does not preempt or supersede any local tobacco control law other than those related to the collection of state taxes. Local tobacco retailer licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.

**Note:** The state licensing law focuses on protecting state revenue by targeting tax evasion. Local jurisdictions can pass tobacco retailer licensing laws that focus on protecting the public's health by, for example, providing for the suspension of tobacco retailer licenses for illegal sales to minors.

**ENFORCEMENT:** The BOE is authorized to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Unlicensed retailers are guilty of a misdemeanor and subject to a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. Each day of continued sales or gifting without a valid license after notification by a law enforcement agency that a valid license is required constitutes a separate violation. Continued sales or gifting after notification by the BOE that a license has been suspended or revoked shall result in the seizure and forfeiture of all tobacco products in the possession of the person making such sales. In addition, the penalties listed in entry 103 may apply.

## 95. RETAILER LICENSE DISPLAY

### *California Business and Professions Code Sections 22980.5, 22972, 22974.5*

**SCOPE:** A retailer shall conspicuously display the license at each retail location in a manner visible to the public. A retailer whose license has been suspended or revoked by the state Board of Equalization must conspicuously post a notice of that suspension or revocation at each public entrance to the retail location and at each cash register and other point of sale. The notice must be posted for the duration of the suspension or for 30 days following the effective date of a revocation.

**ENFORCEMENT:** The state Board of Equalization is authorized to enforce this law.

**PENALTY:** A retailer who fails to display the license is liable for a \$500 fine. A retailer who removes, alters, or fails to post required notices of suspension or revocation shall be subject to a civil penalty of \$1,000 for each offense.

In addition, the penalties listed in entry 103 may apply.

## 96. PROVISIONAL LICENSING PENALTIES FOR SALES-TO-MINORS VIOLATIONS

*California Business and Professions Code Section 22974.8*

**SCOPE:** Retailers convicted of either a STAKE Act violation (see entries 22, 25, 27–29, 35, and 53) or a Penal Code Section 308 violation (see entries 21 and 27) shall be subject to license-related penalties, but only if the most recent official statewide youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. (See entry 24 for a summary of the youth purchase survey requirement.)

**ENFORCEMENT:** The state Board of Equalization (BOE) is charged with enforcing this law.

**PENALTY:** If the most recent official youth purchase survey finds that 13 percent or more youth were able to purchase cigarettes, the following penalties apply:

- Upon a first conviction, the retailer shall receive a warning letter from the BOE and shall receive training from the California Department of Public Health.
- Upon a second conviction within 12 months, the retailer shall be fined \$500.
- Upon a third conviction within 12 months, the retailer shall be fined \$1,000.
- Upon a fourth to seventh conviction within 12 months, the BOE shall suspend the retailer's license for 90 days.
- Upon an eighth conviction within 24 months, the BOE shall revoke the retailer's license. Convictions by a retailer at one retail location are not accumulated against other locations owned by that retailer. Convictions accumulated against a prior retail owner at a retail location are not accumulated against a new retail owner of the same retail location.

In addition, the penalties listed in entry 103 may apply.

## 97. DISTRIBUTOR AND WHOLESALER LICENSES

*California Business and Professions Code Sections 22971, 22975–22978.8, 22980.2, 22981*

**SCOPE:** Tobacco distributors and wholesalers must be licensed by the state Board of Equalization (BOE) and must pay an annual license fee of \$1,000. (This license requirement is in addition to the California Revenue and Taxation Code license requirements described below in this entry.)

**ENFORCEMENT:** The BOE is authorized to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Unlicensed distributors and wholesalers are guilty of a misdemeanor and subject to a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. Each day of continued sales or gifting without a valid license after notification by a law enforcement agency that a valid license is required constitutes a separate violation. Continued sales

or gifting after notification by the BOE that a license has been suspended or revoked shall result in the seizure and forfeiture of all tobacco products in the possession of the person making such sales. The BOE shall include on its website the name of any distributor or wholesaler whose license has been suspended or revoked. In addition, the penalties listed in entry 103 may apply.

*California Revenue and Taxation Code Sections 30140–30149*

**SCOPE:** Tobacco distributors must be licensed by the state Board of Equalization (BOE) for each place of business. (This license requirement is in addition to the California Business and Professions Code license requirements described above in this entry.) License applicants must submit a security deposit (minimum of \$1,000) to the BOE. The security is conditioned upon the lawful performance of all tobacco tax related requirements.

**ENFORCEMENT:** The BOE is authorized to enforce this law.

**PENALTY:** The license may be revoked for failure to comply with applicable rules and regulations. Distributing without a license is a misdemeanor. In addition, the penalties listed in entry 103 may apply.

