

# Tracking Tobacco Laws A California Digest

June 2022

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

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This resource was developed by the Public Health Law Center and made possible by funds received under Grant Number #19-10229 from the California Department of Public Health, California Tobacco Control Program, and the American Lung Association in California. The Public Health Law Center is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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## Introduction

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The Public Health Law Center revised and updated this 2022 digest of state and federal commercial tobacco laws that affect California, which was originally developed by ChangeLab Solutions.<sup>1</sup> The Center acknowledges the excellent work done by ChangeLab Solutions in creating the original resource (formerly *Tobacco Laws Affecting California*).

This digest is designed as a resource for tobacco control advocates, government attorneys, local law enforcement agencies, and anyone working on tobacco control issues. The resource includes information

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<sup>1</sup> The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcmi.org>. When the word “tobacco” is used throughout this digest, a commercial context is implied and intended.

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on California state laws and regulations related to tobacco, including the Stop Tobacco Access to Kids Enforcement Act (known as the STAKE Act), as well as federal statutes and regulations that apply within California, such as the Family Smoking Prevention and Tobacco Control Act (known as the Tobacco Control Act).<sup>2</sup> The information in this digest includes tobacco-related laws that are effective as of June 30, 2022.

The digest also summarizes portions of the 1998 Master Settlement Agreement (MSA) between the attorneys general of 46 states (including California) and the major cigarette companies, and the 1998 Smokeless Tobacco Master Settlement Agreement (STMSA) between the attorneys general of 45 states (including California) and the U.S. Smokeless Tobacco Company.

## Enhancements to Previous Version

The *2022 Tracking Tobacco Laws: A California Digest* is an update of the 2021 edition. The 2020, 2021, and 2022 editions, while modeled closely on previous versions of this resource, include several structural updates throughout to improve navigability and overall ease of use. The major changes include:

- Hyperlinks to major state and federal laws
- Internal links, rather than cross-references to entry numbers
- Consolidation of “Secondhand Smoke” and “Use and Possession Restrictions” sections
- Alphabetized entries within sections and subsections
- Brief introductions before each major section

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<sup>2</sup> This resource does not include every instance in which the word *tobacco* is mentioned in state or federal law. It does contain information on laws that are relevant to tobacco control implementation and enforcement efforts in California. If you note any omissions in the digest, please contact the Public Health Law Center.

## How to Use this Digest

This publication is intended as a resource for public health and legal professionals, local government officials, and the general public. It summarizes the major tobacco-related laws and regulations that affect the State of California. It also includes an overview of federal laws, state statutes and regulations, and other legal restrictions on the tobacco industry — all of which are current as of June 30, 2022. Although many cities and counties have adopted important tobacco control laws, most local laws are not addressed here. Readers should contact their local officials to learn whether their communities have adopted any tobacco-related laws.

This digest describes tobacco-related laws in the following areas:

- (1) Use and Possession Restrictions
- (2) Sales
- (3) Advertising
- (4) Sponsorship, Branding, & Promotions
- (5) Warning Labels
- (6) Taxation, Licensing, & Reporting
- (7) Master Settlement Agreement Funds
- (8) Related Laws

In some cases, multiple laws cover a particular topic. For example, both California and the federal government ban distributing free samples of cigarettes (see **Samples** entries for more information on the distribution of free samples). In other cases, state and federal laws may cover the same topic but have different restrictions. Moreover, California and federal laws often use similar terminology with different definitions. A glossary of terms used in federal and California laws is included later in this section. Readers will need to examine the scope of each law closely to determine what is covered.

Many local California 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 example, 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.

Be sure to review local laws to determine whether a jurisdiction has adopted restrictions to supplement the laws described in this book.

## Locating the Laws

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

- **California Laws**

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

This website is the easiest place to find California laws.

- **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 and Regulations**

- **United States Code**

<https://www.law.cornell.edu/uscode/text>

This website contains the full text of the United States Code (U.S.C.). To pinpoint a particular federal law, you can search by several methods, including keyword, title, and section.

- **Code of Federal Regulations**  
<https://www.govinfo.gov/app/collection/cfr>  
 This website provides access to the Code of Federal Regulations (C.F.R.).
- **U.S. Food and Drug Administration Guidance, Compliance, and Regulatory Information**  
<https://www.fda.gov/tobacco-products>  
 This website provides access to U.S. Food and Drug Administration (FDA) guidance and compliance information on the 2009 federal Family Smoking Prevention and Tobacco Control Act.
- **Master Settlement Agreement (MSA)**  
**Smokeless Tobacco Master Settlement Agreement (STMSA)**  
<https://oag.ca.gov/tobacco/msa>  
 This website contains the entire MSA between the attorneys general of 46 states (including California) and the major cigarette companies, as well as the entire STMSA between the attorneys general of 45 states (including California) and the U.S. Smokeless Tobacco Company.

## Updated California Tobacco Control Laws

Following changes to California law in 2016, most state laws use the following definitions:

- **Smoking** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. Smoking includes the use of an electronic smoking device that creates an aerosol or a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking. 📄 *Calif. Business and Professions Code § 22950.5(c)*.

- **Tobacco product** means:

- (1) A product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
- (2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
- (3) Any component, part, or accessory of a tobacco product, whether or not sold separately.

Tobacco Products do not include products approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose. [\*Calif. Business and Professions Code § 22950.5\(d\)\*](#).

Local laws that use the words smoking and tobacco product are not affected by these changes unless a local law specifically refers to a state law definition. None of the 2016 laws alter the authority of local governments to regulate the use of tobacco products. Furthermore, local governments may regulate electronic smoking devices to the extent they are able to regulate conventional tobacco products.

## Federal Regulation of Tobacco Products

As of August 8, 2016, the U.S. Food and Drug Administration's (FDA's) authority over the regulation of tobacco products extends to all tobacco products, including cigarettes, smokeless tobacco, cigars, pipe tobacco, hookah tobacco, gels, dissolvables, electronic nicotine delivery systems (smoking devices), and any product made or derived from tobacco or nicotine. [\*81 Federal Register 28973 \(May 10, 2015\)\*](#).

For more information about the federal regulation of commercial tobacco products, see the Public Health Law Center's [FDA Tobacco Action Center](#).

The FDA applies varying requirements and limitations to different categories of tobacco products. The following is a non-exhaustive list of terms used in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) and FDA regulations. (It is possible for a product to fall under more than one category below.)

- A **tobacco product** means any product made or derived from tobacco or containing nicotine from any source that is intended for human consumption<sup>3</sup>, including any component, part, or accessory of a tobacco product. Tobacco products do not include raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product, nor any article regulated as a drug, device, or combination product under the Food, Drug, and Cosmetics Act (FDCA). “The term ‘tobacco product’ does not mean an article that is a food under paragraph (f), if such article contains no nicotine, or no more than trace amounts of naturally occurring nicotine.” [🔗 21 U.S.C. § 321\(g\)\(1\), 321\(h\), 321\(rr\), 353\(g\)](#)
- An **accessory** means any item that (1) does not contain tobacco; (2) is not derived from tobacco; (3) is used with or for the human consumption of a tobacco product; and (4) does not affect or alter the performance, composition, constituents, or characteristics of a tobacco product, with the exception of items that only control moisture/temperature or provide an external heat source to ignite but not maintain combustion. [🔗 21 C.F.R. § 1140.3](#)
- A **component or part** means any software or assembly of materials intended or reasonably expected (1) to alter or affect the tobacco product’s performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco

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3 In 2022, the Food, Drug, and Cosmetics Act was revised to include “synthetic nicotine products” as part of the federal definition of “tobacco product.” 21 U.S.C. §321(rr).

product. Component or part excludes anything that is an accessory of a tobacco product. [!\[\]\(ed1c174c5d80bce5bc8fea3f20e80aae\_img.jpg\) 21 C.F.R. § 1140.3](#)

- The **deeming rule** refers to the final rule issued by the FDA that extends its regulatory authority under the Tobacco Control Act to all tobacco products. Under the Tobacco Control Act, the scope of preemption that applies to state and local regulation of newly deemed tobacco products subject to FDA authority will likely be the same or less than it is for regulation of cigarettes. However, provisions in the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act that preempt states from regulating the content of cigarette and smokeless tobacco product advertisements, respectively, still apply only to cigarettes and smokeless tobacco products. (For more information about preemption, see **Cigarette Warning Labels, Federal Preemption of State and Local Regulation of Cigarette and Smokeless Tobacco Advertising and Promotion**, and **Tobacco Control Act: Preservation of State and Local Authority**.)
- A **newly deemed tobacco product** means a tobacco product that is not cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. For example, this includes cigars, pipe tobacco, hookah tobacco, gels, dissolvables, and electronic smoking devices containing anything made or derived from tobacco or nicotine. Newly deemed tobacco products include any component or part of newly deemed products, but do not include their accessories. On various effective and compliance dates, different newly deemed tobacco products will be subject to many Tobacco Control Act provisions that apply to cigarettes, roll-your-own tobacco, and smokeless tobacco, including the following:
  - (1) Adulteration and misbranding provisions
  - (2) Required submission of ingredient listing and reporting of harmful and potentially harmful constituents
  - (3) Required registration and product listing

- (4) Prohibition against the use of modified risk descriptors and claims (e.g., “light,” “low,” and “mild” descriptors), unless the FDA issues an order permitting their use
  - (5) Prohibition on the distribution of free samples
  - (6) Premarket review requirements
- **Electronic smoking devices** are tobacco products under the FDA deeming rule, and may include products such as e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers, and electronic pipes. These products are all subject to FDA regulation, regardless of what they are called or their heating source. Components or parts of electronic smoking devices may include, for example, e-liquids, tanks, cartridges, pods, wicks, or atomizers. [81 Federal Register 28974, 29028 \(May 10, 2016\)](#)
  - A **covered tobacco product** means any tobacco product deemed to be subject to the Federal Food, Drug, and Cosmetic Act under 21 C.F.R. § 1100.2. However, covered tobacco products exclude any component or part that is not made or derived from tobacco. [21 C.F.R. § 1140.3](#)

In addition to the requirements and limitations applicable to all newly deemed tobacco products, the deeming rule applies two additional provisions to covered tobacco products:

- (1) Requiring health warnings for product packages and advertisements
  - (2) Prohibiting vending machine sales, unless the vending machine is located in a facility where the retailer ensures that individuals under 18 are prohibited from entering at any time
- A **finished tobacco product** means a tobacco product, including all components and parts, sealed in final packaging intended for consumer use. [81 Federal Register 28973, 28995 \(May 10, 2016\)](#)

- A **new tobacco product** means any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007. A new tobacco product also includes any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery, or form of nicotine, or any other additive or ingredient) of a tobacco product in which the modified product was commercially marketed in the United States after February 15, 2007. [21 U.S.C. § 387j\(a\)\(1\)](#)

This digest references these provisions where applicable and provides effective and compliance dates relevant to retailers, manufacturers, importers, and distributors of newly deemed tobacco products. The FDA has reserved the authority to impose additional restrictions and limitations on newly deemed tobacco products.

## Disclaimer

This digest is provided for general information only and is not offered or intended as legal advice. The Public Health Law Center does 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 the Public Health Law Center.

## Additional Copies of this Resource

You can download a copy of this digest from the California Tobacco Control Project website and the Public Health Law Center's California-specific [webpage](#).

# Section 1: Use & Possession Restrictions

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Secondhand smoke is a mixture of the smoke emitted by the burning end of a cigarette, pipe, or cigar and the smoke exhaled by the smoker. Exposure to secondhand smoke is sometimes called involuntary or passive smoking. Among other diseases and conditions, secondhand smoke exposure causes coronary heart disease, lung cancer, sudden infant death syndrome, and respiratory problems.<sup>4</sup> Moreover, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making “thirdhand smoke” a potential health hazard as well.<sup>5</sup>

The use of an electronic smoking device results in the emission of e-cigarette aerosol, which typically contains nicotine, as well as ultrafine particles that can be inhaled deep into the lungs.<sup>6</sup> This aerosol also contains other chemicals and several known carcinogens that may increase the risk of certain cancers.<sup>7</sup> Throughout this section, the term “smoking” refers both to the use of combustible tobacco products and to the act of vaping, or of using electronic smoking devices.

Under California Health and Safety Code Section 118910, a local governing body may regulate or completely ban smoking, including the use of electronic smoking devices, in any manner consistent with state law. Several state laws explicitly permit cities and counties to pass smoke-free laws that have stricter restrictions than those

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4 U.S. Dep’t Health & Human Servs., *THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL* (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-anniversary/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm).

5 Georg Matt et al., *Persistent Tobacco Smoke Residue in Multiunit Housing: Legacy of Permissive Indoor Smoking Policies and Challenges in the Implementation of Smoking Bans*, 18 *Prev. Med. Rep.* 101088 (2020), <https://www.sciencedirect.com/science/article/pii/S2211335520300486>.

6 Ctrs. for Disease Control & Prevention, *About Electronic Cigarettes* (2020), [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/about-e-cigarettes.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html).

7 See generally U.S. Dep’t Health & Human Servs., *E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL* (2016), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm).

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imposed by the state.<sup>8</sup> 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 local agencies and impose various penalties.

This section provides an overview of laws restricting smoking and the use and possession of tobacco products, including electronic delivery devices, in California. Because cannabis is often smoked or vaped, this section also includes laws regulating the use and possession of recreational cannabis in California.

## AIRPLANES AND TRAINS

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**General Rule:** Smoking, including the use of electronic smoking devices, is prohibited on any aircraft or Amtrak train, except to the extent permitted by federal law. The law contains sign posting requirements. [\*Calif. Health and Safety Code § 118925-118945\*](#) [\*Calif. Public Utilities Code § 561\*](#)

### Notes

- Under the Public Utilities Code, any railroad corporation, passenger stage corporation, passenger air carrier, and street railroad corporation providing departures originating in this state shall prohibit smoking, including the use of electronic smoking devices, in passenger seating areas. They must also post readily visible signs advising passengers of these no smoking requirements.
- The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).

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<sup>8</sup> For summaries of these state laws, see **Multi-Unit Residences**, **Public Buildings**, **Public Housing**, **Schools**, **Vehicles with Children**, **Tot Lots and Playgrounds**, **Workplaces**, and **Youth Sports Events**.

**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.

**General Rule (Federal):** 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. [14 C.F.R. § 252.3](#) [49 C.F.R. § 175.10](#) [49 U.S.C. § 41706](#)

### Notes

- In April 2016, a U.S. Department of Transportation rule became effective that updated the definition of smoking to expressly prohibit the use of electronic smoking devices on aircraft. Products that meet the definition of a medical device in section 201(h) of the Federal Food, Drug, and Cosmetic Act, such as nebulizers, are exempted from this definition.
- In June 2016, a U.S. Pipeline and Hazardous Materials Safety Administration rule became effective that prohibits carrying electronic smoking devices in checked baggage, carrying on board any associated batteries exceeding certain capacity limits, and charging electronic smoking devices or their batteries on board an aircraft. The rule applies to all battery-powered portable electronic smoking devices, such as e-cigarettes, e-cigars, e-pipes, e-hookahs, personal vaporizers, and electronic nicotine delivery systems.

**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.

## BASEBALL STADIUMS

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**General Rule:** As of December 1, 2016, the use and possession of smokeless tobacco products is prohibited on a baseball stadium's playing field, including the dugout, bullpen, and team bench areas. A baseball stadium is any physical area in which a professional baseball game or practice is occurring in connection with Major League Baseball or minor league baseball. Local ordinances with more restrictive bans are allowed, and if a local law conflicts with state law, the more restrictive ban shall control. [\*Calif. Health and Safety Code § 118916\*](#)

**Enforcement:** Not specified.

**Penalty:** Not specified.

## CANNABIS

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**General Rule:** It is against the law to smoke cannabis anywhere that smoking tobacco is prohibited. In addition, smoking or ingesting cannabis is prohibited in the following places. [\*Calif. Health and Safety Code § 11353.1\*](#) [\*§ 11362.3\*](#) [\*§ 11362.4\*](#) [\*§ 11362.45\*](#) [\*Calif. Business and Professions Code § 26200\*](#) [\*Calif. Vehicle Code § 23152\(f\)\*](#)

### (1) Public places

#### Exceptions

- Local jurisdictions may allow public use of cannabis in licensed cannabis retailers or microbusinesses if (1) access to the public area is restricted to persons age 21 and older, (2) the area is not visible from any public place that is not age-restricted, and (3) no tobacco or alcohol is sold on the premises.
- Local jurisdictions may allow temporary event licenses that permit smoking and ingesting cannabis at a county fair or

district agricultural event or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature if:

- Access to the public area is restricted to persons age 21 and older,
- The area is not visible from any public place that is not age-restricted,
- No tobacco or alcohol is sold on the premises,
- All participants are licensed, and
- The activities are otherwise consistent with other temporary licensing regulations.

**(2) Within 1,000 feet of a school, day care center, or youth center while children are present at the facility (smoking only)**

**Note:** A youth center is defined as a public or private facility primarily used for recreation or social activities of minors.

**Exception:** A person may smoke or ingest cannabis within 1,000 feet of a school, day care center, or youth center if the smoking happens at a private residence or, in accordance with California Business and Professions Code Section 26200 (covering temporary events approved by local jurisdictions), where it is not detectable and children are not present.

**(3) In a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation (use or open possession, with some exceptions for passengers)**

**Note:** Smoking of medical cannabis on a school bus is prohibited under California Health and Safety Code Sections 11362.79 and 11362.3(a)(4).

**(4) At a school, day care center, or youth center while children are present (use or possession)**

## (5) On federal lands within California (such as national parks)

**Note:** Private property owners may prohibit the use of cannabis on their property.

**Enforcement:** This section may be enforced by local peace officers under California Penal Code Section 830.1.

### Penalty

#### Smoking or ingesting cannabis in public:

- A violator 18 years of age or older is guilty of an infraction and subject to a fine of \$100.
- A violator under the age of 18 is guilty of an infraction and must complete 4 hours of drug education and up to 10 hours of community service.

#### Smoking or ingesting cannabis on the grounds of a school, day care center, or youth center:

- **A violator 18 years of age or older:** For a first-time violation, the violator is guilty of a misdemeanor and subject to a fine of \$250. For subsequent violations, the violator is guilty of a misdemeanor and subject to a fine of \$500 and/or 10 days in jail.
- **A violator under the age of 18:** For a first-time violation, the violator is guilty of an infraction and must complete eight hours of drug education and up to 40 hours of community service. For subsequent violations, the violator is guilty of an infraction and must complete 10 hours of drug education and up to 60 hours of community service.

#### Smoking or ingesting cannabis where tobacco is prohibited or smoking within 1,000 feet of a school, day care center, or youth center:

- A violator 18 years of age or older is guilty of an infraction and subject to a fine of \$250.

- A violator under the age of 18 is guilty of an infraction and must complete four hours of drug education and up to 20 hours of community service.

**Drivers who are under the influence of cannabis while driving are subject to California Vehicle Code Section 23152 et seq.**

**Note:** Drug education programs must be provided free of charge, must be based on science, and must use evidence-based principles and practices specific to the use of cannabis and controlled substances.

