

State Legislated Actions on Tobacco Issues: 2007



Foreword

Summarizes major accomplishments in state tobacco control policy during 2007.

SLATI Overview

Gives a synopsis of current tobacco control laws in all 50 states and the District of Columbia as of January 1, 2008 of each category tracked in SLATI.

2007 Passed Legislation— by Issue

Outlines relevant tobacco control legislation passed in each state and the District of Columbia in 2007 by issue.

2007 Passed Legislation— by State

Lists relevant tobacco control legislation passed in each state and the District of Columbia in 2007.

State Pages

Provides summaries of tobacco control laws with code/statute citations in effect in each state and the District of Columbia as of January 1, 2008.

Appendices

Condenses certain information presented in SLATI into nine charts and maps.

Acknowledgments

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State Legislated Actions On Tobacco Issues, 19th Edition 2007 is strictly for informational purposes and does not constitute legal services or representation. For legal advice, a practicing attorney who has a thorough knowledge of the current law in the state or locality and who is informed about all the relevant details of the situation should be consulted.

The American Lung Association does not guarantee the accuracy of the contents of this book. Laws change, often quite rapidly, and interpretations of statutes may vary from court to court. Legislation may have been introduced or acted upon, or cases decided, after this book went to press. The cut-off date for new laws to be considered was January 1, 2008.

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Improving Life, One Breath at a Time

Foreword

State Legislated Actions on Tobacco Issues (SLATI) 2007 is the American Lung Association's comprehensive annual compendium of state tobacco control laws. It provides information on state tobacco control laws in a number of different areas, including smokefree air, tobacco taxes, youth access laws and funding for state tobacco prevention programs as of January 1, 2008. SLATI has been published every year since 1988 and exclusively by the American Lung Association since 1996. The report is the only resource of its kind in tobacco control today—summarizing state tobacco control laws on an annual basis. A midterm report detailing state activity on tobacco control issues in 2008 to date will be released in July.

Highlights of 2007:

Smokefree Air: Five states—Illinois, Maryland, Minnesota, New Mexico and Oregon—approved legislation that will prohibit smoking in almost all public places and workplaces, including restaurants and bars. These states join 16 other states¹ and the District of Columbia that have already met the American Lung Association's *Smokefree Air 2010 Challenge* and approved comprehensive smokefree air laws. Laws in 17 states² and the District of Columbia had taken full effect as of January 1, 2008. In January 2006, the American Lung Association issued its *Smokefree Air 2010 Challenge*, which calls on all states to pass comprehensive smokefree laws no later than 2010.

Tennessee also became the first traditional tobacco-growing state to pass a strong law prohibiting smoking in many public places and workplaces; however, the law is not comprehensive because it contains several exemptions. New Hampshire approved legislation prohibiting smoking in restaurants and bars, but smoking is still allowed in many other public places and workplaces. Colorado and Idaho also closed loopholes in their respective state laws for casinos and bowling alleys.

Tobacco Excise Taxes: Eight states—Connecticut, Delaware, Indiana, Iowa, Maryland, New Hampshire, Tennessee and Wisconsin—approved laws increasing their cigarette taxes; taxes in three states—Iowa,

Maryland and Wisconsin—increased by \$1.00 per pack. Alaska and Hawaii also implemented scheduled increases passed in previous years. The average state cigarette tax stands at \$1.11 per pack as of January 1, 2008—an increase of 11 cents since January 1, 2007, and a dramatic increase from only \$0.446 per pack on January 1, 2002.

New Jersey continued to have the top cigarette tax rate in the country at \$2.575 per pack. Nine states—Alaska, Arizona, Connecticut, Maine, Maryland, Michigan, New Jersey, Rhode Island and Washington—have a cigarette tax of \$2.00 or higher and 25 states and the District of Columbia have taxes of \$1.00 or more.³ South Carolina has the lowest cigarette tax in the country at \$0.07 per pack. Chicago, IL has the highest combined state and local cigarette tax at \$3.66 per pack.

Higher cigarette taxes keep children from starting to smoke, motivate adults to stop and reduce future tobacco-related health care costs.⁴ For instance, Rhode Island's cigarette tax increased from 71 cents in 2001 to \$2.46 in 2005, and their high school smoking rate has decreased from 24.8 percent in 2001 to 15.9 percent in 2005, one of the lowest in the country.⁵ Cigarette tax increases also raise revenue, a portion of which can and should be used to fund tobacco control and prevention programs. Seven states—Arizona, California, Colorado, Michigan, New Jersey, Oregon and South Dakota—are funding their entire tobacco prevention and control programs through cigarette excise tax revenues in FY2008. And six more states—Idaho, Iowa, Louisiana, Oklahoma, Utah and Washington—use cigarette tax revenue to partially fund their programs.

Tobacco Control Program Funding: A number of states increased funding for tobacco control programs in FY2008 (July 1, 2007 to June 30, 2008 for most states). Florida significantly increased its funding for tobacco control program from \$5.6 million in FY2007 to \$58 million in FY2008 due largely to a constitutional amendment that requires 15 percent of tobacco settlement proceeds each year be dedicated to these programs. Tennessee allocated \$10 million for tobacco control programs after providing virtually no state money for such a program in previous years.

Alaska, Indiana, Iowa, Massachusetts, Mississippi, Montana, New Hampshire, Oklahoma, Oregon, South Dakota and Wisconsin also increased funding for their programs. Connecticut is spending no new state money on tobacco control and prevention programs in FY2008.

Evidence shows that tobacco prevention programs are a wise investment for states. A study published in the February 2005 issue of the *American Journal of Public Health* found that if all states spent just the CDC-recommended minimum on tobacco control programs, youth smoking nationally would be 3 to 14 percent lower.⁶ In Maine, where tobacco prevention programs have been funded at the CDC minimum for a number of years, there has been a dramatic decline in youth smoking rates among both high school and middle school students. Despite this evidence, only six states—Alaska, Colorado, Delaware, Hawaii, Maine and Montana—are funding their tobacco prevention programs above the minimum level of funding recommended by the CDC in FY2008.

New Landmark Studies: In 2007, the Institute of Medicine (IOM) and the President's Cancer Panel each issued reports urging stronger tobacco control policies at all levels of government to combat the tobacco epidemic. The IOM Report, *Ending the Tobacco Problem: A Blueprint for the Nation*, contains a series of recommendations, which include encouraging state to increase tobacco taxes, pass comprehensive smokefree workplace laws and fund state tobacco control programs at levels recommended

by the CDC.⁷ The President's Cancer Panel report, *Promoting Healthy Lifestyles: Policy, Program and Personal Recommendations for Reducing Cancer Risk*, makes similar recommendations for states indicating the consensus that exists on the effectiveness of these policies.⁸

Fire-Safety Standards: In 2007, 16 more states⁹ passed laws requiring fire safety standards for cigarettes, to help prevent cigarette-caused fires. They join the six other states—California, Illinois, Massachusetts, New Hampshire, New York and Vermont—that have passed such laws in previous years. The National Fire Protection Association estimates that 700 to 900 deaths per year in the U.S. are the result of cigarette-caused fires.

The American Lung Association's *State Legislated Actions on Tobacco Issues (SLATI)* is also available online at <http://slati.lungusa.org> and is updated regularly to reflect changes in laws taking effect throughout the year. We hope that all readers will find *SLATI* informative and an incentive to join with the American Lung Association in the fight against the nation's number one preventable cause of death and disease, tobacco use. To get involved, go to www.lungusa.org and click on the "Act Now" link.



Bernadette A. Toomey
President and Chief Executive Officer

1. States that have passed comprehensive smokefree air laws: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Montana, New Jersey, New York, Ohio, Rhode Island, Utah, Vermont and Washington.
2. States with comprehensive smokefree air laws in effect: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Ohio, Rhode Island, Vermont and Washington.
3. States with cigarette excise taxes of a \$1.00 or more: Alaska, Arizona, Connecticut, Delaware, District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington and Wisconsin.
4. It is estimated that a 10 percent increase in the price of cigarettes decreases consumption by 7 percent for youth and 4 percent for adults. See Tauras, J., et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001.
5. Centers for Disease Control and Prevention. Youth Risk Behavior Survey, 2001 and 2005.
6. Tauras JA, et al. State Tobacco Control Spending and Youth Smoking. *Am J Public Health*. 2005 Feb; 95(2):338-44.
7. Institute of Medicine (IOM). 2007. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC: The National Academies Press.
8. National Institutes of Health. 2006-2007 *Annual Report President's Cancer Panel: Promoting Healthy Lifestyles—Policy, Program and Personal Recommendations for Reducing Cancer Risk*. August 2007. Available at: <http://deainfo.nci.nih.gov/ADVISORY/pcp/pcp07rpt/pcp07rpt.pdf>.
9. States that passed fire-safety standards for cigarettes in 2007: Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, New Jersey, North Carolina, Oregon, Rhode Island, Texas and Utah.

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A Restrictions on Smoking in Public Places

All 50 states and the District of Columbia have laws/policies restricting smoking in certain places. These laws range from simple, limited restrictions, such as requiring designated smoking areas in government buildings, to laws that prohibit smoking in virtually all public places and workplaces. Seventeen states—Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Ohio, Rhode Island, Washington and Vermont—as well as the District of Columbia prohibit smoking in almost all public places and workplaces, including restaurants and bars. Montana and Utah prohibit smoking in most public places and workplaces, including restaurants; bars will go smokefree in 2009. New Hampshire prohibits smoking in some public places, including all restaurants and bars. Four states—Florida, Idaho, Louisiana and Nevada—prohibit smoking in most public places and workplaces, including restaurants, but exempt stand-alone bars. Fifteen states partially or totally prevent (preempt) local communities from passing smokefree air ordinances stronger than the statewide law.

*Maryland and Oregon have passed legislation prohibiting smoking in almost all public places and workplaces, including restaurants and bars, but the laws have not taken effect yet.

B Tobacco Excise Taxes

Cigarettes:

All 50 states and the District of Columbia impose an excise tax on cigarettes. These taxes range from a high of \$2.575 per pack in New Jersey to a low of \$0.07 per pack in South Carolina. The national average for state cigarette excise taxes (as of January 1, 2008) is \$1.112 per pack. Eight states—Connecticut, Delaware, Indiana, Iowa, Maryland, New Hampshire, Tennessee and Wisconsin—increased their cigarette taxes in 2007, and Alaska and Hawaii implemented scheduled increases passed in previous years. Eight states increased

their cigarette taxes, or implemented scheduled increases passed in previous years in 2006.

Other Tobacco Products:

Forty-nine states and the District of Columbia have excise taxes on tobacco products other than cigarettes. Pennsylvania is the only state that does not impose a tax on other tobacco products. In most states, the excise tax is calculated as a percentage of the wholesale sales price to retailers, the manufacturer's invoice price or the price at which the tobacco entered the state. Fourteen states—Alabama, Arizona, Connecticut, Delaware, Iowa, Kentucky, Montana, New Jersey, North Dakota, Oklahoma, Rhode Island, Texas, Vermont and Wisconsin—base some or all of their tobacco product excise taxes on the weight of the tobacco package.

C Youth Access

Age Restrictions on Sales of Tobacco Products:

All 50 states and the District of Columbia prohibit the sale of tobacco products to minors. Most states define minors as persons less than 18 years of age, however, enforcement varies widely. Four states—Alabama, Alaska, New Jersey and Utah—define minors as persons less than 19 years of age. Thirty-eight states and the District of Columbia require retailers to post signs at the point of purchase stating that selling tobacco products to minors is illegal. Eighteen states and the District of Columbia require a person selling tobacco products to check the identification of a purchaser who appears to be under a certain age.

Penalties to Minors:

Forty-five states penalize minors for tobacco-related offenses. Thirty-five states prohibit minors from possessing tobacco products. Eighteen states have language prohibiting the use of tobacco products by minors. Twenty-five states order minors who are guilty of a tobacco-related offense to perform community service as well as, or in lieu of, a fine. Nine states—Florida, Minnesota,

Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas and Vermont—may suspend the driver's license of a minor who violates their youth access law. Sixteen states—Colorado, Florida, Georgia, Idaho, Missouri, Montana, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington and Wyoming—require minors to attend smoking education/cessation programs in addition to, or in lieu of, other penalties for tobacco-related offenses.

{Penalizing children has not been proven to be an effective technique to reduce underage tobacco usage. In fact, penalties may adversely affect existing programs that are proven to be effective and are required, such as compliance checks utilizing young people.}

Placement of Tobacco Products:

Twenty-three states—Alaska, Arkansas, California, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Minnesota, Missouri, New Mexico, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Vermont and Wyoming—restrict customer access to cigarettes and/or tobacco products. Fourteen of these states—Alaska, California, Idaho, Iowa, Maine, Massachusetts, Minnesota, New Mexico, New York, Oklahoma, Oregon, Texas, Utah and Wyoming—completely prohibit customers from having direct access to tobacco products in retail stores, and/or have language prohibiting the use of self-service displays. Almost all laws do not apply to retail stores that do not allow minors to enter.

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Tobacco Product Samples:

All 50 states and the District of Columbia prohibit the distribution of tobacco products to minors. Twenty states and the District of Columbia restrict where free samples of tobacco products can be distributed to the general public or virtually prohibit the free distribution of tobacco products entirely. Minnesota and Massachusetts prohibit the sampling of tobacco products entirely except for single-serving samples distributed in tobacco stores. Nebraska bans samples, coupons and rebate offers for smokeless tobacco products. Six

states—California, Connecticut, New York, Utah, Washington and Wisconsin—and the District of Columbia prohibit giving away samples except in specific locations such as places inaccessible to minors, and/or in a manufacturer's place of business. Four states—Hawaii, Idaho, New Hampshire and Tennessee—prohibit giving away samples in public places. Seven states—Arkansas, Georgia, Iowa, Kansas, Oklahoma, Rhode Island and South Dakota—prohibit the free distribution of tobacco products to persons less than 18 and within a certain distance of a school, playground or other location used primarily by persons less than 18.

Sales of Single Cigarettes:

Forty-eight states and the District of Columbia place restrictions on cigarette packaging and the number of cigarettes that can be sold outside the package. Twenty-two states prohibit the sale of cigarettes in packs containing less than 20 cigarettes. Nineteen states and the District of Columbia prohibit the sale of single cigarettes. Fourteen states require cigarettes to be sold in a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Eleven states require cigarettes to be sold in the original, sealed package. Ten states prohibit roll-your-own tobacco in an individual package or container that contains less than 0.6 ounces of tobacco. Twenty-four states and the District of Columbia prohibit the sale of cigarette packages that do not comply with the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of health warnings on the package.

*The number of states does not add up to 50 because many states have multiple provisions.

E Restrictions on Sales of Tobacco Products in Vending Machines

Forty-eight states and the District of Columbia restrict the placement of tobacco product vending machines; only Alabama and New Jersey do not. Idaho and Vermont prohibit the sale of tobacco products through vending machines. Seventeen states prohibit tobacco vending machines everywhere except for bars, taverns and other places where minors are not permitted by law. Nevada prohibits vending machines except in public areas where people under 21 years of age are prohibited

from loitering. Twelve states and the District of Columbia restrict vending machine placement to bars, private clubs with liquor licenses and/or workplaces not generally open to the public. Sixteen states allow vending machines in any location with a locking device or within the direct line of sight of store employees. Twenty-four states require owners, operators and/or supervisors of tobacco vending machines to post warning signs on the machines advising of age restrictions for purchase or sales.

F Licensing Requirements

All 50 states and the District of Columbia require the licensing of certain entities that sell tobacco products. Licensing laws range from requiring only distributors, or the party responsible for payment of excise taxes, to have licenses (Arizona and Illinois) to requiring wholesalers, distributors, manufacturers, retailers and vending machine operators to obtain licenses (Arkansas and California). Laws in 27 states and the District of Columbia include provisions that penalize a retailer who furnishes tobacco products to minors by a possible suspension or revocation of their license for multiple offenses.

G Smoking Protection Laws

Regrettably, 30 states and the District of Columbia have passed some form of smoker protection legislation that prohibits employers from discriminating against employees or prospective employees based on their use of tobacco products. The American Lung Association does not support elevating smokers to a protected class.

H Advertising and Promotion

Eight states and the District of Columbia have some restrictions on tobacco advertising and promotion. Texas prohibits tobacco advertising within 1,000 feet of a church, public or private school and requires purchasers of tobacco advertising to pay a fee of 10 percent of the gross sales price of any tobacco advertising. California restricts tobacco advertising in all state-owned buildings and billboard advertising within 1,000 feet of any public school or playground. Kentucky prohibits tobacco billboard advertising within 500 feet of schools. Illinois, Michigan and West Virginia require health warnings to be posted on smokeless

tobacco billboard advertising. Utah prohibits the display on any billboard, streetcar, sign, bus or placard of an advertisement for tobacco products, except that dealers in tobacco products may have a sign at their place of business indicating that they sell tobacco. Delaware prohibits advertising any tobacco products within 200 feet of any public or private school but does not prohibit the display of any message or advertisement opposing the use of tobacco products. In addition, any such message or advertisement may not contain the brand name of any tobacco product or the name of any tobacco company. The District of Columbia prohibits all tobacco advertising on the Washington Metropolitan Area Transit System, which operates its bus and subway systems.

*Some of these advertising restrictions may be part of state law but not enforced due to a 2001 Supreme Court decision striking down certain advertising restrictions in Massachusetts.

I Tobacco Product Disclosure

Six states require tobacco product disclosure information. Massachusetts and Texas require tobacco manufacturers to disclose any added constituent of tobacco products other than tobacco, water and reconstituted tobacco sheet made wholly from tobacco. Massachusetts, Texas and Utah require disclosure of the nicotine yield for each brand of cigarettes. Minnesota and Utah require tobacco manufacturers to disclose any of the following substances in their unburned or burned states: ammonia or any compound of ammonia, arsenic, cadmium, formaldehyde and lead. New Hampshire requires its state Department of Health and Human Services to obtain from the Massachusetts Department of Public Health a list of additives for each brand of tobacco products sold. Connecticut requires its Commissioner of Public Health to issue regulations concerning how the commissioner will obtain nicotine yield ratings for each brand of tobacco product.

J Tobacco Divestment

Massachusetts passed a state law to prohibit new public pension funds from investing in stocks, securities or other obligations of any company that derives more than 15 percent of its revenue from the sale of tobacco products and requires divestment of existing investments. Also, in Minnesota,

the Minnesota State Investment Board passed a resolution in 1998 requiring all equity managers to divest shares of any company that obtained more than 15 percent of its revenues from the manufacture of consumer tobacco products, which was accomplished by June 30, 2001.

K Tobacco Liability

Thirty-four states have enacted legislation that caps the appeal bond required for the damages portion of a lawsuit judgment. Fourteen states apply these caps on appeal bonds to all damages. Fourteen states apply the caps only to Master Settlement Agreement/separate tobacco settlement signatories. Two states—Florida and Hawaii—have separate statutes applying the cap to both settlement signatories and all other parties. Four states—Georgia, Idaho, Kentucky and Mississippi—apply these caps to punitive damages only. Almost all of these laws include an exception for intentional dissipation of assets by the appellant. No appeal bond is required to appeal a lawsuit judgment in Connecticut, Maine, Massachusetts, New Hampshire and Vermont. California, Hawaii, Minnesota and Oregon have capped the appeal bond required at \$150 million; Alabama has set the limit at \$125 million; Florida, Iowa, Kentucky, Mississippi, New Mexico, Pennsylvania, Washington and Wisconsin have set the limit at \$100 million; Tennessee has set the limit at \$75 million; Louisiana, Missouri, Nebraska, Nevada, New Jersey and Ohio have set the limit at \$50 million, while Arkansas, Colorado, Georgia, Indiana, Kansas, Michigan, North Carolina, Oklahoma, South Dakota, Texas and Virginia have imposed a limit of \$25 million. West Virginia has set the limit at \$100 million each for compensatory and punitive damages. Idaho has set the level at \$1 million, while a judgment in South Carolina is automatically appealed. Kentucky also makes it extremely difficult for plaintiffs to pursue a civil action against a tobacco grower or a “warehouseman.”

L Tobacco Control Program Funding/ Use of Settlement Dollars

Forty-nine states and the District of Columbia have made decisions that provide for the allocation of money from annual Master Settlement Agreement payments, tobacco excise tax revenues

and/or general fund revenue to tobacco control and prevention programs in FY2008 (July 1, 2007 to June 30, 2008 for most states). The amounts range from \$200,000 for tobacco prevention and control programs in Missouri, to \$85.5 million in New York. Connecticut has appropriated no new state money for tobacco control and prevention programs this year. In terms of a percentage of the minimum level recommended by the Centers for Disease Control and Prevention, Maine ranks highest in its allocation of funds for tobacco prevention programs. Seventeen states—Alaska, Arkansas, California, Iowa, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Virginia, Washington, West Virginia and Wisconsin—and the District of Columbia have set up arrangements to securitize all or part of their annual Master Settlement Agreement revenue.

{Securitization involves selling or pledging expected tobacco settlement payments to a state-created corporate entity for the purpose of issuing bonds backed by settlement funds. The state then receives a smaller lump sum payment up front.}

M Fire Safety Standards

Eight states—California, Illinois, Maine, Massachusetts, New Hampshire, New York, Oregon and Vermont—have laws in effect setting fire-safety standards for cigarettes to help prevent cigarette-caused fires. Fourteen additional states—Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Montana, New Jersey, North Carolina, Rhode Island, Texas and Utah—have enacted legislation setting fire safety standards for cigarettes that had not taken effect yet as of January 1, 2008. The fire safety standards in all these states are identical to the standard in the first state to implement this type of legislation, New York.

Below is a quick summary of tobacco control legislation passed in 2007 by specific issue.

Smoking Restrictions/ Smokefree Air Laws:

- 15 states—Colorado, Idaho, Illinois, Maine, Maryland, Minnesota, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Utah and Virginia—enacted laws or promulgated regulations strengthening their smoking restrictions and/or repealing preemption.
- Colorado amended its smokefree law regarding smoking in nursing homes and assisted-living facilities. Utah passed legislation temporarily weakening its restrictions on smoking in bars and private clubs. Mississippi amended its law to allow smoking again in state veterans' homes.
- California passed legislation prohibiting smoking in vehicles when children under 18 are present in the vehicle.

Tobacco Taxes:

- Thirteen states—Connecticut, Delaware, Hawaii, Indiana, Iowa, Maryland, Nebraska, New Hampshire, North Carolina, South Dakota, Tennessee, Vermont and Wisconsin—passed legislation increasing taxes on tobacco products and/or changed the way their tobacco tax revenue was distributed.
- Delaware, Iowa and Wisconsin changed their taxes on snuff to a weight-based tax.

Settlement/Securitization:

- Four states—Colorado, Nevada, New Hampshire and Oregon—changed its state laws allocating Master Settlement Agreement (MSA) payments. Pennsylvania changed its law for FY2008 only.
- Mississippi had a court decision uphold a lower court ruling taking money away from the non-profit that previously ran its state tobacco control program.
- Three states—Ohio, Virginia and West Virginia securitized all or a portion of their future MSA

payments. Michigan and Rhode Island added to and/or amended their law governing securitization of MSA payments.

Smoking Cessation Coverage:

- Kentucky passed legislation allowing Medicaid to cover smoking cessation products/services. Maine required the state Department of Health to devise a plan for covering cessation products/services under Medicaid and private insurance.

Fire-Safe Cigarettes:

- Sixteen states—Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, New Jersey, North Carolina, Oregon, Rhode Island, Texas and Utah—enacted legislation setting fire-safety standards for cigarettes.

Flavored Tobacco Products:

- Maine passed legislation prohibiting the sale of certain flavored cigarettes/tobacco products.

Youth Access/Tobacco Product Licensing:

- Three states—Maine, Rhode Island and South Dakota—amended or enacted new laws governing licensing or registration of entities that deal in tobacco products.
- Fourteen states—Alaska, Arkansas, California, Connecticut, Georgia, Indiana, Iowa, Maryland, Nevada, North Dakota, Rhode Island, South Dakota, Texas and Wyoming—amended or enacted new laws restricting youth access to tobacco products.

Tobacco Liability:

- New Mexico limited the appeal bond required of MSA signatories to appeal a lawsuit judgment against them.

Internet Sales:

- Delaware amended its law regarding the sales of tobacco products by phone, mail or over the Internet.

Below is a list and short description of state tobacco control legislation passed during 2007 in each state. The list primarily covers the areas of state tobacco control law that are tracked by SLATI.

ALABAMA

Settlement/Tobacco Prevention Spending: Allocated \$766,811 for tobacco control and prevention programs.

[FY2008 MSA Payment Annual Budget \(H.B. 211\) enacted 6/14/07 and effective 10/1/07](#) & [FY2008 General Appropriations \(H.B. 208\) enacted 6/7/07 and effective 10/1/07](#).

ALASKA

Settlement/Tobacco Prevention Spending: Appropriated \$7,482,200 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 95\) enacted 6/29/07 and effective 7/1/07](#).

Fire-Safe Cigarettes: Requires cigarettes sold in Alaska to self-extinguish when not being smoked based on the specified performance standard.

[S.B. 84 enacted 7/18/07 and effective 9/1/08](#).

Youth Access: Prohibits persons under 19 years of age from selling tobacco products, and changes the requirements regarding business license endorsement suspensions for violations of selling tobacco products to minors.

[S.B. 84 enacted 7/18/07 and effective 10/16/07](#).

ARIZONA

Settlement/Tobacco Prevention Spending: Appropriated \$23,500,000 for tobacco control and prevention programs.

Appropriation for FY2008 based on percentage dedicated to the program as part of a 1994 ballot initiative, effective 7/1/07.

ARKANSAS

Settlement/Tobacco Prevention Spending: Appropriated \$15,940,997 for tobacco control and prevention programs in FY2008.

[FY2008-FY2009 Tobacco Prevention and Control Program Biennial Budget \(H.B. 1353\) enacted 4/5/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\)](#); [FY2008-FY2009 Tobacco Settlement Commission Biennial Budget \(H.B. 1168\) enacted 4/2/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\)](#); and [Arkansas Tobacco Control Board Biennial Budget \(H.B. 1126\) enacted 3/26/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\)](#).

Youth Access: Prohibits the sale of cigarettes by self-service display and without the assistance of a salesperson. Retail tobacco stores as defined are exempt from this requirement.

[H.B. 1370 enacted 2/28/07 and effective 7/30/07](#).

CALIFORNIA

Settlement/Tobacco Prevention Spending: Appropriated \$78,715,217 for tobacco control and prevention programs.

[FY2008 Annual Budget \(S.B. 77\) enacted and effective 8/24/07](#).

Youth Access/Tobacco Product Sampling: Expands the definition of non-sale distribution of tobacco products to include coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smokeless tobacco or cigarettes. Continues to prohibit the non-sale distribution of tobacco products in public places and private property open to the public.

[A.B. 1585 enacted 10/10/07 and effective 1/1/08](#).

Smoking in Vehicles: Prohibits smoking in motor vehicles when a person under 18 years of age is present in the vehicle. Makes violation a secondary offense.

[S.B. 7 enacted 10/10/07 and effective 1/1/08](#).

Youth Access: Increases civil penalties that may be levied for selling tobacco products to minors for the first and second violations and changes other provisions related to enforcement of state youth access laws.

[S.B. 624 enacted 10/13/07 and effective 1/1/08](#).

Tobacco Product Licensing: Requires a new \$100 fee for reinstating an expired tobacco product retailer license.

[S.B. 625 enacted 10/13/07 and effective 1/1/08](#).

COLORADO

Settlement/Tobacco Prevention Spending: Allocated \$26,000,000 for tobacco control and prevention programs.

[FY2008 Annual Budget \(S.B. 07-239\) enacted 5/4/07 and effective 7/1/07.](#)

Smokefree Air: Eliminates the exemption for casinos in Colorado’s smokefree air law.

[H.B. 07-1269 enacted 6/1/07 and effective 1/1/08.](#)

Settlement: Makes major changes to the way future Master Settlement Agreement payments are distributed.

[S.B. 07-97 enacted and effective 3/22/07.](#)

Settlement: Makes additional changes to the way future Master Settlement Agreement payments are distributed, and accounts for the MSA strategic contribution payments the state will receive in April 2008.

[H.B. 07-1359 enacted and effective 6/1/07.](#)

Smokefree Air: Allows smoking in separately enclosed, separately ventilated smoking rooms in nursing homes and assisted living facilities, but removes the previous exemption for smoking in private rooms in these facilities.

[H.B. 07-1196 enacted 4/9/07 and effective 8/2/07.](#)

CONNECTICUT

Tobacco Tax: Increases the cigarette tax by 49 cents to \$2.00 per pack.

[H.B. 8001a enacted 6/26/07 and effective 7/1/07.](#)

Fire-Safe Cigarettes: Requires cigarettes sold in Connecticut to self-extinguish when not being smoked based on the specified performance standard.

[S.B. 703 enacted 7/10/07 and effective 7/1/08.](#)

Youth Access: Increases the monetary penalties for selling tobacco products to minors, and for minors purchasing tobacco products.

[H.B. 7139 enacted 7/5/07 and effective 10/1/07.](#)

DELAWARE

Settlement/Tobacco Prevention Spending: Appropriated \$10,680,300 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 250\) enacted and effective 7/1/07.](#)

Tobacco Tax: Increases the cigarette tax by 60 cents to \$1.15 per pack.

[H.B. 249 enacted 6/30/07 and effective 7/31/07.](#)

Fire-Safe Cigarettes: Requires cigarettes sold in Delaware to self extinguish when not being smoked based on the performance standard specified in the bill.

[H.B. 149 enacted 7/5/07 and effective 1/1/09.](#)

Tobacco Tax: Changes the tax on moist snuff to a weight-based tax of 54 cents per ounce.

[H.B. 245 enacted 6/30/07 and effective 1/1/08.](#)

Internet Sales: Exempts cigars and pipe tobacco from most of the requirements governing sales of tobacco products by phone, mail or the Internet.

[S.B. 157 enacted and effective 7/24/07.](#)

DISTRICT OF COLUMBIA

Settlement/Tobacco Prevention Funding: Allocates \$10 million of revenue from the sale of tobacco settlement bonds in 2006 over three years to the American Lung Association of the District of Columbia for tobacco prevention and cessation programs.

[B16-913 passed by the City Council 12/19/06, signed by mayor 12/29/06, passed U.S. Congressional Review period and effective 3/14/07.](#)

FLORIDA

Settlement/Tobacco Prevention Spending: Appropriated \$57,898,788 for tobacco control and prevention programs.

[FY2008 Annual Budget \(S.B. 2800\) enacted 5/24/07 and effective 7/1/07.](#)

Settlement/Tobacco Prevention Spending: Sets up the parameters for the statewide tobacco prevention and cessation program per the constitutional amendment passed by Florida’s voters in November 2006.

[S.B. 1126 enacted 5/24/07 and effective 7/1/07.](#)

Tobacco Use/Employment: Allows employing agencies to set tobacco-use standards for law enforcement personnel.

[H.B. 547 enacted 5/17/07 and effective 10/1/07.](#)

GEORGIA

Settlement/Tobacco Prevention Spending:

Appropriated \$2,249,875 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 95\) enacted 5/30/07 and effective 7/1/07.](#)

Youth Access: Prohibits minors from attempting to purchase tobacco products, and prohibits tobacco products from being sold with non-tobacco products in vending machines.

[S.B. 95 enacted 5/24/07 and effective 7/1/07.](#)

HAWAII

Settlement/Tobacco Prevention Spending: Expected non-federal expenditure of \$10,388,000 for tobacco control and prevention programs in 2007/2008.

[FY2008-FY2009 Budget \(H.B. 500\) enacted 6/27/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\);](#) and expenditure for calendar year 2007 from Hawaii Tobacco Prevention and Control Trust Fund.

Tobacco Tax: Corrects mistakes related to the disposition of cigarette tax revenue as part of the cigarette tax increase passed last year.

[S.B. 139 enacted and effective 5/28/07.](#)

IDAHO

Settlement/Tobacco Prevention Spending:

Appropriated \$1,479,800 for tobacco control and prevention programs.

[FY2008 Millenium Income Fund Appropriations \(S.B. 1210\) enacted 3/29/07 and effective 7/1/07 & FY2007 Appropriation for the Department of Health and Welfare \(H.B. 307\) enacted 3/27/07 and effective 7/1/07.](#)

Smokefree Air: Removes the exemption for bowling alleys from the statewide law prohibiting smoking in most public places.

[H.B. 121 enacted by veto override 3/28/07 and effective 6/1/07.](#)

ILLINOIS

Settlement/Tobacco Prevention Spending:

Appropriated \$8,500,000 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 3866\) enacted and effective 10/25/07.](#)

Smokefree Air: Prohibits smoking in almost all public places and workplaces, including restau-

rants, bars and casinos. Also prohibits smoking within 15 feet of entrances and exits to these places.

[S.B. 500 enacted 7/23/07 and effective 1/1/08.](#)

INDIANA

Settlement/Tobacco Prevention Spending:

Appropriated \$16,200,000 for tobacco control and prevention programs for FY2008.

[FY2008-FY2009 Biennial Budget \(H.B. 1001\) enacted 5/11/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\) & H.B. 1678 enacted 5/10/07 and effective 7/1/07.](#)

Tobacco Tax: Increases the cigarette tax by \$0.44 to \$0.995 per pack, and changes the way that old and new cigarette tax revenue is distributed.

[H.B. 1678 enacted 5/10/07 and effective 7/1/07 & 8/1/07.](#)

Tobacco Tax: Increases the tax on other tobacco products, and changes the way the revenue is distributed.

[H.B. 1001 enacted 5/11/07 and effective 7/1/07 and 8/1/07.](#)

Youth Access: Prohibits the sale of cigarettes by self-service display and without the assistance of a salesperson except in retail establishments that do not allow persons under 18 to enter.

[H.B. 1477 enacted 4/23/07 and effective 7/1/07.](#)

IOWA

Settlement/Tobacco Prevention Spending:

Appropriated \$12,290,219 for tobacco control and prevention programs.

[FY2008 Appropriation from Healthy Iowans Tobacco Trust \(H.F. 907\) enacted 5/23/07 and effective 7/1/07 and FY2008 Appropriations for Health and Human Services \(H.F. 909\) enacted 5/29/07 and effective 7/1/07.](#)

Tobacco Tax: Increases the cigarette tax by \$1.00 to a \$1.36 per pack and increases the other tobacco products tax to 50% of the wholesale sales price. Portion of the revenue dedicated to a health care trust fund starting July 1, 2007, and the money in the fund can be used to help fund tobacco control programs.

[S.F. 128 enacted and effective 3/15/07.](#)

Youth Access: Prohibits the sale of cigarettes in packs of less than 20.

[S.F. 128 enacted and effective 3/15/07.](#)

Fire-Safe Cigarettes: After the effective date of the legislation, requires cigarettes sold in Iowa to self-extinguish when not being smoked based on the specified performance standard.

[H.F. 718 enacted 5/21/07 and effective 1/1/09.](#)

KANSAS

Settlement/Tobacco Prevention Spending:

Appropriated \$1,400,000 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 2368\) enacted 4/23/07 and effective 7/1/07.](#)

Smokefree Air: Eliminates a rule that restricted smoking in areas occupied by the House of Representatives.

[H.R. 6004 passed by House and effective 2/8/07.](#)

KENTUCKY

Fire-safe cigarettes: Requires cigarettes sold in Kentucky to self-extinguish when not being smoked based on the performance standard specified in the bill.

[S.B. 134 enacted 3/23/07 and effective 4/1/08.](#)

Cessation Coverage: Allows the state Cabinet for Health and Family Services to cover smoking cessation treatments and services under the state Medicaid program. The scope of the coverage would be defined by regulation.

[H.B. 337 enacted 3/23/07 and effective 6/25/07.](#)

LOUISIANA

Settlement/Tobacco Prevention Spending:

Appropriated \$7,664,897 for tobacco control and prevention programs.

[FY2008 Appropriations \(H.B. 1\) enacted and effective 7/12/07.](#)

Fire-Safe Cigarettes: Requires cigarettes sold in Louisiana to self-extinguish when not being smoked based on the specified performance standard.

[H.B. 579 enacted 7/10/07 and effective 8/1/09.](#)

MAINE

Settlement/Tobacco Prevention Spending:

Appropriated \$16,926,452 for tobacco control and prevention programs in FY2008.

[FY2008-FY2009 Biennial Budget \(Pub. Law 2007, chap. 240 - L.D. 499\) enacted 6/7/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\).](#)

Flavored Tobacco Products: Prohibits the sale of certain flavored cigarettes and cigars in the state as well as the sale of hard snuff as defined.

[L.D. 1361 \(S.B. 475\) enacted 7/2/07 and effective 9/20/07 & 7/1/09.](#)

Fire-safe Cigarettes: As of the effective date of this legislation, requires cigarettes sold in Maine to self-extinguish when not being smoked based on the specified performance standard to help reduce cigarette-caused fires.

[L.D. 70 \(H.B. 68\) enacted 6/8/07 and effective 1/1/08.](#)

Smokefree Air: Prohibits the use of tobacco in school buildings and on school grounds at all times.

[L.D. 184 \(S.B. 67\) enacted 5/22/07 and effective 9/20/07.](#)

Smokefree Air: Prohibits tobacco specialty stores from getting a license to sell food or drink if they did not have one as of January 1, 2007 and prohibits the use of hookahs in tobacco specialty stores required to get new licenses or renew old licenses after January 1, 2007.

[L.D. 859 \(S.B. 269\) enacted 5/29/07 and effective 9/20/07.](#)

Smokefree Air: Gives legislative approval to a portion of the rules governing smoking in the workplace.

[L.D. 38 \(H.B. 39\) enacted and effective 3/22/07.](#)

Cessation Coverage: Requires the Maine Department of Health and Human Services to undertake a study of best practice treatment and clinical practice guidelines for tobacco cessation treatment, which must include development of a model tobacco cessation treatment program for use in the public sector and private sector. A report is due to the Joint Committee on Health and Human Services of the legislature by January 15, 2008.

[L.D. 1421 \(S.B. 499\) enacted and effective 5/22/07.](#)

Tobacco Product Licensing: Prohibits distributors from selling to retailers who do not hold a current retail tobacco license.

[L.D. 725 \(H.B. 546\) enacted 5/25/07 and effective 9/20/07.](#)

MARYLAND

Settlement/Tobacco Prevention Spending:

Appropriated \$18,382,706 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 50\) enacted 4/3/07 and effective 7/1/07.](#)

Smokefree Air: Prohibits smoking in almost all public places and workplaces, including restaurants and bars. Provides an economic hardship waiver for businesses impacted by the law to be defined by regulation, which sunsets after three years.

[H.B. 359/S.B. 91 enacted 5/17/07 and effective 2/1/08.](#)

Tobacco Tax: Increases the cigarette tax by \$1.00 to \$2.00 per pack.

[H.B. 5 \(2007 special legislative session\) enacted 11/19/07 and effective 1/1/08.](#)

Fire-Safe Cigarettes: Requires cigarettes sold in Maryland to self-extinguish when not being smoked based on the specified performance standard to help reduce cigarette-caused fires.

[H.B. 785 enacted 5/17/07 and effective 7/1/08.](#)

Youth Access: Prohibits the sale of tobacco paraphernalia to a minor as defined. Repeals provisions penalizing minors for tobacco-related offenses.

[S.B. 1017 enacted and effective 4/24/07.](#)

MASSACHUSETTS

Settlement/Tobacco Prevention Spending:

Appropriated \$12,750,000 for tobacco control and prevention programs.

[FY2008 Annual Budget \(H.B. 4141\) enacted and effective 7/12/07.](#)

MICHIGAN

Settlement/Tobacco Prevention Spending:

Appropriated \$3,600,000 for tobacco control and prevention programs.

[FY2008 Department of Community Health Budget \(H.B. 4344\) enacted and effective 10/31/07.](#)

Settlement/Securitization: Increases the amount of Master Settlement Agreement revenue being securitized, and changes the way the proceeds from the lump sum payment are deposited.

[H.B. 4850 enacted and effective 6/12/07.](#)

MINNESOTA

Settlement/Tobacco Prevention Spending:

Appropriated/Allocated \$22,080,000 total for tobacco control and prevention programs from the state general fund and tobacco settlement money. This is the first year of the FY2008-FY2009 biennium.

[FY2008-FY2009 Biennial Health and Human Services Budget \(H.F. 1078\) enacted 5/25/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\) and FY2008 ClearWay Minnesota Operating Budget.](#)

Smokefree Air: Prohibits smoking in almost all public places and workplaces, including restaurants and bars. Specifically allows stronger local ordinances.

[S.F. 238 enacted 5/16/07 and effective 10/1/07.](#)

Fire-Safe Cigarettes: Requires cigarettes sold in Minnesota to self-extinguish when not being smoked based on the performance standard specified in the legislation.

[H.F. 829 enacted 5/7/07 and effective 1/1/09.](#)

MISSISSIPPI

Settlement/Tobacco Prevention Spending:

Appropriated \$9,450,000 for tobacco control and prevention programs.

[FY2008 Department of Health Appropriations \(H.B. 1696\) enacted 4/21/07 and effective 7/1/07.](#)

Settlement/Tobacco Prevention Spending:

Establishes an Office of Tobacco Control within the state Department of Health, which will manage a comprehensive tobacco control program. Also establishes the Mississippi Tobacco Advisory Council, which shall assist in implementing the tobacco control program. Dedicates \$20 million annually in settlement money to the Office of Tobacco Control.

[S.B. 2764 enacted and effective 3/30/07.](#)

Settlement/Tobacco Prevention Funding: Allows some of the \$20 million in settlement money appropriated to the Office of Tobacco Control by S.B. 2764 above to be used for other purposes as determined by the state Board of Health.

[H.B. 528 enacted 4/20/07 and effective 7/1/07.](#)

Settlement/Tobacco Prevention Spending: In a 6-1 decision, the Mississippi Supreme Court affirmed a 2006 Chancery court order prevent-

ing the future transfer of \$20 million annual payments to the Partnership for a Healthy Mississippi for a tobacco prevention and cessation program, and also ordered the Partnership to give back any remaining money from the payments it had received since 2000.

[Healthy Mississippi v. State of Mississippi, decided 6/14/07.](#)

Smokefree Air: Allows smoking in state veterans' homes in designated areas.

[H.B. 1090 enacted 3/15/07 and effective 7/1/07.](#)

MISSOURI

Settlement/Tobacco Prevention Spending:

Appropriated \$200,000 for tobacco control and prevention programs.

[FY2008 Department of Health and Senior Services Budget \(H.B. 10\) enacted 6/27/07 and effective 7/1/07.](#)

MONTANA

Settlement/Tobacco Prevention Spending:

Appropriated \$8,476,567 for tobacco control and prevention programs for FY2008.

[FY2008-FY2009 Biennial Budget \(H.B. 2, 1st special session 2007\) enacted 6/1/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\).](#)

Fire-Safe Cigarettes: Requires cigarettes sold in Montana to self-extinguish when not being smoked based on the specified performance standard.

[H.B. 461 enacted 4/28/07 and effective 5/1/08.](#)

NEBRASKA

Settlement/Tobacco Prevention Spending:

Appropriated \$2,500,000 for tobacco control and prevention programs in FY2008.

[FY2008-FY2009 Biennial Budget \(L.B. 321\) enacted 5/21/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\).](#)

Tobacco Tax: Makes changes to the way cigarette tax revenue is distributed.

[L.B. 322 enacted and effective 5/21/07.](#)

NEVADA

Settlement/Tobacco Prevention Spending:

Allocated \$3,300,000 for tobacco control and prevention programs in FY2008.

[FY2008 Allocation based on 1999 law/state Department](#)

[of Health recommendations, effective 7/1/07.](#)

Settlement/Tobacco Prevention Spending: Changes the way annual Master Settlement Agreement revenues are allocated; reduces the amount of money going to tobacco control programs.

[A.B. 182 enacted 6/13/07 and effective 7/1/07.](#)

Youth Access: Requires the posting of a sign at the point of purchase stating that selling tobacco products to minors is illegal, and prohibits the sale of cigarettes by self-service display.

[A.B. 586 enacted 6/13/07 and effective 10/1/07.](#)

NEW HAMPSHIRE

Settlement/Tobacco Prevention Spending:

Appropriated \$1,350,000 for tobacco control and prevention programs in FY2008.

[FY2008-FY2009 Biennial Budget \(H.B. 1\) enacted 6/29/07 and effective 7/1/07 \(FY2008\) & 7/1/08 \(FY2009\).](#)

Smokefree Air: Prohibits smoking in some public places, including restaurants and cocktail lounges (bars).

[S.B. 42 enacted 6/19/07 and effective 9/17/07.](#)

Tobacco Tax: Increases the cigarette tax by 28 cents to \$1.08 per pack.

[H.B. 2 enacted 6/29/07 and effective 7/1/07.](#)

Settlement/Tobacco Prevention Funding: Sets up a tobacco use prevention and cessation program administered by the state Department of Health and Human Services. Devotes 67.4 percent of the money appropriated to the state comprehensive cancer plan to the program. Eliminates the Tobacco Use Prevention Fund.

[H.B. 2 enacted 6/29/07 and effective 7/1/07.](#)

NEW JERSEY

Settlement/Tobacco Prevention Spending:

Appropriated \$11,000,000 for tobacco control and prevention programs.

[FY2008 Annual Budget \(S.B. 3000\) enacted 6/28/07 and effective 7/1/07.](#)

Fire-Safe Cigarettes: Requires cigarettes sold in New Jersey to self-extinguish when not being smoked based on the specified performance standard.

[A.B. 2575 enacted 5/4/07 and effective 6/1/08.](#)

Settlement: Amends the MSA Qualifying statute regarding release of money from non-participating manufacturers escrow accounts.

A.B. 3058 enacted and effective 6/28/07.

NEW MEXICO

Settlement/Tobacco Prevention Spending:

Appropriated \$9,165,000 for tobacco control and prevention programs.

FY2008 Annual Budget (H.B. 2) enacted 3/15/07 and effective 7/1/07.

Smokefree Air: Prohibits smoking in almost all public places and workplaces, including restaurants and bars. Smoking will continue to be allowed in casinos/gaming facilities and bingo halls. Stronger local ordinances are specifically allowed.

H.B. 283 enacted 3/13/07 and effective 6/15/07.

Tobacco Liability: Limits the appeal bond required of MSA signatories to appeal a lawsuit judgment to \$100 million, regardless of the amount of the judgment.

S.B. 335 enacted 4/2/07 and effective 6/15/07.

NEW YORK

Settlement/Tobacco Prevention Spending:

Appropriated \$85,485,000 for tobacco control and prevention programs.

FY2008 Department of Health and Mental Hygiene Annual Budget (S.B. 2104) enacted and effective 4/9/07.

NORTH CAROLINA

Settlement/Tobacco Prevention Spending: The [Health and Wellness Trust Fund](#) Commission allocated \$17,100,000 for tobacco control and prevention related initiatives in FY2008.

Smokefree Air: Prohibits smoking in state government buildings, and provides the option to local governments to make local government buildings and transportation systems smokefree.

H.B. 24 enacted 7/8/07 and effective 1/1/08.

Smokefree Air: Requires local school districts to prohibit tobacco use in all school buildings, on school grounds and at school-sponsored events by August 1, 2008.

S.B. 1086 enacted and effective 7/18/07.

Smokefree Air: Prohibits smoking in long-term care facilities as defined.

H.B. 1294 enacted 8/28/07 and effective 10/1/07.

Smokefree Air: Provides the Boards of Governors of each of 16 schools within the UNC System the authority to expand regulations for smoking on their individual campus, including campus grounds.

S.B. 862 enacted 6/27/07 and effective 7/1/07.

Fire-safe Cigarettes: Requires cigarettes sold in North Carolina to self-extinguish when not being smoked based on the specified performance standards.

H.B. 1785 enacted 8/24/07 and effective 1/1/10.

Tobacco Tax: Increases the tax on tobacco products other than cigarettes to 10 percent of the cost price of the products, and dedicates the additional revenue to a University Cancer Research Fund.

H.B. 1473 enacted 7/31/07 and effective 10/1/07.

NORTH DAKOTA

Settlement/Tobacco Prevention Spending:

Appropriated \$3,134,198 for tobacco control and prevention programs in FY2008.

FY2008-FY2009 Biennial Department of Health Budget (H.B. 1004) enacted 5/3/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

Youth Access: Restricts the sale/placement of tobacco product vending machines and makes it unlawful for minors to use false ID to purchase or attempt to purchase tobacco products.

H.B. 1358 enacted 3/21/07 and effective 8/1/07.

Smokefree Air: Requires the office of management and budget to develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds.

S.B. 2090 enacted 5/1/07 and effective 8/1/07.

OHIO

Settlement/Tobacco Prevention Spending: The [Ohio Tobacco Use Prevention and Control Foundation](#) allocated \$44,732,438 for tobacco control and prevention programs in FY2008.

Settlement/Securitization: Authorizes the sale of all of the state's future annual payments under the Master Settlement Agreement for a lump-sum payment up front.

H.B. 119 enacted and effective 6/30/07.

OKLAHOMA

Settlement/Tobacco Prevention Spending:

Appropriated \$14,212,000 for tobacco control and prevention programs.

FY2008 Annual Department of Health Budget (H.B. 1234) enacted 3/28/07 and effective 7/1/07 & interest generated by the Tobacco Settlement Endowment Trust Fund and certified for use in FY2008.

Smokefree Air: Prohibits smoking in the public areas of zoos whether indoors or outdoors.

S.B. 473 enacted 4/30/07 and effective 11/1/07.

OREGON

Settlement/Tobacco Prevention Spending:

Appropriated \$7,900,000 for tobacco control and prevention programs for FY2008.

FY2008-FY2009 Department of Human Services Biennial Budget (H.B. 5031) enacted and effective 7/3/07 (FY2008) & 7/1/08 (FY2009).

Smokefree Air: Closes loopholes in Oregon's statewide smokefree law for bars, bowling alleys, bingo halls and workplace smoking rooms. Also repeals preemptive language in the current law.

S.B. 571 enacted 6/26/07 and effective 1/1/09.

Fire-Safe Cigarettes: Requires all cigarettes sold in Oregon to self-extinguish when not being smoked based on the performance standard specified in the bill.

H.B. 2163 enacted 4/17/07 and effective 1/1/08 and 7/1/08.

Settlement: Makes small change to the way MSA money is allocated.

H.B. 2143 enacted and effective 7/30/07.

PENNSYLVANIA

Settlement/Tobacco Prevention Spending:

Appropriated \$31,673,000 for tobacco control and prevention programs.

FY2008 Allocation based on the Tobacco Settlement Act of 2001, effective 7/1/07 and H.B. 1295 enacted and effective 7/17/07.

Settlement/Tobacco Prevention Spending:

Redirected some of the annual MSA monies to other purposes for FY2008, including redirecting 25 percent of the money supposed to go to tobacco prevention and cessation programs.

H.B. 1295 enacted and effective 7/17/07.

RHODE ISLAND

Settlement/Tobacco Prevention Spending:

Appropriated \$940,475 for tobacco control and prevention programs.

FY2008 Appropriations (H.B. 5300) enacted by veto override 6/21/07 and effective 7/1/07.

Fire-Safe Cigarettes: Requires cigarettes to self-extinguish when not being smoked based on the performance standard specified in the bill.

S.B. 106/H.B. 5257 enacted (became law without governor's signature) 7/3/07 and 7/7/07 respectively and effective 9/1/08.

Tobacco Product Licensing: Changes various provisions regarding licensing of entities that sell, manufacture or import tobacco products.

S.B. 145/H.B. 5753 enacted (became law without governor's signature) 7/3/07 & 7/7/07 respectively and effective 10/1/07.

Settlement/Securitization: Authorizes the sale of additional bonds backed by residual interest from the state's previously sold future MSA payments to raise additional money.

H.B. 5300 enacted by veto override and effective 6/21/07.

Youth Access: Eliminates the monetary penalty for minors that possess tobacco products, and increases the community service penalty from 20 to 30 hours.

S.B. 19 enacted (became law without the governor's signature) and effective 7/7/07.

SOUTH CAROLINA

Settlement/Tobacco Prevention Spending:

Appropriated \$2,000,000 for tobacco control and prevention programs.

FY2008 Annual Budget (H.B. 3620) enacted 6/29/07 and effective 7/1/07.

SOUTH DAKOTA

Settlement/Tobacco Prevention Spending:

Appropriated \$5,000,000 for tobacco control and prevention programs.

FY2008 Annual Budget (H.B. 1281) enacted 3/13/07 and effective 7/1/07.

Settlement/Tobacco Prevention Spending:

Appropriated an additional \$5 million to the state tobacco control and prevention program for FY2007.

S.B. 59 enacted and effective 3/6/07.

Tobacco Tax: Redefines two trust funds where portions of tobacco tax revenue are deposited. Allows all the money in the funds to be available for appropriation by the legislature.

H.B. 1139 enacted 3/15/07 and effective 7/1/07.

Youth Access: Makes it illegal to purchase a tobacco product on behalf of, or give a tobacco product to, a minor.

H.B. 1162 enacted 3/16/07 and effective 7/1/07.

Tobacco Product Licensing: Requires retailers of cigarettes or tobacco products to register with the state Department of Revenue and Regulation. No fee is required.

S.B. 43 enacted 3/20/07 and effective 7/1/07.

TENNESSEE

Settlement/Tobacco Prevention Spending:

Appropriated \$10,000,000 for tobacco control and prevention programs.

FY2008 Annual Budget (S.B. 2334) enacted 6/28/07 and effective 7/1/07.

Tobacco Tax: Increases the cigarette tax by 42 cents to 62 cents per pack. The additional revenue is dedicated to a state education trust fund, and state trauma centers.

S.B. 2326 enacted 6/7/07 and effective 7/1/07.

Smokefree Air: Prohibits smoking in most public places and workplaces, including almost all restaurants. Places where persons under 21 are prohibited from entering at all times, and workplaces with three or fewer employees are exempt. Stronger local ordinances are still preempted.

S.B. 1325 enacted 6/11/07 and effective 10/1/07.

Smokefree Air: Prohibits smoking in all motor vehicles owned, leased or operated by the state of Tennessee.

S.B. 10 enacted 6/21/07 and effective 7/1/07.

TEXAS

Settlement/Tobacco Prevention Spending:

Appropriated \$12,482,003 for tobacco control and prevention programs for FY2008.

FY2008-FY2009 Biennial Budget (H.B. 1) enacted 6/15/07 and effective 9/1/07 (FY2008) & 9/1/08 (FY2009).

Fire-Safe Cigarettes: Requires cigarettes sold in Texas to self-extinguish when not being smoked based on the performance standard specified in the legislation.

H.B. 2935 enacted 6/15/07 and effective 1/1/09.

Youth Access: Adds a sentence on the dangers of smoking to pregnant women to the required point-of-sale warning signs for tobacco products.

S.B. 91 enacted 5/11/07 and effective 9/1/07.

UTAH

Settlement/Tobacco Prevention Spending:

Appropriated \$7,262,700 for tobacco control and prevention programs.

FY2008 Annual Budget (H.B. 1) enacted 2/2/07 and effective 7/1/07.

Fire-Safe Cigarettes: Requires cigarettes sold in Utah to self-extinguish when not being smoked based on the performance standard specified in the legislation.

S.B. 200 enacted 3/19/07 and effective 7/1/08.

Smokefree Air/Preemption: Repeals preemption of local smokefree ordinances for outdoor places of public access that are owned or operated by a political subdivision, a state institution of higher education or a state institution of public education.

H.B. 201 enacted 3/7/07 and effective 4/30/07.

Smokefree Air: Allows smoking again in Class B private clubs until January 1, 2009 if they were licensed by May 15, 2006 and do not allow persons under 21 into the club. Allows smoking in taverns and Class D private clubs until January 1, 2009 that were licensed by May 15, 2006, but underwent a change in ownership after that date.

H.B. 273 enacted 2/27/07 and effective 4/30/07.

VERMONT

Settlement/Tobacco Prevention Spending:

Appropriated \$5,224,947 for tobacco control and prevention programs.

FY2008 Annual Budget (H.B. 537) enacted 6/4/07 and effective 7/1/07.

Tobacco Tax: Makes small change to distribution of cigarette tax revenue.

H.B. 537 enacted and effective 6/4/07.

VIRGINIA

Settlement/Securitization: Authorizes the securitization of the 10 percent of annual MSA payments that goes to the Virginia Tobacco Settlement Fund. These are the monies that are used to fund the state tobacco control program.

H.B. 3111 enacted 3/13/07 and effective 7/1/07.

Smokefree Air: Prohibits smoking within 25 feet of a medical oxygen source in a health care facility.

H.B. 1652 enacted 3/19/07 and effective 7/1/07.

Smokefree Air: Prohibits smoking within 20 feet of gas pumps or fueling tankers delivering gasoline if a sign is posted at the pump.

H.B. 1653 enacted 4/4/07 and effective 7/1/07.

WASHINGTON

Settlement/Tobacco Prevention Spending:

Appropriated \$27,191,000 for tobacco control and prevention programs for FY2008.

FY2008-FY2009 Biennial Budget (H.B. 1128) enacted 5/15/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

Tobacco Prevention Spending: Transfers \$50 million from the state general fund to the Tobacco Prevention and Control Account to provide additional funding for the state tobacco control program.

H.B. 1128 enacted and effective 5/15/07.

WEST VIRGINIA

Settlement/Tobacco Prevention Spending:

Appropriated \$5,663,118 for tobacco control and prevention programs.

FY2008 Annual Budget (H.B. 2007) enacted 3/23/07 and effective 7/1/07.

Settlement/Securitization: Authorizes the sale of all future Master Settlement Agreement payments to the Tobacco Settlement Financing Authority to obtain a lump sum payment up front. The sale will be executed by executive

order of the governor, and must generate at least \$800 million in revenue.

S.B. 185 enacted and effective 4/4/07.

WISCONSIN

Settlement/Tobacco Prevention Spending:

Appropriated \$15,000,000 for tobacco control and prevention programs for FY2008.

FY2008-FY2009 Biennial Budget (S.B. 40) enacted and effective 10/26/07 (FY2008) & 7/1/07 (FY2009).

Tobacco Tax: Increases the cigarette tax by \$1.00 to \$1.77 per pack. Increases the tax on other tobacco products to 50 percent of manufacturer's list price, but changes the tax on moist snuff to a weight-based tax of \$1.31 per ounce.

S.B. 40 enacted 10/26/07 and effective 1/1/08.

WYOMING

Settlement/Tobacco Prevention Spending:

Appropriated \$5,906,829 for tobacco control and prevention programs in FY2008.

FY2007-FY2008 Mental Health and Substance Abuse Biennial Budget (H.B. 91) enacted 3/10/06 and effective 7/1/06 (FY2007) & 7/1/07 (FY2008).

Youth Access: Prohibits the sale of tobacco products by self-service display and without the assistance of a salesperson. Businesses that do not allow persons under 18 to enter are exempt from this requirement.

H.B. 114 enacted 2/22/07 and effective 7/1/07.



A Smokefree Air

Public Places

No person shall smoke in a public place or at a public meeting except in enclosed, well-ventilated areas designated as smoking areas by the person in charge. Exemptions include retail tobacco stores and tobacco businesses, limousines used under private hire by an individual or corporation, hotel and motel rooms rented to guests, except for those rooms designated by the hotels and motels as no smoking rooms. Nothing in this section shall be construed to prevent any owner, operator, manager, or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility.

ALA. CODE § 22-15A-1 et seq. (2003).

Government Buildings

Smoking is prohibited except in designated enclosed and well-ventilated areas excluding private offices.

ALA. CODE § 22-15A-1 et seq. (2003).

Private Workplaces

Employers having a closed place of employment must have a written smoking policy that contains at a minimum: the right of an employee to declare his work area as nonsmoking; smoking shall be prohibited in all common work areas unless a majority of the workers who work in that area agree that a smoking area will be designated; the smoking policy shall be communicated to all employees within three weeks of its adoption and all employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee; every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

ALA. CODE § 22-15A-1 et seq. (2003).

Schools

Smoking is prohibited except in enclosed and well-ventilated areas at schools, other school

facilities or enclosed school-sponsored events for grades K-12.

ALA. CODE § 22-15A-1 et seq. (2003).

Child Care Facilities

Smoking is prohibited except in designated enclosed and well-ventilated areas in child care facilities.

ALA. CODE §§ 22-15A-1 et seq. (2003).

Health Care Facilities

Smoking is prohibited except in designated enclosed and well-ventilated areas in most health care facilities. Smoking by patients in a chemical dependency treatment program or mental health program may be allowed in a separated well-ventilated area.

ALA. CODE § 22-15A-1 et seq. (2003).

Restaurants

A smoking area may be provided. If any restaurant is deemed by its owner as being too small to have a designated smoking area, it shall be left up to the discretion of the owner if the facility will be a "smoking" or a "nonsmoking" facility.

ALA. CODE § 22-15A-1 et seq. (2003).

Bars

Bars and lounges are exempt from the restrictions on smoking in public places.

ALA. CODE § 22-15A-1 et seq. (2003).

Penalties/Enforcement

Any person who violates this act commits a violation, punishable by a fine of \$25 for each violation. Violations by specific public places incur, after a 30-day warning to comply, a fine of no more than \$50 for the first violation, no more than \$100 for the second violation, and no more than \$200 for the third violation. The Alabama Department of Public Health enforces this law, and shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators and rules specifying

procedures by which appeals may be taken by aggrieved parties.

ALA. CODE §§ 22-15A-1 et seq. (2003).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 42.5 cents

Date last changed: May 18, 2004 — from 16.5 cents to 42.5 cents

Year first enacted: 1927

ALA. CODE § 40-25-2 (2004).

The state cigarette tax revenue is split into two separate parts. 38.82 percent of the cigarette tax revenue is distributed as follows:

1) 6.06 percent to the State Public Welfare Trust Fund;

2) 9.09 percent to be used for the following purposes in the following order: 1) as much as is necessary to pay the principal and interest that will mature during the then current fiscal year on certain bonds issued by the State Industrial Development Authority; 2) any remaining revenue goes into a special fund designated the “General and Mental Health Fund”;

3) 12.12 percent to be used for the following purposes in the following order: 1) as much as is necessary to pay, at their respective maturities, the principal and interest that will mature during the then current fiscal year on bonds issued for acquisition and construction of mental health facilities or bonds issued by the Alabama Mental Health Finance Authority; 2) any remaining revenue is put into the “General and Mental Health Fund”;

4) 6.06 percent for the following purposes in the following order: 1) as much as is necessary to pay the principal and interest that will mature during the then current fiscal year on all bonds that may be issued by the State Parks Development Authority; 2) any remaining revenue is designated to a special fund called the “State Parks Fund”;

5) 67.67 percent to the General Fund.

The remaining 61.18 percent of all cigarette tax

revenue is allocated as follows: 1) up to \$2 million received annually shall be allocated to the various counties of the state levying a cigarette tax to offset the administrative expenses of obtaining local stamps to affix to cigarettes sold in their jurisdiction for the purpose of collecting their local cigarette tax and to provide a discount to wholesalers and jobbers for affixing such stamps;

2) all remaining revenue goes to the General Fund to be used for Medicaid Services.

ALA. CODE § 40-25-23 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (October 1, 2005 to September 30, 2006): \$151,012,000

Other Tobacco Products

Chewing tobacco: 1.5 cents per ounce;

Snuff: 1 cent to 8 cents, depending on the weight, for up to 6 ounces; 12 cents for each ounce or fractional part thereof over 6 ounces;

Little Cigars (not weighing more than 3 pounds per thousand): 4 cents per each 10 cigars or fractional part thereof;

All other Cherooots, Stogies & Cigars: \$3.00 to \$40.50 per thousand depending on the price they retail for;

Smoking Tobacco: 4 cents to 21 cents, depending on the weight, for up to 4 ounces; 6 cents for each ounce or fractional part thereof over 4 ounces

ALA. CODE § 40-25-2 (2004).

All revenue derived from the taxes on tobacco products other than cigarettes is credited to the General Fund.

ALA. CODE § 40-25-23 (2004).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

The Alabama Alcoholic Beverage Control Board shall enforce state and federal laws that prohibit the distribution of tobacco or tobacco products to minors. The board will have the authority to

conduct annual random compliance tests to assure compliance with state and federal laws regarding the distribution of tobacco products to minors. Minors may be enlisted to attempt to purchase tobacco products, provided they have written consent of a parent or legal guardian and are directly supervised by a sheriff or head of police. If questioned about their age during an attempt to purchase or receive tobacco products, a minor shall state their true age. A photograph or video recording of any minor assisting in an inspection or enforcement action shall be taken prior to the investigation. The appearance of a minor participating in an inspection or enforcement action shall not be altered at the time of the inspection. The minor shall be under the age of 18.

ALA. CODE §§ 28-11-3 & 28-11-4 (1997).

Penalties for Sales to Minors

Any person who sells, barter, exchanges or gives to any minor any cigarettes, cigarette tobacco or cigarette paper or any substitute for either of them shall, on conviction, be fined not less than \$10 or more than \$50 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.

ALA. CODE § 13A-12-3 (1975).

The Alabama Alcoholic Beverage Control Board upon finding that a permit holder or any partner, member, employee, officer, or director of the permit holder has violated any of the laws of this state relating to the manufacture, sale, possession, or transportation of tobacco or tobacco products may upon due notice and hearing, levy administrative fines or suspend or revoke the permit issued by the board, or a combination of all three. For a first violation, an administrative fine of up to \$200, or the permit holder may be offered an opportunity to provide training sessions administered by the Responsible Vendor Program in lieu of an administrative fine; for a second violation within a two year period, an administrative fine of not more than \$400; for a third violation within two years, an administrative fine of not more than \$750; and for a fourth and subsequent violation within two years, an administrative fine of up to \$1,000 and the permit may be suspended or revoked. The maximum length for suspension or revocation of a permit is one year.

ALA. CODE § 28-11-9 (1997).

Photo ID

None

Sign Posting

None

Penalties to Minors

It is unlawful for any minor to purchase, use, possess, or transport tobacco or tobacco products within this state. It shall not be unlawful for a minor employee of a tobacco permit holder to handle, transport, or sell tobacco or tobacco products if the minor employee is acting within the line and scope of employment and the permit holder, or an employee of the permit holder who is 21 years of age or older, is present. Minors shall be fined no less than \$10 and no more than \$50 for each violation.