*California Revenue and Taxation Code Sections 30155–30159*

**SCOPE:** Tobacco wholesalers must be licensed at no cost separately for each place of business. (This license requirement is in addition to the California Business and Professions Code license requirements described above in this entry.) This license must be prominently displayed at each place of business.

**ENFORCEMENT:** The state Board of Equalization is authorized to enforce this law.

**PENALTY:** The license may be suspended or revoked for failure to comply with applicable rules and regulations. Engaging in wholesaling without a license is a misdemeanor. In addition, the penalties listed in entry 103 may apply.

## 98. DISTRIBUTOR AND WHOLESALER REPORTING

*California Business and Professions Code Sections 22954, 22957 (STAKE Act)*

**SCOPE:** Tobacco distributors, tobacco wholesalers, and cigarette vending machine operators shall report annually to the California Department of Public Health (CDPH) the names and addresses of those persons to whom they provide tobacco products. The data provided shall be deemed confidential by CDPH and shall be exempt from disclosure under the California Public Records Act (California Government Code Sections 6250–6276.48).

**ENFORCEMENT:** Primary enforcement responsibility rests with CDPH. However, this requirement may also be enforced by any “enforcing agency” authorized to enforce the STAKE Act, including the California Attorney General’s office and local law enforcement agencies.

**PENALTY:** Not specified.

**99. MANUFACTURER AND IMPORTER LICENSE AND REPORTING**

*California Business and Professions Code Sections 22971, 22979, 22979.21–22979.24, 22979.7, 22980.2*

**SCOPE:** Tobacco manufacturers and importers must be licensed by the state Board of Equalization (BOE). In order to obtain and maintain a license, the manufacturer or importer must supply the BOE with specified lists, certifications, and consents.

As of May 1, 2007, every manufacturer or importer of chewing tobacco or snuff must pay a onetime license fee of \$10,000, and every manufacturer or importer of other tobacco products must pay a onetime license fee of \$2,000.

As of May 1, 2007, every tobacco manufacturer and importer must file a monthly report to the BOE that includes a list of all licensed distributors to which the manufacturer or importer shipped its products and the total wholesale cost of the products. The data provided shall be deemed confidential and shall be exempt from disclosure under the California Public Records Act (California Government Code Sections 6258-6276.48).

In order to be eligible to obtain a license, every tobacco manufacturer or importer must do either of the following: (1) waive any sovereign immunity defense that may apply to any enforcement action brought by the Attorney General or the Board of Equalization to enforce state manufacturer and importer licensing requirements, the manufacturer requirements relating to the Master Settlement Agreement, or state tobacco tax laws; or (2) file a surety bond with the Attorney General in favor of the State of California that is conditioned on the manufacturer's performance of its duties and obligations.

**ENFORCEMENT:** The BOE is authorized to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

Every tobacco manufacturer or importer must consent to the jurisdiction of the California courts for enforcement of the Master Settlement Agreement and the Cigarette and Tobacco Products Tax Law, must appoint a registered agent for service of process in California, and must identify the registered agent to the Board of Equalization and the state Attorney General.

**PENALTY:** Unlicensed manufacturers and importers are guilty of a misdemeanor and subject to a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. For a first offense, the BOE may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license, which include written notice and opportunity for a hearing. The procedures for revocation are set forth in Section 30148 of the Revenue and Taxation Code.

Each day of continued sales or gifting without a valid license after notification by a law enforcement agency that a valid license is required constitutes a separate violation. Continued sales or gifting must result in the seizure and forfeiture of all tobacco products in the possession of the person making such sales. *Gifting* is defined as any transfer of title or possession without consideration, exchange, or barter. In addition, the penalties listed in entry 103 may apply.

**100. RECORD RETENTION BY STATE LICENSEES**

*California Business and Professions Code Sections 22974, 22978.1, 22979.4, 22979.5, 22981*

**SCOPE:** Each retailer, distributor, wholesaler, manufacturer, and importer must retain purchase and sale invoices for all tobacco products for a period of four years. Such records shall be kept at the location identified in the license for a period of one year and shall be made available for inspection upon request of the state Board of Equalization (BOE) or by a law enforcement agency.

**ENFORCEMENT:** The BOE is authorized to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. In addition, the penalties listed in entry 103 may apply.

**101. INSPECTIONS**

*California Business and Professions Code Sections 22980, 22981*

**SCOPE:** Any peace officer or authorized state Board of Equalization (BOE) employee may enter and inspect any place where tobacco products are sold, produced, or stored; any site where evidence of activities involving evasion of tobacco product taxes may be discovered; or any site where there is evidence of a violation of Section 30165.1 of the California Revenue and Taxation Code, which prohibits the sale of tobacco products that are not included on the state Attorney General's directory of tobacco product manufacturers and brands.