## CERTIFIED FARMERS' MARKETS

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**General Rule:** Smoking, including the use of electronic smoking devices, is prohibited within 25 feet of the **common commerce area** of a certified farmers' market. The **common commerce area** is comprised of sales personnel and shopping customers of the certified farmers' market. [\*Calif. Health and Safety Code § 114371\(f\)\*](#)

**Enforcement:** Health enforcement officers are authorized to enforce this law and related regulations under California Health and Safety Code Section 114390 et seq.

**Penalty:** Violators are guilty of a misdemeanor, and each offense is punishable by a fine of \$25 to \$1,000 and/or by imprisonment for no more than six months. For violations by employees, or at shared facilities, each owner, manager, or operator may be held responsible.

## CORRECTIONAL FACILITIES

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**General Rule:** The possession or use of any product that contains tobacco is prohibited by inmates under the jurisdiction of the California Department of Corrections and Rehabilitation. The possession or use of tobacco products is prohibited by anyone on the grounds of any facility under the jurisdiction of the California Department of

Corrections and Rehabilitation. Tobacco products possessed or used by inmates are considered contraband and their use and possession is prohibited by anyone in facilities where inmates are housed or detained. [☞ Calif. Penal Code § 5030.1](#) [☞ Calif. Code of Regulations, Title 15, § 3006\(c\)\(18\)](#) [☞ 3187-89](#)

**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.

## Local Correctional Facilities

**General Rule:** The possession of any tobacco products in any form, or any device intended to be used for ingesting or consuming tobacco, 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. [☞ Calif. Penal Code § 4575](#)

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

**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.

## Youth Correctional Facilities

**General Rule:** 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. [!\[\]\(c7774dea93eb10ead3ed0542c77a8534\_img.jpg\) \*Calif. Welfare and Institutions Code § 1712.5\*](#)

**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.

## DAY CARE FACILITIES

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**General Rule:** California law prohibits smoking, including the use of electronic smoking devices, on the premises of a licensed day care center and in a licensed family day care home (such as a day care for

children based in the home of the provider) at all times, including non-business hours. The law allows for more stringent local laws. [↻ Calif. Health and Safety Code § 1596.795](#) [↻ 1596.890](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see [Workplaces](#)).

**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 up to a \$1,000 fine and/or imprisonment for no more than 180 days.

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**General Rule (Federal):** 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. [↻ 20 U.S.C. § 6083](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see [Workplaces](#)).

**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.

**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.

## FOOD SERVICE FACILITIES AND NONPROFIT TEMPORARY FOOD FACILITIES

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**General Rule:** Food service employees may use any form of commercial tobacco only in designated areas where food and equipment cannot be contaminated. Food service employees must wash their hands after using tobacco. Owners, managers, and operators are responsible for violations by employees. Food facilities must have a No Smoking sign posted in the food preparation, food storage, and dishwashing areas. [\*Calif. Health and Safety Code § 113953.3\(a\)\(5\)\*](#)  
[§ 113977](#) [§ 113978](#) [§ 114390](#) [§ 114395](#) [§ 114397](#) [§ 114405](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).

**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.

**General Rule:** Smoking, including the use of electronic smoking devices, is prohibited in nonprofit charitable temporary food facilities. A nonprofit charitable temporary food facility is (1) a temporary food facility that is conducted by a nonprofit organization, or (2) an established club or organization of students

that operates under the authorization of a school or another type of educational facility. [↻ Calif. Health and Safety Code § 113842](#)  
[↻ 114332.1](#) [↻ 114332.3\(f\)](#) [↻ 114332.7](#) [↻ 114390](#) [↻ 114395](#) [↻ 114405](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply to enclosed temporary food facilities that constitute places of employment (see **Workplaces**).

**Enforcement:** Enforcement officers from the departments or local health agencies that have jurisdiction over these food facilities are authorized to enforce this law by performing inspections of, or requiring permits for, any nonprofit charitable temporary food facility to ensure compliance with this provision and the other food safety provisions in this chapter.

**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.

## FOSTER HOMES

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**General Rule:** Smoking, including the use of electronic smoking devices, is prohibited in group homes, foster family agencies, small family homes, transitional housing placement providers' facilities, resource family homes, and crisis nurseries licensed pursuant to the [California Community Care Facilities Act](#). [↻ Calif. Health and Safety Code § 1530.7](#)

Indoor smoking is prohibited in foster family homes and certified family homes. Smoking is also prohibited on the outdoor grounds of these facilities when a child is present. Moreover, a foster care provider must not smoke in any vehicle regularly used to transport a child or children in foster care.

**Enforcement:** The California Department of Social Services is authorized to enforce this law.

**Penalty:** Violation may result in the denial or revocation of a certificate of approval for a certified family home or other disciplinary action against the certified or prospective foster parent.

## MENTAL HEALTH HOSPITALS

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**General Rule:** 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 state Director must provide an implementation plan for the policy and provide any requesting patient with smoking cessation information and assistance. At hospitals where possession and use of tobacco products are prohibited, the facility's store or canteen 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. [\*Calif. Welfare and Institutions Code § 4138\*](#) [\*§ 4139\*](#)

**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.

## MULTI-UNIT RESIDENCES

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**General Rule:** The workplace smoking prohibitions in Labor Code Section 6404.5 apply to the indoor common areas of apartment and condominium complexes (including, for example, hallways, stairwells, laundry rooms, and recreation rooms) if these areas are places of employment (see **Workplaces** for a summary of Labor Code Section 6404.5). Smoking includes the use of electronic smoking devices. [\*Calif. Labor Code § 6404.5\*](#)

### Notes

- An indoor common area may be a place of employment if any employment is carried on at the property, even if the employment is carried on by the property owner or by individuals who are employed by someone other than the property owner. Cal. Atty. Gen. Op. No. 12-901 (Dec. 20, 2013). Thus, this law may apply to common areas if the property has any individual who works on the property at any time (e.g., manager, security guard, or maintenance worker), regardless of whether the individual is the property owner, is employed directly by the property owner, or is employed by a separate business that the property owner hires to perform services.
- 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.
- 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 **Americans with Disabilities Act**, **Federal Fair Housing Act**, **California Fair Employment and Housing Act**, and **California Unruh Civil Rights Act** for more information on remedies available to people with disabilities).

**Enforcement:** See **Workplaces** for a summary of how the Labor Code may be enforced.

**Penalty:** See **Workplaces** for penalties available under the Labor Code.

**General Rule:** A landlord may prohibit the smoking of cigarettes or other tobacco products, including electronic smoking devices, on the property or in any portion of the building. [\*Calif. Civil Code § 1947.5\*](#)

### Notes

- 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 smoke-free policy was adopted (e.g., 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.
- This law explicitly permits local governments to pass ordinances, regulations, and policies that prohibit smoking or tobacco product use, including the use of electronic smoking devices, in residential dwellings.

**Enforcement:** Not applicable.

**Penalty:** Not applicable.

## PUBLIC BUILDINGS

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**General Rule:** Smoking, including the use of electronic smoking devices, 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
- In a passenger vehicle owned by the state

This law explicitly permits local governments and campuses (such as 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. [↪ Calif. Government Code § 7596–7598](#) [↪ Calif. Education Code § 89031](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).

**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.

Furthermore, the trustees of the California State University may establish rules and regulations for the governance and maintenance of the university's buildings and grounds.

**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.

Violations or attempted violations of the rules and regulations governing and maintaining the buildings and grounds of California State University constitute misdemeanors.

## PUBLIC HOUSING

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**General Rule:** Federal law prohibits the use of certain **prohibited tobacco products** in all public housing living units and interior areas. This prohibition also applies to any outdoor area within 25 feet of public housing and administrative office buildings. Public Housing Authorities (PHAs) were required to amend their PHA plans and resident lease agreements by July 30, 2018. PHAs may make the entire property smoke-free. [🔗 24 C.F.R. § 965.651-965.655](#)

**Note:** This law defines **prohibited tobacco products** as items that involve the ignition and burning of tobacco leaves (e.g., cigarettes, cigars, and pipes) and water pipes (hookahs). The law does not apply to electronic smoking devices. Public housing includes low-income housing and all necessary accessory buildings (such as community facilities) assisted under the U.S. Housing Act of 1937.

**Exception:** Public housing does not include mixed-finance projects or assisted units under Section 8 housing. The law does not apply to smokeless tobacco, electronic smoking devices, or cannabis products.

## Notes

- PHAs are not required to provide designated smoking areas. If a PHA establishes a designated smoking area, the area may be partially enclosed but cannot be located in any area where smoking is prohibited (e.g., within 25 feet of an administrative office building).
- The law provides PHAs significant flexibility to implement its requirements. PHAs may elect to prohibit the use of electronic smoking devices and other noncombustible tobacco products. PHAs may also decide whether to establish a designated smoking area, extend the 25-foot buffer zone around buildings, or make the entire property smoke-free.

**Enforcement:** Enforcement of this law will occur through specific lease provisions. PHAs are encouraged to use a graduated enforcement scheme to ensure compliance. PHAs are also encouraged to post signs and partner with community-based organizations to provide cessation support.

**Penalty:** PHA plans and lease provisions establish specific penalties. PHAs are encouraged to use eviction only as a last resort.

## PUBLIC TRANSIT

**General Rule:** Smoking, including the use of electronic smoking devices, 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. [!\[\]\(7487782dbad083afbf914fa6b7731eae\_img.jpg\) Calif. Health and Safety Code § 118925-118945](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).

**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 not exceeding \$100 for a first violation; not exceeding \$200 for a second violation within one year; and not exceeding \$500 for a third or subsequent violation within one year.

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**General Rule:** Smoking, including the use of electronic smoking devices, is not allowed on public transportation in areas where it is prohibited by that system. [☞ Calif. Public Utilities Code § 99580\(b\)\(4\)](#) [☞ Calif. Penal Code § 640](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).

**Enforcement:** Local law enforcement agencies have the general authority to enforce this law under [California Penal Code Section 830.1](#). A public transportation agency may also enact and enforce an ordinance to impose an administrative penalty for smoking in places where smoking has been prohibited.

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

**Note:** The issuing agency must allow installment or deferred payments if the total amount owed is \$200 or more and the person can show satisfactory evidence of inability to pay. Further, if the person is under 18 years of age or can show evidence of inability to pay, the issuing agency must allow performance of community service instead of payment.

**Exception:** The issuing agency does not have to allow community service if the person has had more than three violations for which community service was previously allowed and the person did not

complete the community service. However, the person must have been provided with a community service placement and enough time to complete the required hours.

**Note:** A person may not be cited for both a violation for this law and a violation under California Penal Code Section 640.

## SCHOOLS

**General Rule:** California law prohibits the use of tobacco and nicotine products, including electronic nicotine delivery devices, at all times in county offices of education, in buildings owned or leased by a charter school or school district, on school or school district property, and in school or school district vehicles. School districts, charter schools, and county offices of education must prominently display signs stating “Tobacco Use Is Prohibited” at all entrances to school property. [\*Calif. Health and Safety Code § 104559\*](#)

### Notes

- The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**). When a school is housed in a government-owned or government-leased building, the smoking restrictions in California Government Code Sections 7596–7598 also apply (see **Public Buildings**).
- See **Student Possession and Use** and **Tobacco-Free Campus Policies** for summaries of tobacco possession and use restrictions relating to schools.

**Enforcement:** Not applicable.

**General Rule (Federal):** It is illegal under federal law to permit smoking within any indoor facility used for kindergarten, elementary, or secondary education or library services for children. [\*20 U.S.C. § 6083\*](#)

## Notes

- The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).
- See **Student Possession and Use** and **Tobacco-Free Campus Policies** for summaries of tobacco possession and use restrictions relating to schools.

**Enforcement:** The U.S. Department of Education is authorized to enforce the federal 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.

## Student Possession and Use

**General Rule:** No elementary or secondary school shall permit its students to smoke, including the use of electronic smoking devices, while the students are on campus, attending school-sponsored activities, or under the supervision and control of school district employees. [!\[\]\(f6662514069ff48bdef07a1000762f95\_img.jpg\) \*Calif. Education Code § 48901\*](#)

**Exception:** This provision does not prohibit students' use or possession of cessation or therapeutic products approved by the U.S. Food and Drug Administration.

## Notes

- The workplace smoking restrictions in California Labor Code Section 6404.5 also apply to the enclosed areas of schools (see **Workplaces**).
- See **Schools** for a summary of laws prohibiting smoking that apply 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.

**Penalty:** Not specified.

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**General Rule:** A student who possesses or uses tobacco products, or products containing tobacco or nicotine, 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 returning from school or a school-sponsored activity, or during the on- or off-campus lunch period). [↻ Calif. Education Code § 48900\(h\)](#) [↻ 48900\(s\)](#)

**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.

## Tobacco-Free Campus Policies

**General Rule:** Each school district, charter school, 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 (see **California State Tobacco Tax** for a summary of Proposition 99). The policy prohibits the use of tobacco products at all times in buildings owned or leased by a charter school or school district, on school or school district property, and in school or school district vehicles. Tobacco products may include, but are not limited to, smokeless tobacco, snuff, chew, clove cigarettes, and electronic cigarettes that can deliver nicotine and non-nicotine vaporized solutions. Under the policy, signs stating “Tobacco Use Is Prohibited” shall be prominently displayed at all entrances to school property. [!\[\]\(eeb0c2abfc4c5ed5e20fe8dd69ec4ba2\_img.jpg\) Calif. Health and Safety Code § 104420\(n\)\(2\)](#)

### Notes

- See **Schools** for a summary of the laws prohibiting smoking that apply to schools.
- See **Student Possession and Use** for a summary of the tobacco use and possession prohibitions that apply to students.

**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, charter school, 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.

## TOT LOTS AND PLAYGROUNDS

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**General Rule:** Smoking, including the use of electronic smoking devices, is prohibited within 25 feet of a **playground** or **tot lot sandbox area**. The disposal in these areas of tobacco-related waste, such as cigar and cigarette butts or e-cigarette trash, 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. [!\[\]\(8268d3ddd38f4b31328094274c2a1f20\_img.jpg\) Calif. Health and Safety Code § 104495](#)

**Exception:** The law does not apply to public sidewalks within 25 feet of a playground or tot lot sandbox 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.

## TRIBAL LANDS

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**General Rule:** Because tribal governments are sovereign, California smoke-free restrictions do not apply to tribal businesses or governments located on tribal lands. For example, smoking may be permitted at tribal casinos located on the reservation of a federally recognized tribe unless the tribal government or the casino adopts a policy to the contrary.

## VEHICLES WITH CHILDREN

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**General Rule:** Smoking, including the use of electronic smoking devices, is prohibited in any motor vehicle in which a minor is present,

regardless of whether the vehicle is in motion or at rest. [Calif. Health and Safety Code § 118947-118949](#)

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

**Penalty:** Violators are guilty of an infraction punishable by a fine not exceeding \$100 per violation.

## WORKPLACES

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**General Rule:** It is against the law to smoke or use electronic smoking or vaping devices, such as e-cigarettes, in an **enclosed space** at a **place of employment** or owner-operated business. No employer or owner-operated business shall knowingly or intentionally permit smoking in an enclosed space. **Enclosed space** includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building. A **place of employment** is any place where employees or owner-operators carry on their work. [Calif. Labor Code § 6404.5](#)

Employers or owner-operators who permit any nonemployee access to their place of employment on a regular basis must take reasonable steps to prevent smoking by any nonemployee, as specified.

### Notes

- 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).
- A business constitutes a “place of employment” if employment of any kind is carried on at the business location, whether the employment is carried on by employees, by individuals who are employed by someone other than the business owner, or by the business owner.

- 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).
- Local governments may impose and enforce their own smoking restrictions if they apply to areas not covered by state law. *City of San Jose v. Dep't of Health Services*, 66 Cal. App. 4th 35, 44 (1998). However, to the extent that state law currently prohibits smoking in an enclosed place of employment, a local government may only enforce the state law (and not a similar local law).

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

- Up to 20 percent of hotel and motel guest rooms.

**Note:** Hotels and motels may choose to be 100 percent smoke-free.

- Retail or wholesale tobacco shops (businesses whose main purpose is the sale of tobacco products, including electronic smoking devices) and private smokers' lounges (any enclosed area, in or attached to a retail or wholesale tobacco shop, dedicated to tobacco use, including the use of electronic smoking devices).

**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.
- 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 (where smoking is prohibited pursuant to [Section 1596.795 of the Health and Safety Code](#)).
- Patient smoking areas in long-term health facilities, as defined in [Section 1418 of the Health and Safety Code](#).

**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 Labor Code Section 6404.5. In addition, under [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 can be much greater, potentially up to \$50,000.

## Employment and Off-Duty Use

**General Rule:** It is illegal for an employer to discriminate against an employee or applicant on the basis of off-duty lawful conduct [§ Calif. Labor Code § 96\(k\)](#) [§ 98.6](#)

**Note:** This law could apply to legal, off-duty tobacco use.

**Exception:** An employer may discriminate against an applicant on the basis of off-duty lawful conduct if the conduct is 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:** Individuals who believe they have 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 violation. In addition, if the California Labor and Workforce Development Agency declines to act upon a complaint, an aggrieved individual may bring a civil action under Labor Code Section 2699.

**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.

## YOUTH BUSES AND PUBLIC PARATRANSIT VEHICLES

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**General Rule:** Drivers of a **youth bus** (a bus that is not a school bus but is used to transport children) may not smoke, including using electronic smoking devices, 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 transporting students who are at or below the 12th grade level to or from a public or private school or school activity) shall refrain from smoking. [Calif. Vehicle Code § 336](#) [§ 680](#) [§ 12523\(d\)\(2\)](#) [§ 12523.5\(d\)\(2\)](#) [§ 13369\(c\)\(3\)](#)

**Note:** The workplace smoking restrictions in California Labor Code Section 6404.5 also apply (see **Workplaces**).

**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 public paratransit vehicle.

## YOUTH PURCHASE AND POSSESSION

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As of June 9, 2016, under California law it is no longer illegal for individuals of any age to purchase, receive, or possess any tobacco products or paraphernalia. However, California law prohibits *selling, giving, or in any way furnishing* tobacco products or paraphernalia, including electronic smoking devices, to any individual under the age of 21 (see **Age-Based Sales Restrictions: Penal Code 308** and **Age-Based Sales Restrictions: STAKE Act**). See California Senate Bill X2-7, which enacted these changes.

## YOUTH SPORTS EVENTS

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**General Rule:** The use of tobacco products, including electronic smoking devices, is prohibited within 250 feet of a **youth sports event** when the user is located in the same park or facility where a youth sports event is taking place. A **youth sports event** is any practice, game, or related activity, organized by any entity, at which athletes up to 18 years of age are present. [!\[\]\(77634a81c987bf5f6571c89605768d45\_img.jpg\) Calif. Health and Safety Code § 104495](#)

**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.

## Section 2: Tobacco Sales

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Federal law and the State of California prohibit the sale of cigarettes and other commercial tobacco products to those under the age of 21, with California adopting its tobacco 21 law in 2016. Nonetheless, in 2021, an estimated 2 million U.S. youth reported using e-cigarettes within the past 30 days.<sup>9</sup> In addition, nearly nine out of ten daily cigarette users first try cigarettes by age 18, and 99 percent first try smoking by age 26.<sup>10</sup> Easy access to tobacco products and prominent displays of tobacco products in retail stores encourage youth tobacco use. The regulation of tobacco retailers and distributors helps reduce the number of illegal sales to minors and young adults, transform social practices, and denormalize the use of tobacco products. Restrictions on how, where, and in what form tobacco products are sold also help limit youth access.