ALA. CODE §§ 28-11-13 & 28-11-14 (1997).

Placement of Tobacco Products

None

Internet Sales

No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum age. No person, other than a delivery service, shall mail, ship, or otherwise cause to be delivered a shipping package in connection with a delivery sale unless the person, prior to the first delivery sale obtains from the prospective consumer a written certification which includes a statement signed by the consumer that certifies the consumer's current address and that the consumer is at least the legal minimum age. The person makes a good faith effort to verify the date of birth of the customer against a commercially available database or by obtaining a photocopy or other image of a valid, government-issued identification stating the date of birth or age of the prospective consumer. The person receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in the consumer's name, or by check, or other written instrument in the consumer's name. The person must also use a method of mailing, shipping, or delivery that requires the consumer's signature before the shipping package is released to the consumer; and must ensure the package is not delivered to a post office box. Violation of any of these provisions is a Class A

misdemeanor, and is also subject to revocation of any license or permit pertaining to the sale or distribution of cigarettes or other tobacco products.

ALA. CODE §§ 13A-12-3.1 to 13A-12-3.7 (2006) & 8-9-12(b) (2002).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

Any person who gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them shall, on conviction, be fined not less than \$10 or more than \$50 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.

ALA. CODE § 13A-12-3 (1975).

Single Cigarettes

No tobacco product, except cigars, shall be distributed unless in an original factory-wrapped container. This prohibition also applies to the distribution of single cigarettes and packages containing less than 20 cigarettes. Violation by a permit holder is subject to the same penalties listed under the "Penalties for Sales to Minors" section.

ALA. CODE §§ 28-11-6 & 28-11-9 (1997).

E Restrictions on the Sale of Tobacco Products in Vending Machines

None

F Licensing Requirements

Requirements

Retailers and wholesalers must obtain a privilege license to sell tobacco products.

ALA. CODE §§ 40-12-72 & 40-12-73 (1940).

Any person who distributes tobacco or maintains a tobacco vending machine must obtain a permit from the Alabama Alcoholic Beverage Control Board for each location or vending machine. A permit is nontransferable and must be renewed annually. Failure to obtain or display a valid permit is a misdemeanor offense subject to a fine of not less than \$100 or more than \$500 for the first offense and not less than \$500 and not more than

\$1,500 for subsequent offenses.

ALA. CODE §§ 28-11-7 & 28-11-8 (1997).

Fee

\$2 to \$15 annually for a retail license, depending on the population of the city or town where tobacco products are being sold, \$100 for a wholesale license, plus \$5 to each county where a wholesaler does business.

ALA. CODE §§ 40-12-72 & 40-12-73 (1940).

License Suspension for Sales to Minors

The Alabama Alcoholic Beverage Control Board upon finding that a permit holder, or any partner, member, employee, officer, or director of the permit holder, has violated any of the laws of this state or the United States relating to the sale of tobacco, may, upon due notice and hearing, levy administrative fines or suspend or revoke the permit issued by the board upon a fourth or subsequent violation within two years.

ALA. CODE § 28-11-9 (1997).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total supersedeas bond that is required of all appellants collectively shall not exceed \$125 million, regardless of the amount

of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.

ALA. CODE § 6-12-4 (2006).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Allocated \$766,811 to tobacco control and prevention programs from the state's annual MSA payment and the state general fund.

FY2008 MSA Payment Annual Budget (H.B. 211) enacted 6/14/07 and effective 10/1/07 & FY2008 General Appropriations (H.B. 208) enacted 6/7/07 and effective 10/1/07.

Each year the legislature enacts a separate bill allocating some of the state's annual Master Settlement Agreement payments to the Children's First Trust Fund. Up to \$225,000 per fiscal year is provided for administration of the trust fund. Of the remaining revenue, 10 percent goes to the Department of Public Health for the state Children's Health Insurance Program, tobacco control and prevention programs for youth, and the Alabama Qualified Health Center Grant Program; 22 percent to the state Board of Education; 20 percent to the Alabama Department of Human Resources; 5 percent to the Children's Trust Fund; 5 percent to the State Multiple Needs Children's Fund; 5 percent to the Department of Mental Health and Mental Retardation; 10 percent to the Juvenile Probation Services Fund; 17 percent to the Department of Youth Services; 3.5 percent to the Medicaid Agency; 1 percent to the Alcoholic Beverage Control Board which includes enforcement of youth access to tobacco laws; 1 percent to the Department of Forensic Sciences; and 0.5 percent to the Department of Rehabilitation Services. To get more details on the specific programs funded, see the statutory language.

ALA. CODE §§ 41-15B-2.1 & 41-15B-2.2 (1999).

Alabama has pledged \$13 million per year of its Master Settlement Agreement payments to the Alabama 21st Century Fund to pay for bonds issued by the Alabama 21st Century Authority.

The Alabama 21st Century Authority has been authorized to issue bonds in the amount of \$103,760,000 for the purpose of promoting economic development and industrial recruitment as specified by the Legislature from time to time by separate act. The Alabama 21st Century Fund may invest the funds until such time as they are needed to pay the principal, interest or premium on the above-issued bonds. Excess funds may also be transferred to the State Treasury by act of the legislature. The \$13 million allocation will remain steady through 2018.

ALA. CODE §§ 41-10-620 et seq. (2001).

Non-Monetary Provisions

The Children First Trust Fund was established in 1999 to receive a portion of Alabama's annual Master Settlement Agreement payments. The Alabama Children's Policy Council oversees the trust fund. No monies shall be withdrawn or expended from the fund for any purpose unless the monies have been appropriated by the Legislature and allocated pursuant to this chapter. Any monies remaining in the fund at the end of any fiscal year remain in the trust fund.

ALA. CODE §§ 41-15B-1 et seq. (1998).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in elevators. Smoking is restricted to designated areas in public transportation vehicles and waiting areas, courtrooms or jury rooms, correctional facilities, grocery and retail food stores, and the Alaska Pioneers' Home or the Alaska Veterans' Home.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Government Buildings

Smoking is prohibited in rooms controlled by the state or a political subdivision of the state when a public meeting or assembly is in progress. Smoking is restricted to designated areas in buildings and other structures owned, leased, or operated by the state or a political subdivision of the state, including places of employment, offices, libraries, museums, theaters, concert halls, convention halls, gymnasiums, swimming pools, and other places of entertainment or recreation.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Private Workplaces

Smoking is restricted to designated areas in places of employment. The employer shall post signs in areas prohibiting smoking.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Schools

Smoking in any form is prohibited in a public or private elementary or secondary school or a preschool. This prohibition does not apply to a designated smoking area in public or private elementary schools created by a collective bargaining agreement for employees made prior to August 14, 1990. These designated areas must be properly ventilated or equipped with an exhaust fan and located in a room where minors are not permitted. Smoking is restricted to designated areas in a public or private postsecondary educational institution.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Child Care Facilities

Smoking is prohibited in children's day care facilities, including private residences during the time they are being used for day care services. Smoking is restricted to designated areas in public or private adult day care facilities.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Health Care Facilities

Smoking is prohibited in public and private hospitals and in offices where health or dental care is practiced. Smoking is restricted to designated areas in nursing homes, rest homes, or other residential health care institutions or facilities, and public or private mental health facilities.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Restaurants

Smoking is restricted to designated areas in food service establishments with a seating capacity of at least 50 persons.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Bars

None

Penalties/Enforcement

The person in charge of the indoor place or vehicle must display smoking and no smoking signs. Failure to post signs is punishable by a civil fine of \$20 to \$300 for each day the violation occurs. A person who smokes in a prohibited area is subject to a civil fine between \$10 and \$50. The commissioner of Environmental Conservation or the commissioner's designee is responsible for enforcement, and shall develop and maintain a procedure for processing reports of violations.

ALASKA STAT. §§ 18.35.300 et seq. (2004).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: \$2.00

Date last changed: July 1, 2007 – from \$1.80 to \$2.00

Year first enacted: 1949

ALASKA STAT. §§ 43.50.90 & 43.50.190 (2005).

The cigarette tax increased by \$0.20 to \$2.00 per pack on July 1, 2007 as scheduled by legislation passed in 2004.

S.B. 1001 (2004 special session) enacted 7/24/04.

Seventy-six cents of the cigarette tax goes into a state fund entitled the “School Fund”, which is used to rehabilitate, construct, and repair the state’s school facilities.

ALASKA STAT. § 43.50.140 (2005).

The remainder of the cigarette tax goes into the general fund. A portion of the proceeds (8.9 percent) shall be deposited into the Tobacco Use Education and Cessation Fund, which funds the state’s tobacco control and prevention program.

ALASKA STAT. § 43.50.190 (2005).

There is levied, in addition to the cigarette tax, a nonparticipating equity excise tax of 25 cents per pack on cigarettes sold in this state by nonparticipating manufacturers. A nonparticipating manufacturer is a tobacco product manufacturer that has not signed the 1998 Master Settlement Agreement. Proceeds from this tax go to the general fund.

ALASKA STAT. § 43.50.200 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$57,535,000

Other Tobacco Products

All other tobacco products: 75% of the wholesale price

ALASKA STAT. § 43.50.300 (1997).

All proceeds from the tax on other tobacco products go to the general fund, and may be used by the legislature to make appropriations for health care, health research, health promotion, and health education programs.

ALASKA STAT. § 43.50.350 (1997).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

The Department of Health and Social Services is charged with administering the state tobacco control program, which is required to include a tobacco enforcement component among other requirements.

ALASKA STAT. § 44.29.020(a)(14)(E) (2000).

Penalties for Sales to Minors

A person commits the offense of selling or giving tobacco to a minor if the person negligently sells, exchanges, or gives a cigarette, cigar or tobacco product to persons under 19 or holds a business license endorsement and allows a person less than 19 years of age to sell a cigarette, cigar or tobacco product. Persons who do not hold a business license endorsement are guilty of a violation and upon conviction may be fined not less than \$300. For business license endorsement holders, the business license endorsement shall be suspended for 20 days and a civil penalty of \$300 shall be levied for a first offense, a suspension of 45 days and a civil penalty of \$500 shall be levied for the second offense within 24 months, a suspension of 90 days and a civil penalty of \$1,000 shall be levied for a third offense within 24 months, and a suspension of one year and a civil penalty of \$2,500 shall be levied for an additional conviction within 24 months. The license suspension can be reduced or increased by a set number of days for the first and second violation based on specified factors, and as determined by the Department of Health and Social Services. See full statute for further details. A suspension or revocation applies only to the retail outlet in the location in which the violation occurs.

ALASKA STAT. §§ 11.76.100(a) & 43.70.075 (2007).

Photo ID

None

Sign Posting

A person who holds a business license endorsement shall post on the licensed premises a warning sign that must be at least 6 inches by 18 inches and must read, in lettering at least 1.25 inches high,

“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 19 IS ILLEGAL.” The sign shall be displayed in a manner conspicuous to a person purchasing or consuming tobacco products on the licensed premises. The department shall, without charge, furnish warning signs to a person who holds an endorsement issued under this section or a person who requests the sign with the intention of displaying it.

ALASKA STAT. § 43.70.075(f) (2001).

Penalties to Minors

It is unlawful for minors to knowingly possess tobacco products, and a person who violates this law is guilty of a violation.

ALASKA STAT. § 11.76.105 (1995).

Placement of Tobacco Products

A person may not sell cigarettes, cigars, tobacco, or a product containing tobacco unless the sale occurs in a manner that allows only the sales clerk to control access to the cigarettes, cigars, tobacco, or product containing tobacco unless the sale is by vending machine, a wholesale transaction, or is by a retailer who sells primarily cigarettes, cigars, tobacco, or a product containing tobacco and who restricts access to the premises to only those individuals who are 19 years of age or older. A person who violates this section is guilty of a violation and upon conviction is subject to a fine of not less than \$300. Business license endorsement holders are subject to the same penalties and license suspensions as selling tobacco products to minors.

ALASKA STAT. §§ 11.76.106 (1995) & 43.70.075 (2007).

Internet Sales

A person who is not licensed under this chapter may not ship or cause to be shipped cigarettes to a person in this state unless the person receiving the cigarettes is: licensed under this chapter; an operator of a customs bonded warehouse; or an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter. A person who is licensed under this chapter may not ship or cause to be shipped cigarettes to a person in this state unless the person receiving the cigarettes is: licensed under this chapter; holds a tobacco endorsement under AS 43.70.075; is an operator of a customs bonded warehouse; is an instrumentality

of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter; or is an individual 19 years of age or older receiving the cigarettes for personal consumption and the tax imposed on the cigarettes has been paid. A common or contract carrier may not knowingly transport cigarettes to a person in this state unless the person shipping the cigarettes is licensed under this chapter and before shipment provides the common or contract carrier with a copy of the person’s current license issued by the department and an affidavit certifying that the person receiving the cigarettes is a person specified or licensed under this chapter; or the person receiving the cigarettes is a person specified or licensed under this chapter and before receipt, provides the common or contract carrier with a copy of the person’s current license issued by the department. If the cigarettes are transported by a common or contract carrier to a home or residence, it is rebuttably presumed that the common or contract carrier knew that the person receiving the cigarettes was not a person specified or licensed under this section. A person who violates the provisions of this section is guilty of a class A misdemeanor if the person unlawfully ships, causes to be shipped, or transports at least one but fewer than 5,000 cigarettes; and a class C felony if the person unlawfully ships, causes to be shipped, or transports 5,000 or more cigarettes. In addition to the criminal penalty, the Department of Revenue and Taxation may assess a civil fine of not more than \$5,000 for each violation.

ALASKA STAT. § 43.50.105 (2004).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

Persons who negligently give a cigarette, cigar, or tobacco product to persons under 19 are guilty of a violation and upon conviction are subject to the same penalties listed under the “Penalties for Sales to Minors” section, including the possible license suspension for business license endorsement holders.

ALASKA STAT. §§ 11.76.100 (2001) & 43.70.075 (2007).

Single Cigarettes

A business license endorsement holder may not sell cigarettes to another person unless the ciga-

rettes are sold in groups of at least 20 and the cigarettes are in the manufacturer's original cigarette pack or contained in a cigarette carton or box; or differs in any respect from the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of warnings or of any other information upon a package of cigarettes that is sold within the United States. Violation is a Class B misdemeanor. In addition, the business license endorsement may be suspended for 45 days for a first violation or 90 days for a second violation within 24 months.

ALASKA STAT. § 43.70.075(g-k) (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A vending machine may be maintained only if it is on premises licensed as beverage dispensaries, clubs, or package stores, is as far as possible from the primary entrance and is directly and continually supervised by an employee of the premises when accessible to the public. Vending machines may also be located in an employee break room or other controlled area of a private workplace that is not generally considered a public place and the room or area must contain a posted warning sign at least 11 inches by 14 inches indicating that possession of tobacco by a person under 19 years of age is prohibited.

ALASKA STAT. § 11.76.100(b) (1998).

Penalty

Failure to supervise a tobacco product vending machine is, upon conviction, punishable by a fine of not less than \$300. Business license endorsement holders are subject to the same penalties and license suspensions as selling tobacco products to minors.

ALASKA STAT. §§ 11.76.106 (1995) & 43.70.075 (2007).

Sign Posting

A vending machine located in an employee break room or other controlled area of a private workplace that is not generally considered a public place must contain a posted warning sign at least 12 inches by 14 inches indicating that possession of tobacco by a person under 19 years of age is prohibited by law.

ALASKA STAT. §§ 11.76.100 et seq. (1998).

F Licensing Requirements

Requirements

A separate license is required to sell, purchase, possess, or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator or buyer. If a person operates more than one place of business, the person must obtain a separate license for each place of business, except that a person operating one or more cigarette vending machines is considered to have only one place of business. Licenses are effective until June 30 of the year after the date of issuance, and may be renewed. Additionally, each business is required to get a business license which covers all places of business in the state. However, retailers of cigarettes and other products containing tobacco must have a business license endorsement for each place of business before they can sell tobacco products at retail.

AK STAT. § 43.50.010 & 43.70.075 (2007).

Fee

Manufacturers: \$50 per year; Distributors and Wholesaler-Distributors: \$50 per year; Vending Machine Operators: \$50 per year; Direct-Buying Retailers: \$50 per year; Buyers: \$25 per year; Business License Endorsement for Retailers and Vending Machine Operators: \$100 per year.

ALASKA STAT. §§ 43.50.030 (2005) & 43.70.075 (2001).

License Suspension for Sales to Minors

A business license endorsement for retailers/vending machine operators shall be suspended for a violation of selling tobacco products to a minor for 20 days for a first offense, 45 days for a second offense within 24 months, 90 days for a third offense within 24 months, and one year for subsequent violations within 24 months. The license suspension can be reduced or increased by a set number of days for the first and second violation based on specified factors, and as determined by the Department of Health and Social Services. A suspension or revocation applies only to the retail outlet in the location in which the violation occurs.

AK STAT. § 43.70.075 (2007).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$7,482,200 for tobacco control and prevention programs from the Tobacco Use Education and Cessation Fund in the state general fund.

FY2008 Annual Budget (H.B. 95) enacted 6/29/07 and effective 7/1/07.

The Tobacco Use Education and Cessation Fund is created as a special account in the general fund into which 20 percent annually of the revenue from the Master Settlement Agreement shall be deposited. The legislature may make appropriations from the Tobacco Use Prevention and Cessation Fund for the comprehensive smoking education, tobacco use prevention and tobacco control program.

ALASKA STAT. § 37.05.580 (2001).

Non-Monetary Provisions

Directed the Department of Health to administer a comprehensive smoking education, tobacco use prevention and tobacco control program. It is to do so by grant or contract with one or more organizations in the state. It must include a tobacco use prevention and cessation component, anti-tobacco counter-marketing targeting both youth and adult populations, as well as youth-based efforts that involve youth in the design and implementation of tobacco control efforts.

ALASKA STAT. § 44.29.020(a)(15) (2000).

Securitization

The Commissioner of Revenue is authorized to

sell to the Alaska Housing Finance Corporation (AHFC) the right to receive a total of 80 percent annually of the revenue derived from the Master Settlement Agreement. 40 percent of these payments was sold in 2000, and an additional 40 percent was sold in 2001.

H.B. 281 (2000) & H.B. 234 (2001).

M Fire Safety Standards

Alaska has enacted legislation requiring cigarettes sold in Alaska to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on August 1, 2008.

S.B. 84 enacted 7/18/07 and effective 8/1/08.





A Smokefree Air

Public Places

Smoking is prohibited in almost all public places and workplaces, including restaurants and bars. “Public place” is defined as any enclosed area to which the public is invited or permitted, see statute cited below for a detailed list. Exemptions include: private residences except when used as a licensed child care, adult day care or health care facility; up to 50 percent of hotel/motel rooms; retail tobacco stores that are physically separated, so that smoke does not infiltrate into areas where smoking is prohibited; veterans and fraternal clubs as defined when they are not open to the general public; smoking as part of a Native American religious ceremony; outdoor patios as long as smoke does not enter into places where smoking is prohibited; and smoking as part of a theatrical performance. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places and places of employment, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Government Buildings

Smoking is prohibited in places of employment, the definition of which includes public places of employment. The definition of “employer” also includes the state of Arizona and its political subdivisions. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places and places of employment, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Private Workplaces

Smoking is prohibited in “places of employment,” which are defined as an enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment, including office buildings, work areas, auditoriums, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, stairs, elevators, health care

facilities, private offices and vehicles owned and operated by the employer during working hours when the vehicle is occupied by more than one person. A private residence is not a “place of employment” unless it is used as a child care, adult day care or health care facility. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Schools

Tobacco products are prohibited on school grounds, inside school buildings, in school parking lots or playing fields, in school buses or vehicles, or at off-campus school-sponsored events. This does not apply to an adult who employs tobacco products as a necessary component of a school-sanctioned, tobacco prevention or cessation program established pursuant to AZ REV. STAT. § 15-712.

ARIZ. REV. STAT. § 36-798.03 (2000).

To the extent not covered above, smoking is prohibited in “public places,” the definition of which includes educational facilities. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Child Care Facilities

Smoking is prohibited in “public places,” which are defined as any enclosed area to which the public is invited or permitted. Smoking is also prohibited in “places of employment,” which are defined as an enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment. Although not specifically mentioned, these definitions do include child care facilities. Smoking in private residences is specifically prohibited if it is a child care or adult day care facility. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public

places, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Health Care Facilities

Smoking is prohibited in “public places,” the definition of which includes health care facilities. Smoking is also prohibited in “places of employment,” which are defined as an enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment, including health care facilities. Smoking in private residences is specifically prohibited if it is used as a health care facility. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places and places of employment, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Restaurants

Smoking is prohibited in “public places,” the definition of which includes restaurants. Outdoor patios of restaurants are exempt as long as smoke does not enter areas where smoking is prohibited. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places and places of employment, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Bars

Smoking is prohibited in “public places,” the definition of which includes bars. Outdoor patios of bars are exempt as long as smoke does not enter areas where smoking is prohibited. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places and places of employment, excluding outdoor patios.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Penalties/Enforcement

“No smoking” signs shall be clearly and conspicuously posted by the owner or person in charge of a public place or place of employment. All ashtrays shall be removed from public places and places of employment as well. The state Department of

Health shall implement and enforce the law. The department shall impose a civil penalty of \$100 to \$500 for each offense, and each day an offense occurs is a separate offense. The department may also apply for injunctive relief in the superior court in the county in which the violation occurred. If the court finds the violations are willful or evidence of a pattern of noncompliance a fine of up to \$5,000 may be imposed.

ARIZ. REV. STAT. § 36-601.01 & AZ ADMIN RULES §§ R9-2-101 to R9-2-112 (2007).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: December 4, 2006 – from \$1.18 to \$2.00

Year first enacted: 1933

ARIZ. REV. STAT. §§ 42-3052 (2002), 42-3251 (2002), 42-3251.01 (2002), 42-3251.02 (2006) & 42-3271 (2006).

Two cents of the cigarette tax shall be deposited into the Smoke-Free Arizona Fund to fund enforcement of Arizona’s smokefree air law. Any money remaining after enforcement obligations have been met will be transferred to Arizona’s Tobacco Education and Prevention Program. This increase in the cigarette tax was passed by voters in 2006.

ARIZ. REV. STAT. §§ 42-3251.02 & 36-601.01(L) (2006).

Eighty cents of the cigarette tax is distributed to the Early Childhood Development and Education Fund for use on specified early childhood education programs. This increase in the cigarette tax was also passed by voters in 2006.

ARIZ. REV. STAT. §§ 42-3272 & 8-1181 (2006).

Sixty cents of the cigarette tax is distributed to the Tobacco Products Tax Fund. Forty-two cents of each \$1.00 in the fund is deposited in the Proposition 204 Protection Account which helps fund health insurance coverage for more uninsured residents; five cents of each \$1.00 is deposited in the Health Research Fund to be

used for research into tobacco-related diseases; 27 cents of each \$1.00 is deposited in the Medically Needy Account where it is used to provide health insurance for low-income residents; 20 cents of each \$1.00 is deposited in the Emergency Health Services Account where it is to be used for reimbursement of uncompensated care, primary care services and trauma center readiness costs as appropriated by the legislature; four cents of each \$1.00 is deposited in a health care adjustment account; and two cents of each \$1.00 goes to the Health Education Account for tobacco prevention programs. This increase in the cigarette tax was passed by voters in 2002.

ARIZ. REV. STAT. §§ 36-770, 36-772, 36-774, 36-776 to 36-778 & 42-3251.01 (2002).

Forty cents of the cigarette tax is deposited into the Tobacco Tax and Health Care Fund. Twenty-three cents of every \$1.00 in the fund goes into a Health Education Account where it is used for tobacco control and prevention programs; five cents of each \$1.00 in the fund goes into the Health Research Account where it is used for research on preventing and treating tobacco-related disease and addiction; 70 cents of each \$1.00 in the fund goes into the Medically Needy Account (see above), and two cents of each \$1.00 goes into an adjustment account. This increase in the cigarette tax was passed by voters in 1994.

ARIZ. REV. STAT. §§ 36-771 to 36-775 & 42-3251 (2002).

Eighteen cents of the cigarette tax is distributed as follows: 19.44 percent to state school aid, 11.11 percent to the corrections fund, and the remainder to the general fund.

ARIZ. REV. STAT. §§ 42-3102 to 42-3104 (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$283,148,000

Other Tobacco Products

Chewing tobacco, smoking tobacco, and snuff: 22.25 cents/ounce;

Cavendish, plug, or twist tobacco: 5.45 cents/ounce;

On each 20 small cigars or fractional part weighing not more than three pounds per thousand: 44.05 cents;

All other cigars: 21.8 cents/three cigars or 21.8 cents/cigar depending on the manufacturer's retail price

ARIZ. REV. STAT. §§ 42-3052 (2002), 42-3251 (2002), 42-3251.01 (2002), 42-3271 (2002) & 42-3272 (2006).

The revenue from the other tobacco product taxes levied by ARIZ. REV. STAT. § 42-3271 is deposited in the Early Childhood Development and Education Fund where it is used in the same manner as 80 cents of the cigarette tax (see above).

ARIZ. REV. STAT. §§ 42-3272 & 8-1181 (2006).

The revenue from the other tobacco product taxes levied by ARIZ. REV. STAT. § 42-3251.01 is deposited in the Tobacco Products Tax Fund, where it is used in the same manner as 60 cents of the cigarette tax (see above).

ARIZ. REV. STAT. §§ 42-3251.01 & 36-770 (2002).

The revenue from the other tobacco product taxes levied by ARIZ. REV. STAT. § 42-3251 go to the Tobacco Tax and Health Care Fund where it is distributed in the same manner as 40 cents of the cigarette tax (see above).

ARIZ. REV. STAT. §§ 42-3251 & 36-771 (2002).

The revenue from the other tobacco product taxes levied in ARIZ. REV. STAT. § 42-3052 is deposited 50 percent to the Corrections Fund and 50 percent to the general fund.

ARIZ. REV. STAT. §§ 42-3102 & 42-3104 (2002).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

A person who knowingly sells, gives or furnishes cigars, cigarettes or cigarette papers, smoking or chewing tobacco to a minor is guilty of a petty offense.

ARIZ. REV. STAT § 13-3622 (1978).

Photo ID

None

Sign Posting

None

Bidis

It is unlawful for a retail tobacco vendor to sell, furnish, give, or provide beedies or bidis to a minor. Any person who violates this section is guilty of a Class Three misdemeanor.

ARIZ. REV. STAT. § 36-798.01 (2000).

Penalties to Minors

Minors who buy, possess, or accept tobacco products are guilty of a petty offense.

ARIZ. REV. STAT. § 36-3622 (1978).

Placement of Tobacco Products

None

Internet Sales

Any person accepting an order for a delivery sale shall comply with specific age-verification requirements, including obtaining a certification from the consumer before delivery and verifying the information against a commercially available database or receiving a photocopy of a government-issued identification; specific disclosure requirements; specific shipping requirements including using a delivery service that requires a signature from the consumer or another person of legal minimum purchase age and proof in the form of a photographic government-issued identification that the individual is the consumer or adult residing at the address; specific registration and reporting requirements; and specific tax collection requirements. Violation by an adult is a Class Five felony and for the first violation the person shall be fined \$1,000 or five times the retail value of tobacco products involved, whichever is greater. For the second and subsequent violations, the fine is \$5,000 or five times the retail value of the tobacco products involved, whichever is greater. An adult who knowingly submits a false certification is guilty of a Class Five felony and for each offense shall be fined \$10,000 or five times the retail value of the tobacco products involved, whichever is greater. A minor submitting a false certification is guilty of a petty offense. Failure to pay the appropriate taxes is a penalty of five times the retail value

of the tobacco products involved in addition to any other penalty. Pipe tobacco and cigars are excluded from these requirements.

ARIZ. REV. STAT. §§ 42-3221 to 42-3230 (2004).

Other Provisions

It is unlawful for a person to deliver, or cause to be delivered, to any residence in this state any tobacco products unsolicited by at least one adult who resides at that address. A person who knowingly violates this section is guilty of a Class Two misdemeanor and is subject to a civil penalty of up to \$5,000 for each violation. Each delivery of a tobacco product shall constitute a separate violation.

ARIZ. REV. STAT. § 36-798.05 (2000).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes**Samples**

A person who knowingly gives or furnishes tobacco products to a minor is guilty of a petty offense.

ARIZ. REV. STAT. § 13-3622 (1978).

Single Cigarettes

It is unlawful to manufacture, sell, or distribute in this state either a package or other container of cigarettes with fewer than twenty cigarettes or a package of roll-your-own tobacco that contains less than 0.60 ounces of tobacco. This does not prohibit the sale or distribution of such products in specially licensed tobacco stores and in places that only admit people over 21 years of age. A violation of this section is a Class Three misdemeanor.

ARIZ. REV. STAT. § 36-798.04 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines**Placement**

Tobacco vending machines are restricted to bars and employee lounges that are not open to the public and if the business does not employ minors. This act does not invalidate or prohibit any local ordinance.

ARIZ. REV. STAT. § 36-798.02 (2000).

Penalty

Violation of the restrictions on tobacco product vending machines is a petty offense.

ARIZ. REV. STAT. § 36-798.02 (2000).

Sign Posting

Tobacco vending machines must have a sign measuring at least 80 square inches that states "IT IS ILLEGAL FOR A MINOR TO PURCHASE CIGARETTES OR TOBACCO PRODUCTS AND, UPON CONVICTION, A FINE UP TO \$300 MAY BE IMPOSED." This act does not invalidate or prohibit any local ordinance.

ARIZ. REV. STAT. § 36-798.02 (2000).

F Licensing Requirements**Requirements**

Distributors must be licensed by the Department of Revenue to sell tobacco products on which a tax is imposed. The license is non-transferable, valid for one year unless suspended or revoked and must be displayed in the applicant's place of business.

ARIZ. REV. STAT. § 42-3201 (2006).

Fee

\$25 annually.

ARIZ. REV. STAT. § 42-3201 (2006).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

No state employer may discriminate against any employee or other person on the basis of the use or nonuse of tobacco products. Violators are guilty of a petty offense.

ARIZ. REV. STAT. § 36-601.02 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$23,500,000 for tobacco control and prevention programs from a portion of state tobacco tax revenue.

Appropriation for FY2008 based on percentage dedicated to the program as part of a 1994 ballot initiative, effective 7/1/07.

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in most public places and enclosed areas of places of employment, including almost all restaurants. See the definition of “public place” and “place of employment” under ARK. CODE ANN. § 20-27-1803 for more details. This does not apply to private residences, except when used as a licensed child care, adult day care, or health care facility; designated guest smoking rooms in hotels/motels, except in hotels/motels with more than 25 rooms no more than 20 percent of the rooms may be designated smoking; all workplaces with fewer than three employees that are not public places; a retail tobacco store, if secondhand smoke from the store does not infiltrate into places where smoking is prohibited; areas within long-term care facilities that are designated by the facility as a smoking area or for supervised patient smoking only; outdoor areas of places of employment; all workplaces of any manufacturer, importer or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities; all restaurants and bars licensed by the state of Arkansas that prohibit at all times persons less than 21 years of age from entering the premises, if secondhand smoke does not infiltrate into areas where smoking is prohibited; and designated smoking areas on the gaming floor of any franchisee of the Arkansas Racing Commission.

ARK. CODE ANN. §§ 20-27-1801 et seq. (2006).

Government Buildings

Smoking is prohibited in all vehicles and enclosed areas owned, leased, or operated by the state of Arkansas, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

ARK. CODE ANN. § 20-27-1804 (2006).

Smoking any cigarette, cigar, pipe, or other to-

bacco product in the State Capitol Building is prohibited. Violation is a misdemeanor punishable by a fine of \$25.

ARK. CODE ANN. § 22-3-220 (2000).

Private Workplaces

Smoking is prohibited in all enclosed areas of places of employment, including common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, health care facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed areas. The prohibitions on smoking shall be communicated to all current employees by their employer within 30 days of the effective date of this act, and to each prospective employee upon application for employment. Workplaces with fewer than three employees, as long as the workplace is not also a public place; workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities; and outdoor places of employment are all exempt from these requirements.

ARK. CODE ANN. §§ 20-27-1804 & 20-27-1805 (2006).

Schools

Smoking is prohibited in public places, the definition of which includes educational facilities.

ARK. CODE ANN. §§ 20-27-1803 & 20-27-1804 (2006).

Smoking or use of tobacco in enclosed areas, buildings, or facilities of a public elementary or secondary school, or on any property owned or leased by a public school district is prohibited. A copy of this statute shall be posted in a conspicuous location at every entrance to each building owned or leased by a public school district, and every school bus used to transport public school students. Persons violating this act shall be guilty of a misdemeanor and punishable by a fine not less than \$10 or more than \$100.

ARK. CODE ANN. § 6-21-609 (1999).

Child Care Facilities

Smoking is prohibited in all licensed child care facilities.

ARK. CODE ANN. § 20-78-217 (1997).

Health Care Facilities

Smoking is prohibited in public places, the definition of which includes health care facilities. "Health care facility" is defined as an office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. This includes the building or buildings in which a medical facility operates, together with all property owned or operated by a medical facility that is contiguous to the building or buildings in which medical services are provided. Health care facility does not include medical facilities as defined below, psychiatric hospitals or long-term care facilities.

ARK. CODE ANN. §§ 20-27-1803 & 20-27-1804 (2006).

Smoking is prohibited in and on the grounds of all medical facilities in the state. "Medical facilities" are defined as hospitals, including both inpatient and outpatient services, as well as hospital-owned and operated ambulatory surgery centers and free-standing medical clinics. Psychiatric hospitals are exempt. If a treating physician determines that an inpatient's treatment will be substantially impaired by the denial to that patient of the use of tobacco, the physician may enter a written order permitting the use of tobacco by that patient. The order shall be consistent with the medical facilities staff bylaws, hospital regulations and any local ordinances. Violation is a Class C misdemeanor. Each medical facility shall post signs in prominent places in its facilities and on its property to explain the prohibition of smoking.

ARK. CODE ANN § 20-27-704 et seq. (2005).

Restaurants

Smoking is prohibited in public places, the definition of which includes restaurants. The term restaurant includes the bar area of a restaurant. Licensed restaurants that do not allow persons under 21 to enter at any time are exempt from these restrictions as long as smoke does not infiltrate into areas where smoking is prohibited.

ARK. CODE ANN. §§ 20-27-1801 et seq. (2006).

Bars

Smoking is allowed in stand-alone bars as long as they do not allow people under 21 to enter at any time, and smoke does not infiltrate into areas where smoking is prohibited.

ARK. CODE ANN. §§ 20-27-1801 et seq. (2006).

Penalties/Enforcement

"No Smoking" signs may be clearly and conspicuously posted by the owner, operator, manager or other person in control in every public place and place of employment where smoking is prohibited. The owner, operator, manager, or other person in control of any area where smoking is prohibited shall also remove all ashtrays from the area, unless an ashtray is permanently affixed to an existing structure. The Department of Health and Human Services and its authorized agents may enforce compliance with this subchapter and any rules and regulations adopted and promulgated under this subchapter by the state Board of Health. Any person who violates any provision of this subchapter is guilty of a violation and upon conviction shall be punished by a fine of not less than \$100 or more than \$500.

ARK. CODE ANN. §§ 20-27-1806, 20-27-1807 & 20-27-1809 (2006).

Preemption

This subchapter is cumulative to and does not prohibit the enactment of any other general or local laws, rules, or regulations of state or local governing authorities or local ordinances prohibiting smoking that are more restrictive than or are in direct conflict with this subchapter.

ARK. CODE ANN. § 20-27-1808 (2006).

Vehicles

Smoking is prohibited in all motor vehicles in which a child who is less than six years of age and who weighs less than 60 lbs. is restrained in a child passenger safety seat properly secured to the vehicle. Violation is subject to a fine not to exceed \$25. Any person who proves to the court that they have entered into a smoking cessation program may have their fine eliminated for a first offense.

H.B. 1046 (1st special session 2006) enacted 4/10/06 and effective 7/21/06.

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: 59 cents

Date last changed: June 1, 2003 — from 34 cents to 59 cents

Year first enacted: 1925

ARK. CODE ANN. §§ 26-57-208 (1999); 26-57-802 (2001); 26-57-803 (1999); & 26-57-804 (2003); & 26-57-1101 (1997).

Whenever there are two adjoining cities each with a population of 5,000 or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas not to exceed Arkansas' existing cigarette tax. The tax on cigarettes sold in Arkansas within 300 feet of a state line or in any Arkansas city which adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state not to exceed Arkansas' existing cigarette tax. This only applies to retail sales to individuals. One cent of the cigarette tax is exempted from this requirement.

ARK. CODE ANN. §§ 26-57-208 (1999) & 26-57-802 (2001).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$128,534,000

Other Tobacco Products

All other tobacco products: 32% of the manufacturer's list price.

ARK. CODE ANN. §§ 26-57-208 (1999); 26-57-803 (1999); 26-57-805 (2005); & 26-57-1102 (1999).

A tax is also levied on the sale of cigarette papers of 25 cents per package of approximately 32 sheets.

ARK. CODE ANN. § 26-57-801 (1987).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

Pursuant to a Memorandum of Agreement with the Arkansas Department of Health and Human

Services—Division of Health (ADHHS-DOH), the Arkansas Tobacco Control Board (ATCB) shall administer the enforcement of youth access laws in Arkansas, including conducting unannounced investigations in retail establishments that sell tobacco products.

MEMO OF AGREEMENT B/N ADHHS-DOH & ATCB (2008).

Minors are allowed to be used in compliance checks as long as they appear to be under 18 years of age; if asked, state their actual age and present their true identification; written consent has been received from a parent or guardian; and the minor is being directed by an officer having enforcement authority, an employee of the Arkansas Tobacco Control Board or a prosecuting attorney, an authorized representative of a business acting pursuant to a self-compliance program, an employee or authorized representative of the Department of Health, or an employee or authorized agent of a governmental agency with enforcement authority.

ARK. CODE ANN. § 5-27-227 (2007).

Penalties for Sales to Minors

It is unlawful for any person to give, barter or sell tobacco products or cigarette papers to a minor less than 18 years of age. Violators shall be guilty of a violation and subject to a fine not to exceed \$250 for a first violation within a 48-month period; a fine not to exceed \$500, and suspension of the permit or license to sell tobacco products for not more than two days for a second violation within a 48-month period; a fine not to exceed \$1000 and suspension of the permit or license to sell tobacco products for not more than seven days for a third violation in a 48-month period; a fine not to exceed \$2,000 and suspension of the license or permit to sell tobacco products for a period not to exceed 14 days for a fourth violation in a 48-month period; and after five violations within a 48 month period, a license or permit may be revoked. An employee of a permit holder who violates this law shall be subject to a fine not to exceed \$100. The court shall consider specific factors when reviewing a possible violation, including whether the business has adopted a written policy prohibiting the sale of tobacco products to minors.

ARK. CODE ANN. § 5-27-227 (2007).

Sign Posting

Signs must be posted in a conspicuous place stating that it is a violation of the law to sell tobacco products to persons under the age of 18. Violators are guilty of a violation and subject to the same penalties as selling tobacco products to minors.

ARK. CODE ANN. § 5-27-227 (2007).

Penalties to Minors

It is unlawful for a minor to possess, unless acting as an agent of his employer within the scope of employment, purchase or use any cigarettes or other tobacco products. It is also unlawful to use falsified identification or someone else's identification for the purpose of obtaining or attempting to obtain tobacco products or cigarette papers. This does not prohibit minors from participating in compliance checks, provided the checks are conducted under the direction or supervision of a governmental agency and there is parental consent.

ARK. CODE ANN. § 5-27-227 (2007).

Placement of Tobacco Products

It is unlawful for a person who has been issued a permit or license to sell or distribute a cigarette product through a self-service display. "Self-service display" is defined as a display that contains a cigarette product that is located in an area where customers are permitted, and in which the cigarette product is readily accessible to a customer without the assistance of a salesperson. This does not apply to a retail tobacco store as defined. Violation is subject to the same penalties as selling tobacco products to minors.

ARK. CODE ANN. § 5-27-227 (2007).

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for any manufacturer or any person who has been issued a permit or license to distribute free samples or coupons for samples to any person under the age of 18 and in or on any public street or sidewalk within 500 feet of any playground, public school or other facility being

used primarily by people under 18. Violators shall be guilty of a violation and subject to the same penalties as selling tobacco products to minors.

ARK. CODE ANN. § 5-27-227 (2007).

Single Cigarettes

The sale of individual cigarettes or "loosies" is prohibited. Individual cigarettes or "loosies" are defined as any cigarette not contained in its original, unopened pack. Violation is subject to the same penalties as selling/distributing tobacco products to minors.

ATCB RULES & REGS § 4.2 (2005).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines may only be placed in restricted areas within a factory, business, office or other structure to which members of the general public are not given access; in premises that have a permit for the sale of alcoholic beverages for on-site consumption; or places where the vending machine is under the supervision of the owner or their employee.

ARK. CODE ANN. § 5-27-227 (2007).

Penalty

The owner of a vending machine that violates the restrictions on placement of tobacco product vending machines shall be guilty of a violation and subject to the same penalties as selling tobacco products to a minor.

ARK. CODE ANN. § 5-27-227 (2007).

Sign Posting

Each machine shall display a sign stating "IT IS A VIOLATION OF THE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD TO OR PURCHASED BY A PERSON UNDER THE AGE OF 18." Violation is subject to the same penalties as selling tobacco products to a minor.

ARK. CODE ANN. § 5-27-227 (2007).

F Licensing Requirements

Requirements

No person shall deal with, or otherwise do busi-

ness in, tobacco products in this state without having registered with the Director of Tobacco Control Board and obtained a permit or license for that purpose. Manufacturers need only to register with the Director of Finance and Administration. The Tobacco Control Board shall have responsibility for the issuance, suspension and revocation of licenses and permits. Selling cigarettes or tobacco products without the appropriate license is a Class C misdemeanor for the first offense and a Class B misdemeanor for subsequent offenses.

ARK. CODE ANN. § 26-57-214 (2003).

Fee

Between \$20-\$50 for retail cigarette/tobacco permits depending on weekly gross sales; \$500 for wholesale cigarette permits; \$500 for wholesaler permits for other tobacco products; and \$100 for a vending machine permit plus \$10 per machine for vending machine licenses.

ARK. CODE ANN. § 26-57-219 (1997).

License Suspension for Sales to Minors

Those selling tobacco products to minors shall be guilty of a violation and shall have their license or permit suspended for a period not to exceed two days for a second violation within a 48-month period, not to exceed seven days for a third violation within a 48-month period, and not to exceed 14 days for a fourth violation within a 48-month period. After five violations within a 48-month period, a license or permit may be revoked.

ARK. CODE ANN. § 5-27-227 (2007).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

Appeal bonds shall be determined under § 16-68-301 et seq., and Arkansas Rules of Appellate Procedure—Civil, Rule 8, except that the maximum appeal bond that may be required in any civil action under any legal theory shall be limited to \$25 million, regardless of the amount of the judgment. If a party proves by a preponderance of the evidence that the party who has posted a bond is purposely dissipating or diverting assets outside of the ordinary course of its business for the purpose of evading ultimate payment of the judgment, the court may enter orders as are necessary to prevent dissipation or diversion, including requiring that a bond be posted equal to the full amount of the judgment.

ARK. CODE ANN. § 16-55-214 (2005).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Arkansas appropriated \$15,940,997 for tobacco control and prevention programs for FY2008 from the state's annual MSA payment. This appropriation is the first year of the FY2008-FY2009 biennial budget.

FY2008-FY2009 Tobacco Prevention and Control Program Biennial Budget (H.B. 1353) enacted 4/5/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009); FY2008-FY2009 Tobacco Settlement Commission Biennial Budget (H.B. 1168) enacted 4/2/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009); and Arkansas Tobacco Control Board Biennial Budget (H.B. 1126) enacted 3/26/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

Initiated Act 1 was passed in November 2000 by the voters of Arkansas, which created a fund, held separate from the state Treasury, known as the Tobacco Settlement Cash Holding Fund, to be administered by the state Board of Finance. All monies received as part of the Master Settlement Agreement were directed to this fund. Beginning in 2002, tobacco settlement payments shall be distributed as follows: the first \$5 million received in each calendar year shall be transferred to the Tobacco Settlement Debt Service Fund; and the amounts remaining shall be transferred to the Tobacco Settlement Program Fund. The funds in the Tobacco Settlement Program Fund will then be distributed as follows: 31.6 percent will go to

Prevention and Cessation program account to fund tobacco prevention and cessation programs administered by the Arkansas Department of Health, 15.8 percent to the Targeted State Needs program account, 22.8 percent to the Arkansas Biosciences Institute program account and 29.8 percent to the Medicaid Expansion program account.

ARK. CODE ANN. §§ 19-12-101 et seq. (2005).

Securitization

Initiated Act 1 also directed the Arkansas Development Finance Authority (ADFA) to issue Tobacco Settlement Revenue Bonds, the proceeds of which shall be used to finance capital improvement projects at the University of Arkansas School for Medical Sciences Biosciences Research Building; the Arkansas State University Biosciences Research Building; the School of Public Health; and such other capital improvement projects related to the provision of health care services, health education or health-related research as may be designated by the General Assembly.

ARK. CODE ANN. § 19-12-106 (2000).

The Arkansas Cancer Research Center of the University of Arkansas for Medical Sciences is designated as a Capital Improvement Project relating to health care services, health education, or health-related research for which tobacco settlement revenue bonds can be issued. Additional tobacco settlement revenue bonds can be issued under the following conditions: no more than \$5 million per year may be used on debt service for the project, allocation to debt service on the project shall not commence until the bonds issued in 2001 are no longer outstanding and no more than \$40 million in bonds may be issued for the project.

ARK. CODE ANN. §§ 19-12-201 et seq. (2006).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in all enclosed spaces of places of employment, except for designated break-rooms that are separately ventilated directly to the outside and located in a non-work area where no one is required to enter as part of their work responsibilities. “Enclosed space” includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building. The exceptions to this law are: 65 percent of rooms in a hotel, motel, or similar transient lodging establishment; a percentage of all lobby areas in hotel, motel, or similar establishments; meeting and banquet rooms, except while food, beverage or exhibit functions are taking place; retail or wholesale tobacco shops; cabs of motor trucks when only smokers are present; warehouse facilities; theatrical production sites, if smoking is an integral part of the story; medical research or treatment sites, if smoking is integral to those functions; private residences when not in use as family day care centers; and patient areas in long-term health care facilities.

CA LABOR CODE § 6404.5 (2007).

Government Buildings

Smoking is prohibited by employees and members of the public inside buildings owned or leased by the state, a county, a city, a city and county, or a California Community College district or within 20 feet of a main exit, entrance, or operable window of these buildings. “Inside a public building” includes all indoor areas of the building, except for covered parking lots and residential space. Smoking is also prohibited in state-owned vehicles.

CA GOVT. CODE §§ 7596 to 7598 (2007).

Private Workplaces

Smoking is prohibited in all enclosed places of employment, except for designated break rooms that are separately ventilated directly to the outside and located in a non-work area where no one is required to enter as part of their work respon-

sibilities. Please note the exemptions to this listed under “Public Places.”

CA LABOR CODE § 6404.5 (2007).

Schools

Smoking is prohibited at public school facilities. No school shall permit smoking or use of tobacco or any product containing tobacco or nicotine products, where the pupils are on campus, while they are attending school-sponsored activities, or while under the supervision and control of school district employees. The possession of nicotine or use of any product containing tobacco or nicotine is considered grounds for suspension or expulsion.

CA EDUC. CODE §§ 48900 & 48901 (1986).

Signs stating “Tobacco use is prohibited” shall be prominently displayed at all entrances to school property.

CA HEALTH & SAFETY CODE § 104420 (2000).

Child Care Facilities

Smoking is forbidden on the premises of licensed day care centers and during hours of operation in private residences licensed as family day care homes in areas of the day care home where children are present.

CA HEALTH & SAFETY CODE § 1596.795 (1993).

Health Care Facilities

Smoking is prohibited in all enclosed places of employment, except for designated break rooms that are separately ventilated directly to the outside and located in a non-work area where no one is required to enter as part of their work responsibilities. Patient rooms in long-term health care facilities are exempt from this law.

CA LABOR CODE § 6404.5 (2007).

Restaurants

Smoking is prohibited in all enclosed places of employment, including restaurants, except for designated break rooms that are separately ventilated directly to the outside and located in a non-work

area where no one is required to enter as part of their work responsibilities.

CA LABOR CODE § 6404.5 (2007).

Bars

Smoking is prohibited in all enclosed places of employment, except for designated break rooms that are separately ventilated directly to the outside and located in a non-work area where no one is required to enter as part of his or her work responsibilities. This law became effective for bars, taverns and gaming clubs in 1998.

CA LABOR CODE § 6404.5 (2007).

Other

Tobacco use is prohibited within the boundaries of any playground or tot lot sandbox area. Disposing of cigarette butts, cigar butts, or any other tobacco-related waste within a playground or tot lot sandbox area is also prohibited.

CA HEALTH & SAFETY CODE § 104495 (2001).

The possession or use of tobacco products by inmates under the jurisdiction of the Department of Corrections is prohibited except an exception is provided for departmentally approved religious ceremonies. The use of tobacco products by any other person on the grounds of any institution or facility under the jurisdiction of the Department of Corrections is prohibited, with the exception of residential staff housing where inmates are not present.

CA PENAL CODE § 5030.1 (2005).

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 except an exemption is allowed for departmentally approved religious ceremonies. The use of tobacco products by any other person on the grounds of any institution or facility under the jurisdiction of the Department of the Youth Authority is prohibited, with the exception of residential staff housing where inmates or wards are not present.

CA WELFARE & INSTITUTIONS CODE § 1712.5 (2005).

If a regulation is adopted by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to secondhand smoke to a level that will prevent anything

other than insignificantly harmful effects to exposed employees or by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to secondhand smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons than smoking in bar/taverns and gaming clubs would be allowed again subject to compliance with the applicable regulation.

CA LABOR CODE § 6404.5 (2007).

Penalties/Enforcement

Any violation of laws governing smoking in the workplace is an infraction, punishable by a fine not to exceed \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and subsequent violation within one year. Laws governing smoking in the workplace shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

CA LABOR CODE § 6404.5 (2007).

Preemption

Political subdivisions can enact local smoking ordinances that cover anyplace not covered by the definition of “place of employment;” otherwise, local ordinances are preempted. If the law is modified or repealed, local ordinances are once again allowed.

CA LABOR CODE § 6404.5 (2007).

Vehicles

It is unlawful for a person to smoke a pipe, cigar, or cigarette in a motor vehicle, whether in motion or at rest, in which there is a person under 18 years of age in the vehicle. Violation is an infraction punishable by a fine not exceeding \$100 for each violation. A law enforcement officer shall not stop a vehicle for the sole purpose of determining whether the driver is in violation.

CA HEALTH AND SAFETY CODE §§ 118947 to 118949 (2008).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 87 cents

Date last changed: January 1, 1999 — from 37 cents to 87 cents

Year first enacted: 1959

CA REV. & TAX CODE §§ 30101 (1994), 30123 (1989) & 30131.2 (1999).

Distribution of Tobacco Tax Revenues: 10 cents to the General Fund for state budget purposes; 2 cents to the Breast Cancer Fund, for research, prevention and screening programs; 25 cents to programs funded under Proposition 99, which was enacted by voters in 1988. Twenty five percent of the revenue is directed toward programs established under the Health Education Account and the Research Account, including an anti-smoking media campaign, project grants, public and private school-based programs, local and state-wide community-based health education programs, and behavioral and biomedical research. Most of the remaining revenues go toward medical care programs, including uncompensated health care for the medically indigent and a small portion to environmental resource programs; 50 cents goes to the California Children and Families First Trust Fund, for the purpose of promoting, supporting, and improving the early development of children, from the prenatal stage to five years of age.

CA REV. & TAX CODE §§ 30101 et seq. (1999).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$1,026,495,000

Other Tobacco Products

All other tobacco products: 45.13% of the wholesale price (changes annually)

CA REV. & TAX CODE §§ 30123 (1989) & 30131.2 (1999).

The Board of Equalization determines the other tobacco products tax rate annually, which is equivalent to the excise tax imposed on cigarettes.

CA REV. & TAX CODE §§ 30123 (1989) & 30131.2 (1999).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The state Department of Health Services has the primary responsibility for enforcement of the Stop Tobacco Access to Kids Enforcement (STAKE)

Act, and shall establish and develop a program to reduce the availability of tobacco products to persons less than 18 years of age. As part of this enforcement, the department is required to conduct random, on-site sting inspections at retail sites and shall enlist the assistance of persons that are 15 and 16 years of age in conducting these inspections subject to certain guidelines. The department may conduct inspections in response to public complaints or at retail sites where violations have previously occurred, and investigate sales of tobacco products to minors by telephone, mail or the Internet. Other enforcing agencies as defined may conduct inspections and assess penalties if applicable laws and guidelines are followed; sharing results is encouraged to avoid duplication.

CA BUS. & PROF. CODE §§ 22950.5 to 22952 & 22957 (2008).

Penalties for Sales to Minors

Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes tobacco products or paraphernalia to a minor is guilty of an infraction and shall be subject either to criminal action for a misdemeanor or to civil action punishable by a fine of \$200 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. Proof that a defendant, or their employee or agent, demanded, was shown, and reasonably relied upon a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces shall be an affirmative defense to prosecution. A specific violation prosecuted under this section shall not be subject to civil penalties that can be assessed by the Department of Health Services. No city or county shall adopt an ordinance or regulation inconsistent with this specific provision.

CA PENAL CODE § 308 (2006).

The Department of Health Services may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18

years tobacco products or tobacco paraphernalia. Penalties range from \$400 to \$600 for the first violation to \$5,000 to \$6,000 for the fifth and subsequent violations within a five-year period. A person, firm or corporation against which a civil penalty has been brought can not be prosecuted under § 308 of the Penal Code. Civil penalties in this section are assessed against the owner or owners of the business and not the employees.

CA BUS. & PROF. CODE §§ 22952(f) (1994) & 22958 (2008).

The person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises they manage or otherwise control and under circumstances in which they have knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

CA PENAL CODE § 308 (2006).

Photo ID

All persons engaging in the retail sale of tobacco products shall check the identification of tobacco purchasers, to establish the age of the purchaser, if the purchaser reasonably appears to be under 18 years of age.

CA BUS. & PROF. CODE § 22956 (1994).

Sign Posting

Signs must be posted at each point of purchase stating that selling tobacco products to anyone less than 18 years of age is illegal and subject to penalties, and that the law requires that all persons selling tobacco products check the identification of any purchaser of tobacco products who reasonably appears to be under 18 years of age. The sign shall include a toll-free telephone number to the state department for persons to report unlawful sales to minors.

CA BUSINESS & PROF CODE § 22952(b) (1994).

Every tobacco retailer shall conspicuously post in their place of business the notice required above or shall be punished by a fine of \$50 for the first offense, \$100 for the second offense, \$250 for the third offense, and \$500 for the fourth and subsequent violations or imprisonment for not more than 30 days. No city or county shall adopt

an ordinance or regulation inconsistent with this specific provision.

CA PENAL CODE § 308 (2006).

Bidis

No person shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as “bidis” or “beedies”, unless that tobacco product is sold, offered for sale, or intended to be sold in a business establishment that prohibits the presence of persons under 18 years of age on its premises. Violators are guilty of a misdemeanor and a civil penalty of up to \$2,000.

CA PENAL CODE § 308.1 (2001).

Penalties to Minors

Every minor who purchases, receives, or possesses any tobacco product or paraphernalia shall be punished by a fine of \$75 and 30 hours of community service. No city or county shall adopt an ordinance or regulation inconsistent with this specific provision. This does not apply to minors participating in compliance inspections done under the jurisdiction of the state Department of Health Services or other enforcing agency as defined.

CA PENAL CODE § 308 (2006) & CA BUS. & PROF. CODE § 22952(c) (2008).

Placement of Tobacco Products

It is unlawful for any person engaged in the retail sale of tobacco products or tobacco paraphernalia to sell, offer for sale, or display for sale, tobacco products or tobacco paraphernalia by self-service display. This shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer containing less than six cigars. Violators are subject to the civil penalties assessed for violation of selling or distributing to minors.

CA BUS. & PROF. CODE § 22962 (2007).

Internet Sales

Any person selling or distributing tobacco products directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile

transmission, or the Internet, shall comply with the following provisions. Before distributing or selling the tobacco product through any of these means the distributor or seller shall attempt to match the name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has been verified to be 18 years or older by reference to an appropriate database of government records kept by the distributor, a direct marketing firm, or any other entity. They shall also verify that the billing address on the check or credit card offered for payment by the purchaser matches the address listed in the database. If they are unable to verify that the purchaser is 18 years of age or older, he or she shall require the customer to submit an age-verification kit consisting of an attestation signed by the customer that he or she is 18 years of age or older and a copy of a valid form of government identification. They shall impose a two-carton minimum on each order of cigarettes, and shall require payment for the purchase of any tobacco product to be made by personal check of the purchaser or the purchaser's credit card. No money order or cash payment shall be received or permitted. They shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products. Finally, they shall deliver the tobacco product to the purchaser's verified billing address on the check or credit card used for payment. No delivery described under this section shall be permitted to any post office box. Violation is subject to civil penalties that range from \$1,000 to \$2,000 for a first violation to \$10,000 for a fifth or subsequent violation within a five-year period.

CA BUS. & PROF. CODE § 22963.

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for any person, agent, or employee of a person in the business of selling or distributing smokeless tobacco or cigarettes to engage in the non-sale distribution of such products to any person in any public building, park or playground, or on any public sidewalk, street, or other public grounds or any private property that is open to the general public. 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 any of the above in connection with the sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers shall not constitute non-sale distribution. Violators are liable for a civil penalty of not less than \$200 for the first violation, \$500 for the second violation, and \$1,000 for each succeeding violation. This does not apply to public places where minors are prohibited by law.

CA HEALTH & SAFETY CODE § 118950 (2008).

Single Cigarettes

A person, firm, corporation or business may not manufacture for sale, distribute, sell or offer to sell any cigarette, except in a package containing at least 20 cigarettes. A person, firm, corporation or business may not manufacture for sale, distribute, sell or offer to sell any roll-your-own tobacco, except in a package containing at least 0.60 ounces of tobacco. Violators are liable for a civil penalty of \$200 dollars for the first violation and up to \$1000 for subsequent violations.

CA PENAL CODE § 308.3 (2001).

No stamp or meter impression may be affixed to, or made upon, any package of cigarettes if the package does not comply with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following) for the placement of labels, warnings or any other information upon a package of cigarettes that is to be sold within the United States.

CA REV. & TAX CODE § 30163 (1998).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Cigarette or tobacco product vending machines may only be located in premises that have been issued an on-sale public premises license to sell alcoholic beverages and must be at least 15 feet away from the entrance.

CA BUS. & PROF. CODE § 22960 (1995).

Penalty

Civil penalties for violation of the restrictions on placement of tobacco product vending machines range from a \$400 to \$600 fine for the first violation, to a \$5,000 to \$6,000 fine for the fifth and subsequent violations within five years.

CA BUS. & PROF. CODE § 22958 (2008).

F Licensing Requirements**Requirements**

Retailers, distributors, wholesalers, manufacturers, and importers must be licensed to sell cigarettes or other tobacco products by the State Board of Equalization. Selling or purchasing cigarettes or tobacco products to or from any of the above without a license or from any of the above that has had its license suspended or revoked is a misdemeanor punishable by not more than a \$5,000 fine, not more than one year in county jail or both. Failure to display a license by a retailer is a \$500 fine.

CA BUS. & PROF. CODE § 22970 to 22991 (2008).

In addition to the above, wholesalers and distributors must be licensed pursuant to the Revenue and Taxation Code.

CA REV. & TAX. CODE §§ 30140 et seq. & 30155 et seq. (1979).

Fee

Retailers: One time fee of \$100 per location, \$100 fee for reinstatement of an expired license;

Wholesalers & Distributors: \$1,000 per year;

Manufacturers & Importers of Cigarettes: After January 1, 2004, a fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer and sold in this state in the next calendar year as estimated by the state Board of Equalization;

Manufacturers and Importers of Tobacco Products:

Fee of \$10,000 if manufacturing or importing chewing tobacco or snuff; fee of \$2,000 if manufacturing or importing any other tobacco product

CA BUS. & PROF. CODE §§ 22970 to 22991 (2008).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including lawful conduct occurring during nonworking hours away from the employer's premises. An aggrieved individual shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. This does not apply to a collective bargaining agreement or contract that protects an employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation; and a firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting their consumption of tobacco products on and off the job.

CA LABOR CODE § 96(k) & 98.6

H Advertising & Promotion

No tobacco product advertising shall be allowed in any state-owned and state-occupied building except advertising contained in a program, leaflet, newspaper, magazine, or other written material lawfully sold, brought, or distributed within a state building. Advertising is defined as the display of any poster, sign, or other written or visual material that is intended to communicate commercial information or images to the public.

CA GOVT. CODE § 19994.335 (1993).

No person, firm, corporation, partnership, or other organization shall advertise or cause to be advertised any tobacco products on any outdoor billboard located within 1,000 feet of any public or private elementary school, junior high school, or high school, or public playground.

CA BUS. & PROF. CODE § 22961 (1997).

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

In order to secure and protect the moneys to be received as a result of the Master Settlement Agreement, in civil litigation under any legal theory involving a signatory, successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement that has not been brought to trial as of the effective date of this section, the amount of the required undertaking, bond, or equivalent surety to be furnished during the pendency of an appeal or any discretionary appellate review of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of the appellate review shall be set in accordance with applicable laws and rules of the court, except that the total undertaking, bond, or equivalent surety that is required per case, whether individual, aggregate, or otherwise, of all appellants, collectively, may not exceed 100 percent of the verdict or \$150 million, whichever is less, regardless of the value of the judgment.

CA HEALTH & SAFETY CODE § 104558 (2003).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$78,715,217 for tobacco control and prevention programs from a portion of state tobacco excise tax revenue.

FY2008 Annual Budget (S.B. 77) enacted and effective 8/24/07.

Securitization

The California Infrastructure and Economic Development Bank is authorized to sell for, and on behalf of, the state, solely as its agent, all or any portion of the tobacco assets from the Master Settlement Agreement (MSA), or any residual interests therein, to a special purpose trust which is hereby established as a not-for-profit corporation solely for that purpose. The sale of MSA payments may be made all at once or from time to time, and is backed up by state assets if unanticipated revenue shortfalls occur. Revenue from the sale is deposited in the general fund except that the proceeds from the sale of any residual interests therein shall be deposited

in the Tobacco Asset Sales Revenue Fund to be used as specified.

CA GOVT. CODE §§ 63049 to 63049.55 (2007).

M Fire Safety Standards

To help prevent cigarette-caused fires a person shall not sell, offer, or possess for sale in this state cigarettes not in compliance with the following requirements: cigarettes are tested by the manufacturer in accordance with the test method prescribed in Section 14952(a), when tested no more than 25 percent of the cigarettes exhibit full-length burns, the cigarettes meet the marking requirement in Section 14954, and a written certification is filed by the manufacturer with the State Fire Marshal. Any manufacturer or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part is subject to a civil penalty not to exceed \$10,000 for each sale. Any retailer, distributor, or wholesaler that knowingly sells or offers to sell cigarettes in violation of this part is subject to a civil penalty not to exceed \$500 for each sale or offer for sale of less than 50 packages of cigarettes and a civil penalty not to exceed \$1,000 for a sale or offer for sale of more than 50 packages of cigarettes. Knowingly making a false certification is subject to a civil penalty of \$10,000 in addition to any other penalty.

CA HEALTH & SAFETY CODE §§ 14950 to 14960 (2007).



A Smokefree Air

Public Places

Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants, bars and casinos. See CO. REV. STAT. § 25-14-204 for a detailed list. Smoking is also prohibited within 15 feet or other distance specified by local communities of entryways to indoor areas where smoking is prohibited. This does not apply to private homes, private residences and private automobiles except if any such home, residence or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation; limousines under private hire; a hotel or motel room rented to guests as long as no more than 25 percent of the rooms in the hotel/motel are designated as smoking; any retail tobacco business; a cigar-tobacco bar; an airport smoking concession; the outdoor area of any business; a place of employment that is not open to the public and is under the control of an employer that employs three or fewer employees, provided that employees who request to work in a smokefree work area shall be provided with one; a private non-residential building on a farm or ranch that has annual gross income of less than \$500,000; and designated smoking areas for residents of assisted living facilities and their guests, provided the area is fully enclosed and ventilated. The owner or manager of a place not specifically listed or exempted may post signs prohibiting smoking or limiting it to designated areas, which shall have the effect of including the place/area in the list of indoor areas where smoking is prohibited.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Government Buildings

Smoking is prohibited in almost all indoor areas, including public buildings, which are defined as any building owned or operated by the state, including the legislative, executive and judicial branches of state government; any county, city and county, city, town, or instrumentality thereof or any political subdivision of the state, a special

district, an authority, a commission or an agency; or any other separate corporate instrumentality or unit of state or local government. Smoking is also specifically prohibited in public meeting places, government-owned or operated means of mass transportation, jury waiting and deliberation rooms and courtrooms.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Private Workplaces

Smoking is prohibited in almost all indoor areas, which includes almost all private places of employment. Smoking is also prohibited within 15 feet or other distance specified by local authority of entryways to places of employment. Places of employment that are not open to the public and have three or fewer employees are exempt, provided that employees in exempted places of employment are entitled to a smokefree work area upon request. Outdoor areas of places of employment are also specifically exempted.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Schools

The board of education of each school district must adopt policies and rules that mandate a prohibition of the use of all tobacco products on the grounds of all public nursery schools, day care centers, child care facilities, Head Start programs, kindergarten, and elementary and secondary education facilities through grade 12. This prohibition pertains to all students, teachers, staff, and visitors on school property and at school-sponsored events. Smoking is also prohibited in all vehicles used by the school for the purpose of transporting students, workers, visitors, or any other persons.

COLO. REV. STAT. ANN. § 25-14-103.5 (1998).