**ENFORCEMENT:** State and local law enforcement agencies and the BOE are authorized to enforce this law.

**PENALTY:** Anyone who fails to permit an inspection is guilty of a misdemeanor punishable by a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. In addition, the penalties listed in entry 103 may apply.

*California Revenue and Taxation Code Sections 30435, 30471*

**SCOPE:** State Board of Equalization (BOE) employees may enter and inspect any place where tobacco products are sold, produced, or stored, or any site where there is evidence of activities involving tobacco tax evasion or Master Settlement Agreement violations.

**ENFORCEMENT:** The BOE is authorized to enforce this law.

**PENALTY:** Refusal to allow an inspection is a misdemeanor punishable by a fine not to exceed \$1,000 for each offense. In addition, the penalties listed in entry 103 may apply.

## 102. TRANSACTIONS WITH UNLICENSED ENTITIES

### *California Business and Professions Code Sections 22980.1, 22981*

**SCOPE:** No entity shall sell or purchase tobacco products to or from an entity that is unlawfully operating without a license or that has a suspended or revoked license. No entity shall acquire any package of cigarettes to which the required tax stamp or meter impression may not be properly affixed (see entry 91) or that fails to comply with federal ingredient reporting provisions (see 15 U.S.C. Section 1335a).

**ENFORCEMENT:** The state Board of Equalization is authorized to enforce this law. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.

**PENALTY:** Violators are guilty of a misdemeanor punishable by a fine not to exceed \$5,000 and/or imprisonment not to exceed one year. In addition, the penalties listed in entry 103 may apply.

## 103. ADMINISTRATIVE PENALTIES APPLICABLE TO ALL LICENSEES

### *California Business and Professions Code Sections 22974.7, 22978.7, 22979.7*

**SCOPE:** In addition to any other penalties, violators of the California Cigarette and Tobacco Products Licensing Act of 2003 (California Business and Professions Code Sections 22970–22991) are subject to administrative penalties. (See entries 94–97, and 99–102 for summaries of relevant provisions of the California Cigarette and Tobacco Products Licensing Act.)

**ENFORCEMENT:** The state Board of Equalization (BOE) is authorized to enforce this law.

**PENALTY:** The BOE may for a first offense, revoke or suspend a license; and for a second or subsequent offense, revoke or suspend a license, and impose a civil penalty not to exceed the greater of five times the retail value of the seized tobacco products or \$5,000.

**Note:** These provisions apply to retailers, distributors, wholesalers, manufacturers and importers.

### *California Business and Professions Code Section 22980.3*

**SCOPE:** In addition to any other fines or penalties, violators of the tobacco tax laws or the California Cigarette and Tobacco Products Licensing Act of 2003 (California Business and Professions Code Sections 22970–22991) may have their licenses suspended or revoked. After having received notice of suspension or revocation, violators may not sell, gift, or display for sale cigarettes or other tobacco products for sale. (See entries 88–89, 91–95, 97, and 99–102 for summaries of relevant provisions of the tobacco tax laws and the California Cigarette and Tobacco Products Licensing Act.)

**ENFORCEMENT:** The state Board of Equalization (BOE) is authorized to enforce this law.

**PENALTY:** For a first conviction, the penalty is a written notice from the BOE detailing the

suspension and revocation provisions of this law, and the BOE at its discretion may suspend the license for up to 30 days. For a second conviction within four years, the license shall be revoked, but a previously licensed applicant may apply for a new license six months after a revocation. Violations at one location are not counted against other locations of that same licensee or against a new owner at the same licensed location. Each day of continued sales without a valid license after notification by a law enforcement agency that a valid license is required constitutes a separate violation.

### *California Business and Professions Code Sections 22974.4, 22978.6*

**SCOPE:** The license of a retailer, distributor, or wholesaler shall be revoked if (1) the license holder has been convicted of a felony pursuant to California Revenue and Taxation Code Sections 30473 (see entry 92) or 30480 (see entry 88); or (2) the license holder has had any permit or license revoked under any provision of the California Revenue and Taxation Code.

**ENFORCEMENT:** The state Board of Equalization is authorized to enforce this law.

**PENALTY:** Revocation of the license.

## 104. BOARD OF EQUALIZATION LICENSING DATABASE

### *California Business and Professions Code Sections 22973.2, 22978, 22979.3*

**SCOPE:** Upon request, the state Board of Equalization shall provide its database of licenses issued to retailers, distributors, wholesalers, manufacturers, and importers to the California Department of Public Health, the state Attorney General, a law enforcement agency, or any agency authorized to enforce local tobacco control laws. The database may be used only for the purposes of enforcing tobacco control laws, and its use must adhere to all state laws, policies, and regulations governing the use of personal information and privacy.