The Family Smoking Prevention and Tobacco Control Act gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacturing of cigarettes and other tobacco products, including the flavors or additives they contain. The Tobacco Control Act also establishes limitations on new products, giving FDA authority to prevent new products from entering the market unless their marketing is appropriate for the protection of public health. Additionally, the Tobacco Control Act prohibits any retailer from selling tobacco products to any person under the age of 21, limits access to tobacco products through self-service displays, and prohibits the sale of cigarettes in packages of fewer than 20 cigarettes.

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9 Eunice Park-Lee et al., *E-Cigarette Use Among Middle and High School Students — National Youth Tobacco Survey, United States 2021*, 70 MORBIDITY & MORTALITY WKLY. REP. 1387-89 (2021), [https://www.cdc.gov/mmwr/volumes/70/wr/mm7039a4.htm?s\\_cid=m-m7039a4\\_w&utm\\_medium=email&utm\\_source=govdelivery#T1\\_down](https://www.cdc.gov/mmwr/volumes/70/wr/mm7039a4.htm?s_cid=m-m7039a4_w&utm_medium=email&utm_source=govdelivery#T1_down).

10 COMMITTEE ON THE PUBLIC HEALTH IMPLICATIONS OF RAISING THE MINIMUM AGE FOR PURCHASING TOBACCO PRODUCTS, BOARD ON POPULATION HEALTH AND PUBLIC HEALTH PRACTICE & INSTITUTE OF MEDICINE, *PUBLIC HEALTH IMPLICATIONS OF RAISING THE MINIMUM AGE OF LEGAL ACCESS TO TOBACCO PRODUCTS* (2015), <https://www.ncbi.nlm.nih.gov/books/NBK310412/toc/?report=reader>.

The California Business and Professions Code, Sections 22950 through 22964, also places minimum requirements on retailers relating to the retail sale, distribution, and display of tobacco products. Known as the “Stop Tobacco Access to Kids Enforcement” or “STAKE” Act, the law sets requirements pertaining to minimum sales age, signage, and self-service displays. The STAKE Act also specifically allows municipalities to impose regulations on the sale and display of tobacco products that are more restrictive than state law. The state’s minimum requirements, however, cannot be weakened or compromised. In addition, the California Penal Code places its own restrictions on cigarette sales and establishes penalties for violations.

This section summarizes state and federal laws on the retail sale, distribution, display, and packaging of tobacco and related devices and products in general, with a particular focus on youth access.

**Note:** On August 28, 2020, California enacted a bill (SB793) to ban the sale of menthol cigarettes and all flavored e-cigarettes statewide, as well as flavored non-cigarette tobacco products, such as smokeless tobacco and some cigars, with exemptions for hookah, premium cigars, and pipe tobacco. The implementation of the law has been suspended until a referendum vote in the 2022 general election.

## **ADULTERATED AND MISBRANDED TOBACCO PRODUCTS: TOBACCO CONTROL ACT**

**General Rule:** A tobacco product is considered adulterated if (1) it contains, is packaged in, or is contaminated with an unsanitary or deleterious substance that could render it injurious to health; (2) the manufacturer or importer has failed to pay a user fee; (3) it is subject to a tobacco product standard but is in any respect out of compliance with such standard; (4) it fails to obtain any required premarket review order or is out of compliance with a premarket review order; (5) it has been produced out of compliance with good manufacturing

requirements; or (6) it violates any modified risk provisions.

[21 U.S.C. § 333](#) [372](#) [387b](#) [387c](#) [387e](#) [387f](#)

A tobacco product is considered misbranded if it is manufactured or prepared in an unregistered establishment, or if it is sold in violation of any other federal regulations governing the sale and distribution of tobacco products, including required warning labels. A tobacco product is also misbranded if its labeling is false or misleading, or if the package label does not contain all of the following:

- The name and address of the manufacturer, packer, or distributor;
- An accurate net weight and quantity statement;
- The percentage of tobacco that is domestically grown and the percentage that is foreign-grown; and
- The statement “sale only allowed in the United States.”

**Enforcement:** The FDA is authorized to enforce most of these provisions with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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. Intentional violations of certain provisions may result in higher or compounded penalties.

**Note:** On March 16, 2022, the U.S. Food and Drug Administration received authorization to regulate nicotine products, regardless of source, as tobacco products. This amendment to the Tobacco Control Act came in response to a loophole for synthetic or non-nicotine products, which are purportedly made with nicotine not derived from tobacco. As of this publication, FDA has not promulgated any new or special rules for synthetic nicotine, but this expansion of the definition of tobacco products means any current and future regulations on tobacco products generally apply to nicotine products, including for adulteration and misbranding.

## AGE-BASED SALES RESTRICTIONS: PENAL CODE 308

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**General Rule:** It is illegal for any person, firm, or corporation to sell, give, or in any way furnish to an individual under the age of 21 years any tobacco products or paraphernalia, including electronic smoking devices and those used to consume controlled substances, if that person, firm, or corporation knows or should otherwise have grounds to know that the recipient is under 21 years of age. This law may be enforced against a business owner, an employee who sold the tobacco product or paraphernalia, or both. Penal Code Section 308(d) states that cities and counties may not adopt any ordinance or regulation that is inconsistent with this law. (See **Sales to Minors: Tobacco Control Act.**) [\*Calif. Penal Code § 308\*](#)

### Exceptions

- These restrictions do not apply to the sale of products approved by the U.S. Food and Drug Administration for sale as tobacco cessation products or as products that have other therapeutic purposes where the products are marketed and sold solely for such approved purposes.
- 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, the state Attorney General, and designated peace officers have the general authority to enforce this law under California Penal Code Section 830.1.

### Notes

- A local licensing law that suspends or revokes a license based on a violation of 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 **Tobacco Retailer License**).

- Local law enforcement agencies do not need to use the STAKE Act protocol described in **Age-Based Sales Restrictions: STAKE Act** when enforcing this law.

**Penalty:** Violators are subject to a criminal 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.

## Notes

- A business may not be penalized for the same incident under both Penal Code Section 308 and the STAKE Act (see **Age-Based Sales Restrictions: STAKE Act** for a summary of the STAKE Act age-based sales restrictions; see **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that attach to Section 308 violations).
- If an employee sells tobacco to an underage individual, the business owner can be penalized under the STAKE Act and the employee can be penalized under Penal Code Section 308. This is because the owner and employee are not legally the same violator (see **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that apply to STAKE Act violations).
- Underage individuals no longer face criminal or administrative citations for purchasing, receiving, or possessing tobacco products or paraphernalia (see **Age-Based Sales Restrictions: STAKE Act**).

## AGE-BASED SALES RESTRICTIONS: STAKE ACT

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**General Rule:** It is illegal for any person, firm, or corporation to sell, give, or in any way furnish any tobacco products or paraphernalia, including electronic smoking devices, to an individual under the age of 21 years. This law may be enforced only against a business owner and not against an employee who sold the tobacco product or paraphernalia. (See **Sales to Minors: Tobacco Control Act.**)

[\*Calif. Business and Professions Code § 22952\*](#) [\*§ 22957\*](#) [\*§ 22958\*](#) [\*Calif. Code of Regulations, Title 17, § 6903\*](#)

### Exceptions

- These restrictions do not include the sale of products approved by the U.S. Food and Drug Administration for sale as tobacco cessation products or as products that have other therapeutic purposes where the products are marketed and sold solely for such approved purposes.
- 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 21 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 21 years of age to provide true and correct identification, if verbally asked for it, is also a valid defense.

**Enforcement:** Primary responsibility for enforcement of the STAKE Act is with the California Department of Public Health. The STAKE Act may also be enforced by any defined "enforcing agency," including the California Department of Public Health, other state agencies, including the office of the Attorney General, and local law enforcement agencies. The law instructs enforcing agencies to use youth decoys in on-site inspections to determine whether retailers are making illegal sales of tobacco products. The law also authorizes enforcing agencies to use youth decoys to investigate illegal sales to underage individuals by telephone, mail, or the internet.

An enforcing agency may conduct such inspections or investigations 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 to \$600 for a first violation; \$900 to \$1,000 for a second violation within a five-year period; \$1,200 to \$1,800 for a third violation within a five-year period; \$3,000 to \$4,000 for a fourth violation within a five-year period; and \$5,000 to \$6,000 for a fifth violation within a five-year period.

Additional civil penalties in the amount of \$250 each for the third, fourth, and fifth violations are assessed by the State Board of Equalization and deposited into the Cigarette and Tobacco Products Compliance Fund for the administration of these provisions. The board may also suspend or revoke the retailer's license with 10 days' notice (see **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that attach to STAKE Act violations).

A business owner may not be penalized for the same incident under both the STAKE Act and California Penal Code Section 308 (see **Age-Based Sales Restrictions: Penal Code 308** for a summary of Penal Code Section 308 prohibitions on sales to underage individuals).

**Note:** If an employee sells tobacco to an underage individual, the business owner can be penalized under the STAKE Act and the employee can be penalized under Penal Code Section 308. This is because the owner and employee are not legally the same violator (see **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that apply to STAKE Act violations).

## BIDIS

**General Rule:** It is illegal to sell, offer to sell, distribute, or import **bidis** (or beedies), which are defined as products containing tobacco

wrapped in temburni leaf or tendu leaf, or products that are marketed and sold as “bidis” or “beedies.” [\*Calif. Penal Code § 308.1\*](#)

**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 candy-like 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 prohibit individuals under 18 years of age on the premises.

**Enforcement:** The state Attorney General, a city attorney, 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 subject to a civil action brought by the state Attorney General, a city attorney, county counsel, or district attorney for an injunction and a civil penalty of up to \$2,000 per violation. Other remedies may also be available for this violation.

## FIRE-SAFE CIGARETTES

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**General Rule:** It is illegal to sell, offer to sell, or possess for sale cigarettes unless they meet fire safety standards. 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 test trial exhibited full-length burns. Manufacturers shall mark the packaging and case of cigarettes in compliance with this law. The law is implemented in accordance with similar standards adopted in New York in 2004. [\*Calif. Health and Safety Code § 14950-14959\*](#)

**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 or the California Department of Tax and Fee Administration 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 sold in violation of these provisions are subject to seizure.

## FLAVORED CIGARETTES OR CIGARETTE COMPONENTS PROHIBITED: TOBACCO CONTROL ACT

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**General Rule:** 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 U.S. Food and Drug Administration has the authority to ban menthol. [🔗 21 U.S.C. § 333](#) [🔗 372](#) [🔗 387g](#)

**Exception:** Tobacco and menthol flavors are excluded from this provision. This provision does not apply to tobacco products other than cigarettes (for example, e-cigarettes).

### Notes

- The Tobacco Control Act contains a specific provision preserving the authority of local governments to enact sales restrictions, such as those prohibiting the sale of flavored tobacco products. [🔗 21 U.S.C. § 387p](#) In addition, two federal circuit courts of appeal have held that local governments

may enact laws restricting the sale of flavored non-cigarette tobacco products, such as cigars and chewing tobacco. See *United States Smokeless Tobacco Mfg. Co. v. City of New York*, 708 F.3d 428 (2d Cir. 2013); *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence*, 731 F.3d 71 (1st Cir. 2013).

- These courts found that local laws were not preempted by the federal Tobacco Control Act. Recent California courts have also issued similar rulings. *R.J. Reynolds Tobacco Company et al. v. County of Los Angeles et al.* No. 2:20-cv-04880 (C.D. Cal. Jun 01, 2020); *CA Smoke and Vape Association, Inc. et al. v. County of Los Angeles, et al.* No. 2:20-cv-04065 (C.D. Cal. May 04, 2020).
- On April 28, 2022, the FDA announced two new proposed product standards prohibiting menthol as a characterizing flavor in cigarettes and prohibiting all characterizing flavors (other than tobacco) in cigars. At the time of publication, the FDA is seeking and reviewing public comments on these rules. The FDA's action comes years after it collected voluminous information about menthol's unique negative health impacts. On June 17, 2020, two public health groups filed a lawsuit against the FDA to obtain a court order requiring the agency to act. See *African American Tobacco Control Leadership Council et al. v. FDA*, No. 3:20-cv-04012 (2020).

**Enforcement:** The FDA 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.

## HOME DELIVERY OF UNSOLICITED TOBACCO PRODUCTS

**General Rule:** It is illegal for a person to knowingly deliver or cause to be delivered any unsolicited tobacco products to any residence in California (see **Samples, Coupons, and Promotional Offers: California**

**Law** for more information on mailing unsolicited samples of smokeless tobacco products). [\*Calif. Penal Code § 308b\*](#)

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

**Enforcement:** Local law enforcement agencies, the state Attorney General, and any designated peace officers have the general authority to enforce this law under California Penal Code Section 830.1.

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

## **ID CHECK REQUIREMENT: STAKE ACT**

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**General Rule:** Retailers must check the identification of purchasers of tobacco products, including electronic smoking devices, who reasonably appear to be under 21 years of age. [\*Calif. Business and Professions Code § 22956\*](#) [\*§ 22957\*](#)

**Enforcement:** The California Department of Public Health has primary enforcement responsibility, though any “enforcing agency” is authorized to enforce the STAKE Act, including the California Attorney General’s office and local law enforcement agencies.

**Penalty:** Penalties under the STAKE Act apply to the furnishing of any tobacco products to people under the age of 21, not to the failure to check identification.

## **ID CHECK REQUIREMENT: TOBACCO CONTROL ACT**

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**General Rule:** Tobacco retailers must verify that a purchaser of any tobacco or nicotine product is 21 years of age or older through a photo identification card containing the individual’s date of birth. [\*21 U.S.C. § 333\*](#) [\*§ 372\*](#) [\*§ 387a-1\*](#) [\*§ 387f\(d\)\*](#) [\*21 C.F.R. § 1100.3\*](#) [\*§ 1140.14\(a\),\(b\)\*](#)

**Note:** See **ID Check Requirement: STAKE Act** for information about California’s requirement to check the identification of purchasers who reasonably appear to be under 21 years of age.

**Exception:** Verification is not required for any person over the age of 26. (The FDA is raising its ID check requirements to any person under the age of 30. See **Sales to Minors: Tobacco Control Act.**)

**Enforcement:** The U.S. Food and Drug Administration is authorized to enforce this provision with the help of other federal agencies and state governments. In California, the FDA 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 is 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.

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

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**General Rule:** “Light,” “low,” “mild,” and similar descriptors are prohibited in all advertising and labeling of tobacco products. This provision applies to manufacturers and retailers alike. [§ 21 U.S.C. § 333](#) [§ 372](#) [§ 387k](#) [§ 21 C.F.R. § 1100.3](#)

**Enforcement:** The U.S. Food and Drug Administration is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Violators are subject to a 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 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 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.

## LIQUID NICOTINE PACKAGING REQUIREMENTS

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**General Rule:** As of October 1, 2016, all cartridges for electronic cigarettes and solutions for filling or refilling an electronic cigarette must be in child-resistant packaging that meets federal child-resistant packaging standards and testing procedures. As of July 26, 2016, the Child Nicotine Poisoning Prevention Act of 2015 requires liquid nicotine sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the U.S. to meet existing packaging and testing requirements found in the federal Poison Prevention Packaging Act of 1970. The special packaging requirements include child-resistant packaging and restricted flow rates for containers, as determined in accordance with specific testing procedures. [☞ Calif. Health and Safety Code § 119406](#) [☞ 15 U.S.C. § 1472a](#) [☞ 16 C.F.R. § 1700.15](#) [☞ 1700.20](#)

**Exception:** The 2015 Act's definition of **liquid nicotine container** does not include sealed, pre-filled, or disposable liquid nicotine containers that are inserted directly into electronic cigarettes, electronic nicotine delivery systems, or similar products, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

**Note:** The Child Nicotine Poisoning Prevention Act is not intended to limit or otherwise affect the authority of the U.S. Food and Drug Administration (FDA) to regulate, issue guidance on, or take action regarding the manufacture, marketing, sale, distribution, importation, or packaging, including child-resistant packaging, of nicotine, liquid nicotine, electronic cigarettes, or other similar products. The Act is not intended to limit or affect the FDA's advance notice of proposed rulemaking concerning packaging requirements for liquid nicotine, nicotine-containing e-liquid(s), and other tobacco products. The Act also specifically states that the FDA's deeming rule is not affected by the Act (see **Introduction** for more information about the FDA's deeming rule).

**Enforcement:** The U.S. Consumer Product Safety Commission enforces the requirements of the Child Nicotine Poisoning Prevention Act. Other federal agencies, state attorneys general, and local entities also have enforcement and inspection power under the Consumer Product Safety Act.

**Penalty:** Under the Consumer Product Safety Act and 2008 amendments, the Consumer Product Safety Commission has many regulatory and enforcement tools, which include imposing civil penalties, ordering product recalls, issuing written notices, or requiring modification of a noncompliant product. With respect to liquid nicotine containers, the Commission has stated that the sale of noncompliant products may be subject to civil penalties of up to \$110,000 for each violation, and up to \$16,025,000 for any related series of violations. See Press Release, Consumer Product Safety Commission, *Safety Regulator Warns Vape Shops and Other Retailers: Selling Liquid Nicotine without Proper Packaging is Against Federal Law*, Nov. 22, 2019.

## MAIL ORDER/INTERNET SALES: PACT ACT

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**General Rule:** The Prevent All Cigarette Trafficking Act (PACT Act) prohibits the delivery 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 10 pounds or less 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. (In light of this federal law, many common delivery companies (e.g., UPS, FedEx, DHL) have voluntarily agreed that they will stop shipping e-cigarettes directly to consumers.) 15 U.S.C. § 375 [↻](#) 376 [↻](#) 376a [↻](#) 377 [↻](#) 18 U.S.C. § 1716E

## Exceptions

- 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 of cigarettes 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 U.S. Postal Service provision is enforced by the U.S. Postmaster General in cooperation with other federal, state, or local agencies, or tribal governments, whenever appropriate. The common carrier provisions are enforced by the U.S. Attorney General, 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 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 10 times the retail value of the non-mailable cigarettes or smokeless tobacco, including all federal, state, and local taxes. Any cigarette or smokeless tobacco that is deposited in the mail is 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.

## MAIL ORDER/INTERNET SALES: STAKE ACT

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**General Rule:** No person may sell, distribute, or engage in the non-sale distribution of tobacco products, including electronic smoking devices, to persons under 21 years of age via public or private postal or package delivery services. The law includes requirements designed to ensure that people who order tobacco products by mail, fax, phone, or the internet are 21 years of age or older. For example, distributors or sellers must either (1) attempt to match the name, address, and date of birth provided by the customer to information contained in a database of individuals verified to be 21 years or older by reference to a database of government records, or (2) require the customer to submit verification of age, including a copy of a valid form of government identification and a signed attestation that the customer or recipient is 21 years of age or older. The law establishes a two-carton minimum on each order of cigarettes. It also mandates that all applicable purchases be made by personal check or the purchaser's credit card and that the distributor or seller calls purchasers to confirm their orders. [!\[\]\(bd5f98ff1e71f73f69aadd99259f23d0\_img.jpg\) \*Calif. Business and Professions Code § 22963\*](#)

**Non-sale 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, does not constitute non-sale 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 subject to a civil penalty of \$1,000 to \$2,000 for a first violation; \$2,500 to \$3,500 for a second violation; \$4,000 to \$5,000 for a third violation within a five-year period; \$5,500 to \$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.