Smoking is prohibited in almost all indoor areas, including to the extent not covered by CO. REV. STAT. § 25-14-103.5 above public and nonpublic schools. Smoking is also specifically prohibited in other educational and vocational institutions and within 15 feet or other distance specified by local authority of entryways to these places.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Child Care Facilities

The board of education of each school district must adopt policies and rules that prohibit the use of tobacco products on the property and in the vehicles of public nursery schools, day care centers, childcare facilities, and Head Start programs. This prohibition pertains to all students, teachers, staff and visitors.

COLO. REV. STAT. ANN. §§ 25-14-103.5 (1998).

Smoking is also prohibited in almost all indoor areas, specifically including all child day care facilities, and within 15 feet or other distance specified by local authority of entryways to child day care facilities.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Health Care Facilities

Smoking is prohibited in almost all indoor areas, including health care facilities. Health care facilities specifically include hospitals, health care clinics, doctor's offices and other health care related facilities. Smoking is restricted to designated areas in assisted living facilities that are fully enclosed and ventilated, and to which access is restricted to residents or their guests. Smoking is also prohibited within 15 feet or other distance specified by local authority of entryways to health care facilities.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Restaurants

Smoking is prohibited in almost all indoor areas, including food service establishments, which are defined as any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes restaurants, cafeterias, coffee shops, diners, sandwich shops and short-order cafes. Smoking is also prohibited within 15 feet or other distance specified by local authority of entryways to food service establishments.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Bars

Smoking is prohibited in almost all indoor areas, including bars, which are defined as indoor areas primarily devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is secondary to the

consumption of such beverages. Cigar-tobacco bars are exempt. Cigar-tobacco bars are defined as bars that in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income from the on-site sale of tobacco products and the on-site rental of humidors, not including any sales from vending machines. If a bar previously designated as a cigar-tobacco bar fails to meet these requirements in any calendar year after December 31, 2005, the bar shall lose the cigar-tobacco bar designation permanently. Also a cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. Smoking is also prohibited within 15 feet or other distance specified by local authority of entryways to bars.

COLO. REV. STAT. ANN. §§ 25-14-201 et seq. (2008).

Penalties/Enforcement

It is unlawful for a person who owns, manages, operates or otherwise controls the use of premises subject to the law prohibiting smoking in indoor areas to violate the provisions of that law. It is also unlawful for a person to smoke in a place subject to the provisions of law prohibiting smoking in indoor areas. Violation is a Class 2 petty offense subject to a fine not to exceed \$200 for a first violation within a calendar year, a fine not to exceed \$300 for a second violation within a calendar year and a fine not to exceed \$500 for each additional violation within a calendar year. Each day of a continuing violation will be considered a separate offense.

COLO. REV. STAT. ANN. § 25-14-208 (2006).

Preemption

A local authority may enact, adopt and enforce smoking regulations that cover the same subject matter as the above state law. No local authority may adopt any local regulation of smoking that is less stringent than the above state law, except a local authority may specify a radius of less than 15 feet for the area included within an entryway.

COLO. REV. STAT. ANN. § 25-14-207(2)(a) (2006).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 84 cents

Date last changed: January 1, 2005 — from 20 cents to 84 cents

Year first enacted: 1964

COLO. REV. STAT. § 39-28-103 (1986) & 39-28-103.5 (2005).

The Tobacco Tax Cash Fund is created in the state treasury. All moneys from the cigarette tax imposed pursuant to Art. X, Sect. 21 of the Colorado Constitution is deposited in this fund. In each fiscal year, three percent of the money deposited in the fund plus three percent of the interest earned from moneys in the fund shall be appropriated to the state general fund, old-age pension fund and municipal and county governments to compensate for lost tax revenue from lower tobacco product sales. The Health Care Expansion Fund, Primary Care Fund, Tobacco Education Programs Fund, and the Prevention, Early Detection and Treatment Fund are created in the state treasury, which will receive 46 percent, 19 percent, 16 percent and 16 percent respectively of the moneys deposited in the fund plus the same respective percentages of the interest from moneys in the fund in each fiscal year. The Tobacco Education Programs Fund money is used to fund the state tobacco prevention program. This portion of the cigarette tax is levied pursuant to a ballot initiative passed by voters in November 2004.

COLO. REV. STAT. ANN. § 24-22-117 (2005).

Of the revenue generated from the cigarette tax enacted by statute, 15 percent goes to the general fund and 85 percent goes to the old-age pension fund. Revenue from the cigarette tax imposed pursuant to Art. 10, Sect. 21 of the Colorado Constitution is deposited in the Tobacco Tax Cash Fund (see above).

COLO. REV. STAT. § 39-28-110 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$206,113,000

Other Tobacco Products

All other tobacco products: 40% of the manufacturer's list price

COLO. REV. STAT. ANN. § 39-28.5-102 (1986) & 39-28.5-102.5 (2005).

The revenue from the other tobacco products tax

imposed pursuant to Art. X, Sect. 21 Colorado Constitution is deposited in the Tobacco Tax Cash Fund. Moneys are then distributed to several funds from there, including the Tobacco Education Programs Fund, which funds the state tobacco prevention program. See "Cigarettes" section for specific percentages and relevant details. This portion of the other tobacco products tax is levied pursuant to a ballot initiative passed by voters in November 2004.

COLO. REV. STAT. ANN. § 24-22-117 (2005).

Of the revenue generated from the other tobacco products tax enacted by statute, 15 percent is distributed to the general fund and 85 percent to the old-age pension fund. Revenue from the other tobacco products tax imposed pursuant to Art. 10, Sect. 21 of the Colorado Constitution is deposited in the Tobacco Tax Cash Fund.

COLO. REV. STAT. ANN. § 39-28.5-108 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Liquor Enforcement has the power to enforce all state statutes relating to the prohibition of the sale of cigarettes and tobacco products to minors. The Department of Revenue is authorized to share information on the identification and address of retailers that sell tobacco products with any state agency responsible for the enforcement of youth access laws. The division shall perform at least the minimum number of random inspections of businesses that sell cigarettes and tobacco products at retail as required by federal regulations.

COLO. REV. STAT. ANN. § 24-35-504 (2001).

Penalties for Sales to Minors

No retailer shall sell or permit the sale of cigarettes or tobacco products to minors. Violators receive a written warning for the first violation; a \$250 fine for the second violation within a 24-month period; a \$500 fine for a third violation within a 24-month period; a \$1,000 fine for a fourth violation within a 24-month period; and \$1000 to \$15,000 for a fifth and subsequent violations within a 24-month

period. It is an affirmative defense if the employer has adopted and enforced a written policy against selling cigarettes to minors, required employees to verify the age of the tobacco product customer by way of photographic identification, and had established and imposed disciplinary sanctions for noncompliance. This affirmative defense can only be used two times at each establishment within a 24-month period.

COLO. REV. STAT. ANN. §§ 24-35-503 & 24-35-506 (2001).

Photo ID

None

Sign Posting

Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign. The warning sign shall be displayed in a prominent place in the building at all times, shall have a minimum height of three inches and a width of six inches, and shall read as follows: WARNING: IT IS ILLEGAL FOR ANY PERSON UNDER 18 YEARS OF AGE TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A \$100 FINE MAY BE IMPOSED. Violators receive a written warning for a first offense; \$50 fine for a second violation within a 24-month period; \$100 fine for a third violation within a 24-month period; \$250 fine for a fourth violation in a 24-month period; and \$250 to \$1,000 fine for a fifth and subsequent violations in a 24-month period.

COLO. REV. STAT. ANN. § 24-35-503 (2001).

Penalties to Minors

A minor who purchases or attempts to purchase any tobacco products commits a Class Two petty offense punishable by a fine of \$100, or the court, in lieu of the fine, may sentence the person to participate in a tobacco education program. The court may allow a person convicted under this section to perform community service and be granted credit against the fine and court costs at a rate of \$5 for each hour of work performed for up to 50 percent of the fine and court costs. It shall not be an offense if the minor was participating in a compliance check.

COLO. REV. STAT. ANN. § 18-13-121 (2001).

The board of county commissioners has the power

to adopt a resolution or an ordinance prohibiting minors from possessing cigarettes or tobacco products.

COLO. REV. STAT. ANN. § 30-15-401(1.5) (1998).

Placement of Tobacco Products

None

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

Any person who knowingly furnishes tobacco products to a minor commits a Class Two petty offense punishable by a fine of \$200. It is an affirmative defense to prosecution that the person furnishing the tobacco product was presented with and relied on a document identifying the purchaser as being 18 years of age or older.

COLO. REV. STAT. ANN. § 18-13-121 (1991).

Single Cigarettes

No retailer shall sell or offer to sell individual cigarettes, or any pack or container of cigarettes containing fewer than 20 cigarettes, or roll-your-own tobacco in any package containing less than 0.60 ounces of tobacco. Violation is subject to the same penalties as selling cigarettes or tobacco products to minors.

COLO. REV. STAT. ANN. § 24-35-503 (2001).

No person shall import into this state any package of cigarettes that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package.

COLO. REV. STAT. ANN. § 39-28-104.5 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sale of cigarettes or tobacco products through vending machines is restricted to factories, businesses, offices, or other places not open to the general public; places where persons under 18 are not permitted access; or establishments where

the vending machine dispenses cigarettes through the operation of a device that enables an adult employee of the establishment to prevent the dispensing of cigarettes to minors.

COLO. REV. STAT. ANN. § 24-35-503 (1998).

Penalty

Violators are fined \$25 for a first violation, \$50 for the second violation within a 24-month period, \$100 for the third violation within a 24-month period, \$250 for a fourth violation in a 24-month period and \$250 to \$1,000 for a fifth and subsequent violations in a 24-month period.

COLO. REV. STAT. ANN. § 24-35-506 (2001).

Sign Posting

A warning sign shall be displayed on any tobacco vending or coin operated machine at all times, shall have a minimum height of three inches and a width of six inches, and shall read as follows: "WARNING. IT IS ILLEGAL FOR ANY PERSON UNDER 18 YEARS OF AGE TO PURCHASE OR ATTEMPT TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A \$100 FINE MAY BE IMPOSED." Penalties range from \$25 for a first violation to \$250 to \$1,000 for a fifth and subsequent violations in a 24-month period.

COLO. REV. STAT. ANN. § 24-35-503 (1998) & 24-35-506 (2001).

F Licensing Requirements

Requirements

Wholesalers must be licensed by the Department of Revenue to sell cigarettes, and distributors must be licensed by the department to sell other tobacco products. Licenses are to be renewed annually.

COLO. REV. STAT. ANN. §§ 39-28-102 (1964) & 39-28.5-104 (1986).

Fee

\$10 annually for each place of business for wholesalers and distributors.

COLO. REV. STAT. ANN. §§ 39-28-102 (1964) & 39-28.5-104 (1986).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It shall be a discriminatory or unfair employment practice for any employer to terminate the employment of any employee due to that employee engaging in any lawful activity off the premises of the employer during non-work hours unless such a restriction relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest. The sole remedy for a person claiming to be aggrieved by this section is a civil suit for damages.

COLO. REV. STAT. § 24-34-402.5 (1990).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting legal, equitable, or any other relief during the entire course of all appeals or discretionary reviews of the judgment by all appellate courts shall be set in accordance with applicable law; except that the total amount of the supersedeas bonds that are required collectively of all appellants during the appeal of a civil action may not exceed \$25 million, regardless of the amount of the judgment appealed. If an appellee proves by a preponderance of the evidence that an appellant is intentionally dissipating or diverting assets outside the ordinary course of its business for the purpose of avoiding payment of the judgment, a court may enter orders that are necessary to protect the appellee or that require the appellant to post

a bond in the amount up to the total amount of the judgment.

COLO. REV STAT ANN. § 13-16-125 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Allocated \$26,000,000 for tobacco control and prevention programs from a portion of the state's tobacco tax revenue.

FY2008 Annual Budget (S.B. 07-239) enacted 5/4/07 and effective 7/1/07.

Note: S.B. 07-239, the FY2008 appropriations bill appropriated \$35,342,042 of tobacco tax revenue to the Tobacco Education Programs Fund, which is where money for the state tobacco control program is allocated from. Then, \$26,000,000 was allocated to the tobacco control program itself for FY2008.

The Tobacco Litigation Settlement Cash Fund was created to receive annual Master Settlement Agreement payments. Interest from the investment of these funds starting in FY2002 is credited to the Breast and Cervical Cancer Prevention and Treatment Fund. This money is available for expenditure by the legislature each year on specified programs, but starting in FY2007 and each fiscal year thereafter, up to \$1 million shall be transferred to the Colorado Autism Treatment Fund at the end of the fiscal year. Any money in the fund left unspent at the end of a fiscal year is transferred to the Short-Term Innovative Health Program Grant Fund. The Healthcare Supplemental Appropriations and Overexpenditures Account is also created in the cash fund. Interest earned on any moneys in the account is credited to the Breast and Cervical Cancer Prevention and Treatment Fund. From the April 2007 MSA payment, \$24.4 million of money not required for other programs shall be credited to the account, and is available for overexpenditures or supplemental appropriations to the Children's Basic Health Plan Trust or Colorado Benefits Management System as specified for FY2007 or FY2008. The money reverts to the cash fund on April 16, 2008 if not appropriated/used.

COLO. REV STAT ANN. § 24-22-115 (2007).

The Tobacco Litigation Settlement Trust Fund was also created. In FY2006 only, the principal

of the trust fund will be up to 21 percent of the money based on the previous fiscal year settlement payment amount minus the required appropriation to the general fund. The principal of the fund shall not be expended for any purpose except that money may be appropriated to the Children's Basic Health Plan Trust. The interest shall be credited to the fund, but shall be available for expenditure when the amount of interest is sufficient to fund current programs funded through MSA money. On July 1, 2004 the balance of the trust fund was transferred to the general fund.

COLO. REV STAT ANN. § 24-22-115.5 (2007).

MSA money in the Tobacco Litigation Settlement Cash Fund is distributed to the following programs per fiscal year starting in FY2004, except for \$15.4 million in strategic contribution payments shall be in each fiscal year they are received: 11 percent to the Colorado Nurse Home Visitor Program, not to exceed \$19 million in any fiscal year (changes in subsequent fiscal years); 3 percent not to exceed \$5 million to the Comprehensive Primary and Preventive Care Grant Program; 24 percent not to exceed \$30 million to the Children's Basic Health Plan Trust; \$200,000 to the State Dental Loan Repayment Program; 8 percent not to exceed \$8 million to the Fitzsimmons Trust Fund; 1 percent not to exceed \$1 million to the Colorado State Veterans' Trust Fund; 5 percent not to exceed \$8 million to the Read-to-Achieve Program; 4 percent not to exceed \$5 million to the Tony Grampas Youth Services Program; 3.5 percent not to exceed \$5 million to the AIDS Drug Assistance Program; \$300,000 to pay the state's share of the "Child Mental Health Treatment Act"; the amount needed not to exceed \$1 million to the Autism Treatment Fund to pay the state's share of the annual funding required by the "Home and Community Based Services for Children with Autism Act"; and 2 percent not to exceed \$2 million to the Colorado HIV and AIDS Prevention Grant Program. In FY2008 and each fiscal year thereafter, any MSA strategic contribution payments received in the current fiscal year and the portion of all other settlement monies received by the state in the preceding fiscal year remaining after the programs above have been fully funded is distributed as follows: 49 percent to the University of Colorado at Denver and Health Sciences Center; 12 percent to Offender Mental Health Services Fund; 8.5 percent to the

Colorado Indigent Care Program; 7 percent to the Public Health Services per Capita Support Fund; 5 percent to the Supplemental Tobacco Litigation Settlement Moneys Account of the Children's Basic Health Plan Trust; 4.5 percent to the Supplemental State Contribution Fund; 4 percent to the Supplemental Tobacco Litigation Settlement Moneys Account of the Colorado Immunization Fund; 3 percent to the Division of Alcohol and Drug Abuse; 6 percent to the Short-Term Innovative Health Program Grant Fund, and 1 percent to the Supplemental Tobacco Litigation Settlement Moneys Account of the Pediatric Specialty Hospital Fund.

COLO. REV STAT ANN. § 24-75-1104.5 (2007).

Non-Monetary Provisions

The tobacco education, prevention, and cessation grant program was created to provide funding for community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to second-hand smoke. The program is funded by a portion of tobacco tax revenue.

COLO. REV STAT ANN. §§ 25-3.5-801 et seq. (2004).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in almost all public places, specifically including: any building or portion of a building owned and operated or leased and operated by the state or any political subdivision thereof; any area of a health care institution; any area of a retail food store; any restaurant; any bar/tavern; within a school building while school is in session or student activities are being conducted; any passenger elevator; in any dormitory of any public or private institution of higher education; and any dog racing track or off track betting facility. Exemptions include: correctional facilities; designated smoking areas in psychiatric facilities; public housing projects; classrooms where demonstration smoking is taking place as part of a medical or scientific experiment or lesson; smoking rooms provided by employers pursuant to section 31-40q, outdoor areas of restaurants subject to certain conditions; and tobacco bars. The operator of a hotel, motel or similar lodging may allow guests to smoke in not more than 25 percent of their rooms.

CONN. GEN. STAT. § 19a-342 (2003).

Smoking is prohibited in buses and railroad cars unless a special compartment of such vehicle is designated as a smoking area. Violation of this section is an infraction.

CONN. GEN. STAT. § 53-198 (1985).

Government Buildings

No person shall smoke in any building or portion of any building owned or leased and operated by the state or any political subdivision thereof.

CONN. GEN. STAT. § 19a-342 (2003).

Private Workplaces

Each employer with fewer than five employees in a business facility shall establish one or more work areas where smoking is prohibited, sufficient to accommodate nonsmokers who request to utilize such an area. Signs shall be posted to clearly designate the boundaries of each nonsmoking area. In the areas within the business facility where

smoking is permitted, existing physical barriers and ventilation systems shall be used to the extent practicable to minimize the effect of smoking in adjacent nonsmoking areas. Each employer with five or more employees shall prohibit smoking in any business facility under said employer's control, except that an employer may designate one or more smoking rooms. Each employer that provides a smoking room pursuant to this subsection shall provide sufficient nonsmoking break rooms for nonsmoking employees. Each smoking room designated by an employer shall be located in a non-work area where no employee, as part of their work responsibilities, is required to enter, and such room shall be for the use of employees only. Nothing in this section may be construed to prohibit an employer from designating an entire business facility as a nonsmoking area.

CONN. GEN. STAT. § 31-40q (2003).

Schools

Smoking is prohibited in school buildings when school is in session or student activities are being conducted. Exempt are classrooms where demonstration smoking is taking place as part of a medical or scientific experiment or lesson. No person shall smoke in any dormitory in any public or private institution of higher education.

CONN. GEN. STAT. § 19a-342 (2003).

No passenger or employee shall possess a lighted cigarette while traveling upon or engaged in the operation of a school bus. Violation shall be an infraction.

CONN. GEN. STAT. § 53-198 (1985).

Child Care Facilities

Smoking is prohibited in all child day care centers or group day care homes and outdoor areas, except in designated smoking areas. Smoking areas must be enclosed, properly ventilated, and away from any children present at the day care facility. Signs must be posted at the entrance stating that smoking is prohibited except in designated areas.

Regulations: Public Health Code, 19a-79-7(d)(9).

Health Care Facilities

No person shall smoke in any area of a health care institution. Smoking is restricted to designated areas in psychiatric facilities.

CONN. GEN. STAT. § 19a-342 (2003).

Restaurants

No person shall smoke in any indoor area of a restaurant. An exemption is made for the outdoor portion of the restaurant, provided, in the case of any seating area maintained for the service of food at least 75 percent of the outdoor seating capacity is an area in which smoking is prohibited.

CONN. GEN. STAT. § 19a-342 (2003).

Bars

Smoking is prohibited in bars. Tobacco bars are exempt, provided no tobacco bar shall expand in size or change its location from its size or location as of December 31, 2002. "Tobacco bar" means a bar that in the calendar year ending December 31, 2002, generated 10 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors.

CONN. GEN. STAT. § 19a-342 (2003).

Penalties/Enforcement

Violation of laws prohibiting smoking in public places or failure to post the required signs is an infraction. This law preempts municipal laws and ordinances regarding smoking effective prior to, on, or after October 1, 1993.

CONN. GEN. STAT. § 19A-342 (2003).

Preemption

The provisions of this section shall supersede and preempt the provisions of any municipal law or ordinance relative to smoking effective prior to, on, or after October 1, 1993.

CONN. GEN. STAT. §§ 19a-342 & 31-40q (2003).

Note: Preemption of stronger local smokefree ordinances applies to all locations.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: July 1, 2007 – from \$1.51 to \$2.00

Year first enacted: 1935

CONN. GEN. STAT. § 12-296 (2007).

Sales and use tax will no longer be imposed on specially formulated gum, inhalants, or similar products designed to aid in the cessation of a smoking habit.

CT GEN. STAT. § 12-412-108 (2000).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$267,542,000

Other Tobacco Products

Snuff: 40 cents per ounce of snuff and a proportionate tax at the like rate on all fractional parts of an ounce;

All other tobacco products: 20% of the wholesale sales price

CONN. GEN. STAT. § 12-330(c) (2000).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Commissioner of Revenue Services shall prepare a report on enforcement efforts undertaken to enforce youth access laws. Such report shall include the number of unannounced inspections conducted by the commissioner, a summary of enforcement actions taken pursuant to said sections and an assessment of the progress made in the previous fiscal year in reducing the availability of tobacco products to minors.

CONN. GEN. STAT. § 12-315a (1998).

Penalties for Sales to Minors

Any person employed by a dealer or distributor who sells, gives, or delivers tobacco in any form to a minor, other than a minor who is delivering or accepting delivery in his capacity as an employee, shall be assessed a civil penalty by the Commissioner of Revenue Services not more than \$200 for the first offense and \$250 for subsequent offenses within 18 months. Any dealer or distributor who has sold, given or delivered cigarettes or tobacco products to a minor, other than a minor

who is delivering or accepting delivery in his capacity as an employee, or if their employee has done so, shall be assessed a civil penalty of \$350 for the first violation, \$750 for the second violation within 18 months, and a fine of \$750 and license suspension for at least 30 days for the third offense within 18 months.

CONN. GEN. STAT. § 12-295a(b&c) (2007).

If the owner of an establishment where a cigarette vending machine is located has sold, given or delivered or allowed to be sold, given or delivered tobacco products to a minor, other than a minor who is delivering or accepting delivery in his capacity as an employee, from that machine they are subject to the same civil penalties as dealers of tobacco products above, except on a third violation within 18 months, the vending machine will be immediately removed from the establishment, and may not be placed there again for a period of one year.

CONN. GEN. STAT. § 12-295a(d) (2007).

Any person who sells, gives, or delivers tobacco to a minor shall be fined not more than \$200 for the first offense, \$350 for a second offense within 18 months, and not more than \$500 for each subsequent offense within 18 months. A seller or seller's agent or employee may perform a transaction scan to check the validity of a driver's license or identity card presented by a cardholder as a condition for selling, giving away, or otherwise distributing tobacco to the cardholder. It is an affirmative defense to prosecution if all the following occurred: A card holder attempting to purchase tobacco products presented an official piece of identification; a transaction scan of the ID indicated that it was valid; tobacco products were sold or given away in reasonable reliance upon the ID presented and the completed scan. However, this does not excuse the seller from exercising reasonable diligence to determine whether the person attempting to purchase tobacco products is 18 years of age or older and whether the description and picture appearing on the ID presented by a card holder is that of the card holder.

CONN. GEN. STAT. § 53-344 (2001).

Photo ID

Each retailer of cigarettes or tobacco products or employee of such retailer shall require a person

who is purchasing or attempting to purchase cigarettes or tobacco products, whose age is in question, to exhibit proper proof of age. If a person fails to provide such proof of age, such retailer or employee shall not sell cigarettes or tobacco products to the person. As used in this section, "proper proof" means a motor vehicle operator's license, a valid passport or an identity card.

CONN. GEN. STAT. § 53-344a (1992).

Sign Posting

Signs must be posted and maintained at each point of sale stating that it is illegal to sell or give tobacco products to minors and illegal for minors to purchase tobacco products or misrepresent their age to do so. Retailers in violation shall be punishable by a fine of not more than \$100.

CONN. GEN. STAT. § 12-286a (2007).

Penalties to Minors

Any minor who purchases tobacco products or misrepresents their age to purchase tobacco products shall be fined not more than \$50 for the first offense and \$50-\$100 for subsequent offenses.

CONN. GEN. STAT. § 53-344 (2001).

If the Commissioner of Revenue Services finds, after a hearing, that a minor has purchased cigarettes or tobacco products, the commissioner shall assess such minor a civil penalty of not more than \$100 for the first violation and not more than \$150 for any subsequent offenses.

CONN. GEN. STAT. § 12-295a(a) (2007).

Placement of Tobacco Products

None

Internet Sales

Bans the transport of cigarettes by tobacco product manufacturers to anybody in the state except cigarette distributors and dealers; an export warehouse proprietor or operator of a customs bonded warehouse; or a person who is an officer, employee or agent of the United States Government, this state or a department, agency, instrumentality or political subdivision of the United States or of this state, when such person is acting in accordance with such person's official duties. A common or contract carrier is barred from transporting cigarettes to a residential dwelling and anybody who

is not reasonably believed to be one of the above persons. Persons selling cigarettes shall require, as a condition of delivery, that the customer who is receiving the cigarettes shall sign an acknowledgment of receipt and provide proper proof of age. Any person who violates the provisions of this section shall be guilty of a class A misdemeanor and, for a second or subsequent violation, shall be guilty of a class D felony.

CONN. GEN. STAT. § 12-285c (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

The Commissioner of Revenue Services may authorize a dealer or distributor to give or deliver any cigarette or tobacco product in connection with the promotion or advertisement of such product without receiving monetary compensation from the person receiving the tobacco product, provided the distribution is on the premises of a licensed dealer or at any event or establishment with an area limited to adult access only, the sample of cigarettes contains no less than two cigarettes, and the taxes on such cigarettes have been paid. The licensed dealer or distributor shall be liable for any gift or delivery of tobacco to minors on his premises by any person conducting a promotion or advertisement.

CONN. GEN. STAT. § 12-314a (1996).

Single Cigarettes

The sale of cigarettes other than in an unopened package containing 20 or more cigarettes originating with the manufacturer which bears the health warning required by law is prohibited. Violation is subject to a civil penalty of \$50 for a first offense, \$250 for a second offense and \$500 for the third and subsequent offenses. The license to sell tobacco products may also be suspended or revoked.

CONN. GEN. STAT. § 12-314 (2001)

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No cigarettes may be dispensed from any machine other than a cigarette vending machine or a

restricted cigarette vending machine. A cigarette vending machine may be placed only in an area, facility or business which is accessible to adults only, or may be placed in an area frequented by persons of all ages provided the machine is placed in an area accessible to adults only.

CONN. GEN. STAT. § 12-289a (1996).

Penalty

Violation of the restrictions on the placement of vending machines is subject to a civil penalty of \$250 for a first violation and \$500 for a second violation within 18 months. A third violation within 18 months is subject to a civil penalty of \$500 and removal of the vending machine for a period of one year.

CONN. GEN. STAT. § 12-289a (1996).

Sign Posting

Notice must be posted and maintained on the front of each vending machine and restricted vending machine stating that it is illegal to sell or give tobacco products to minors and it is illegal for minors to purchase tobacco products or misrepresent their age to do so. Violation is punishable by a fine of not more than \$100.

CONN. GEN. STAT. § 12-286a (1996).

F Licensing Requirements

Requirements

Dealers, distributors, including vending machine operators, and manufacturers who sell cigarettes must be licensed by the Commissioner of Revenue Services. All licenses are renewable annually unless suspended or revoked. Any person who knowingly sells, offers for sale or possesses with intent to sell any cigarettes, without a license, shall be fined not more than \$500 or imprisoned for not more than three months, or both, for each offense. Each day of such unauthorized operation may be deemed a separate offense. Any person who fails to secure or renew a license shall forfeit as a penalty for each day of operation without such license the sum of \$5.

CONN. GEN. STAT. §§ 12-285b (2004), 12-286 (2000), 12-287 (1993), 12-288 (1993) & 12-291a (1993).

Distributors who deal in tobacco products other than cigarettes must also be licensed by the Commissioner of Revenue Services. The license

must be displayed on the premises covered by the license.

CONN. GEN. STAT. § 12-330b (1990).

Fee

\$25 annually for a dealer's license (includes persons operating fewer than 25 cigarette vending machines); \$1,000 each year for a distributor's license (includes persons operating 25 or more cigarette vending machines); \$5,000 for a manufacturer's license. For distributors who sell cigarettes as a distributor exclusively to retail stores which such distributor is operating the fee is \$250 to \$1,000 annually depending on the number of retail stores operated. For distributors of tobacco products other than cigarettes the fee is \$100.

CONN. GEN. STAT. §§ 12-285b (2004), 12-287 (1993), 12-288 (1993) & 12-330b (1990).

License Suspension for Sales to Minors

The Commissioner of Revenue Services may suspend the license of any dealer or distributor for not less than 30 days for a third violation of selling or distributing tobacco products to minors, following a hearing.

CONN. GEN. STAT. § 12-295a (2007).

G Smoker Protection Laws

No employer or agent of any employer shall require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of his employment, or otherwise discriminate with respect to compensation, terms, conditions or privileges of employment. Any nonprofit organization or corporation whose primary purpose is to discourage use of tobacco products by the general public shall be exempt from the provisions of this section.

CONN. GEN. STAT. § 31-40s (2003).

H Advertising & Promotion

None

I Product Disclosure

Product Disclosure

The Commissioner of Public Health shall adopt regulations that specify the manner in which said commissioner shall obtain information from pub-

lic sources concerning the nicotine yield ratings for each brand of tobacco product including, but not limited to, cigarettes sold or offered for sale in this state.

CONN. GEN. STAT. § 19a-74a (1999).

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits.

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated no new state money for tobacco control and prevention programs in FY2008.

A Tobacco Settlement Fund is created where all annual Master Settlement Agreement payments are deposited. In FY2000, \$5 million was distributed to the Office of Policy and Management for tobacco grants to reduce tobacco abuse through prevention, education, cessation, treatment, enforcement and health needs programs. In FY2001, money in the fund was distributed to the general fund, \$500,000 was distributed to the Department of Mental Health and Addiction Services, and \$19.5 million was distributed to the Tobacco and Health Trust Fund. In FY2002, and each fiscal year thereafter, \$12 million is supposed to go to the Tobacco and Health Trust Fund, \$4 million is supposed to go to the Biomedical Research Trust Fund, an unspecified amount to the general fund, and any remainder to the Tobacco and Health Trust Fund. In FY2005, and each fiscal year thereafter, \$100,000 is appropriated to the Department of Revenue Services and the sum of \$25,000 is appropriated to the office of the Attorney General for the enforcement of MSA complimentary enforcement legislation.

CONN. GEN. STAT. § 4-28e (2004).

A Tobacco and Health Trust Fund was created, which consists of money transferred from the Tobacco Settlement Fund, and money from various other sources. The trust fund is administered by a board of 17 trustees, except the board's du-

ties were suspended during FY2004 and FY2005. Prior to FY2004, 50 percent of the net earnings of the trust fund could be recommended for expenditure to support and encourage development of programs to reduce tobacco abuse through prevention, education and cessation programs; support and encourage development of programs to reduce substance abuse; and develop and implement programs to meet the unmet physical and mental health needs in the state. In FY2006, and each fiscal year thereafter, all the net earnings from money in the trust fund may be recommended for expenditure.

CONN. GEN. STAT. § 4-28f (2003).

M Fire Safety Standards

Connecticut has enacted legislation requiring cigarettes sold in Connecticut to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on July 1, 2008.

S.B. 703 enacted 7/10/07 and effective 7/1/08.





A Smokefree Air

Public Places

Smoking is not permitted in any indoor enclosed area to which the general public is invited or permitted, including but not limited to: public meetings; elevators; government owned or operated transportation including buses, vans, trains, taxis, and limousines; grocery stores; gymnasiums; jury waiting and deliberations rooms; courtrooms; child day care facilities; health care facilities including hospitals, clinics, and doctors' offices; workplaces; restrooms, lobbies, reception areas, hallways, and other common-use areas; restaurants; gaming facilities; indoor sports arenas; lobbies, hallways and other common areas in multiple-unit residential facilities or hotels; at least 75 percent of the sleeping quarters within a hotel or motel rented to guests; bowling alleys; pool halls; retirement facilities and nursing homes not including private residence; public buildings; auditoria; theaters; museums; libraries; public and nonpublic schools; and other educational and vocational institutions. The only exceptions are for private homes and automobiles, private social functions, privately-hired limousines, up to 25 percent of hotel rooms rented to guests, and fund raising functions sponsored by volunteer fire, ambulance or rescue companies, or by a fraternal benefit society.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Government Buildings

Smoking is prohibited in all public buildings. A "public building" is defined as any building owned or operated by the state, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government. Smoking is also specifically prohibited in public meetings, jury waiting and deliberation rooms, and courtrooms.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Private Workplaces

Smoking is prohibited in all workplaces.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Schools

Smoking is specifically prohibited in public and nonpublic schools. Smoking is also prohibited in any other educational and vocational institutions.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Child Care Facilities

Smoking is prohibited in all child day care facilities.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Health Care Facilities

Smoking is prohibited in all health care facilities, including hospitals, clinics and doctor's offices. Smoking is also prohibited in the common areas of nursing homes.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Restaurants

Smoking is prohibited in all "food service establishments" which are defined as any indoor area open to the public or portion thereof in which the principal business is the sale of food for on-premises consumption including, but not limited to, restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment. Any establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a "restaurant" is considered a "food service establishment."

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Bars

Smoking is prohibited in "bars," which are defined as any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages. Any establishment which has

been licensed by the Delaware Alcoholic Beverage Control Commission as a “taproom or tavern,” is considered a “bar.”

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Penalties/Enforcement

Where smoking is permitted, the person in charge shall display signs stating “Warning: Smoking Permitted”. Violators of Delaware’s Clean Indoor Air Act will be fined \$100 for a first offense and at least \$250 for each subsequent offense. The Delaware Department of Labor and Department of Health are responsible for the regulation, implementation, and enforcement of the Clean Indoor Air Act.

DEL. CODE ANN. tit. 16, §§ 2905 to 2907 (2002).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.15

Date last changed: July 31, 2007 – from 55 cents to \$1.15

Year first enacted: 1949

DEL. CODE ANN. tit. 30, § 5305(a) (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$84,727,000

Other Tobacco Products

Moist snuff: 54 cents/oz.

All other tobacco products: 15% of the wholesale price

DEL. CODE ANN. tit. 30, § 5305(b & c) (2008).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Safety and Homeland Security

or its delegates shall be responsible for conducting annual, random, unannounced inspections at locations where tobacco products are sold or distributed to test compliance. Persons under the age of 18 may be enlisted by the department or its delegates to test compliance provided that such persons may be used only under the direct supervision of the department, its employees or delegates and only when written parental consent has been provided. The department shall adopt and publish guidelines for the use of persons under 18 in inspections. The department may enter into an agreement with any local law enforcement agency for delegation of inspection and enforcement within the local agency’s jurisdiction. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1125 & 1127 (1996).

Penalties for Sales to Minors

It shall be unlawful for any person to sell or distribute any tobacco product to another person who has not attained the age of 18 years or to purchase any tobacco product on behalf of another such person, except that this section shall not apply to the parent or guardian of another such person. Violators shall be fined \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third and all subsequent offenses within 12 months. The court may also order the Department of Finance to suspend the defendant’s license for sale of tobacco products for a period not to exceed 6 months for the second and subsequent violations. It shall be an affirmative defense that the purchaser or recipient of tobacco products who had not reached the age of 18 years presented to the accused proof of age which set forth information that would lead a reasonable person to believe that such individual was 18 years of age or older. The person in charge of the establishment where the violation occurred shall be guilty of the violation and shall be subject to the fine only if the retail licensee has received written notice of the above provisions from the Department of Safety and Homeland Security. The person in charge of the establishment where the alleged violation occurred shall have an affirmative defense if such person or entity can establish that, prior to the date of the violation, they had adopted and

enforced a written policy against selling tobacco products to persons under 18 years of age; had informed employees of the applicable laws regarding the sale of tobacco products to persons under 18 years of age; required employees to sign a form indicating that they have been informed of and understand the written policy required herein; required employees to verify the age of tobacco product customers by means of photographic identification; and had established and enforced disciplinary sanctions for noncompliance. This affirmative defense is available only twice at one retail location during any 12-month period. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1116; 1121; 1122; 1123 & 1127 (1996).

Photo ID

A person engaged in the sale or distribution of tobacco products shall have the right to demand proof of age from a prospective purchaser or recipient of such products. "Proof of age" means a driver's license or other identification with a photograph of the individual affixed thereon that indicates that the individual is 18 years old or older. Violation is subject to the same penalties as selling or distributing tobacco products to minors. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1116(b) (1992), 1126 (1996) & 1127 (1996).

Sign Posting

A person engaged in the sale or distribution of tobacco products shall post conspicuously at each point of purchase a notice stating that selling tobacco products to anyone under 18 is illegal, that the purchase of tobacco products by anyone under 18 is illegal, and that a violator is subject to fines. The notice shall also state that all persons selling tobacco products have the right to check proof of age of purchaser. The notice shall include a toll-free number to the Department of Safety and Homeland Security to report unlawful sales to minors. Owners who fail to post a notice shall be subject to a fine of \$100. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted

after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1117 & 1127 (1996).

Penalties to Minors

It shall be unlawful for any person who is not 18 or older to purchase tobacco products, to accept receipt of a sample, to exchange a coupon for a tobacco product, or to present or offer another person a purported proof of age which is false, fraudulent, or not actually his own proof of age, for the purpose of purchasing or receiving any tobacco product. Violators shall be fined \$50 or ordered to perform 25 hours of community service for the first offense, \$50 fine and 50 hours of community service for the second and all subsequent offenses within 12 months of prior offenses. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation.

DEL. CODE ANN. tit. 11, §§ 1124 & 1127 (1996).

Placement of Tobacco Products

It shall be unlawful for any person who owns, operates, or manages a business establishment where tobacco products are offered for sale over the counter at retail to maintain such products in any display accessible to customers that is not either within the line of sight of a cashier or other employee, or under the control of a cashier or other employee. This prohibition shall not apply to business establishments to which persons under the age of 18 are not admitted, unless accompanied by an adult, or to tobacco stores. "Within the line of sight" means visible to a cashier or other employee, whether directly or by means of mirrors or monitors, and "under the control" means within the reach of a cashier or other employee or protected by other security, surveillance or detection methods. Violators are subject to the same penalties as selling tobacco products to minors. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1119; 1121; & 1127 (1996).

Internet Sales

Places restrictions on sales of tobacco products by mail, over the phone, or by the Internet by requiring prior to delivery a copy of government issued identification and a certification that this informa-

tion is true and uses a delivery service that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package. Reporting of delivery sales of tobacco products to the Department of Finance is required. Cigars and pipe tobacco are exempt from most of the above requirements. A first violation of this subchapter is a \$1,000 fine or five times the retail value of any tobacco product involved, whichever is greater; a second and subsequent violation is a fine of \$5,000 or five times the retail value of the cigarettes involved. Any person who knowingly violates any provision of this subchapter, or who knowingly and falsely submits a certification in another person's name, shall, for each such offense, be fined \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five years, or both. Failure to collect or remit taxes in connection with a delivery sale is five times the retail value of any tobacco product involved in addition to any other penalty.

DEL. CODE ANN. tit. 30, §§ 5361 to 5369 (2007).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It shall be unlawful for any person to distribute tobacco product samples or coupons for subsequent receipt of free or discounted tobacco products to another person under age 18. A person engaged in sampling shall have the right to demand proof of age from a prospective recipient of samples or of coupons for the redemption of tobacco products. Violators are subject to the same penalties as selling tobacco products to minors. In addition, both affirmative defenses listed under the "Penalties for Sales to Minors" category are available for a violation of this section. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1118; 1121; 1122; 1123 & 1127 (1996).

Single Cigarettes

No person shall distribute a tobacco product for commercial purposes unless the product is in a

sealed package provided by the manufacturer with the required health warning and tax stamp. No person shall distribute any pack of cigarettes containing fewer than 20 cigarettes. Violators are subject to the same penalties as selling tobacco products to minors. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1120; 1121; & 1127 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It shall be unlawful for any person to distribute or permit the distribution of tobacco products through the operation of a vending machine in a public place, except in a taproom, tobacco shop, or in premises in which a person who has not attained the age of 18 years is prohibited by law from entering. A tobacco vending machine must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner or supervisor of the premises. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1119 & 1127 (1996).

Penalty

Violators are subject to the same penalties as selling tobacco products to minors. These provisions shall preempt and supersede any provisions of any municipal or county ordinance or regulation enacted after June 30, 1996.

DEL. CODE ANN. tit. 11, §§ 1121 & 1127 (1996).

F Licensing Requirements

Requirements

No person shall engage in or conduct the business of manufacturing, purchasing, selling, consigning or distributing tobacco products in this state or acting as an affixing agent without having first obtained the appropriate license or licenses from the Department of Finance. Licenses are to be renewed annually. Selling tobacco products without a license is subject to a fine of \$100 to \$1,000, or imprisonment for not more than 90 days, or both.

DEL. CODE ANN. tit. 30, §§ 5307, 5311, & 5343 (1977).

Fee

\$200 annually for each place of business for wholesalers, \$5 annually for each place of business for retailers, \$3 annually for each machine for vending machine operators.

DEL. CODE ANN. tit. 30, § 5308 (1977).

License Suspension for Sales to Minors

By court order, the Department of Finance may suspend the license for the sale of tobacco products for a period not to exceed six months for the second and subsequent violations of applicable youth access laws.

DEL. CODE ANN. tit. 11, § 1121 (1996).

G Smoker Protection Laws

None

H Advertising & Promotion

No person, firm, corporation, partnership or other organization shall advertise any tobacco products within 200 feet of any public or private school, excluding institutions of higher education. This section shall not apply to advertisements inside of a commercial establishment, except outward-facing advertisements placed in windows. This section shall not be construed to prohibit the display of any message or advertisement opposing the use of tobacco products. Any message or advertisement opposing the use of tobacco products that is placed within 200 feet of a school may not contain the brand name of any tobacco product or the name of any tobacco company. This section shall also not be construed to prohibit an advertisement stating that a commercial establishment sells tobacco products, provided that the advertisement is on the premises or property of the commercial establishment and does not identify any tobacco product brand or any tobacco product manufacturer by name. Whoever is found to be in violation of this section by the Superior Court shall be fined up to \$1,000 for the first offense and up to \$5,000 for each subsequent offense.

DEL. CODE ANN. tit. 6, § 2507 (2000).

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$10,680,300 for tobacco control and prevention programs from the state's annual MSA payment.

FY2008 Annual Budget (H.B. 350) enacted and effective 7/1/07.

M Fire Safety Standards

Delaware has enacted legislation requiring cigarettes sold in Delaware to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on January 1, 2009.

H.B. 149 enacted 7/5/07 and effective 1/1/09.





A Smokefree Air

Public Places

The Department of Health is authorized to conduct inspections of all “places of employment” and “public places” to ensure that the activity of smoking in such places, which is hereby prohibited, is not taking place. A “public place” is defined as an enclosed area to which the public is invited or in which the public is permitted, including banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, nightclubs, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms, and excludes a private residence, unless it is used as a child care, adult day care, or health care facility. Exemptions include: a retail store that is used primarily for the sale of tobacco products and accessories in which the total annual revenue generated by the sale of non-tobacco products or accessories is no greater than 25 percent of the total revenue of the establishment, provided, that it does not share space with any other establishment; tobacco bars; an outdoor area of a restaurant, tavern, club, brew pub, or nightclub; hotel and motel rooms; a medical treatment, research, or nonprofit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program; and theatrical productions. An economic hardship waiver is also provided, see “Other” section.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Smoking is prohibited on public passenger vehicles that seat 12 or more. Carriers may refuse to transport violators. Violation is also punishable by a fine of \$10 to \$50 for the first offense, and by a fine of \$50 to \$100 and/or by up to 10 days imprisonment for subsequent violations.

D.C. CODE ANN. §§ 35-251 et seq. (1992).

Government Buildings

Smoking is prohibited in “places of employment,”

which includes places of public employment. “Place of employment” is defined as an enclosed area under the control of a public employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, and hallways.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Private Workplaces

Smoking is prohibited in “places of employment,” which are defined as an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways and vehicles owned by a private employer, if the vehicle is used by more than one person, and excludes a private residence, unless it is used as a child care, adult day care, or health care facility.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Schools

Smoking is prohibited in “public places” the definition of which includes educational facilities.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

The use of tobacco and tobacco products on public school premises shall be prohibited at all times, except that adults may use tobacco and tobacco products in designated smoking areas on public school premises established pursuant to guidelines promulgated by the Superintendent of Schools.

D.C. MUN.REG. § 3502.5 (1992).

Child Care Facilities

Smoking is prohibited in “public places” and “places of employment” the definitions of which include child care facilities. Child care and adult day care facilities in private residences are specifically included.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Health Care Facilities

Smoking is prohibited in “public places,” the definition of which includes health care facilities. Health care facilities in private residences are specifically included in the language of the law. A medical treatment, research, or nonprofit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program is exempt.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Restaurants

Smoking is prohibited in “public places” the definition of which includes restaurants.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Bars

Smoking is prohibited in “public places” the definition of which includes brew pubs, clubs, nightclubs and taverns. “Tobacco bars,” which are defined as restaurants, taverns, brew pubs, clubs or nightclubs that generate 10 percent or more of their total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines, or the rental of on-site humidors and outdoor areas of any of these types of establishments are permanently exempted.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Other

The Mayor may grant an economic hardship waiver from the requirements of this part; provided, that prior to the granting of a waiver, the applicant establishes, to the satisfaction of the Mayor, that compliance with the requirements of this part has caused or will cause undue financial hardship. An economic hardship waiver shall be based on regulations to be issued by the Mayor. Public places and places of employment who receive an economic hardship waiver shall have been in existence on or before January 1, 2007; not permit smoking in an area that exceeds 25 percent of the total area if the place of employment or public place is a restaurant; and be subject to conditions or restrictions as may be necessary to minimize the adverse effects of smoking.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Penalties/Enforcement

In any place, elevator or vehicle in which smoking is prohibited, the owner, manager, or person in charge of the place, elevator or vehicle shall post or cause to be posted specified warning signs. Signs posted shall clearly state the maximum fine for a violation of this subchapter. Signs shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number in a manner that gives notice to the public of the applicable law. Smoking in a prohibited area is subject to a fine of \$100 to \$1,000 for a first offense, and \$200 to \$1,000 for subsequent offenses. Obscuring, removing, defacing, mutilating or destroying any posted sign is subject to a fine of \$500. Failing to post or maintain the required warning signs and failing to notify a person observed to be smoking to stop the activity shall be punishable by a fine of \$500; each day the violation continues is a separate offense. The D.C. Department of Health is the designated enforcement agency.

D.C. CODE ANN. §§ 7-731, Part B, §§ 4915 to 4921 (2006) & 7-1704 (1991).

Preemption

No specific provision concerning preemption in city law. Law was approved by the District of Columbia city council, and there is no elected lawmaking body beneath the council.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.00

Date last changed: January 1, 2003 — from 65 cents to \$1.00

Year first enacted: 1949

D.C. CODE ANN. § 47-2404 (2003).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$22,754,000

Other Tobacco Products

All Other Tobacco Products (except premium cigars and pipe tobacco): 12% of the gross receipts from the sale of or charges for the tobacco product.

D.C. CODE ANN. §§ 47-2001 & 47-2002 (2006).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

None

Penalties for Sales to Minors

No person shall sell, give or furnish any tobacco products to any person less than 18 years of age. Violation is a misdemeanor punishable by a fine of between \$100 and \$500 and/or imprisonment for not more than 30 days for the first offense. A person who commits subsequent violations shall be fined \$500 to \$1,000, imprisoned for not more than 90 days, or both. Any license to sell cigarettes may be suspended for the first or second violation, and shall be revoked for a third violation.

D.C. CODE ANN. § 22-1320 (1991).

Photo ID

Any person who sells any cigarette or other tobacco product that has reasonable cause to believe that a person that attempts to purchase the product is under 18 years of age shall require that the purchaser present identification that indicates their age. Violation is a misdemeanor punishable by the same penalties as for selling or furnishing tobacco products to minors.

D.C. CODE ANN. § 22-1320 (1991).

Sign Posting

The owner or person in charge of a place of business that sells tobacco products shall post a warning sign that states that it is illegal for minors to purchase tobacco products and that includes a surgeon general's warning. The sign shall clearly state the maximum fine for a violation of this section. The sign shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number to give notice of the law to the public.

D.C. CODE ANN. § 22-1320 (1991).

Penalties to Minors

None

Placement of Tobacco Products

None

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes**Samples**

No person, agent, or employee of any person shall, in the course of doing business, distribute any free cigarettes or other tobacco product to any person on any public street, public sidewalk, public park, playground, in a public building, other public property, or private property open to the public, except that free cigarettes or other tobacco products may be distributed at a tobacco store, a convention, or a conference catering to adults. Violators will be fined not less than \$250 per violation.

D.C. CODE ANN. § 7-1731 (1991).

Single Cigarettes

Cigarettes may not be sold in numbers less than the number contained in the original package. The sale of loose cigarettes from opened or original packages is prohibited. Violation is subject to a fine of 500 percent of the retail value of the cigarettes involved or \$5,000, whichever is greater.

D.C. MUN. REGS. Tit. 9, § 1016 (2000).

No person shall sell or distribute in the District any cigarettes the package of which does not comply with all requirements imposed by or under federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including the precise warning labels specified in section Four of the Federal Cigarette Labeling and Advertising Act. Violation is subject to a fine of up to \$5,000 and/or up to three years in prison.

DC CODE ANN. §§ 47-2419 (2001) & 47-2421 (2005).

E Restrictions on the Sale of Tobacco Products in Vending Machines**Placement**

Tobacco vending machines are restricted to li-

censed taverns or nightclubs, establishments that restrict admittance to persons under 18 years of age, or a licensed restaurant. These vending machines shall be located in an area that is in the immediate vicinity, in plain view and control of a responsible employee, so that any tobacco purchase is readily observable by an employee.

D.C. CODE ANN. § 47-2404(b)(3) (1991).

Penalty

Violation is subject to loss of the license to operate a vending machine.

D.C. CODE ANN. § 47-2404(f) (2003).

F Licensing Requirements

Requirements

Cigarette wholesalers, retailers, and vending machine operators must obtain a license from the Mayor. Licenses must be renewed at least annually unless suspended or revoked. Licenses are required for each place of business and vending machine.

D.C. CODE ANN. § 47-2404 (2003)

Fee

\$50 annually for a wholesaler's license; \$15 annually for a retailer's license; \$15 for each vending machine for vending machine operators. The mayor may adjust license fees by regulation.

D.C. CODE ANN. § 47-2404 (2003).

License Suspension for Sales to Minors

The Mayor may suspend any license issued under this law to any person convicted of a first or second violation of selling, giving or furnishing tobacco products to minors and shall revoke the license for a third or subsequent offense.

D.C. CODE ANN. §§ 47-2404 (2003) & 22-1320 (1991).

G Smoker Protection Laws

No person shall refuse to hire or employ any applicant for employment, or discharge or otherwise discriminate against any employee with respect to compensation or any other term, condition, or privilege of employment, on the basis of the use of tobacco products by the applicant or employee. An employee or applicant for employment who is aggrieved by violation of this section shall have the right to a private cause of action against the person

after exhausting all other options. The person is entitled to recover any damages, including lost or back wages and salary.

D.C. CODE ANN. § 7-1703.3 (1993).

H Advertising & Promotion

The Washington Metropolitan Area Transit Authority prohibited tobacco and alcohol advertising on all system rail cars and buses.

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Allocated \$3,600,000 for tobacco prevention and cessation programs in FY2008 from annual MSA payments.

B16-913 passed by the City Council 12/19/06, signed by mayor 12/29/06, passed U.S. Congressional Review period and effective 3/14/07.

Note: B16-913 appropriated \$10 million over three years to the American Lung Association of the District of Columbia to run a tobacco prevention and cessation program. Out of this amount \$3.6 million has been allocated to this program in FY2008.

A Community Health Care Financing Fund was established within the city general fund where proceeds from the 2006 sale of future MSA payments were deposited. Money in the fund shall be to directly pay to promote health care and for the delivery of health care related services in the District, including the construction of health care facilities and the operation of health care related programs. The monies are then dedicated to a variety of purposes, including \$10 million being granted to the American Lung Association of the District of Columbia over three years to implement a tobacco cessation program in partnership

with the American Cancer Society and the DC Department of Health.

B16-913 passed by the City Council 12/19/06, signed by mayor 12/29/06, passed U.S. Congressional Review period and effective 3/14/07.

Securitization

In 2000, the District of Columbia securitized most of its Master Settlement Agreement revenue, and in 2006 transferred additional money to the Tobacco Settlement Financing Corporation. Proceeds from the initial bond sale went into a trust to pay off some of the city's debt, and an additional bond sale by the Tobacco Settlement Financing Corporation was authorized in 2006 to finance the costs of the National Capital Medical Center, healthcare related issues, other capital projects, or for debt defeasance.

D.C. CODE ANN. §§ 7-1801.01 et seq. & 7-1831.01 et seq. (2006).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in most public places and workplaces except in the following: stand-alone bars, retail tobacco shops, designated hotel rooms, tobacco manufacturing facilities, customs smoking rooms in an international airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security, smoking cessation programs approved by the Department of Health or medical or scientific research conducted therein, and “membership associations” as long as no one is engaged in work.

FLA. STAT. ch. 386.201 et seq. (2003).

Government Buildings

Smoking is prohibited in all enclosed indoor workplaces, including state and local government workplaces.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Private Workplaces

Smoking is prohibited in all enclosed indoor workplaces.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Schools

Smoking is prohibited in all enclosed, indoor workplaces, including all educational facilities. It is unlawful for any person under 18 years of age to smoke tobacco in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.

FLA. STAT. ch. 386.203, 386.204 & 386.212 (2003).

Child Care Facilities

Smoking is prohibited in all enclosed, indoor workplaces, including child care facilities.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Health Care Facilities

Smoking is prohibited in all enclosed, indoor

workplaces, including health care facilities.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Restaurants

Smoking is prohibited in enclosed, indoor workplaces, including restaurants. The bar areas of a restaurant are included.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Bars

Stand-alone bars are specifically exempted. “Stand-alone bar” is defined as a separate establishment that makes no more than 10 percent of its gross revenue from the sale of food.

FLA. STAT. ch. 386.203 & 386.2045 (2003).

Penalties/Enforcement

A person who smokes in a nonsmoking area commits a non-criminal violation, punishable by a fine of no more than \$100 for the first violation and \$500 for subsequent violations. Signs designating smoking areas must be posted in appropriate areas. The Department of Health or other enforcement authority as specified, upon notification of observed violations, shall issue to the person in charge of such enclosed indoor workplace, a notice to comply. If such person fails to comply within 30 days of such notice, the department or division shall assess a civil penalty against them of not less than \$250 and not to exceed \$750 for the first violation and not less than \$500 and not to exceed \$2,000 for each subsequent violation. If a person refuses to comply after being assessed the penalty, the appropriate enforcement authority may file a complaint in the specific county circuit court to force compliance. The Department of Health, the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall enforce this part based upon each department’s specific areas of regulatory authority and to implement such enforcement shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators and rules specifying

procedures by which appeals may be taken by aggrieved parties. Public agencies responsible for the management and maintenance of government buildings shall report observed violations to the department. The State Fire Marshal shall report to the department observed violations of this part found during its periodic inspections conducted under its regulatory authority.

FLA. STAT. ch. 386.207 (2003).

Preemption

This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

FLA. STAT. ch. 386.209 (2003).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 33.9 cents

Date last changed: July 1, 1990 — from 24 cents to 33.9 cents

Year first enacted: 1943

FLA. STAT. ch. 210.02 (1990).

No municipality shall, after July 1, 1972, levy or collect any excise tax on cigarettes.

FLA. STAT. ch. 210.03 (1972).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$426,680,000

Other Tobacco Products

All other tobacco products except cigars: 25% of the wholesale sales price

FLA. STAT. ch. 210.30 (1990).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Alcoholic Beverages and Tobacco is the designated enforcement authority for all youth access laws and the sign posting requirement. Law enforcement officers may also enforce all youth access laws. A county or municipality

may designate certain of its employees or agents as tobacco product enforcement officers. An applicant for a permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this chapter.

FLA. STAT. ch. 569.004, 569.12, & 569.14 (1997).

Penalties for Sales to Minors

It is unlawful to sell, deliver, barter, or furnish, directly or indirectly, any tobacco product to any person under 18 years of age. Violation is a misdemeanor of the second degree punishable by a fine of \$500, repeat violations within one year are a misdemeanor of the first degree punishable by a \$1,000 fine for a second violation, \$2,000 fine and 20 day suspension of the retailer's permit for a third violation, and revocation of a retailer's cigarette permit for a fourth and subsequent violations. All civil penalties may be substituted with license or permit suspensions using the ratio of one day for each \$50. A person charged with a violation has a complete defense if a prudent person would believe the buyer or recipient to be 18 years of age or older; the buyer falsely evidenced that they were 18 years of age or older; and carefully checked specified forms of identification and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

FLA. STAT. ch. 569.101 (1997) & FL ADMIN. CODE § 61A-2.022 (1997).

The Division of Alcoholic Beverages and Tobacco may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a minor if they qualify as a responsible retail dealer; the dealer provided the training program required to the employee before the violation occurred; and the dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

FLA. STAT. ch. 569.008 (1997).

Photo ID

None

Sign Posting

Any dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business stating that the sale of tobacco products to persons under 18 is against Florida law and proof of age is required for purchase. At the check-out counter a sign must contain the following language: "IF YOU ARE NOT BORN BEFORE THIS DATE (INSERT DATE AND YEAR) YOU CANNOT BUY TOBACCO PRODUCTS." Failure to comply with this requirement is a misdemeanor of the second degree punishable by a \$500 fine.

FLA. STAT. ch. 569.14 (1997).

Penalties to Minors

It is unlawful for minors to knowingly possess any tobacco product or misrepresent their age for the purpose of purchasing, or attempting to purchase a tobacco product from a person or a vending machine. Penalty for the first violation within a 12-week period is 16 hours of community service or a \$25 fine and the minor must attend a school approved anti-tobacco program. Penalty for the second violation in a 12-week period is a \$25 fine. Third or subsequent violations within a 12-week period can result in suspension or revocation of a person's driver's license. Any law enforcement officer designated as a tobacco product enforcement officer is authorized to issue a citation to minors possessing or attempting to purchase tobacco products.

FLA. STAT. ch. 569.11 (2001).

Placement of Tobacco Products

The sale or delivery of tobacco products is prohibited, except when under the direct control or line of sight of the dealer or the dealer's agent or employee. These provisions shall not apply to an establishment that prohibits persons less than 18 years of age on the licensed premises, or to the sale or delivery of cigars and pipe tobacco. Violation is subject to an administrative fine of up to \$1,000 and possible suspension of the permit to sell tobacco products.

FLA. STAT. ch. 569.006 & 569.007 (1997).

Internet Sales

None

Other Provisions

Retail dealers can qualify as responsible retail tobacco products dealers if they provide a training program for their employees that addresses the use and sale of tobacco products including the laws concerning sales to minors and methods and procedures to prevent such sales.

FLA. STAT. ch. 569.008 (1997).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

The gift of sample tobacco products to any person under the age of 18 is prohibited. Violation is a misdemeanor of the second degree punishable by a fine of \$500, repeat violations within one year are a misdemeanor of the first degree punishable by a \$1,000 fine for a second violation, \$2,000 fine and 20 day suspension of the retailer's permit for a third violation, and revocation of a retailer's cigarette permit for a fourth and subsequent violations. A person charged with a violation has a complete defense if a prudent person would believe the buyer or recipient to be 18 years of age or older or the buyer falsely evidenced that they were 18 years of age or older.

FLA. STAT. ch. 569.0075 (1997).

Single Cigarettes

It is unlawful for any person to sell or distribute any cigarettes the package of which does not comply with all requirements imposed by or under federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act.

FLA. STAT. ch. 210.185 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sales from a vending machine are only permissible from a machine that is equipped with an operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items

through the machine. The lock-out device must include a mechanism to prevent the machine from functioning if the power source for the lock-out device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time. This provision does not apply to establishments that prohibit persons under age 18 on the licensed premises or to sales of cigars or pipe tobacco.

FLA. STAT. ch. 569.007 (1997).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is subject to an administrative fine of up to \$1,000 and possible suspension of the permit to sell tobacco products.

FLA. STAT. ch. 569.006 (1997)

F Licensing Requirements

Requirements

Wholesale dealers and manufacturers of cigarettes must obtain a cigarette permit from the Division of Alcoholic Beverages and Tobacco. All places of business must be listed on the application for a cigarette permit. Distributors must also obtain a license to sell tobacco products other than cigarettes from the division. A separate application is required for each place of business.

FLA. STAT. ch. 210.15 (2005) & ch. 210.35 (1991).

Retail tobacco dealers and vending machine owners must obtain permits from the Division of Alcoholic Beverages and Tobacco for each place of business where they sell tobacco products. Retail permits must be renewed annually. Selling tobacco products at retail without a license is a noncriminal violation subject to a fine of \$500.

FLA. STAT. ch. 569.003 & ch. 569.005 (1997).

Fee

Up to \$50 annually for each retail or vending machine license; \$100 annually for wholesale dealers and manufacturers of cigarettes; \$25 annually for distributors of tobacco products other than cigarettes.

FLA. STAT. ch. 569.003 (1992), ch. 210.15 (2005) & 210.40 (1991).

License Suspension for Sales to Minors

The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may suspend a retailer's permit to sell tobacco products for 20 days for a third violation or revoke the permit for a fourth violation if the retailer or their employee violates state laws concerning sale of tobacco to minors, sampling, or placement of tobacco vending machines.

FLA. STAT. ch. 569.006 (1997).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety as provided in this section, shall stay the execution of any judgment, or portion thereof, entered on account of punitive damages pending completion of any appellate review of the judgment. The required bond or equivalent surety acceptable to the court for imposition of the stay shall be the lower of: the amount of the punitive-damages judgment, plus twice the statutory rate of interest; or 10 percent of the net worth of the defendant as determined by applying generally-accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment for punitive damages; provided that in no case shall the amount of the required bond or equivalent surety exceed \$100 million, regardless of the amount of punitive damages. If, at any time after notice and hearing, the court finds that a defendant who has posted a bond or equivalent surety is purposefully moving assets with the intent to avoid the punitive-damages judgment, the court shall increase the

bond or equivalent surety to the amount of the punitive damages judgment plus twice the statutory rate of interest. If the defendant does not post the additional bond required by the court, the stay shall be revoked.

FLA. STAT. ch. 768.733 (2000).

In any civil action involving a signatory or successor or an affiliate of a signatory to the tobacco settlement agreement, the appeal bond to be furnished during the pendency of all appeals or discretionary appellate reviews of any judgment in such litigation shall be set pursuant to applicable laws or court rules, except that the total bond for all defendants may not exceed \$100 million, regardless of the total value of the judgment. If, after notice and hearing, a plaintiff proves by a preponderance of the evidence that a defendant who posted such bond or equivalent surety is purposefully dissipating assets outside the ordinary course of business to avoid payment of the judgment, the court may enter necessary orders to protect the plaintiff, including an order that the bond or equivalent surety be posted in an amount up to the full amount of the judgment. This section does not apply to any past, present, or future action brought by the State of Florida against one or more signatories to the settlement agreement.

FLA. STAT. ch. 569.23 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$57,898,788 for tobacco control and prevention programs from the state's annual tobacco settlement payment and the state general fund.

FY2008 Annual Budget (S.B. 2800) enacted 5/24/07 and effective 7/1/07.

Florida voters approved a constitutional amendment in November 2006 that will dedicate 15 percent of future tobacco settlement payments, adjusted for inflation each year, to the state tobacco control and prevention program. Implementing legislation was approved in May 2007 and the program took effect in the fiscal year starting July 1, 2007 (FY2008).

FL CONST. Art. X § 27 (2006) & FLA. STA. ch. 381.84 (2007).

Money from the state of Florida's tobacco settlement is initially deposited into the Department of Financial Services Tobacco Settlement Clearing Trust Fund. Monies are then allocated to the Department of Health Tobacco Settlement Trust Fund, the Department of Children and Family Services Tobacco Settlement Trust Fund, the Agency for Healthcare Administration Tobacco Settlement Trust Fund, the Department of Elderly Affairs Tobacco Settlement Trust Fund, the Biomedical Research Trust Fund in the Department of Health or the Agency for Persons with Disabilities Tobacco Settlement Trust Fund as appropriated by the legislature.

FLA. STA. ch. 20.195 (2003), ch. 20.425 (2003), ch. 17.41 (2004), ch. 430.42 (2003), ch. 20.435(g) (2004) & 20.1971 (2005).

In 1999, the legislature established the Lawton Chiles Endowment Fund for Health & Human Services, and transferred \$1.1 billion in FY2000, and \$200 million in FY2001, FY2002 & FY2003 from the Tobacco Settlement Clearing Trust Fund. The earnings of the endowment are appropriated through the general budget process to various agency trust funds by the legislature to help fund specified programs.

FLA. STA. ch. 215.5601 (2004).

Non-Monetary Provisions

Requires the state Department of Health conduct a comprehensive, statewide tobacco education and prevention program consistent with the recommendations for effective program components contained in the Centers for Disease Control and Prevention (CDC)'s 1999 Best Practices for Comprehensive Tobacco Control Programs, as amended by the CDC. The program is required to have a number of components, for more information see the statute cited. A 23-member Tobacco Education and Use Prevention Advisory Council was also created within the department to provide advice as to the direction and scope of the program. The council will have several members from public health organizations, including the American Lung Association of Florida.

FLA. STA. ch. 381.84 (2007).

Securitization

Created the Tobacco Settlement Financing Corporation as a not-for-profit public benefits

corporation to purchase any or all of the state's right to the tobacco settlement agreement and issue bonds to pay the purchase price therefore which will be used to fund the Lawton Chiles Endowment Fund. Issuance of bonds by the Corporation is subject to approval by the legislature. The total principal amount of bonds issued shall not exceed \$3.0 billion and the amount of bonds issued in any single fiscal year shall not exceed \$1.5 billion beginning with FY 2001.