**ENFORCEMENT:** Not applicable.

**PENALTY:** Not applicable.

## 105. MANUFACTURER CERTIFICATION

### *California Revenue and Taxation Code Sections 30165.1(b), 30165.1(c)(5), 30165.1(m)*

**SCOPE:** A manufacturer must make an annual certification to the state Attorney General (AG) that it has signed the Master Settlement Agreement or has complied with California law regarding nonparticipating manufacturers. The certification must include a complete list of brand families.

For each manufacturer that has submitted the required certification, the AG shall provide a written acknowledgment of receipt within seven business days. In turn, each manufacturer shall provide to each distributor to whom it sells or ships cigarettes a copy of the AG's receipt.

**ENFORCEMENT:** The state Board of Equalization and the AG are authorized to enforce this law.

**PENALTY:** False certifications knowingly made are a misdemeanor punishable by a fine of not more than \$1,000 and/or imprisonment for up to one year. In addition, the penalties listed in entry 103 may apply.

***California Revenue and Taxation Code Sections 30165.1(b), 30165.1(m)***

**SCOPE:** Manufacturers located outside the United States must provide the state Attorney General (AG) with current contact information for all importers that sell their cigarettes in California, and must require these importers to provide the AG with copies of a valid importer permit issued by the U.S. Treasury and a valid importer license issued by the state Board of Equalization (BOE). Nonparticipating manufacturers who are newly qualified or whom the AG deems to pose an elevated risk for noncompliance must file a surety bond with the AG in favor of the state, in an amount equal to the greater of \$50,000 or the amount of escrow the manufacturer was required to deposit as a result of the largest of its most recent five calendar years' sales in California.

**ENFORCEMENT:** The BOE and the AG are authorized to enforce this law.

**PENALTY:** False certifications knowingly made are a misdemeanor punishable by a fine of not more than \$1,000 and/or imprisonment for up to one year.

***California Revenue and Taxation Code Section 30165.1(c)-(l)***

**SCOPE:** The state Attorney General (AG) shall publish and maintain a website directory listing manufacturers that have complied with the required certification and listing all certified brand families of the manufacturer. No one shall affix a tax stamp or meter impression to any package of cigarettes unless the brand family is included in the AG's directory. No one shall sell, offer, possess for sale, or import for personal consumption cigarettes of a brand family not included in the AG's directory. No one shall acquire, hold, own, possess, transport, or import cigarettes that the person knows or should know are intended to be distributed in violation of the requirement that tax stamps and meter impressions may only be affixed to packages of cigarettes whose brand families are included on the AG's directory.

**ENFORCEMENT:** The state Board of Equalization (BOE) and the AG are authorized to enforce this law.

**PENALTY:** A violation constitutes a misdemeanor. In addition, distributors who violate this law are subject to a license revocation or suspension for a first offense. For a second or subsequent offense, the BOE may revoke or suspend the distributor's license and may impose a civil penalty not to exceed the greater of five times the retail value of the seized cigarettes or \$5,000. In addition, the penalties listed in entry 103 may apply.

**106. RECORD-KEEPING: THE TOBACCO CONTROL ACT**

***21 United States Code Sections 333, 372, 387t***

**SCOPE:** The U.S. Department of Health and Human Services (HHS) must issue regulations regarding how any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products should establish and maintain records. Some records must be furnished for inspection upon request by the government to aid an investigation about illicit trade, smuggling, or a counterfeit product.

**EXCEPTION:** Retailers do not have to maintain records for individual purchasers who purchase tobacco products for personal consumption. HHS must have the express written consent of an Indian tribe before inspecting records located in Indian country.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments. The HHS Secretary may also consult with the U.S. Attorney General and the Secretary of the Treasury. Manufacturers and distributors of a tobacco product must notify the Attorney General and the Secretary of the Treasury if they have knowledge of illegal transactions.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

**107. REGISTRATION OF TOBACCO ESTABLISHMENTS:  
THE TOBACCO CONTROL ACT**

***21 United States Code Sections 333, 372, 387e***

**SCOPE:** Owners and operators engaged in the manufacture, preparation, compounding, or processing of a tobacco product sold or distributed must register their establishments, both foreign and domestic, with the U.S. Department of Health and Human Services (HHS). Registration information shall be made available to the public.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

**108. USER FEES: THE TOBACCO CONTROL ACT**

***21 United States Code Sections 333, 372, 387s***

**SCOPE:** Tobacco manufacturers and importers must pay a quarterly fee that will be earmarked for tobacco regulation activities. The annual fee varies by fiscal year and class of tobacco products.