## MINIMUM PACKAGE SIZE

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**General Rule:** 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. [\*Calif. Penal Code § 308.3\*](#)

**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 subject to 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.

## MINIMUM PACKAGE SIZE: TOBACCO CONTROL ACT

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**General Rule:** Cigarettes may not be manufactured, sold, or distributed in packages containing fewer than 20 cigarettes. A tobacco retailer may not sell or distribute any quantity of cigarettes or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use. (See **Single Cigarettes.**) [21 U.S.C. § 333](#) [372](#) [387a-1](#) [387f\(d\)](#) [21 C.F.R. § 1100.3](#) [1140.14\(a\)\(4\)](#) [1140.16\(b\)](#)

**Enforcement:** The U.S. Food and Drug Administration (FDA) is authorized to enforce this provision with the help of other federal

agencies and state governments. In California, the FDA 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:** Violators are 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 that the FDA is required to adjust these amounts annually to reflect inflation.)

## **MODIFIED RISK TOBACCO PRODUCTS: TOBACCO CONTROL ACT**

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**General Rule:** No person may introduce a **modified risk** tobacco product into interstate commerce or commercially market such a product without authorization from the U.S. Food and Drug Administration (FDA). A **modified risk** product is a nicotine or tobacco product that is sold or distributed with authorized claims that the product will reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products or that products reduce exposure to harmful constituents in commercially marketed tobacco products, even if the manufacturer cannot prove that it reduces harm or risk. For example, a modified risk product might represent that it presents a lower risk of tobacco-caused disease, or that it contains fewer substances or reduces the user's exposure to harmful substances. "Mild," "light," "low," or similar descriptors are also modified risk claims. Any application to make such claims submitted under this section must be referred to the Tobacco Products Scientific Advisory Committee (TPSAC), which issues a report and recommendations. The agency approves a tobacco product to make modified risk claims only after determining that the product, as it is actually used by consumers, will (1) significantly reduce harm and the risk of tobacco-caused disease to individual tobacco users, and (2) benefit the health of the population as a whole, taking into account both users and non-users of tobacco products. An order issued under this section is limited to a five-year term but

may be renewed. Importantly, any product manufacturer that applies to make modified risk claims also must apply and receive premarket review authorization from the FDA. For more about modified risk tobacco products, see the Public Health Law Center's FDA Tobacco Action Center's resources. [🔗 21 U.S.C. § 333](#) [🔗 372](#) [🔗 387k](#) [🔗 21 C.F.R. § 1100.3](#) [🔗 1100.5](#)

**Note:** A smokeless tobacco product is not a modified risk product solely because it advertises itself as being “smokeless” or “smoke-free.” Additionally, products intended to be used to treat tobacco dependence, including smoking cessation products, that have been approved as drugs or devices by the FDA are not modified risk products.

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Violators are subject to civil penalties of up to \$15,000 for each violation, not to exceed \$1 million for all violations ruled on in a single proceeding. Intentional marketing of modified risk products without FDA authorization can incur enhanced 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 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.

## NON-NICOTINE PRODUCT IN A VAPOR STATE

**General Rule:** It is illegal to sell, or otherwise provide to anyone under 18 years of age any device intended to deliver by inhalation a non-nicotine product in a vapor state. [🔗 Calif. Health and Safety Code § 24600](#)

**Exception:** This provision exempts drug or medical devices approved by the U.S. Food and Drug Administration.

**Enforcement:** Local law enforcement agencies, the state Attorney General, or any designated peace officers 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 \$500 for a first violation; up to \$1,000 for a second violation; and up to \$1,500 for a third or subsequent violation.

## RESTRICTIONS ON TOBACCO AND ALCOHOL SALES NEAR CANNABIS SELLERS

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**General Rule:** A business licensed to sell cannabis may not sell any tobacco products or alcohol on the premises. Further, a business licensed to sell cannabis may not be located where a consumer must pass through a store that sells tobacco products or alcohol to access the cannabis business. The cannabis business must also not be in a place that consumers must pass through in order to reach a store that sells tobacco products or alcohol. [\*Calif. Business and Professions Code § 26030\*](#) [\*§ 26031\*](#) [\*§ 26054\*](#) [\*16 Calif. Code of Regulations § 5026\*](#)

**Enforcement:** The California Bureau of Cannabis Control (BCC) is authorized to enforce these provisions. Additionally, the BCC may enforce these provisions based on information received from local authorities.

**Penalty:** The BCC may fine a licensee or suspend or revoke a business's cannabis license.

## SALES TO MINORS: SYNAR AMENDMENT

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**General Rule:** In order to receive the annual Substance Abuse Prevention and Treatment federal block grant under the Synar Amendment, the state requires retailers to conduct ID checks to ensure that tobacco products are not sold to individuals under the age of 21 years. 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. Food and Drug Administration (FDA).

[42 U.S.C. § 300x-26](#) [45 C.F.R. § 96.130](#)

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

**Enforcement:** The FDA 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 10 percent of the amount originally allocated to the state, if the Secretary determines that the state is not in substantial compliance with the law.

## SALES TO MINORS: TOBACCO CONTROL ACT

**General Rule:** It is illegal for any tobacco retailer to sell a nicotine or tobacco product to any person under the age of 21 years. This law overrides any previous exemptions for sales to minors. [21 U.S.C. § 333](#) [372](#) [387a-1](#) [387f\(d\)](#) [21 C.F.R. § 1100.3](#) [1140.14\(a\),\(b\)](#)

**Exception:** Tobacco products do not include articles that are food, drugs, devices, or combination products under the U.S. Food, Drug, and Cosmetic Act. [21 U.S.C. § 321\(g\)\(1\)](#) [321\(h\)](#) [353\(g\)](#)

**Enforcement:** The U.S. Food and Drug Administration is authorized to enforce this provision with the help of other federal agencies and state governments. In California, the FDA has contracted with the California Department of Public Health's Food and Drug Branch to enforce this provision. For more on enforcement of the federal T21 law, see the FDA's resources on [Tobacco 21](#).

**Penalty:** Violators of this provision are 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 that the FDA is required to adjust these amounts annually to reflect inflation.)

## SELF-SERVICE DISPLAYS: STAKE ACT

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**General Rule:** It is illegal to sell, offer for sale, or display any tobacco products or paraphernalia, including electronic smoking devices, through a self-service display, which is an open display of tobacco products or paraphernalia that is accessible to the public without the assistance of the clerk. This law may be enforced against a person, firm, or corporation. The law allows local governments to pass and enforce laws that are stricter than state law. [🔗 Calif. Business and Professions Code § 22958](#) [🔗 22960](#) [🔗 22962](#)

**Exception:** Tobacco stores may make available by self-service display pipe tobacco, snuff, chewing tobacco, and dipping tobacco. Tobacco stores may also display cigars provided they are not sold in the manufacturer's or importer's original sealed packaging containing fewer than six cigars.

Aside from these exceptions, self-service displays of tobacco products and paraphernalia are not 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 individuals under 18 years of age on the premises unless they are accompanied by a parent or legal 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 **Vending Machines: STAKE Act**).

**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 to \$600 for a first violation; \$900 to \$1,000 for a second violation within a five-year period; \$1,200 to \$1,800 for a third violation within a five-year period; \$3,000 to \$4,000 for a fourth violation within a five-year period; and

\$5,000 to \$6,000 for a fifth violation within a five-year period (see [Licensing Penalties for Illegal Sales to Underage Individuals](#) for license-related penalties that attach to STAKE Act violations).

## SELF-SERVICE DISPLAYS: TOBACCO CONTROL ACT

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**General Rule:** Cigarettes and smokeless tobacco may be sold only via a direct, face-to-face exchange. The use of vending machines and self-service displays is not permitted. [§ 21 U.S.C. § 333](#) [§ 387a-1](#) [§ 387f\(d\)](#) [21 C.F.R. § 1140.14](#) [§ 1140.16\(c\)](#)

**Exceptions:** 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 years is present or allowed to enter at any time.

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

**Penalty:** Violators of this provision are 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 that the FDA is required to adjust these amounts annually to reflect inflation.)

## SIGN POSTING REQUIREMENT: STAKE ACT

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**General Rule:** Every store that sells tobacco products, including electronic smoking devices, must post a boldly printed, contrasting-color sign in a conspicuous place at each point of purchase saying that selling tobacco products to anyone under 21 years of age is illegal

and subject to penalties. [Calif. Business and Professions Code § 22952\(b\)](#) [22957](#) [22958\(e\)](#) [Calif. Code of Regulations, Title 17, § 6902\(a\)](#) [Calif. Penal Code § 308\(b\)](#)

The sign must contain the following words with initial letters capitalized in the following manner: “The Sale of Tobacco Products to Persons Under 21 Years of Age Is Prohibited by Law and Subject to Penalties. U.S. Armed Forces active duty personnel with military ID must be at least 18 years of age. 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 high by 8.5 inches wide), and the required words must meet specified font sizes and typefaces.

**Note:** The military exemption is now out of date due to the recent changes in federal law. See **Sales to Minors: Tobacco Control Act**.

**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 penalty for the first violation and a \$500 civil penalty for each subsequent violation.

Under Penal Code Section 308(b), 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 in a county jail for not more than 30 days.

A business owner may not be penalized for the same incident under both the STAKE Act and Penal Code Section 308 (see **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that attach to STAKE Act violations).

## SINGLE CIGARETTES

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**General Rule:** 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 that meets federal labeling requirements. (See **Minimum Package Size: Tobacco Control Act.**) [🔗 Calif. Penal Code § 308.2](#)

**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.

## VENDING MACHINES: STAKE ACT

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**General Rule:** Tobacco products, including electronic smoking devices, shall not be sold, offered for sale, or distributed from vending machines, including machines or devices that use remote control locking mechanisms. This law may be enforced against a person, firm, or corporation. A local government may also restrict or completely ban tobacco vending machines. [🔗 Calif. Business and Professions Code § 22957](#) [🔗 22958](#) [🔗 22960](#)

**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. Note that under federal law, a retailer may not sell covered tobacco products from vending machines, except in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time. [🔗 21 C.F.R. § 1140.14](#)

**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 to \$600 for a first violation; \$900 to \$1,000 for a second violation within a five-year period; \$1,200 to \$1,800 for a third violation within a five-year period; \$3,000 to \$4,000 for a fourth violation within a five-year period; and \$5,000 to \$6,000 for a fifth violation within a five-year period (see **Age-Based Sales Restrictions: Penal Code 308** for possible related penalties under Penal Code Section 308, and **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that apply to STAKE Act violations).

## Section 3: Advertising

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To prevent and reduce commercial tobacco use, particularly among youth, governments at the federal, state, and local levels have long recognized the importance of regulating tobacco product advertising. Tobacco companies historically targeted young people and other populations in product advertisements and strong evidence has linked this target marketing to smoking initiation.<sup>11</sup> Studies have demonstrated that even brief exposure to tobacco product advertisements can influence the perceptions and attitudes of youth about smoking and the use of tobacco products.<sup>12</sup> By placing restrictions or imposing disclosures or warnings on tobacco product advertising, governments can regulate the extent and nature of youth exposure to tobacco advertising, which can decrease youth smoking initiation.

However, tobacco advertising regulations face two obstacles: the First Amendment and federal preemption — that is, preemption by the Federal Cigarette Labeling and Advertising Act. Because tobacco advertisements constitute commercial speech, entitled to some First Amendment protection, any regulation of tobacco advertisements remains subject to First Amendment considerations. In addition, while state and local governments retain some authority to restrict tobacco advertisements, in general they may only impose “time, place, and manner” restrictions on cigarette and smokeless tobacco ads. Federal law largely preempts them from imposing content-based restrictions on these advertisements.

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11 U.S. DEP’T OF HEALTH AND HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2012), <https://www.ncbi.nlm.nih.gov/books/NBK99238/>; Siobhan N. Perks et al., *Cigarette Brand Preference and Pro-Tobacco Advertising Among Middle and High School Students — United States, 2012–2016*, 67 MORBIDITY AND MORTALITY WKLY. REP. 119-24 (2018), [https://www.cdc.gov/mmwr/volumes/67/wr/mm6704a3.htm?s\\_cid=mm6704a3\\_w](https://www.cdc.gov/mmwr/volumes/67/wr/mm6704a3.htm?s_cid=mm6704a3_w).

12 Douglas A. Luke et al., *Family Smoking Prevention and Tobacco Control Act: Banning Outdoor Tobacco Advertising Near Schools and Playgrounds*, 40 AM. J. PREV. MED. 295 (2011) (citing National Cancer Inst., *The Role of the Media in Promoting and Reducing Tobacco Use: Tobacco Control Monograph No. 19*, (2008)).

Since the 1970s, federal law has prohibited cigarette companies from advertising on television and radio — media subject to the jurisdiction of the U.S. Federal Communications Commission. Similar restrictions took effect in 1986 for smokeless tobacco. However, most restrictions on tobacco advertising are contained in two measures: the 1998 Master Settlement Agreement, an agreement between the four largest cigarette manufacturers and a majority of the states, and the 2009 Family Smoking Prevention and Tobacco Control Act (including the U.S. Food and Drug Administration's regulations pursuant to the authority granted by this Act). In addition, the historic 2006 decision in U.S. v. Philip Morris exposed a 50-year-old conspiracy during which the tobacco industry target-marketed to youth and deceived the public about the addictiveness, nicotine levels, and health hazards of their products.

This section provides an overview of California and federal tobacco advertising restrictions and regulations, including those contained in the Master Settlement Agreement and Tobacco Control Act.

## BLUNT WRAPS ADVERTISING

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**General Rule:** No person or business may place advertising for **blunt wraps** lower than 4 feet above the floor. No person or business offering blunt wraps for sale may place blunt wrap advertising within 2 feet of a candy, snack, or nonalcoholic beverage display. This law may be enforced against a business owner only and not against an employee. [\*Calif. Business and Professions Code § 22958\(a\)\*](#) [\*§ 22962\*](#) [\*Calif. Penal Code § 308\*](#)

**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 to \$600 for a first violation; \$900 to \$1,000 for a second violation within a five-year period; \$1,200 to \$1,800 for a third violation within a five-year period; \$3,000 to \$4,000 for a fourth violation within a five-year period; and \$5,000 to \$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 **Licensing Penalties for Illegal Sales to Underage Individuals** for license-related penalties that attach to STAKE Act violations).

## CARTOON CHARACTERS

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**General Rule:** Under the Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA), the settling tobacco companies are prohibited from using cartoons in tobacco advertising, promoting, labeling, and packaging. [☞ Master Settlement Agreement § II\(I\)](#) [☞ III\(b\)](#) [☞ VII\(c\)](#) [☞ Smokeless Tobacco Master Settlement Agreement § II\(j\)](#) [☞ III\(b\)](#) [☞ VII\(c\)](#)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: State of California, Office of the Attorney General, Department of Justice, P.O. Box 944255, Sacramento, CA 94244-2550.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

# FEDERAL PREEMPTION OF STATE AND LOCAL REGULATION OF CIGARETTE AND SMOKELESS TOBACCO ADVERTISING AND PROMOTION

**General Rule:** 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 **Cigarette Warning Labels** and **Television/Radio Smokeless Tobacco Advertising**). In sections 1334(b) and (c), the FCLAA also contains a preemption clause that prohibits most 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. Permissible state and local laws and regulations must constitute "specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes." Similarly, the Comprehensive Smokeless Tobacco Health Education Act (CSTHEA) establishes a federal program governing smokeless tobacco labeling and advertising. In section 4406, the CSTHEA also contains a preemption clause that prohibits state and local laws and regulations from requiring any statements relating to the use of smokeless tobacco products and health on any package or advertisement of a smokeless tobacco product (unless the advertisement is an outdoor billboard advertisement). [§ 15 U.S.C. § 1331-1341](#) [§ 4401-4408](#)

## Notes

- The FCLAA applies only 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, e-cigarettes). However, the First Amendment of the U.S. Constitution remains an important consideration regarding the legality of any such law.
- The MSA is able to limit cigarette advertising in spite of the preemption provision of the FCLAA because the MSA is not

a state law but instead is a contract to which the tobacco companies have voluntarily agreed to be bound.

- In 2012, a federal court of appeals held that the FCLAA preempted a New York City law requiring tobacco retailers to display signs bearing graphic images showing the adverse health effects of smoking. *23-34 94th St. Grocery Corp. v. N.Y.C. Bd. of Health*, 685 F.3d 174 (2d Cir. 2012). The court concluded that requiring graphic warnings to be placed adjacent to product displays impermissibly affected cigarette makers' promotions at retail sites. Although this decision is not binding in California, the case may serve as guidance for California courts examining similar issues.
- By contrast, a different federal court of appeals held that the FCLAA did not preempt a Providence, Rhode Island, law that prohibits tobacco retailers from accepting or redeeming coupons and multipack discounts for any tobacco products or cigarettes. *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence*, 731 F.3d 71 (1st Cir. 2013). In November 2013, New York City adopted a similar law that prohibits tobacco retailers from accepting or redeeming coupons and multipack discounts for any tobacco products or cigarettes. This law also withstood a challenge in federal court, on similar preemption and First Amendment grounds as the First Circuit case. *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of New York*, 27 F.Supp.3d 415 (S.D.N.Y. 2014).
- The CSTHEA applies only to smokeless tobacco products that contain cut, ground, powdered, or leaf tobacco and are intended to be placed in the oral or nasal cavity. There is no law comparable to the CSTHEA for e-cigarettes, cigars, and other tobacco products that are not smokeless tobacco or cigarettes. Therefore, there is no preemption on regulations relating to the advertising or promotion of these products. However, the First Amendment of the U.S. Constitution remains an important consideration regarding the legality of any such law.

**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 or CSTHEA.

## MISLEADING CONSUMERS ABOUT FDA ENDORSEMENTS: TOBACCO CONTROL ACT

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**General Rule:** This law prohibits making any express or implied statement or representation to consumers in tobacco product labeling or through the media or advertising that would mislead consumers into believing that a tobacco product is:

- Approved by the U.S. Food and Drug Administration (FDA);
- Endorsed by the FDA;
- Deemed safe by the FDA; or
- Less harmful due to FDA regulation.

[§ 21 U.S.C. § 331\(tt\)](#) [§ 333](#) [§ 372](#)

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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.

## OUTDOOR ADVERTISING: MSA AND STMSA

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**General Rule:** Under the Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA), the settling tobacco companies are prohibited from engaging in **outdoor advertising** of cigarettes and smokeless 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. [☞ \*Master Settlement Agreement\* § II\(ii\)](#) [☞ \*II\(xx\)\*](#) [☞ \*III\(c\)\*](#) [☞ \*III\(d\)\*](#) [☞ \*VII\(c\)\*](#) [☞ \*Smokeless Tobacco Master Settlement Agreement\* § II\(dd\)](#) [☞ \*II\(rr\)\*](#) [☞ \*III\(c\)\*](#) [☞ \*III\(d\)\*](#) [☞ \*VII\(c\)\*](#)

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

- Advertisements that are 14 square feet or smaller, 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 an event with a brand name for the duration of the event, and no more than 14 days before the event;
- Outdoor advertising for a tobacco brand-sponsored event at the site of the event for 90 days before the initial sponsored event and 10 days after the last sponsored event, provided that the advertising does not pertain to any tobacco product (now banned by federal law); or
- 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](#).