FLA. STAT ch. 215.56005 (2003).

Note: No bonds financed by tobacco settlement moneys have been issued to date.

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in many enclosed public places. “Public places” are defined as an enclosed area to which the public is invited or permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day-care, or health care facility. Exemptions include: 20 percent of hotel/motel rooms; retail tobacco stores as defined; long-term care facilities; smoking areas in international airports; private and semiprivate rooms in health care facilities; convention facility meeting and assembly rooms in convention facilities not owned, leased or operated by state or local government when these places are used for private functions as long as persons under 18 are prohibited from attending or working at the function; and private clubs, military officer clubs and noncommissioned officer clubs. Smoking is also allowed in bars and restaurants that do not allow persons under 18 to enter and do not employ persons under 18; or smoking is allowed in private rooms in restaurants and bars if the room is enclosed, separately ventilated from the rest of the building and the air is exhausted directly to the outside. Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

GA. CODE ANN. §§ 31-12A-1 et seq. (2005).

Smoking tobacco in any form is prohibited in a public transit bus, rapid rail car, rapid rail station or intermodal bus station. Violation is a misdemeanor subject to a fine of \$50 to \$100 for a first violation and \$100 to \$250 fine and/or ten days in jail for the second and subsequent violations.

GA. CODE ANN. § 16-12-120 (1998).

Government Buildings

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, the state of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

GA. CODE ANN. § 31-12A-3 (2005).

Private Workplaces

Smoking is prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment. Exceptions include outdoor areas of places of employment, and all workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities. Designated smoking areas are allowed in workplaces if they are located in a non-work area where no person is required to enter as part of their work responsibilities, have a separate ventilation system that exhausts directly to the outside, and is for use by employees only. Additionally, smoking is allowed in common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment.

GA. CODE ANN. §§ 31-12A-5 & 31-12A-6 (2005).

Schools

Smoking is prohibited in enclosed “public places,”

the definition of which includes educational facilities.

GA. CODE ANN. §§ 31-12A-2(10) & 31-12A-4 (2005).

Child Care Facilities

Smoking is prohibited in all enclosed areas within places of employment, which includes all child care facilities. The term “place of employment” also includes home-based child care facilities.

GA. CODE ANN. §§ 31-12A-1 et seq. (2005).

Health Care Facilities

Smoking is prohibited in all enclosed “public places,” the definition of which includes health care facilities. Long-term care facilities are exempt as well as private and semiprivate rooms in health-care facilities as long as all patient(s) have permission to smoke from their treating physician.

GA. CODE ANN. §§ 31-12A-2 & 31-12A-4 (2005).

Restaurants

Smoking is prohibited in restaurants unless the restaurant denies access to persons under 18 and does not employ persons under 18. Smoking is also allowed in private rooms in restaurants if the room is enclosed, separately ventilated from the rest of the building and the air is exhausted directly to the outside.

GA. CODE ANN. §§ 12-31A-2, 12-31A-4 & 12-31A-6 (2005).

Bars

Smoking is prohibited in bars unless the bar denies access to persons under 18 and does not employ persons under 18. Smoking is also allowed in private rooms in bars if the room is enclosed, separately ventilated from the rest of the building and the air is exhausted directly to the outside.

GA. CODE ANN. §§ 12-31A-2, 12-31A-4 & 12-31A-6 (2005).

Penalties/Enforcement

“No-smoking” signs may be clearly and conspicuously posted and ashtrays must be removed by the owner, operator, manager, or other person in control of every public place and place of employment where smoking is prohibited. A person who smokes in a nonsmoking area is guilty of a misdemeanor and shall be punished by a fine of \$100 to \$500. The Department of Human Resources

and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance and are allowed to enter upon and inspect the premises of any establishment or business at any reasonable time and in a reasonable manner.

GA. CODE ANN. §§ 31-12A-8 to 31-12A-11 & 16-12-2 (2005).

Preemption

This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than or in direct conflict with this chapter.

GA. CODE ANN. § 31-12A-12 (2005).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 37 cents

Date last changed: July 1, 2003 — from 12 cents to 37 cents

Year first enacted: 1923

GA. CODE ANN. § 48-11-2 (2003).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$222,314,000

Other Tobacco Products

Smokeless tobacco: 10% of the wholesale price

Cigars: 23% of the wholesale price

Little cigars: \$.0025 each

GA. CODE ANN. § 48-11-2 (2003).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The State Revenue Commissioner, acting through special agents or enforcement officers, shall annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under the age of 18 years may

be enlisted to test compliance; provided, however, that such persons may be used to test compliance only if the testing is conducted under the direct supervision of such special agents or enforcement officers, and written parental consent has been provided. Any other use of persons under the age of 18 years to test compliance with this article shall be unlawful and the person or persons responsible for such use shall be subject to specified penalties.

GA. CODE ANN. § 16-12-175 (2000).

Penalties for Sales to Minors

It is unlawful for any person to knowingly sell or barter, directly or indirectly, any cigarettes or tobacco-related objects to a minor; to knowingly allow a minor to operate a vending machine that dispenses tobacco products; to purchase any cigarettes or tobacco products or objects for any minor unless the minor is the child of the purchaser; or to advise, counsel or compel any minor to smoke, inhale, chew, or use cigarettes or tobacco-related objects. Violation is a misdemeanor. This shall not apply with respect to the sale of cigarettes, tobacco products, or tobacco-related objects by a person when such person has been furnished with proper identification showing that the person to whom the cigarettes, tobacco products, or tobacco-related objects are sold is 18 years of age or older.

GA. CODE ANN. § 16-12-171 (1996).

Photo ID

In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom cigarettes or tobacco-related objects are to be sold or otherwise furnished is actually 18 years of age or older, it shall be the duty of the person selling or otherwise furnishing such cigarettes or tobacco-related objects to request to see and to be furnished with proper identification in order to verify the age of such person. "Proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or a state identification card. Violation is a misdemeanor. The failure to make such request and verification in any case where the person to whom the cigarettes or tobacco-related objects are

sold or otherwise furnished is less than 18 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such cigarettes or tobacco-related objects did so knowingly.

GA. CODE ANN. § 16-12-170(5) & 16-12-171 (1996).

Sign Posting

Any person owning or operating a place of business where tobacco products are sold shall in a conspicuous place post a sign containing the following statement: "SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, OR TOBACCO RELATED OBJECTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Any person who fails to comply with this requirement shall be guilty of a misdemeanor.

GA. CODE ANN. § 16-12-172 (1993).

Penalties to Minors

It shall be unlawful for any minor to purchase, attempt to purchase or possess for personal use cigarettes or tobacco-related objects, except this shall not apply when a parent or guardian of such minor gives the cigarettes or tobacco-related objects to the minor and possession is in the home of the parent or guardian and such parent or guardian is present. It is also unlawful for minors to misrepresent their age or identity to purchase cigarettes or tobacco-related objects. A minor who commits an offense may be punished by requiring 20 hours of community service, requiring attendance at a lecture or discussion on the health hazards of smoking, or a combination of both.

GA. CODE ANN. § 16-12-171(b)(1) (2007).

Placement of Tobacco Products

None

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for a person to distribute tobacco product samples at no cost to any person under 18 years of age, or for any person under this age to re-

ceive such samples. A person distributing tobacco product samples shall require proof of age if an ordinary person would conclude that an individual is younger than 18. Samples may not be distributed on public streets, sidewalks, or parks within 500 feet of schools or playgrounds when they are being used primarily by persons under 18 years of age. Any violation of this section is a misdemeanor.

GA. CODE ANN. § 16-12-174 (1993).

Single Cigarettes

No tax stamp may be affixed to, or made upon, any package of cigarettes or loose or smokeless tobacco if the package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, for the placement of labels, warnings, or any other information upon a package of cigarettes or loose or smokeless tobacco that is to be sold within the United States. Violation is a misdemeanor. In addition, the applicable license to deal in tobacco products may be revoked upon violation.

GA. CODE ANN. § 48-11-23.1 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

The sale of cigarettes or tobacco-related objects from vending machines is restricted to locations not readily accessible to minors, including, but not limited to, factories, businesses, offices, places where alcoholic beverages are offered for sale, areas where minors are not permitted, and rest areas adjacent to roads and highways of the state. Vending machines are also permitted in areas under continuous supervision of an employee of the establishment who will observe the purchase of tobacco products from the machine. Nontobacco products, other than matches, are not allowed to be dispensed from vending machines that dispense tobacco products.

GA. CODE ANN. § 16-12-173 (2007).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is a misdemeanor. The sentence for a first offense shall be a fine not to exceed \$300.

GA. CODE ANN. § 16-12-173 (2007).

Sign Posting

Any person who maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, or tobacco-related objects shall place or cause to be placed in a conspicuous place on such vending machine a sign containing the following statement: "THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, OR TOBACCO RELATED OBJECTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Violation constitutes a misdemeanor provided, however, penalty for the first offense is a fine not to exceed \$300.

GA. CODE ANN. § 16-12-173 (2007).

F Licensing Requirements

Requirements

Cigarette and cigar manufacturers, dealers (retailers), and distributors must be licensed to sell tobacco products from the state Revenue Commissioner. A separate license shall be required for each place of business. Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year unless suspended or revoked. Dealer's licenses are valid indefinitely unless suspended or revoked.

GA. CODE ANN. § 48-11-4 (2004).

Fee

Licenses for tobacco dealers are free of charge. Manufacturer, importer, or distributor licenses cost an initial \$250 per place of business and an annual renewal fee of \$50; cigarette and other tobacco product vending machine licenses are \$1 per machine annually.

GA. CODE ANN. § 48-11-4 (2004).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

M Fire Safety Standards

None

J Tobacco Divestment

None

■■■

K Tobacco Liability**Industry Protection**

The “Civil Litigation Improvement Act of 2000” limited the amount of the supersedeas bond for the punitive damages portion of a civil judgment to \$25 million and provided that such limitation shall not apply if the court finds after notice and hearing that the appellee has proved by a preponderance of the evidence that the appellant is purposefully dissipating or secreting its assets or diverting assets outside the jurisdiction of the United States.

GA. CODE ANN. § 5-6-46 (2000).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$2,249,875 for tobacco control and prevention programs from the state’s annual MSA payment and the state general fund.

FY2008 Annual Budget (H.B. 95) enacted 5/30/07 and effective 7/1/07.

Securitization

Created the One Georgia Authority as an instrumentality of the state, and not a state agency, and a public corporation performing an essential governmental function. The authority may issue bonds for the purpose of facilitating economic development, for the improvement of public health, safety, and welfare and for other public purposes through the provision of financing and financial assistance. Any bonds, revenue bonds, or securities of any kind may only be secured by obligation of a business, enterprise, or proceeds paid to the state of Georgia pursuant to funds received by the state from the tobacco settlement. The Authority shall not have outstanding at any one time bonds and notes for financing of enterprises exceeding \$1 billion.

GA. CODE ANN. § 50-34-1 et seq. (2000).

A Smokefree Air**Public Places**

Smoking is prohibited in all enclosed and partially enclosed places open to the public, including all restaurants and bars, see HAW REV. STAT. §§ 328J-1 to 328J-15 for a detailed list. Smoking is also prohibited in all enclosed or partially enclosed areas of places of employment, and enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums, and amphitheatres. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Exemptions include: private residences, except when used as a licensed child care, adult day care, or health care facility; hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided that not more than 20 percent of rooms may be so designated; retail tobacco stores; provided that smoke from these places shall not infiltrate into areas where smoking is prohibited; private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; outdoor areas of places of employment; all areas covered by this chapter when smoking is part of a production being filmed; and state correctional facilities.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Government Buildings

Smoking shall be prohibited in all enclosed or partially enclosed areas, including buildings and vehicles owned, leased, or operated by the state or any county. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Private Workplaces

Smoking shall be prohibited in all enclosed or

partially enclosed areas of places of employment. “Place of employment” is defined as an area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to auditoriums, cafeterias, classrooms, clubs, common work areas, conference rooms, elevators, employee lounges, hallways, medical facilities, meeting rooms, private offices, restrooms, and stairs. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Schools

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including both public and private educational facilities. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Use of tobacco is prohibited in all public schools and at all public school functions, grades kindergarten through 12th grade. The Department of Education shall provide affected public employees with breaks throughout the work day during which they may smoke at locations off-campus. The Department of Education shall also provide a smoking cessation program for public employees who are interested in participating.

HAW. REV. STAT. § 302A-102 (2004).

Child Care Facilities

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including licensed child care and adult day care facilities. Smoking is also prohibited within a presumptively

reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Smoking is prohibited in child care facilities, including group child care homes, group child care centers, and family day care homes during their hours of operation. “Family child care home” means a private residence at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption, at any given time. “Group child care home” means a facility, which may be an extended or modified private home, at which care is provided for seven to twelve children. “Group child care center” means a facility, other than a private home, at which care is provided.

HAW. REV. STAT. §§ 346-151& 346-158 (1993).

Health Care Facilities

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including health care facilities. “Health care facility” is defined as an office or institution, including all waiting rooms, hallways, private rooms, semi-private rooms, and wards, which provides care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. Health care facilities in private residences are specifically included. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, are exempt.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Restaurants

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including restaurants. “Restaurant” is defined as an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” includes a bar area within the restaurant and outdoor areas of restaurants. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Bars

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including bars and nightclubs. “Bar” is defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises regardless of whether food is served, including but not limited to taverns, cocktail lounges, and cabarets, including outdoor areas of bars. “Nightclub” is defined as an establishment in which live entertainment is provided or facilities for dancing by patrons either by live entertainment or recorded music may be provided, regardless of whether alcoholic beverages are served. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Penalties/Enforcement

Clearly legible signs that include the words “Smoking Prohibited by Law” with letters of not less than one inch in height or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in and at the entrance to every place open to the public and place of employment where smoking is prohibited by this chapter by the owner, operator, manager, or other

person in control of that place. A person who smokes in an area where smoking is prohibited shall be guilty of a violation and fined not more than \$50. Police officers are empowered to issue citations. A person who owns, manages, operates, or otherwise controls any place or facility designated by this chapter and fails to comply with this chapter shall be guilty of a violation and fined not more than \$100 for a first violation, not more than \$200 for a second violation within one year of the first violation and \$500 for each additional violation within one year of the first violation. Violation may also result in the suspension or revocation of any permit or license issued to the person or the place for the premises on which the violation occurred. Each day on which a violation occurs will be considered a separate offense. Enforcement of this law will be under the jurisdiction of the Department of Health.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2006).

Preemption

Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter, and nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter.

HAW. REV. STAT. § 328J-15 (2006).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.80

Date last changed: September 30, 2007 – from \$1.60 to \$1.80

Year first enacted: 1939

HAW. REV. STAT. § 245-3 (2006).

All moneys collected shall be paid into the state treasury as state realizations, provided that of the moneys collected under the tax imposed pursuant to: section 245-3(a)(5) after September 30, 2006 and prior to October 1, 2007, 1 cent per cigarette shall be deposited to the credit of the Hawaii Cancer Research Special Fund (HCRSF); section 245-3(a)(6) after September 30, 2007, and prior to October 1, 2008, 1.5 cents per cigarette to the HCRSF, 0.25 cents per cigarette to the Trauma System Special Fund (TSSF) and 0.25

cents per cigarette to Emergency Medical Services Special Fund (EMSSF); section 245-3(a)(7) after September 30, 2008, and prior to October 1, 2009, 2 cents per cigarette to the HCRSF, 0.5 cents per cigarette to the TSSF, 0.25 cents per cigarette to the Community Health Centers Special Fund (CHCSF) and 0.25 cents per cigarette to the EMSSF; section 245-3(a)(8) after September 30, 2009, and prior to October 1, 2010, 2 cents per cigarette to the HCRSF, 0.75 cents per cigarette to the TSSF, 0.75 cents per cigarette to the CHCSF, 0.5 cents per cigarette to the EMSSF; section 245-3(a)(9) after September 30, 2010, and prior to October 1, 2011, 2 cents per cigarette to the HCRSF, 1 cent per cigarette to the TSSF, 1 cent per cigarette to the CHCSF, and 1 cent per cigarette to the EMSSF; and section 245-3(a)(10) after September 30, 2011, 2 cents per cigarette to the HCRSF, 1.5 cents per cigarette to the TSSF, 1.25 cents per cigarette to the CHCSF and 1.25 cents per cigarette to the EMSSF.

HAW. REV. STAT. § 245-15 (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$85,702,000

Other Tobacco Products

All other tobacco products: 40% of the wholesale price

HAW. REV. STAT. § 245-3 (1998).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Hawaii Department of Health, Alcohol and Drug Abuse Division, has a cooperative agreement with the University of Hawaii, Cancer Research Center of Hawaii to give technical assistance to police departments in conducting tobacco sale inspections to enforce HAW. REV. STAT. § 709-908. They are required to complete a minimum of 1,200 compliance checks per contract year, and recruit minor volunteers ages 15 to 17 to assist with the inspections. The Cancer Research Center must follow certain requirements concerning minor volunteers such as obtaining

written parental consent and ensure that minors do not carry false identification or lie during compliance checks.

FY2008 Memorandum of Agreement (2007).

The Hawaii Department of Health, Alcohol and Drug Abuse Division, has a cooperative agreement with police departments across the islands to enforce HAW REV. STAT. § 709-908 by conducting a certain number of inspections by minor volunteers of places where tobacco products are sold at retail.

FY2008 Memorandums of Agreement with Police Departments (2007).

Penalties for Sales to Minors

No person shall sell or furnish tobacco to a minor under 18 years of age. Any person who violates this law shall be fined not more than \$500 for the first offense and \$500 to \$2,000 for subsequent offenses. Retail clerks and not the owner of the store are cited for violations.

HAW. REV. STAT. § 709-908 (1998).

Photo ID

None

Sign Posting

Signs using the statement “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 IS PROHIBITED” shall be posted at or near the point of sale where tobacco products are sold in letters at least one-half inch high. Any person who violates this law shall be fined \$500 for the first offense and \$500 to \$2,000 for subsequent offenses.

HAW. REV. STAT. § 709-908 (1998).

Penalties to Minors

Any minor under the age of 18 who purchases any tobacco product shall be fined \$10 for the first offense and \$50 or 48 to 72 hours of community service for subsequent offenses. This provision does not apply if a person under the age of 18, with parental notification, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the Department of Health.

HAW. REV. STAT. § 709-908 (1998).

Placement of Tobacco Products

None

Internet Sales

It is unlawful to ship cigarettes to a person or entity that is not: licensed to sell or possess tobacco products by the state, an export warehouse proprietor, or an operator of a customs-bonded warehouse. This does not apply if the cigarettes are exempt from taxes, all applicable Hawaii taxes are paid, or the person or entity has fully complied with the federal Jenkins Act and includes a specified notice on the shipping container. Violation is a Class C felony if 1,000 or more cigarettes are shipped illegally, and a misdemeanor if less than 1,000 cigarettes are shipped illegally. A delivery service is exempt if it is not a knowing participant in violating this law. Other tobacco products are excluded from these requirements.

HAW. REV. STAT. § 245-16 (2004).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful to distribute sample tobacco products on or in any public street, sidewalk, or park or within 1,000 feet of any school attended by minors. The distribution of tobacco promotional materials or tobacco coupons within 1,000 feet of any school attended by minors is prohibited. This statute does not apply to commercial establishments where distribution is not visible to the public or establishments that prohibit minors. Violators will be fined not more than \$1,000.

HAW. REV. STAT. § 328K-22 (1999).

Single Cigarettes

It is unlawful to sell single cigarettes or packs of cigarettes containing less than 20 cigarettes. It is unlawful to sell cigarettes other than in sealed packages originating with the manufacturer and bearing the health warning required by law. Violators will be fined no more than \$2,500 for the first offense and \$100 to \$5,000 for any subsequent offense. Knowingly violating this section is a Class C felony.

HAW. REV. STAT. § 712-1257 (2000).

It shall be unlawful for an entity to possess,

keep, store, retain, transport, sell, or offer to sell, distribute, acquire, hold, own, import, or cause to be imported into the state any cigarette the package of which does not comply with all requirements imposed by federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including, but not limited to, the specific warning labels specified in the federal Cigarette Labeling and Advertising Act. Any person who knowingly violates this section shall be guilty of a Class C felony, and upon conviction thereof, shall be fined not more than \$10,000, and/or may be imprisoned for one to five years.

HAW. REV. STAT. §§ 245-51 (2003) & 245-53 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

The sale of cigarettes from vending machines is prohibited unless the vending machine is located in a bar, cabaret, or any other establishment for which the minimum age of admission is 18. It is also unlawful to sell cigarettes from a lunch wagon within 1,000 feet of any public or private elementary or secondary school grounds.

HAW. REV. STAT. § 328K-21 (1996).

Penalty

Violations are subject to a fine of up to \$1,000 per day for each violation.

HAW. REV. STAT. § 328K-21 (1996).

Sign Posting

A sign stating "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 IS PROHIBITED" shall be posted on or near any vending machine in letters at least one-half inch high. A person who sells tobacco to a minor or fails to post the appropriate sign shall be fined \$500 for the first offense and \$500 to \$2,000 for subsequent offenses.

HAW. REV. STAT. § 709-908 (1998).

F Licensing Requirements

Requirements

It shall be unlawful for any person to engage in the business of a wholesaler or dealer in the state

without having received a license issued by the Department of Taxation; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business. The license shall be renewable annually on July 1st for the 12 months ending the succeeding June 30th. The license may be suspended, revoked or not renewed by the department for specified reasons.

HAW. REV. STAT. § 245-2 (2005).

Every retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter shall obtain a retail tobacco permit. Permits shall be valid for one year, from December 1 to November 30, and renewable annually. A separate retail tobacco permit shall be obtained for each place of business owned, controlled, or operated by a retailer. A retail tobacco permit shall be non-assignable and nontransferable from one entity to another, and shall be displayed at all times in a conspicuous place at the place of business. Sales of cigarettes and tobacco products from vending machines are subject to the licensing requirements. Beginning March 1, 2007, a person or entity that knowingly fails to obtain the required permit and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports 5,000 or more cigarettes is guilty of unlawful tobacco retailing in the 1st degree punishable as a misdemeanor for the 1st offense and a Class C felony for subsequent offenses within five years of the first offense. A person or entity that knowingly fails to obtain the required permit and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports fewer than 5,000 cigarettes or any tobacco products is guilty of unlawful tobacco retailing in the 2nd degree punishable as a petty misdemeanor for the 1st offense and a misdemeanor for subsequent offenses within five years of the first offense.

HAW. REV. STAT. §§ 245A to 245C (2005).

Fee

\$2.50 per license application for wholesalers or dealers; \$20 per permit for retailers.

HAW. REV. STAT. § 245-2 & 245A(c) (2005).

License Suspension for Sale to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed \$150 million, regardless of the amount of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the full amount of the judgment.

HAW. REV. STAT. § 328L-7 (2004).

In any civil action brought under any legal theory, the amount of a supersedeas bond or other form of security necessary to stay execution of a judgment granting legal, equitable, or any other form of relief during the entire course of all appeals or discretionary review of that judgment by all appellate courts shall be set in accordance with applicable law, except that the total amount of the supersedeas bond or other form of security that is required of any party shall not exceed \$25 million regardless of the amount of the judgment that is appealed. If the party posting the bond is a "small business concern," the required supersedeas bond is capped at \$1 million. If a party in whose favor the judgment has been entered proves to a court by a preponderance of the evidence that an appellant who has posted a supersedeas bond is in-

entionally dissipating assets outside the ordinary course of its business for the purpose of avoiding payment of the judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment appealed. This statute does not apply to MSA signatories, which are covered by a separate, existing statute (see above).

HAW. REV. STAT. § 607-26 (2006).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Expected non-federal expenditure of \$10,388,000 for tobacco control and prevention programs in 2007/2008 from the state general fund, Master Settlement Agreement (MSA) moneys expended by the Hawaii Tobacco Prevention and Control Trust Fund and MSA moneys allocated to the state Department of Health.

FY2008-FY2009 Budget (H.B. 500) enacted 6/27/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009); and expenditure for calendar year 2007 from Hawaii Tobacco Prevention and Control Trust Fund.

Hawaii established the Tobacco Settlement Special Fund into which all monies received from the Master Settlement Agreement are deposited as well as interest and earnings from this money. The first \$350,000 of this money goes into the Tobacco Enforcement Special Fund. The remaining money is distributed as follows: 24.5 percent to the Emergency and Budget Reserve Fund, 35 percent to the Department of Health for health promotion and disease prevention programs, 12.5 percent into the Tobacco Prevention and Control Trust Fund and 28 percent into a University Revenue-Undertakings Fund.

HAW. REV. STAT. § 328L-2 (2003).

There is established the Hawaii Tobacco Prevention and Control Trust Fund as a separate fund of a nonprofit entity having a board of directors and qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, into which shall be deposited a set percentage of the annual MSA payments. Up to 50 percent of the total market value of the trust fund on the preceding June 30th may be spent for tobacco prevention and control, including, but not limited to, reducing cigarette smoking and tobacco

use among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco is a risk factor.

HAW. REV. STAT. § 328L-5 (2001).

Non-Monetary Provisions

Hawaii established a Tobacco Prevention and Control Advisory Board to develop, in collaboration with the state Department of Health, a strategic plan for tobacco prevention and control.

HAW. REV. STAT. § 328L-6 (1999).

M Fire Safety Standards

None





A Smokefree Air

Public Places

No person shall smoke in a public place, publicly-owned building or office or at a public meeting, except in the following which may contain smoking areas or be designated as smoking areas in their entirety: bars; retail tobacco stores; buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function; hotel and motel rooms designated as smoking rooms; theatrical production sites, if smoking is an integral part of the story in the theatrical production; areas of owner-operated businesses, with no employees other than the owner-operators, that are not commonly open to the public; any office or business, other than child care facilities, located within the proprietor's private home when all such offices and/or businesses occupy less than 50 percent of the total area within the private home; Idaho state veterans homes in designated areas, provided that physical barriers and ventilation systems are used to reduce smoke in adjacent nonsmoking areas and a designated employee break-room established by a small business owner employing five or fewer employees.

IDAHO CODE §§ 39-5501 et seq. (2007).

Government Buildings

Smoking is prohibited in any publicly-owned buildings or offices. These are defined as any enclosed indoor place or portion of a place owned, leased or rented by any state, county or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, municipal or county taxes.

IDAHO CODE §§ 39-5501 et seq. (2007).

By Executive Order, smoking is prohibited in all state-owned or state-leased buildings, facilities, or areas occupied by state employees except for

custodial care and full-time residential facilities. Policies governing smoking in custodial care and full-time residential facilities may be determined by the directors of such facilities.

Exec. Order 2005-10 (2005).

Private Workplaces

Smoking is prohibited in most private workplaces. However, small businesses with five or fewer employees can establish designated employee break-rooms as long as the following conditions are met: the break-room is not accessible to minors; the break-room is separated from other parts of the building by a floor to ceiling partition; the break-room is not the sole means of entrance or exit to the establishment or its restrooms and is located in an area where no employee is required to enter as part of the employee's work responsibilities, the term "work responsibilities" does not include custodial or maintenance work performed in a break-room when it is unoccupied; and "Warning: Smoking Permitted" signs are prominently posted in the smoking break-room and properly maintained by the employer. Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment.

IDAHO CODE §§ 39-5501 et seq. (2007).

Schools

Smoking is prohibited in public or private elementary or secondary school buildings and educational facilities and within 20 feet of entrances and exits of such buildings or facilities.

IDAHO CODE §§ 39-5501 et seq. (2007).

Child Care Facilities

Smoking is prohibited in any child care facility subject to licensure under the laws of Idaho, including those operated in private homes, when any child cared for under that license is present.

IDAHO CODE §§ 39-5501 et seq. (2007).

Health Care Facilities

Smoking is prohibited in hospitals and within 20 feet of public entrances and exits to such facilities.

Smoking is also prohibited in the common areas of nursing homes.

IDAHO CODE §§ 39-5501 et seq. (2007).

Restaurants

Smoking is prohibited in restaurants. Restaurant is defined as an eating establishment including, but not limited to, coffee shops, cafes, cafeterias, and private and public school cafeterias, which give or offer for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term restaurant shall include a bar area within a restaurant.

IDAHO CODE §§ 39-5501 et seq. (2007).

Bars

Smoking is allowed. Bar is defined as any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where: the service of food is incidental to the consumption of such beverages, or no person under the age of 21 years is permitted except employees, musicians and singers, and all public entrances are clearly posted with signs warning patrons that it is a smoking facility and that persons under 21 years of age are not permitted. The term bar does not include any area within a restaurant.

IDAHO CODE §§ 39-5501 et seq. (2007).

Penalties/Enforcement

Any employer or other person in charge of a public place or publicly-owned building or office who knowingly or intentionally permits the smoking of tobacco products is subject to a fine not to exceed \$100. An employer, or other person in charge of a public place or publicly-owned building, or the agent or employee of such person, who observes a person smoking in apparent violation shall ask the person to extinguish all lighted tobacco products. If the person persists in violating, the employer, person in charge, agent or employee shall ask the person to leave the premises. Any person who refuses to either extinguish all lighted tobacco products or leave the premises is guilty of an infraction and is subject to a fine not to exceed \$50. Any violation may be reported to a law enforcement officer.

IDAHO CODE §§ 39-5506 & 39-5507 (2004).

Preemption

Nothing in this chapter shall be interpreted to prevent local, county or municipal governments from adopting ordinances or regulations more restrictive than the provisions contained herein.

IDAHO CODE § 39-5511 (2004).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 57 cents

Date last changed: June 1, 2003 — from 28 cents to 57 cents

Year first enacted: 1945

IDAHO CODE § 63-2506 (2003).

Revenues from the cigarette tax are distributed as follows: 5.1746 cents to the public school income fund to provide substance abuse programs in the state public schools, and 5.1746 cents to the Department of Juvenile Corrections for county juvenile probation services. After that an unspecified amount is distributed to the state refund account sufficient to pay current refund claims. Then 17.3 percent of the balance is distributed to a permanent building fund, 0.4 percent is distributed to the central tumor registry account, 1 percent is distributed to the cancer control account, 21.25 percent is distributed to the general fund for FY2006 only, and for FY2006 all remaining monies go to an economic recovery reserve fund. After FY2006, all remaining monies go to a permanent building fund to be used to repair, remodel and restore the state capitol building. Once that project has been certified as completed, remaining monies again go to the economic recovery reserve fund.

IDAHO CODE §§ 63-2506 & 63-2520 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$46,246,000

Other Tobacco Products

All other tobacco products: 40% of the wholesale sales price

IDAHO CODE §§ 63-2552 (1972) & 63-2552a (1994).

The revenue from the other tobacco products tax imposed by IDAHO CODE § 63-2552 is distributed as follows: an unspecified amount to the state

refund account sufficient to pay current refund claims and the balance is distributed to the general fund. The revenue from the other tobacco products tax imposed by IDAHO CODE § 63-2552a is distributed as follows: 50 percent to the public school income fund to pay for substance abuse programs in the public schools and 50 percent to the Department of Juvenile Corrections for county juvenile probation services.

IDAHO CODE §§ 63-2552a (1994) & 63-2564 (1972).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health and Welfare must conduct at least one random, unannounced inspection per year at all locations where tobacco products are sold or distributed at retail to ensure compliance. These inspections must be done with the assistance of a minor except permittees that hold a “minor exempt permit.” A “minor exempt permittee” is a permittee whose revenues from the sale of alcoholic beverages for on-site consumption comprise at least 55 percent of total revenues; or whose products and services are primarily obscene, pornographic, profane or sexually oriented; or if minors are not allowed in the location and such prohibition is posted clearly on all entrance doors. Minors may assist with random, unannounced inspections with the written consent of a parent or legal guardian. When assisting with these inspections, minors shall not provide false identification, nor make any false statement regarding their age. Each year, the department shall conduct random, unannounced inspections equal to the number of permittees multiplied by the violation percentage reported for the previous year multiplied by a factor of ten.

IDAHO CODE § 39-5710 (2003).

Penalties for Sales to Minors

It is illegal to sell, distribute or offer tobacco products to minors. For a non-permittee, selling or distributing tobacco products to a minor is subject to a fine of \$100. Any permittee who sells or distributes tobacco products to minors shall be notified in writing about the potential fines for further viola-

tions for a first violation. For a second violation, a permittee shall not be fined if the permittee can show that a training program was in place for the employee and the permittee has a form signed by that employee on file stating that they understand the tobacco laws dealing with minors and the unlawful purchase of tobacco, but if no training program is in place the permittee will be fined \$200. For a third violation within two years, the permittee shall be fined \$200 and the permit may be suspended for up to seven days. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined \$400. Effective training and employment practices by the permittee, as determined by the Department of Health and Welfare shall be a mitigating factor in determining permit suspension. For a fourth and subsequent violations within a two year period, the permittee shall be fined \$400 and the permit shall be revoked until such time that the permittee demonstrates an effective training plan, but in no case shall the revocation be for less than 30 days. It is an affirmative defense to prosecution that the person furnishing the tobacco product was presented with and relied on a photographic identification identifying the purchaser as being 18 years of age or older.

IDAHO CODE §§ 39-5705 & 39-5708 (2001).

Photo ID

None

Sign Posting

Retailers may display a sign within a place of business where tobacco products are sold or distributed. The sign must state: “STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS OLD. PROOF OF AGE REQUIRED. ANYONE WHO SELLS OR DISTRIBUTES TOBACCO TO A MINOR IS SUBJECT TO STRICT FINES AND PENALTIES. MINORS ARE SUBJECT TO FINES AND PENALTIES.”

IDAHO CODE § 39-5704 (1998).

Penalties to Minors

It is illegal for a minor to purchase, receive, possess, sell, distribute, use or consume tobacco products. It is unlawful for a minor to provide false identification, or make any false statement regarding their age in an attempt to obtain tobacco

products. This does not bar minors from participating in compliance checks. A minor may possess but not sell or distribute tobacco products in the course of employment, for duties such as stocking shelves or carrying purchases to customers' vehicles. A violation is a misdemeanor punishable by imprisonment not exceeding six months and/or a fine not exceeding \$300. In addition the court may require the minor and the minor's parents or legal guardian to attend tobacco awareness programs or perform community service in programs related to tobacco awareness.

IDAHO CODE § 39-5703 (1998).

Placement of Tobacco Products

It is unlawful to sell or distribute tobacco products from self-service displays. Customers are not allowed access to tobacco products except through the assistance of the seller. Stores with tobacco products comprising at least 75 percent of total merchandise are exempt from requiring vendor assisted sales, if minors are not allowed in the store and such prohibition is posted clearly on all entrance doors. Tobacco product permittees are subject to the same penalties listed under the "Penalties for Sales to Minors" section upon violation except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE §§ 39-5706 & 39-5708 (1998).

Internet Sales

No permittee shall mail or ship tobacco products in connection with a delivery sale order unless, before mailing or shipping such tobacco products, the permittee accepting the delivery sale order first obtains from the prospective customer a certification which includes proof of age that the purchaser is at least 18 years old, the credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped match the credit card company's address for the cardholder. Prior to making delivery sales or shipping tobacco products in connection with any such sales, every business shall obtain a permit from the Department of Health and Welfare. Violation by a permittee or non-permittee is subject to the same penalties as other youth access laws.

IDAHO CODE §§ 39-5714 to 39-5718 (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is illegal to sell or distribute tobacco products for free or below cost to members of the general public in public places or at public events. Tobacco product permittees are subject to the same penalties listed under the "Penalties for Sales to Minors" section upon violation except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE §§ 39-5707 & 39-5708 (1998).

Single Cigarettes

It is illegal to sell or distribute tobacco products other than in the federally required sealed package provided by the manufacturer with all the required warning labels and health warnings. Tobacco product permittees are subject to the same penalties listed under the "Penalties for Sales to Minors" section upon violation except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE §§ 39-5707 & 39-5708 (1998).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful to sell or distribute tobacco products from a vending machine.

IDAHO CODE § 39-5706 (1998).

Penalty

Tobacco product permittees are subject to the same penalties listed under the "Penalties for Sales to Minors" section upon violation, except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE § 39-5708 (1998).

F Licensing Requirements

Requirements

Wholesalers must obtain a permit from the state Tax Commission to sell cigarettes. The permit is

non-assignable and will remain in force indefinitely. Failure to possess a valid permit is subject to, after receiving a written notice from the state Tax Commission, a civil penalty of \$100, with each day constituting a separate offense. A permit is also required of all distributors of tobacco products other than cigarettes.

IDADO CODE §§ 63-2503 (2006) & 63-2554 (2007).

Retailers must obtain a tobacco permit to sell or distribute tobacco products from the state Department of Health and Welfare. Permits shall be issued annually and a separate permit is required for each place of business. Any person who sells tobacco products without a permit is guilty of a misdemeanor punishable by up to six months in county jail, and/or a \$300 fine. If the sale or distribution of tobacco products was to a minor, the fine shall be no less than \$500 or more than \$1,000. The court may impose an additional fine of \$1,000 per day beginning the day following the date of citation as long as the illegal tobacco sales or distribution continues.

ID CODE §§ 39-5704 & 39-5709 (1998).

Local units of government shall not have the power to require a permit or license for the sale or distribution of tobacco products.

IDAHO CODE § 39-5713 (1998).

Fee

Wholesalers: \$50; Retailers: free of charge.

IDAHO CODE §§ 63-2503 (1974) & 39-5704 (1998).

License Suspension for Sales to Minors

Any permittee who sells or distributes tobacco products to minors may have his permit suspended for seven days for a third violation. Effective training and employment practices by the permittee shall be a mitigating factor in determining permit suspension. For the fourth and subsequent violations the permit shall be revoked until such time that the permittee demonstrates an effective training plan to the Department of Health and Welfare, but in no case shall the revocation be for less than 30 days.

IDAHO CODE § 39-5708 (2001).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds \$1 million if the party or parties found liable seek a stay of enforcement of the judgment during the appeal. If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, the waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

IDAHO CODE § 13-202 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$1,479,800 for tobacco control and prevention programs from the state's annual MSA payment and state cigarette tax revenue.

FY2008 Millenium Income Fund Appropriations (S.B. 1210) enacted 3/29/07 and effective 7/1/07 & FY2008 Appropriation for the Department of Health and Welfare (H.B. 307) enacted 3/27/07 and effective 7/1/07.

The Idaho Millennium Permanent Endowment Fund, the Idaho Millennium Fund and the Idaho Millennium Income Fund were put into the Idaho Constitution when voters approved in November 2006, 58 to 42 percent, a constitutional amendment submitted by the legislature. This makes it much more difficult for money in the funds to be appropriated for other purposes than specified.

IDAHO CONSTITUTION Art. VII § 18 (2006).

There is hereby created in the state treasury the Idaho Millennium Permanent Endowment Fund. The fund shall consist of 80 percent of the moneys received by the state of Idaho on and after January 1, 2007, pursuant to the Master Settlement Agreement (MSA), money provided by legislative appropriations, or other specified sources. The moneys received annually for deposit to the fund, including earnings, shall forever remain inviolate and intact. On the 1st business day of July, the state treasurer shall distribute to the Idaho Millennium Income Fund five percent of the Idaho Millennium Permanent Endowment Fund's average monthly fair market value of the first 12 months of the preceding 24 months.

IDAHO CODE §§ 67-1801 & 67-1802 (2007).

There is hereby created in the state treasury the Idaho Millennium Fund. The fund shall consist of 20 percent of the moneys after January 1, 2007, received pursuant to the MSA, funds provided by legislative appropriation, or other specified sources. Money in the fund is not subject to appropriation or distribution, except as provided below. On the first business day of July, the state treasurer shall distribute to the Idaho Millennium Income Fund five percent of the Idaho Millennium Fund's average monthly fair market value for the first 12 months of the preceding 24 months. The balance of the Millennium Fund shall not exceed \$100 million, and any amount in excess will be transferred to the Millennium Permanent Endowment Fund.

IDAHO CODE §§ 67-1803 to 67-1805 (2007).

There is hereby created in the state treasury the Idaho Millennium Income Fund. The fund shall consist of distributions from the Millennium Permanent Endowment Fund, the Idaho Millennium Fund and such moneys that may be provided by legislative appropriations. The uses of this fund shall be determined by legislative appropriation.

IDAHO CODE § 67-1806 (2007).

M Fire Safety Standards

None





A Smokefree Air

Public Places

No person shall smoke in a public place or in any place of employment, including restaurants, bars and casinos or within 15 feet of any entrance, exit, window that opens or ventilation intake serving a public place or place of employment. See the definitions of public place and place of employment for more details on locations covered. Smoking is still allowed in: private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public; retail tobacco stores as defined, private and semi-private rooms in nursing homes and long-term care facilities under specified conditions; and up to 25 percent of hotel/motel rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited;

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Government Buildings

Smoking is prohibited in public places, the definition of which includes places open to the public owned by the state of Illinois or any public entity. Smoking is also prohibited in places of employment, the definition of which includes all public places of employment. For the above, smoking is also prohibited within 15 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. No person may smoke in any vehicle owned, leased, or operated by the state or a political subdivision of the state.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Private Workplaces

Smoking is prohibited in all places of employment as defined, including a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A private residence or home-based business, unless used to provide

licensed child care, foster care, adult care, or other similar social service care on the premises, is not a “place of employment”.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Schools

Each school board and Board of Education in cities of over 500,000 people shall prohibit the use of tobacco on school property by any school personnel, student or other person when such property is being used for any school purposes. The school board, Board of Education in cities of more than 500,000 people or local council in cities of more than 500,000 people may not authorize or permit any exception to or exemption from the prohibition at any place or at any time, including without limitation outside of school buildings or before or after the regular school day or on days when school is not in session. “School purposes” include, but are not limited to, all events, activities or other use of school property that are authorized by school officials including all interscholastic or extracurricular athletic, academic or other sponsored events in which pupils participate.

105 ILL. COMP. STAT. 5/10-20.5b & 5/34-18.11 (1995).

Smoking is prohibited in any portion of the living quarters, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies, and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education.

410 ILL. COMP. STAT. 82/25 (2007).

Smoking is prohibited in public places, the definition of which includes educational facilities.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Child Care Facilities

Smoking tobacco products is prohibited in any area of an operating child care center regardless of whether children are present. Smoking tobacco products is forbidden in any area of a day care home, or group day care home in which day care

services are being provided, while those children are present. This does not prohibit smoking in the home in the presence of a person's own children or of children to whom day care services are not then being provided.

225 ILL. COMP. STAT. 10/5.5 (1993).

Smoking is prohibited in public places and places of employment, including child care facilities. This specifically includes private residences or home-based businesses that provide licensed child care, foster care, adult care or other similar social service care on the premises.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Health Care Facilities

Smoking is prohibited in public places the definition of which includes hospitals, nursing homes and other healthcare facilities and clinics as defined. Smoking is still allowed in private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Patients, individuals who accompany a patient, and emergency medical services personnel may not smoke while inside an ambulance or SEMSV. The Department of Public Health may impose a civil penalty on an individual who violates this subsection in the amount of \$100.

210 ILL. COMP. STAT. 50/3.155 (2001).

Restaurants

Smoking is prohibited in public places the definition of which includes restaurants. Restaurant is defined as an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. This specifically includes a bar area within a restaurant.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Bars

Smoking is prohibited in public places the defini-

tion of which includes bars/taverns. Bar is defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10 percent of its gross revenue from the sale of food consumed on the premises. "Bar" includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.

410 ILL. COMP. STAT. 82/1 et seq. (2008).

Penalties/Enforcement

"No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in each public place and place of employment where smoking is prohibited. A person who smokes in an area where smoking is prohibited shall be fined in an amount that is not less than \$100 and not more than \$250. A person who owns, operates, or otherwise controls a public place or place of employment and allows smoking to occur shall be fined not less than \$250 for the first violation, not less than \$500 for the second violation within one year after the first violation and not less than \$2,500 for each additional violation within one year after the first violation. Each day a violation occurs is a separate offense. The state Department of Health, state-certified local public health departments and local law enforcement agencies shall enforce the provisions of this act and may assess the fines above. A telephone number will be established to report violations. An action may be instituted in circuit court to enjoin repeated violations.

410 ILL. COMP. STAT. 82/20, 82/40, 82/45 & 82/50 (2008).

Preemption

Any home-rule unit of local government, any non-home rule municipality or any non-home rule county within the unincorporated territory of the county in this state may regulate smoking in public places, but that regulation must be no less restrictive than state law. In addition, any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a "public place" under state law.

410 ILL. COMP. STAT. 82/65 (2008).

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: 98 cents

Date last changed: July 1, 2002 — from 58 cents to 98 cents

Year first enacted: 1941

35 ILL. COMP. STAT. 130/2 (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$633,869,000

Other Tobacco Products

All other tobacco products: 18% of the wholesale purchase price

35 ILL. COMP. STAT. 143/10-10 (1995).

All the revenue from the excise tax on other tobacco products goes to the Long-Term Care Provider Fund of the State Treasury.

35 ILL. COMP. STAT. 143/10-10 (1995).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Illinois Liquor Control Commission is designated as the agency responsible for complying with federal regulations regarding sales of tobacco products to minors. The commission created the Kids Can't Buy 'Em Here (KCBEH) Campaign to help fulfill this duty. Grants are awarded to some, but not all communities each year for retailer education and enforcement.

Illinois Liquor Control Commission KCBEH Campaign website (2007).

As part of the contract for the KCBEH program, grant recipients are required to conduct three rounds of compliance checks on each tobacco retailer and to employ youth workers ages 15-17 years old in the compliance checks among other requirements.

Illinois Liquor Control Commission KCBEH Campaign Program Assurances (2007).

Penalties for Sales to Minors

No person shall sell, buy for, distribute samples of or furnish tobacco in any form to a minor. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense in a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 IL COMP. STAT. 675/1 et seq. (1993).

No person shall sell any smokeless tobacco product to any person under the age of 18. Violators are guilty of a business offense and punishable by a fine of not more than \$50 for each violation.

720 ILL. COMP. STAT. 680/3 (1985).

No person shall knowingly sell, deliver or give away cigarette papers or other tobacco accessories to minors. No person shall knowingly offer, sell, barter, exchange, deliver or give away cigarette paper except from premises or an establishment where other tobacco products are sold. Violators shall be guilty of a Class C misdemeanor.

720 ILL. COMP. STAT. 685/1 et seq. (1981).

Photo ID

None

Sign Posting

No person may sell or offer to sell cigarettes at retail unless a sign with the message "SURGEON GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT," printed on white cards in red letters at least one-half inch in height, is posted in a conspicuous place upon the premises. Failure to post such a warning sign is a business offense for which a fine of up to \$1,000 each day may be imposed.

410 ILL. COMP. STAT. 85/1 et seq. (1991).

Any place of business where tobacco accessories are sold shall conspicuously post a sign warning that the sale of tobacco accessories to minors or minors misrepresenting their age to procure such a sale is prohibited by law. Violation is a Class C misdemeanor.

720 ILL. COMP. STAT. 685/1 et seq. (1981).

Bidis

No person shall knowingly sell, barter, exchange,

deliver, or give away a bidi cigarette to another person, nor shall a person cause or permit or procure a bidi cigarette to be sold, bartered, exchanged, delivered, or given away to another person. Violation is a petty offense for which the offender may be fined for a first offense up to \$500, for a second offense within a two-year period not less than \$250 and not more than \$500 and for a third or subsequent offense within a two-year period not less than \$500 and not more than \$1,000.

720 ILL. COMP. STAT. 685/4 (a-5) & 685/5 (2001).

Penalties to Minors

No minor under 18 years of age shall buy tobacco in any form. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense within a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1 et seq. (1993).

Any minor who uses false or forged identification to obtain cigarette papers or other tobacco accessories shall be guilty of a Class C misdemeanor.

720 ILL. COMP. STAT. 685/1 et seq. (1981).

No minor under 16 years of age may sell any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms at a retail establishment selling tobacco products. This does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense within a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1 et seq. (2005).

Placement of Tobacco Products

All single packs of cigarettes must be sold from behind the counter, in an age restricted area or in a sealed display case. Any other tobacco products must be sold in the line of sight, which means visible to a cashier or other employee. These restrictions do not apply to a retail tobacco store that derives 90 percent of its revenue from tobacco and tobacco-related products, does not allow people under 18 to enter the premises unless accompanied by a parent or legal guardian

and posts a sign on the main entrance stating that persons under the age of 18 are prohibited from entering unless accompanied by a parent or legal guardian. Violation is a petty offense subject to a fine of \$100 to \$1,000.

720 ILL. COMP. STAT. 677/1 et seq. (2005).

Internet Sales

It is unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes in this state unless the person shipping the cigarettes is licensed as a distributor or the person delivers the cigarettes to a licensed distributor; or ships them to an export warehouse proprietor or an operator of a customs bonded warehouse. A common or contract carrier may transport cigarettes to any individual person in this state only if the carrier reasonably believes such cigarettes have been received from a person who is licensed as a distributor. A common or contract carrier may not complete the delivery of any cigarettes unless the purchaser displays a government-issued identification that shows the person is at least 18, and signs a written statement certifying the purchaser's address and age. First violation is a Class A misdemeanor and the Illinois Department of Revenue shall impose a civil penalty of \$5,000. Second and subsequent violations are a Class Four felony and a civil penalty of \$5,000 for each violation.

720 ILL. COMP. STAT. 678/1 et seq. (2004).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person shall distribute samples of tobacco products without charge or at nominal cost to anyone under 18 years of age. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense within a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1 et seq. (1993).

Any person who distributes a sample of smokeless tobacco to a minor shall be guilty of a business offense and subject to the same fines listed above.

720 ILL. COMP. STAT. 680/4 (1993).

Single Cigarettes

It is unlawful for any person to sell or distribute in this state; to acquire, hold, own, possess, or transport, for sale or distribution in this state; or to import, or cause to be imported into this state for sale or distribution in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act. Violation is subject to a civil penalty of 500 percent of the retail value of the cigarettes involved or \$5,000, whichever is greater. A distributor who violates this provision may also have his license suspended or revoked.

35 ILL. COMP. STAT. 130/3-10 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines are restricted to factories, businesses, offices, private clubs, and other places not open to the general public; places to which minors under 18 years of age are not permitted access; places where alcoholic beverages are sold and consumed on the premises; places where the vending machine is in the unimpeded line of sight of the owner or an employee of the establishment; or places where the vending machine can only be operated by the owner or an employee either directly or through a remote control device if the device is inaccessible to all customers. Selling or distributing cigarettes from a "lunch wagon" within 1,000 feet of public or private elementary or secondary school grounds at no charge is prohibited.

720 ILL. COMP. STAT. 675/1 (2003).

Penalty

Violation is subject to a fine of \$200 for a first offense, \$400 for a second offense within 12 months, and \$600 for the third and subsequent offenses within 12 months.

720 ILL. COMP. STAT. 675/2 (2003).

Sign Posting

No person may sell cigarettes at retail using a

cigarette vending machine unless a sign with the message "SURGEON GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT," printed on a white card in red letters at least one-half inch in height, is displayed in plain view on the machine. Failure to post such a warning sign is a business offense for which a fine of up to \$1,000 each day may be imposed.

410 ILL. COMP. STAT. 85/1 et seq. (1991).

F Licensing Requirements

Requirements

Distributors must obtain a license from the Department of Revenue to sell cigarettes and other tobacco products. All licenses are valid for one year from the date of issuance unless suspended or revoked.

35 ILL. COMP. STAT. 130/4 (2002) & 143/10-20 (2002).

Fee

\$250 annually for cigarettes; no charge for other tobacco products.

35 ILL. COMP. STAT. 130/4 & 142/10-20 (2002).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It shall be unlawful for an employer to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products off the premises of the employer during nonworking hours. This does not apply to any employer that is a non-profit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public; or to the use of those lawful products which impairs an employee's ability to perform the employee's assigned duties. It is also not a violation for an employer to offer, impose or have in effect a health, disability or life insurance policy that makes distinctions between employees for the type of coverage or the price of coverage based upon the employees' use of lawful products, provided that differential premium rates charged

employees reflect a differential cost to the employer; and employers provide employees with a statement delineating the differential rates used by insurance carriers.

820 ILL. COMP. STAT. 55/5 (1987).

H Advertising & Promotion

All outdoor billboard advertisements for smokeless tobacco shall bear one of the following statements in capital letters: "WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER. WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS. WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES." The manufacturer, packager or importer of the product shall rotate the warnings every four months. Any outdoor billboard advertisement that does not conform to these provisions shall be deemed a nuisance affecting the public health. No other warning, format or type style in any outdoor billboard advertisement shall be required by any state or local statute or regulation.

410 ILL. COMP. STAT. 75/2 (1987).

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding
Appropriated \$8,500,000 for tobacco control and prevention programs from the state's annual MSA payment.

FY2008 Annual Budget (H.B. 3866) enacted and effective 10/25/07.

M Fire Safety Standards

To help prevent cigarette-caused fires, on and after the effective date of the Cigarette Fire Safety Standard Act, no cigarettes shall be sold or of-

fered for sale to any person in this State unless: cigarettes have been tested in accordance with the test method prescribed in Section 8/15, the cigarettes meet the performance standard specified in Section 8/20, and a written certification has been filed by the manufacturer with the Office of the State Fire Marshal and the Office of Attorney General in accordance with Section 8/30. Any manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells cigarettes in violation of the above is subject to a civil penalty not to exceed \$10,000 for each sale. Any retailer dealer that knowingly sells or offers to sell cigarettes in violation of the above is subject to a civil penalty not to exceed \$500 for each sale or offer for sale of less than 1,000 cigarettes and a civil penalty not to exceed \$1,000 for each sale or offer for sale of more than 1,000 cigarettes. Knowingly making a false certification is subject to a civil penalty of \$10,000 in addition to any other penalty.

425 ILL. COMP. STAT. 8/1 et seq. (2008).





A Smokefree Air

Public Places

Smoking is restricted to designated areas in “public buildings”. A “public building” is an enclosed structure or part of an enclosed structure occupied by an agency of state or local government, used as a classroom building or a dining area at a state educational institution, used as a public school, licensed as a health facility, used as a station for paid firefighters, used as a station for paid police officers, licensed as a child care center or child care home or registered as a child care ministry, licensed as a hospital or a county hospital, and used as a provider’s office. Smoking is prohibited in a school bus during a school week or when it is being used for specified purposes. Smoking is also prohibited in the retail area of a grocery or drug store, or the dining area of a restaurant designated as non-smoking by the proprietor.

IND. CODE. §§ 16-41-37-1 et seq. (2003).

Government Buildings

Smoking is restricted to designated areas in “public buildings.” An enclosed structure or part of an enclosed structure occupied by an agency of state or local government is included in the definition of “public buildings.”

IND. CODE. §§ 16-41-37-1 et seq. (2003).

Private Workplaces

None

Schools

Smoking is restricted to designated areas in “public buildings.” Public schools and classroom buildings and dining areas at a state educational institution are included in the definition of “public buildings.” Smoking is also prohibited in a school bus during a school week or while the school bus is being used for the transportation of school children to and from the following: school, school athletic games or contests, or other school functions.

IND. CODE §§ 16-41-37-1 et seq. (2003).

Child Care Facilities

Smoking is restricted to designated areas in “public buildings.” Places licensed as a child care center or child care home or registered as a child care ministry are included in the definition of “public buildings.”

IND. CODE §§ 16-41-37-1 et seq. (2003).

Health Care Facilities

Smoking is restricted to designated areas in “public buildings.” Places licensed as a health facility or a hospital, a county hospital or used as a healthcare provider’s office are included in the definition of “public buildings.”

IND. CODE §§ 16-41-37-1 et seq. (2003).

Restaurants

Smoking is prohibited in the dining area of a restaurant that is designated and posted as the restaurant’s nonsmoking area by the restaurant’s proprietor. The proprietor of a restaurant shall post conspicuous signs at each entrance to the restaurant, informing the public of the establishment’s smoking policy.

IND. CODE §§ 16-41-37-1 et seq. (2003).

Bars

None

Penalties/Enforcement

The official in charge of a public building shall post a conspicuous sign that reads “Smoking is Prohibited by State Law Except in Designated Smoking Areas” or other similar language. A person who smokes in a nonsmoking area commits a class B infraction punishable by a fine of up to \$1,000 for the first offense which becomes a Class A infraction punishable by a fine of up to \$10,000 if the person has three previous violations within the preceding 12 months. Also the person may be removed by the official in charge of the public building for failing to refrain from smoking when asked to do so.

IND. CODE §§ 16-41-37-1 et seq. (2003) & 34-28-5-4 (1998).

Preemption

A county, city, town, or other governmental unit is not prohibited from adopting an ordinance more restrictive than the above requirements.

IND. CODE. § 16-41-37-9 (1996).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 99.5 cents

Date last changed: July 1, 2007 -- from 55.5 cents to 99.5 cents

Year first enacted: 1947

IND. CODE § 6-7-1-12 (2007).

A tax is also imposed on all cigarette papers, wrappers, or tubes, made or prepared for the purpose of making cigarettes. On cigarette papers, the tax is \$0.005 per 50 papers, and for tubes, the tax is \$0.01 per 50 tubes or fractional part thereof.

IND. CODE § 6-7-1-12 (2002).

Cigarette tax revenue is distributed as follows: 4.22 percent to the “Cigarette Tax Fund,” which is then allocated to the Department of Natural Resources for specified purposes, the Clean Water Indiana Fund and to cities and towns in Indiana based on population; 0.6 percent to the “Mental Health Centers Fund,” which is then allocated to the Division of Mental Health and Addiction for specified purposes; 53.68 percent to the General Fund; 5.43 percent to the Pension Relief Fund; 27.05 percent to the Indiana check-up plan trust fund; 2.46 percent to the state general fund for the purpose of paying appropriations for Medicaid Current Obligations, for provider reimbursements; 4.1 percent to the state general fund for the purpose of paying any appropriation for a health initiative; and 2.46 percent to the state general fund for the purpose of reimbursing the state general fund for a specified tax credit.

IND. CODE § 6-7-1-28.1 (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$339,369,000

Other Tobacco Products

All other tobacco products: 24% of the wholesale price

IND. CODE § 6-7-2-7 (2007).

Twenty-five percent of the revenue from the tax on other tobacco products is deposited in the affordable housing and community development fund. The remaining revenue is distributed the same way as cigarette tax revenue (see above).

IND. CODE §§ 6-7-2-17 & 6-7-1-28.1 (2007).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Mental Health and Addiction shall coordinate the conduct of random, unannounced inspections at locations where tobacco products are sold or distributed. Only the Indiana Alcohol and Tobacco Commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off-duty law enforcement officers to conduct the inspections. Minors may be used in an enforcement action as long as they are overseen by the division of government conducting the inspection, are not recruited at the scene of a possible violation, and have written permission from their parents or legal guardian. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE §§ 7.1-6-2-2 (2001); 7.1-6-2-4 (1997); & 16-41-39 et seq. (1996).

Penalties for Sales to Minors

A retail establishment that sells or distributes tobacco to a minor commits a Class C infraction. For a sale to take place the buyer must pay the seller for the tobacco products. Violation is subject to a civil penalty of \$50 for a first violation, a civil penalty of \$100 for a second violation within a 90-day period, a civil penalty of \$250 for a third violation within a 90-day period, and a civil penalty of \$500 for a fourth and subsequent violations in a 90-day period. A person who violates this law at least six times in any six month period commits habitual illegal sale of tobacco, a Class B infraction. A

retail establishment may not be issued a citation for a violation of this section more than once every 24 hours for each specific business location. It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco. It is a defense if the buyer produced a driver's license or photo ID that showed the buyer was of legal age to make the purchase; and the appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the legal age. It is also a defense if the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco: agriculture, processing, transporting, wholesaling, or retailing. Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than 18 years of age who bought or received the tobacco is also issued a citation or summons. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE §§ 35-46-1-10.2 (2003) & 16-41-39 et seq. (1996).

A person who knowingly sells or distributes tobacco to a minor or purchases tobacco for delivery to another person who is a minor commits a Class C infraction punishable by a fine of up to \$500. For a sale to take place the buyer must pay the seller for the tobacco products. It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco. The same affirmative defenses available to retailers are also available to persons who sell tobacco products to minors (see above). Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than 18 years of age who bought or received the tobacco is also issued a citation or summons. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city,

township, other political subdivision, or agency of the state is void.

IND. CODE §§ 35-46-1-10 (2003) & 16-41-39 et seq. (1996).

Photo ID

None

Sign Posting

A location selling tobacco at retail shall post and maintain in a conspicuous place a sign stating "THE SALE OF TOBACCO TO PERSONS UNDER 18 YEARS OF AGE IS FORBIDDEN BY INDIANA LAW." Violation is a Class C infraction punishable by a fine of up to \$500 for the owner or person who has control over the establishment. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state, is void.

IND. CODE §§ 35-46-1-11 (2001) & 16-41-39 et seq. (1996).

Penalties to Minors

A minor who purchases, accepts tobacco for personal use or possesses tobacco commits a Class C infraction for which a fine of up to \$500 may be adjudged. It is a defense to prosecution if the accused person acted in the ordinary course of employment in a business concerning tobacco agriculture, tobacco processing, tobacco transporting, tobacco wholesaling, or tobacco retailing. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule, of any county, city, township, other political subdivision or agency of the state, is void.

IND. CODE §§ 35-46-1-10.5 (1997) & 16-41-39 et seq. (1996).

Placement of Tobacco Products

The owner of a retail establishment that sells or distributes cigarettes through a self-service display, other than a coin operated machine, commits a Class C infraction. As used in this section, "self-service display" means a display that contains cigarettes in an area where a customer is permitted and has access to cigarettes without assistance from a sales person. This does not apply to a self-service

display in a retail establishment that has a primary purpose to sell cigarettes and prohibits entry by persons less than 18 years of age.

IND. CODE § 35-46-1-11.8 (2007).

Internet Sales

A merchant may not mail or ship cigarettes as part of a delivery sale unless, before mailing or shipping the cigarettes, the merchant: obtains from the prospective customer a written statement signed by the prospective customer stating the customer's address and date of birth, makes a good faith effort to verify the information by using a federal or commercially available data base and receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser. Merchants that are not cigarette manufacturers are prohibited from making delivery sales to Indiana residents or retailers that are not distributors except under specified circumstances. Violation is subject to a civil penalty not to exceed \$5,000. A merchant who mails or ships cigarettes as part of a delivery sale shall use a mailing or shipping service that requires the customer or a person at least 18 years of age designated by the customer to sign to accept delivery of the cigarettes; and to present a valid driver's license or identification card unless the person appears to be over 27 years of age. Violation by a delivery service is up to a \$1,000 fine. Violations by merchants range from \$1,000 to \$2,000 for a first violation to \$10,000 for a fifth violation in five years. Signing another person's name to a certification is a \$1,000 fine.

IND. CODE § 24-3-5 et seq. (2005).

Other Provisions

A retail establishment whose primary purpose is the sale of tobacco products may not allow an individual who is less than 18 years of age to enter the retail establishment. The retail establishment must conspicuously post on all entrances a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store." Violation is a Class C infraction subject to a fine ranging from \$50 for a first violation to \$500 for a fourth and subsequent violations in a 90-day period. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political

subdivision, or agency of the state is void.

IND. CODE §§ 35-46-1-11.7 (2003) & 16-41-39 et seq. (1996).

Businesses whose primary activity is the sale of tobacco or tobacco products and accessories may not operate within 200 feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes. A violation of this section is a Class C misdemeanor. This section does not apply to businesses operating as a tobacco business before April 1, 1996. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE §§ 35-46-1-11.2 (1997) & 16-41-39 et seq. (1996).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A retail establishment that distributes tobacco to a minor commits a Class C infraction punishable by the graduated civil penalties listed under the 1st paragraph of the "Penalties for Sales to Minors" section. All provisions and affirmative defenses from that section apply to the distribution of tobacco products by retailers as well. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state, is void.

IND. CODE §§ 35-46-1-10.2 (2003) & 16-41-39 et seq. (1996).

A person that knowingly distributes tobacco to a minor commits a Class C infraction punishable by a civil penalty of up to \$500. All provisions and affirmative defenses from the 1st paragraph of the "Penalties for Sales to Minors" section apply to the distribution of tobacco products by persons as well. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political

subdivision, or agency of the state, is void.

IND. CODE §§ 35-46-1-10 (2003) & 16-41-39 et seq. (1996).

Single Cigarettes

It is unlawful for a person to sell cigarettes other than in an unopened package originating with the manufacturer that bears the health warning required by federal law. A violation of this law is a Class C infraction punishable by a fine of up to \$500. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule, of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE §§ 7.1-6-2-3 (1997) & 16-41-39 et seq. (1996).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines are restricted to areas of licensed premises accessible to persons over 18 years of age; private industrial or office locations; private clubs, if they are accessible only to persons over age 18; and riverboats where entry is limited to persons who are at least 21 years of age and on which lawful gambling is authorized. Vending machines can not be located in these areas if a vending machine is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than 18 years of age. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE §§ 35-46-1-11.5 (2003) & 16-41-39 et seq. (1996).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is a Class C infraction punishable by a civil penalty of \$50 for a first violation; \$250 for a second violation within 90 days; and the vending machine shall be impounded upon a third violation within 90 days. An owner of a retail establishment may not be issued

a citation or summons for a violation more than once every two business days for each business location. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE § 35-46-1-11.5 (2003) & 16-41-39 et seq. (1996).

Sign Posting

The following notice must be posted on machines located in a public place: "IF YOU ARE UNDER 18 YEARS OF AGE, YOU ARE FORBIDDEN BY INDIANA LAW TO BUY TOBACCO FROM THIS MACHINE." The owner or person who has control over a vending machine in violation commits a Class C infraction punishable by a fine of up to \$500. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state is void.

IND. CODE §§ 35-46-1-11 (2001) & 16-41-39 et seq. (1996).

F Licensing Requirements

Requirements

Distributors must obtain a registration certificate to sell cigarettes from the Department of State Revenue. All registration certificates shall be valid for one year from the date of issuance unless revoked or suspended. A separate registration certificate is required for each place of business. Selling cigarettes without a registration certificate is a Class B misdemeanor.

IND. CODE §§ 6-7-1-16 (1992) & 6-7-1-23 (1978).