**ENFORCEMENT:** The U.S. Department of Health and Human Services is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

### 109. REQUIRED DISCLOSURES TO THE FDA: THE TOBACCO CONTROL ACT

*21 United States Code Sections 333, 372, 387d, 387i, 387o*

*15 United States Code Section 1333*

**SCOPE:** Tobacco manufacturers and importers or their agents must provide the FDA with:

1. A list of the ingredients used in each product;
2. A description of content, delivery, and form of nicotine;
3. A list of smoke constituents that are harmful or potentially harmful to health and reports of required testing (the U.S. Department of Health and Human Services (HHS) must issue regulations by June 22, 2012, regarding testing and reporting of tobacco product constituents, ingredients, and additives); and
4. All documents related to health, toxicological, behavioral, or physiological effects.

**EXCEPTION:** Small tobacco product manufacturers shall be exempt from testing and reporting requirements regarding tobacco product constituents, ingredients, and additives either for two years after final regulations are issued or when a compliance date is set by HHS for all other tobacco product manufacturers, whichever is later.

**Note:** At the request of HHS, tobacco manufacturers and importers must furnish any or all documents relating to particular research activities. In addition, tobacco product manufacturers or importers must maintain records and provide information to HHS upon request to assure that a tobacco product is not adulterated or misbranded, and to otherwise protect public health.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Any person who violates this provision shall be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding.

Any person who intentionally violates this provision shall be subject to a civil monetary penalty of up to \$250,000 per violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after HHS provides written notice, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days thereafter that the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding.



# MASTER SETTLEMENT AGREEMENT (MSA) FUNDS

**110. MSA PAYMENTS***Master Settlement Agreement Sections IX, XI, VII(c); Exhibit A, VII*

**SCOPE:** Under the Master Settlement Agreement (MSA) between the major tobacco companies and the attorneys general of 46 states, the settling companies are responsible for making annual payments to the settling states in perpetuity. These payments are distributed to the states based on formulas agreed to in the MSA.

**Note:** In recent years, California has received between \$700-750 million per year. Half of that money is allocated to the state and half to local governments within the state.

**ENFORCEMENT:** The state Attorney General (AG) may enforce these provisions.

**PENALTY:** The AG may seek a court order to enforce the provisions or stop a violation of the provisions. If such an order is violated, the AG may pursue monetary compensation, civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

**111. MSA BONDS***California Government Code Sections 63049–63049.55*

**SCOPE:** California law allows state and local governments to generate revenue by selling tobacco bonds that are backed by the future flow of payments to the state by tobacco companies as required by the Master Settlement Agreement (MSA). (See entry 110 for a summary of the MSA payments.)

**Note:** State and local agencies can use the proceeds to fund capital improvement projects and health care programs/facilities. There is no limit on the amount of tobacco securitization bonds that can be issued. From 2001 to 2007, state and local governments in California issued bonds totaling \$16.8 billion. (See Cal. Debt and Investment Advisory Commission, *Issue Brief: Tobacco Securitization Bond Issuance in California* (June 2009), [www.treasurer.ca.gov/cdiac/reports/tobacco.pdf](http://www.treasurer.ca.gov/cdiac/reports/tobacco.pdf).) Some local governments have elected to borrow against expected future payments but haven't guaranteed to cover their debt with general fund revenue.

**EXCEPTION:** The sale of state tobacco bonds does not affect MSA funding received by California local governments.

**ENFORCEMENT:** Not applicable.

**PENALTY:** Not applicable.

**112. APPEAL BONDS***California Health and Safety Code Section 104558*

**SCOPE:** In a civil lawsuit involving a tobacco company that has signed the Master Settlement Agreement (MSA) or that involves a successor or affiliate of such a company, the amount of the bond to be furnished during the course of an appeal shall not exceed 100 percent of the verdict or \$150 million, whichever is less. The stated purpose of the appeal bond cap is to secure the funds owed to the state by tobacco companies as required by the MSA.

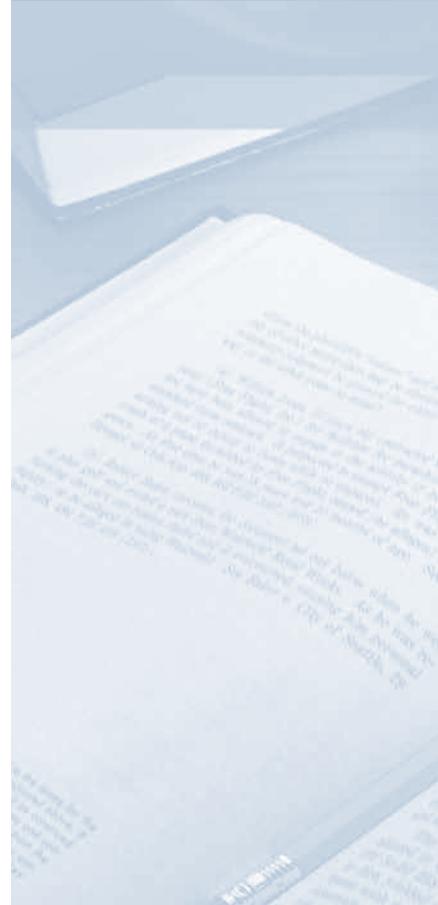
**EXCEPTION:** If the opposing party proves by a preponderance of the evidence that a tobacco company is intentionally dissipating or diverting assets outside the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the cap may be lifted and the court may order any actions necessary to prevent dissipation or diversion of the assets.