Inquiries and reports of suspected violations can also be mailed to the: State of California, Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## OUTDOOR ADVERTISING: STAKE ACT

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**General Rule:** Advertising of tobacco products, including electronic smoking devices, is prohibited on any outdoor billboard located within 1,000 feet of any public or private elementary, junior high, or high school, or public playground. [🔗](#) *Calif. Business and Professions Code § 22957* [🔗](#) 22958 [🔗](#) 22961

**Note:** This law currently is not being enforced and partially overlaps with the limits on outdoor advertising in the Master Settlement Agreement and Smokeless Tobacco Master Settlement Agreement. Moreover, since the law applies to cigarettes, it may be preempted by federal law in light of the U.S. Supreme Court decision in *Lorillard Tobacco Co. v. Reilly* (see **Federal Preemption of State and Local Regulation of Cigarette and Smokeless Tobacco Advertising and Promotion** for more information about this decision). *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001).

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

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

**Penalty:** Violators are subject to civil penalties according to California Business and Professions Code Section 22958(f).

## STATE BUILDING ADVERTISING

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**General Rule:** No advertising for any product containing tobacco is allowed in any building owned and occupied by the state. [🔗 Calif. Government Code § 19994.35](#)

**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.

## STORE FRONT ADVERTISING

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**General Rule:** 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. [🔗 Calif. Business and Professions Code § 25612.5\(c\)\(7\)](#) [🔗 25617](#) [🔗 25619](#) (known informally as the Lee Law)

**Note:** This law is not preempted by the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smokeless Tobacco Health Education Act (see **Federal Preemption of State and Local Regulation of Cigarette and Smokeless Tobacco Advertising and Promotion**) because it applies generally to advertising of all types, not specifically to advertising of cigarettes or smokeless tobacco.

**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:** Officers who refuse or neglect to diligently prosecute persons whom they have reasonable cause to believe have violated this provision are guilty of a misdemeanor under California Business and Professions Code Section 25619.

## TELEVISION/RADIO CIGARETTE ADVERTISING

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**General Rule:** The Federal Cigarette Labeling and Advertising Act prohibits advertising cigarettes or little cigars (defined by weight) on any medium of electronic communication subject to the jurisdiction of the U.S. Federal Communications Commission (FCC) (such as television and radio). [§ 15 U.S.C. § 1335](#) [§ 1338](#) [§ 1339](#)

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

**Enforcement:** The Department of Justice and FCC 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: [fcc.gov/complaints](https://www.fcc.gov/complaints).

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

## TELEVISION/RADIO SMOKELESS TOBACCO ADVERTISING

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**General Rule:** This law prohibits advertising smokeless tobacco on any medium of electronic communication subject to the jurisdiction of the U.S. Federal Communications Commission (FCC) (such as television and radio). [§ 15 U.S.C. § 4402\(c\)](#) [§ 4404](#) [§ 4405](#)

**Enforcement:** The U.S. Department of Justice and FCC 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: [fcc.gov/complaints](https://www.fcc.gov/complaints).

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

## TRANSIT ADVERTISING

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**General Rule:** Under the Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA), the settling tobacco companies are prohibited from placing cigarette and smokeless tobacco **transit advertisements**, defined as advertisements on or within private or public vehicles, or placed at, on, or within a bus stop, taxi stand, transportation waiting area, train station, airport, or similar location. [↻ Master Settlement Agreement § II\(xx\) III\(c\)\(3\)\(E\)](#) [↻ III\(d\)](#) [↻ VII\(c\)](#) [↻ Smokeless Tobacco Master Settlement Agreement § II\(rr\) III\(c\)\(3\)\(E\)](#) [↻ III\(d\)](#) [↻ VII\(c\)](#)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: State of California, Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## VIDEO GAMES

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**General Rule:** This law prohibits paid commercial advertising for alcohol and tobacco products, including e-cigarettes, 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. Paid commercial advertising includes, for example, containers or packaging, product brand names, trademarks, or copyrighted slogans. [\*Calif. Penal Code § 308.5\*](#)

**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 a misdemeanor.

## YOUTH TARGETING

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**General Rule:** Under the Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA), the settling tobacco companies are prohibited from directly or indirectly targeting youth in tobacco advertising, promotion, and marketing, and from taking any action the primary purpose of which is to initiate, maintain, or increase the incidence of youth smoking. [\*Master Settlement Agreement § III\(a\)\*](#) [\*VII\(c\)\*](#) [\*Smokeless Tobacco Master Settlement Agreement § III\(a\)\*](#) [\*VII\(c\)\*](#)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: State of California, Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## Section 4: Sponsorship, Branding, and Promotions

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One of the most effective ways tobacco manufacturers market their products is by creating a strong brand image and identity through the sponsorship and branding of products. The way in which tobacco products are promoted and used in brand-name sponsorships in California is regulated by both federal and state law. The Master Settlement Agreement between 46 states and the tobacco industry also contains several provisions that apply to specific marketing tactics. This section describes the major federal and state requirements, as well as the settlement provisions, that apply to tobacco industry sponsorship, branding, and promotions, including sampling.

### Sponsorship

#### SPONSORSHIP: MSA/STMSA

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**General Rule:** Under the Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA), each settling tobacco company may engage in only one **brand name sponsorship** in any 12-month period. The MSA defines a **brand name sponsorship** as an athletic, musical, artistic, or other social or cultural event for which payment is made (or other consideration is provided) in exchange for use of a brand name or names (1) as part of the name of the event or (2) to identify, advertise, or promote such an event or an entrant, participant, or team in such an event in any other way. 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 for which the intended audience consists of a significant percentage of youth (although *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. (See **Sponsorship: Tobacco Control Act.**) [§ Master Settlement Agreement § II\(j\)](#) [§ III\(c\)](#) [§ VII\(c\)](#) [§ Smokeless Tobacco Master Settlement Agreement § II\(h\)](#) [§ III\(c\)](#) [§ VII\(c\)](#)

**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 10 days after the event; and
- Corporate name sponsorship (which allows sponsorship in the name of the parent company (e.g., Altria) but not in the name of the brand (e.g., Marlboro)).

**Note:** The Tobacco Control Act covers similar topics but includes other prohibitions. (See **Sponsorship: Tobacco Control Act.**)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: California Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550. More information about the MSA and details of the settlement itself can be found at <https://oag.ca.gov/tobacco/msa>.

**Penalty:** The AG may seek a court order to enforce these provisions or to stop a violation of the provisions. If a company subject to such an order violates its terms, the AG may pursue monetary compensation,

civil contempt charges, or criminal sanctions. The parties must first attempt to resolve alleged violations through discussion.

## SPONSORSHIP: TOBACCO CONTROL ACT

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**General Rule:** Manufacturers, distributors, and retailers may not directly or indirectly sponsor any athletic, social, or cultural event, or any entry or team in any event, through use of 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. (See **Sponsorship: MSA/STMSA.**) [§ 21 U.S.C. § 333\(f\)\(9\)](#) [§ 372](#) [§ 387a-1](#) [§ 387f\(d\)](#) [§ 21 C.F.R. § 1140.34\(c\)](#)

**Note:** This provision, among others, in the Tobacco Control Act, was challenged in federal court and upheld by the Sixth Circuit Court of Appeals. *Discount Tobacco City & Lottery v. United States*, 674 F.3d 509 (6th Cir. 2012), cert. denied, 133 S.Ct. 1996 (2013). The lawsuit alleged that the prohibition on tobacco sponsorships improperly regulated speech and violated the First Amendment.

**Exception:** Manufacturers, distributors, and 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. Food and Drug Administration (FDA) is authorized to enforce this provision with the help of other federal agencies and state governments. The FDA states that it generally does not intend to seek a civil money penalty or no-tobacco-sale order the first time an inspection identifies violations by a retailer. The FDA instead intends to send the retailer a warning letter after the first violation. *Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (Revised)-Guidance for Industry (December 2016)*

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

**Note:** The FDA is required to adjust these amounts annually to reflect inflation.

## Branding

### BRAND NAME LIMITATIONS: MSA/STMSA

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**General Rule:** 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. [☞ \*Master Settlement Agreement S III\(j\) ☞ VII\(c\) ☞ Smokeless Tobacco Master Settlement Agreement S III\(j\) ☞ VII\(c\)\*](#)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: California Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550. More information about the MSA and details of the settlement itself can be found at <https://oag.ca.gov/tobacco/msa>.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## BRAND NAME LIMITATIONS: TOBACCO CONTROL ACT

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**General Rule:** Brands of cigarettes or smokeless tobacco may not include a trade or brand name of a non-tobacco product. [§ 21 U.S.C. § 333](#) [§ 372](#) [§ 387a-1](#) [§ 21 C.F.R. § 1140.16\(a\)](#)

**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 sold in the United States on January 1, 1995.

**Enforcement:** The U.S. Food and Drug Administration (FDA) is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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:** In May 2010, after the FDA became aware of concerns regarding the constitutionality of this provision, the FDA announced how it would exercise its enforcement discretion with respect to 21 Code of Federal Regulations Section 1140.16(a). See [\*Guidance for Industry and FDA Staff: Enforcement Policy Concerning Certain Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco\*](#) (May 2010). 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.

On November 17, 2011, the FDA published a proposed rule to amend Section 1140.16(a). [76 Fed. Reg. 71281 \(Nov. 17, 2011\)](#). The FDA noted

that it was aware of concerns raised by the current rule, including its constitutionality, and that, after considering those concerns, it was proposing to narrow the scope of the rule. At the time of publication, the FDA had not issued a final rule and the FDA's enforcement discretion policy in its 2010 guidance was still in effect. In 2013, the FDA issued guidance for industry regarding compliance with the regulations — *Guidance for Industry: Compliance with Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents* (Aug. 2013).

## BRAND NAME MERCHANDISE

**General Rule:** 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. (See parallel Tobacco Control Act provision, **Sale and Distribution of Non-Tobacco Items or Services: Tobacco Control Act.**) [↻](#) *Master Settlement Agreement § III(f)* [↻](#) *III(c)(3)(C)* [↻](#) *VII(c)* [↻](#) *Smokeless Tobacco Master Settlement Agreement § III(f)* [↻](#) *III(c)(3)(D)* [↻](#) *VII(c)*

**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. These provisions also do not 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. Inquiries and reports of suspected violations can also be mailed to the: California Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550.

More information about the MSA and details of the settlement itself can be found at <https://oag.ca.gov/tobacco/msa>.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## Promotions

### JOINT MARKETING: TOBACCO CONTROL ACT

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**General Rule:** A tobacco product may not be marketed with any other product regulated by the U.S. Food and Drug Administration (FDA), including a drug, food, cosmetic, medical device, or dietary supplement. [§ 21 U.S.C. § 321\(rr\)](#) [§ 333](#) [§ 372](#)

**Note:** This provision, among others, in the Tobacco Control Act, was challenged in federal court and upheld. *Commonwealth Brands, Inc. v. United States*, 678 F.Supp.2d 512 (W.D.Ky. 2010), overruled in part on other grounds by *Discount Tobacco City & Lottery v. United States*, 674 F.3d 509 (6th Cir. 2012), cert. denied, 133 S.Ct. 1996 (2013). The lawsuit alleged that the prohibition on joint marketing improperly regulated speech and violated the First Amendment.

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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.

## PRODUCT PLACEMENT

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**General Rule:** The settling tobacco companies may not pay for product placement in movies, television, theater, video games, music videos, concerts, or other performances. [\*Master Settlement Agreement § III\(e\)\*](#) [\*§ VII\(c\)\*](#) [\*Smokeless Tobacco Master Settlement Agreement § III\(e\)\*](#) [\*§ VII\(c\)\*](#)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: California Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550. More information about the MSA and details of the settlement itself can be found at <https://oag.ca.gov/tobacco/msa>.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## PROOF-OF-PURCHASE GIFTS

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**General Rule:** 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 the recipient is an adult (e.g., a photocopy of a driver's license or other government-issued ID card). [\*Master Settlement Agreement § III\(h\)\*](#) [\*§ VII\(c\)\*](#) [\*Smokeless Tobacco Master Settlement Agreement § III\(h\)\*](#) [\*§ VII\(c\)\*](#)

**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](#). Inquiries and reports of suspected violations can also be mailed to the: California Office of the Attorney General, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550. More information about the MSA and details of the settlement itself can be found at <https://oag.ca.gov/tobacco/msa>.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

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

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**General Rule:** Manufacturers and distributors of imported cigarettes or smokeless tobacco may not directly or indirectly market, license, distribute, or sell any non-tobacco 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. (See parallel Master Settlement Agreement provision **Brand Name Merchandise.**) [§ 21 U.S.C. § 333](#) [§ 372](#) [§ 387a-1](#) [§ 21 C.F.R. § 1100.3](#) [§ 1140.34\(a\)](#)

**Note:** This provision, among others in the Tobacco Control Act, was challenged in federal court and upheld. *Discount Tobacco City & Lottery v. United States*, 674 F.3d 509 (6th Cir. 2012), *cert. denied*, 133 S.Ct. 1996 (2013). The lawsuit alleged that the prohibition on the use of cigarette and smokeless tobacco branding improperly regulated speech and violated the First Amendment.

**Enforcement:** The U.S. Food and Drug Administration is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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.

## **SAMPLES, COUPONS, AND PROMOTIONAL OFFERS: CALIFORNIA LAW**

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**General Rule:** Free or nominal-cost cigarettes or smokeless tobacco products (or nonsale distribution, which includes coupons, coupon offers, rebate offers, gift certificates, gift cards, or other similar offers for such products) may not be distributed or sold in any public building, park or playground, on any public sidewalk, street or other public grounds, or on private grounds that are open to the public. [☞ Calif. Health and Safety Code § 118950](#) [☞ Calif. Code of Regulations Title 18, § 4081](#)

### **Notes**

- The definition of public building, park, playground, sidewalk, street, or other public grounds explicitly includes fair grounds, public transportation facilities and terminals, public health facilities, and public reception areas.
- 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.
- Many local jurisdictions in California have adopted ordinances prohibiting tobacco product sampling. In addition, at least two local jurisdictions outside California — Providence, Rhode Island, and New York City — adopted prohibitions on

redeeming tobacco product coupons and multipack discounts. The Providence ordinance was challenged in federal court and upheld in *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence*, 731 F.3d 71 (1st Cir. 2013), and the New York City ordinance was similarly challenged in federal court and upheld in *Nat'l Ass'n of Tobacco Outlets, Inc. v. City of New York*, 27 F.Supp.3d 415 (S.D.N.Y. 2014).

## Exceptions

- This law applies only to cigarettes and smokeless tobacco products (e.g., it does not apply to cigars).
- The law exempts the distribution of 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 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 violation, \$500 for a second violation, and \$1,000 for each subsequent violation. Each distribution of a single package, coupon, coupon offer, gift certificate, gift card, or other similar offer, or rebate offer to an individual member of the general public in violation of this section is considered a separate violation.

## Youth Protections

**General Rule:** 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 persons under the age of 21 years, 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 individuals under 21 years of age. Mail-in and telephone requests for promotional offers must include appropriate efforts to ensure that the person is at least 21 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 **Home Delivery of Unsolicited Tobacco Products** for more information on home delivery of unsolicited tobacco products). [\*Calif. Business and Professions Code § 17534\*](#) [\*§ 17535\*](#) [\*§ 17536\*](#) [\*§ 17537.3\*](#)

**Enforcement:** Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1. Actions for injunction or a civil penalty of up to \$2,500 for each violation may be brought by the state Attorney General, district attorney, county counsel, city attorney, city prosecutor, or 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.

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

**General Rule:** The settling tobacco companies are prohibited from distributing free samples of cigarettes and smokeless tobacco products. [\*Master Settlement Agreement § III\(g\)\*](#) [\*§ VII\(c\)\*](#) [\*Smokeless Tobacco Master Settlement Agreement § III\(g\)\*](#) [\*§ VII\(c\)\*](#)

**Exceptions:** 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 “2-for-1” 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](#). Inquiries and reports of suspected violations can also be mailed to the: California Office of the Attorney General, Department of Justice, Tobacco Litigation & Enforcement Section, P.O. Box 944255, Sacramento, CA 94244-2550. More information about the MSA and details of the settlement itself can be found at <https://oag.ca.gov/tobacco/msa>.

**Penalty:** The AG may seek a court order to enforce these provisions or to 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.

## SAMPLES: TOBACCO CONTROL ACT

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**General Rule:** Manufacturers, distributors, and retailers may not distribute (or cause to be distributed) free samples of tobacco products — including all deemed products (for more information about products newly covered by the deeming rule, see the **Introduction**). [§ 21 U.S.C. § 333](#) [§ 372](#) [§ 387a-1](#) [§ 387f\(d\)](#) [21 C.F.R. § 1100.3](#) [§ 1140.16\(d\)](#)

### Notes

- This provision, among others, in the Tobacco Control Act, was challenged in federal court and upheld. *Discount Tobacco City & Lottery v. United States*, 674 F.3d 509 (6th Cir. 2012), cert. denied, 133 S.Ct. 1996 (2013). The lawsuit alleged that the

prohibition on tobacco samples, event sponsorship, and similar promotions improperly regulated speech and violated the First Amendment.

- In October 2017, the U.S. Food and Drug Administration (FDA) released updated guidance for the industry, clarifying the applicability of the prohibition on free tobacco product samples, including the effects on non-monetary exchanges (coupons and discounts), membership and rewards programs, contests, games of chance, and business-to-business exchanges. *The Prohibition of Distributing Free Samples of Tobacco Products: Guidance for Industry* (October 2017).

**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 containing no more than 15 grams of smokeless tobacco. The distributor of the free samples must take reasonable steps to ensure that free samples are limited to one package per consumer per day. A QAF must:

- Have a law enforcement officer present to check photo ID and ensure that access is limited only to those who can show they are of at least the minimum age to purchase tobacco;
- Be a temporary structure created for the purpose of distributing free samples of smokeless tobacco;
- Be enclosed by a barrier that is constructed of an opaque material that extends to at least eight feet in height and 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 display any tobacco product advertising on its exterior other than brand names in conjunction with words identifying the QAF.

QAFs are not permitted at any football, basketball, baseball, soccer, or hockey event. The FDA has the authority to add additional sporting or entertainment events to this list.

### Notes

- The QAF exception is limited to **smokeless tobacco** products, which is defined by the Tobacco Control Act to mean “any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.”
- 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 FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

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

**Note:** The FDA is required to adjust these amounts annually to reflect inflation.

## Section 5: Warning Labels

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A year after the release of the first U.S. Surgeon General's Report on Smoking and Health in 1964, the federal government required health warning labels on all cigarette packages, although the original warnings were significantly weaker than those in effect today. Indeed, evidence now indicates that tobacco manufacturers actually welcomed the introduction of these weak warnings in the expectation that they would later be able to argue, when sued by dying smokers, that their customers had been informed of the hazards of smoking and had made the choice to continue.<sup>13</sup> Since then, a wealth of scientific evidence has revealed the significant health risks posed by cigarettes and other commercial tobacco products. The federal government now requires health warning labels on the packages and advertisements of most tobacco products.