Distributors must obtain a license to sell other tobacco products from the Department of State Revenue. All licenses shall be valid for one year from the date of issuance unless revoked or suspended. A separate license is required for each place of business. Selling other tobacco products without a license is a Class B misdemeanor.

IND. CODE §§ 6-7-2-8 & 6-7-2-18 (1987).

Retailers must obtain a tobacco sales certificate from the Indiana Alcohol and Tobacco Commission to sell tobacco products. A separate

certificate is required for each place where tobacco products are sold or distributed. A certificate is valid for one year after the date of issuance and is nontransferable. Selling tobacco products at retail without a certificate is a Class A infraction.

IND. CODE §§ 7.1-3-18.5 et seq. (2003).

Manufacturers must obtain a license from the Indiana Alcohol and Tobacco Commission for their principal place of business. The commission shall determine the duration of a license, but a license may not be valid for more than three years. The license issued under this section is nontransferable.

IND. CODE §§ 24-3-6 et seq. (2005).

Fee

Distributors: \$500 annually for cigarettes, \$25 annually for other tobacco products.

Retailers: \$50 per location.

IND. CODE §§ 6-7-1-16 (1992), 6-7-2-8 (1987), & 7.1-3-18.5 (2003).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

An employer may not require, as a condition of employment, an employee or prospective employee to refrain from using tobacco products outside the course of the employee's or prospective employee's employment. An employer also may not discriminate against an employee with respect to compensation and benefits, or terms and conditions of employment based on the employee's or prospective employee's use of tobacco products outside the course of employment. However, an employer may implement financial incentives intended to reduce tobacco use, and related to employee health benefits provided by the employer. An employee or prospective employee may bring civil action against the employer to enforce this law. This does not apply to an employer that is a church, a religious organization, or a school or business conducted by a religious organization.

IND. CODE §§ 22-5-4-1 et seq. (2006).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

An appeal bond that an appellant must post to stay execution on a judgment while an appeal is pending may not exceed \$25 million regardless of the total amount of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that are necessary to protect the appellee, and require the appellant to post a bond that is equal to the total amount of the judgment.

IND. CODE § 34-49-5-3 (2002).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$16,200,000 for tobacco control and prevention programs from the state's annual MSA payment and the state general fund in FY2008. This is the first year of the FY2008-FY2009 biennial budget.

FY2008-FY2009 Biennial Budget (H.B. 1001) enacted 5/11/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009) & H.B. 1678 enacted 5/10/07 and effective 7/1/07.

Non-Monetary Provisions

Indiana created the Tobacco Use Prevention and Cessation Trust Fund. The governing board consists of government and health officials, including representatives of the American Lung Association of Indiana. The Fund will develop a long range state plan, based on best practices for tobacco control programs as published by the Centers for Disease Control and Prevention.

IND. CODE §§ 4-12-4 et seq. (2000).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is restricted to designated areas in any enclosed indoor space used by the general public, or serving as a place of work containing 250 or more square feet of floor space. These areas include, but are not limited to, restaurants seating more than 50 people, retail stores, lobbies and malls, offices, including waiting rooms, other commercial establishments, public conveyances with departure, travel and destination entirely within the state, educational facilities, hospitals, clinics, nursing homes, other healthcare and medical facilities, elevators, auditoria, theaters, libraries, art museums, concert halls, indoor arenas and meeting rooms. Smoking is prohibited on elevators. Public places not covered by this law include retail stores where 50 percent or more of the sales result from the sale of tobacco products, the portion of a retail store where tobacco products are sold, a room used primarily as the residence of students or other persons at an educational facility, sleeping rooms in motels or hotels and rooms or halls used for a private social function. Where smoking areas are designated, existing physical barriers and existing ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

IOWA CODE §§ 142B et seq. (1990).

Government Buildings

Smoking is restricted to designated areas during a gathering of the members of a governmental body, whether an open or a closed session.

IOWA CODE §§ 142B et seq. (1990).

Private Workplaces

Smoking is restricted to designated areas in places of work containing 250 square feet or more of floor space. Excluded from this law are private, enclosed offices occupied exclusively by smokers, even though non-smokers may visit the office; and factories, warehouses, and similar places of work not usually frequented by the general public, except that an employee cafeteria in such place of

work shall have a designated nonsmoking area.

IOWA CODE §§ 142B et seq. (1990).

Schools

Smoking is restricted to designated areas in educational facilities. This law does not apply to rooms used primarily as the residence of students or other persons at an educational facility.

IOWA CODE §§ 142B et seq. (1990).

Child Care Facilities

Smoking is prohibited in child development homes during their hours of operation in areas which may be used by the children receiving child care. "Child development home" means a person or program that may provide child care to six or more children at any one time.

IOWA CODE § 237A.3A (2002).

Health Care Facilities

Smoking is restricted to designated areas in hospitals, clinics, nursing homes and other health care and medical facilities. Smoking is not prohibited in patient rooms in health care facilities, but the person in custody or control of the facility shall provide a sufficient number of non-smoking rooms to accommodate persons who do not smoke.

IOWA CODE §§ 142B et seq. (1990).

Restaurants

Smoking is restricted to designated areas in restaurants seating more than 50 people.

IOWA CODE §§ 142B et seq. (1990).

Bars

None

Penalties/Enforcement

Signs must be posted that designate smoking and non-smoking areas. A person who smokes in a nonsmoking area or a person in control of a public place who fails to post the appropriate sign shall pay a civil fine of \$25. If the public place is subject to any state inspection process or under

contract with the state, the person performing the inspection shall check for compliance with the posting requirement. A facility inspected by the Department of Inspections and Appeals shall be inspected by the department for compliance with the sign posting requirement and the proprietor's responsibility provisions.

IOWA CODE §§ 142B et seq. (1990).

Preemption

For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE § 142B.6 (2001).

In May 2003, the Iowa Supreme Court overturned a lower court decision and reinstated preemption of local smokefree air ordinances. The court found that previous state legislation occupied the field of smokefree air laws, and that the legislature did not intend for local governments to have the power to pass more stringent laws. The lawsuit involved eight restaurant owners in Ames, Iowa, who sued after the city passed a law prohibiting smoking in restaurants in 2001.

James Enterprise Inc. et al. v. City of Ames, decided 5/7/03.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.36

Date last changed: March 15, 2007 -- from 36 cents to \$1.36

Year first enacted: 1921

IOWA CODE § 453A.6(1) (2007).

All revenue from the cigarette tax is deposited in the state General Fund. However, beginning July 1, 2007, the first \$127,600,000 in revenue from the cigarette and other tobacco product taxes is appropriated annually to the Health Care Trust Fund created in the office of the state Treasurer. Moneys in the fund shall be separate from the General Fund of the state and shall not be considered part of the General Fund of the state. Moneys in the fund shall be used only for purposes related to health care, substance abuse treatment and

prevention, and tobacco use prevention, cessation, and control.

IOWA CODE §§ 453A.35 & 453A.35A (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$89,480,000

Other Tobacco Products

Little Cigars: \$1.36 per cigar;

Snuff: \$1.19/oz. and a proportionate rate on fractional parts of an ounce;

All other tobacco products: 50% of the wholesale sales price

IOWA CODE § 453A.43 (2007).

All revenue from the taxes on other tobacco products is deposited in the state General Fund. However, beginning July 1, 2007, the first \$127,600,000 in revenue from the cigarette and other tobacco product taxes is appropriated annually to the Health Care Trust Fund created in the office of the state Treasurer. Moneys in the fund shall be separate from the General Fund of the state and shall not be considered part of the General Fund of the state. Moneys in the fund shall be used only for purposes related to health care, substance abuse treatment and prevention, and tobacco use prevention, cessation, and control.

IOWA CODE §§ 453A.35 & 453A.35A (2007).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

A person shall not sell, give or otherwise supply tobacco products to any person less than 18 years of age. This also applies to sales of cigarettes or tobacco products through a vending machine. For a person, other than a retailer, violation is a simple misdemeanor. For violations of youth access laws by an employee of a retailer, the scheduled fine is as follows: \$100 for a first

offense, \$250 for a second offense and \$500 for a third offense. If a retailer or employee of a retailer commits a violation, the Department of Revenue and Finance, a local authority, or the Department of Public Health shall also assess a civil penalty of \$300 for a first violation. Failure to pay the fine shall result in automatic suspension of the permit for a period of 14 days. For a second violation within a period of two years, the retailer shall be assessed a \$1,500 fine or the retailer's permit shall be suspended for a period of 30 days based on the retailer's preference. For a third violation within three years, the retailer shall be assessed a fine of \$1,500 and have his permit suspended for 30 days. For a fourth violation within three years, the retailer will be assessed a fine of \$1,500 and have his permit suspended for 60 days. For a fifth violation in four years, the retailer's permit shall be revoked. If an employee of a retailer commits a violation, the retailer shall not be charged with a violation if the employee took the state tobacco compliance employee training program or an in-house training program substantially similar to it. This defense may only be asserted once every four years for violations that occur at the same business location. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.2 (2003), 453A.22 (2003), 453A.56 (1991) & 805.8C(3)(b) (2001).

Photo ID

None

Sign Posting

None

Penalties to Minors

A minor shall not smoke, use, possess, purchase or attempt to purchase any tobacco products. This does not apply if a minor employee possesses the tobacco products as part of their employment responsibilities, and are employed by a person who holds a valid retail tobacco product permit. The penalty for a first offense is \$50, for the second offense \$100 and \$250 for the third or subsequent offenses. In addition, a person who violates this section is subject to the following: For a first offense, performance of eight hours of community work requirements, unless waived by the court;

for a second offense, performance of 12 hours of community work requirements; for a third or subsequent offense, performance of 16 hours of community work requirements. A person shall not be guilty of a violation if conduct that would otherwise constitute a violation is performed, under the supervision of law enforcement, to assess compliance with cigarette and tobacco products laws. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.2 (2003), 453A.3 (2004) & 805.8C (3)(c) (2004).

A person who is under the age of 18, who alters or displays or has in the person's possession a fictitious or fraudulently altered driver's license or nonoperator's identification card and who uses the license or card to purchase or attempt to purchase tobacco products commits a simple misdemeanor punishable by a fine of \$100.

IOWA CODE §§ 321.216C (2001) & 805.8A (3)(c) (2004).

If a retailer or employee of a retailer has reasonable belief that a driver's license or other identification offered by a person seeking to buy a tobacco product is altered or falsified, they may retain the license or identification. It must be forwarded within 24 hours to the appropriate law enforcement agency of the holder's jurisdiction for further investigation. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.4 (2000) & 453A.56 (1991).

Placement of Tobacco Products

Retailers are prohibited from selling cigarettes or tobacco products, in a quantity of less than a carton, through the use of a self-service display. Violation is grounds for revocation of the retailer's permit. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.36A (1998) & 453A.56 (1991).

Internet Sales

None

Other Provisions

The Alcoholic Beverages Division of the Iowa Department of Commerce shall develop a tobacco

compliance employee training program not to exceed two hours in length for employees and prospective employees of tobacco retailers to inform the employees about state and federal laws and regulations regarding the sale of cigarettes and tobacco products to persons less than 18 years of age. The training program shall be free of cost. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.5 (2003) & 453A.56 (1991).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person shall not give away any cigarettes or tobacco products to any person under 18 years of age or at all within 500 feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under 18 for recreational, educational, or other purposes. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under 18 years of age. Cigarette samples must have a cigarette tax stamp affixed to them. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.39 (2004) & 453A.56 (1991).

Single Cigarettes

Cigarettes shall be sold in packages of only 20 or more cigarettes. No penalty is specified for violation. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.6(7) (2007) & 453A.56 (1991).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are restricted to places where the retailer ensures that no person younger than 18 years of age is present or permitted to enter at any time. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provi-

sions of this chapter shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.36 (2000) & 453A.56 (1991).

Penalty

Violation of the restrictions on the placement of tobacco product vending machines by a retailer is subject to the civil penalties listed under the “Penalties for Sales to Minors” section. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.22 (2003) & 453A.56 (1991).

F Licensing Requirements

Requirements

Wholesalers, distributors, and cigarette vendors must obtain a state permit to sell cigarettes from the Department of Revenue. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities. All permits expire on June 30 of each year. Selling or distributing cigarettes without a valid permit is subject to a civil penalty of \$200 for a first violation, \$500 for a second violation and \$1,000 for a third and subsequent violations. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.13 (2000), 453A.31 (2004) & 453A.56 (1991).

Distributors of other tobacco products must obtain a state license from the Director of the Department of Revenue. Retailers of other tobacco products must obtain a permit from the respective city or county where they are located, except a retailer who already has a retailer permit under IOWA CODE § 453A.13 need not obtain a separate retailer permit under this section. A separate license is required for each place of business, and licenses expire on June 30th following the date of issue unless sooner revoked. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions

of this chapter.

IOWA CODE §§ 453A.44 (1994), 453A.47A (2005) & 453A.56 (1991).

Fee

\$50 to \$100 annually for a retail permit, depending on local population; \$100 annually for a wholesaler, distributor, or cigarette vendor permit; \$100 for a tobacco products distributor license unless the person already has a permit of any kind to deal in cigarettes.

IOWA CODE §§ 453A.13 (2000) & 453A.44 (1994).

License Suspension for Sales to Minors

If a retailer or employee of a retailer commits a violation of the sales to minors law, including vending machine violations, the Department of Revenue and Finance, a local authority, or the Department of Public Health shall assess a civil penalty for a first violation. Failure to pay the fine shall result in automatic suspension of the permit for a period of 14 days. For a second violation within a period of two years, the retailer shall be assessed a fine or have his permit suspended for a period of 30 days, whichever the retailer prefers. For a third violation within three years, the retailer shall have his permit suspended for 30 days. For a fourth violation within three years, the retailer shall have his permit suspended for 60 days. For a fifth violation in four years, the retailer shall have his permit revoked. This law shall supersede any local law or regulation that is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE §§ 453A.22 (2003) & 453A.56 (1991).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

If a judgment or order appealed from is for money, the supersedeas bond required shall not exceed 110 percent of the amount of the money judgment except the court may set a higher bond amount based on specific findings. However, in no case shall a bond exceed \$100 million, regardless of the value of the money judgment. This limitation shall not apply in cases where the court finds that the defendant intentionally dissipated the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment.

IOWA CODE § 625A.9 (2) (2004).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$12,290,219 for tobacco control and prevention programs from the state's annual MSA payment, state tobacco tax revenue and the state general fund.

FY2008 Appropriation from Healthy Iowans Tobacco Trust (H.F. 907) enacted 5/23/07 and effective 7/1/07 and FY2008 Appropriations for Health and Human Services (H.F. 909) enacted 5/29/07 and effective 7/1/07.

A Tobacco Settlement Trust Fund was established, separate and apart from all other public moneys of the state, under control of the Tobacco Settlement Authority. The fund shall consist of Master Settlement Agreement moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. The fund consists of two accounts: The Tax-Exempt Bonds Proceeds Restricted Capital Funds Account where most of the proceeds from securitization of MSA payments went and the Endowment for Iowa's Health Account where a small portion of the proceeds from securitization and MSA money not sold to the Tobacco Settlement Authority are deposited. Each year, money is transferred from the Endowment for Iowa's Health Account to the Healthy Iowans Tobacco Trust. Specifically, \$55 million was transferred in FY2002, and \$55 million plus an inflationary factor of one and one-half percent of the amount transferred in the previous fiscal year was transferred in FY2003 and each fiscal year thereafter. A three-fifths majority in each

house and approval by the governor is required to override this transfer.

IOWA CODE § 12E.12 (2001).

The Healthy Iowans Tobacco Trust was created in the office of the Treasurer of the State. The trust consists of moneys transferred to the Healthy Iowans Tobacco Trust from the Endowment for Iowa's Health Account of the Tobacco Settlement Trust Fund and moneys appropriated or transferred from any other source (see above). Moneys deposited in the trust will be used for purposes related to health care, substance abuse treatment and enforcement, tobacco use prevention and control and other purposes related to the needs of children, adults and families in the state.

IOWA CODE § 12.65 (2001).

Non-Monetary Provisions

Iowa established a Tobacco Use Prevention and Control Initiative that will specifically address reduction of tobacco use by youth and pregnant women, promotion of compliance by minors and retailers with tobacco sales laws and ordinances, and enhancement of the capacity of youth to make healthy choices and provide for extensive involvement of youth in attaining these results. The Commission on Tobacco Use Prevention and Control was also created in the Department of Public Health consisting of 14 members, among others three appointed by the governor from tobacco-control related organizations, members of youth organizations and state legislators from the house and senate.

IOWA CODE §§ 142A.1 et seq. (2000).

Securitization

The Tobacco Settlement Authority was created as a public instrumentality and agency of the state to sell, pledge, or assign, as security or consideration, all or a portion of the state's share of the Master Settlement Agreement. The authority shall issue tax-exempt bonds in an amount of not more than \$540 million for deposit in the Tax-Exempt Bond Proceeds Restricted Capital Funds Account of the Tobacco Settlement Trust Fund, to be used for capital projects, certain debt service on outstanding obligations which funded capital projects, and attorney fees related to the Master Settlement Agreement. The authority may also issue taxable bonds or tax-exempt bonds

to provide additional funding for the Healthy Iowans Tobacco Trust.

IOWA CODE §§ 12E.1 et seq. (2001).

M Fire Safety Standards

Iowa has enacted legislation requiring cigarettes sold in Iowa to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on January 1, 2009.

H.F. 718 enacted 5/21/07 and effective 1/1/09.



A Smokefree Air**Public Places**

Smoking is restricted to designated areas in enclosed indoor areas open to, or used by, the general public including, but not limited to: restaurants, retail stores, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, museums, theaters, auditoriums, arenas and recreational facilities. Smoking is prohibited entirely in passenger elevators, on public means of transportation, and on school buses.

KAN. STAT. ANN. §§ 21-4009 to 21-4013 (1987).

Government Buildings

Smoking is restricted to designated areas in state, county or municipal buildings.

KAN. STAT. ANN. § 21-4010 (1987).

No person shall smoke in any area, room, hallway, or other place in the state capitol and no area shall be designated as a smoking area.

KAN. STAT. ANN. § 21-4016 (1993).

Private Workplaces

None

Schools

The use of tobacco products in any public school building is prohibited. A school building is defined as an enclosed building used for pupil attendance purposes by the board of education of a unified school district. Not included are buildings or portions thereof used for residential purposes or leased from the school district for nonschool sponsored activities.

KAN. STAT. ANN. §§ 72-53, 107 (1988).

Smoking is restricted to designated areas in all other educational facilities. Smoking is prohibited on school buses.

KAN. STAT. ANN. § 21-4010 (1987).

Child Care Facilities

Smoking is prohibited in day care homes, group day care homes and family day care homes while children are present. Outside areas on the premises of the facility are specifically excluded from this law. The Secretary of Health and Environment may levy a civil fine of up to \$500 against any day care home for a first or second violation, and suspend the license for third or subsequent violations.

KAN. STAT. ANN. § 65-530 (1994).

Health Care Facilities

Smoking is prohibited in “medical care facilities” which includes general or special hospitals, ambulatory surgery centers or recuperation centers, and any licensed psychiatric hospital. A smoking area may be established within a licensed long-term care unit if such area is well ventilated.

KAN. STAT. ANN. § 21-4017 (1993).

Smoking is restricted to designated areas in other health care institutions or places where health care services are provided to the public.

KAN. STAT. ANN. § 21-4010 (1987).

Restaurants

Smoking is restricted to designated areas in restaurants.

KAN. STAT. ANN. § 21-4010 (1987)

Bars

None

Penalties/Enforcement

The proprietor or other person in charge of a public place shall post signs designating smoking and nonsmoking areas. Any person found guilty of smoking in a nonsmoking area is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs, as required, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the Department of Health and Environment, or a local department of health, may institute an action in any court of competent

jurisdiction to enjoin repeat violations.

KAN. STAT. ANN. § 21-4012 (1987).

Preemption

Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act.

KAN. STAT. ANN. § 21-4013 (1987).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 79 cents

Date last changed: January 1, 2003 — from 70 cents to 79 cents

Year first enacted: 1927

KAN. STAT. ANN. § 79-3310 (2003).

All proceeds from the cigarette tax go to the general fund.

KAN. STAT. ANN. § 79-3387 (2001).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$119,055,000

Other Tobacco Products

All other tobacco products: 10% of the wholesale sales price

KAN. STAT. ANN. § 79-3371 (1972).

All proceeds from the tax on other tobacco products go to the general fund.

KAN. STAT. ANN. § 79-3387 (2001).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Director of Taxation shall administer and enforce the provisions of the Kansas Cigarette and Tobacco Products Act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right

to inspect all premises, records and invoices pertaining to the wholesale distribution, retail sale or sampling of cigarettes or tobacco products within the city at all reasonable times. No person shall engage or direct a minor to violate any provision of this act for purposes of determining compliance with provisions of this act unless such person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and such person is an officer having authority to enforce this act; an authorized representative of the attorney general; a county attorney or a district attorney; or an authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with the provisions of this act.

KAN. STAT. ANN. §§ 79-3326 & 79-3394 (1996).

It is unlawful to prevent the Director of Taxation or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away. Violation is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Penalties for Sales to Minors

It is a Class B misdemeanor punishable by a minimum fine of \$200 for any person to: (1) Sell, give or furnish any cigarettes or tobacco products to any person less than 18 years of age; or (2) buy any cigarettes or tobacco products for any person less than 18 years of age. It is a defense to prosecution if the defendant is a licensed retail dealer or employee thereof; the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and the person under 18 years of age exhibited a driver's license, or other official document containing a photograph, showing they were of legal age to purchase or receive cigarettes or tobacco products. The person who violates this law shall be the individual directly selling, furnishing or distributing the cigarettes or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling,

furnishing or distributing by such individual or both.

KAN. STAT. ANN. § 79-3322 (2000).

In addition to or in lieu of any other civil or criminal penalty provided by law, the Secretary of Revenue or their designee, upon a finding that a licensee has violated any provision of the Kansas Cigarette and Tobacco Products Act, including selling, giving or furnishing tobacco products to minors, shall impose on such licensee a civil fine not exceeding \$1,000 for each violation. In determining the fine to be imposed, the Secretary of Revenue or their designee shall consider it to be a mitigating circumstance if the employee had completed a training program in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

KAN. STAT. ANN. § 79-3391 (2001).

Whenever the Director of Taxation has reason to believe that any person licensed under this act has violated any of the provisions of this act, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's license or licenses. Within 10 days after the mailing of the notice, the person may request a hearing in writing before the director. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which the license or licenses were suspended or revoked.

KAN. STAT. ANN. § 79-3309 (1996).

Photo ID

None

Sign Posting

It is unlawful for any person who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "BY LAW, CIGARETTES AND TOBACCO PRODUCTS MAY BE SOLD ONLY TO PERSONS 18 YEARS OF AGE AND OLDER." Violation is a misdemeanor punishable

by a fine of not more than \$1,000, imprisonment for not more than one year or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Penalties to Minors

It is unlawful for any person under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products. It is unlawful for any person who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products. Violation is a tobacco infraction punishable by a fine of \$25.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Placement of Tobacco Products

None

Internet Sales

The following restrictions are placed on Internet, telephone, and mail order sales of cigarettes: 1) each person engaged in the business of selling cigarettes to persons who reside in Kansas shall obtain a license, and shall have a valid Kansas cigarette tax stamp affixed to each package; 2) all retail cigarette dealers, whether located in or outside Kansas, shall have a registration certificate and be subject to the provisions of the Kansas retailers' sales tax act; 3) all cigarette sales transactions over the Internet, telephone, or by mail order shall not be completed unless before each delivery the seller has obtained a certification from the purchaser that includes a reliable confirmation that the purchaser is at least 18 years of age; that the cigarettes purchased are not intended for consumption by an individual who is younger than 18; and a written statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least 18 years of age; 4) the retail cigarette dealer shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser; 5) all invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the Internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller; 6) cigarette packages being shipped are also

subject to certain labeling requirements. Violation of the requirement to obtain a license, certification requirement, or verification requirement is a severity level eight, non-person felony. Violations of all other requirements are misdemeanors punishable by a fine of not more than \$1,000 and/or imprisonment for one year. Other tobacco products are excluded from these requirements.

KAN. STAT. ANN. § 79-3333 (2004).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for any person to distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) in an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility. Violation is a misdemeanor punishable by a fine of not more than \$1,000, up to one year in prison, or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Single Cigarettes

It is unlawful to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States. Violation is a misdemeanor punishable by a fine of not more than \$1,000, up to one year in prison, or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful for any person to sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except (1) installation and use behind the counter; (2) installation and use in a commercial building or industrial plant; or

(3) vending machines with lockout devices.

KAN. STAT. ANN. § 79-3321 (2000).

Penalty

Violators are guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000, up to one year in prison, or both.

KAN. STAT. ANN. § 79-3322 (2000).

F Licensing Requirements

Requirements

Retailers, wholesalers, and vending machine operators must be licensed to sell cigarettes. Licenses are renewed every two years. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. Selling cigarettes without a license is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year, or both.

KAN. STAT. ANN. §§ 79-3303 (2001), 79-3321(2000) & 79-3322 (2000).

Distributors must be licensed to sell or deal in tobacco products. A separate license is required for each place of business. Each license shall expire on December 31st following its date of issue unless sooner revoked. Selling tobacco products without a distributor's license is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both.

KAN. STAT. ANN. §§ 79-3373 (1996); 79-3374 (1972); 79-3375 (1972); 79-3321 (2000) & 79-3322 (2000).

Fee

Retail License: \$25 for each establishment every two years;

Wholesale dealer's license: \$50 for each establishment every two years;

Vending Machines: \$50 for a vending machine distributor license, no fee for a vending machine operator license and \$25 for each vending machine every two years;

Distributor's License for Tobacco Products: \$25 per year.

KAN. STAT. ANN. §§ 79-3304 (1996) & 79-3374 (1972).

License Suspension for Sales to Minors

The Director of Taxation, after a hearing, can suspend the license of any person licensed under the Kansas Cigarette and Tobacco Products Act for violations of this act for a period not to exceed one year.

KAN. STAT. ANN. § 79-3309 (1996).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory, involving a signatory or a successor to a signatory of the Master Settlement Agreement, the maximum appeal bond that any appellant in the litigation may be required to post to stay execution on a judgment during an appeal or discretionary review shall be set in accordance with existing law and court rules, except that in no case shall an appeal bond for any individual appellant and its successors, individually or collectively exceed \$25 million, regardless of the total value of the judgment. If it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent the dissipation or diversion of assets.

KAN. STAT. ANN. § 50-6a05 (2005).

**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding

Appropriated \$1,400,000 for tobacco control and

prevention programs from the state's annual MSA payments and the state general fund.

FY2008 Annual Budget (H.B. 2368) enacted 4/23/07 and effective 7/1/07.

Non-Monetary Provisions

Established a tobacco use prevention and control fund from which expenditures can be made for a comprehensive, statewide tobacco use prevention and control program. The comprehensive statewide tobacco use prevention and control program shall support tobacco use prevention and control activities including community programs to prevent and reduce tobacco use through local involvement and partnerships; school-based programs to prevent and reduce tobacco use; tobacco cessation programs for youth and adults; special projects to reduce the disparities in smoking prevalence among various populations; restriction of youth access to tobacco products; surveillance of smoking rates; and any other activities determined by the secretary of the Department of Health and Environment to be necessary to implement the program. An independent evaluation of the program is required as well as a state tobacco control report that breaks down information relevant to tobacco control efforts by county.

FY2005 Annual Budget (H.B. 2675) enacted 4/19/04 & effective 5/5/04.

M Fire Safety Standards

None



A Smokefree Air

Public Places

None

Government Buildings

By executive order, smoking is prohibited in all office buildings and common areas occupied by state executive branch employees. This also applies to state correctional facilities except the maximum security prison at Eddyville, KY. This order does not apply to state legislative or judicial branch employees.

EXEC. ORDER 2006-0807 (2006).

Smoking is restricted to designated areas of the state Capitol or state Capitol Annex. The governing authority for each branch of state government, each in regard to space allocated to and occupied by that respective branch of state government, may designate one or more smoking areas in the Capitol and one or more smoking areas in the Capitol Annex. Each smoking area shall be an enclosed area that is not a public area, is clearly designated as a smoking area, and is maintained by a ventilation system that does not disburse the smoke or smoke byproducts into any other area of the Capitol or Capitol annex. "Public area" is defined as any hallway, office shared by more than one person, stairwell, restroom, meeting room, cafeteria, or conference room.

KY REV. STAT. ANN. § 61.167 (2004).

Except as otherwise specified for the Capitol and Capitol Annex above, a policy for smoking in governmental office buildings or workplaces shall be adopted by state government. This policy shall apply to all state-owned or operated office buildings, workplaces, and facilities, including but not limited to state-operated hospitals and residential facilities for the mentally retarded, state-operated veterans' nursing homes and health facilities, and any correctional facility owned, operated or under the jurisdiction of the state. Any policy relating to smoking in state office buildings or workplaces shall be by executive order of the governor or action of the General Assembly and shall require

the governmental authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or prohibit indoor smoking.

KY REV. STAT. ANN. § 61.165 (2006).

Except as otherwise specified for the Capitol and Capitol Annex above, a policy for smoking in governmental office buildings or workplaces may be adopted by county, municipal, special district, urban-county, charter county or consolidated local governments. Any policy adopted may apply to any office buildings, workplaces, or facilities that are owned, operated, or under the jurisdiction of that government, including but not limited to jails and detention facilities. Any such policy shall be adopted in writing by the legislative body of the government and shall require the government authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or prohibit indoor smoking.

KY REV. STAT. ANN. § 61.165 (2006).

Each board of regents or trustees for each of the state postsecondary education institutions shall adopt a written policy relating to smoking in all buildings owned, operated, or under the jurisdiction of the state postsecondary education institutions that shall either provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or prohibit indoor smoking.

KY REV. STAT. ANN. § 61.165 (2006).

Private Workplaces

None

Schools

Any person, except adult employees of the school system who smoke in a room on the school premises designated by the superintendent or principal for the purpose, who smokes tobacco products in any school building or any part of any building used for school purposes, or upon school grounds, while children are assembled there for lawful purposes, except in areas in secondary schools designated and supervised by the superintendent or principal for the purpose, shall be fined not less than \$1 nor more than \$5.

KY. REV. STAT. ANN. § 438.050 (1988).

Child Care Facilities

None

Health Care Facilities

None

Restaurants

None

Bars

None

Penalties/Enforcement

No provisions

Preemption

On April 22, 2004 the Kentucky Supreme Court ruled 6-1 that Lexington’s smokefree air ordinance was not preempted by existing state law, and did not violate the private property rights of business owners. This allows the smokefree air ordinance Lexington passed in 2003 to go into effect, and provides legal justification for other Kentucky communities seeking to enact local smokefree air ordinances.

Lexington-Fayette County Food and Beverage Association v. Lexington-Fayette Urban County Government, et al. (2004).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 30 cents

Date last changed: June 1, 2005 — from 3 cents to 30 cents

Year first enacted: 1936

KY. REV. STAT. ANN. § 138.140(1-3) (2005).

A tax was added to sales of cigarette papers in the state at a rate of \$0.25 per package of 32 sheets.

KY. REV. STAT. ANN. § 138.140(6)(a-c) (2006).

There is created the “Cancer Research Institutions Matching Fund” in the state Treasury where one cent of the cigarette tax is deposited. One half of the moneys in the fund are available to the University of Kentucky and the other half of the moneys in the fund are available to the University of Louisville for cancer research.

KY. REV. STAT. ANN. § 164.043 (2005).

One-half cent of the cigarette excise tax goes to the Tobacco Research-Trust Fund. Money appropriated to the fund goes to the Tobacco Research and Development Center at the University of Kentucky.

KY REV. STAT. §§ 248.510 et seq. (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$158,892,000

Other Tobacco Products

Snuff: 9.5 cents per unit (unit = hard container capable of containing not more than 1.5 ounces); All other tobacco products: 7.5% of the wholesale price

KY. REV. STAT. ANN. § 138.140(4&5) (2005).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually random, unannounced inspections of retail establishments where tobacco products are sold or distributed for the purpose of enforcing the provisions of KY REV. STAT. § 438.305 to 438.340. The departments shall also ensure that targeted inspections are conducted at those retail

establishments where, and at those times when, persons under the age of 18 are most likely to purchase tobacco products. Persons under the age of 18 may be used to test compliance only if the testing is conducted under the direct supervision of the Department of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained. The Department of Agriculture shall be entitled to keep 50 percent of any fines collected to offset the costs of educating the public and sellers of tobacco products about provisions and penalties of KY REV. STAT. § 438.305 to 438.340. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.330 to 438.340 (2000).

Penalties for Sales to Minors

No person shall sell or cause to be sold any tobacco product at retail to any person under the age of 18, or solicit any person under the age of 18 to purchase any tobacco product at retail. The first violation is subject to a fine of \$100 to \$500 and subsequent violations are subject to a fine of \$500 to \$1,000. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.310 (2000).

Photo ID

Any person selling tobacco products must require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of 18. “Proof of age” means a driver’s license or other documentary or written evidence that the individual is 18 years of age or older. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.310 (2000).

Sign Posting

Notice must be posted in a conspicuous place stating that it is illegal to sell tobacco products

to persons under the age of 18. Fines are \$100 to \$500 for the first violation and \$500 to \$1,000 for subsequent violations. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.310 (2000).

Penalties to Minors

No person under the age of 18 shall possess or use tobacco products. This does not apply to minors participating in compliance inspections, receipt of a tobacco product from a family member or from an employer when required in the performance of the person’s duties. Any tobacco product found in the possession of a person under the age of 18 in plain view of a law enforcement officer shall be confiscated by the officer making the charge. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. §§ 438.300 (1996) & 438.350 (2000).

Except when participating in compliance inspections, it is unlawful for any person under the age of 18 to purchase or accept receipt of or attempt to purchase or accept receipt of a tobacco product, or to offer false proof of age. It shall not be unlawful for such a person to accept receipt of a tobacco product from a family member, or from an employer when required in the performance of the person’s duties. Violations shall be punishable by a fine of \$50 and 20 hours of community service for a first offense within a one-year period, and a fine of \$200 and 40 hours of community service for a second or subsequent offense within a one-year period. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.311 (2000).

Placement of Tobacco Products

None

Internet Sales

None

Other Provisions

All retail sales clerks must signify in writing that they understand that it is illegal under state law for persons to sell or distribute tobacco products to persons under 18 and for minors to purchase such products. The owner of the retail establishment shall keep the signed notice in a place that is easily accessible to persons conducting a compliance inspection. Any owner of a retail establishment who violates this provision is subject to a fine of \$100 to \$500 for each violation. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.325 (2000).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute samples of these products, free of charge or otherwise, to any person under 18 years old. Violators shall be fined not less than \$1,000 or more than \$2,500 for each offense. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.313 (2000).

Single Cigarettes

No person may sell cigarettes in units of fewer than 20 cigarettes. Violation is a fine of not less than \$100 or more than \$500. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.317 (2000).

No person shall sell or distribute in this commonwealth any cigarettes the package of which does not comply with all requirements imposed by or in accordance with federal law regarding warnings, and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States

including, but not limited to, the precise warning label specified in the Federal Cigarette Labeling and Advertising Act. The Revenue Cabinet may suspend or revoke the license and impose a civil penalty not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000 for a licensee upon violation. Any person who violates this section is guilty of a Class D felony and, in addition, may be subject to a fine of \$5,000 plus costs of prosecution.

KY REV. STAT. ANN. §§ 248.752, 248.756 & 248.762 (2002).

E Restrictions on the Sale of Tobacco Products In Vending Machines

Placement

The sale or purchase of tobacco products dispensed through a vending machine is prohibited to any person under the age of 18. Vending machines from which tobacco products are dispensed shall be located in the line of sight of the cashier for the retail establishment. This does not apply to vending machines located in factories, or bars or taverns to which minors are not permitted access. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.315 (2000).

Penalty

Any owner of a retail establishment violating this section shall be subject to a fine of \$100 to \$500 for each violation. This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. §§ 438.300 (1996) & 438.315 (2000)

F Licensing Requirements

Requirements

Wholesalers and vending machine operators are required to be licensed by the Revenue Cabinet. Wholesalers must secure a license for each place of business and all licenses must be renewed annually.

KY REV. STAT. ANN. § 138.195 (1988).

Fee

Wholesalers: \$500 per year; Vending Machine Operators: \$25 per year

KY REV. STAT. ANN. § 138.195 (1988).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It is an unlawful practice for an employer to fail or refuse to hire, or to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because the individual is a smoker or nonsmoker; limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect their status as an employee because the individual is a smoker or nonsmoker; or require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.

KY. REV. STAT. ANN. § 344.040 (1994).

H Advertising & Promotion

No cigarette or tobacco product advertising shall be posted on a billboard with display space larger than 50 square feet located within 500 feet of any elementary or secondary school building or adjacent school-owned property. Violators shall be fined at least \$100 for each offense.

KY. REV. STAT. ANN. § 438.047 (1992).

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

If the appellee in a civil action obtains a judgment for punitive or exemplary damages and the appellant seeks a stay of enforcement of the judgment in

order to obtain review by an appellate court, the supersedeas bond for the punitive damages portion of the judgment on appeal shall not exceed \$100 million. If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the punitive damages judgment, the limitation granted shall be rescinded and the bond requirement shall be reinstated for the full amount of the judgment.

KY REV. STAT. ANN. § 411.187 (2000).

In a civil action against a tobacco grower for damages alleged to have occurred as a result of use or consumption of tobacco products, in order for liability to be found against a grower, the plaintiff must prove by clear and convincing evidence that the tobacco that caused the alleged damage was planted, cultivated, and harvested by that specific grower and not by any other person. In a similar civil action against a warehouseman, the plaintiff must prove by clear and convincing evidence that the tobacco that caused the alleged damage was sold by that specific warehouseman and not by any other person. If the suit is dismissed or the defendant prevails at trial, the defendant may be entitled to three times the entire cost of defending the action.

KY. REV. STAT. ANN. § 454.455 (1998).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$2,866,000 for tobacco control and prevention programs from the state's annual MSA payment, and the state general fund.

FY2007-FY2008 Biennial Budget (H.B. 380) enacted 4/24/06 and effective 7/1/06 (FY2007) and 7/1/07 (FY2008).

Kentucky established in the State Treasury a permanent and perpetual fund to be known as the Tobacco Settlement Agreement Fund. Moneys in the fund are distributed as follows: 50 percent to the Rural Development Fund, 25 percent to the Early Childhood Development Fund and 25 percent to the Kentucky Health Care Improvement Fund.

KY REV. STAT. § 248.654 (2000).

The Kentucky Health Care Improvement Fund was created in the state treasury for the purpose of receipt and expenditure of moneys to improve health care and access to health insurance in the state. State tobacco prevention funding comes from this fund.

KY REV. STAT. ANN. § 194A.055 (2000).

The Lung Cancer Research Fund was created and is administered through the University of Kentucky and the University of Louisville. It will receive its funding from the Kentucky Health Care Improvement Fund.

KY REV. STAT. ANN. § 164.476 (2000).

M Fire Safety Standards

Kentucky has enacted legislation requiring cigarettes sold in Kentucky to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on April 1, 2008.

S.B. 134 enacted 3/23/07 and effective 4/1/08.





A Smokefree Air

Public Places

Smoking is prohibited in any public place, any enclosed place of employment, any public building or any school. "Public place" is defined as an enclosed area to which the public is invited or in which the public is permitted which is not a public building, including, but not limited to banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and waiting rooms. Exceptions include: private homes, private residences and private automobiles except if being used for child care or day care; limousines under private hire; up to 50 percent of hotel/motel guest rooms; retail tobacco businesses; bars; outdoor areas of places of employment; private or semiprivate rooms or apartments in assisted living and long-term care facilities; gaming establishments except smoking is prohibited within restaurants in the gaming establishment; all workplaces of any manufacturer, importer, wholesaler or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities; convention facilities under certain conditions; designated and well-ventilated smoking rooms in nursing homes; a hotel or motel room operated by a gaming operation; outdoor patios; and state, local or private correctional facilities until August 15, 2009.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Government Buildings

Smoking is prohibited in all public buildings, which are defined as any building owned by the legislative, executive or judicial branches of state government; any parish, city or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency; and any other separate corporate instrumentality or entity of state or local government. State and local correctional facilities are exempted until August 15, 2009.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Private Workplaces

Smoking is prohibited within any enclosed area of a place of employment, which is defined as an area under the control of an employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility. Outdoor areas of places of employment; workplaces of any manufacturer, importer, wholesaler or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities; and private correctional facilities until August 15, 2009 are exempt.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Schools

Smoking is prohibited in any school, which is defined as any elementary or secondary school building, the campus of any school, any buildings on the campus, and all school buses.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

The use of tobacco products is prohibited in all elementary and secondary school buildings. Smoking is restricted on the grounds of elementary and secondary school property to areas specifically designated as smoking areas. Smoking is prohibited on any school bus transporting children to or from school. The governing authority of each public and private school may provide for appropriate penalties, including, but not limited to, disciplinary action or a fine not to exceed \$200 or both.

LA. REV. STAT. ANN. § 17:240 (1994).

Child Care Facilities

Smoking is prohibited in places of employment, the definition of which covers child care facilities. Private residences, homes or vehicles are specifically included if they are being used as child care or day care facilities or for day care transportation.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Health Care Facilities

Smoking is prohibited in public places, the definition of which includes health care facilities. Private and semiprivate rooms or apartments in assisted living residences, and other long-term care facilities that are occupied by one or more persons, who are all smokers and who have requested in writing to be placed in a room where smoking is permitted; provided that smoke from such rooms or apartments does not infiltrate into areas where smoking is prohibited are exempt. Also exempt are designated and well ventilated smoking rooms in nursing homes which permit smoking.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Restaurants

Smoking is prohibited in public places, the definition of which includes restaurants. "Restaurant" is defined as an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The bar area of a restaurant is specifically included. Restaurants in gaming establishments are covered as well.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Bars

Smoking is allowed in bars, which are defined as a business that holds a Class A-General retail permit and the primary purpose of such business is to serve alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges and cabarets.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2007).

Vehicles

It shall be unlawful for the operator or any passenger in a motor vehicle to smoke cigarettes, pipes, or cigars in a motor vehicle, passenger van, or pick-up truck, when a child who is required to be restrained in a rear-facing child safety seat, a forward-facing child safety seat, a booster seat, or a motor vehicle's safety belt as required in R.S. 32:295 is also present in such vehicle, regardless of whether windows of the motor vehicle are

down. Violation is subject to a fine of \$150 per offense, or, at the discretion of the judge may be sentenced to no less than 24 hours of community service. Violation is considered a primary offense, so police officers may stop but not search a vehicle if a violation is occurring.

LA REV. STAT. ANN. § 32:300.3 (2006).

Penalties/Enforcement

"No smoking" signs or the international "No smoking" symbol shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public building, public place and place of employment where smoking is prohibited. All ashtrays shall also be removed. Any violation may be cited by any law enforcement officer by the issuance of a citation and summons to appear before a court of proper jurisdiction. A person who smokes in a place where smoking is prohibited shall be fined \$25 for a first offense, \$50 for second offense and \$100 for a third or subsequent offense. Any employer who knowingly allows smoking in a place of employment shall be fined \$100 for a first offense, \$250 for a second offense and \$500 for a third or subsequent offense. The Department of Health and Hospitals may treat a violation as a deficiency to be assessed against any licensee or facility over which it has statutory jurisdiction.

LA REV. STAT. ANN. §§ 40:1300.261& 1300.262 (2007).

Preemption

Nothing in the law above shall be construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places as set forth above.

LA REV. STAT. ANN. §§ 40:1300.255(D) (2007).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 36 cents

Date last changed: July 1, 2002 — from 24 cents to 36 cents

Year first enacted: 1926

LA. REV. STAT. ANN. § 47:841(B) (2002).

The Tobacco Regulation Enforcement Fund was

created in the state treasury. From the existing cigarette tax, 0.25 of one cent is dedicated to the fund to be used solely by the Office of Alcohol and Tobacco Control for tobacco regulation enforcement.

LA. REV. STAT. ANN. § 47:841(F) (2006).

Twelve cents of the cigarette tax is deposited into a fund called the “Tobacco Tax Health Care Fund.” Subject to the appropriation by the legislature, seven cents of the proceeds in this fund are distributed as follows: 29.2 percent for funding prevention mass media programs and evidence-based tobacco control programs within the public hospital system and the public school system and community development programs directed at cessation among children and pregnant women and the screening, prevention and treatment of tobacco use and dependence among individuals with diseases caused or exacerbated by tobacco use; 42.8 percent for funding for the Louisiana Cancer Research Center of Louisiana State University Health Sciences Center in New Orleans/Tulane Health Sciences Center; and 28 percent to provide funding for the Cancer Center of Louisiana State University Health Sciences Center in Shreveport;

The remaining five cents is distributed as follows: 20 percent to the Office of Addictive Disorders in the state Department of Health and Hospitals, 20 percent to fund the Louisiana State University Agricultural Center and the Southern University Agricultural Research and Extension Center, 20 percent to Drug Abuse Resistance Programs (DARE) and 40 percent to the Office of State Police in the Department of Public Safety and Corrections.

LA. REV. STAT. ANN. § 47:841.1 (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$118,883,000

Other Tobacco Products

Cigars: 8% to 20% depending on the manufacturer’s invoice price;

Smokeless tobacco: 20% of the invoice price

Smoking Tobacco: 33% of the invoice price

LA. REV. STAT. ANN. § 47:841(A), (C) & (E) (2002).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The commissioner of the Office of Alcohol and Tobacco Control in the Department of Revenue and Taxation shall annually conduct random, unannounced inspections of all locations where tobacco products are sold or distributed. Minors may be enlisted to test compliance only if the testing is conducted under the direct supervision of the local law enforcement department and written parental consent has been provided. Any person under the age of 18 shall either carry the person’s own identification showing the person’s correct date of birth or shall carry no identification. A person under the age of 18 who carries identification shall, on request, present it to any seller of tobacco products. In addition, any person under the age of 18 shall truthfully answer any questions about the person’s age. Any other use of persons under the age of 18 to test compliance shall be unlawful.

LA REV. STAT. ANN. § 26:793 (1997).

Penalties for Sales to Minors

It is unlawful for any manufacturer, distributor, retailer, or other person knowingly to sell or distribute any tobacco product to a person under 18. However, it shall not be unlawful for a person under the age of 18 to accept receipt of a tobacco product from an employer when required in the performance of such person’s duties. A person who sells tobacco products to minors shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$400 for any subsequent violations. This law shall supersede existing or subsequently adopted local ordinances or regulations that relate to the sale, promotion, and distribution of tobacco products.

LA REV. STAT. ANN. § 14:91.8 (1997).

Violation by a holder of a permit or certificate from the Commissioner of the Office of Alcohol and Tobacco Control may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the

second offense in two years and \$500 to \$2,500 for a third offense within two years in addition to the penalties listed above.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Photo ID

No person, agent, associate, employee, representative, or servant of any person shall sell or serve tobacco products over-the-counter in a retail establishment to any person under the age of 18 unless such person submits a driver's license, selective service card, or other lawful identification which on its face establishes the age of the person as 18 years or older and there is no reason to doubt the authenticity or correctness of the identification. Violation may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years.

LA REV. STAT. ANN. §§ 26:909 (1997), 26:911(1999) & 26:918 (1997).

Sign Posting

Signs are required at the point of purchase stating that Louisiana law prohibits the sale of tobacco to persons under 18. Owners of the establishment where a violation of this provision occurs shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$500 for any subsequent violations. This law shall supersede existing or subsequently adopted local ordinances or regulations that relate to the sale, promotion, and distribution of tobacco products.

LA REV. STAT. ANN. § 14:91.8 (1997).

Violation by a holder of a permit or certificate from the Commissioner of the Office of Alcohol and Tobacco Control may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years in addition to the penalties listed above.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Penalties to Minors

It is unlawful for any person under the age of 18 to buy or possess any tobacco product. It is not unlawful for a minor to possess tobacco if accompanied by a parent, spouse, or legal guardian or in a private residence or during the scope of the minor's employment. A minor who buys tobacco products shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$400 for any subsequent violations. A minor who possesses tobacco products shall be fined not more than \$50 for each violation. This law shall supersede existing or subsequently adopted local ordinances or regulations that relate to the sale, promotion, and distribution of tobacco products.

LA. REV. STAT. ANN. § 14:91.8 (1997).

Placement of Tobacco Products

None

Internet Sales

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to such consumer, the consumer's age is verified through electronic or written communication, and the person uses a method of mailing, shipping, or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery and provide photo identification. A first violation is punishable by a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation is a \$5,000 fine or five times the retail value of the cigarettes involved, whichever is greater. A knowing violation is a fine of \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, and/or up to five years in prison. Failure to collect or remit the applicable taxes is a fine of five times the retail value of the cigarettes involved, in addition to any other penalty.

LA REV. STAT. ANN. §§ 47:871 to 47:878 (2003).

Other Provisions

Sale of tobacco products to a minor by a retail dealer's agent, associate, employee, representative, or servant shall be considered an act of the retail

dealer for purpose of suspension, revocation or assessment of civil penalties unless the employee attends a Commissioner of the Office of Alcohol and Tobacco Control approved training program and the employer does not directly or indirectly encourage the employee to violate the prohibited sales provision.

LA REV. STAT. ANN. § 26:917 (1997).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person shall distribute or cause to be distributed to persons under 18 years of age a promotional sample of any tobacco product. Violators shall be fined not less than \$100 or more than \$500 upon conviction.

LA. REV. STAT. ANN. § 14:91.6 (1988).

Violation by a holder of a permit or certificate from the Commissioner of the Office of Alcohol and Tobacco Control may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years in addition to the penalties listed above.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Single Cigarettes

No retail dealer shall sell to the public single cigarettes. Packages of cigarettes containing less than 20 cigarettes are prohibited. No smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes shall be sold or distributed in individual packages containing less than six-tenths of one ounce of smoking tobacco. Cigarettes or smokeless tobacco products must be sold in an unopened package originating with the manufacturer bearing the health warning required by federal law. Violation may be subject to suspension or revocation of the required certificate or permit by the commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years.

LA REV. STAT. ANN. §§ 26:909 (1997), 26:911 (1999), & 26:918 (1997).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines must be located in an establishment to which persons under the age of 18 are denied access and located within the unobstructed line of sight of a dealer or employee.

LA REV. STAT. ANN. § 26:910 (1997).

Penalty

Violation may be subject to suspension or revocation of the required certificate or permit by the commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Sign Posting

Tobacco vending machines must display signs or stickers stating Louisiana law prohibits the sale of tobacco products to persons under 18. The owner of a vending machine in violation of this provision shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$500 for any subsequent violations. This law shall supersede existing or subsequently adopted local ordinances or regulations that relate to the sale, promotion, and distribution of tobacco products.

LA REV. STAT. ANN. § 14:91.8 (1997).

F Licensing Requirements

Requirements

The Commissioner of the Office of Alcohol and Tobacco Control shall issue retail dealer registration certificates or retail dealer permits for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine; vending machine operator permits for the operator of one or more vending machines; vending machine permits for each vending machine; and wholesale dealer permits for each wholesale place of business op-

erated by the wholesale dealer. Each registration certificate or permit shall be valid for only one year unless a different system than specified by statute is set up by administrative rule. No person shall perform any action for which a registration certificate or permit is required unless he holds the proper registration certificate or permit. Each day of business which is conducted without such a valid, unsuspended registration certificate or permit shall constitute a separate violation.

LA REV. STAT. ANN. §§ 26:901 to 26:924 (1997).

Fee

\$75 for an annual retail dealer registration certificate; \$75 for an annual retail dealer permit; \$75 for an annual vending machine operator permit; \$5 annually for each vending machine; and \$75 for an annual wholesaler dealer permit.

LA REV. STAT. ANN. § 26:903 (1997).

License Suspension for Sales to Minors

The commissioner of the Office of Alcohol and Tobacco Control may suspend a permit previously issued or may refuse to grant a permit if, after a hearing, it is proven that a permittee has violated any youth access laws.

LA REV. STAT. ANN. § 26:909 (1997).

G Smoker Protection Laws

As long as an individual, during the course of employment, complies with applicable law and any adopted workplace policy regulating smoking, it shall be unlawful for an employer to discriminate against the individual with respect to discharge, compensation, promotion, any personnel action or other condition, or privilege of employment because the individual is a smoker or nonsmoker or require, as a condition of employment, that the individual abstain from smoking or otherwise using tobacco products outside the course of employment. Any employer who violates the provisions of this law shall be fined up to \$250 for the first offense and up to \$500 for any subsequent offense.

LA. REV. STAT. ANN. § 23:966 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In order to secure and protect the monies to be received as a result of the Master Settlement Agreement (MSA) in civil litigation under any legal theory involving a signatory, successor of a signatory, or affiliate of a signatory to the MSA, except for litigation related to the MSA or any litigation where the state is a party, the security to be furnished for an appeal of any judgment in civil litigation that is required to stay the execution thereon during the course of appeal shall be determined in accordance with the Code of Civil Procedure, except that the total amount of security required shall not exceed \$50 million. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion of assets, including but not limited to, requiring the bond be posted equal to the full amount of security.

LA. REV. STAT. ANN. § 39:98.6 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$7,664,897 for tobacco control and prevention programs from a portion of state cigarette tax revenue and the state's annual MSA payment.

FY2008 Appropriations (H.B. 1) enacted and effective 7/12/07.

Louisiana established the Millennium Trust, a permanent trust fund in the state treasury. After allocation of money to the Bond Security and Redemption Fund, a portion of the proceeds from the Master Settlement Agreement (45 percent in FY2001, 60 percent in FY2002 and 75 percent

in FY2003 and each fiscal year thereafter) and all dividend and interest income and all realized capital gains on investment of the monies in the Millennium Trust shall be allocated to the Millennium Trust. All money is credited, one-third each, to the Education Excellence Fund, the Health Excellence Fund and the TOPS Fund, funds created within the Millennium Trust. Only the investment earnings from the various funds may be spent.

LA CONST., ART. VII, SECT. 10.8 (2000).

The state also established the Louisiana Fund which receives the rest of the MSA proceeds and all investment income from the Louisiana Fund. Appropriations from the Fund are limited to the following specified purposes: 1) initiatives for children through enhancements in education and health care; 2) provision of direct health care for tobacco-related illnesses; 3) initiatives to benefit the citizens of the state with respect to health care; 4) initiatives to diminish tobacco-related injury and death to Louisiana's citizens.

LA CONST., ART. VII, SECT. 10.9 (2000).

The Louisiana legislature may provide, by a two-thirds vote in both houses of the legislature, for the deposit of all or a portion of the MSA proceeds into a special trust fund in the state treasury called the Millennium Leverage Fund. A two-thirds vote of the legislature provides for the issuance of revenue bonds secured by monies in the Leverage Fund in amounts authorized by the legislature. Bond proceeds must be appropriated 25 percent each to the Health Excellence, Education Excellence, TOPS, and Louisiana Funds, to be used for the specified purposes of each fund. Termination of the deposit of settlement revenues into the Leverage Fund is allowed pursuant to a two-thirds vote of the legislature.

LA CONST., ART. VII, SECT. 10.10 (2000).

Securitization

The Tobacco Settlement Financing Corporation was created as a separate entity from the state of Louisiana. The Corporation has the power to purchase the tobacco assets and receive, or authorize the indenture trustee to receive, the tobacco settlement payments and issue bonds.

LA REV. STAT. ANN. §§ 39:99.1 to 39:99.20 (2003).

The State Bond Commission is authorized to

sell and convey up to 60 percent of the tobacco settlement funds. In the event a sale or sales are made during the fiscal year commencing on July 1, 2001, the state treasurer, in consultation with the Commissioner of Administration, shall provide for the deposit into the Louisiana Fund an amount of the net proceeds of any such sale that together with other deposits will ensure that \$50 million is deposited into the Louisiana Fund that state fiscal year. The remainder of such proceeds, any residuals received in such state fiscal year and the net proceeds of any sale occurring after that state fiscal year, shall be deposited into the Millennium Trust. After June 30, 2003, the State Bond Commission shall declare its intent by granting preliminary approval and authorization to sell or convey up to 100 percent of the state allocation to the corporation. Said declaration shall first be approved by the Joint Legislative Committee on the Budget and, if approved by the legislative committee, shall then be approved by a majority of the legislature if the legislature is in session or by mail ballot if the legislature is out of session. Upon approval of the legislature, the State Bond Commission shall commence with the sale. In the event an authorized sale is made during any fiscal year commencing on or after July 1, 2003, the state treasurer, in consultation with the Commissioner of Administration, shall provide for the deposit into the Louisiana Fund an amount of the net proceeds of any sale or sales that, together with other deposits, will ensure that a sufficient amount is deposited into the Louisiana Fund to fund the appropriations from that fund for that fiscal year. The remainder of such proceeds after deposit into the Louisiana Fund and any residuals received in such state fiscal year shall be deposited into the Millennium Trust.

LA REV. STAT. ANN. § 39:99.12 (2003).

M Fire Safety Standards

Louisiana has enacted legislation requiring cigarettes sold in Louisiana to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on August 1, 2009.

H.B. 579 enacted 7/10/07 and effective 8/1/09.





A Smokefree Air

Public Places

Smoking is prohibited in all enclosed areas of public places and all public restrooms. Exceptions to this law are public places when they are not open to the public; theaters when smoking is part of the performance; smoking during a religious ceremony or cultural activity; hotel and motel rooms; tobacco specialty stores, provided that the on-premises service, preparation or consumption of food or drink, if the tobacco specialty store is not licensed for such service or consumption prior to January 1, 2007, is prohibited, and smoking a waterpipe or hookah is also prohibited in a tobacco specialty store that is newly licensed or that requires a new license after January 1, 2007; beano or bingo games run by a federally recognized Indian tribe; and designated smoking areas in an off-track betting facility or simulcast racing facility at a commercial track, subject to certain conditions, see the statute cited below for more information. During its normal business hours, a public place must be closed for at least one hour to be considered “not open to the public.” A person under 18 years of age is prohibited from entering a business licensed as a tobacco specialty store unless accompanied by a parent or legal guardian, regardless of whether smoking is allowed in that store. Signs must be posted conspicuously in buildings where smoking is regulated.

ME REV. STAT. ANN. tit. 22, §§ 1541 et seq. (2007) & CODE of ME RULES 10-144, Ch. 249 (2006).

Government Buildings

Every employer who has one or more employees, must establish, or may negotiate through the collective bargaining process, a written policy on smoking. The definition of “employer” includes the state of Maine or a political subdivision of the state. The policy shall restrict smoking to designated areas. The policy may prohibit smoking throughout the business facility. The employer shall post and supervise the implementation of the policy. The employer shall provide a copy of this policy to any employee upon request.

ME REV. STAT. ANN. tit. 22, § 1580-A & CODE of ME RULES 10-144, Ch. 250 (2006).

Specific criteria for designated smoking areas are contained in a rule promulgated by the Department of Health and Human Services. Designated smoking areas can not be a common area and must have a floor to ceiling partition such that the ceiling and walls are permanently attached to one another and a door that is kept closed at all times except for ingress or egress. Smoke shall be directly discharged to the outdoors, and the indoor smoking area shall be under negative air pressure. Air exchange requirements for ventilation of a permissible indoor designated smoking area shall be a minimum of 60 cubic feet per minute per person. The designated smoking area must be located in a nonwork area where employees do not otherwise visit or execute their employment duties. The designated smoking area can be located outdoors as long as no smoke drifts back into the business facility.

CODE OF ME RULES 10-144, ch. 250 (2006).

Private Workplaces

Every employer who has one or more employees, must establish, or may negotiate through the collective bargaining process, a written policy on smoking that aims to protect the employer and employees from the detrimental effects of smoking by others. The policy must restrict smoking to designated areas. The policy may prohibit smoking throughout the business facility. The employer shall post and supervise the implementation of the policy, and shall provide a copy of this policy to any employee upon request. All enclosed areas of a business facility into which members of the public are invited or allowed are governed by the law prohibiting smoking in public places.

ME REV. STAT. ANN. tit. 22, § 1580-A & CODE of ME RULES 10-144, Ch. 250 (2006).

The above provisions do not apply to a business facility that is a veterans’ service organization that is not open to the public or to any other club that was not open to the public and that was in operation prior to January 1, 2004 subject to certain conditions. See the statutes/regulations cited below for more detailed information.

ME REV. STAT. ANN. tit. 22, § 1580-A(7) & 1580-A(9) & CODE of ME RULES 10-144, Ch. 250 (2006).

Specific criteria for designated smoking areas are contained in a rule promulgated by the Department of Health and Human Services. Designated smoking areas can not be a common area and must have a floor to ceiling partition such that the ceiling and walls are permanently attached to one another and a door that is kept closed at all times except for ingress or egress. Smoke shall be directly discharged to the outdoors, and the indoor smoking area shall be under negative air pressure. Air exchange requirements for ventilation of a permissible indoor designated smoking area shall be a minimum of 60 cubic feet per minute per person. The designated smoking area must be located in a nonwork area where employees do not otherwise visit or execute their employment duties. The designated smoking area can be located outdoors as long as no smoke drifts back into the business facility.

CODE OF ME RULES 10-144, ch. 250 (2006).

Schools

Tobacco use in the buildings or on the grounds of any elementary or secondary school is prohibited at all times. Tobacco use may be permitted in classrooms only as part of a bona fide demonstration during a class lesson, with prior notice being given to the school's administrator. The principal of the elementary or secondary school, or the principal's designee, shall enforce the law prohibiting and restricting tobacco use under this section. Indoor smoking areas negotiated by collective bargaining under a previous exemption in this law may be kept until the contract comes up for renewal.

ME REV. STAT. ANN. tit. 22, § 1578-B (2007).

Child Care Facilities

Smoking is prohibited in all child care facilities. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present. In a private residence used as a day care or baby-sitting service, smoking is prohibited in the residence, during the hours of operation as a day care or baby-sitting service; in outdoor areas on the property of that private residence, wherever a child under care may be present; and during the

facility's hours of operation, in a motor vehicle owned or operated by the facility whenever a child under care is in the vehicle.

ME REV. STAT. ANN. tit. 22, §§ 1541 et seq. (2007) & CODE of ME RULES 10-144, Ch. 249 (2006).

Smoking is prohibited in a foster home when a foster child is present. When a foster child is absent from the foster home, smoking is prohibited within 12 hours prior to the child's expected return. Smoking is also prohibited in a foster parents' motor vehicle within 12 hours of transporting a foster child and whenever the foster child is present in the vehicle.

CODE OF ME RULES 10-148 § 16-9(k) (2004).

Health Care Facilities

A person may not smoke tobacco or any other substance in any enclosed area of any hospital, except that a hospital may establish an enclosed and adequately-ventilated smoking area for patient use. Nothing in this subsection prohibits a hospital from designating the entire hospital campus, both buildings and grounds, as a non-smoking area.

ME. REV. STAT. ANN. tit. 22, § 1580-B (2001).

Smoking by residents, visitors and personnel in licensed nursing homes is restricted to designated areas.

ME. REV. STAT. ANN. tit. 22, § 1825 (1983).

Restaurants

Smoking is prohibited in restaurants.

ME REV. STAT. ANN. tit. 22, §§ 1541 et seq. (2007) & CODE of ME RULES 10-144, Ch. 249 (2006).

Bars

Smoking is prohibited in lounges and taverns.

ME REV. STAT. ANN. tit. 22, §§ 1541 et seq. (2007) & CODE of ME RULES 10-144, Ch. 249 (2006).

Penalties/Enforcement

A person who violates any provision of the law governing smoking in public places or the law governing smoking in workplaces commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged, except that a fine of up to \$1,500 may be adjudged for each violation in cases when a person or employer engages in a pattern of conduct that demonstrates a lack of good faith in

complying with these requirements. The Attorney General may bring an action to enforce this chapter in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this chapter by a person or any person controlling such person.

ME REV. STAT. ANN. tit. 22, §§ 1545, 1548, 1580-A(4) & 1580-A(4-A) (2005) & CODE of ME RULES 10-144, Ch. 249 (2006).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: September 19, 2005 — from \$1.00 to \$2.00

Year first enacted: 1941

ME. REV. STAT. ANN. tit. 36, § 4365 (2005).

All cigarette tax revenue is credited to the general fund.

ME. REV. STAT. ANN. tit. 36, § 4381 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$151,497,000

Other Tobacco Products

Smokeless tobacco, including chewing tobacco and snuff: 78% of the wholesale sales price;

Cigars, pipe tobacco, and other tobacco intended for smoking: 20% of the wholesale sales price

ME. REV. STAT. ANN. tit. 36, § 4403 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health and Human Services shall enforce the tobacco retail licensing laws

and sales of tobacco products through vending machines in cooperation with all law enforcement officers. Retail tobacco sales laws may be enforced by law enforcement officers or by individuals hired by contract with the Department of Health and Human Services to enforce these laws.

ME REV. STAT. ANN. tit. 22, §§ 1551-A (1995) & 1556-A (1999).

The Office of Substance Abuse within the Department of Health and Human Services shall coordinate the enforcement of the state’s laws relating to the sale and use of tobacco products by minors. The office shall ensure compliance with the Synar Act, including the preparations of reports for the signature of the governor.

ME REV. STAT. ANN. tit. 5 § 20002(3) (2003).

Penalties for Sales to Minors

A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under the age of 18. This also applies to sales from cigarette vending machines. Any person who violates this law commits a civil violation for which a fine between \$50 and \$1,500, plus court costs must be adjudged for any one offense. Any employer of a person who violates this law commits a civil violation for which a fine between \$50 and \$1,500 plus court costs must be imposed. It is an affirmative defense to prosecution that the defendant sold or distributed cigarettes, cigarette paper or any other tobacco product to a person under 18 years of age who furnished fraudulent proof of age.

ME REV. STAT. ANN. tit. 22, § 1555-B (1997).

The District Court may impose fines as listed above or revoke or suspend licenses for violation of state laws or rules related to the sale of tobacco products. License suspensions apply only to the premises where the violation occurs, but the court may order that a revocation apply to any of a licensee’s premises or machines. Suspensions and revocations must be for a definite period of time.