**ENFORCEMENT:** The court shall set the amount of the appeal bond.

**PENALTY:** Not applicable.



# RELATED LAWS



### 113. PRESERVATION OF STATE AND LOCAL AUTHORITY: THE TOBACCO CONTROL ACT

*21 United States Code Section 387p*

**SCOPE:** State and local governments are permitted to enact more stringent restrictions related to the sale, distribution, possession, use, availability, or advertising and promotion of tobacco products. The Tobacco Control Act also does not limit the existing ability of state and local governments to regulate the reporting of information to the state, fire safety standards for tobacco products, and taxation of tobacco products.

**EXCEPTION:** State and local governments cannot enact restrictions that are different from or in addition to the provisions in the Tobacco Control Act regarding tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

**ENFORCEMENT:** Not applicable.

**PENALTY:** Not applicable.

### 114. ADDITIONAL REGULATIONS: THE TOBACCO CONTROL ACT

*21 United States Code Sections 372, 387f*

**SCOPE:** The U.S. Department of Health and Human Services (HHS) may issue additional regulations restricting the sale and distribution of tobacco products, including restrictions on advertising and promotion. Regulations must be appropriate for the protection of public health, which should be determined with respect to the risks and benefits to the population as a whole, taking into account whether individuals will likely either stop or start using tobacco products.

**EXCEPTION:** Federal regulations may not limit the sale or distribution of a tobacco product to prescription by licensed medical professionals; prohibit the sale of a tobacco product in face-to-face transactions by a specific category of retail outlets; or raise the minimum age for the sale of tobacco products above the age of 18.

**Note:** Restrictions on the advertising or promotion of a tobacco product must be consistent with the First Amendment to the U.S. Constitution.

**ENFORCEMENT:** HHS is authorized to enforce this provision with the help of other federal agencies and state governments.

**PENALTY:** Not applicable.

### 115. ADVISORY COMMITTEE: THE TOBACCO CONTROL ACT

*21 United States Code Section 387q*

**SCOPE:** The U.S. Department of Health and Human Services shall appoint 12 people to a Tobacco Products Scientific Advisory Committee to provide advice, information, and recommendations. The members will include seven individuals from the medical, dental, scientific, and health care industries; one government employee; one member of the general public; and three nonvoting members representing the tobacco manufacturing industry, the small business tobacco manufacturing industry, and tobacco growers.

**EXCEPTION:** Full-time employees of the FDA or any agency responsible for enforcing Tobacco Control Act may not be appointed to this Advisory Committee.

**ENFORCEMENT:** Not applicable.

**PENALTY:** Not applicable.

 At the time of this publication, two tobacco companies, Lorillard and R.J. Reynolds, had challenged the make-up of the Advisory Committee, claiming that several members are biased against the tobacco industry and should not be allowed to continue to serve in this capacity. *Lorillard, Inc. v. U.S. Food and Drug Administration*, No. 11-cv-00440 (D.D.C. argued Feb. 14, 2012).

### 116. FEDERAL AMERICANS WITH DISABILITIES ACT (ADA)

*42 United States Code Sections 12101–12213*

**SCOPE:** The federal Americans with Disabilities Act (ADA) prohibits discrimination against a person with a disability. (Section 12112(a)) The law applies to public entities, including schools and public transportation, employers with at least 15 employees, and to those who operate places where the public is invited, such as restaurants, hotels, and theaters. (Sections 12111(5), 12181-1282)

**Note:** The ADA does not apply to private housing, which is covered by the Federal Fair Housing Act (entry 117).

The ADA defines a *disability* as: (1) a physical or mental impairment that substantially limits one or more of a person's major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment. Breathing is specifically listed as one of the *major life activities* covered by the ADA, and a *major life activity* is also defined as the operation of a major bodily function, including respiratory functions.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Even if the person's breathing is substantially improved through the use of oxygen therapy equipment, he or she would still be considered disabled under the ADA. (Section 12102)

**Note:** For example, a person may be disabled under the ADA if he or she has Chronic Obstructive Pulmonary Disease (COPD) or severe asthma which substantially limits breathing. (*EEOC v. Supervalu, Inc.*, 674 F. Supp. 2d 1007, (N.D. Ill. 2009))

Under the ADA, employers must provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless that accommodation causes an undue hardship. (Sections 12112(b)(5)(A), 12111(8)–(10)) In addition, places of public accommodation may not deny patrons with disabilities an equal opportunity to enjoy the goods, services, facilities, privileges, advantages, or accommodations of such a place. (Section 12182)

**Note:** The ADA may be used by a person with a respiratory disability to enforce existing laws against smoking. For example, a California restaurant owner who knowingly allows smoking in the restaurant in the presence of an employee or patron with severe asthma may be violating the ADA, in addition to other laws.