Under the Family Smoking Prevention and Tobacco Control Act (TCA), the U.S. Food and Drug Administration (FDA) has authority to require health warnings for tobacco packaging and advertisements. A vast majority of countries, including Canada, Brazil, Thailand, and all nations of the European Union, require graphic warnings or visual images for cigarette packages. In March 2020, the FDA issued its own graphic warning label rule that would require images depicting the negative health consequences of smoking to be prominently displayed on cigarette packages and advertisements in the U.S., though the implementation of the rule has been delayed due to litigation.<sup>14</sup>

This section covers laws that govern health warning labels on tobacco product packaging and advertisements. It does not address

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<sup>13</sup> See *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

<sup>14</sup> The rule has been challenged by the tobacco industry in two separate lawsuits: *Philip Morris USA Inc. and Sherman Group Holdings, LLC v. U.S. Food and Drug Administration et al.*, No. 1:20-cv-01181 (D.D.C. May 06, 2020) and *R.J. Reynolds Tobacco Company et al. v. U.S. Food and Drug Administration et al.*, No. 6:20-cv-00176 (E.D. Tex. Apr 03, 2020). Pursuant to a court order issued on February 10, 2022, the rule's effective date has been delayed until April 19, 2023. See U.S. Food & Drug Admin., *Cigarette Labeling and Health Warning Requirements*.

secondhand smoke warnings posted in public places, which are sometimes required under local “use” laws.

## CIGAR WARNING LABELS

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**General Rule:** Pursuant to agreements between the U.S. 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. [FTC Agreements, File Numbers 0023199–0023205](#)

**Note:** For more information about this agreement, see the [FTC’s website](#).

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

**Penalty:** Not specified.

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**General Rule:** Cigar manufacturers or importers must label each retail package of cigars shipped for distribution in California with one of the three warnings listed in the law. Display boxes or containers used to sell individual cigars must be clearly labeled. [Calif. Health and Safety Code § 104550–104552](#)

**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 Health and Safety Code 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, any district attorney, 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.

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**General Rule:** The U.S. Food and Drug Administration (FDA)'s deeming rule extended the FDA's authority to cigars. The deeming rule established warning label requirements for cigar packaging and advertisements (see **Introduction** for more information about the FDA's deeming rule). This aspect of the rule was challenged by industry, however, and in July 2020, the United States Court of Appeals for the District of Columbia Circuit upheld the lower court's order vacating the health warning requirements for cigars and pipe tobacco and remanded the Deeming Rule's warning requirements back to the FDA. See *Cigar Ass'n. of Am. v. U.S. Food & Drug Admin.*, 964 F.3d. 56 (D.C. Cir. 2020). Although the agency is enjoined from enforcing warning label requirements in the deeming rule as to cigars and pipe tobacco, manufacturers can still voluntarily comply.

## **CIGARETTE WARNING LABELS**

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**General Rule:** All cigarette packages made, sold, or distributed within the United States, and all related advertising and marketing, shall be required to bear one of eleven specified warnings regarding associated health risks. The warning labels must adhere to placement and typography restrictions. (For example, the warnings must cover the top 50 percent of 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. Food and Drug Administration (FDA) 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 tobacco products. [§ 21 U.S.C. § 387n](#) [§ 15 U.S.C. § 1333](#) [§ 1336](#) [§ 1338](#) [§ 1339](#)

**Note:** The FDA first issued graphic label regulations on June 22, 2011. However, the warning label requirements were struck down. See *R.J. Reynolds Tobacco Co. v. U.S. F.D.A.*, Case No. 1:11-cv-01482 (D.D.C. Aug 16, 2011). After a lawsuit from public health groups, the FDA issued a new graphic warning rule in March of 2020. However, that rule was immediately litigated by the industry. *R.J. Reynolds Tobacco Co. et al. v. U.S. F.D.A.*, Case No. 6:20-cv-00176-JCB (E.D. Texas Apr. 03, 2020). As of the date of publication, the litigation is ongoing and the effective date of the rule has been postponed until July 8, 2023. See U.S. Food & Drug Admin., [Cigarette Labeling and Health Warning Requirements](#).

**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.

**Enforcement:** The FDA is authorized to enforce this provision.

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

## **SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS: TOBACCO CONTROL ACT**

**General Rule:** 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. The U.S. Food and Drug Administration (FDA) 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. [§ 21 U.S.C. § 387n](#) [§ 15 U.S.C. § 4402](#) [§ 4404](#) [§ 4405](#) [§ 21 C.F.R. § 1143.3\(a\),\(b\)](#)

**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 FDA is authorized to enforce this provision.

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

## **TOBACCO PRODUCT LABELS AND ADVERTISING WARNINGS: TOBACCO CONTROL ACT**

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**General Rule:** As of August 10, 2018, the U.S. Food and Drug Administration (FDA)'s deeming rule requires a nicotine addictiveness warning on all packages and advertisements for cigarette tobacco, roll-your-own tobacco, and covered tobacco products (other than cigars), such as pipe tobacco, hookah tobacco, gels, dissolvables, and electronic nicotine delivery systems containing anything made or derived from tobacco (see **Introduction** for more information about the FDA's deeming rule). The warning must read "WARNING: This product contains nicotine. Nicotine is an addictive chemical." For covered tobacco products that do not contain nicotine, manufacturers must submit a self-certification to the FDA and their products must bear a warning label that reads: "This product is made from

tobacco.” These warnings must adhere to placement and typography restrictions. As of September 11, 2018, all distribution of products without such warnings must stop. Additionally, retailers may not sell noncompliant products as of August 10, 2018. [§ 21 U.S.C. § 387a\(b\)](#) [§ 387c](#) [§ 387n](#) [§ 387f\(d\)](#) [21 C.F.R. § 1143.3\(a\),\(b\)](#)

**Note:** The FDA’s implementation of its packaging and advertising warnings requirements for cigars and pipe tobacco was enjoined as a result of litigation. See overview of [Cigar Association of America v. FDA](#), 315 F.Supp. 3rd (D.D.C. 2018).

**Exceptions:** If a product package is too small or otherwise unable to accommodate a label, it is exempt from these requirements only if the required information or label appears on the carton or other outer container or wrapper. If the carton, outer container, or wrapper does not have sufficient space to display the information, the required information may be located on a tag permanently affixed to the package.

These provisions do not apply to cigars or tobacco products sold outside the United States. A retailer that meets safe harbor requirements may have a defense for selling noncompliant products. A retailer of tobacco products may not be penalized for selling noncompliant products if all the following requirements are met: (1) the product contains a health warning; (2) the product was supplied to the retailer by a distributor, manufacturer, or importer; and (3) the retailer has not altered the product in a material way.

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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.

## Section 6: Taxation, Licensing, and Reporting

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Federal and state governments tax tobacco products to raise revenue and discourage consumer use. However, the taxes collected do not begin to recoup the costs that commercial tobacco imposes on society. Tobacco-caused illnesses cost the United States billions of dollars in health care costs and lost productivity each year. Smoking causes an estimated 40,000 additional deaths annually in the state,<sup>15</sup> including more than a fourth of cancer deaths in California.<sup>16</sup> Illnesses caused by commercial tobacco result in an estimated \$13.29 billion in additional California healthcare costs, \$3.58 billion in Medicaid costs due to smoking, and government expenditures that amount to \$710 of additional annual tax burden on the average household.<sup>17</sup>

California imposes four excise taxes/surtaxes on the sale or possession of cigarettes that amount to \$2.87 per pack of 20, with the proceeds dedicated to healthcare, tobacco research and prevention, a child and family trust fund, medical research, and breast cancer programs.<sup>18</sup> An excise tax on other tobacco products, such as cigars, pipe tobacco, snuff, electronic smoking devices, and chewing tobacco, is set annually at a rate designed to match cigarette taxes, and is collected at the wholesale distribution of these other tobacco products.

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15 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING: 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), <https://www.ncbi.nlm.nih.gov/books/NBK179276>.

16 Joannie Lortet-Tieulent et al. *State-level Cancer Mortality Attributable to Cigarette Smoking in the United States*, 176 JAMA INTERNAL MED. 1792-98 (2016), doi:10.1001/jamainternmed.2016.6530.

17 Campaign for Tobacco-Free Kids. *The Toll of Tobacco in California* (2021), [www.tobaccofreekids.org/problem/toll-us/california](http://www.tobaccofreekids.org/problem/toll-us/california).

18 California Dep't Tax & Fee Administration, *Tax Guide for Cigarettes and Tobacco Products*, <https://cdtfa.ca.gov/industry/cigarette-and-tobacco-products.htm>.

Also, as of July 1, 2022, a purchaser of electronic cigarettes, at retail, must pay the retailer a tax of 12.5 percent (which the state will collect from the retailer). Under this new law, all revenues, interest, and penalties, less refunds, collected from this e-cigarette tax will be deposited into the California Electronic Cigarette Excise Tax Fund. [The California Legislative Information website](#) has more information.

Raising the price of tobacco products through taxes is one of the most effective ways to prevent and reduce smoking, especially among youth, who are especially susceptible to increased prices. Research suggests, for example, that for every 20 percent price increase in the real price of cigarettes, overall demand for cigarettes would decrease by approximately 10 percent, and youth smoking initiation would decline by as much as 8.6 percent.<sup>19</sup> Also, effectively tracking tobacco businesses through licensing and recordkeeping is an effective tool for both tax collection and preventing illegal sales of licensed products.

By increasing tobacco prices and ensuring that taxes are paid by all tobacco sellers, California seeks to reduce both the number of tobacco users in the state and future medical and insurance expenses. This section covers taxes imposed on tobacco products sold in California, reporting requirements that ensure these taxes are paid correctly, laws and penalties for evasion/forgery, state licensing of manufacturers/importers/wholesalers/retailers, federal requirements regarding various records and fees, and license penalties for sales to underage people.

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<sup>19</sup> U.S. Community Preventive Services Task Force, *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products* (2012), <https://www.thecommunityguide.org/findings/tobacco-use-and-secondhand-smoke-exposure-interventions-increase-unit-price-tobacco>.

# Taxation

## CALIFORNIA STATE TOBACCO TAX

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**General Rule:** Under the Cigarette and Tobacco Products Tax Law, California imposes four taxes on the distribution of cigarettes and other tobacco products, including:

- A tax of 12 cents per package of 20 cigarettes, of which 2 cents are earmarked for breast cancer research and control and the remaining 10 cents are allocated to the general fund.
- 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 tobacco health education, tobacco-related disease research, healthcare 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 6 through 12. The [California Tobacco Control Program website](#) has more information on the formula for the designation of Proposition 99 surtax revenue.
- 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.

- Effective April 1, 2017, a Proposition 56 surtax of two dollars per package of 20 cigarettes. Other tobacco products, including electronic cigarettes, are taxed on the basis of the wholesale cost of the product at a rate set by the California Department of Tax and Fee Administration (CDTFA). [The CDTFA on CA.gov](#) has more information on the wholesale cost.

Distributors are responsible for paying state cigarette taxes through the use of tax stamps or meter impressions (see **Cigarette Tax Stamps/Meter Impressions**). Non-cigarette tobacco products are subject to a surtax that is set annually by the CDTFA.

The surtax rate is calculated to be equivalent to the total tax on cigarettes. Distributors are responsible for paying state tobacco taxes.

[§ Calif. Revenue and Taxation Code § 30001-30483](#) [§ Calif. Health and Safety Code § 104350-104495](#) [§ 104500-104545](#) [§ 130100-130158](#)

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

- Sales to commissaries, exchanges, and ship stores of the U.S. armed services;
- Sales to the U.S. Department of Veterans Affairs;
- 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; or
- Use or consumption of untaxed cigarettes brought into the state in a single lot of not more than 400 cigarettes (i.e., two cartons) by individuals for their own use or consumption.

**Enforcement:** The CDTFA 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 fails or refuses to file a report required by the CDTFA is guilty of a misdemeanor and subject to a fine up to \$1,000 for each offense. Anyone required to make, render, sign or verify a report to the CDTFA, and makes a fraudulent report with the intent to defeat or evade the determination required by law is guilty of a misdemeanor. Each misdemeanor offense is punishable by imprisonment up to one year in the county jail and/or a fine of not less than \$300 and not more than \$5,000.

Anyone who intentionally engages in tax evasion under the Cigarette and Tobacco Products Tax Law is guilty of a felony if the amount of tax liability is \$25,000 or more in any one-year period. Each felony offense is punishable by imprisonment and/or a fine of not less than \$5,000 and not more than \$20,000 (see later in this section for other penalties associated with violation of state tobacco tax laws).

**Note:** State law expressly preempts local governments from imposing additional taxes on cigarettes and tobacco products.

## CIGARETTE TAX STAMPS/METER IMPRESSIONS

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**General Rule:** Distributors pay cigarette taxes through the use of stamps or meter impressions. The California Department of Tax and Fee Administration (CDTFA) 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 must 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. Meter impressions must 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 **Cigarette Warning Labels** and **Tobacco Product Labels and Advertising Warnings: Tobacco Control Act**);
- 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, 26 United States Code Section 5754; or
- The package bears a brand name of a participating manufacturer in the Master Settlement Agreement and is imported by an entity other than the participating manufacturer.

[Calif. Revenue and Taxation Code § 30161–30165](#) [Calif. Code of Regulations Title 18 § 4048](#) [4054](#) [4081](#)

**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 CDTFA 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 laws (see **Samples, Coupons, and Promotional Offers: California Law**; **Samples, Coupons, and Promotional Offers: MSA/STMSA**; **Samples: Tobacco Control Act**), making this exception highly unlikely to apply.

**Enforcement:** The CDTFA is authorized to enforce this law.

**Penalty:** The CDTFA shall revoke the license issued to a distributor under the Revenue and Taxation Code if the distributor violates this law (see elsewhere in this section for penalties that attach to various violations relating to tax stamps and meter impressions).

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## COUNTERFEIT TAXED OR METER CIGARETTES

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**General Rule:** 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 **Cigarette Tax Stamps/Meter Impressions** for more information on tax stamps and meter impressions). [\*Calif. Business and Professions Code § 22974.3\(a\)\*](#) [\*§ 22978.2\(a\)\*](#)

**Enforcement:** The California Department of Tax and Fee Administration and local law enforcement agencies are authorized to enforce this law.

**Penalty:** The unstamped or fraudulently stamped 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 to \$5,000 and/or imprisonment not to exceed one year, and revocation of a retailer, distributor, or wholesaler license (see later in this section 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 five years, a fine of \$5,000 to \$50,000 and/or imprisonment not to exceed one year, and revocation of a retailer, distributor, or wholesaler license (see later in this section for more information on retailer, distributor, and wholesaler licenses).

- In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## COUNTERFEIT TOBACCO

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**General Rule:** Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes and tobacco products, including any article or product containing at least 50 percent tobacco, is illegal. Counterfeit tobacco products include tobacco products with false manufacturing labels and/or fraudulent tax stamps or meter impressions. [\*Calif. Revenue and Taxation Code § 30474.1\*](#) [\*§ 30477\*](#)

**Enforcement:** The California Department of Tax and Fee Administration and local law enforcement agencies are authorized to enforce this law.

**Penalty:** The illegal products are subject to seizure, forfeiture, and destruction, and violators are guilty of a misdemeanor. If fewer 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 later in this section for more information on distributor, wholesaler, and manufacturer licenses).

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## FEDERAL TOBACCO TAX

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**General Rule:** The manufacturer or importer of tobacco products pays taxes in the amount specified for each type of tobacco product, including cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco. The federal tax on cigarettes is currently \$1.01 per

20 pack. Small cigars are taxed by unit at the same rate as cigarettes. All other cigars are taxed based on manufacturer price with a cap on the maximum. The federal taxes on smokeless tobacco, pipe tobacco, and roll-your-own tobacco are calculated according to weight. [§ 26 U.S.C. § 5701-5704](#) [§ 5761-5763](#)

**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 the Alcohol and Tobacco Tax and Trade Bureau.

**Penalty:** A range of civil and criminal penalties may be incurred following 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.

## FORGERY OF STAMPS/METER IMPRESSIONS

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**General Rule:** It is illegal to fraudulently make, forge, alter, reuse, or counterfeit any tax stamp or meter impression (see **Cigarette Tax Stamps/Meter Impressions** for more information on tax stamps and meter impressions). [§ Calif. Revenue and Taxation Code § 30473](#)

**Enforcement:** The California Department of Tax and Fee Administration 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 **Administrative Penalties Applicable to All Licensees** may apply.

## MAIL ORDER/INTERNET CIGARETTE TAXATION

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**General Rule:** In order to sell cigarettes or tobacco products, including any article or product containing at least 50 percent tobacco, to a person in California over the internet, over 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 PACT (former Jenkins) Act (see **Reporting Requirements: PACT Act**); (2) it must obtain and maintain any applicable license under the California Business and Professions Code, as if the delivery-sale 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 California Department of Tax and Fee Administration may provide information to the state Attorney General (AG) regarding a seller's failure or attempt to comply with the PACT Act. The AG must provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the PACT Act. The AG may require a seller to report its delivery sales of cigarettes and tobacco products to consumers within California. [\*Calif. Revenue and Taxation Code § 30101.7\*](#)

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

**Enforcement:** The State Board of Equalization enforces the licensing and tax portions of this section. The AG, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this law against violators.

**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 and \$2,000 for a first violation; \$2,500 and \$3,500 for a second violation within a five-year period; \$4,000 and \$5,000 for a third violation within a five-year period; \$5,500 and \$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.

## POSSESSION OR SALE OF FALSE STAMPS/METER IMPRESSIONS

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**General Rule:** It is illegal to possess, sell, offer to sell, buy, or offer to buy any false, fraudulent, or unaffixed tax stamps or meter impressions (see **Cigarette Tax Stamps/Meter Impressions** for more information on tax stamps and meter impressions). [\*Calif. Revenue and Taxation Code § 30473.5\*](#)

**Exception:** In the possession of a licensed distributor, “unaffixed stamps” do not include unused and unapplied stamps acquired from the California Department of Tax and Fee Administration (CDTFA) or its authorized agent.

**Enforcement:** The CDTFA 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 CDTFA shall destroy any stamps seized under this law.

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## UNTAXED OR UNMETERED CIGARETTES

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**General Rule:** 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 **Cigarette Tax Stamps/Meter Impressions** for a summary of the tax stamp and meter impression requirements). [\*Calif. Revenue and Taxation Code § 30474\*](#)

**Enforcement:** The California Department of Tax and Fee Administration (CDTFA) 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 are also subject to a fine amounting to \$100 per violating carton of 200 cigarettes or portion thereof, divided evenly between the local prosecuting jurisdiction and the CDTFA.

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

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## UNTAXED TOBACCO PRODUCTS

**General Rule:** 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. [§ Calif. Business and Professions Code § 22974.3\(b\)](#) [§ 22978.2\(b\)](#) [§ 22981](#)

**Enforcement:** The California Department of Tax and Fee Administration 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, see the penalties listed in **Transactions with Unlicensed Entities** and **Administrative Penalties Applicable to All Licensees**.