ME REV. STAT. ANN. tit. 22, §§ 1557 to 1559 (2001).

Photo ID

Tobacco products may not be sold at retail to any person less than 27 years of age unless the seller first verifies that person’s age by means of reliable photographic identification containing the

person's date of birth. Violation is subject to the same penalties listed under the "Penalties for Sales to Minors" category.

ME REV. STAT. ANN. tit. 22, § 1555-B (1997).

Sign Posting

A dealer or distributor of tobacco products shall post notice of this section prohibiting tobacco and cigarette paper sales to persons less than 18 years of age. Signs may be provided at cost by the department. Failure to post the required notice is a civil violation for which a fine between \$50 and \$200 may be imposed for the first and subsequent offenses.

ME REV. STAT. ANN. tit. 22, §§ 1552-A & 1555-B (1997).

Penalties to Minors

It is unlawful for any person under the age of 18 to offer false identification in attempting to purchase any tobacco products or to purchase, possess or use cigarettes, cigarette paper or any other tobacco product. A minor may transport cigarettes if it is in the scope of that person's employment. Any person who violates this section commits a civil violation for which the following forfeitures may be adjudged: a fine between \$100 and \$300 and/or community service may be imposed for the first offense; a fine between \$200 and \$500 and/or community service may be imposed for the second offense; and a mandatory fine of \$500 that may not be suspended and possibly additional community service for all subsequent offenses.

ME. REV. STAT. ANN. tit. 22, § 1555-B (1997).

Placement of Tobacco Products

Prohibits purchasers from direct access to tobacco products. This law does not apply to multi-unit packages of 10 or more units, tobacco specialty stores or in locations where minors are prohibited.

ME REV STAT. ANN. tit. 22, § 1555-B (11) (1999).

Internet Sales

Before a sale of tobacco products by phone, the Internet, or by a delivery service, a tobacco retailer must obtain a copy of a government issued ID, and a written statement from the customer documenting that the customer is at least 18 years of age and understands that providing false information or purchasing tobacco products for a minor is il-

legal. The information must be confirmed against a commercially available database derived solely from government records. The tobacco retailer must also use a delivery service that requires the purchaser to be the addressee. The addressee must be of legal age to purchase tobacco products, and must show valid government-issued identification that contains a photograph of the addressee. Tobacco retailers must be licensed by the state, and unlicensed tobacco retailers are not allowed to engage in delivery sales in the state. Violations of the above provisions are civil violations subject to fines from \$50 to \$1,500 for a first violation and \$1,000 to \$5,000 for subsequent violations.

ME REV STAT. ANN. tit. 22, §§ 1551(1A to 3A) & 1555 C&D (2003).

Other Provisions

Tobacco products may be sold at retail only in a direct, face-to-face exchange in which the purchaser may be clearly identified and through the mail under procedures approved by the department to provide reliable verification that the purchaser is not a minor. For direct, face-to-face sales, employees who sell tobacco products must be at least 17 years of age. An employee who is at least 17 years of age but less than 21 years of age may sell tobacco products only in the presence of an employee who is at least 21 years of age and is in a supervisory capacity.

ME REV STAT. ANN. tit. 22, § 1555-B(1) (2005).

Nothing in the chapter on retail tobacco sales affects the authority of municipalities to enact ordinances or regulations (or amendments to same) that are more restrictive, except that they must give notice to licensees doing business in the municipality at least 30 days prior to consideration of such ordinances, regulations, or amendments.

ME REV. STAT. ANN. tit. 22, § 1556 (1997).

To the extent that funds are available, the Department of Health and Human Services and the Office of Substance Abuse shall collaboratively coordinate, develop and implement programs to educate retailers, schools, retail clerks, juveniles and the general public about the laws relating to cigarette sales to, and purchases by, juveniles, and the consequences of violating those laws and of using tobacco products. They shall also work in cooperation with the Department of Education, tobacco industry retailers and non-profit health

agencies. The Office of Substance Abuse will also make tobacco cessation programs available throughout the state.

P.L. 1995, C. 470, §§ 17 & 19.

A person may not sell, furnish, give away or offer to sell, furnish or give away nicotine water in this State. "Nicotine water" is defined as water intended for human consumption and that contains, as an added ingredient, nicotine or an alkaloid having similar physiological activity. Violation is a civil violation subject to a fine of \$500 for the first offense, \$1,000 for a second violation and \$5,000 for the third and subsequent violations.

ME REV STAT. ANN. tit. 22, § 1560 (2004).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person may not furnish or give away or offer to furnish or give away a tobacco product to any person under the age of 18 or to any individual who does not demonstrate through either a driver's license or photo identification card that the individual is at least 18. Violation is subject to the penalties listed under the "Penalties for Sales to Minors" category.

ME REV. STAT. ANN. tit. 22, § 1555-B (1997).

Single Cigarettes

A person may not sell cigarettes except in the original, sealed package in which the manufacturer placed them, which may not be smaller than 20 cigarettes per package, or sell cigarettes in smaller quantities than placed in the package by the manufacturer. A person who violates this section commits a civil violation for which a fine of between \$10 and \$100 may be adjudged. An employer of a person who violates this law commits a civil violation for which a fine of between \$100 and \$1,000 may be adjudged.

ME REV. STAT. ANN. tit. 22, § 1554-A (2003).

A distributor may not offer for sale or sell tobacco products if the package containing the tobacco products is subject to and does not comply with the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings or any other information for a package of tobacco prod-

ucts to be sold within the United States. Violation of this provision is a Class E crime for the first offense and a Class D crime for subsequent offenses.

ME REV. STAT. ANN. tit. 36 § 4404-B (2006).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Any vending machine used for the sale of tobacco products may only dispense tobacco products. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons under 18 years of age from purchasing any tobacco product from that machine. Vending machines may be located only in areas where minors, if permitted, must be accompanied by an adult.

ME REV. STAT. ANN. tit. 22, § 1553-A (1997).

Penalty

Any person in control of a facility who violates this section commits a civil violation for which a fine between \$100 to \$500 may be adjudged, or the person may be prohibited from having a cigarette vending machine located on the premises for up to six months, or both.

ME. REV. STAT. ANN. tit. 22, § 1553-A (1997).

Sign Posting

A sign must be affixed to the front of the machine warning that it is unlawful for a minor to purchase cigarettes in this state. Penalty for a violation is listed above.

ME. REV. STAT. ANN. tit. 22, § 1553-A (1995).

F Licensing Requirements

Requirements

All tobacco product retailers, including those who conduct sales through vending machines or engage in free distribution of tobacco products, must obtain a license from the Department of Human Services. A separate license shall be obtained for each place of business and vending machine. All retail licenses are valid for one year unless suspended or revoked. Selling tobacco

products at retail, through a vending machine or distribution of free samples without a license is subject to a fine of \$300 to \$500 plus court costs and an additional penalty of not more than 30 days imprisonment at the court's discretion for a first violation; a fine of \$500 to \$1,000 plus court costs and an additional penalty of not more than 60 days imprisonment at the court's discretion for a second violation; and a fine of not less than \$1,000 plus courts costs and 60 days imprisonment and an additional penalty of not more than four months imprisonment at the court's discretion for a third violation.

ME REV. STAT. ANN. tit. 22, §§ 1551-A (1995), 1552 (2003) & 1554-B (2003).

A distributor of cigarettes shall obtain a license from the state Tax Assessor. A license must be obtained for each wholesale outlet maintained by the distributor, and must be prominently displayed on the premises of the wholesale outlet. A distributor's license expires one year from the 30th day of June next succeeding the date of issuance. A distributor who imports into this state, sells at wholesale, offers for sale at wholesale or possesses with intent to sell at wholesale any cigarettes without holding a distributor's license issued by the state Tax Assessor commits a civil violation for which a forfeiture of not less than \$250 to \$500 must be adjudged for the first violation and a forfeiture of not less than \$500 to \$1,000 must be adjudged for each subsequent violation.

ME REV. STAT. ANN. tit. 36, § 4362-A (2003).

It is unlawful for any person to accept an order for a delivery sale of tobacco products to a consumer in the state unless that person is licensed as a tobacco retailer. A "delivery sale" is defined as a sale of tobacco products by phone, over the Internet, or by a delivery service. Engaging in a delivery sale without a license is subject to a fine of \$50 to \$1,500 for the first violation and \$1,000 to \$5,000 for subsequent violations.

ME REV. STAT. ANN. tit. 22, § 1555-C (2003).

Every distributor of tobacco products other than cigarettes shall obtain a license from the State Tax Assessor before engaging in business. A retailer required to be licensed as a distributor pursuant to this chapter must also hold a current retail tobacco license. An issued license expires on June 30th of

each year unless sooner revoked. The license must be prominently displayed on the premises covered by the license and may not be transferred to any other person. Violation is subject to a fine of \$250 to \$500 for the first offense and \$500 to \$1,000 for subsequent offenses. The license may also be suspended or revoked for violation.

ME REV. STAT. ANN. tit. 36 § 4402 (2006).

Fee

The annual fee for each retail establishment, vending machine or person engaging in free distribution of tobacco products is set according to rules promulgated by the Department of Health and Human Services. The current fee for a retail establishment is \$100 to \$150 depending on the percentage of gross annual revenue from tobacco sales, and for a tobacco vending machine is \$50 per machine annually.

ME. REV. STAT. ANN. tit 22, § 1552 & CODE OF ME RULES 10-144, chap. 203 § 3 (2005).

License Suspension for Sales to Minors

The District Court may impose fines or revoke or suspend licenses for violation of state laws or rules related to the sale of tobacco products. License suspensions apply only to the premises where the violation occurs, but the court may order that a revocation apply to any of the licensee's premises or machines. Suspensions and revocations must be for a definite period of time.

ME REV. STAT. ANN. tit. 22, §§ 1557 to 1559 (2001).

G Smoker Protection Laws

An employer or an agent of an employer may not require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of employment or otherwise discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment for using tobacco products outside the course of employment as long as the employee complies with any workplace policy concerning the use of tobacco.

ME. REV. STAT. ANN. tit. 26, § 597 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits in Maine.

sale. A tobacco retailer that knowingly sells or offers to sell more than 1,000 cigarettes in violation of this part commits a civil violation and is subject to a civil penalty not to exceed \$1,000 per sale, except if previously adjudicated for a violation not to exceed \$5,000 per sale. A fine against any one retailer may not exceed \$25,000 during any 30-day period. Knowingly making a false certification is subject to a civil penalty of \$75,000 in addition to any other penalty.

ME REV. STAT. ANN. tit 22 §§ 1555-E (2008).



**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding

Appropriated \$16,926,452 for tobacco control and prevention programs from the state's annual MSA payment in FY2008. This is the first year of the FY2008-FY2009 biennial budget.

FY2008-FY2009 Biennial Budget (Pub. Law 2007, chap. 240 - L.D. 499) enacted 6/7/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

M Fire Safety Standards

Unless federal law provides otherwise, to help prevent cigarette-caused fires, cigarettes may not be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes have been tested in accordance with the test methods and meet the performance standards specified in subsection 2, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with subsection 3 and the cigarettes have been marked in accordance with subsection 4. Any manufacturer, distributor, agent or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part commits a civil violation subject to a civil penalty not to exceed \$10,000 per sale for a first violation, and if previously adjudicated for a violation not to exceed \$25,000 per sale. A fine against any one person or entity may not exceed \$100,000 during any 30-day period. A tobacco retailer that knowingly sells or offers to sell 1,000 or less cigarettes in violation of this part commits a civil violation and is subject to a civil penalty not to exceed \$500 per sale, except if previously adjudicated for a violation, not to exceed \$2,000 per

A Smokefree Air**Public Places**

Smoking is prohibited in enclosed workplaces unless enclosed, separately ventilated smoking areas are constructed meeting the specifications listed below under “Private Workplaces.” Smoking in restaurants and bars is allowed under certain conditions due to a separate state law. See entries under “Restaurants” and “Bars” for more details.

CODE OF MD REGS. (COMAR) tit. 9, § 12.23 et seq. (1994).

Note: Legislation was passed in 2007 that prohibits smoking in virtually all public places and workplaces, including restaurants and bars. The new law will take effect February 1, 2008.

H.B. 359/S.B. 91 enacted 5/17/07 and effective 2/1/08.

Hotels and motels may only permit smoking in their bar and in up to 40 percent of their sleeping rooms.

MD. CODE ANN., BUS. REGS. § 2-105(D)(1)(i)(6) (1995).

Smoking is prohibited on public elevators. “No Smoking” signs must be posted. Maximum fine is \$25.

MD. CODE ANN., HEALTH-GEN. § 24-212 (2003).

Smoking or carrying lighted tobacco products is prohibited in a public transit vehicle or facility. Violation is a misdemeanor, subject to a fine of \$500 for each offense.

MD. CODE ANN., TRANS. § 7-705(B) (1992).

Government Buildings

By executive order smoking is prohibited in all state buildings and facilities, in all space leased or rented by the state, and in government-operated shuttle buses. State employees are strongly encouraged to refrain from smoking in state vehicles and may not smoke when other nonsmoking passengers are present in the vehicle. State officials or employees in charge of facilities housing clients, patients, inmates, or wards of the state may prohibit or restrict smoking by residents. This order does not apply to the ground and first floor of the State House and spaces assigned to

the legislative and judicial branches of government. However, these branches are called upon to establish smoke-free environments in those workspaces.

EXEC. ORDER 01.01.1992.29 (1992).

Smoking is prohibited in enclosed workplaces unless enclosed, separately ventilated smoking areas are constructed meeting the specifications listed below under “Private Workplaces.”

CODE OF MD REGS. (COMAR) tit. 9, § 12.23 et seq. (1994).

Private Workplaces

The Maryland Occupational Safety and Health Advisory Board adopted a regulation prohibiting smoking in all enclosed places of employment. The prohibition includes all indoor work areas, vehicles when in use during the course of employment and occupied by more than one employee, an employee lounge or restroom, a conference and meeting room, a classroom, a cafeteria operated by an employer for use by its employees and a hallway. Excluded from this regulation are retail tobacco shops, a vehicle, when used in the course of employment and occupied by only one individual, and smoking that is necessary to the conduct of scientific research into the health effects of tobacco smoke conducted at an analytical or educational laboratory. Smoking areas may be designated if the area has all of the following characteristics: solid walls that tightly join the floor and ceiling; a closable door; openings to adjacent enclosed workplaces limited to make-up air inlets; a ventilation system that exhausts directly to the outdoors without re-circulation to nonsmoking areas; is not in a location where an employee, other than a custodial or maintenance employee, is required to work; and shall be under negative pressure sufficient to prevent smoke migration to enclosed workplaces.

CODE OF MD REGS. (COMAR) tit. 9, § 12.23 et seq. (1994).

Note: This regulation included restaurants, bars/taverns, and hotel/motel sleeping rooms, but separate legislation was passed in 1995 concerning smoking in these types of establishments.

Schools

The sale or use of tobacco in any form is prohibited in school buildings at all times. In addition, the sale or use of tobacco in any form is prohibited on school grounds during the official school day. Each local superintendent of schools must certify in writing to the State Superintendent of Schools that all school buildings and grounds are tobacco free. Each local school system must also post notification to students, staff, and the general public that school buildings and grounds are tobacco free.

CODE of MD REGS. (COMAR) tit. 13A §§ 02.04 et seq. (1992).

Child Care Facilities

Smoking is prohibited in enclosed workplaces unless enclosed, separately ventilated smoking areas are constructed meeting the specifications listed under "Private Workplaces."

CODE OF MD REGS. (COMAR) tit. 9, § 12.23 et seq. (1994).

Health Care Facilities

Smoking is prohibited in enclosed workplaces unless enclosed, separately ventilated smoking areas are constructed meeting the specifications listed under "Private Workplaces."

CODE OF MD REGS. (COMAR) tit. 9, § 12.23 et seq. (1994).

Restaurants

Restaurants that do not possess an alcoholic beverage license may have a separate enclosed smoking room not to exceed 40 percent of the total area of the restaurant. Restaurants that do possess an alcoholic beverage license may designate the bar or bar area, a separate enclosed room not exceeding 40 percent of the total restaurant, or a combination of a bar or bar area and a separate enclosed room not exceeding 40 percent of the total area of the restaurant, including the bar or bar area, as a smoking area. A separate enclosed room in which smoking is permitted is not required to have a specially modified ventilation system for the room.

MD. CODE ANN., BUS. REGS. § 2-105 (1995).

Bars

Smoking is permitted in any location that possesses an alcoholic beverage license for consumption on the premises and is generally recognized

as a bar, tavern or club.

MD. CODE ANN., BUS. REGS. § 2-105 (1995).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: January 1, 2008 – from \$1.00 to \$2.00

Year first enacted: 1958

MD. CODE ANN., TAX-GEN. § 12-105(a) (2008).

The sales and use tax do not apply to a sale of nicotine patches, nicotine gum, or any other product intended for use as an aid in tobacco use cessation and approved by the United States Food and Drug Administration for that purpose.

MD. CODE ANN., TAX-GEN. § 11-211(b)(18) (2000).

A county, municipal corporation, special taxing district, or other political subdivision of the state may not impose a tax on cigarettes.

MD. CODE ANN., TAX-GEN. § 12-102 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$271,076,000

Other Tobacco Products

All other tobacco products: 15% of the wholesale price

MD. CODE ANN., TAX-GEN. § 12-105(b) (2002).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

A person engaged in selling or otherwise distributing tobacco products for commercial purposes

may not distribute tobacco products or tobacco paraphernalia to persons under 18 years of age. No other person may purchase for, deliver or sell tobacco products or tobacco paraphernalia to a minor. "Tobacco product" means a substance containing tobacco including cigarettes, cigars, smoking tobacco, snuff, smokeless tobacco, and candy-like products that contain tobacco. This does not apply to the distribution of a tobacco product or tobacco paraphernalia to a minor who is acting solely as the agent of the minor's employer if the employer distributes tobacco products or tobacco paraphernalia for commercial purposes. Persons who violate this law shall be subject to a fine of not more than \$300 for the first violation, \$1,000 for a second violation within two years, and \$3,000 for subsequent violations within a two-year period. It is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 18 years of age. The owner or person in control of a tobacco vending machine that has the required sign displayed, is not subject to these penalties if a person under 18 has purchased tobacco from their machine.

MD. CODE ANN. CRIM. LAW §§ 10-107 (2007).

Photo ID

None

Sign Posting

None

Penalties to Minors

None

Placement of Tobacco Products

None

Internet Sales

No person engaged in the business of selling or distributing cigarettes may sell, ship, or cause to be sold or shipped cigarettes ordered or purchased by mail or through a computer network, telephonic network or other electronic network by a consumer or other unlicensed recipient, directly to a consumer or other unlicensed recipient. A licensed retailer may deliver no more than two

cartons of cigarettes directly to a consumer if the delivery is made by the licensed retailer or an employee of the licensed retailer. A licensee who violates this section is subject to specified discipline by the state Comptroller, and is guilty of a felony and subject to a fine not exceeding \$50 for each carton of cigarettes transported and/or imprisonment not exceeding two years. Unlicensed persons who violate this section are also guilty of a felony and subject to the same penalties listed above.

MD. CODE ANN., BUS. REGS. § 16-223 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes may not give away, offer or dispense tobacco products, cigarette rolling papers or a coupon redeemable for any tobacco product to a minor. This does not apply to the distribution of a coupon that is redeemable for a tobacco product if the coupon is contained in a newspaper, magazine, or other type of publication in which the coupon is incidental to the primary purpose of the publication or the coupon is sent through the mail. This also does not apply to the distribution of a tobacco product to a minor who is acting solely as the agent of the minor's employer if the employer distributes tobacco products for commercial purposes. It is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 18 years of age. Persons who violate this law shall be subject to a fine of not more than \$300 for the first violation, \$1,000 for a second violation within two years, and \$3,000 for subsequent violations within a two-year period.

MD. CODE ANN. CRIM. LAW § 10-107 (2007).

Single Cigarettes

A retailer or vending machine operator may not purchase from a tobacco product manufacturer or sell, resell, distribute, dispense, or give away to any person a package of cigarettes containing less than 20 cigarettes; and a wholesaler may not sell, resell, distribute, dispense, or give away to any person in

this state a package of cigarettes containing less than 20 cigarettes. Violation is subject to a license suspension or revocation.

MD. CODE ANN., COMM. LAW §§ 11-5A-01 et seq. (2000); & MD. CODE ANN., BUS. REGS. § 16-210 (2000).

A person who ships, imports, or sells cigarettes into or within this state shall comply with any federal and state requirements concerning the placement of warning labels or other information on the containers or individual packages of cigarettes. Violation is a felony and subject to a fine of \$50 for each carton of cigarettes transported and/or two years imprisonment. The license to sell tobacco products may also be suspended or revoked.

MD. CODE ANN., BUS. REGS. §§ 16-210 (2000) & 16-222 (1999); MD. CODE ANN., TAX-GEN. § 13-1015 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A person may not sell or dispense or offer to sell or dispense a tobacco product through a vending machine in the state unless the vending machine (1) is located in an establishment that minors are prohibited by law from entering or an establishment that is a bona fide fraternal or veterans organization; or (2) can only be operated with a token, card, or similar device that an individual can only obtain or purchase from the owner or an employee or agent.

MD. CODE ANN., BUS. REGS. § 16-3A-02 (2000).

Penalty

Violating the restrictions on placement of tobacco product vending machines is a misdemeanor punishable by a fine of \$100.

MD. CODE ANN., BUS. REGS. § 16-3A-03 (2000).

Sign Posting

A licensee who sells cigarettes through a vending machine shall display on a conspicuous label the prohibition and penalties for sales or distribution of tobacco products to minors.

MD. CODE ANN., BUS. REGS. § 16-209(b)(2)(ii) (1992).

F Licensing Requirements

Requirements

Manufacturers, wholesalers, and vending machine

operators must obtain an appropriate license to sell or distribute cigarettes from the state Comptroller. Retailers must obtain a county license (see below), but still must pay a license fee to the state. A retailer’s license is required for each place of business. Licenses must be renewed annually. Selling or distributing cigarettes without the appropriate license is a misdemeanor subject to a fine of \$1,000, imprisonment for not more than 30 days, or both.

MD. CODE ANN., BUS. REG. §§ 16-201 et seq. (1997).

A county license is required for each place of business and each vending machine selling cigarettes. A county license is effective for one year. Selling cigarettes without a county license is a misdemeanor subject to a fine of \$100.

MD. CODE ANN., BUS. REGS. §§ 16-301 et seq. (1992).

Fee

\$25 for a manufacturer’s license; \$30 for a state retail license, and \$25 for a county retail license except for Cecil County where the license fee is \$50; \$750 for a wholesale license; and \$500 for a vending machine license. In addition, licensees must pay a non-refundable application fee of \$200 to the state comptroller for initial issuance of a license, and a fee of \$30 for renewal of a license.

MD. CODE ANN., BUS. REGS. § 16-204 (1994).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$18,382,706 for tobacco control and prevention programs from the state's annual MSA payment.

FY2008 Annual Budget (H.B. 50) enacted 4/3/07 and effective 7/1/07.

In FY2007 and each fiscal year thereafter the Governor is required to include \$21 million in the annual budget for activities aimed at reducing tobacco use in Maryland as recommended by the Centers for Disease Control and Prevention (CDC).

MD. CODE ANN., HEALTH-GEN. § 13-1015 (2005).

The Cigarette Restitution Fund was established where all revenues from annual Master Settlement Agreement (MSA) payments are distributed. Expenditures from the fund are made by annual appropriation in the state budget. The Cigarette Restitution Fund shall be used to fund the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; and other specified purposes. The governor shall include in the annual budget bill appropriations from the fund equivalent to the lesser of \$100 million or 90 percent of the funds estimated to be available to the fund in the fiscal year for which the appropriations are made. In each fiscal year, at least 50 percent of the funds are to be appropriated for the purposes specified above, at least 30 percent of the funds are to be used for the Maryland Medical Assistance Program, and 0.15 percent of the funds are to be used to enforce MSA complementary enforcement legislation.

MD. CODE ANN., STATE FIN. & PROCUREMENT § 7-317 (2005).

Non-Monetary Provisions

A tobacco use prevention and cessation program was established in the Department of Health with funds from the Cigarette Restitution Fund. It is the purpose of the program to coordinate the state's use of the settlement moneys so as to create a lasting legacy of public health initiatives that result in a reduction of tobacco use in the state. Resources shall be allocated in a manner that is consistent with CDC recommendations regarding best practices for tobacco control programs.

Beginning in FY2007, and every second fiscal year thereafter, the program is required to conduct a Tobacco Study to collect data on smoking rates.

MD. CODE ANN., HEALTH-GEN. §§ 13-1001 et seq. (2005).

M Fire Safety Standards

Maryland has enacted legislation requiring cigarettes sold in Maryland to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on July 1, 2008.

H.B. 785 enacted 5/17/07 and effective 7/1/08.





A Smokefree Air

Public Places

Smoking is prohibited in almost all public places and workplaces, including restaurants and bars. See the statute cited below for a more detailed list. Exceptions include: private residences, except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the office of child care services or as a health care related office or facility; membership associations if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, is not located in a public building, and the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association; hotel and motel rooms designated as smoking rooms; retail tobacco stores; smoking bars; in the course of professional film production, if smoking is part of the theatrical production; by a person, organization or other entity that conducts medical or scientific research on tobacco products; religious ceremonies where smoking is part of the ritual; and a tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Smoking in a public conveyance, or in a terminal or other facility of the Massachusetts Bay Transportation Authority is prohibited. Those who violate this law must appear in court or pay a fine of \$25. Failure to comply warrants a criminal complaint; individuals who do not appear in court in response to this complaint are subject to arrest and may be punished by a fine of no more than \$100, or not more than 10 days in prison, or both.

MASS. GEN. LAWS ch. 161A § 42 & ch. 272 § 43A (1993).

Government Buildings

Smoking is prohibited in the statehouse or in a public building or in a vehicle or vessel owned, leased, or otherwise operated by the commonwealth or a political subdivision thereof, or in a space occupied by a state agency or department of the commonwealth which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body, or in a courtroom or courthouse. This shall not apply to a resident or patient of a state hospital, the Soldiers' Home in Massachusetts located in the city of Chelsea or the Soldiers' Home in Holyoke. "Public building" is defined as a building owned by the commonwealth or any political subdivision thereof, or in an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Private Workplaces

It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace. To that end, smoking is prohibited in all indoor areas of workplaces. "Workplace" is defined as an indoor area, structure or facility, or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public, and where the employer has the right or authority to exercise control over the space.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Schools

Smoking is prohibited in any school, college, and university.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Students in primary or secondary public schools in the commonwealth are prohibited from using tobacco products of any type on school grounds during normal school hours.

MASS. GEN. LAWS ch. 71, § 2A (1987).

Child Care Facilities

Smoking is prohibited in group child care centers, school-age day care centers, family day care centers and school age day or overnight camp buildings.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Health Care Facilities

Smoking is prohibited in health care facilities. “Health care facility” is defined as any hospital, nursing home, extended care facility, state health or mental institution, clinic, physician’s office or health maintenance organization licensed or otherwise operating legally within the commonwealth. However, a nursing home and any acute care substance abuse treatment center under the jurisdiction of the commonwealth may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees. The entire facility may not be designated as a residence. The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility. All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Restaurants

Smoking is prohibited in all restaurants.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Bars

Smoking is prohibited in bars. Smoking bars, which are defined as establishments that occupy exclusively an enclosed indoor space and that primarily are engaged in the retail sale of tobacco products for consumption by customers on the premises; derive revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products; prohibit entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibit any food or beverage not sold

directly by the business to be consumed on the premises; maintain a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located; and maintain a valid permit to operate a smoking bar issued by the Department of Revenue, are exempt.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Penalties/Enforcement

An owner, manager or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100 for the first violation, \$200 for a second violation within two years of the first violation and \$300 for a third and subsequent violation within two years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of a building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health. An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation. Any person may register a complaint to initiate an investigation and enforcement with the local board of health, the Department of Public Health, or the local inspection department or the equivalent.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.51

Date last changed: July 25, 2002 — from 76 cents to \$1.51

Year first enacted: 1939

MASS. GEN. LAWS ch. 64C, §§ 6, 7A & 7C (2002).

Twenty-five cents of the cigarette excise tax is dedicated to the Children's and Senior's Health Care Assistance Fund.

MASS. GEN. LAWS ch. 64C, § 7A (1996); & ch. 29 § 2FF (2003).

The remainder of the revenue from the cigarette excise tax is credited 40 percent of the amount exceeding \$169,800,000 to the Local Aid Fund and the remainder of the revenue to the General Fund.

MA GEN. LAWS. ch. 64C, § 28 (1992).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$425,635,000

Other Tobacco Products

Chewing tobacco and snuff: 90% of the wholesale price;

Cigars and smoking tobacco: 30% of the wholesale price

MASS. GEN. LAWS ch. 64C, §§ 6, 7A, 7B, & 7C (2002).

Twenty-five percent of the tax on chewing tobacco and snuff, and 15 percent of the tax on cigars and smoking tobacco is credited to the Children's and Senior's Health Care Assistance Fund.

MA GEN. LAWS ch. 64C, §§ 7A & 7B (1996); & ch. 29 § 2FF (2003).

The remainder of the revenue is credited 40 percent of the amount exceeding \$169,800,000 to the Local Aid Fund and the remainder of the revenue to the General Fund.

MASS. GEN. LAWS ch. 64C, § 28 (1992).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

Whoever sells or gives tobacco in any form to a person under the age of 18 shall be punished by a fine of not less than \$100 for the first offense, not less than \$200 for a second offense, and not less

than \$300 for subsequent offenses. This does not apply to tobacco given by the parents or guardian of the child.

MASS. GEN. LAWS ch. 270, § 6 (1985).

Whoever sells cigarette rolling papers to any person under the age of 18 shall be punished by a fine of not less than \$25 for the first offense, \$50 for the second offense and \$100 for subsequent offenses. No city, town, department, board or other political subdivision or agency of the commonwealth may impose any requirements, restrictions, or prohibitions pertaining to the sale of cigarette rolling papers, in addition to those in this section, notwithstanding any ordinance or regulation that was in effect before February 20, 1996.

MASS. GEN. LAWS ch. 270, § 6A (1995).

Photo ID

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes or smokeless tobacco products through a retail outlet located within Massachusetts to fail to verify by means of a valid government-issued photographic identification that each person purchasing cigarettes or smokeless tobacco is 18 years of age or older. No such verification is required for any person who appears 27 years of age or older. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 21.04 (2000).

A separate identical regulation to the one above applies to cigars and little cigars. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 22.06 (2000).

Sign Posting

The owner or person in charge of a place that sells cigarettes at retail shall conspicuously post a copy of the law concerning tobacco sales to minors. Whoever violates this provision shall be punished by a fine of not more than \$50. Any person who unlawfully removes the required sign shall be fined \$10.

MASS. GEN. LAWS ch. 270, § 7 (1995).

Penalties to Minors

None

Placement of Tobacco Products

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes or smokeless tobacco products through a retail outlet located within Massachusetts to engage in the use of self-service displays of cigarettes or smokeless tobacco products or fail to place cigarettes and smokeless tobacco products out of the reach of all consumers, in a location accessible only to outlet personnel. Self-service displays are allowed if located within adult-only retail facilities. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 21.04 (2000).

A separate regulation identical to the above regulation applies to cigars and little cigars. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 22.06 (2000).

Internet Sales

None

Other Provisions

It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in the distribution of cigarettes or smokeless tobacco products through the mail, including redemption of coupons, credits and proofs-of-purchase. Exempts mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail, that are subject to age verification. Verification of age through the mail shall consist of, at a minimum, ensuring that the person to whom the product is being sent supplies a legible photocopy of a valid government-issued identification and is over the age of 18. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A § 2 & 4 & CODE of MASS. REGS. tit. 940, § 21.04 (2000).

A separate, identical regulation to the one above applies to cigars and little cigars. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 22.06 (2000).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in sampling, promotional giveaways, or any other free distribution of cigarettes or smokeless tobacco products. Exceptions are made for an adult-only retail facility, with distribution of no more than one free sample per day to an individual adult. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 21.04 (2000).

A separate, identical regulation to the one above applies to cigars and little cigars. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 22.06 (2000).

Single Cigarettes

No person shall sell, offer for sale or have in possession with intent to sell single unpackaged cigarettes. Whoever violates the provision of this section shall be punished by a fine of not less than \$200 or more than \$500.

MASS. GEN. LAWS ch. 94, § 307A (1996).

It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to break or otherwise open any cigarette or smokeless tobacco product package to sell or distribute any number of unpackaged or repackaged cigarettes or any quantity of smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

tion, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 21.04 (2000).

A separate, identical regulation to the one above applies to cigars and little cigars. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, § 22.06 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes or smokeless tobacco products through a retail outlet located within Massachusetts to engage in the selling of cigarettes or smokeless tobacco products in any manner other than in a direct, face-to-face exchange without the assistance of any vending machines or any other electronic or mechanical device, except for vending machines that are located in facilities licensed to serve alcoholic beverages for consumption on the premises, if the vending machine is equipped with a lock-out device that locks out sales from the vending machine unless the locking mechanism is released by an outlet employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to outlet personnel; must be located within the immediate vicinity and exclusive control of outlet personnel such that all purchases are observable by the outlet employee(s) controlling the lock-out device; and must be posted with a sign stating that minors are not permitted to purchase tobacco and notifying customers of the lock-out device and identifying the outlet employee(s) to contact to purchase tobacco from the machine.

MASS. GEN. LAWS ch. 93A § 2 & CODE of MASS. REGS. tit. 940, § 21.04 (2000).

A separate, identical regulation to the one above applies to cigars and little cigars.

MASS. GEN. LAWS ch. 93A § 2 & CODE of MASS. REGS. tit. 940, § 22.06 (2000).

Penalty

Violation is subject to a civil penalty of not more

than \$5,000 plus costs of investigation and litigation including attorney's fees.

MASS. GEN. LAWS ch. 93A § 4 (2000).

F Sign Posting

Each vending machine shall have attached to the front of it a notice reading "PERSONS UNDER 18 ARE PROHIBITED FROM USING THIS MACHINE." Any person owning or operating a vending machine that fails to display such a notice shall be punished by a fine of up to \$50.

MASS. GEN. LAWS ch. 64C § 10 (1976).

F Licensing Requirements

Requirements

Manufacturers, retailers, wholesalers, and vending machine operators must obtain a license to sell tobacco products. Every machine operated or maintained for the purpose of vending cigarettes shall be deemed to constitute a place of retail business, and no person shall maintain or cause to be operated such a machine without procuring a retailer's license. Licenses for manufacturers, wholesalers and vending machine operators expire every year; retailers each even numbered year.

MASS. GEN. LAWS ch. 62C § 67 (1986) & ch. 64C § 2 (1976).

Fee

The fees for licenses and each renewal shall be determined annually by the Commissioner of Administration, except that for wholesalers, manufacturers or vending machine operators who maintain more than one place of business the fee for each additional place of business shall be one-half of the above determined fee.

MASS. GEN. LAWS ch. 62C § 67 (1986).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

Note: The U.S. Supreme Court held unanimously that Massachusetts's outdoor tobacco advertising restrictions violate First Amendment speech

rights, and 5-4 that Massachusetts cannot impose broad regulations on cigarette advertisements without violating federal law. Text of struck down regulations is below.

Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001).

OVERTURNED: It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in any of the following practices: (a) outdoor advertising, including advertising in enclosed stadiums and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment, in any location that is within a 1,000 foot radius of any public playground, playground area in a public park, elementary school or secondary school; (b) point-of-sale advertising of cigarettes or smokeless tobacco products any portion of which is placed lower than five feet from the floor of any retail establishment which is located within a 1,000 foot radius of any public playground, playground area in a public park, elementary school or secondary school, and which is not an adult-only retail establishment. (6) Exception to Prohibited Advertising Practices. The following advertising practice is not unfair or deceptive: A retailer may place one sign no larger than 576 square inches and containing only black text on a white background stating “Tobacco Products Sold Here” on the outside or visible from the outside of each location where such products are offered for sale.

CODE of MASS. REGS. tit. 940, § 21.04 (1999)

OVERTURNED: A separate, identical regulation to the one above dealing with advertising of cigars and little cigars was also struck down on free speech grounds. The Federal Cigarette Labeling and Advertising Act does not cover cigars.

Code of MASS. REGS. tit. 940, § 22.06 (1999).

I Product Disclosure

Any manufacturer of cigarettes, snuff, or chewing tobacco sold in the commonwealth shall provide the Department of Public Health for each brand of such product sold, the identity of any added constituent other than tobacco, water or reconstituted tobacco sheet made wholly from tobacco, to be listed in descending order according to weight, measure or numerical count; and the nicotine yield ratings, which shall accurately predict nicotine intake for average consumers, based on

standards to be established by the department. The department shall determine the public availability of this information if there is a reasonable scientific basis for concluding that the availability of such information could reduce risks to public health. However, before any public disclosure of such information the department shall request the advice of the attorney general whether such disclosure would constitute an unconstitutional taking of property, and shall not disclose such information unless and until the attorney general advises that such disclosure would not constitute an unconstitutional taking. A regulation was promulgated providing more detail on the implementation of this law.

MASS. GEN. LAWS ch. 94 § 307B; & 105 CMR 660.001 et seq. (1996).

Note: In a decision issued on October 16, 2001, the United States Court of Appeals for the First District reversed an earlier decision by the U.S. District Court and upheld Massachusetts’ tobacco disclosure law. The court concluded that the law requiring manufacturers who market tobacco products in Massachusetts to report for potential public discourse the constituents for each brand in order of weight, measure or numerical count—information the manufacturers treat as trade secrets—is a valid exercise of the police power of the state and, in the absence of explicit guarantees of confidentiality from the commonwealth, does not effect an unconstitutional taking.

United States Court of Appeals for the First Circuit No. 00-2425 & No. 00-2449.

J Tobacco Divestment

New public pension funds in stocks, securities, or other obligations of any company which derives more than 15 percent of its revenues from the sale of tobacco products are prohibited. Divestment of existing investments is required within three years of enactment. Annual reporting of tobacco investments, until divestment is completed, is required.

MASS. GEN. LAWS ch. 32 § 23 (1997).

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits.

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$12,750,000 for tobacco control and prevention programs from the state general fund.

FY2008 Annual Budget (H.B. 50) enacted 4/3/07 and effective 7/1/07.

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes may be sold or offered for sale in Massachusetts or offered for sale or sold to persons located in Massachusetts unless the cigarettes have been tested in accordance with the test method prescribed in this section, meet the performance standard specified in this section and a written certification has been filed by the manufacturer with the Secretary of the Executive Office of Public Safety. Cigarettes that are certified by a manufacturer in accordance with section 2C shall be marked as specified to indicate compliance with the requirements of section 2B. Any manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation is subject to a civil penalty not to exceed \$10,000 per sale for a first violation, and not to exceed \$25,000 per sale for a second or subsequent violation. A retail dealer that knowingly sells or offers to sell 1,000 or less cigarettes in violation is subject to a civil penalty not to exceed \$500 per sale for a first violation, and not to exceed \$2,000 per sale for a second or subsequent violation. A retail dealer that knowingly sells or offers to sell more than 1,000 cigarettes in violation is subject to a civil penalty not to exceed \$1,000 per sale for a first violation, and not to exceed \$5,000 per sale for a second or subsequent violation. Knowingly making a false certification is subject to a civil penalty not to exceed \$10,000 for a first violation and \$25,000 for a subsequent violation for each such false certification in addition to any other penalty.

MASS. GEN. LAWS ch. 64C §§ 2A to 2F (2008).





A Smokefree Air

Public Places

Smoking is restricted to designated areas in places used by the general public in enclosed indoor areas in auditoria, arenas, theaters, museums, concert halls, and other facilities for the performance or exhibit of the arts. This act does not apply to bars, private enclosed rooms or offices occupied exclusively by smokers, even if the room or office may be visited by nonsmokers and private functions when the seating arrangements are under the control of the sponsor of the function.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

Smoking is prohibited in retail food establishments. Areas may be designated for employee and public smoking, but shall be isolated from the retail food area. No smoking signs must be posted at entrances. Violation of this act is a misdemeanor punishable by a fine not to exceed \$100.

MICH. COMP. LAWS § 289.707A (1976).

Smoking, or carrying lighted tobacco in any form, is forbidden in passenger elevators. Signs prohibiting smoking must be posted. Violators are subject to a fine of \$50 or 90 days imprisonment.

MICH. COMP. LAWS § 408.820 (1967).

Government Buildings

Smoking is restricted to designated areas in enclosed indoor areas owned or operated by a state or local government agency and used by the general public or serving as workplaces for public employees or a meeting place for a public body. These areas include offices, educational facilities, auditoria, arenas, meeting rooms and public conveyances. Private, enclosed rooms or offices occupied exclusively by a smoker are not restricted by this law.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

By executive order, smoking is prohibited in areas in state government facilities, including, but not limited to, private enclosed offices, meeting rooms, cafeterias, restrooms, break-rooms, and all other general space. Exempt from this order

are living units, and a strictly limited number of designated areas, in facilities housing prisoners or mental health patients. Department directors and agency heads are responsible for posting such provisions.

Exec. Order 1992-3 (1992).

Private Workplaces

None

Schools

Tobacco use is prohibited in any building, structure, or real estate owned, leased, or otherwise controlled by a school district. This law does not apply to that part of school property consisting of outdoor areas including, but not limited to, an open-air stadium, on weekends or other days on which there are no regularly scheduled classes, or after 6:00 p.m. on regular school days.

MICH. COMP. LAWS § 750.473 (1993).

Child Care Facilities

Individuals may not smoke in child care institutions or child care centers, or on the real property under the control of such facilities, including other related buildings. Violators are guilty of a misdemeanor, punishable by a fine between \$100 and \$1,000.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993) & 722.125 (1993).

A prohibition on smoking is a requirement for licensing through the Department of Social Services for childcare centers. Prohibition during the hours of operation is required for licensing of group day care homes and family day care homes. Smoking is permitted on these premises during the time these facilities are not in operation, but the operator of the facility must inform parents or guardians that smoking on the premises may occur during these times. Violators are subject to the fines listed above.

MICH. COMP. LAWS §§ 722.111 et seq. (1993).

Health Care Facilities

Smoking is prohibited in the common and treat-

ment areas of health facilities, including hospitals, health clinics, and doctors' offices. Patients may be permitted to smoke if the medical staff determines that this prohibition would be detrimental to treatment. Smoking areas provided in these cases must be separately ventilated to ensure that there is a smokefree environment in other patient care and common areas.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

Licensed nursing homes and licensed homes for the aged must adopt a policy that regulates smoking to provide patients with the option of no-smoking rooms. Visitors and staff are permitted to smoke in designated smoking areas only. Tobacco sales are prohibited in nursing homes, except as provided for by owners. Notices must be posted for smoking and nonsmoking areas.

MICH. COMP. LAWS §§ 333.21333 (1978) & 333.21733 (1978).

Restaurants

Food service establishments seating 50 or more persons that are not owned or operated by a private club must reserve a minimum of 50 percent of all seating for a nonsmoking section. All food service establishments seating fewer than 50 people, including establishments owned and operated by a private club, must reserve a minimum of 25 percent of the seating for a non-smoking section. Public areas in restaurants must be smokefree. These areas include, but are not limited to, restrooms, coatrooms, and entrances. Public areas do not include lobbies, waiting rooms, hallways, or lounges. This law also applies to food service establishments or food court areas in enclosed shopping malls.

MICH. COMP. LAWS § 333.12905 (1993).

Bars

None

Penalties/Enforcement

Persons who smoke in nonsmoking areas of public places or health care facilities or a person or governmental agency that fails to follow the applicable guidelines or post the appropriate signs shall be subject to a civil fine of not more than \$100 for the first offense and not more than \$500 for subsequent offenses. The state Department of Public

Health and/or local health departments shall enforce the restrictions on smoking in public places. In addition to the civil fine, the state Department of Public Health or local health departments may enforce these provisions through an action in the appropriate court of law.

MICH. COMP. LAWS §§ 333.12611 & 333.12613 (1993).

Preemption

A county, city, village, or township shall not regulate those aspects of food service establishments or vending machines which are subject to regulation under sections 333.12901 et seq. of the Michigan Compiled Laws except to the extent necessary to carry out the responsibility of a local health department.

MICH. COMP. LAWS § 333.12915 (1983).

A Michigan appeals court found in 2001 that Michigan law preempts local ordinances more restrictive than state law on smoking in restaurants and bars.

Michigan Restaurant Association et al. v. City of Marquette (2001).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: July 1, 2004 — from \$1.25 to \$2.00

Year first enacted: 1947

MICH. COMP. LAWS § 205.427 (2004).

Michigan's cigarette tax revenue is distributed as follows:

- 1) Seventy-five cents is distributed: 6 percent to the Healthy Michigan Fund, 6.5 percent to the Health and Safety Fund, 24.1 percent to the general fund and 63.4 percent to the State School Aid Fund;
- 2) Another 30 cents is distributed: 6 percent to the Healthy Michigan Fund, 9 percent to the general fund, 56.3 percent to the State School Aid Fund, 3.7 percent to counties with a year 2000 population of more than two million, to be used only for indigent health care and 25 percent to the Medicaid Benefits Trust Fund;
- 3) Another 20 cents is distributed: 6 percent to the Healthy Michigan Fund and 94 percent to the

State School Aid Fund;

4) The final 75 cents is distributed: Through October 1, 2005, 100 percent goes to the Medicaid Benefits Trust Fund. After October 1, 2005, 75 percent goes to the Medicaid Benefits Trust Fund and 25 percent goes to the general fund.

MICH. COMP. LAWS § 205.432 (2004).

An additional fund, entitled the Healthy Michigan Fund, was created in the state treasury for health programs addressing the needs of vulnerable populations, including smoking cessation and anti-tobacco activities. Six percent of \$1.25 of the cigarette tax goes into the Healthy Michigan Fund.

MICH. COMP. LAWS §§ 333.5951 et seq. (1995).

An equity assessment was imposed on nonparticipating tobacco product manufacturers, those that have not signed the Master Settlement Agreement, of 35 cents per pack of 20 cigarettes in addition to all other taxes.

MICH. COMP. LAWS § 205.426d(4) (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$1,126,111,000

Other Tobacco Products

Cigars, noncigarette smoking tobacco, and smokeless tobacco: 32% of the wholesale price

MICH. COMP. LAWS § 205.427 (2004).

Through October 1, 2005, 100 percent of the revenue from the tax on other tobacco products goes to the Michigan Medicaid Benefits Trust Fund. After October 1, 2005, 75 percent goes to the Medicaid Benefits Trust Fund and 25 percent goes to the general fund.

MICH. COMP. LAWS § 205.432 (2004).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

A person shall not sell or furnish any tobacco

product to a person less than 18 years of age. Violation is a misdemeanor, punishable by a fine of not more than \$50 for each offense. It is an affirmative defense that the defendant had, and continues to have in force, a written policy to prevent the sale of tobacco products to minors and enforces said policy. This does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment. This also does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

MICH. COMP. LAWS §§ 722.641 (2006) & 722.643 (1989).

Photo ID

None

Sign Posting

A person who sells tobacco products at retail shall post, in a place close to the point of sale, conspicuous to both employees and customers, a sign produced by the Department of Community Health that states: "THE PURCHASE OF TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE AND PROVISION OF TOBACCO PRODUCTS TO A MINOR ARE PROHIBITED BY LAW. A MINOR UNLAWFULLY PURCHASING OR USING TOBACCO PRODUCTS IS SUBJECT TO CRIMINAL PENALTIES."

MICH. COMP. LAWS § 722.641 (2006).

Penalties to Minors

A minor shall not purchase or attempt to purchase a tobacco product; possess or attempt to possess a tobacco product; use a tobacco product in a public place; and/or present or offer to an individual a purported proof of age that is false, fraudulent or not actually their own for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product. Violation is a misdemeanor, punishable by a fine of not more than \$50 for each offense. Pursuant to a probation order, the court may also require an individual to participate in a health promotion and risk reduction assessment program, if available. The individual is responsible for the cost of the program. In addition, an individual is subject to one of the following for a first violation: perform

not more than 16 hours of community service in a hospice, nursing home or long-term care facility; or participate in a health promotion and risk reduction program. For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility. For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 48 hours of community service in a hospice, nursing home, or long-term care facility. This does not apply to minors used in efforts to gauge compliance with the law. This also does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment or interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

MICH. COMP. LAWS §§ 722.642 (2006) & 722.643 (1989).

Placement of Tobacco Products

None

Internet Sales

All sales conducted through the Internet, by telephone, or in a mail-order transaction shall not be completed unless, before each delivery of cigarettes is made, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser. The

deliverer of the cigarettes is required to obtain proof from a valid government-issued document that the person signing for the cigarettes is the purchaser. Violation is a misdemeanor punishable by a fine of \$1,000 or five times the retail value of the tobacco products involved, whichever is greater and/or imprisonment for not more than one year.

MICH. COMP. LAWS §§ 205.428 & 205.431 (2004).

Other Provisions

Other limitations are made on tobacco products distributed through United States mail service, express mail service, parcel post service, or common carrier. Tobacco products are not to be distributed via these services unless the receiver has previously paid or agreed to pay for the products at fair market value, in response to a consumer complaint, or as part of marketing to specifically named individuals that involves the prior return by that same individual of a signed authorization card to be kept on file by the tobacco company for at least one year that indicates that the individual is at least 18 years of age. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than \$10,000, or both.

MICH. COMP. LAWS § 750.42b (1992).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person shall furnish any tobacco product to a person less than 18 years of age. Violation is a misdemeanor, punishable by a fine of not more than \$50 for each offense. This does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

MICH. COMP. LAWS §§ 722.641 & 722.643 (1989).

Single Cigarettes

A person who sells tobacco products at retail shall not sell a cigarette separately from its package. Any person who violates this law is guilty of a misdemeanor, punishable by a fine of not more than \$500 for each offense. This law does not apply to tobacco specialty stores or other retail stores that deal exclusively in the sale of tobacco products

and smoking paraphernalia.

MICH. COMP. LAWS § 722.642A (1992).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are restricted to establishments holding a Class C license. If this establishment has a bar that is in a separate room from the rest of the establishment, the vending machine must be located entirely within that room. If the bar area is not separate, the vending machine shall be located entirely within the bar area and not in a hallway, coat room, restroom or similar area, must be no more than 20 feet from the bar itself and must be under the direct visual supervision of an adult. Vending machines are also permitted in areas, offices, plants, factories and private membership clubs not open to the public, and must be located not less than 20 feet from all entrances and exits accessible to the general public.

MICH. COMP. LAWS § 750.470 (1998).

Penalty

A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than six months, service to the community for a period of not more than 45 days, or a fine of not more than \$1,000, or any combination thereof. Each day of violation constitutes a separate offense.

MICH. COMP. LAWS § 750.470 (1998).

F Licensing Requirements

Requirements

Manufacturers, wholesalers, and vending machine operators must obtain a license to sell tobacco products. Each place of business shall be separately licensed. Licenses expire on the June 30th next succeeding the date of issuance and can be renewed annually. Beginning on March 15, 1994, any local unit of government or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes.

MICH. COMP. LAWS §§ 205.423 (1997), 205.424 (1994) & 205.434 (1994).

Fee

\$100 annually for a wholesale license; \$25 annually for a vending machine operator's license; and \$100 annually for a manufacturer's license. For multiple places of business, the fee is one quarter of the above fee. Beginning on March 15, 1994, any local unit of government or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes.

MICH. COMP. LAWS § 205.423 (1997).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

A person who uses an outdoor sign to advertise a smokeless tobacco product shall display on the outdoor sign one of the following statements: "WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER. WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS. WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES." The warning statements shall be rotated every four months, and shall meet several size and format requirements. Outdoor sign is defined as a sign, display, device, figure, painting, drawing, message, placard, poster, or billboard that is placed outdoors, is stationary, has a surface area of more than 150 square feet, and is designed, intended, or used to advertise or promote. A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both. An ordinance, regulation or other law enacted by a local unit of government shall not require a statement, format or type style other than those required by this section.

MICH. COMP. LAWS § 750.42a (1989).

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

The amount of a bond issued to stay execution on a judgment while an appeal is pending shall be determined according to the applicable Michigan court rules and statutory provisions. The bond shall not exceed \$25 million regardless of the amount of the judgment. If the appellee proves by a preponderance of the evidence that the party for whom the bond to stay execution has been limited is purposefully dissipating or diverting assets outside of the ordinary course of business for the purpose of avoiding ultimate payment of the judgment, the court shall rescind this limitation.

MICH. COMP. LAWS § 600.2607 (2002).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$3,600,000 for tobacco control and prevention programs from a portion of state cigarette excise tax revenue.

FY2008 Department of Community Health Budget (H.B. 4344) enacted and effective 10/31/07.

The 21st Century Jobs Trust Fund is established in the Department of Treasury. The trust fund shall consist of the net proceeds of the sale of a portion of tobacco settlement revenues to the Tobacco Settlement Finance Authority (TSFA), and in FY2008 through FY2015, \$75 million of tobacco settlement revenue not sold to the TSFA each year. Interest on the trust fund is deposited in the general fund.

MICH. COMP. LAWS §§ 12.257 & 12.258 (2005).

The Michigan Merit Award Trust Fund is also established in the Department of Treasury. The trust fund shall consist only of interest and earnings from trust fund investments, and, in each fiscal year, any tobacco settlement money not sold to the Tobacco Settlement Finance Authority or allocated to the 21st Century Jobs Trust Fund. Upon appropriation, the money is spent on specified educational initiatives.

MICH. COMP. LAWS §§ 12.259 & 12.260 (2005).

Securitization

The Michigan Tobacco Settlement Finance Authority is created as a public body corporate and politic within the Department of Treasury. The authority shall have power and is hereby authorized from time to time to issue bonds in the principal amount or amounts and with the maturities as the authority shall determine to be necessary to provide sufficient funds for achieving its authorized purposes, consisting of the purchase of all or a portion of the state's tobacco receipts and the payment of or provision for financing costs. The state Budget Director with the approval of the state Administrative Board may sell to the authority, and the authority may purchase, for cash or other consideration and in one or more installments, all or a portion of the state's tobacco receipts pursuant to the terms of one or more sale agreements. In the alternative, the state Budget Director with the approval of the state Administrative Board may sell all or a portion of the state's tobacco receipts for cash or other consideration to a person or persons other than the authority, if the terms of the sale agreement to sell the state's tobacco receipts are in the best interests of this state and the net proceeds of the sale will not exceed \$400 million. The sale agreement or combined sale agreements shall provide for the sale of that portion of the state's tobacco receipts sufficient to provide net proceeds to the state in the amount of \$815 million, \$400 million of which shall be expended pursuant to the Michigan Trust Fund Act (MICH. COMP. LAWS §§ 12.251 to 12.260), \$207,800,000 shall be deposited in the state school aid fund, and the remainder shall be deposited in the general fund.

MICH. COMP. LAWS §§ 129.261 to 129.279 (2007).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in almost all public places, public meetings, places of employment and public transportation. See the definitions of “public place,” “place of employment” and “public transportation in the statutes sections cited below for more information. Smoking is still allowed: in places of employment with less than two employees; by a patient or resident in a nursing home, boarding care facility, or licensed residential facility for adults under certain conditions; by drivers of public transportation vehicles when the vehicle is being used for personal use as defined; by subjects in scientific studies of the health effects of smoking under certain conditions; by Native Americans as part of a traditional Native American spiritual or cultural ceremony; in private homes, private residences and private automobiles when not in use as a place of employment as defined; in hotel or motel sleeping rooms rented to one or more guests; in tobacco products shops under specified conditions; in heavy commercial vehicles as defined; in farm vehicles and construction equipment as specified; in or on family farms as defined; in the disabled veterans rest camp in Washington County; and by actors/actresses as part of a theatrical performance.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Smoking is prohibited in a hotel sleeping room designated as nonsmoking. A person who violates this law is guilty of a misdemeanor, and may be required to pay the innkeeper not more than \$100 to restore the room to its pre-violation condition.

MINN. STAT. § 327.742 (1993).

Government Buildings

Smoking is prohibited in places of employment, the definition of which includes government agencies with two or more employees.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Private Workplaces

Smoking is prohibited in places of employment

defined as any indoor area where two or more employees perform any type of a service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. A private residence is a place of employment if the homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or the homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner’s trade or business.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Schools

No person shall at any time smoke or use other tobacco products in public schools. This prohibition extends to all facilities, whether owned, rented, or leased, and all vehicles that a school district owns, leases, rents, contracts for, or controls. This prohibition does not apply to the lighting of tobacco by an adult as part of a traditional Indian spiritual or cultural ceremony.

MINN. STAT. § 144.4165 (1999).

Smoking is prohibited in public places, the definition of which includes all non-public educational facilities.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Child Care Facilities

Smoking is prohibited in licensed day care centers and during the hours of operation in licensed family day care homes or group family day care provider homes. The proprietor of a family home or group family day care provider must disclose to parents or guardians of children cared for on the premises if the proprietor permits smoking outside of its hours of operation. Disclosure must include posting on the premises a conspicuous written notice and orally informing parents or guardians.

MINN. STAT. § 144.414(2) (2007).

Health Care Facilities

Smoking is prohibited in any area of a hospital, health care clinic, doctor’s office, licensed residential facility for children or other health care-related facility, except that a patient or resident in a nursing home, boarding care facility, or licensed residential facility for adults may smoke in a designated separate, enclosed room maintained in accordance with applicable state and federal laws. Smoking by patients in locked psychiatric units is also allowed under certain specified conditions.

MINN. STAT. § 144.414(3) (2007).

Restaurants

Smoking is prohibited in public places and places of employment, the definitions of which both include restaurants.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Bars

Smoking is prohibited in public places and places of employment, the definitions of which both include bars.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Penalties/Enforcement

The proprietor or other person, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place, public transportation, place of employment, or public meeting shall make reasonable efforts to prevent smoking by posting the appropriate signs, and taking the specified actions for persons who are smoking illegally. Any proprietor, person, or entity that owns, leases, manages, operates, or otherwise controls the use of an area, and that knowingly fails to comply with sections 144.414 to 144.417, is guilty of a petty misdemeanor. A person who smokes in an area where smoking prohibited is also guilty of a petty misdemeanor. The state Commissioner of Health, a local board of health or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of the law. The state Commissioner of Health shall adopt rules necessary and reasonable to implement the provisions of sections 144.411 to 144.417.

MINN. STAT. §§ 144.416 & 114.417 (2007).

Preemption

Nothing in sections 144.414 to 144.417 prohibits a statutory or home rule charter city or county from enacting and enforcing more stringent measures to protect individuals from secondhand smoke. Except as specified by state law or restricted by local ordinance, smoking is permitted outside of restaurants, bars, and bingo halls.

MINN. STAT. § 144.417(4) (2007).

B Tobacco Excise Taxes

Cigarettes

Taxes and fees per pack of 20: \$1.49

Date last changed: August 1, 2007 – from \$1.493 to \$1.49

Year first enacted: 1947

MINN. STAT. §§ 297F.05 (1992) & 256.9658 (2005).

Note: The “Health Impact Fee” on cigarettes was adjusted on August 1, 2007 so the effective combined cigarette tax/fee decreased from \$1.493 to \$1.49 per pack.

On May 16, 2006, the Minnesota Supreme Court ruled that the \$0.75 “Health Impact Fee” on cigarettes, passed by the legislature in July 2005, does not violate Minnesota’s settlement agreement with the major tobacco companies or the Minnesota Constitution. This overturns a ruling by a Ramsey County District Court judge that had overturned the “Health Impact Fee” in December 2005.

State of Minnesota et al. v. Philip Morris USA et al., decided 5/16/06.

The revenue from the 48 cent cigarette tax is distributed as follows: Six and a half cents of the tax is credited to the Academic Health Center Special Revenue Fund and is annually appropriated to the Board of Regents at the University of Minnesota for Academic Health Center funding at the University of Minnesota; two and a half cents is credited to the Medical Education and Research Costs Account and is annually appropriated to the Commissioner of Health for specified programs; and the remaining 39 cents goes to the general fund.

MINN. STAT. § 297F.10 (2003).

The revenue from the 75 cent “Health Impact Fee” is deposited in the Health Impact Fund and

is used to refund the state for medical costs associated with tobacco use.

MINN. STAT. §§ 256.9658 & 16A.725 (2005).

A fee of 35 cents per pack is imposed upon the sale of nonsettlement cigarettes in this state. The purpose of this fee is to ensure that manufacturers of nonsettlement cigarettes pay fees to the state that are comparable to costs attributable to the use of the cigarettes; prevent manufacturers of nonsettlement cigarettes from undermining the state's policy of discouraging underage smoking by offering nonsettlement cigarettes at prices substantially below the cigarettes of other manufacturers; and fund such other purposes as the legislature determines appropriate.

MINN. STAT. § 297F.24 (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$390,965,000

Other Tobacco Products

All other tobacco products: 70% of the wholesale sales price.

MINN. STAT. §§ 297F.05 (1992) & 256.9658 (2005).

Note: The Minnesota Supreme Court ruling allows the "Health Impact Fee" on other tobacco products of 35 percent of the wholesale sales price to stand as well. See information under "Cigarettes" section above for further information.

The revenue from the 35 percent tax on other tobacco products goes to the state general fund.

MINN. STAT. § 297F.10 (2003).

The revenue from the 35 percent "Health Impact Fee" on other tobacco products is deposited in the Health Impact Fund and is used to refund the state for medical costs associated with tobacco use.

MINN. STAT. §§ 256.9658 & 16A.725 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

A county or municipal licensing authority shall conduct unannounced compliance checks at

least once each calendar year at each location where tobacco is sold. Compliance checks must involve minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, attempt to purchase tobacco under the direct supervision of a law enforcement officer or an employee of the licensing authority.

MINN. STAT. § 461.12 (2001).

Penalties for Sales to Minors

Anyone who sells tobacco to a person under the age of 18 years is guilty of a misdemeanor for the first violation, and a gross misdemeanor for subsequent violations within five years. It is an affirmative defense to the charge of selling tobacco to a minor if the person relied in good faith upon specified proof of age. Whoever furnishes tobacco or tobacco-related devices to a minor is guilty of a misdemeanor for the first violation and a gross misdemeanor for any subsequent violation. However, an Indian may furnish tobacco to an Indian minor as part of a traditional Indian spiritual or cultural ceremony.

MINN. STAT. § 609.685 (2000).

If a municipal licensee or employee of a municipal licensee sells tobacco to a minor they shall be charged an administrative penalty of \$75. A second violation within 24 months after the initial violation is subject to an administrative penalty of \$200. A third violation within 24 months is subject to an administrative penalty of \$250 and the license to sell tobacco products must be suspended for not less than seven days. An individual who sells tobacco to a person under the age of 18 must be charged an administrative penalty of \$50. The penalty and license suspension can not take effect until the alleged violator has had the opportunity for a court hearing. It is an affirmative defense to the charge of selling tobacco to a minor if the person relied in good faith upon specified proof of age.

MINN. STAT. § 461.12 (2001).

Photo ID

None

Sign Posting

None

Penalties to Minors

A person under the age of 18 years who purchases or attempts to purchase tobacco or tobacco-related devices and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age is guilty of a misdemeanor. Except as otherwise stated above, any minor that possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase tobacco or tobacco-related devices is guilty of a petty misdemeanor. The penalties in this section do not apply to a person under the age of 18 years who purchases or attempts to purchase tobacco or tobacco-related devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

MINN. STAT. § 609.685 (2000).

A minor found guilty of using a driver's license or other form of identification to purchase or attempt to purchase tobacco products, or of lending to another minor their driver's license to purchase tobacco products shall have their driver's license suspended for 90 days.

MINN. STAT. § 171.171 (2000).

A county or municipal licensing authority shall consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for minors who purchase, possess, and consume tobacco. The licensing authority and the interested persons shall consider a variety of options, including, but not limited to, tobacco free education programs, notice to schools, parents, community service, and other court diversion programs.

MINN. STAT. § 461.12 (2001).

A retailer of tobacco products may seize a form of identification listed in Minn. Stat. § 340A.503, subdiv. 6, if the retailer has reasonable grounds to believe that the form of identification has been altered or falsified or is being used to violate any law. A retailer that seizes a form of identification as authorized under this paragraph must deliver it to a law enforcement agency within 24 hours of seizing it.

MINN. STAT. §§ 609.685 & 340A.503 (2000).

Placement of Tobacco Products

No person shall sell cigarettes or smokeless tobacco in open displays which are accessible to the public without the intervention of a store employee. This does not apply to retail stores that derive 90 percent of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18. Violation is subject to an administrative penalty of \$75 for a first violation, \$200 for a second violation within 24 months and \$250 for a third violation within 24 months. Upon the third violation, the license to sell tobacco products must also be suspended for not less than seven days.

MINN. STAT. § 461.18 (1997).

Internet Sales

Places restrictions on delivery sales of tobacco products, which are sales ordered by phone, fax or the Internet or delivered by mail. Specifically, when accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain a copy of a valid government-issued document that provides the person's name, current address, photograph, and date of birth; and a signed statement documenting certain information about the purchaser. If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping. Prior to shipping the tobacco products, the tobacco retailer shall verify the information provided against a commercially available database. The tobacco retailer shall also utilize a delivery service that requires an adult of legal purchase age to sign to accept delivery, and show a valid government-issued ID with a photograph of the person that proves the person is of legal purchase age and resides at the delivery address. Criminal penalties for violation are a cease and desist order for a first violation, a misdemeanor for a violation within two years of the cease and desist order, and a gross misdemeanor for subsequent violations. Civil penalties for violation are not more than \$1,000 for the first violation and not more than \$5,000 for a second and subsequent violation. Failure to pay taxes is an additional penalty of 50 percent of the tax due but unpaid.

MINN. STAT. § 325F.781 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person shall distribute promotional samples of tobacco products to the general public free of charge or at nominal cost. Single serving samples of tobacco may be distributed in tobacco stores. The court may impose a civil penalty in an amount not to exceed \$5,000 for each offense.

MINN. STAT. §§ 325F.77 (1987) & 325F.78 (1986).

Single Cigarettes

It is unlawful for any person to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including, but not limited to, the precise warning labels specified in the federal Cigarette Labeling and Advertising Act. Violation is a misdemeanor.