**ENFORCEMENT:** Employees and tenants may file a complaint with the Equal Employment Opportunity Commission (EEOC) or with the California Department of Fair Employment and Housing (DFEH). (42 U.S.C. Section 2000e-5) The EEOC and DFEH are obligated to investigate the complaint. A private lawsuit may be filed if the EEOC and DFEH do not file an action based on the complaint. Patrons who believe a business has violated the ADA may also file a private lawsuit.

**PENALTY:** Available penalties include financial penalties (limited based on the number of employees), injunctive relief (a court order to stop the violation of the ADA), and attorneys' fees. (42 U.S.C. Section 1981a, 42 U.S.C. Section 2000e-5)

## 117. FEDERAL FAIR HOUSING ACT (FHA)

*42 United States Code Sections 3601–3619*

*24 Code of Federal Regulations Sections 100.200–100.205*

**SCOPE:** The federal Fair Housing Act (FHA) prohibits discrimination based on *handicap*, which is defined as: (1) a physical or mental impairment that substantially limits a person's major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment. (Sections 3602, 3604(f)–3606)

**Note:** The U.S. Department of Housing and Urban Development (HUD) has ruled that multiple chemical sensitivity disorder and environmental illness could qualify as a *handicap* under the FHA. (HUD Memorandum, Multiple Chemical Sensitivity Disorder and Environmental Illness as Handicaps, doc. no. GME-0009 (March 5, 1992), [www.mcs-global.org/Documents/PDFs/MCS%20Disorder.pdf](http://www.mcs-global.org/Documents/PDFs/MCS%20Disorder.pdf)) A person may have a *handicap* under the FHA if he or she is hypersensitive to tobacco smoke. (*Vickers v. Veterans Administration*, 549 F. Supp. 85, 86-87 (W.D. Wash. 1982))

If a resident has a disability under the law, the FHA requires landlords and condominium associations to make reasonable accommodations in rules, practices, policies, and services that provide the resident with a disability an equal opportunity to use and enjoy the housing. (24 C.F.R. Section 100.204)

**Note:** Examples of reasonable accommodations that a tenant with a respiratory disability might request include: allowing the tenant to move to a vacant apartment to avoid exposure to drifting smoke; allowing the tenant to break a lease without penalty; or implementing a no-smoking policy for common areas or units.

The FHA applies to most private and federal government housing, including Section 8 housing. (Section 3603)

**Note:** Section 8 housing refers to federal programs offering low-income housing assistance through payments to private landlords. (42 U.S.C. Section 1437f)

**EXCEPTION:** The law may not apply to buildings with four or fewer units if the owner lives on-site or to single-family homes sold or rented by the owner. (Section 3603(b))

**ENFORCEMENT:** Individuals may file a complaint with HUD or a state agency which is its substantial equivalent (the DFEH, in California) within one year of the discrimination and/or file a lawsuit in federal district court within two years of the discrimination.

**PENALTY:** Available relief includes actual damages, injunctive relief (a court order to stop the violation of the law), attorneys' fees, civil penalties, and other relief as appropriate.

## 118. CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (FEHA)

*California Government Code Sections 12900–12996*

**SCOPE:** The state Fair Employment and Housing Act (FEHA) prohibits discrimination based on physical disability, mental disability, or medical condition. Under the law, a physical disability includes physiological and anatomical conditions that limit a person's ability to participate in major life activities. (Section 12926(k))

**Note:** FEHA's definition of physical disability is broader than the definition in the federal Americans with Disabilities Act (ADA), which requires a disability to substantially limit a major life activity. (See entry 116 for a summary of the ADA.)

**Note:** A person may be disabled under FEHA if he or she is hypersensitive to tobacco and tobacco exposure interferes with a major life activity, such as breathing. (See *County of Fresno v. Fair Employment & Housing Comm'n*, 226 Cal. App. 3d 1541, 1548-1550 (1991).)

Under FEHA, both private and public employers with five or more employees must engage in an interactive process to determine what accommodation is reasonable and must provide reasonable accommodation for the known physical or mental disability of an applicant or employee unless that accommodation causes an undue hardship. (Section 12940)

**Note:** FEHA may be used by an employee with a respiratory disability to enforce existing laws against smoking. For example, a California restaurant owner who knowingly allows smoking in the restaurant in the presence of an employee with severe asthma may be violating FEHA, in addition to other laws.