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## USER FEES: TOBACCO CONTROL ACT

**General Rule:** Tobacco manufacturers and importers must pay a quarterly fee that is earmarked for tobacco regulation activities. The annual fee varies by fiscal year and class of tobacco products. [§ 21 U.S.C. § 333](#) [§ 372](#) [§ 387s](#) [§ 21 C.F.R. § 1100.3](#) [§ 1150.1-1150.17](#)

**Note:** In order to assist the U.S. Food and Drug Administration (FDA) in calculating user fees, domestic tobacco manufacturers and importers of certain classes of products are required monthly to submit information to the FDA (formerly submitted to the U.S. Department of Agriculture) about product units “removed (from storage) into commerce” and taxes paid per class of product. These classes are established by statute and include cigarettes, snuff, chewing tobacco, roll-your-own tobacco, cigar, and pipe tobacco.

Additionally, no later than August 20, 2016, the FDA required manufacturers and importers of newly-deemed cigars and pipe tobacco to submit data to calculate fees and payments. There have been efforts to assess these fees for e-cigarette manufacturers as well but, to date, the statute has not been amended to include e-cigarettes or other newly deemed products. (See **Required Disclosures to the U.S. Food and Drug Administration: Tobacco Control Act** for other reporting requirements).

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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.

## Licensing

### ADMINISTRATIVE PENALTIES APPLICABLE TO ALL LICENSEES

**General Rule:** In addition to any other penalties, violators of the California Cigarette and Tobacco Products Licensing Act of 2003, sections 22970–22991 of the California Business and Professions Code, are subject to administrative penalties. [☞ Calif. Business and Professions Code § 22974.7](#) [☞ 22978.7](#) [☞ 22979.7](#)

**Note:** See **Tobacco Retailer License, Retailer License Display, Licensing Penalties for Illegal Sales to Underage Individuals, Inspections,** and **Transactions with Unlicensed Entities** for summaries of relevant provisions of the California Cigarette and Tobacco Products Licensing Act.

As of January 1, 2017, retailers of electronic smoking devices are required to comply with licensing requirements under state law.

**Note:** See **Tobacco Retailer License, Retailer License Display, Licensing Penalties for Illegal Sales to Underage Individuals, Inspections,** and **Transactions with Unlicensed Entities** for more information about these requirements.

**Enforcement:** The California Department of Tax and Fee Administration (CDTFA) is authorized to enforce this law.

**Penalty:** The CDTFA 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 defined as cigarettes under this law, or \$5,000.

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

## DISTRIBUTOR AND WHOLESALER LICENSES

**General Rule:** Tobacco distributors and wholesalers must be licensed by the California Department of Tax and Fee Administration (CDTFA). Each distributor or wholesaler must pay a license fee of \$1,200. A \$1,200 license renewal fee is required each year. This license fee requirement is in addition to the California Revenue and Taxation Code license requirements described below. [§ Calif. Business and Professions Code § 22971](#) [§ 22975-22978.8](#) [§ 22980.2](#) [§ 22981](#) [§ 22990.7](#)

## Enforcement

- The CDTFA is authorized to enforce this license fee requirement. Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1.
- Since 2019, the CDTFA must report to the Legislature annually (on and before January 1) regarding the adequacy of funding for the Cigarette and Tobacco Products Licensing Act of 2003, including recommendations for funding levels sufficient to maintain an effective enforcement program.

**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 the CDTFA or a law enforcement agency that a valid license is required constitutes a separate violation. Continued sales or gifting after notification by the CDTFA 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 CDTFA 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 **Administrative Penalties Applicable to All Licensees** may apply.

## Additional Tobacco Distributor Licensing

**General Rule:** Tobacco distributors must be licensed by the California Department of Tax and Fee Administration (CDTFA) for each place of business. This license requirement is in addition to the California Business and Professions Code license requirements described above. License applicants must submit a security deposit (minimum of \$1,000) to the Board of Equalization. The security is conditioned upon the lawful performance of all tobacco tax related requirements. [\*Calif. Revenue and Taxation Code § 30140-30149\*](#)

**Enforcement:** The CDTFA 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 **Administrative Penalties Applicable to All Licensees** may apply.

## Additional Tobacco Wholesaler Licensing

**General Rule:** Tobacco wholesalers must be licensed at no cost by the California Department of Tax and Fee Administration (CDTFA) for each place of business. This license requirement is in addition to the California Business and Professions Code license requirements described above. This license must be prominently displayed at each place of business. [\*Calif. Revenue and Taxation Code § 30155-30159\*](#)

**Enforcement:** The CDFTA 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 **Administrative Penalties Applicable to All Licensees** may apply.

## INSPECTIONS

**General Rule:** Any peace officer or authorized California Department of Tax and Fee Administration (CDTFA) 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. [\*Calif. Business and Professions Code § 22980\*](#) [\*§ 22981\*](#) [\*Calif. Revenue and Taxation Code § 30165.1\*](#)

**Enforcement:** State and local law enforcement agencies and the CDTFA are authorized to enforce this law.

**Penalty:** Anyone who fails to allow 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 **Administrative Penalties Applicable to All Licensees** may apply.

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**General Rule:** California Department of Tax and Fee Administration (CDTFA) 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. [↻ Calif. Revenue and Taxation Code § 30435](#) [↻ 30471](#)

**Enforcement:** The CDTFA 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 **Administrative Penalties Applicable to All Licensees** may apply.

## LICENSING DATABASE

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**General Rule:** Upon request, the California Department of Tax and Fee Administration will 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. [🔗 Calif. Business and Professions Code § 22973.2](#) [🔗 22978](#) [🔗 22979.3](#)

**Enforcement:** Not applicable.

**Penalty:** Not applicable.

## LICENSING PENALTIES FOR ILLEGAL SALES TO UNDERAGE INDIVIDUALS

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**General Rule:** Retailers convicted of illegal sales to underage individuals, a STAKE act violation, are subject to license-related penalties. [🔗 Calif. Business and Professions Code § 22958](#) [🔗 22974.8](#)

**Enforcement:** The California Department of Tax and Fee Administration (CDTFA) is charged with enforcing this law.

**Penalty:** The following penalties apply:

- Upon a first conviction, the retailer shall be fined \$400 to \$600.
- Upon a second conviction within a five-year period, the retailer shall be fined \$900 to \$1,000.
- Upon a third conviction within a five-year period, the retailer shall be fined \$1,200 to \$1,800 and the California Department of Public Health shall, upon request, notify the CDTFA. The retailer shall be assessed an additional \$250 penalty by the CDTFA, and the CDTFA shall suspend the retailer's license for 45 days.
- Upon a fourth conviction within a five-year period, the retailer shall be fined \$3,000 to \$4,000 and the California Department of Public Health shall, upon request, notify the CDTFA. The retailer shall be assessed an additional \$250 penalty by the CDTFA, and the CDTFA shall suspend the retailer's license for 90 days.
- Upon a fifth conviction within a five-year period, the retailer shall be fined \$5,000 to \$6,000 and the California Department of Public Health shall, upon request, notify the CDTFA. The retailer shall be

assessed an additional \$250 penalty by the CDTFA, and the CDTFA shall revoke the retailer's license.

- The CDTFA must give a retailer at least 10 days' written notice of a pending suspension or revocation and an opportunity to appeal the suspension, revocation, and/or civil penalty, but only for the purpose of correcting a mistake or clerical error.
- 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 of a franchise location are not accumulated against a new retail owner of the same franchise location.

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## LICENSE REVOCATION IF FELONY CONVICTION

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**General Rule:** 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 **Forgery of Stamps/Meter Impressions**) or 30480 (see **California State Tobacco Tax**); or (2) the license holder has had any permit or license revoked under any provision of the California Revenue and Taxation Code. [\*Calif. Business and Professions Code § 22974.4\*](#) [\*§ 22978.6\*](#)

As of January 1, 2017, retailers of electronic smoking devices are required to comply with licensing requirements under state law.

**Note:** See **Tobacco Retailer License, Retailer License Display, Licensing Penalties for Illegal Sales to Underage Individuals, Inspections,** and **Transactions with Unlicensed Entities** for more information about these requirements for retailers of electronic smoking devices.

**Enforcement:** The California Department of Tax and Fee Administration is authorized to enforce this law.

**Penalty:** Revocation of the license.

## LICENSE SUSPENSION OR REVOCATION

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**General Rule:** 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, sections 22970–22991 of the California Business and Professions Code, 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. [↻ Calif. Business and Professions Code § 22980.3](#) [↻ 22980.2\(b\)](#)

**Note:** See **Untaxed or Unmetered Cigarettes, Tobacco Retailer License, Retailer License Display, Licensing Penalties for Illegal Sales to Underage Individuals, Distributor and Wholesaler Licenses, Manufacturer and Importer License and Reporting, Record Retention by State Licensees, Inspections,** and **Transactions with Unlicensed Entities** for summaries of relevant provisions of the tobacco tax laws and the California Cigarette and Tobacco Products Licensing Act.

As of January 1, 2017, retailers of electronic smoking devices are required to comply with licensing requirements under state law.

**Note:** See **Tobacco Retailer License, Retailer License Display, Licensing Penalties for Illegal Sales to Underage Individuals, Inspections,** and **Transactions with Unlicensed Entities** for more information about these requirements for retailers of electronic smoking devices.

**Enforcement:** The California Department of Tax and Fee Administration (CDTFA) is authorized to enforce this law.

**Penalty:** For a first conviction, the penalty is a written notice from the CDTFA detailing the suspension and revocation provisions of this law, and the CDTFA 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.

## MANUFACTURER CERTIFICATION

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**General Rule:** A cigarette 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. [↻ Calif. Revenue and Taxation Code § 30165.1\(b\)](#) [↻ 30165.1\(c\)](#) [↻ \(5\)](#) [↻ 30165.1\(m\)](#)

**Enforcement:** The California Department of Tax and Fee Administration and the AG are authorized to enforce this law.

**Penalty:** Individuals who make a certification pursuant to this subdivision that asserts the truth of any material matter that they know or should know to be false are guilty of a misdemeanor punishable by a fine of not more than \$1,000, imprisonment of up to one year in the county jail, or both.

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## Foreign Manufacturers

**General Rule:** Cigarette 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 Department and a valid importer license issued by the California Department of Tax and Fee Administration (CDTFA). 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. [\*Calif. Revenue and Taxation Code\* § 30165.1\(b\)](#) [\*30165.1\(c\)\(4\)\(B\)\*](#) [\*30165.1\(m\)\*](#)

**Enforcement:** The CDTFA and the AG are authorized to enforce this law.

**Penalty:** Individuals who make a certification pursuant to this subdivision that asserts the truth of any material matter that they know or should know to be false are guilty of a misdemeanor punishable by a fine of not more than \$1,000, imprisonment of up to one year in the county jail, or both.

## Attorney General Brand Family Directory

**General Rule:** The state Attorney General (AG) shall publish and maintain a website directory listing cigarette 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. [!\[\]\(afb55c13f09494fbac30e33c9c63a82c\_img.jpg\) \*Calif. Revenue and Taxation Code § 30165.1\(c\)-\(l\)\*](#)

**Enforcement:** The California Department of Tax and Fee Administration (CDTFA) 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 CDTFA 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 **Administrative Penalties Applicable to All Licensees** may apply.

## **MANUFACTURER AND IMPORTER LICENSE AND REPORTING**

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**General Rule:** Tobacco product manufacturers and importers must be licensed by the California Department of Tax and Fee Administration (CDTFA). To obtain and maintain a license, the manufacturer or importer must supply the CDTFA with specified lists, certifications, and consents.

Every manufacturer or importer of chewing tobacco or snuff must pay a one-time license fee of \$10,000, and every manufacturer or importer of other tobacco products, including cigarettes, must pay a one-time license fee of \$2,000.

Every tobacco manufacturer and importer must file a monthly report to the CDTFA 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.

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 CDTFA to enforce state manufacturer and importer licensing requirements, the manufacturer requirements relating to the Master Settlement Agreement (MSA), 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. [☞ Calif. Business and Professions Code § 22971](#) [☞ 22971.7](#) [☞ 22979](#) [☞ 22979.21-22979.24](#) [☞ 22979.7](#) [☞ 22980.2](#) [☞ Calif. Government Code § 6250-6276.48](#)

**Enforcement:** The CDTFA 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 MSA 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 CDTFA and the state Attorney General.

**Penalty:** Unlicensed manufacturers and importers are guilty of a misdemeanor and subject to a fine of up to \$1,000 and/or imprisonment not to exceed one year. For a first offense, the CDTFA may revoke or suspend the license or licenses of the manufacturer and/or importer pursuant to the procedures applicable to the revocation of a license, which include a written notice and an opportunity for a hearing. For a second or subsequent offense, the CDTFA 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. The procedures for revocation are set forth in [Section 30148 of the California 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 **Administrative Penalties Applicable to All Licensees** may apply.

## RECORD RETENTION BY STATE LICENSEES

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**General Rule:** Each retailer, distributor, wholesaler, manufacturer, and importer must retain purchase and sale invoices for tobacco products for a period of four years. Such records must be kept at the location identified in the license for a period of one year and made available for inspection upon request of the California Department of Tax and Fee Administration (CDTFA) or by a law enforcement agency. [§ Calif. Business and Professions Code § 22974](#) [§ 22978.1](#) [§ 22979.4](#) [§ 22979.5](#) [§ 22981](#)

**Enforcement:** The CDTFA 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 **Administrative Penalties Applicable to All Licensees** may apply.

## RETAILER LICENSE DISPLAY

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**General Rule:** A tobacco retailer must 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 California Department of Tax and Fee Administration (CDTFA) 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. [🔗 Calif. Business and Professions Code § 22972](#)  
[🔗 22974.5](#) [🔗 22980.5](#)

**Enforcement:** The CDTFA 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 is subject to a civil penalty of \$1,000 for each offense.

In addition, the penalties listed in **Administrative Penalties Applicable to All Licensees** may apply.

## TOBACCO RETAILER LICENSE

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**General Rule:** Tobacco retailers must be licensed by the California Department of Tax and Fee Administration (CDTFA) 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 apply for a 12-month license and pay a license fee of \$265 for each retail location. Beginning on and after January 1, 2017, retailers must apply annually to renew their licenses with a \$265 fee.

As of January 1, 2017, retailers of electronic smoking devices are required to comply with tobacco retailer licensing requirements under state law. Retailers may also sell these products under any existing, valid tobacco retailer license.

A tobacco retailer license is not assignable or transferable. A retailer may not obtain a license for a location if the retailer's license for the same location 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 law. [☞ Calif. Business and Professions Code § 22971-22974.8](#) [☞ 22980.2](#) [☞ 22981](#) [☞ 22990.7](#)

## Notes

- 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 underage individuals.

In 2012, the CDTFA implemented a new policy based on a legal opinion that determined that catering trucks, lunch wagons, and other mobile facilities cannot be licensed as tobacco retail locations. Tobacco products cannot be sold from a mobile location. "[Cigarette and Tobacco Products Licensing Act Annotations \(Business Taxes Law Guide — Revision 2019\)](#)"

**Enforcement:** The CDTFA 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](#).

No later than January 1 of each year, the CDTFA must report to the Legislature regarding the adequacy of funding for the Cigarette and Tobacco Products Licensing Act of 2003, including recommendations for funding levels sufficient to maintain an effective enforcement program.

**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 CDTFA that a license has been suspended or revoked 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 **Administrative Penalties Applicable to All Licensees** may apply.

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## TRANSACTIONS WITH UNLICENSED ENTITIES

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**General Rule:** No entity shall sell tobacco products to or purchase tobacco products from an entity that is illegally 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 or that fails to comply with federal ingredient reporting provisions. [\*Calif. Business and Professions Code § 22980.1\*](#) [\*§ 22981\*](#) [\*15 U.S.C. § 1335a\*](#)

**Enforcement:** The California Department of Tax and Fee Administration 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 **Administrative Penalties Applicable to All Licensees** may apply.

## Reporting

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### MANUFACTURER AND IMPORTER REPORTING

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See **Manufacturer and Importer License and Reporting**

## REGISTRATION OF TOBACCO ESTABLISHMENTS: TOBACCO CONTROL ACT

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**General Rule:** 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. Food Drug Administration (FDA). Registration information shall be made available to the public. [🔗 21 U.S.C. § 333](#) [🔗 372](#) [🔗 387e](#)

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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.

## REPORTING REQUIREMENTS: PACT ACT

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**General Rule:** The Prevent All Cigarette Trafficking Act (PACT Act) requires cigarette or smokeless tobacco product sellers to register with the California Department of Tax and Fee Administration (CDTFA) and also file monthly reports with CDTFA and the California Attorney General no later than the 10th day of each calendar month. As of 2021, the definition of “cigarette” in the PACT Act includes all forms of e-cigarettes, their component parts, and accessories. The U.S. Attorney General will compile a list of delivery sellers that have not registered or not complied with this law. Common carriers (e.g., UPS, FedEx) are prohibited from delivering packages for delivery sellers that are on the list. In most instances, the PACT Act makes cigarettes, smokeless tobacco, and e-cigarettes (including component parts and accessories sold separately) nonmailable in the U.S. mail. [🔗 15 U.S.C. 10A](#) [🔗 18 U.S.C. § 1716E](#)

**Note:** The PACT Act was preceded by the Jenkins Act, which required cigarette and smokeless tobacco sellers who shipped or advertised to buyers in another state who are not distributors, to register and file monthly reports.

**Enforcement:** The U.S. Attorney General is authorized to administer and enforce this 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.

Common carriers or other delivery services who knowingly violate the 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.

## **REQUIRED DISCLOSURES TO THE U.S. FOOD AND DRUG ADMINISTRATION: TOBACCO CONTROL ACT**

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**General Rule:** Manufacturers and importers of tobacco products must provide the U.S. Food and Drug Administration (FDA) with a list of its currently marketed products and the following for each product:

- A list of the ingredients;
- A description of content, delivery, and form of nicotine;
- A list of smoke constituents that are harmful or potentially harmful (HPHCs) to health and reports of required testing; and
- All documents related to health, toxicological, behavioral, and physiological effects.

[21 U.S.C. § 333](#) [372](#) [387](#) [387d](#) [387i](#) [387o](#) [15 U.S.C. § 1333](#) [21 C.F.R. § 1100.3](#) [1150.1-1150.17](#)

## Notes

- Ingredient lists, although collected by the FDA, are not available for public disclosure because of the need to protect proprietary information of the manufacturers.
- At the request of the FDA, 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 the FDA upon request to assure that a tobacco product is not adulterated or misbranded, and to otherwise protect public health.
- In April 2012, the FDA issued a notice establishing a list of HPHCs. The notice includes the criteria the FDA used to develop the list and the reasons the FDA may add or remove constituents from the list. 77 Fed. Reg. 20034 (Apr. 3, 2012). At the time of this digest's publication, the FDA was gradually phasing in enforcement, starting with 20 constituents for which testing is already widely available. The FDA prepared guidance on the abbreviated HPHC list that tobacco product manufacturers and importers must report. Draft Guidance for Industry: Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under § 904(a)(3) of the Federal Food, Drug, and Cosmetic Act (Mar. 2012).
- In 2019, the FDA proposed to add 19 additional constituents to the HPHC list to capture unique toxicants or chemicals that exist in newly deemed products, especially e-cigarettes. The FDA has yet to finalize this rule.