MINN. STAT. § 325D.421 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to facilities that cannot be entered at any time by persons younger than 18.

MINN. STAT. § 461.18 (1997).

Penalty

Violation is subject to an administrative penalty of \$75 for a first violation, \$200 for a second violation within 24 months and \$250 for a third violation within 24 months of the first violation. Upon the third violation, the license to sell tobacco products must also be suspended for not less than seven days.

MINN. STAT. § 461.12 (2001).

Sign Posting

A warning shall be posted and maintained in a conspicuous place on each vending machine stating “ANY PERSON UNDER 18 YEARS OF AGE IS FORBIDDEN BY LAW TO PURCHASE CIGARETTES FROM THIS MACHINE.”

Violation is a misdemeanor.

MINN. STAT. § 325E.07 (1963).

F Licensing Requirements

Requirements

Distributors must obtain a license from the state Commissioner of Revenue to sell tobacco products. A separate license is required for each place of business. Licensing periods begin on January 1st of an even-numbered year and end on December 31st of the following year. Selling tobacco products without a license is a misdemeanor.

MINN. STAT. §§ 297F.03 (1997) & 297F.20 (2003).

A town board or governing board of a home rule charter or statutory city may license and regulate the retail sale of tobacco and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco in unorganized territories and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail tobacco sales. Retail establishments licensed by a town or city to sell tobacco are not required to obtain a second license for the same location under the licensing ordinance of the county.

MINN. STAT. § 461.12 (2001).

Fee

\$300 every other year for a wholesale cigarette license; \$75 every other year for a wholesale license to sell other tobacco products.

MINN. STAT. § 297F.03 (1997).

License Suspension for Sales to Minors

Violation by a county or municipal retail licensee is punishable by set fines and no less than a seven day suspension of the license to sell tobacco products for the third violation within a 24-month period.

MINN. STAT. § 461.12 (2001).

G Smoker Protection Laws

An employer may not refuse to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of lawful consumable products, including tobacco, if use

or enjoyment takes place off the premises of the employer during non-work hours. It is not a violation for an employer to restrict the use of lawful consumable products by employees during nonworking hours if the employer's restriction relates to a bona fide occupational requirement and is reasonably related to employment activities or responsibilities of a particular employee or group of employees; or is necessary to avoid a conflict of interest or the appearance of a conflict of interest with any responsibilities owed by the employee to the employer. It is also not a violation for an employer to refuse to hire an applicant or discipline or discharge an employee who refuses or fails to comply with the conditions established by a chemical dependency treatment or aftercare program; for an employer to offer, impose, or have in effect a health or life insurance plan that makes distinctions between employees for the type of coverage or the cost of coverage based upon the employee's use of lawful consumable products, provided that, to the extent that different premium rates are charged to the employees, those rates must reflect the actual differential cost to the employer; and for an employer to refuse to hire an applicant or discipline or discharge an employee on the basis of the applicant's or employee's past or present job performance. The remedy for a violation is a civil action for damages limited to wages and benefits lost by the individual because of the violation.

MINN. STAT. § 181.938 (1992).

H Advertising & Promotion

None

I Product Disclosure

Each manufacturer of tobacco products sold in Minnesota shall provide the Commissioner of Health with an annual report, in a form and at a time specified by the commissioner, identifying, for each brand of such product, any of the following substances present in detectable levels in the product in its unburned state and in its burned state: ammonia or any compound of ammonia; arsenic; cadmium; formaldehyde; and lead. Reports under this section are public data.

MINN. STAT. § 461.17 (1997).

J Tobacco Divestment

At its September 1998 meeting, the Minnesota State Board of Investment adopted a resolution that required each active and semi-passive equity manager to divest by September 2001 shares of any company which obtained more than 15 percent of its revenues from the manufacture of consumer tobacco products. At the close of fiscal year 2001 (June 30, 2001), the board had divested from its active portfolios all shares of companies covered by this resolution.

2004 Annual Report, Minnesota State Board of Investment.

K Tobacco Liability

Industry Protection

The amount of an appeal bond required to stay execution of a judgment must be in the amount of the judgment, or a lesser amount, but the total appeal bond required of all appellant(s) can not be more than \$150 million regardless of the value of the judgment. If an appellee provides evidence that a judgment debtor may be dissipating assets to avoid payment of a judgment, a court may enter orders that are necessary to protect the appellee, and require the appellant(s) to post a bond in an amount up to the total amount of the judgment.

MINN. STAT. § 550.36 (2004).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated/Allocated \$22,080,000 total for tobacco control and prevention programs from the state general fund and tobacco settlement money. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Health and Human Services Budget (H.F. 1078) enacted 5/25/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009) and FY2008 ClearWay Minnesota Operating Budget.

Note: Clearway Minnesota (formerly the Minnesota Partnership for Action Against Tobacco) allocates money for a statewide tobacco prevention program, but is not controlled by the state legislature. It is overseen by the Ramsey County District Court, which heard the original tobacco settlement case brought by the state of Minnesota (see below for more details).

In 1998, Lawrence D. Cohen, chief judge of the Ramsey County District Court, approved the state of Minnesota's plan to establish the Minnesota Partnership for Action Against Tobacco (MPAAT), a nonprofit foundation which will receive \$202 million dollars (about 3 percent of Minnesota's settlement money) over ten years to fund projects that seek to reduce tobacco use in the state. MPAAT, now called ClearWay Minnesota, serves Minnesota through its grant-making program, QUITPLAN individual stop-smoking services and community outreach, which includes an advertising campaign. The organization files an annual report with the Ramsey County District Court and the state legislature each year.

State of Minnesota and Blue Cross/Blue Shield of Minnesota v. Philip Morris et al. (1998).

Blue Cross & Blue Shield of Minnesota, a plaintiff in Minnesota's settlement with the tobacco companies, is scheduled to receive \$469 million total from the settlement subject to certain adjustments. Due to these adjustments the actual amount received will be reduced. The organization will be spending \$252 million of this money over ten years to help reduce tobacco use, heart disease, and cancer in Minnesota.

State of Minnesota and Blue Cross/Blue Shield of Minnesota v. Philip Morris et al. (1998).

Non-Monetary Provisions

In 1999, the legislature set a goal to reduce tobacco use among youth by 25 percent by the year 2005, and to promote statewide and local tobacco use prevention activities to help achieve this goal. The Commissioner of Health, in consultation with other public, private, or nonprofit organizations involved in tobacco use prevention efforts, is required to establish measurable outcomes to determine the effectiveness of the grants receiving funds under this section in reducing the use of tobacco among youth, and a statewide assessment of tobacco-related behaviors and attitudes among youth to establish a baseline to measure the statewide effect of tobacco use prevention activities. The commissioner must also set up a grant program through the state Department of Health for statewide and local tobacco prevention grants to reduce tobacco use among youth, as well as local public health promotion and protection to local community health boards. The legislature also required a biennial evaluation of

these grant programs.

MINN. STAT. § 144.396 (2003).

M Fire Safety Standards

Minnesota has enacted legislation requiring cigarettes sold in Minnesota to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on January 1, 2009.

H.F. 829 enacted 5/7/07 and effective 1/1/09.





A Smokefree Air

Public Places

It shall be unlawful for any person to smoke a cigar or pipe in or upon any passenger bus or coach. Persons who continue to smoke after being asked to refrain from smoking can be ejected from public buses and charged with a misdemeanor, punishable by a fine of not more than \$500, imprisonment up to 30 days, or both.

MISS. CODE ANN. § 97-35-1 (1964).

Government Buildings

No person shall smoke in any government building, which is defined as any building owned, rented, leased, occupied or operated by the state, including the legislative, executive and judicial branches of state government; any county, municipality or any other political subdivision of the state; any public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government. If only part of a facility is leased by the state or an agency, department or institution of the state, or any county, municipality or other political subdivision of the state, only the leased part of the facility will be considered to be a government building. A government building shall not include any building owned or leased by the state institutions of higher learning or the public community and junior colleges or any space in a government building used by law enforcement officers. The State Veterans Affairs Board may designate smoking areas in the state veterans' homes operated by the board. The person, agency or entity having jurisdiction or supervision over a government building shall not allow smoking in the building, and shall use reasonable efforts to prevent smoking in such building, including, but not limited to posting appropriate signs informing employees, invitees, guests and other persons that smoking is prohibited and securing the removal of persons who smoke in the building.

MISS. CODE ANN. § 29-5-161 (2007).

Private Workplaces

None

Schools

No person shall use any tobacco product on any educational property. "Educational property" means any public school building or bus, public school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, or directors for the administration of any public educational institution or during a school-related activity. Any adult who violates this section shall receive a warning for a first conviction; a \$75 fine for a second conviction; and a fine of up to \$150 for all subsequent convictions. It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this act are enforced.

MISS. CODE ANN. § 97-32-29 (2000).

No person shall smoke in any university or college classroom building, which is defined as any building used by the state institutions of higher learning or the public community and junior colleges exclusively for student instructional purposes, including classrooms, auditoriums, theaters, laboratories, hallways and restrooms. Smoking policies applicable in the private offices of faculty and staff and other "smoking permitted" space may be determined by each academic and administrative department. The person, agency or entity having jurisdiction or supervision over a university/classroom building shall not allow smoking in the building, and shall use reasonable efforts to prevent smoking in such building, including, but not limited to posting appropriate signs informing employees, invitees, guests and other persons that smoking is prohibited and securing the removal of persons who smoke in the building.

MISS. CODE ANN. § 29-5-161 (2007).

Child Care Facilities

None

Health Care Facilities

None

Restaurants

None

Bars

None

Preemption

The law prohibiting smoking in government buildings and university/college classroom buildings shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or to prohibit any municipality or county from adopting additional ordinances with regard to smoking in public places.

MISS. CODE ANN. § 29-5-161 (2007).

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: 18 cents

Date last changed: June 1, 1985 — from 11 cents to 18 cents

Year first enacted: 1930

MISS. CODE ANN. § 27-69-13 (1985).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$45,368,000

Other Tobacco Products

All other tobacco products: 15% of the manufacturer's list price

MISS. CODE ANN. § 27-69-13 (1985).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Office of the Attorney General or local law enforcement agencies shall at least annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under 18 may be enlisted by the Office of the Attorney General or local law enforcement agencies, provided that the parent or legal guardian has given prior written consent. The Office of the Attorney General must prepare a report of the findings to the Department of Health and Department of Mental Health. The provisions of this law shall supersede any existing

or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-21 & 97-32-2 (1998).

Penalties for Sales to Minors

It is unlawful for any person or retailer to sell, barter, deliver or give tobacco products, including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, smokeless tobacco, and rolling papers to any minor unless the individual under age 18 holds a retailer's permit to sell tobacco products. Any person who violates this section is liable for a fine of \$50 for the first violation, \$75 for the second violation and \$150 for all subsequent violations. The person owning the applicable retailer permit shall be sent a warning letter for the first violation, and shall be required to enroll in and complete a "Retailer Tobacco Education Program" for the second violation. For the third and subsequent violations within a year of the first two violations, any retailer's permit may be revoked or suspended for a period of at least one year after notice and opportunity for hearing. It is an affirmative defense that the person selling, bartering, delivering or giving tobacco products to a minor, had requested and examined a government issued photographic identification. The failure of a person selling tobacco to request and examine photographic identification shall form a conclusive basis for the seller's violation of this section. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-5 & 97-32-2 (1998).

Photo ID

None

Sign Posting

Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of tobacco products to consumers, a sign no smaller than 8.5 by 11 inches or 93 square inches stating "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS. PROOF OF AGE REQUIRED." Violation is subject to a penalty of not more than

\$100. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-11 & 97-32-2 (1998).

Penalties to Minors

No person under 18 shall purchase any tobacco product. High school, junior high school or elementary school students may not possess tobacco on any educational property.

MISS. CODE ANN. § 97-32-9 (1998).

A minor who falsely states he is 18 years of age or older or presents any document that indicates he is 18 years of age or older for the purpose of purchasing or possessing any tobacco or tobacco product shall be fined from \$25 to \$200 or required to complete at least 30 days of community service, or both.

MISS. CODE ANN. § 97-32-13 (1998).

Placement of Tobacco Products

None

Internet Sales

None

Other Provisions

Every person employed as a retail sales clerk by a person engaged in the business of selling tobacco products at retail shall sign an agreement with his employer, which states that they understand that state law prohibits the sale or distribution of tobacco products, including samples, to persons under the age of 18 and requires that proof of age be demanded if the purchaser appears to be under the age of 18, and such employee shall promise, "as a condition of their employment, to observe this law." Any person violating the provisions of this section shall be guilty of a misdemeanor and fined \$50 to \$100 upon conviction. No retailer who instructs his employee as directed above shall be liable for any violations committed by such employees. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-7 & 97-32-2 (1998).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for any person to barter, deliver or give tobacco products to any minor. Any person who violates this section is subject to the same penalties as selling tobacco products to a minor. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-5 & 97-32-2 (1998).

Single Cigarettes

No retailer shall distribute tobacco products, excluding cigars and pipe tobacco, other than in a sealed package provided by the manufacturer with the required health warning. Violators will be fined \$100 for the first violation and/or enrolled in a Retailer Tobacco Education Prevention Program, \$200 for a second violation within a year of the first violation and \$300 for all subsequent violations. In addition, in the case of all subsequent violations within one year of two prior violations, the permit of the violator may be suspended or revoked. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-17 & 97-32-2 (1998).

It shall be unlawful for any person to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including, but not limited to, the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act. Knowingly violating this provision is subject to a fine of \$5,000 and/or imprisonment for not more than five years.

MISS. CODE ANN. §§ 75-23-33 & 75-23-35 (2000).

E Restrictions on the Sale of Tobacco Products In Vending Machines

Placement

Vending machines are restricted to establishments where individuals under the age of 18 years are denied access or are required to be accompanied by an adult. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-15 & 97-32-2 (1998).

Penalty

A person who violates this section shall be punished by a penalty of not more than \$250. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN. §§ 97-32-15 & 97-32-2 (1998).

F Licensing Requirements

Requirements

Retailers and wholesalers must obtain a license to sell cigarettes. A separate license is required for each place of business. The state Tax Commission shall make rules and regulations respecting applications therefore or issuance thereof.

MISS. CODE ANN. § 75-23-27 (1954).

Every dealer (manufacturer), distributor, wholesaler and retailer must have an annual permit to engage in the sale or use of tobacco products from the chairman of the state Tax Commission. Permits must be obtained for each place of business. Permits expire on January 31st of each year. Any person who engages in any business for which a permit is required before procuring a permit, or after the permit is cancelled, shall be guilty of a misdemeanor, and punishable by a fine of \$50 to \$500.

MISS. CODE ANN. §§ 27-69-5 (1998) & 27-69-7 (1985).

Fee

Wholesalers, distributors and dealers are subject to a \$100 annual permit fee.

MISS. CODE ANN. § 27-69-7 (1985).

License Suspension for Sales to Minors

For the third and subsequent violations of the sale of tobacco products to minors' law within a year of the two previous violations, the retailer's permit may be revoked or suspended for a period of at least one year after notice and opportunity for a hearing. The provisions of this law shall supersede any existing or subsequently enacted local law, ordinance or regulation that relates to the sale, promotion, and distribution of tobacco products.

MISS. CODE ANN §§ 97-32-5 & 97-32-2 (1998).

G Smoker Protection Laws

It is unlawful for any public or private employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonwork hours, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

MISS. CODE ANN. § 71-7-33 (1994).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

A supersedeas bond or equivalent security required on any money judgment entered in whole or in part on account of punitive damages shall, as to the punitive damages portion of the judgment only, be the lower of: 125 percent of the punitive damages, 10 percent of the net worth of the defendant seeking appeal as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31, of the year prior to the entry of the judgment for punitive damages. Absent unusual circumstances, the total amount of the required bond or equivalent security for any case as to punitive damages shall not exceed \$100 million. When the

appellant is allowed the benefit of a reduction in bond or equivalent security the court may require submission of such reports or evidence to the court and to opposing parties as will allow them to be properly informed of the financial condition of the appellant during the period of supersedeas. If at any time after notice and hearing, the court finds that an appellant who has posted a bond or equivalent security for less than 125 percent of the full amount of the judgment has taken actions that affect the financial ability of the appellant to respond to the judgment, or has taken other actions with the intent to avoid the judgment, the court shall increase the bond or equivalent security to the full 125 percent of the judgment.

MS RULES OF APPELLATE PROCEDURE, Rule 8(b)(2-5) (2001).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$9,450,000 for tobacco control and prevention programs from a portion of the annual state settlement payment.

FY2008 Department of Health Appropriations (H.B. 1696) enacted 4/21/07 and effective 7/1/07.

The Tobacco Control Program Fund was established in the state treasury. From the annual tobacco settlement payment, \$20 million is dedicated annually to the fund. The money is to be used to fund a comprehensive tobacco control program and for other specified purposes.

MISS. CODE ANN. §§ 41-113-1 to 41-113-11 (2007).

On June 14, 2007, the Mississippi Supreme Court affirmed the May 30, 2006 decision of Jackson County Chancery Court Judge Jaye Bradley that absent an agreement between the executive and legislative branches of state government or specific authorizing legislation, the court does not have the power to allocate funding to the non-profit Partnership for a Healthy Mississippi, which formerly ran Mississippi's tobacco prevention program. Additionally, the court ruled that Judge Bradley's original 2000 order transferring money to the Partnership was invalid and all remaining money collected by the Partnership after that date needed to be returned to the Mississippi Health Care Trust Fund.

Healthy Mississippi v. State of Mississippi, issued 6/14/07.

The Health Care Trust Fund was established in the state treasury, and received \$280 million in settlement money at the end of FY1999, and is supposed to receive all subsequent annual settlement payments. All income from the trust fund is supposed to go to the trust fund, and funds do not lapse to the general fund. Money is transferred to the Health Care Expendable Fund each fiscal year from the Health Care Trust Fund. The trust fund principal is supposed to remain forever inviolate except for specified circumstances, but has been used by the legislature for general budget purposes on several occasions, including a \$240 million transfer to the Health Care Expendable Fund in 2005, which is supposed to be paid back from the general fund with interest in FY2009 through FY2016 (see below).

MISS. CODE ANN. § 43-13-405 (2007).

The Health Care Expendable Fund was also established in the state treasury. All income from investment of the money in the fund shall be credited to the fund. The funds in the Health Care Expendable Fund are available for expenditure by specific appropriation each fiscal year beginning in FY2000 for health care purposes. Money is transferred to this fund each fiscal year from the Health Care Trust Fund. In 2005, \$240 million was transferred to this fund from the Health Care Trust Fund in addition to regular transfers each year. This transfer is scheduled to be paid back plus interest from the state general fund in specified amounts in FY2009 to FY2016.

MISS. CODE ANN. § 43-13-407 (2007).

Non-Monetary Provisions

The office of Tobacco Control was created in the state Department of Health. The office, with the advice of the Mississippi Tobacco Control Advisory Board, shall develop and implement a comprehensive tobacco control program that is consistent with the recommendations for effective program components and funding recommendations in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention (CDC), as those Best Practices may be periodically amended by the CDC. The Mississippi Tobacco Control Advisory Board was also created, and will consist of 13 members who will make recommendations

about implementation of the program.

MISS. CODE ANN. §§ 41-113-1 to 41-113-11 (2007).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is restricted to designated areas in public meetings, commercial or retail establishments, public transportation vehicles, restrooms, elevators, libraries, museums, auditoria and art galleries, public areas and waiting rooms of public transportation facilities including airport facilities, indoor places used for entertainment or recreation, indoor corridors, and shopping malls. No more than 30 percent of the space of any public place may be designated as a smoking area. Areas not covered by this law are rooms or halls used for private social functions, limousines and taxicabs where the driver and passengers agree to allow smoking, performers on stage, tobacco retail stores, bowling alleys, and indoor sports arenas seating more than 15,000 persons.

MO. REV. STAT. §§ 191.765 to 191.777 (1992).

Government Buildings

Smoking is restricted to designated areas in all public buildings. A designated smoking area where state employees may smoke during the work day shall be provided by each state executive department and institution of higher education, provided an area can be adequately ventilated at minimum cost within the physical confines of each facility.

MO. REV. STAT. §§ 191.765 & 191.766 (1992).

Private Workplaces

Smoking is restricted to designated areas in enclosed indoor areas serving as a place of work.

MO. REV. STAT. §§ 191.765 & 191.766 (1992).

Schools

Use of tobacco products is prohibited entirely in any indoor area of a public elementary or secondary school building or educational facility, excluding institutions of higher learning, and on buses used to transport students any place for educational purposes. School boards or school districts may set policies on the use of tobacco

products on school grounds or in facilities not occupied by students.

MO. REV. STAT. § 191.775 (1993).

Child Care Facilities

Smoking, and the use of other tobacco products, is prohibited in licensed day care facilities during their hours of operation.

MO. REV. STAT. § 191.776 (1993).

Health Care Facilities

Smoking is restricted to designated areas in all health care facilities, including hospitals, nursing homes, and health care offices.

MO. REV. STAT. §§ 191.765 & 191.766 (1992).

Restaurants

The person in charge of a restaurant seating 50 or more people shall designate an area of sufficient size to accommodate usual customer demand for nonsmoking areas. Restaurants seating 50 people or less are exempt from the restrictions on smoking in public places.

MO. REV. STAT. §§ 191.765 to 191.767 (1992).

Bars

None

Penalties/Enforcement

The person in control of a public place shall post signs and arrange seating to isolate smoking areas. Persons who smoke in a nonsmoking area or proprietors who allow persons to smoke in those areas where smoking is prohibited are guilty of an infraction.

MO. REV. STAT. §§ 191.771 & 191.773 (1992).

Preemption

Nothing in sections 191.775 and 191.776 shall prohibit local political subdivisions or local boards of education from enacting more stringent ordinances or rules.

MO. REV. STAT. § 191.777 (1993).

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: 17 cents

Date last changed: August 28, 1993 — from 13 cents to 17 cents

Year first enacted: 1955

MO REV. STAT. § 149.015 (1993).

The revenue generated by four cents of the cigarette tax imposed effective October 1, 1993 shall be deposited in the Health Initiatives Fund. When and if the general assembly appropriates an amount equal to 25 percent of the net federal reimbursement allowance to the Health Initiatives Fund, this portion of the cigarette tax sunsets.

MO. REV. STAT. § 149.015 (2002).

The revenue generated by four cents of the cigarette tax imposed effective August 13, 1982 shall be placed in a separate fund entitled “The Fair Share Fund”. Moneys in the fund shall be distributed to the schools in this state on an average daily attendance basis.

MO. REV. STAT. § 149.015(7) (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$99,873,000

Other Tobacco Products

All other tobacco products: 10% of the manufacturer’s invoice price.

MO. REV. STAT. § 149.160 (1993).

All revenue is deposited in the Health Initiatives Fund. The other tobacco products tax will sunset on July 1st following when and if the general assembly appropriates an amount equal to 25 percent of the net federal reimbursement allowance to the Health Initiatives Fund.

MO. REV. STAT. § 149.160 (1993).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Liquor Control shall have the authority to inspect stores and tobacco outlets for compliance with all laws related to access of tobacco products to minors. The division may employ a person 17 years of age, with parental consent, to attempt to purchase tobacco for the purpose of inspection or enforcement of tobacco laws. The Supervisor of the Division of Liquor Control shall establish mandatory guidelines for the use of minors in investigations by a state, county, municipal or other local law enforcement authority. See the specified statute for details about the mandatory guidelines. If the state, county, municipal or other local law enforcement authority uses minors in investigations or in enforcing or determining violations of this chapter or any local ordinance and does not comply with the mandatory guidelines established by the Supervisor of the Division of Liquor Control, the supervisor shall not take any disciplinary action against the establishment or seller based on an alleged violation discovered when using a minor and shall not cooperate in any way with the state, county, municipal or other local law enforcement authority in prosecuting any alleged violation discovered when using a minor.

MO. REV. STAT. §§ 407.924 & 407.934 (2001).

Penalties for Sales to Minors

It shall be unlawful for any person to sell, provide or distribute tobacco products or rolling papers to persons under 18 years of age. This shall not apply to the distribution by family members on property that is not open to the public. Violation by any person, including but not limited to a sales clerk, owner or operator shall be subject to a fine of \$25 for a first offense, \$100 for the second offense and \$250 for a third and subsequent offenses. Any owner of the establishment who violates this law, in addition to the penalties above, shall be issued a reprimand for the first violation within two years; shall be prohibited from selling tobacco products for 24 hours for a second violation within two years; shall be prohibited from selling tobacco products for 48 hours for a third violation within two years; and shall be prohibited from selling tobacco products for five days for a fourth and subsequent violation within two years. Owners of an establishment that violate this law, shall be exempt from penalties if they have an

employee compliance training program subject to specific guidelines. This exemption will not apply to owners who have four or more violations per location within a two year period or knowingly violate the law. It is an affirmative defense if the person accused reasonably relied on proof of age purporting to establish the person as 18 years of age or older.

MO. REV. STAT. § 407.931 (2001).

Photo ID

A person or entity selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of 18. "Proof of age" means a driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid.

MO. REV. STAT. § 407.929 (2001).

Sign Posting

Signs shall be conspicuously displayed at every display from which tobacco products are sold stating "IT IS A VIOLATION OF STATE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD OR OTHERWISE PROVIDED TO ANY PERSON UNDER THE AGE OF 18 OR FOR SUCH PERSON TO PURCHASE, ATTEMPT TO PURCHASE OR POSSESS CIGARETTES OR OTHER TOBACCO PRODUCTS" and shall include a depiction of a pack of cigarettes defaced by a red diagonal diameter of a surrounding red circle, and the words "UNDER 18." Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses.

MO. REV. STAT. §§ 407.927 & 407.931 (2001).

Penalties to Minors

No person less than 18 years of age shall purchase, attempt to purchase or possess cigarettes or other tobacco products unless as part of an employment obligation or for enforcement purposes. Any person less than 18 years of age shall not misrepresent their age to purchase cigarettes or tobacco products. A person who violates this law is guilty of an infraction and shall have any cigarettes or tobacco

products confiscated. For a second violation the person shall also complete a tobacco education or smoking cessation program, if available.

MO. REV. STAT. § 407.933 (2001).

Placement of Tobacco Products

No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless they are displayed behind the check-out counter or are within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter.

MO. REV. STAT. § 407.928 (2001).

Internet Sales

Any person or entity who sells or distributes tobacco products by mail or through the Internet to minors shall be assessed a fine of \$250 for the first violation and \$500 for each subsequent violation.

MO. REV. STAT. § 407.926 (2001).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

Distribution of tobacco products and rolling papers to minors is prohibited. This subsection shall not apply to the distribution by family members on property that is not open to the public. Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses. In addition, the owner shall be prohibited from selling tobacco products for a specific number of days for multiple violations. If an employee of a company conducting the sampling distributes a sample, such employee shall be guilty of an offense and responsible for the fine.

MO. REV. STAT. § 407.931 (2001).

Single Cigarettes

No person or entity shall sell, provide or distribute any individual cigarettes to any person in this state. Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses. In addition, the owner shall be prohibited from selling tobacco products for a specific number of days for multiple violations.

MO. REV. STAT. § 407.931 (2001).

It is unlawful for any person to sell or distribute in this state any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and implementing regulations, including but not limited to the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in Section Four of the Federal Cigarette Labeling and Advertising Act. Violation is a Class D felony.

MO. REV. STAT. § 149.200 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons under 18 from purchasing any tobacco product or shall be equipped with a lockout device to prevent the machine from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking devices shall be of a design that prevents them from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required in machines located in areas where persons under 18 years old are not permitted or prohibited by law. This law shall not apply to a vending machine if located in a factory, private club or other location not generally accessible to the public.

MO. REV. STAT. § 407.931 (2001).

Penalty

Any person whose vending machine is not in compliance with the placement provisions above is subject to a fine of \$25 for a first offense, \$100 for a second offense and \$250 for a third and subsequent offenses.

MO. REV. STAT. § 407.931 (2001).

Sign Posting

Signs shall be conspicuously posted on every vending machine where tobacco products are purchased stating "IT IS A VIOLATION OF STATE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD OR OTHERWISE PROVIDED TO ANY PERSON UNDER THE AGE OF 18 OR FOR SUCH

PERSON TO PURCHASE, ATTEMPT TO PURCHASE OR POSSESS CIGARETTES OR OTHER TOBACCO PRODUCTS" and shall include a depiction of a pack of cigarettes defaced by a red diagonal diameter of a surrounding red circle, and the words "UNDER 18." Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses.

MO. REV. STAT. §§ 407.927 & 407.931 (2001).

F Licensing Requirements

Requirements

Wholesalers must obtain a license from the Director of the Department of Revenue to sell cigarettes or tobacco products, on or before February 15th of every year.

MO. REV. STAT. § 149.035 (1993).

No person shall sell cigarettes or tobacco products unless the person has a retail sales tax license. The Department of Revenue shall permit persons to designate through the Internet or by including a place on all sales tax license applications for the applicant to designate themselves as a seller of tobacco products and to provide a list of all locations where the applicant sells such products.

MO. REV. STAT. § 407.934 (2001).

Fee

Wholesaler's License: \$100 each year;

Retail Sales Tax License: No fee

MO. REV. STAT. §§ 149.035 (1993) & 144.083 (2004).

License Suspension for Sales to Minors

The owner of an establishment who sells, provides or distributes a tobacco product to a minor shall be prohibited from selling tobacco products for 24 hours for a second violation, for 48 hours for a third violation and five days for a fourth and subsequent violations within two years.

MO. REV. STAT. § 407.931 (2001).

G Smoker Protection Laws

It shall be an improper employment practice for an employer to refuse to hire, to discharge, or to otherwise disadvantage any individual with respect to compensation, terms or conditions of employment because the individual uses lawful

tobacco products off the premises of the employer during hours such individual is not working for the employer, unless such use interferes with the duties and performance of the employee, the employee's coworkers, or overall business operation; except that, nothing in this section shall prohibit an employer from providing or contracting for health insurance benefits at a reduced premium rate for employees who do not smoke or use tobacco products. Religious organizations and non-profit health promotion organizations are exempt from this section. The provisions of this section shall not be deemed to create a cause of action for injunctive relief, damages or other relief.

MO. REV. STAT. § 290.145 (2005).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

The total appeal bond or equivalent surety required to appeal a lawsuit judgment for a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement shall be set at \$50 million, regardless of the value of the judgment. If the appellee proves by a preponderance of the evidence that a party bringing an appeal or seeking a stay is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the limitation granted may be rescinded and the court may enter such orders as are necessary to prevent dissipation or diversion of the assets.

MO. REV. STAT. § 512.085 (2003).

**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding
Appropriated \$200,000 for tobacco control and

prevention programs from a portion of the annual MSA payment.

FY2008 Department of Health and Senior Services
Budget (H.B. 10) enacted 6/27/07 and effective 7/1/07.

Securitization

The Missouri Tobacco Settlement Financing Authority was established for the purpose of issuance and payback of bonds using Master Settlement Agreement (MSA) proceeds. The governor or the governor's designee shall be authorized to sell and assign to the authority, pursuant to one or more sales agreements, not to exceed 30 percent of the state's annual MSA payment; provided, the net proceeds of bonds shall not exceed \$600 million. Proceeds from the sale of the bonds will be deposited into the Tobacco Settlement Securitization Trust Fund. The Joint Advisory Committee on Tobacco Securitization will recommend uses for the money, and the Tobacco Settlement Financing Authority will make the final decision.

MO. REV. STAT. §§ 8.500 to 8.565 (2002).

The board of public buildings may also issue bonds payable from MSA proceeds; provided, that combined with bonds issued by the Tobacco Settlement Financing Authority it shall not exceed 30 percent of the state's share of MSA proceeds. Bond proceeds may be deposited directly to the general revenue fund or deposited into the Tobacco Bond Proceeds Fund and then transferred to the general revenue fund.

MO. REV. STAT. §§ 8.570 to 8.590 (2002).

The provisions of sections 8.500 to 8.590 shall terminate upon the satisfaction of all outstanding notes and obligations issued under those sections. No new bonds were allowed to be issued after February 26, 2003.

MO. REV. STAT. § 8.589 (2003).

Note: Although the authority to issue bonds was authorized by the legislature in 2002, no bonds were ever issued, and the authority was repealed as indicated above in 2003.

M Fire Safety Standards

None



A Smokefree Air**Public Places**

Smoking is prohibited in enclosed public places, which are defined as an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work. For specific places covered, see the definition under Mont. Code Ann. § 50-40-103. This does not apply to restaurants and bars that make 40 percent or less of their gross revenue from the sale of food until September 30, 2009, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited and persons under 18 are not allowed to enter said establishment; a private residence unless it is licensed and used as a family day-care home, group day-care home, adult foster care home or a health care facility; a private motor vehicle; not more than 35 percent of hotel/motel rooms rented to guests; and a site that is being used in connection with the practice of cultural activities by American Indians.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Government Buildings

Smoking is prohibited in enclosed public places the definition of which includes all buildings or portions of buildings occupied by state and local government. Buildings owned and occupied by a political subdivision only must be smokefree on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smokefree as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smokefree as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smokefree.

MONT. CODE ANN. §§ 50-40-104 & 50-40-201 (2005).

Private Workplaces

Smoking is prohibited in enclosed public places, the definition of which includes all places of work. Places of work are defined as an enclosed room where one or more people work.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Schools

An individual may not use a tobacco product in a public school building or on public school property. This does not apply to the use of a tobacco product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product.

MONT. CODE ANN. § 20-1-220 (2005).

Smoking is also prohibited in community college facilities and facilities of the Montana university system.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Child Care Facilities

Smoking is prohibited in all enclosed public places, the definition of which includes child care facilities. Home-based group day-care and family day-care homes as well as adult foster care homes are specifically included.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Health Care Facilities

Smoking is prohibited in all enclosed public places, the definition of which includes health care facilities. Home-based health care facilities are specifically included.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Restaurants

Smoking is prohibited in all enclosed public places, the definition of which includes restaurants. Restaurants that make 60 percent or more of their sales from alcoholic beverages and/or gambling receipts and do not allow persons under 18 into any area where smoking is allowed are exempt

until October 1, 2009.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Bars

Smoking is prohibited in all enclosed public places the definition of which includes bars. Bars that make 60 percent or more of their sales from alcoholic beverages and/or gambling receipts and do not allow persons under 18 into any area where smoking is allowed are exempt until October 1, 2009.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Penalties/Enforcement

The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to an establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited. The provisions of this part must be supervised and enforced by the Department of Public Health and Human Services and the department's designees, local boards of health, and the boards' designees under the direction of the department. A person who smokes in a place where smoking is prohibited is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the above provisions is guilty of a misdemeanor after a third violation within a 3-year period and shall receive a warning for a first violation, receive a written reprimand for a second violation, be subject to a \$100 fine for a third violation, a \$200 fine for a fourth violation and \$500 for a fifth or subsequent violation.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Preemption

The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation until October 1, 2009.

MONT. CODE ANN. § 50-40-120 (2005).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.70

Date last changed: January 1, 2005 — from 70 cents to \$1.70

Year first enacted: 1947

MONT. CODE ANN. § 16-11-111 (2005).

Cigarette tax revenue is distributed as follows: 8.3 percent or \$2 million, whichever is greater, for the operation and maintenance of state veterans' nursing homes; 2.6 percent to the Long-Range Building Program Account; 44 percent to the state special revenue fund to the credit of the Health and Medicaid Initiatives Account; and the remainder to the general fund. The Health and Medicaid Initiatives Account is intended to provide revenue for an increase in enrollment in the state children's health insurance program; a new need-based prescription drug program; increased Medicaid services and Medicaid provider rates; and fund new tax credits or programs to assist small businesses in providing health insurance for their employees.

MONT. CODE ANN. § 16-11-119 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$81,759,000

Other Tobacco Products

Moist snuff: 85 cents/oz.;

All other tobacco products: 50% of the wholesale price

MONT. CODE ANN. § 16-11-111 (2005).

The revenue from the tax on moist snuff and the tax on all other tobacco products is distributed as follows: 50 percent to the general fund and 50 percent to the state special revenue fund to the credit of the Health and Medicaid Initiatives Account.

MONT. CODE ANN. § 16-11-119 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Public Health and Human Services shall conduct inspections of persons selling or distributing tobacco products to determine compliance with § 16-11-301 et seq. of the Montana Code. Inspections may be conducted directly by the department or may be provided for by contract let by the department. The Department of Public Health and Human Services shall provide documentation to the Department of Revenue regarding alleged violations of licensing, sales or distribution of tobacco to minors or sales of single cigarettes provisions. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for possession of, or attempt to purchase, a tobacco product. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-309 (1995); 16-11-310 (2001) & 16-11-311 (1993).

Penalties for Sales to Minors

A person may not sell or distribute a tobacco product to a person under 18 years of age. The first through third offenses at any one location within a three-year period is punishable by a verbal notification of violation. The fourth offense is punishable by a written notice of violation to be sent by the Department of Public Health and Human Services to the owner of the establishment. The fifth offense is punishable by an assessment of a tobacco education fee of \$500 against the owner of the establishment who may request a hearing to dispute the assessment. The employee or other person who sold the tobacco product, the establishment manager, and the owner, if the owner is a sole proprietor or partner, shall read and review the tobacco education material. The sixth offense is punishable by a three-month license suspension, and the seventh and subsequent violations are punishable by a one-year license suspension. Upon the sixth and subsequent violations of this section, the Department of Revenue shall review the record of violations and if they decline to initiate suspension proceedings, the violation may not be charged against the licensee. Two years after the first violation, if a person has not received notice of any further violation, a second violation is considered a first violation. In addition, the first and subsequent violations are punishable by a tobacco education fee of \$25 for the employee who

sold the tobacco product if not the owner of the establishment. This law preempts localities from enacting stricter regulations.

MONT. CODE ANN. §§ 16-11-305(1) (1993); 16-11-308 (2001); 16-11-311 (1993).

Photo ID

If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-305(2) & 16-11-311 (1993).

Sign Posting

Signs must be conspicuously posted at each place on the premises at which tobacco products are displayed and sold stating "MONTANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE." Failure to do so is punishable by a civil penalty of \$100. This law preempts localities from enacting stricter regulations.

MONT. CODE ANN. §§ 16-11-304 (1995); 16-11-308 (2001) & 16-11-311 (1993).

Penalties to Minors

A person under 18 years of age who knowingly possesses or consumes any tobacco product commits the offense of possession or consumption of a tobacco product. Violators shall be fined \$50 for the first offense, between \$75 and \$100 for the second offense and between \$100 and \$250 for subsequent offenses, or may be adjudicated on a petition alleging the person to be a youth in need of supervision under the provisions of the Montana Youth Court Act. In addition, the violator may be required to perform community service or to attend a tobacco cessation program.

MONT. CODE ANN. § 45-5-637 (2001).

A person under 18 years of age who knowingly attempts to purchase a tobacco product commits the offense of attempting to purchase a tobacco product. Violation is subject to a fine of \$50 and possible community service for the first offense and a fine of not more than \$100 and possible community service for the second and subsequent offenses.

MONT. CODE ANN. § 45-5-637 (2001).

Placement of Tobacco Products

None

Internet Sales

Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the Department of Revenue detailing specific information about themselves. By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department setting out specified information about the sale. Common carriers are also required to report certain information to the department on all shipments made in the state.

MONT. CODE ANN. §§ 16-11-104 & 16-11-128 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person may not distribute a tobacco product to a person under 18 years of age. Violations are punishable by the same penalties for over-the-counter sales to minors, including the tobacco education fee assessed against the person who made the sale. This law preempts localities from enacting stricter regulations.

MONT. CODE ANN. §§ 16-11-305(1) (1993); 16-11-308 (2001) & 16-11-311 (1993).

Single Cigarettes

A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold. Penalties are the same as for selling or distributing tobacco products to minors. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-307(1); 16-11-308 (2001) & 16-11-311 (1993).

The sale of cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight

of tobacco is prohibited. Violations are punishable by a civil penalty of \$100. The third violation is also subject to a license suspension for three months; and the fourth and subsequent violations are subject to a license suspension of one year. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-307(2); 16-11-308 (2001) & 16-11-311 (1993).

A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards that must be on the container or individual package. Violation is subject to a fine of up to \$10,000.

MONT. CODE ANN. § 16-10-306 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. Vending machines may be located in a restaurant if the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the above requirements. Tobacco products must be in a vending machine that contains only tobacco products. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-306 (1997) & 16-11-311(1993).

F Licensing Requirements

Requirements

Any person who sells cigarettes at retail, including from vending machines, must obtain a license from the Department of Revenue to sell tobacco products. Failure to obtain a license is subject to a civil penalty of \$100. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-303 (1993); 16-11-308 (2001); & 16-11-311 (1993).

Wholesalers and retailers must obtain a license

to sell tobacco products from the Department of Revenue. A person who operates 10 or more cigarette vending machines on premises or locations not his own is treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines on premises or locations not his own is considered a retailer. A license is required for each place of business. Licenses must be renewed annually.

MONT. CODE ANN. §§ 16-11-120 & 16-11-122 (1997).

Fee

\$50 annually for wholesaler license and \$5 annually for a retail license.

MONT. CODE ANN. § 16-11-122 (1997).

License Suspension for Sales to Minors

Selling or distributing tobacco products to minors upon the sixth offense within three years is punishable by a three-month license suspension, and the seventh and subsequent violations within three years are punishable by a one-year license suspension. The Department of Revenue shall review the record of violations and if they decline to initiate suspension proceedings, the violation may not be charged against the licensee. This law preempts localities from enacting stricter ordinances.

MONT. CODE ANN. §§ 16-11-308 (2001) & 16-11-311 (1993).

G Smoker Protection Laws

An employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during non-work hours. This does not apply to use of a lawful product that affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees, or conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment; an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the

use of one or more lawful products by the general public. However, an employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product with stipulations. The person against whom a violation is committed may file a civil action against an employer within one year of the alleged violation. Prior to filing a civil action, an employee shall within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

MONT. CODE ANN. §§ 39-2-313 & 39-2-314 (1993).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$8,476,567 for tobacco control and prevention programs for FY2008 from the state's annual MSA payment. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Budget (H.B. 2, 1st special session 2007) enacted 6/1/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

Statutory Initiative 146, approved by the voters on November 5, 2002, re-designated how Master Settlement Agreement payments would be spent: 32 percent is deposited in a state special revenue account and may only be used to fund state tobacco control programs; 17 percent is deposited in a state special revenue fund and is used to help fund the state Children's Health Insurance Program and programs of the Montana Comprehensive Health Association; 40 percent

is dedicated to the Tobacco Trust Fund per the constitutional referendum in 2000 (see below); and the remaining 11 percent is deposited in the state general fund. These allocations will apply to MSA payments received after June 30, 2003. The legislature retained the authority to override these allocations.

MONT. CODE ANN. § 17-6-602 & 17-6-606 (2007).

Referendum C-35 was passed by the voters of Montana on Nov. 7, 2000 to amend Article XII of the state constitution by adding a new section 4. It directs the legislature to dedicate not less than 40 percent of settlement proceeds received on or after January 1, 2001, to a trust fund, 90 percent of the interest and income of which may be appropriated. Ten percent of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and 10 percent of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes. Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

MONT. CODE ANN. §§ 17-6-601 to 17-6-603 & MT CONSTITUTION Art. XII § 4 (2000).

M Fire Safety Standards

Montana has enacted legislation requiring cigarettes sold in Montana to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on May 1, 2008.

H.B. 461 enacted 4/28/07 and effective 5/1/08.



A Smokefree Air**Public Places**

Smoking is restricted to designated areas in public places and at public meetings. Public places are defined as enclosed indoor areas used by the general public or serving as a workplace, including, but not limited to, retail stores, offices and other commercial establishments, public conveyances, auditoriums, arenas and meeting rooms.

NEB. REV. STAT. §§ 71-5701 et seq. (1979).

Government Buildings

Smoking is prohibited in all vehicles owned or leased by the state and in all buildings and the area within ten feet of any entrance of such buildings, owned, leased or occupied by the state. Exempted are veteran's homes, private residences, facilities under the control of the Department of Health and Human Services and overnight lodging facilities and buildings managed by the Game and Parks Commission, but no more than 25 percent of the overnight lodging facilities shall permit smoking. Designated smoking areas may not exceed 50 percent of the space used by the public in state-owned buildings at the State Fairgrounds. Smoking may be permitted in no more than 40 percent of the residential housing rooms or units owned or leased on each campus under the control of the University of Nebraska or Nebraska State Colleges.

NEB. REV. STAT. § 71-5707 (2000).

Private Workplaces

Smoking is restricted to designated areas in places of work. Private offices occupied exclusively by smokers and entire rooms or halls used for a private function and controlled by the function's sponsor are exempt from this law. In factories, warehouses, and similar places of work not usually frequented by the general public, the Department of Health is required to establish rules to restrict or prohibit smoking in those places where the close proximity of workers or the inadequacy of ventilation causes smoke pollution that is detrimental to the health and

comfort of nonsmoking employees.

NEB. REV. STAT. §§ 71-5701 et seq. (1979).

Schools

Smoking is restricted to designated areas in educational facilities.

NEB. REV. STAT. §§ 71-5701 et seq. (1979).

Child Care Facilities

No person shall smoke at a site where licensed child care programs are provided. This prohibition applies to a child care program located in the home of the provider only during times one or more client's children are present in any part of the home.

NEB. REV. STAT. § 71-5707(3) (2004).

Health Care Facilities

Smoking is restricted to designated areas in hospitals and nursing homes.

NEB. REV. STAT. §§ 71-5701 et seq. (1979).

Restaurants

Smoking is restricted to designated areas in restaurants. Restaurants having a serving area of less than 1,200 square feet may be designated as a smoking area in their entirety. If such a designation is made, signs stating that fact must be posted at all public entrances.

NEB. REV. STAT. §§ 71-5701 et seq. (1979).

Bars

Bars are allowed to be designated as a smoking area in their entirety. If such a designation is made, signs stating that fact must be posted at all public entrances.

NEB. REV. STAT. §§ 71-5701 et seq. (1979).

Penalties/Enforcement

The person in charge of the public place must post notices designating smoking and nonsmoking areas. Any person who smokes in a nonsmoking area is guilty of a Class V misdemeanor. The Department of Health and Human Services Regulation and Licensure or a local public health

department may institute an action in any court with jurisdiction to enjoin any violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

NEB. REV. STAT. §§ 71-5712 & 71-5713 (2003).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 64 cents

Date last changed: October 1, 2002 — from 34 cents to 64 cents

Year first enacted: 1947

NEB REV. STAT. § 77-2602 (2003).

Beginning October 1, 2004, the revenue from 49 cents of the above tax, minus \$520,000 placed in the Municipal Infrastructure Redevelopment Fund, is deposited into the state general fund. The remainder of the revenue is distributed as follows:

- 1) beginning July 1, 1980, one cent is placed in Nebraska Outdoor Recreation Development Cash Fund;
- 2) beginning July 1, 1993, three cents of such tax is placed in the Department of Health and Human Services Finance and Support Cash Fund to carry out sections 81-637 to 81-640 of the statutes;
- 3) beginning October 1, 2002, seven cents is placed in Building Renewal Allocation Fund until the purposes of the Deferred Building Renewal Act have been fulfilled;
- 4) beginning July 1, 2001, and continuing until June 30, 2008, two cents, but not less than \$2,050,000 dollars is placed in the Information Technology Infrastructure Fund;
- 5) beginning July 1, 2001, and continuing until June 30, 2016, \$1 million dollars each fiscal year is placed in the City of the Primary Class Development Fund;
- 6) beginning July 1, 2001, and continuing until June 30, 2016, \$1.5 million dollars each fiscal year is placed in the City of the Metropolitan Class

Development Fund;

7) beginning July 1, 2008, and continuing until June 30, 2009, \$2,050,000 dollars is placed in the Nebraska Public Safety Communication System Cash Fund;

8) Any remaining money is placed in the Nebraska Capital Construction Fund.

NEB. REV. STAT. § 77-2602(2-5) (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$65,786,000

Other Tobacco Products

All other tobacco products: 20% of the purchase price of such tobacco products paid by the first owner or the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others.

NEB. REV. STAT. § 77-4008 (2003).

All revenue from the tax on other tobacco products is deposited in the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund.

NEB. REV. STAT. § 77-4025 (2002).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

Whoever sells or furnishes tobacco products to a minor is guilty of a Class III misdemeanor for each offense.

NEB. REV. STAT. § 28-1419 (1977).

Any licensee who shall sell, give, or furnish in any way tobacco products to a minor or allow to be taken from their place of business any tobacco products shall be guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which

violates this provision, if they have knowledge of the same, shall also be subject to these penalties. In addition, such licensee shall be subject to a revocation and forfeiture of their license at the discretion of the court who hears the complaint.

NEB. REV. STAT. § 28-1425 (1977).

Photo ID

None

Sign Posting

None

Penalties to Minors

A minor who uses tobacco in any form shall be guilty of a Class V misdemeanor. Any minor so charged may be free from prosecution when they furnish evidence for the conviction of the person who sold or gave them tobacco products.

NEB REV. STAT. § 28-1418 (1977).

Any minor who misrepresents their age while purchasing tobacco products shall be guilty of a Class V misdemeanor.

NEB REV. STAT. § 28-1427 (1977).

Placement of Tobacco Products

None

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

Any person or licensee who shall give or furnish tobacco products to a minor is guilty of a Class III misdemeanor. In addition, a licensee shall be subject to the additional penalty of revocation and forfeiture of their license.

NEB. REV. STAT. §§ 28-1419 & 28-1425 (1977).

Smokeless tobacco products, or coupons or rebate offers for such products, shall not be distributed for promotional purposes by manufacturers, wholesalers, retailers, or representatives of these people. Violators of this law may be fined a civil penalty of \$500 for the first offense, and between \$600 and \$3,000 for subsequent offenses. Each

violation is considered a separate offense.

NEB. REV. STAT. §§ 69-1901 et seq. (1989).

Single Cigarettes

It is unlawful for any person to sell or distribute in this state, or import or cause to be imported into this state any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in section Four of the Federal Cigarette Labeling and Advertising Act. Any person who knowingly violates this section is guilty of a Class IV felony.

NEB. REV. STAT. §§ 59-1520 & 59-1522 (2001).

E Restrictions on the Sale of Tobacco Products In Vending Machines

Placement

Vending machines are prohibited except when located in offices, businesses, plants or factories not open to the public, or in a room where alcohol is dispensed in establishments holding licenses under the Nebraska Liquor Control Act. Localities are specifically allowed to enact stronger ordinances.

NEB. REV. STAT. §§ 28-1429.01 & 28-1429.02 (1992).

Penalty

Violation of the restrictions on placement of vending machines is a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the license to sell tobacco, and upon conviction for a third or subsequent offense, the license to sell tobacco products shall be permanently revoked.

NEB. REV. STAT. § 28-1429.02 (1992).

F Licensing Requirements

Requirements

Every person, partnership, limited liability company, or corporation must obtain a license from the clerk or finance director of the city, town or village where their place of business is located to sell, keep for sale, or give away in course of trade, any cigars, tobacco, cigarettes, or cigarette material to anyone. A separate license is required for each place of business. Licenses are valid for

one year unless suspended or revoked. Dealing in tobacco products without a license is a Class III misdemeanor for each offense.

NEB. REV. STAT. §§ 28-1420 to 28-1423 (1993).

Fee

The annual license fee for retailers is \$10 to \$25, depending on the class/size of the city. Licenses for wholesalers are \$100 if their combined annual sales are over 150,000 packages of tobacco, and \$15 if their annual sales are below that amount.

NEB. REV. STAT. § 28-1423 (1993).

License Suspension for Sales to Minors

A licensee who sells, gives or furnishes tobacco products to a minor may have their license revoked at the discretion of the court hearing the complaint.

NEB. REV. STAT. § 28-1425 (1977).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

When the judgment, decree, or final order appealed from directs the payment of money, the bond, deposit of United States Government bonds, or cash deposit shall be the lesser of the amount of the judgment plus interest and applicable court costs, 50 percent of the appellant's net worth, or \$50 million. If an appellee proves by a preponderance of the evidence that an appellant is dissipating or diverting assets outside the ordinary course of business to avoid the payment of a judgment, the court may enter any orders necessary to protect the appellee and require the appellant to provide a bond, deposit of United

States Government bonds, or cash deposit up to and including the full amount of the judgment.

NEB. REV. STAT. § 25-1916 (2004).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$2,500,000 for tobacco control and prevention programs from the state's annual MSA payment in FY2008. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Budget (L.D. 321) enacted 5/21/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation, except that of such revenue received on or after April 1, 2005, \$2.5 million shall be credited annually to the Tobacco Prevention and Control Cash Fund. Subject to the terms and conditions of such litigation, money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund.

NEB. REV. STAT. § 71-7608 (2004).

Non-Monetary Provisions

The Tobacco Prevention and Control Cash Fund was created. The fund shall be used for a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services which includes, but is not limited to: 1) community programs to reduce tobacco use, 2) chronic disease programs, 3) school programs, 4) statewide programs, 5) enforcement, 6) counter-marketing, 7) cessation programs, 8) surveillance and evaluation, and 9) administration.

NEB. REV. STAT. § 71-5714 (2003).

M Fire Safety Standards

None



A Smokefree Air**Public Places**

Smoking tobacco is prohibited in indoor places of employment, including, but not limited to: Child care facilities, movie theatres, video arcades, government buildings and public places, malls and retail establishments, all areas of grocery stores, all indoor areas within restaurants, within all public and private school buildings and on all public and private school property. Smoking is still allowed in areas within casinos where loitering by minors is prohibited by state law; stand-alone bars, taverns and saloons; strip clubs or brothels; retail tobacco stores and private residences, including those which may serve as an office workplace, except if used as a child care, adult day care or health care facility.

NEV. REV. STAT. § 202.2483 (2006).

Government Buildings

Smoking tobacco is prohibited in indoor places of employment, including government buildings, which are defined as any building or office space owned or occupied by: any component of the University and Community College System of Nevada and used for any purpose related to the system; the state of Nevada and used for any public purpose; or any county, city, school district or other political subdivision of the state and used for any public purpose.

NEV. REV. STAT. § 202.2483 (2006).

Private Workplaces

Smoking tobacco is prohibited in indoor places of employment, including, but not limited to: Child care facilities, movie theatres, video arcades, government buildings and public places, malls and retail establishments, all areas of grocery stores and all indoor areas within restaurants. Place of employment is defined as an enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies

and reception areas.

NEV. REV. STAT. § 202.2483 (2006).

Schools

Smoking tobacco is prohibited within school buildings and on school property/grounds of any public or private school. Smoking is also prohibited in any building or office space owned or occupied by any component of the University and Community College System of Nevada and used for any purpose related to the system.

NEV. REV. STAT. § 202.2483 (2006).

Child Care Facilities

Smoking is prohibited in child care facilities, including private residences used as child care facilities. "Child care facility" is defined as an establishment operated and maintained to furnish care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children, an on-site child care facility or an outdoor youth program.

NEV. REV. STAT. § 202.2483 (2006).

Health Care Facilities

Smoking is prohibited in indoor places of employment, which includes health care facilities. Health care facilities in a private residence are specifically included.

NEV. REV. STAT. § 202.2483 (2006).

Restaurants

Smoking is prohibited in indoor places of employment, including all indoor areas within restaurants. Restaurant is defined as a place that gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

NEV. REV. STAT. § 202.2483 (2006).

Bars

Smoking is allowed in stand-alone bars, taverns

and saloons as well as strip clubs and brothels. A stand-alone bar is defined as an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this Act. In addition, a stand-alone bar, tavern or saloon must be housed in either: a physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited, or a completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

NEV. REV. STAT. § 202.2483 (2006).

Penalties/Enforcement

All public places and places of employment where smoking is prohibited shall be designated by the specified signs. A person who violates this law shall be guilty of a misdemeanor, and, in addition, liable for a civil penalty of \$100 for each violation. Health authorities or local police officers shall, within their respective jurisdictions, enforce the provisions of this law.

NEV. REV. STAT. §§ 202.2483 (2006), 202.2492 (1999) & 202.24925 (1999).

Note: A court decision issued by Nevada District Court Judge Douglas Herndon in January 2007 upheld Nevada's smokefree air law, but declared the criminal penalty provisions of the law unconstitutional. That means violation of the law can be punished by the civil penalty of \$100 only.

Preemption

Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards in the above law.

NEV. REV. STAT. § 202.2483(4) (2006).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 80 cents

Date last changed: July 22, 2003 — from 35 cents

to 80 cents

Year first enacted: 1947

NEV. REV. STAT. § 370.165 (2003).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$130,060,000

Other Tobacco Products

All other tobacco products: 30% of the wholesale price.

NEV. REV. STAT. § 370.450 (1997).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The state Attorney General shall conduct random, unannounced inspections at locations where tobacco and products made from tobacco are sold, distributed or offered for sale, to inspect for and enforce compliance with laws regarding sales to minors and restrictions on tobacco vending machines. The Attorney General may contract with local law enforcement officials or any other person who will perform the inspection in a fair and impartial manner. The inspector may enlist a child under 18 to assist with the inspection if written consent is obtained from the child's parent, the child states their true age and that they are under 18 if questioned during the inspection, the child's appearance is not altered to make them appear older and a picture is taken of the child immediately before the inspection and retained. An inspector assisted by a child shall inform the establishment that an inspection has been performed and the result, and prepare a written report. The Attorney General shall compile the results of the inspections performed and submit the report as required by federal law. An agency, board, commission or political subdivision of this state shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display, or promotion of tobacco products than those provided by this law.

NEV. REV. STAT. §§ 202.2496 (1995); 202.2497 (1995) & 202.249 (2003).

Penalties for Sales to Minors

It is unlawful for any person to sell, distribute or offer to sell tobacco in any form or cigarette papers to a child under the age of 18 years. Violators shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. A person shall be deemed to be in compliance with this provision if, before they sell or distribute any tobacco product, they demand valid proof of age, are presented with the required identification and reasonably relies upon the information presented to them. The employer of a child who is under 18 years of age may, for the purpose of allowing the child to handle or transport tobacco or products made from tobacco in the course of the child's lawful employment, provide tobacco or products made from tobacco to the child. With respect to any sale made by their employee, the owner of a retail establishment shall be deemed to be in compliance with the provisions for sales or distribution to minors if they had no actual knowledge of the sale and establishes and carries out a continuing program of training for their employees which is reasonably designed to prevent violations. An agency, board, commission or political subdivision of this state shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display, or promotion of tobacco products than those provided by this law.

NEV. REV. STAT. §§ 202.249 (2003) & 202.2493 (2007).

Photo ID

None

Sign Posting

The owner of a retail establishment shall, whenever any product made from tobacco is being sold or offered for sale at the establishment, display prominently at the point of sale a notice indicating that the sale of cigarettes and other tobacco products to minors is prohibited by law; and the retailer may ask for proof of age to comply with this prohibition. A person who violates this shall be punished by a fine of not more than \$100.

NEV. REV. STAT. § 202.2493(6) (2007).

Penalties to Minors

None

Placement of Tobacco Products

It is unlawful for any retailer to sell cigarettes through the use of any type of display, which contains cigarettes and is located in any area to which customers are allowed access; and from which cigarettes are readily accessible to a customer without the assistance of the retailer, except a vending machine used in compliance with NRS 202.2494. A person who violates this subsection shall be punished by a fine of not more than \$500.

NEV. REV. STAT. § 202.2493(7) (2007).

Internet Sales

A person must obtain a retail license to sell tobacco products before accepting an order for a delivery sale. A person shall not cause the mailing or shipment of cigarettes in connection with an order for a delivery sale unless the person first obtains from the prospective purchaser a certification, which includes reliable confirmation the person is 18 or older and a statement attesting to this fact. The person must then make a good faith effort to verify the information using a federal or commercially available database. The person is also required to use a delivery service that requires the purchaser placing the order for the delivery sale, or an adult designated by that purchaser, to sign to accept delivery of the shipping container; and a valid identification that was issued by a governmental entity and bears a photograph of the person who signs to accept delivery of the shipping container showing that the person is at least 18 years of age. The Department of Revenue shall levy a civil penalty for violation of not more than \$1,000 for the first violation and \$1,000 to \$5,000 for subsequent violations.

NEV. REV. STAT. §§ 370.321 to 370.329 (2005).

It is unlawful for a person to knowingly sell or distribute cigarettes, cigarette paper, tobacco of any description or products made from tobacco to a child under the age of 18 years through the use of the Internet. Violators shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. Every person who sells or distributes cigarettes, cigarette paper, tobacco of any description or products made from tobacco through the use of the Internet shall adopt a policy to prevent a child under the age of 18 years from obtaining these products from the person through the use of the Internet. The policy must

include a method for ensuring that the person who delivers such items obtains the signature of a person who is over the age of 18 years when delivering the items, that the packaging or wrapping of the items when they are shipped is clearly marked with the word “cigarettes” or the words “tobacco products,” and that the person complies with the provisions of 15 U.S.C. § 376 (the Jenkin’s Act). A person who fails to adopt a policy is guilty of a misdemeanor and shall be punished by a fine of not more than \$500. An agency, board, commission or political subdivision of this state shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display, or promotion of tobacco products than those provided by this law.

NEV REV. STAT. §§ 202.249 (2003) & 202.24935 (2001).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for any person to distribute tobacco in any form or cigarette papers to a child under the age of 18 years. Violators shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. A person shall be deemed to be in compliance with this provision if before he distributes any tobacco product to another, he demands valid proof of age, is presented with the required identification and reasonably relies upon the information presented to him. An agency, board, commission or political subdivision of this state shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display, or promotion of tobacco products than those provided by this law.

NEV REV. STAT. §§ 202.249 (2003) & 202.2493 (1995).

Single Cigarettes

A person shall not sell, distribute or offer to sell tobacco products in any form other than in an unopened package that originated with the manufacturer and bears any health warning required by federal law. A person who violates this section shall be punished by a fine of \$100 and a civil penalty of \$100. An agency, board, commission or political subdivision of this state shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display, or promotion of tobacco

products than those provided by this law.

NEV REV. STAT. §§ 202.249 (2003) & 202.2493(1) (1995).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A cigarette vending machine may be placed in a public area only if persons who are under 21 years of age are prohibited from loitering in that area. This applies to stand-alone bars and gaming facilities. A coin-operated vending machine containing cigarettes must not be used to dispense any product not made from tobacco. An agency, board, commission or political subdivision of this state shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display, or promotion of tobacco products than those provided by this law.

NEV REV. STAT. § 202.2494 & 202.249 (2003).

Penalty

No specific penalty listed for violating the law restricting placement of tobacco product vending machines.

F Licensing Requirements

Requirements

Retailers and wholesalers must obtain a license to sell cigarettes from the Department of Revenue. A separate license is required for each place of business.

NEV REV. STAT. § 370.080 (1977).

Wholesale and retail dealers must obtain a license to sell tobacco products other than cigarettes from the Department of Revenue, except a retail dealer that has a retail dealer license to sell cigarettes need not obtain a license under this section. Dealing in tobacco products other than cigarettes without a license is a misdemeanor.

NEV REV. STAT. § 370.445 (1997).

Fee

Annual fee for each wholesale cigarette dealer’s license is \$150. No fee is charged for a retail cigarette dealer’s license.

NEV REV. STAT. § 370.150 (1977).

License Suspension for Sales to Minors
None

G Smoker Protection Laws

It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee or discharge or otherwise discriminate against any employee concerning his compensation, terms, conditions or privileges of employment, because they engage in the lawful use in this state of any product outside the premises of the employer during non-working hours, if that use does not adversely affect their ability to perform their job or the safety of other employees. Any wages and benefits lost as a result of a violation may be recovered by civil action.

NEV. REV. STAT. § 613.333 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

If an appeal is taken of a judgment in a civil action involving a signatory, or a successor in interest or affiliate of a signatory, of the Master Settlement Agreement is required to give a bond in order to secure a stay of execution of the judgment during the pendency of any or all such appeals, the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed \$50 million. If the plaintiff proves by a preponderance of evidence that an appellant who posted a bond is purposefully dissipating or diverting assets outside of the ordinary course of its business to evade the ultimate payment of the judgment, the court may, if it determines that such an order is necessary to prevent such dissipation or diversion, require the appellant to post a bond in an amount that does not exceed the full amount of the judgment. The provisions of this section do not limit the discretion of a court, for good cause

shown, to set the bond on appeal in an amount less than the amount otherwise required by law.

NEV. REV. STAT. § 20.035 (2005).

**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding

Allocated \$3,300,000 for tobacco control and prevention programs for FY2008 from the state's annual MSA payment. This is the first year of the FY2008-FY2009 biennium.

FY2008 Allocation based on 1999 law/state Department of Health recommendations, effective 7/1/07.

The Fund for a Healthy Nevada was created in the state Treasury to receive 50 percent of the annual Master Settlement Agreement payments. The Department of Health and Human Services then can allocate the money in a given fiscal year based on the following percentages: not more than 15 percent of available money in the fund to programs that help prevent, reduce or treat tobacco use; allocate not more than 30 percent of available revenues to pay for prescription drugs, pharmaceutical services and other benefits for senior citizens; allocate not more than 30 percent of available revenues to the Aging Services Division of the department for programs that help seniors with independent living; allocate \$200,000 for funding assisted living facilities; allocate not more than 10 percent of revenues for programs that improve health services for children; allocate not more than 10 percent of available revenues for programs that help improve the health and well-being of persons with disabilities; and not more than 5 percent to subsidize a portion of the cost of providing prescription drugs, pharmaceutical services or other benefits to persons with disabilities.

NEV. REV. STAT. §§ 439.600 to 439.665 (2007).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in certain specified places, including restaurants and bars, see N.H. REV. STAT. § 155.66 for a list of places. Smoking may be permitted in enclosed places of public access and publicly-owned buildings and offices, including workplaces, other than those listed, in effectively segregated smoking-permitted areas designated by the person in charge. Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated. Exempt from this law are guest rooms of hotels, motels and resorts; public conveyances rented out for private purposes; buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or when they are rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function and not the organization; halls, ballrooms, dining rooms and conference rooms of hotels, motels, restaurants, resorts, and publicly accessible buildings or portions thereof, excluding those that are publicly owned, when rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function; resident rooms in dormitories, public housing facilities and in facilities such as nursing homes, sheltered care facilities, and residential treatment and rehabilitation facilities, and prisons and detention facilities; other health care facilities; and patients with extraordinary medical conditions, psychiatric disorders, or patients in an alcohol and drug withdrawal program, provided that the patient's physician has written a prescription or an order allowing the patient to smoke.