FEHA also applies to most *housing accommodations*, which are defined as any building, structure, or portion of a structure occupied or intended for occupancy as a residence by one or more families, and any vacant land that is offered for sale or lease for the construction of such buildings. (Sections 12927(d), 12955) FEHA requires landlords and condominium associations to make reasonable accommodations and/or modifications of policies for residents with disabilities in order to ensure equal access to and enjoyment of their housing. (Section 12927(c))

**Note:** Examples of reasonable accommodations that a tenant with a respiratory disability might request include: allowing the tenant to move to a vacant apartment to avoid exposure to drifting smoke; allowing the tenant to break a lease without penalty; or implementing a no smoking policy for common areas and/or units.

**ENFORCEMENT:** Individuals may file a complaint with the California Department of Fair Employment and Housing (DFEH) within one year of the discrimination and/or file a lawsuit in state court within two years of the discrimination.

**PENALTY:** Available relief includes actual damages, injunctive relief (a court order to stop the violation of the law), prospective relief (ongoing remedies to correct past unlawful practices), attorneys' fees, and other relief as appropriate.

## 119. PROPOSITION 65

*California Health and Safety Code Sections 25249.6–25249.13*

**SCOPE:** The state Safe Drinking Water and Toxic Enforcement Act of 1986 requires notification to the public about exposure to chemicals known to the State of California to cause cancer or reproductive toxicity. This law applies to exposure to tobacco smoke. Warnings need not be made to each exposed individual. Instead, warnings may be provided by general methods such as posting clear and reasonable notices or labels on consumer products. The law requires businesses with at least ten employees to post warnings when they knowingly or intentionally expose an individual to a chemical on the list.

**EXCEPTION:** The law applies only to exposures that are made knowingly and intentionally.

**ENFORCEMENT:** Actions may be brought by the state Attorney General, a district attorney, a city attorney of a city with a population larger than 750,000, a city prosecutor in any city having a full-time city prosecutor (with the consent of the district attorney), or an individual acting in the public interest.

**PENALTY:** Violators may be subject to an injunction to stop the violation and are liable for a civil penalty not to exceed \$2,500 per day for each violation.

## 120. UNFAIR COMPETITION LAW

*California Business and Professions Code Sections 17200–17209*

**SCOPE:** It is illegal to engage or propose to engage in an unfair, unlawful, or fraudulent business act or practice.

**Note:** This general law can be used as a mechanism to enforce many tobacco control laws that affect businesses, since a business that violates a tobacco control law is presumed to be in violation of the unfair competition law. For example, the law has been used against retailers who sell tobacco to minors in violation of California Penal Code Section 308. (See entry 21 for a summary of California Penal Code Section 308.)

**ENFORCEMENT:** Actions may be brought by the state Attorney General, a district attorney, or, with the consent of the district attorney in certain cases, by a county counsel, city attorney, or city prosecutor. Actions also may be brought by anyone who has suffered injury in fact and has lost money or property as a result of the unfair competition.

**PENALTY:** Violators are subject to an injunction to stop the behavior and a civil penalty of up to \$2,500 for each violation.

## 121. PATIENT PROTECTION AND AFFORDABLE CARE ACT

*42 United States Code Sections 300u-11, 300gg, 1396d, 1396o, 1397e, 1397r-8*

**SCOPE:** The federal Patient Protection and Affordable Care Act (PPACA) expands Medicaid coverage to include tobacco cessation therapy for pregnant women, effective October 1, 2010. Beginning January 1, 2014, states will be prohibited from excluding tobacco cessation coverage from the Medicaid program. Under the PPACA, health insurers are permitted to vary their premium rates on the basis of tobacco use; however, that rate must not vary by more than 1.5 to 1.

The PPACA establishes a Prevention and Public Health Fund to be administered by the U.S. Department of Health and Human Services (HHS), which will be made available to individual communities for tobacco prevention and other public health programs on a competitive basis beginning January 1, 2014.

**ENFORCEMENT:** Each state must establish one or more rating areas in order to apply the requirements of this title. The HHS Secretary reviews the rating areas to ensure they are adequate to carry out the requirements. If the Secretary determines a state's rating areas are not adequate, or that a state has not established such areas, the Secretary may establish rating areas for that state.

At least every two years each state must audit its expenditures from funds received under this division. These audits must be conducted by an entity independent of any agency administering activities funded under this division. Within 30 days of each audit, the state must submit a copy of that audit to its state legislature and to the HHS Secretary.

## Related Laws

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**PENALTY:** Each state must repay to the United States any amount found not to have been expended in accordance with this division, or the HHS Secretary may offset these amounts against any other funds to which the state is entitled under this division.



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