**Enforcement:** The FDA is authorized to enforce this provision with the help of other federal agencies and state governments.

**Penalty:** Any person who violates this provision is 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 is 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 the FDA 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.

# Section 7. Master Settlement Agreement (MSA) Funds

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In November 1998, forty-six states, the District of Columbia, and five U.S. territories settled lawsuits against the five largest cigarette manufacturers. This settlement, known as the Master Settlement Agreement (or MSA), requires the tobacco industry to pay these governments approximately \$9 billion annually, indefinitely, and provides restrictions on the sale and marketing of cigarettes by those companies. This section describes the amount of MSA funds that accrue to California, state and local government-issued bonds backed by future MSA payments, and court-ordered bonds that cigarette manufacturers must post to challenge judgments against them for MSA violations.

## MSA PAYMENTS

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**General Rule:** Under the Master Settlement Agreement, 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. [↻ Master Settlement Agreement \(MSA\) § VII\(c\)](#) [↻ IX](#) [↻ XI](#) [↻ Exhibit A](#)

**Note:** During 2020–2021, California received between \$814 million and \$919 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 the 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.

## MSA BONDS

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**General Rule:** 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 **MSA Payments** for a summary of the MSA payments). [\*Calif. Government Code § 63049-63049.55\*](#)

**Note:** State and local agencies can use the proceeds to fund capital improvement projects and health care programs and facilities. There is no limit on the amount of tobacco securitization bonds that can be issued. From 2001 to 2007, for example, 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 \(June 2009\)](#). Some local governments have elected to borrow against expected future payments but have not guaranteed to cover their debt with general fund revenue if the payments fell short.

**Exception:** The sale of state tobacco bonds does not affect MSA funding received by California local governments.

**Enforcement:** Not applicable.

**Penalty:** Not applicable.

## APPEAL BONDS

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**General Rule:** 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 must 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. [\*Calif. Health and Safety Code § 104558\*](#)

**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 state Attorney General has enforcement authority. The court sets the amount of the appeal bond.

**Penalty:** Not applicable.

## Section 8. Related Laws

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The previous sections of this digest summarize laws created specifically to regulate commercial tobacco use and commerce. Many other laws affect tobacco use and commerce in an indirect fashion. The lawsuits brought by states in the early 1990s to recoup their cigarette-related Medicaid expenditures are good examples of how such laws may be used. The lawsuits were predicated on claims of fraud, conspiracy to commit fraud, misrepresentation, illegal conspiracies to restrict competition, and more, in violation of state consumer protection and competition laws.

This section provides brief overviews of a few other federal and state legal regimes that frequently interact with either the tobacco industry or an individual's efforts to be free of commercial tobacco. It also summarizes additional regulatory authority under the Family Smoking Prevention and Tobacco Control Act.

### Related California Laws<sup>20</sup>

#### CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

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**General Rule:** The state Fair Employment and Housing Act (FEHA) prohibits discrimination based on physical disability, mental disability, or medical condition. Under section 12926(m) of the law, a physical disability includes physiological and anatomical conditions that limit a person's ability to participate in major life activities. [!\[\]\(2213b04030d8c6a0fcb72e60f2ed9140\_img.jpg\) Calif. Government Code § 12900-12996](#)

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20 On July 1, 2022, Assembly Bill 541 took effect, requiring all licensed substance use disorder facilities or certified programs in California to assess clients for use of all tobacco products at the time of initial intake and take certain actions if the client has tobacco use disorder.

## Notes

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 **Americans with Disabilities Act** for a summary of the ADA).

People may be disabled under FEHA if they are 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. These employers must provide reasonable accommodation for the known physical or mental disability of an applicant or employee, unless that accommodation causes an undue hardship.

- 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 in sections 12927(d) and 12955 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. 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.
- 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; and 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) and/or file a lawsuit in state court. Before filing a lawsuit in state court, individuals must exhaust administrative remedies by filing a complaint with DFEH and obtaining a right-to-sue notice.

**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 illegal practices), attorneys' fees, and other relief as appropriate.

## CALIFORNIA UNRUH CIVIL RIGHTS ACT

---

**General Rule:** The state Unruh Civil Rights Act (Unruh Act) applies to all business establishments in California, including housing and public accommodations, and prohibits discrimination based on physical disability, mental disability, or medical condition, among other protected statuses. The Unruh Act's definitions of physical disability, mental disability, and medical condition mirror the definitions in the state Fair Employment and Housing Act (FEHA) (see **California Fair Employment and Housing Act** for more information about FEHA's definition of physical disability). [\*Calif. Civil Code § 51-51.3\*](#)

**Note:** While FEHA covers discrimination in employment and housing, the Unruh Act covers discrimination in housing and public accommodations. The Unruh Act requires full and equal accommodations, advantages, facilities, privileges, and services in all business establishments.

**Enforcement:** Individuals may file a complaint with the California Department of Fair Employment and Housing (DFEH) and/or file a lawsuit in state court. The Unruh Act is different from FEHA in that it is not necessary for individuals to exhaust administrative remedies

prior to filing a lawsuit in state court. Individuals do not need to obtain a right-to-sue notice from DFEH before filing a lawsuit.

**Penalty:** Available relief includes actual damages, injunctive relief (a court order to stop the violation of the law), attorneys' fees, and other relief as appropriate.

## MEDICAL CESSATION, PREVENTION, AND EDUCATION SERVICES

---

**General Rule:** Once appropriate federal approvals have been obtained, tobacco cessation services are covered benefits under the Medi-Cal program, starting January 1, 2017. The program covers medically necessary quit attempts, including four counseling sessions and FDA-approved treatment regimens. California requires the Medi-Cal Access Program under the Department of Social Services to develop protocols and to provide additional prevention and health education services relating to tobacco use. [\*Calif. Welfare and Institutions Code § 14134.25\*](#) [\*§ 15810-15818\*](#)

**Enforcement:** Not specified.

**Penalty:** Not specified.

## PROPOSITION 65

---

**General Rule:** The state Safe Drinking Water and Toxic Enforcement Act of 1986 (known as Proposition 65) 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 and nicotine. 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. [\*Calif. Health and Safety Code § 25249.6-25249.13\*](#)

**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's 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.

## TRICARE SMOKING CESSATION PROGRAM

---

**General Rule:** On February 27, 2013, the U.S. Department of Defense issued regulations regarding a smoking cessation program under TRICARE, which provides health benefits for military personnel, military retirees, and their dependents. The regulations state that smoking cessation medications are available through TRICARE at no cost to the beneficiary, and that TRICARE covers individual and group cessation counseling. Beneficiaries also have access to a toll-free quit line and web-based resources. [\*32 C.F.R. § 199.4\(e\)\(30\)\*](#)

## UNFAIR COMPETITION LAW

---

**General Rule:** It is illegal to engage or propose to engage in an unfair, unlawful, or fraudulent business act or practice. [\*Calif. Business and Professions Code § 17200-17209\*](#)

**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 underage individuals in violation of [California Penal Code Section 308](#) (see [\*\*Age-Based Sales Restrictions: Penal Code 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.

## Related Federal Laws

### AMERICANS WITH DISABILITIES ACT

---

**General Rule:** The Americans with Disabilities Act (ADA) prohibits discrimination against a person with a **disability**. [↻ 42 U.S. Code § 12112\(a\)](#) The law applies to public entities, including schools and public transportation, employers with at least 15 employees, and entities that operate places of public accommodation as defined in the federal regulations, such as social service center establishments, restaurants, hotels, and theaters. [↻ 42 U.S.C. § 1981a](#) [↻ 2000e-5](#) [↻ 12101-12213](#) [↻ 12181](#) [↻ 12182](#) [↻ 28 C.F.R. Part 36, Appendices A, C](#)

**Note:** The ADA does not apply to private housing, which is covered by the Fair Housing Act (see **Airplanes and Trains**).

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 a person is active. Even if the person's breathing is substantially improved through the use

of oxygen therapy equipment, the person would still be considered disabled under the ADA.

## Notes

- For example, a person may be disabled under the ADA if the person has chronic obstructive pulmonary disease or severe asthma, which substantially limits breathing. *Equal Employment Opportunity Comm'n v. Supervalu, Inc.*, 674 F. Supp. 2d 1007, (N.D. Ill. 2009).
- Under the ADA, employers must provide reasonable accommodation for 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. 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.
- 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.
- Courts have also ruled a person may have a handicap if the person is hypersensitive to tobacco smoke. *Vickers v. Veterans Administration*, 549 F. Supp. 85, 86–87 (W.D. Wash. 1982).

**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). 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.

## FEDERAL FAIR HOUSING ACT

---

**General Rule:** The 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. [§ 42 U.S.C. § 1437f](#) [§ 3601-3619](#) [§ 24 C.F.R. § 100.200-100.205](#)

### Notes

- The U.S. Department of Housing and Urban Development (HUD) has determined 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 (Mar. 5, 1992).
- If a resident has a disability, i.e., a **handicap** 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.
- 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; and implementing a no-smoking policy for common areas and/or units.
- The FHA applies to most private and federal government housing, including Section 8 housing. Section 8 housing refers

to federal programs offering low-income housing assistance through payments to private landlords.

- Under the HUD Smoke-Free Rule, all Public Housing Authorities administering public housing must have a smoke-free policy that includes all indoor areas, including dwelling units, and outdoors within 25 feet of indoor areas. (See **Housing and Urban Development Smoke-Free Rule** and **Public Housing** and [https://www.hud.gov/smokefreepublichousing.](https://www.hud.gov/smokefreepublichousing))

**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.

**Enforcement:** Individuals may file a complaint with HUD or a state agency that is its substantial equivalent (California Department of Fair Employment and Housing) 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.

## HOUSING AND URBAN DEVELOPMENT SMOKE-FREE RULE

**General Rule:** Under the U.S. Department of Housing and Urban Development (HUD), all public housing authorities administering public housing must have a policy prohibiting the use of tobacco products that includes all indoor areas, including dwelling units (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as outdoor areas within 25 feet of public housing and administrative office buildings. Prohibited tobacco products include items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes, as well as hookahs (or waterpipes). [24 C.F.R. § 965.653](#) [956.655](#)

## Exceptions

- The rule excludes dwelling units in mixed-finance projects and does not apply to housing assisted under Section 8, public housing authority properties that have converted to project-based rental assistance contracts under the Rental Assistance Demonstration Program, or tribal housing.
- Electronic smoking devices, including e-cigarettes, are not included in the rule.
- Note: Local public housing authorities can (and often do) include e-cigarettes in their local policies.

**Enforcement:** Public housing authorities are required to implement the rule by amending all applicable public housing authority plans and tenant leases. The rule and accompanying documents, such as [Notice PIH-2017-03](#), include suggestions for compliance and enforcement. HUD may use certifications to verify that public housing authorities have implemented smoke-free policies and use periodic inspections and audits to help monitor whether policies are being enforced.

**Penalty:** Local public housing authorities may enforce the rule via verbal warnings, written warnings, final notice, and (as a last resort) lease termination and eviction proceedings.

## PATIENT PROTECTION AND AFFORDABLE CARE ACT

---

**General Rule:** The Patient Protection and Affordable Care Act (ACA) generally expands tobacco cessation coverage in most health insurance plans. Specific requirements vary based on the type of health insurance. The ACA provides guidance on the following types of health insurance:

**Private, Employer-Sponsored, and Marketplace Insurance:** This includes health insurance plans provided by an employer, purchased through an ACA Marketplace, or purchased directly from an insurer.

- These plans must provide coverage for tobacco cessation at no cost to the patient. This requirement does not apply to plans in existence prior to March 23, 2010.
- Plans can satisfy this requirement by, for example, covering at least two cessation attempts per year, with each attempt including, at minimum, coverage for four counseling sessions and a 90-day supply of any U.S. Food and Drug Administration (FDA)-approved cessation medication. U.S. Dept. of Labor, *FAQs About Affordable Care Act Implementation (Part XIX)*, Q5 (May 2014).

**Medicare:** Medicare is a public health insurance program that provides coverage for most individuals ages 65 or older, as well as certain individuals with disabilities.

- Medicare Part B covers up to eight tobacco cessation counseling sessions per year. Centers for Medicare & Medicaid Services, *Counseling to Prevent Tobacco Use & Tobacco-caused Disease*.
- Medicare Part D also covers prescription tobacco cessation drugs.

**Medicaid:** Medicaid is a public health insurance program for many low-income populations, people with disabilities, and pregnant women. Medicaid limits eligibility based on an individual's income and assets; these limitations vary among the states.

- In all states, Medicaid covers tobacco cessation therapy and doctor-approved cessation medications for pregnant women and for people under the age of 21. Centers for Medicare & Medicaid Services, *Dear State Medicaid Director Letter, SDL # 11-007* (June 2011).
- State Medicaid programs are prohibited from *excluding* coverage for tobacco cessation drugs. Centers for Medicare & Medicaid Services, *Medicaid Drug Rebate Program Notice Release No. 165* (Sept. 2013).
- In states expanding Medicaid under the ACA, individuals in the expansion population, as well as other Medicaid beneficiaries receiving coverage through an Alternative Benefits Package,

must receive coverage for tobacco cessation at no cost to the patients. Medicaid programs can satisfy this requirement by, for example, covering at least two cessation attempts per year, with each attempt including, at minimum, coverage for four counseling sessions and a 90-day supply of any FDA-approved cessation medication. U.S. Department of Labor, *FAQs About Affordable Care Act Implementation (Part XIX)*, Q5 (May 2014).

- Medi-Cal, California's Medicaid program, provides nearly all beneficiaries coverage for tobacco cessation services, including counseling and FDA-approved cessation medications. Cal. Department of Health Care Services, *Policy Letter 14-006* (Sept. 2014).

Under the ACA, health insurers are permitted to vary their premium rates on the basis of tobacco use. However, California Insurance Code sections 10753.14 and 10965.9 allow insurers in the individual and small-group markets to use only age, geographic region, and family size for the purposes of establishing premium rates. As a result, in California, these insurers cannot charge an individual a higher premium based on the individual's tobacco use. The prohibition on differential premiums does not apply to certain "grandfathered" health care plans that were in effect on March 23, 2010.

The ACA establishes a Prevention and Public Health Fund to be administered by the U.S. Department of Health and Human Services (HHS), which is made available to individual communities for tobacco prevention and other public health programs on a competitive basis. Information about funding distribution is available at [hhs.gov/open/prevention/index.html](https://hhs.gov/open/prevention/index.html).

[42 U.S.C. § 300u-11](#) [300gg](#) [1395w-102\(e\)](#) [1396d](#) [1396o](#)  
[1396r-8\(d\)\(2\)\(F\)](#) [1396r-8\(d\)\(7\)\(A\)](#) [1397e](#) [45 C.F.R. § 150.101\(b\)](#)  
[150.201](#) [150.301](#)

**Enforcement:** Various federal and state agencies have oversight of different types of health plans covered by the ACA.

Generally, states have primary authority to enforce ACA provisions against health insurance issuers, and the federal Centers for Medicare and Medicaid Services (CMS) has secondary enforcement authority. In California, under [Chapter 2.2](#) of Division 2 of the Health and Safety Code, the state Department of Insurance and Department of Managed Health Care oversee private health insurance plans. The California Department of Health Care Services oversees Medi-Cal, California's Medicaid program.

At the federal level, CMS has primary authority to enforce ACA provisions against plans issued through nonfederal government employers (e.g., state governments), Medicare, and Medicaid. HHS, the Departments of Labor and the Treasury, and the Internal Revenue Service also share oversight of private health insurance plans. U.S. Dept. of Labor, [Affordable Care Act Implementation Frequently Asked Questions](#).

**Penalty:** Penalties vary for the different federal, state, and local actions affected by the requirements of the ACA. If a health plan overseen by CMS fails to comply with federal requirements, the agency may impose civil fines on the health insurance issuer. Individual states determine the penalties for noncompliance by plans within their oversight. For example, sections [1386-1389](#) and [1390-1394.3](#) of California's Health and Safety Code authorize a variety of penalties for noncompliance with state and/or federal requirements, including civil (e.g., fines), criminal (e.g., imprisonment), administrative (e.g., revoking a license to sell insurance), and equitable remedies (e.g., a court-ordered injunction).

## TOBACCO CONTROL ACT: ADDITIONAL REGULATIONS

---

**General Rule:** The U.S. Food and Drug Administration may issue additional regulations restricting the sale and distribution of tobacco products, including restrictions on advertising and promotion. (The FDA also has authority to create tobacco product standards and manufacturing standards, regulate adulteration and misbrandings, and conduct premarket review. See [Federal Regulation of Tobacco Products, Adulterated and Misbranded Tobacco Products: Tobacco](#)

**Control Act, Brand Name Limitations: Tobacco Control Act, and Tobacco Control Act: Additional Regulations**) Sale and distribution regulations must be appropriate for the protection of public health and 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. [§ 21 U.S.C. § 387f](#)

**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 21 years.

### Notes

- Many state, local, and tribal governments also set a minimum legal sales age of 21 years under their own authorities.
- Restrictions on the advertising or promotion of a tobacco product must be consistent with the First Amendment to the U.S. Constitution.

**Enforcement:** The FDA is authorized to enforce provisions with the help of other federal agencies and state governments.

**Penalty:** Variable.

## TOBACCO CONTROL ACT: PRESERVATION OF STATE AND LOCAL AUTHORITY

**General Rule:** Tribal, 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, including electronic delivery devices. (See **Flavored Cigarettes or Cigarette Components Prohibited: Tobacco Control Act** for information on sales restrictions not preempted by the Tobacco Control Act.) The Tobacco Control Act also does not limit the existing

ability of tribal, state, and local governments to require the reporting of information, fire safety standards for tobacco products, and taxation of tobacco products [🔗 21 U.S.C. § 387p](#)

**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.

## TOBACCO CONTROL ACT: SCIENTIFIC ADVISORY COMMITTEE

---

**General Rule:** The U.S. Department of Health and Human Services must appoint 12 members to a Tobacco Products Scientific Advisory Committee (Advisory Committee) to provide advice, information, and recommendations to the department. 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. [🔗 21 U.S.C. § 387q](#)

**Exception:** Full-time employees of the U.S. Food and Drug Administration or any agency responsible for enforcing the Tobacco Control Act may not be appointed to this Advisory Committee.

**Note:** In 2011, two tobacco companies, Lorillard and R.J. Reynolds, challenged the makeup of the Advisory Committee, claiming that several members were biased against the tobacco industry and should not be allowed to continue to serve in this capacity. While the companies were initially successful and the committee was enjoined for a time, *Lorillard, Inc. v. United States Food & Drug*

*Admin.*, 56 F. Supp. 3d 37 (D.D.C. 2014), ultimately a court of appeals held that the harms alleged by the companies were too remote and uncertain, and approved the makeup of the Advisory Committee. *R.J. Reynolds Tobacco Co. v. United States Food & Drug Admin.*, No. 14-5226 (D.C. Cir. Jan. 15, 2016).

**Enforcement:** Not applicable.

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