N.H. REV. STAT. ANN. §§ 155:64 to 155:77 (2007).

Government Buildings

Smoking is restricted to effectively segregated areas in all buildings, offices, and facilities owned, leased, or rented by state, county, or municipal governments, or agencies supported by funds from the collection of federal, state, county, or

municipal taxes. This definition includes legislative offices and other areas used by legislative bodies, court-rooms, jury rooms, recreation facilities, penal and detention institutions, public housing, subsidized housing, polling places and public meeting and hearing rooms. If smoking can not be effectively segregated, it shall be prohibited entirely.

N.H. REV. STAT. ANN. §§ 155:64 to 155:77 (2007).

Private Workplaces

Smoking is restricted to effectively segregated areas in all private enclosed workplaces that employ more than four people or volunteers. If smoking can not be effectively segregated, it shall be prohibited entirely.

N.H. REV. STAT. ANN. §§ 155:64 to 155:77 (2007).

Schools

No person shall use any tobacco product in any public educational facility or on the grounds of any public educational facility.

N.H. REV. STAT. ANN. § 126-K:7 (1997).

Smoking is prohibited in public educational facilities serving grades kindergarten through 12th grade at any time. Smoking is restricted to effectively segregated areas in postsecondary educational institutions receiving funds appropriated by the state legislature. Resident rooms in dormitories operated by postsecondary institutions are specifically exempted.

N.H. REV. STAT. ANN. §§ 155.66 & 155.67 (2007).

Child Care Facilities

Smoking is prohibited in licensed child care agencies during the hours of operation. Smoking is allowed in foster family homes or foster family group homes.

N.H. REV. STAT. ANN. §§ 155:64 to 155:77 (2007).

Health Care Facilities

Smoking is prohibited in hospitals and other acute care facilities. Other health care facilities and resident rooms in facilities such as nursing homes, sheltered care facilities, and residential

treatment and rehabilitation facilities are specifically exempted, but shall follow any procedures established by rule. Patients with extraordinary medical conditions, psychiatric disorders, or patients in an alcohol and drug withdrawal program, provided that the patient's physician has written a prescription or an order allowing the patient to smoke are also exempted.

N.H. REV. STAT. ANN. §§ 155:64 to 155:77 (2007).

Restaurants

Smoking is prohibited in restaurants.

N.H. REV. STAT. ANN. § 155:66 (2007).

Bars

Smoking is prohibited in cocktail lounges defined as that portion or specified area of a restaurant, hotel, motel, convention center or resort which is used primarily to serve liquor or other alcoholic beverages, irrespective of whether or not food is also served there.

N.H. REV. STAT. ANN. §§ 155:65 & 155:66 (2007).

Penalties/Enforcement

The person in charge of the enclosed place shall develop or oversee the development of written policies to comply with the regulations of this law that shall specify the area or areas where smoking is permitted in the building or facility. The appropriate signs shall be posted for notification of smoking restrictions in all facilities regulated under this law. Any person in charge who repeatedly fails to comply with any of the provisions of this Act and rules adopted pursuant to it or any person who smokes where smoking is prohibited shall be guilty of a violation and shall be subject to a fine of not less than \$100. The person in charge or his designee may call law enforcement authorities if any person refuses to refrain from smoking in an area where smoking is prohibited. The commissioner of the Department of Health and Human Services or his designee shall investigate any complaint regarding noncompliance.

N.H. REV. STAT. ANN. §§ 155:64 to 155:77 (2007).

Other

The Commissioner of the Department of Health and Human Services may grant a waiver to the above law under specified circumstances.

N.H. REV. STAT. ANN. § 155:75 (1995).

Preemption

No specific provision concerning preemption in state law. However, stronger local ordinances are not allowed due to a New Hampshire Supreme Court decision (see below).

The New Hampshire Supreme Court ruled unanimously that the New Hampshire state Clean Indoor Air Act constitutes a comprehensive and detailed statutory scheme, and because there was no provision permitting additional municipal regulation, the state law preempts local ordinances regarding indoor smoking more stringent than state law.

J.T.R. Colebrook, Inc. v. Town of Colebrook (2003).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.08

Date last changed: July 1, 2007 – from 80 cents to \$1.08

Year first enacted: 1939

N.H. REV. STAT. ANN. § 78:7 (2007).

Revenue from 37 cents of the cigarette tax is deposited in the state general fund. Revenue from the remainder of the cigarette tax is deposited in the Education Trust Fund.

N.H. REV. STAT. ANN. § 78:32 (1999).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$142,008,000

Other Tobacco Products

Loose tobacco and smokeless tobacco: 19% of the wholesale sales price

N.H. REV. STAT. ANN. § 78:7-C (2003).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The New Hampshire state Liquor Commission shall have the primary responsibility for enforcing this chapter. Local, county, and state law enforcement officers shall also have jurisdiction to enforce

this chapter. Such authority may be delegated to agents working under their authority.

N.H. REV. STAT. ANN. § 126-K:9 (1998).

Penalties for Sales to Minors

No person shall sell, give, or furnish, or cause or allow or procure to be sold, given, or furnished, tobacco products to a minor. Penalties for violation are not more than \$250 for the first offense; not more than \$500 for the second offense; and between \$500 and \$1,500 for the third offense, and the license to sell tobacco products shall be suspended for a period of 10 consecutive days but not exceeding 30 consecutive days. For the fourth offense, the commission shall issue an administrative fine between \$750 and \$3,000 and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days; or a suspension without a fine of 40 consecutive days. For any violation beyond the fourth, the commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principle thereof for a period of one year. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within three years of the date of the violation being considered. In addition to the civil penalty above, a person who violates this section shall be guilty of a violation for a first offense and a misdemeanor for each subsequent offense.

N.H. REV. STAT. ANN. § 126-K:4 (2002).

No person shall sell, give, or furnish rolling papers to a minor. The fines for violations shall not exceed \$250 for the first offense, \$500 for the second offense, and \$750 for the third and subsequent offenses.

N.H. REV. STAT. ANN. § 126-K:4-a (2002).

No person shall sell, give, or furnish tobacco products to a minor who has a note from an adult requesting such sale, gift, or delivery. Penalties for violation are the same as selling tobacco products to minors (see above).

N.H. REV. STAT. ANN. § 126-K:8 (2002).

Photo ID

Any person responsible for monitoring sales from a tobacco vending machine or any person making the sale of tobacco products, which vending

machine or other sale is to be made to any person who does not appear to be at least 18 years of age, shall require the purchaser to furnish specified photographic identification. Photographic identification shall be consistent with the appearance of the person, and shall be correct and free of alteration, erasure, blemish, or other impairment. It is a defense to prosecution if the person falsely represented in writing and supported by some official documents that the person was 18 years of age or older; the appearance of the person was such that an ordinary and prudent person would believe such person to be at least 18 years of age or older; and the sale was made in good faith relying on such written representation and appearance in the reasonable belief that the person was actually 18 years of age or over.

N.H. REV. STAT. ANN. § 126-K:3 (1998).

Sign Posting

When issuing or renewing a retailer's license, the retailer will be furnished with a sign which reads as follows: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 AND THE PURCHASE, POSSESSION, OR USE OF TOBACCO PRODUCTS BY PERSONS UNDER AGE 18. WARNING: VIOLATORS OF THESE PROVISIONS MAY BE SUBJECT TO A FINE." Signs shall be posted at any location where tobacco products are sold or distributed. The Commissioner of Revenue Administration shall adopt rules relative to placement of these warning signs in areas where tobacco products are sold or distributed.

N.H. REV. STAT. ANN. § 78:2-I-b (1998).

Penalties to Minors

No person under 18 years of age shall purchase, attempt to purchase, use, or possess any tobacco product. A person under 18 years of age shall not misrepresent their age for the purpose of purchasing tobacco products. Violators shall be guilty of a violation and punished by a fine of up to \$100 for each offense or shall be required to complete up to 20 hours of community service for each offense, or both. Where available, punishment may also include participation in an educational program. The prohibition on possession of tobacco products shall not prohibit minors from performing the necessary handling of tobacco products during the

duration of their employment.

N.H. REV. STAT. ANN. § 126-K:6 (1998).

No person under 18 years of age shall purchase, attempt to purchase, possess, or use any rolling paper. Any minor who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense.

N.H. REV. STAT. ANN. § 126-K:4-A (2002).

Placement of Tobacco Products

None

Internet Sales

None

Other Provisions

Nothing in this chapter shall be construed to restrict the power of any county, city, town, village, or other subdivision of the state to adopt local laws, ordinances, and regulations that are more stringent than state youth access laws.

N.H. REV. STAT. ANN. § 126-K:14 (2002).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person may distribute or offer to distribute samples of tobacco products in a public place. This prohibition does not apply to areas where minors are denied access; stores where a retailer's license has been issued; and factory sites, construction sites, conventions, trade shows, fairs or motorsport facilities in areas to which minors are denied access. Penalties for violation are the same as those provided for selling, giving or furnishing tobacco products to minors.

N.H. REV. STAT. ANN. § 126-K:5 (2002).

Single Cigarettes

All tobacco products shall be sold in their original packaging bearing the Surgeon General's warning. The sale of single cigarettes is also prohibited. Penalties are the same as those provided for selling, giving, or furnishing tobacco products to minors.

N.H. REV. STAT. ANN. § 126-K:8 (2002).

No person shall knowingly sell or offer to sell a

package of tobacco products or affix the required stamp or imprint on a package of tobacco products unless that package of tobacco products complies with all federal laws regarding the placement of labels, warnings, or any other information upon a package of tobacco products. Violation is subject to a 90 day license suspension for the first violation, loss of license for a year for subsequent violations, and a fine not to exceed \$10,000.

N.H. REV. STAT. ANN. § 78:34 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are permitted under the following conditions: if they are equipped with a lock-out device which prevents the machine from being operated until the person responsible for monitoring sales from the machine disables the lock; and if they are located in establishments where an employee or agent of the business will be present to monitor the machine when the establishment is open for business. The locking device must be of a design that prevents it from being left in an unlocked condition, and that will allow only a single sale when activated. Locking devices are not required on machines located in areas where minors are prohibited by law. Vending machines shall be located such that they are well within the premises and close enough to the person controlling the machine that such person can determine the age of any person requesting permission to use the machine. No sales of tobacco are permitted from a vending machine that also offers for sale any non-tobacco product.

N.H. REV. STAT. § 78:12-d (2002).

Penalty

Penalties for violation of the restrictions on tobacco product vending machines are not more than \$100 for a first offense and not more than \$200 for a second offense. For the third and subsequent violations, penalties are the same as selling tobacco products to minors.

N.H. REV. STAT. ANN. § 78:12-d (2002).

Sign Posting

Signs shall be posted on tobacco product vending machines informing customers of the current state

law regarding tobacco sales to minors.

N.H. REV. STAT. ANN. § 78:12-d (2002).

F Licensing Requirements

Requirements

Retailers, wholesalers, manufacturers, samplers, and vending machine operators must obtain a license to sell or distribute tobacco products for each outlet/vending machine under their control from the Commissioner of Revenue Administration. A separate license is required for each place of business. Licenses are to be renewed each even numbered year. Any person who shall sell, offer for sale or possess with intent to sell any tobacco products without such license shall be guilty of a misdemeanor.

N.H. REV. STAT. ANN. § 78:2 (1998).

Fee

\$10 for a retailer's license; \$250 for a wholesaler's license; \$100 for a manufacturer's license; \$10 for a sampler's license; \$70 for a vending machine operator's license; and \$10 for each vending machine location.

N.H. REV. STAT. ANN. § 78:2 (1998).

License Suspension for Sales to Minors

No person shall sell, give, or furnish, or cause or allow or procure to be sold, given, or furnished, tobacco products to a minor. License specific penalties start with a suspension of the license to sell tobacco products for 10 consecutive days, not to exceed 30 consecutive days for the third violation. For the fourth violation the license to sell tobacco products shall be suspended for at least 10 days, not to exceed 40 days with an administrative fine or 40 consecutive days without an administrative fine. For any subsequent violations the license to sell tobacco products shall be revoked for the business or business entity at the location where the infraction occurred or any principal thereof for a period of one year from the date of revocation. The New Hampshire Liquor Commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within three years of the date of the violation being considered.

N.H. REV. STAT. ANN. § 126-K:4 (2002).

G Smoker Protection Laws

No employer shall require as a condition of employment that any employee or applicant for employment abstain from using tobacco products outside the course of employment, as long as the employee complies with any workplace policy.

N.H. REV. STAT. ANN. § 275:37-A (1991).

H Advertising & Promotion

None

I Product Disclosure

The Commissioner of the Department of Health and Human Services shall obtain annually from the Commonwealth of Massachusetts Department of Health, or other sources if they become available, a public report containing the list of additives for each brand of tobacco products sold.

N.H. REV. STAT. ANN. § 126-K:15 (1999).

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits in New Hampshire.

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$1,350,000 for tobacco control and prevention programs in FY2008. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Budget (H.B. 1) enacted 6/29/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

There is hereby established in the office of the state Treasurer the Comprehensive Cancer Plan Fund, to be administered by the Department of Health and Human Services. Money in the fund is earmarked for specific programs, including 67.4 percent of the money in the fund is to be used annually to fund a state tobacco use prevention program.

N.H. REV. STAT. ANN. § 126-A:64 (2007).

The FY2008-FY2009 Budget Authorization bill

(H.B. 2) eliminated the Tobacco Use Prevention Fund and transferred any money remaining in the fund to the state general fund.

H.B. 2 enacted 6/29/07 and effective 7/1/07.

An education trust fund was established in the state treasury for specified purposes. Forty million in Master Settlement Agreement money is transferred annually to the fund.

N.H. REV. STAT. ANN. § 198.39(l)(i) (2006).

Non-Monetary Provisions

A tobacco use prevention and cessation program was established in the Department of Health and Human Services, which shall be administered with funds appropriated to the department for such purpose. An advisory committee to the department on the criteria for expenditure of funds was also established. The membership consists of among others one representative each from the New Hampshire Public Health Association; American Heart Association; American Lung Association; American Cancer Society, New Hampshire Medical Society; New Hampshire Hospital Association; and the Community Law Enforcement Agency. In addition there will be two representatives of the Smoke Free New Hampshire Alliance, of which one shall be a minor and one a community coalition member. Members serve three year terms.

N.H. REV. STAT. ANN. §§ 126-K:15 to 126-K:19 (2007).

to exceed \$1,000 if more than 1,000 cigarettes. In addition, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification shall be subject to a civil penalty not to exceed \$10,000 for each such false certification.

N.H. REV. STAT. ANN. §§ 339-F:1 to 339-F:11(2007).



M Fire Safety Standards

To help prevent cigarette-caused fires, on and after October 1, 2007, no cigarettes shall be sold or offered for sale in New Hampshire unless: the cigarettes have been tested in accordance with the test method prescribed in RSA 339-F:3; the cigarettes meet the performance standard specified in RSA 339-F:4; a written certification has been filed by the manufacturer with the Commissioner of Safety and the New Hampshire Department of Justice in accordance with RSA 339-F:6; and the cigarettes are marked in accordance with RSA 339-F:8. Any wholesaler, agent, or other person or entity who knowingly sells cigarettes at wholesale in violation of the above shall be subject to a civil penalty not to exceed \$10,000 for each sale. Any retailer who knowingly sells cigarettes in violation is subject to a civil penalty not to exceed \$500 if the sale involves 1,000 or less cigarettes and not



A Smokefree Air

Public Places

Smoking is prohibited in almost all indoor public places and workplaces, including restaurants and bars. "Indoor public place" is defined as a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public (see statute citation for list of specific places covered). This prohibition does not apply to: cigar bars and cigar lounges, tobacco retail establishments that make 51 percent or more of their sales from tobacco products; tobacco businesses when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco; private homes, private residences, and private automobiles; the floors of casinos and casino simulcasting facilities; and up to 20 percent of rooms in hotels/motels.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Government Buildings

Smoking is prohibited in "indoor public places," the definition of which includes an office or building owned, leased or rented by the state or by a county or municipal government.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Private Workplaces

Smoking is prohibited in "workplaces," which are defined as structurally enclosed locations or portions thereof at which a person performs any type of service or labor. Smoking is also prohibited in "indoor public places," the definition of which includes all private workplaces that are open to the public.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Schools

Smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of

whether the area is an indoor public place or is outdoors.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Child Care Facilities

Smoking is prohibited in "indoor public places," the definition of which includes licensed child care centers. Smoking is also prohibited in "workplaces," that are defined as structurally enclosed locations or portions thereof at which a person performs any type of service or labor.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

A resource (a.k.a. foster) family parent shall maintain a smokefree environment in all indoor areas of the home, and in all vehicles used to transport a child in placement. Smoking may be permitted outdoors when no child in placement is present. The resource family parent shall also prohibit smoking and the use of smokeless tobacco by children in placement.

N.J. ADMIN. CODE § 10:122C-7.2(a)3 (2007).

Health Care Facilities

Smoking is prohibited in "indoor public places" the definition of which includes health care facilities and the patient waiting rooms of health care providers. Smoking is also prohibited in "workplaces," that are defined as structurally enclosed locations or portions thereof at which a person performs any type of service or labor.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Restaurants

Smoking is prohibited in "indoor public places," the definition of which includes restaurants or other establishments where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Bars

Smoking is prohibited in "indoor public places," the definition of which includes bars. Cigar bars and cigar lounges are exempt if in the calendar year ending December 31, 2004, the cigar bar

or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. The registration shall remain in effect for one year and shall be renewable only if in the preceding calendar year, the cigar bar or lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and the cigar bar or cigar lounge has not expanded its size or changed its location since December 31, 2004.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Penalties/Enforcement

The person having control of an indoor public place or workplace shall place in every public entrance to the indoor public place or workplace a sign, which shall be located so as to be clearly visible to the public and shall contain letters or a symbol which contrast in color with the sign, indicating that smoking is prohibited or permitted in establishments allowed to do so. The person having control of an indoor public place or workplace shall order any person smoking in violation of this act to comply. A person, after being so ordered, who continues to smoke is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. The Department of Health and Senior Services or the local board of health or the board, body or officers exercising the functions of the local board of health, upon written complaint or having reason to suspect that an indoor public place or workplace may be in violation, shall, by written notification, advise the person having control of the place accordingly and order appropriate action to be taken. A person receiving that notice who fails or refuses to comply is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.

N.J. STAT. ANN. §§ C.26:3D-55 to C.26:3D-64 (2006).

Preemption

The provisions of this act shall supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning

smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under this act.

N.J. STAT. ANN. § C.26:3D-63 (2006).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.575

Date last changed: July 15, 2006 – from \$2.40 to \$2.575

Year first enacted: 1948

N.J. STAT. ANN. § 54:40A-8 (2006).

The first \$1 million in cigarette tax revenue is deposited annually in the Cancer Research Fund, to be appropriated toward funding of the New Jersey State Commission on Cancer Research or to projects authorized and approved by the commission. After the above deposit, beginning July 1, 2006 and each fiscal year thereafter, the next \$365 million of cigarette tax revenue collected is dedicated to the Health Care Subsidy Fund.

N.J. STAT. ANN. §§ 26:2H-18.58g (2004) & 54:40A-37.1 (1990).

In 2004, the New Jersey Economic Development Authority (NJEDA) was authorized to issue “bonds” primarily for the purpose of providing revenue for the state in any fiscal year starting with FY2005. NJEDA then will establish and maintain a Cigarette Tax Securitization Proceeds Fund where proceeds from these sales minus required costs will be deposited. These bonds are payable solely by revenue from the cigarette tax starting in FY2007. The required revenue from the cigarette tax will be set aside in a Dedicated Cigarette Tax Revenue Fund in the Department of Treasury.

N.J. STAT. ANN. §§ 34:1B-21.16 to 34:1B-21.22 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$788,891,000

Other Tobacco Products

Moist snuff: 75 cents/oz.;

All other tobacco products: 30% of the wholesale price

N.J. STAT. ANN. § 54:40B-3 (2001).

Beginning July 1, 2006, the first \$5 million of other tobacco products tax revenue collected in a fiscal year is dedicated to the Health Care Subsidy Fund.

N.J. STAT. ANN. § 26:2H-18.58g (2004).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

The Commissioner of Health and Senior Services is authorized to enforce the prohibition on the sale and commercial distribution of tobacco products to persons less than 19 years of age. The commissioner may delegate the enforcement authority to local health agencies, subject to the availability of sufficient funding. Grants from the Special Projects and Development Fund shall be made on an annual basis to local health agencies for local enforcement efforts in an amount based on the number of cigarette retail dealer and vending machine licenses issued within their jurisdiction in order to ensure statewide coverage and statewide consistency. Each grant recipient shall report quarterly to the commissioner on the number of compliance check inspections it has completed and the results of those compliance checks. The commissioner reports to the legislature on a quarterly basis on enforcement efforts.

N.J. STAT. ANN. §§ 26:2F-7 (1995) & 26:3A2-20.1(2000).

Penalties for Sales to Minors

Any person who directly or indirectly, acting as an agent or otherwise, sells, gives or furnishes any cigarettes made of tobacco, or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, to a minor less than 19 years of age, including from tobacco product vending machines, is liable for a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1,000 for each subsequent violation. In ad-

dition, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation in the Department of Treasury may suspend or, after a second or subsequent violation, revoke the license of a retail dealer. The licensee shall be subject to administrative charges based on a schedule issued by the director of the division, which may provide for a fine in lieu of the suspension. The establishment of all of the following shall constitute a defense to any prosecution: that the purchaser of the tobacco product or person receiving a promotional sample falsely represented that he was of legal age by producing photo identification; that the appearance of the purchaser or recipient of the tobacco product was such that an ordinary prudent person would believe him to be of legal age; and that the sale or distribution was made in good faith, relying upon the identification, the minor's appearance, and in the reasonable belief that the purchaser or recipient was actually of legal age to make the purchase or receive the sample.

N.J. STAT. ANN. § 2A:170-51.4 (2003).

A person who sells or gives to a person under 19 years of age any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, shall be punished by a fine as provided for a petty disorderly persons offense. Subsequent offenses are subject to twice the amount of the fine provided for a petty disorderly persons' offense. The same defense to prosecution is available for an offense, see paragraph above.

N.J. STAT. ANN. § 2C: 33-13.1 (2000).

Photo ID

None

Sign Posting

A person to whom a license is issued shall, as a condition of the license, conspicuously post a legible sign at the point of display and at the point of sale stating "A PERSON WHO SELLS OR OFFERS TO SELL A TOBACCO PRODUCT TO A PERSON UNDER 19 YEARS OF AGE SHALL PAY A PENALTY OF UP TO \$1,000 AND MAY BE SUBJECT TO A LICENSE SUSPENSION OR REVOCATION. PROOF OF AGE MAY BE

REQUIRED FOR PURCHASE.”

N.J. STAT. ANN. § 54:40A-4.1 (1995).

Bidis

The laws prohibiting the sale, giving or furnishing of tobacco products to minors includes bidi cigarettes as well.

N.J. STAT. ANN. §§ 2A:170-51.4 (2003) & 2C: 33-13.1 (2000).

Penalties to Minors

None

Placement of Tobacco Products

None

Internet Sales

A person may only engage in a non-face-to-face sale of cigarettes to a person in this state if: the seller has complied with all requirements of the federal Jenkins Act; the seller has verified payment of, paid, or collected all applicable state taxes; and the seller has, before mailing or shipping the cigarettes, obtained from the purchaser reliable confirmation that the purchaser is at least 19 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address, made a good faith effort to verify the information contained in the certification provided by the purchaser against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser, received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check, and verified that a credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped matches the credit or debit card company's address for the cardholder. In addition to any other remedies provided by law, the Director of the Division of Taxation in the Department of the Treasury shall assess a penalty of not less than \$1,000 and not more than \$2,000 for the first violation, a penalty of not less than \$2,500 and not more than \$3,500 for the second violation within a five-year period, penalty of not less than \$4,000 and not more than \$5,000 for the third violation within a five-year period, a penalty of not less than

\$5,500 and not more than \$6,500 for a fourth violation within a five-year period, and a penalty of \$10,000 for a fifth or subsequent violation within a five-year period.

N.J. STAT. ANN. §§ C.54:40A-46 to C.54:40A-53 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes**Samples**

Any person who directly or indirectly, acting as an agent or otherwise, distributes any tobacco product for commercial purposes at no cost or at minimal cost or with coupons or rebate offers to a minor under the age of 19 years is liable for a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1,000 for each subsequent violation. A defense to such action may be established if the conditions listed under the "Penalties for Sales to Minors" section are met.

N.J. STAT. ANN. § 2A:170-51.4 (2003).

Single Cigarettes

A person shall not sell, offer for sale, give away or deliver single cigarettes, or cigarettes in packs of less than 20 cigarettes from a vending machine or in a retail establishment. A person owning a vending machine that is in violation of this section shall be fined not less than \$100 but no more than \$500 for each day the violation continues. A person who violates this law in a retail establishment shall be fined \$250 for a first offense and \$500 for the second and subsequent offenses.

N.J. STAT. ANN. § 54:40A-4.2 (2004).

E Restrictions on the Sale of Tobacco Products in Vending Machines**Sign Posting**

A legible sign shall be posted conspicuously on any licensed cigarette vending machine stating "A PERSON WHO SELLS OR OFFERS TO SELL A TOBACCO PRODUCT TO A PERSON UNDER 19 YEARS OF AGE SHALL PAY A PENALTY OF UP TO \$1,000 AND MAY BE SUBJECT TO A LICENSE SUSPENSION OR REVOCATION. PROOF OF AGE MAY BE REQUIRED FOR PURCHASE."

N.J. STAT. ANN. § 54:40A-4.1 (1995).

F Licensing Requirements**Requirements**

Wholesalers, distributors, manufacturers, manufacturer's representatives and retailers must obtain the appropriate license from the Commissioner of Taxation. Each vending machine must also be licensed. Wholesalers, distributors and retailers must obtain a license for each place of business. Licenses expire on March 31st of each year and must be renewed annually.

N.J. STAT. ANN. §§ 54:40A-3 (1952) & 54:40A-4 (1997).

Fee

\$50 annually for a retail dealer or vending machine license for each place of business or machine; \$250 annually for each wholesale dealer license; \$350 annually for each distributor license; \$10 annually for each manufacturer's license; and \$5 annually for each manufacturer's representative license.

N.J. STAT. ANN. § 54:40A-4 (1997).

License Suspension for Sales to Minors

Upon the recommendation of a municipality, following a hearing by a municipality, the Division of Taxation may suspend, or, after a second or subsequent violation, revoke the license of a retail dealer. The licensee shall be subject to administrative charges based on a schedule issued by the Director of the Division, which may provide for a fine in lieu of the suspension.

N.J. STAT. ANN. § 2A:170-51.4 (2003).

G Smoker Protection Laws

No employer shall refuse to hire or employ any person or shall discharge from employment or take any adverse action against any employee with respect to compensation, terms, conditions or other privileges of employment because that person does or does not smoke or use other tobacco products, unless the employer has a rational basis for doing so which is reasonably related to employment, including the responsibilities of the employee or prospective employee. An aggrieved person may institute a civil action within one year from the date of the alleged violation. The Commissioner of Labor may collect a civil penalty imposed against the employer of an amount up to \$2,000 for the first violation and \$5,000 for each subsequent violation.

N.J. STAT. ANN. §§ 34:6B-1 et seq. (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

The appeal bond required to appeal a lawsuit judgment for a signatory, a successor of a signatory, or any affiliate of a signatory to the Master Settlement Agreement is limited to \$50 million regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that: are necessary to protect the appellee; and require the appellant to post a bond in an amount up to the total amount of the judgment.

N.J. STAT. ANN. § 52:4D-13 (2003).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$11,000,000 for tobacco control and prevention programs from a portion of state cigarette tax revenue.

FY2008 Annual Budget (S.B. 3000) enacted 6/28/07 and effective 7/1/07.

Securitization

The Tobacco Settlement Financing Corporation was established in, but not of, the state Department of Treasury. The state acting through the department may sell to the corporation, and the corporation may purchase, for cash or other consideration and in one or more installments, all or a portion of the state's Master Settlement Agreement payments pursuant to the terms of one or more sale agreements. The net proceeds, any earnings thereon and any residual interests shall be applied, transferred, or paid to, and upon the order of the state, shall be used for any bona fide governmental purposes, including without limitation for capital

expenditures, debt service on outstanding bonds, working capital expenditures or operating deficit needs of the state, endowments, or grants or aid to political subdivisions, including without limitation school districts, of the state.

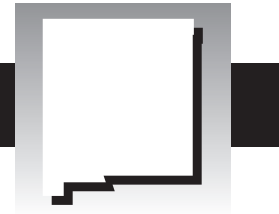
N.J. STAT. ANN. §§ 52:18B-1 to 52:18B-14 (2002).

M Fire Safety Standards

New Jersey has enacted legislation requiring cigarettes sold in New Jersey to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on June 1, 2008.

A.B. 2575 enacted 5/4/07 and effective 6/1/08.





A Smokefree Air

Public Places

It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted. “Indoor public place” is defined as the enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time. Exceptions include: a private residence, except during hours of business operation while it is being used commercially to provide child care, adult care or health care or any combination of those activities; a retail tobacco store as defined; a cigar bar as defined; the facilities of a tobacco manufacturing company, provided that smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited; a state-licensed gaming facility, casino or bingo parlor; an indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements; designated outdoor smoking areas; private clubs as defined; a limousine under private hire; up to 25 percent of hotel/motel rooms; enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions, provided that none of these areas are open to the general public while the private functions are occurring and provided that smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited; a site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans; a business of a sole proprietor or a business with fewer than two employees that is not commonly accessible to the public under certain conditions; and a theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as

part of the production. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Government Buildings

It is unlawful for a person to smoke in any indoor workplace, which includes the state or a political subdivision of the state that employs the services of one or more individuals. No part of the state capitol or capitol north shall be designated as a smoking-permitted area. Employers shall adopt, implement, post and maintain a written smoking policy that conforms to the above requirements. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Private Workplaces

It is unlawful for a person to smoke in any indoor workplace. “Indoor workplace” is defined as any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time. A business of a sole proprietor or a business with fewer than two employees that is not commonly accessible to the public is exempt; provided that the business is not a restaurant or bar, the employer or manager of such business shall provide a smokefree work environment for each employee requesting it; and cigarette smoke does not infiltrate other smoke-free work environments. Also exempt is an indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements. Smoking

is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Schools

The State Board of Education adopted a regulation that prohibits the use of tobacco products in school buildings, on school property and for students at school functions away from school property. Each school district shall develop provisions for enforcement of this policy and communicating the policy to all affected parties.

N.M. ADMIN. CODE 6.12.4 et seq. (1994).

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover public and private schools. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Child Care Facilities

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover child care facilities. Smoking is specifically prohibited in private residences during the hours when it is being used commercially to provide child care or adult care. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Health Care Facilities

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover health care facilities. Smoking is specifically prohibited in private residences during the hours when it is being used commercially to provide health care. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Restaurants

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover restaurants. “Restaurant” means

a coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Bars

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover bars. “Bar” is defined as an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets. Cigars bars are exempt if they generate ten percent or more of their total annual gross revenue or at least \$10,000 in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least 10 percent of its total annual sales from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending machines, shall not be defined as a cigar bar and shall not thereafter be known as such regardless of sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the state’s satisfaction compliance with this definition. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Penalties/Enforcement

For each indoor workplace or indoor public place where smoking is prohibited or permitted, the appropriate sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. The local fire, police or sheriff’s department with appropriate jurisdiction over the location where a violation occurs shall enforce that act by issuance of a citation, and may inspect an establishment for compliance. A person may register a complaint regarding an alleged violation to initiate enforcement with the state Department of Health or the

local fire, police or sheriff's department. Violation by a person 18 years of age and older, is subject a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for a second violation in a 12-month period, and a fine not to exceed \$500 for a third or subsequent violation within a 12-month period of the previous violation. The owner, manager or operator of premises subject to regulation shall not be subject to a penalty if a person on the premises is in violation as long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the person that the person is in violation.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Preemption

Nothing in the above act shall be construed to preempt or in any manner preclude specific provisions of a county or municipal smoking ordinance; provided that the smokefree provisions of such a county or municipal ordinance are inclusive of all minimum standards and provisions for smokefree areas within the above act.

N.M. STAT. ANN. §§ 24-16-12 (2007).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 91 cents

Date last changed: July 1, 2003 — from 21 cents to 91 cents

Year first enacted: 1943

N.M. STAT. ANN. § 7-12-3 (2003).

A portion of cigarette tax revenue is distributed as follows: 1.36 percent to the County and Municipality Recreational Fund, 2.72 percent to the County and Municipal Cigarette Tax Fund, 1.36 percent to the Cancer Research and Treatment Center at the University of New Mexico Health Sciences Center, 2.04 percent to the New Mexico Finance Authority to pay the principal, interest, premiums and related expenses on bonds issued for capital projects pursuant to the Behavioral Health Capital Funding Act, 14.52 percent to the New Mexico Finance Authority, on behalf of and for the benefit of the University of New Mexico Health Sciences Center, 6.11 percent to the New Mexico Finance Authority for improvements to Department of Health facilities and 15.95 percent to the New Mexico Finance

Authority for deposit in the credit enhancement account created in the authority.

N.M. STAT. ANN. § 7-1-6.11 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$60,480,000

Other Tobacco Products

All other tobacco products: 25% of the product value of the tobacco products

N.M. STAT. ANN. § 7-12A-3 (1993).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Alcohol and Gaming Division of the Regulation and Licensing Department and the appropriate law enforcement authorities in each county and municipality shall conduct random, unannounced inspections of facilities where tobacco products are sold to ensure compliance. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-1 & 30-49-10 (1993).

Penalties for Sales to Minors

No person shall knowingly sell or offer to sell tobacco products to persons under 18. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-1 et seq. (1993).

Photo ID

Any person selling goods at retail or wholesale may refuse to sell tobacco products to any person who is unable to produce an identity card as evidence that he is 18 years of age or over. Evidence of the age and identity of the person may be shown by any document that contains a picture

of the person issued by a federal, state, county or municipal government, including a motor vehicle driver's license or an identification card issued to a member of the armed forces. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-4; 30-49-5; & 30-49-11 (1993).

Sign Posting

Any entity engaged in the retail sale of tobacco products shall prominently display a warning sign in the place where tobacco products are sold. The sign shall read as follows: "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT IS SUBJECT TO A FINE OF UP TO \$1,000. A PERSON WHO SELLS A TOBACCO PRODUCT TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO \$1,000." Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-9; 30-49-11; & 30-49-12 (1993).

Penalties to Minors

A minor who procures or attempts to procure tobacco products for their own use or for the use of any other minor shall be punished by a fine not to exceed \$100 or 48 hours of community service. Any minor who presents false evidence of their age or identity to procure tobacco products for such use shall be subject to the same penalty. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-1 et seq. (1993).

Placement of Tobacco Products

A person shall not sell tobacco products at a retail location in New Mexico by any means other than a direct, face-to-face exchange between the customer and the seller or the seller's employee, and a person selling goods at a retail location in New Mexico shall not use a self-service display

for tobacco products. As used in this subsection, "self-service display" means a display to which the public has access without the assistance of the seller or the seller's employee. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine. When a municipality or county adopts an ordinance or a regulation pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-7 (2003); 30-49-11 & 30-49-12 (1993).

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person who sells, distributes, promotes or advertises tobacco products shall not provide free samples of tobacco products to a minor. This law shall not apply to an individual who provides free samples to a family member or to an acquaintance on private property not held open to the public. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine. When a municipality or county adopts an ordinance or a regulation pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-8; 30-49-11; & 30-49-12 (1993).

Single Cigarettes

No person shall sell, offer to sell or deliver a tobacco product in a form other than an original factory-sealed package. Specific penalty for a violation is not listed. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-3(C) & 30-49-11 (1993).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco products may be sold through vending

machines only in locations not open to the public, including factories, businesses and offices; in locations in which the vending machine is equipped with a remote-controlled lock-out device; or in areas where minors are not permitted unless accompanied by an adult. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-7 (2003); & 30-49-11(1993).

Penalty

Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-11 & 30-49-12 (1993).

Sign Posting

Warning signs shall be prominently displayed where a tobacco product vending machine is located. The sign shall read as follows: "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT IS SUBJECT TO A FINE OF UP TO \$1,000. A PERSON WHO SELLS A TOBACCO PRODUCT TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO \$1,000." Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine. When a municipality or county adopts an ordinance pertaining to the sale of tobacco products, the ordinance or regulation shall be consistent with state law.

N.M. STAT. ANN. §§ 30-49-9; 30-49-11; & 30-49-12 (1993).

F Licensing Requirements

Requirements

A person shall not engage in the manufacture or distribution of cigarettes in New Mexico without a license issued by the state Department of Taxation and Revenue. A license shall be issued for a term not to exceed one year. Violators are subject to a civil penalty of up to \$1,000 for a first offense, \$1,500 to \$2,500 for a second offense and not less than \$5,000 for a third or subsequent offense.

N.M. STAT. ANN. §§ 7-12-9.1 & 7-12-13.1 (2006).

Fee

Up to \$100 each year for both distributors and manufacturers.

N.M. STAT. ANN. § 7-12-9.1 (2006).

G Smoker Protection Laws

It is unlawful for an employer to refuse to hire or discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a smoker or non-smoker, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours. It is also unlawful for an employer to require as a condition of employment that any employee or applicant for employment abstain from using tobacco products during non-working hours. This does not apply to any activity that materially threatens an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets, proprietary information or other proprietary interests; or relates to a bona fide occupational requirement and is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer. Any employee claiming to be aggrieved by any unlawful action of any employer may bring a civil suit for damages.

N.M. STAT. ANN. §§ 50-11-1 et seq. (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In any civil action involving a signatory, a successor of a signatory or any affiliate of a signatory to the Master Settlement Agreement, the supersedeas bond required of all appellants collectively in order to stay the execution of a judgment dur-

ing the entire course of appellate review shall not exceed \$100 million, regardless of the amount of the judgment.

N.M. STAT. ANN. § 39-3-22(C) (2007).

**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding

Appropriated \$9,615,000 for tobacco control and prevention programs from a portion of the state’s annual MSA payment.

FY2008 Annual Budget (H.B. 2) enacted 3/15/07 and effective 7/1/07.

The Tobacco Settlement Permanent Fund was established in the state treasury where all Master Settlement payments are distributed. In FY2003 through FY2006, 100 percent of the money is transferred to the general fund. In FY2007 and each fiscal year thereafter, 50 percent of the money in each fiscal year is transferred to the Tobacco Settlement Program Fund until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years.

N.M. STAT. ANN. § 6-4-9 (2002).

The Tobacco Settlement Program Fund is also created in the state treasury and monies in the fund shall consist of distributions made to the fund from the Tobacco Settlement Permanent Fund. Money may be appropriated from the program fund for health and educational purposes, including support of additional public school programs, including extracurricular and after-school programs designed to involve students in athletic, academic, musical, cultural, civic, mentoring and similar types of activities; any health or health care program or service for prevention or treatment of disease or illness; basic and applied research conducted by higher educational institutions or state agencies addressing the impact of smoking or other behavior on health and disease; public health programs and needs; and tobacco use cessation and prevention programs, including state-wide public information, education and media campaigns beginning in FY2002.

N.M. STAT. ANN. § 6-4-10 (2000).

Non-Monetary Provisions

The Tobacco Settlement Revenue Oversight Committee was created to monitor the use of Master Settlement Agreement funds consisting of six members of the legislature, three each from the state House of Representatives and the State Senate. The committee is tasked with making recommendations on how to spend MSA funds, and evaluating programs receiving MSA funds.

N.M. STAT. ANN. § 2-19-1 (2000).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited entirely in virtually all public places and places of employment, including restaurants and bars, see N.Y. [PUB. HEALTH] LAW § 1399-o for a detailed list. Exceptions include private homes, private residences and private automobiles; hotel and motel rooms; retail tobacco businesses; separate, enclosed rooms of residential health and mental health care facilities; membership organizations that have no compensated work staff; cigar bars under certain conditions; outdoor dining areas under certain conditions; and specified enclosed places where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Government Buildings

Smoking is prohibited in places of employment. The definition of “employer” includes the legislative, executive and judicial branches of state government and any political subdivision of the state.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Private Workplaces

Smoking is prohibited in all places of employment. “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, and shall include, but not be limited to, offices, school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment or other office equipment used in common, and company vehicles.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Schools

Smoking is prohibited in places of employment the definition of which includes school grounds. “School grounds” are defined as any building, structure, and surrounding outdoor grounds contained within a public or private preschool, nursery school, elementary or secondary school’s legally defined property boundaries as registered in a county clerk’s office, and any vehicles used to transport children or school personnel. Smoking is also prohibited in all public and private colleges, universities, and other educational and vocational institutions.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Notwithstanding the provisions of any other law, rule or regulation, tobacco use shall not be permitted and no person shall use tobacco on school grounds. “School grounds” means any building, structure and surrounding outdoor grounds contained within a public or private preschool, nursery school, elementary or secondary school’s legally defined property boundaries as registered in a county clerk’s office.

N.Y. [EDUC.] LAW § 409(2) (2003).

Child Care Facilities

Smoking is prohibited in all facilities that provide child care services, except for private homes when no children are present.

N.Y. [PUB. HEALTH] LAW § 1399-o (2003).

Health Care Facilities

Smoking is prohibited in all health care facilities except in separate enclosed rooms in specified residential health and mental health care facilities.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Restaurants

Smoking is prohibited in all indoor food service establishments. Smoking is permitted in outdoor areas of food service establishments with no roof or ceiling enclosure as long as the smoking area constitutes no more than 25 percent of the total outdoor seating area, is at least three feet away from the non-smoking outdoor area, and is clearly

designated by written signage.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Bars

Smoking is prohibited in bars, a cigar bar that makes 10 percent of its gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including vending machine sales are exempt. The cigar bar must also be registered with the appropriate enforcement officer, which will remain in effect for one year. This registration will be renewable only if in the preceding calendar year the cigar bar continued to make 10 percent of its gross income from the on-site sale of tobacco products and the rental of on-site humidors and has not expanded its size or changed its location from its size or location since December 31, 2002.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Other

The designated enforcement officer may grant a waiver from the above law, provided that prior to the granting of any such waiver the applicant for a waiver shall establish that compliance would cause undue financial hardship; or other factors exist which would render compliance unreasonable. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to secondhand smoke and to ensure that the waiver is consistent with the general purpose of this article.

N.Y. [PUB. HEALTH] LAW § 1399-u (2003).

Penalties/Enforcement

Signs shall be prominently posted and maintained indicating smoking and nonsmoking areas. Failure to comply with any of the provisions of this article, including persons who smoke in areas where smoking is prohibited, is punishable by a civil penalty up to \$1,000 if imposed by the state and up to \$500 if imposed by a local enforcement officer. Each county's board of health or a designated enforcement officer in counties with no local board of health shall enforce these provisions. If no such designation is made, the county will be deemed to have designated the state Department of Health and Mental Hygiene as its enforcement officer. In

cities of over one million people, the city's board of health shall enforce these provisions within the city.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003)..

Preemption

Smoking may not be permitted where prohibited by any other law rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.

N.Y. [PUB. HEALTH] LAW § 1399-r(3) (2003).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.50

Date last changed: April 1, 2002 — from \$1.11 to \$1.50

Year first enacted: 1939

N.Y. [TAX] LAW § 471 (2002).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$939,941,000

Other Tobacco Products

All other tobacco products: 37% of the wholesale price

N.Y. [TAX] LAW § 471-b (2002).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The commissioner of the state Department of Health shall develop, plan and implement a comprehensive program to reduce the prevalence of tobacco use, particularly among persons less than 18 years of age. This program shall include, but not be limited to, support for enforcement of article thirteen-F of this chapter (youth access laws.) An enforcement officer, as defined, may an-

nually, on specific dates fixed by the commissioner, submit an application for such monies as are made available for such purpose. Such application shall include, but not be limited to, plans regarding random spot checks, including the number and types of compliance checks that will be conducted, and other activities to determine compliance.

N.Y. [PUB. HEALTH] LAW § 1399-hh (1997).

Penalties for Sales to Minors

The sale of tobacco products, herbal cigarettes, rolling papers or pipes to minors by any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale is prohibited. Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale may perform a transaction scan as a precondition for such purchases. In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied. It shall be an affirmative defense to prosecution that a person had produced a driver's license or non-driver ID apparently issued by a governmental entity, successfully completed a transaction scan, and that the tobacco product or herbal cigarette had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration any written policy adopted and implemented by the seller. Use of a transaction scan shall not excuse any person from using reasonable diligence.

N.Y. [PUB. HEALTH] LAW § 1399-cc (2001).

If the enforcement officer determines, after a hearing, that a violation of the above provision occurred, a civil penalty of \$300, but not to exceed \$1,000, shall be imposed for a first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation. The enforcement officer shall also assign two points to a retailer's record for violation if the individual committing the violation has not completed a state certified tobacco sales training program and one point if the individual has. Points remain on the retailer's record for 36 months. If the state Department

of Health determines that a retailer has accumulated three points or more, the department shall direct the Commissioner of Taxation and Finance to suspend such dealer's registration for six months. The three points serving as the basis for a suspension shall be erased upon the completion of the six month penalty. If the enforcement officer determines the retailer has violated the above provisions four or more times in a three year period, they shall direct the Commissioner of Taxation and Finance to revoke the retailer's registration for one year. If a retail dealer was selling tobacco products or herbal cigarettes while their registration was either suspended or permanently revoked, a civil penalty of \$2,500 shall be imposed. The Commissioner of Taxation and Finance shall also permanently revoke the dealer's registration and not permit the dealer to obtain a new registration in the case of selling with a suspended license. A \$50 surcharge shall also be imposed for each violation to be used for enforcement purposes.

N.Y. [PUB. HEALTH] LAW § 1399-ee (2001).

In addition, the enforcement officer shall promptly notify the Director of the Division of the Lottery of any determination that a violation of the article regulating the sale of tobacco products/sales to minors has occurred. The lottery license shall be suspended for a period of six months upon notification to the division by the Commissioner of Health of a lottery sales agent's accumulating three points or more. A license shall be revoked for one year upon notification of a lottery sales agent's fourth violation within a three year period.

N.Y. [TAX] LAW § 1607-h (2000).

Photo ID

The sale of tobacco products or herbal cigarettes other than by a vending machine, shall be made only to an individual who demonstrates, through a driver's license or other photographic identification issued by a government entity or educational institution indicating that the individual is at least 18 years of age. Such identification need not be required of any individual who reasonably appears to be at least 25 years of age, provided that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco products or herbal cigarettes to an individual less than 18 years of age.

N.Y. [PUB. HEALTH] LAW § 1399-cc(3) (2001).

Sign Posting

Any person operating a business wherein tobacco products or herbal cigarettes are sold shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-cc (2001).

Bidis

No person shall knowingly sell or provide bidis to any other person. "Bidis" means a product containing tobacco that is wrapped in temburni leaf or tendra leaf or any other product offered to consumers as "beedies" or "bidis". Any person who violates the provisions of this subdivision shall be subject to a civil fine of not more than \$500. This does not apply to a tobacco business. This law further prohibits tobacco businesses from selling bidis to minors, and directs posting of a sign in a conspicuous place upon which there shall be imprinted the following statement: "SALE OF BIDIS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." The sign is to be printed on a white card in red letters at least one half inch in height.

N.Y. [PUB. HEALTH] LAW § 1399-ll (2000).

Penalties to Minors

None

Placement of Tobacco Products

No person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product or herbal cigarettes in any manner, unless such products and cigarettes are stored for sale behind a counter in an area accessible only to the personnel of such business, or in a locked container; however, such restriction shall not apply to tobacco businesses and to places to which admission is restricted to persons 18 years of age or older. Violation is subject to a civil penalty of \$300, but

not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-cc (2001).

Internet Sales

It is unlawful for any person to knowingly transport cigarettes to any person in this state, other than (a) a person licensed as a cigarette tax agent or wholesale dealer or registered retail dealer; (b) an export warehouse proprietor or an operator of a customs bonded warehouse; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state, when such person is acting in accordance with their official duties. Any person who violates these provisions shall be guilty of a Class A misdemeanor and for a second or subsequent violation shall be guilty of a Class E felony. In addition to the criminal penalty, the Commissioner of Taxation and Finance may impose a civil fine not to exceed \$5,000 for each violation.

N.Y. [PUB. HEALTH] LAW § 1399-ll (2000).

NOTE: Due to a lawsuit filed by Brown & Williamson, among others, this law did not take effect until February 2003. On February 13, 2003, a federal appeals panel overturned a lower court finding invalidating this law on constitutional grounds.

Other Provisions

The sale of "gutka" (a tobacco product containing lime paste, spices, areca, and tobacco) is prohibited except at a "tobacco business." At a tobacco business it is unlawful to sell "gutka" to a person under 18 years of age. Violation is a civil penalty of not more than \$500.

N.Y. [PUB. HEALTH] LAW § 1399-mm (2003).

Nicotine water, bottled water that is laced with nicotine, was added to the definition of tobacco product, thus prohibiting its sale to minors.

N.Y. [PUB. HEALTH] LAW § 1399-aa (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person engaged in the business of selling or

otherwise distributing tobacco products or herbal cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly distribute without charge any tobacco products or herbal cigarettes to any individual; or distribute coupons which are redeemable for tobacco products or herbal cigarettes to any individual, provided that this shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products or herbal cigarettes or obtained at locations which sell tobacco products or herbal cigarettes, provided that such distribution is confined to a designated area or to coupons sent through the mail. These prohibitions shall not apply to private social functions when seating arrangements are under the control of the sponsor of the function; conventions and trade shows, provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18; events sponsored by tobacco or herbal cigarette manufacturers, provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18; bars; tobacco businesses; and factories, provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18. No person shall distribute tobacco products or herbal cigarettes at trade shows, events sponsored by tobacco or herbal cigarette manufacturers or factories unless such person gives five days written notice to an enforcement officer. Before distribution, a photographic ID is required for any person who appears to be under the age of 25. Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-bb (1992).

Single Cigarettes

All cigarettes must be sold or offered for sale in the package or container provided by the manufacturer, which bears all health warnings required by applicable law. No person shall sell or distribute any package or other container of cigarettes containing fewer than 20 cigarettes; any package of roll-your-own tobacco containing less than six-tenths of an ounce of tobacco; or any package or other container of cigarette wrapping papers, wrapping leaves or tubes containing fewer than

20 sheets, leaves, or tubes. Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-gg (2004).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines that sell tobacco or herbal cigarettes are restricted to locations such as bars or bar areas of food service establishments with valid, on-premises full liquor licenses, private clubs, tobacco businesses, and workplaces that have an insignificant portion of its regular workforce comprised of minors and only in such locations that are not accessible to the general public. However, vending machines located in such places of employment must be in plain view and under the direct supervision and control of the person in charge of the location or their designated employee.

N.Y. [PUB. HEALTH] LAW § 1399-dd (1992).

Penalty

Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation. In addition, if it is determined that a vending machine operator has violated this article three times within a two-year period, or four times cumulatively, the Commissioner of Taxation and Finance shall suspend the vendor's registration for one year.

N.Y. [PUB. HEALTH] LAW § 1399-ee (1992).

F Licensing Requirements

Requirements

Wholesale dealers are required to obtain a license from the Department of Taxation and Finance. The license must be displayed in the wholesaler's place of business. Licenses are valid indefinitely unless suspended or revoked.

N.Y. [TAX] LAW § 480 (2000).

Retail dealers are required to obtain and display a certificate of registration from the Department of Taxation and Finance. Retail dealers are de-

fined as all other people dealing in cigarettes and tobacco products besides wholesalers. All vending machines must also be registered with the department and have a registration certificate affixed to it. Registrations for retail dealers and vending machines are valid for a calendar year unless suspended or revoked and must be renewed each year.

N.Y. [TAX] LAW § 480-a (2000).

Fee

\$100 annually for a retail license; \$1,500 for a wholesale license; \$25 annually for a vending machine license.

N.Y. [TAX] LAW §§ 480 & 480-a (2000).

License Suspension for Sales to Minors

Retailers are subject to a suspension or revocation of their certificate of registration based on a point system for violation. Retailers receive two points for violation if the individual seller has not completed a state certified tobacco sales training program, and one point if the seller has. Three points or more is subject to a six-month registration certificate suspension. Four violations in a three year period is subject to a license revocation for one year. A vending machine operator that violates the sales to minors law three times within a two year period, or four or more times cumulatively shall have the registration certificate for the vending machine(s) suspended for a year.

N.Y. [PUB. HEALTH] LAW, § 1399-ee (1992).

G Smoker Protection Laws

It shall be unlawful for any employer or employment agency to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual in compensation, promotion, or terms, conditions or privileges of employment because of an individual's legal use of consumable products prior to the beginning or after the conclusion of the employee's work hours and off of the employer's premises and without use of the employer's equipment or property. This does not apply to activities that create a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest; state employees when the activity could conflict

with performance of their official duties under specified circumstances; and when the activity is in violation of a collective bargaining agreement. This shall not prohibit an organization or employer from offering, imposing or having in effect a health, disability or life insurance policy that makes distinctions between employees for the type of coverage or the price of coverage based upon the employees' recreational activities or use of consumable products, provided that differential premium rates charged employees reflect a differential cost to the employer and that employers provide employees with a statement delineating the differential rates used by the carriers providing insurance for the employer, and provided further that such distinctions in type or price of coverage shall not be utilized to expand, limit or curtail the rights or liabilities of any party with regard to a civil cause of action. The attorney general may apply for an order enjoining or restraining the commission or continuance of the alleged unlawful acts. The court may impose a civil penalty in the amount of \$300 for the first violation and \$500 for subsequent violations. An aggrieved individual may commence an action for equitable relief and damages as well.

N.Y. [LABOR] LAW § 201-d (1992).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$85,485,000 for tobacco control and prevention programs from the state general fund.

FY2008 Department of Health and Mental Hygiene Annual Budget (S.B. 2104) enacted and effective 4/9/07.

M Fire Safety Standards

By rule of the Office of Fire Prevention and Control, after June 28, 2004, cigarettes sold in New York state are required to self-extinguish if left unattended to help prevent cigarette caused fires. Cigarettes are required to be tested in accordance with the American Society of Testing and Materials standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," subject to the modifications stated in Appendix A. When tested no more than 25 percent of the cigarettes shall exhibit full length burns. A certification is required from each manufacturer stating that each cigarette has been tested and has met the performance standard.

NYCRR Title 19, Part 429 (2004).

By 2002, the Office of Fire Prevention and Safety shall promulgate fire safety standards for cigarettes sold or offered for sale in this state. The standards shall insure that such cigarettes will stop burning within a time period specified by the standards if the cigarettes are not smoked during that period or will meet performance standards which limit the risk that such cigarettes will ignite upholstered furniture, mattresses or household furnishings. On or after the date such standards are promulgated by the Office of Fire Prevention and Control, it will be unlawful to sell in the state cigarettes that do not meet the required standards.

N.Y. [EXEC.] LAW § 156-c (2000).

Note: Implementation of this law was delayed for a year because of legal challenges to earlier versions of the regulations. Final regulations were issued in December 2003, and took effect on June 28, 2004.





A Smokefree Air

Public Places

None

Government Buildings

Smoking is prohibited inside state government buildings as provided in this section. State government building is defined as a building owned, leased as lessor, or the area leased as lessee and occupied by state government. This includes all agencies of the executive, legislative and judicial branches of government. As to smoking rooms in residence halls that were permitted by G.S. 143-597(a)(6), this law becomes effective beginning with the 2008-2009 academic year. Smoking is permitted inside state government buildings that are used for medical or scientific research to the extent that smoking is an integral part of the research, and is confined to the area where the research is being conducted. The individual in charge of the state government building or the individual's designee shall post signs in conspicuous areas of the building.

N.C. GEN. STAT. §§ 130A-491 to 130A-495 (2008).

Notwithstanding the above provision, the following areas may be designated as non-smoking areas in buildings owned, leased, or occupied by the state government. A library or museum open to the public; an area established as a non-smoking area, as long as at least 20 percent of the interior area, of equal quality, is required to be designated as a smoking area; any indoor space in an auditorium or arena except a designated smoking area shall be established in the lobby area; any educational buildings primarily involved in health care instruction and the grounds of those buildings, and except as provided in G.S. 143-599(11), any facilities of the University of North Carolina and the grounds of those facilities except dorm rooms. All areas of any buildings occupied by the General Assembly are also smokefree. Exempt from this are primary or secondary schools or day care centers—except for a teacher's lounge; enclosed elevators; public school buses; hospitals, nursing homes and other rest homes; local health departments

and local departments of social services and the grounds of each as defined; tobacco manufacturing, processing or administrative facilities; indoor arenas with a seating capacity greater than 23,000 people; state correctional facilities operated by the Department of Correction; community colleges; nonprofit organizations whose primary purpose is to discourage the use of tobacco products by the general public; and the buildings, grounds, and walkways of the University of North Carolina Health Care System and of the East Carolina University School of Medicine, Health Sciences Complex, and Medical Faculty Practice Plan. Any area designated as nonsmoking or smoking shall be established by the appropriate department, institution, agency, or person in charge of the state-controlled building or area. The person in charge of the building shall conspicuously post in any area designated as a smoking or nonsmoking area, one or more signs stating that smoking is or is not permitted. Existing physical barriers and ventilation systems shall be used to minimize smoke from adjacent areas. Individuals who continue to smoke in a non-smoking area, despite notice by the person in charge, will be guilty of an infraction and be fined no more than \$25.

N.C. GEN. STAT. §§ 143-597 (2007), 143-598 (1993) & 143-599 (2007).

Private Workplaces

None

Schools

No later than August 1, 2008, local boards of education shall adopt, implement and enforce a written policy prohibiting the use of all tobacco products by any person, in school buildings, in school facilities, on school campuses, and on any property owned by the local school administrative unit. Tobacco use shall also be prohibited by persons attending a school-sponsored event at a location not listed above when in the presence of students or school personnel or in an area where smoking is otherwise prohibited by law. The policy may permit tobacco products to be included in instructional or research activities in public

school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product. Nothing in this section or any other section prohibits a local board of education from adopting and enforcing a more restrictive policy on the use of tobacco in school buildings, in school facilities, on school campuses, or at school-related or school-sponsored events, and in or on other school property.

N.C. GEN. STAT. § 115C-407 (2007).

Except as provided in G.S. 143-599(11), any facilities of The University of North Carolina and the grounds of those facilities may be designated as non-smoking areas. Each constituent institution, except for the North Carolina School of Science and Mathematics, shall make a reasonable effort to provide residential smoking rooms in residence halls in proportion to student demand for those rooms. The term “facilities” includes all of the following: State-owned buildings allocated to and occupied by the University of North Carolina, state-owned buildings allocated to the University of North Carolina and leased to a third party and the area of any building owned by a third party and occupied by the University of North Carolina as lessee.

N.C. GEN. STAT. § 143-597(6) (2007).

Child Care Facilities

None

Health Care Facilities

Smoking is prohibited in long-term care facilities, which include adult care homes, nursing homes, skilled nursing facilities, facilities licensed under Chapter 122C of the General Statutes, and other licensed facilities that provide long-term care services. The person who owns, manages, operates, or otherwise controls a long-term care facility shall conspicuously post the appropriate signs indicating smoking is prohibited, ask anyone smoking inside to stop and provide written notice to people upon admittance that smoking is prohibited. The Department may impose an administrative penalty not to exceed \$200 for violation.

N.C. GEN. STAT. §§ 131D-4.4 & 131E-114.3 (2007).

Restaurants

None

Bars

None

Other

No person may use tobacco products inside of a state correctional facility, except for authorized religious purposes. Inmates in violation of this section are subject to disciplinary measures to be determined by the department, including the potential loss of sentence credits earned prior to that violation. Employees in violation are subject to disciplinary action by the department. Visitors in violation are subject to removal from the facility and loss of visitation privileges.

N.C. GEN. STAT. § 148-23.1 (2006).

Preemption

A local government may adopt an ordinance, law, or rule restricting smoking; provided any local ordinance, law, or rule authorized under this section may restrict smoking only in: Buildings owned, leased as lessor, or the area leased as lessee and occupied by local government; building and grounds wherein local health departments and departments of social services are housed; public schools, school facilities, on school campuses, at school-related or school-sponsored events, in or on other school property, public school buses, or at day care centers. Such restrictions may be imposed by local school boards having ownership or jurisdiction over the building, campus, event, property, or vehicle; and any place on a public transportation vehicle owned or leased by local government and used by the public. “Local government” means any local political subdivision of this state, any airport authority, or any authority or body created by any ordinance or rules of any such entity. “Grounds” means the area located within 50 linear feet of a building wherein a local health department or a local department of social services is housed.

N.C. GEN. STAT. §§ 143-498 (2008).

Notwithstanding the above provision, any local law, rule, or ordinance enacted prior to October 1, 1993 is not preempted. After this date, local laws, rules, or ordinances shall not be amended or enacted to contain restrictions regulating smoking, which are stronger than existing state law. Any such local ordinance, law, or rule may restrict smoking only in the following facilities

that are not owned, leased, or occupied by local government: a public meeting; the indoor space in an auditorium, arena, or coliseum, or appurtenant building thereof; or a library or museum open to the public.

N.C. GEN. STAT. § 143-601 (2008).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 35 cents

Date last changed: July 1, 2006 – from 30 cents to 35 cents

Year first enacted: 1969

N.C. GEN. STAT. § 105-113.5 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$165,885,000

Other Tobacco Products

All other tobacco products: 10% of the cost price of the products

N.C. GEN. STAT. § 105-113.35(a) (2007).

Revenue from three percent of the tax is deposited in the state general fund, and the remaining revenue is deposited in the University Cancer Research Fund established pursuant to N.C. GEN. STAT. § 116-29.1.

N.C. GEN. STAT. § 105-113.35(e) (2007).

This tax does not apply to free samples of tobacco products.

N.C. GEN. STAT. § 105-113.35 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety is designated as the state agency, in coordination with local police and sheriffs' departments, and the Department of Health and Human Services to implement model education and enforcement of N.C. GEN. STAT. § 14-313. The standard model

of education and enforcement shall include: merchant education; age-testing of youth volunteers involved in enforcement; providing public notice of upcoming enforcement operations; conducting vending machine and retail enforcement; issuing warning notices or citations; public recognition for good behavior; and advising communities of the results of enforcement.

N.C. Exec. Order 123 (1997).

If any person shall knowingly send or assist a person less than 18 years old in purchasing, acquiring, or receiving tobacco products or cigarette wrapping papers, the person shall be guilty of a Class Two misdemeanor. However, persons under 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided. The Department of Health and Human Services shall also have the authority, pursuant to a written plan prepared by the secretary, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the state has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by federal law. No political subdivisions, boards, or agencies of the state may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995.

N.C. GEN. STAT. § 14-313 (2002).

Penalties for Sales to Minors

If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products on behalf of a person less than 18 years, the person shall have committed a Class Two misdemeanor; provided, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Proof that the defendant demanded, was shown, and

reasonably relied upon proof of age or the defendant relied on the electronic system established by the Division of Motor Vehicles shall be a defense to any action brought under this subsection. No political subdivisions, boards, or agencies of the state may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995.

N.C. GEN. STAT. § 14-313 (2002).

Photo ID

A person engaged in the sale of tobacco products at retail or through a vending machine shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is less than 18 years of age. Failure to demand proof of age as required is a Class Two misdemeanor if in fact the prospective purchaser is under 18 years of age. "Proof of age" is defined as a driver's license or other photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older. No political subdivisions, boards, or agencies of the state may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995.

N.C. GEN. STAT. § 14-313 (2002).

Sign Posting

Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following: "N.C. LAW STRICTLY PROHIBITS THE PURCHASE OF TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 18. PROOF OF AGE REQUIRED." Failure to post the sign will result in a fine of \$25 for the first violation and \$75 for each succeeding violation. No political subdivisions, boards, or agencies of the state may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995.

N.C. GEN. STAT. § 14-313 (2002).

Penalties to Minors

If a person under the age of 18 purchases or ac-

cepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually their own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class Two misdemeanor. No political subdivisions, boards, or agencies of the state may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995.

N.C. GEN. STAT. § 14-313 (2002).

Placement of Tobacco Products

None

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

If any person shall furnish, give, or provide tobacco products or cigarette wrapping papers, including tobacco product samples, at no cost for the purpose of promoting the product, to any person under the age of 18 years, the person shall be guilty of a Class Two misdemeanor. No political subdivisions, boards, or agencies of the state may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995.

N.C. GEN. STAT. § 14-313 (2002).

Single Cigarettes

A person who sells or holds for sale a package of cigarettes that differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by NC GEN. STAT. 75-1.1.

N.C. GEN. STAT. § 14-401.18 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to any establishment which is open only to persons 18 years or older, or any establishment where the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof, can be operated only upon activation by the owner, licensee or employee prior to each purchase, and is not accessible to the public when the establishment is closed. The regulation of vending machines is exempted from statewide preemption.

N.C. GEN. STAT. § 14-313 (2002).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is a Class Two misdemeanor.

N.C. GEN. STAT. § 14-313 (2002).

F Licensing Requirements

Requirements

No person shall engage in business as a distributor of cigarettes without obtaining a license from the Secretary of Revenue for each place of business. Distributing cigarettes without the appropriate license is a Class One misdemeanor.

N.C. GEN. STAT. § 105-113.11 (1973).

Retail dealers and wholesale dealers of tobacco products other than cigarettes must obtain a license for each place of business.

N.C. GEN. STAT. § 105-113.36 (1992).

Fee

\$25 for each place of business for cigarette distributors; \$25 for wholesale dealers of other tobacco products; and \$10 for a retail dealer of other tobacco products.

N.C. GEN. STAT. § 105-113.12 (1991).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It is an unlawful employment practice for an

employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employer during non-working hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of the other employees. It is not unlawful if the restriction relates to a bona fide occupational requirement and is reasonably related to the employment activities; if the restriction relates to the fundamental objectives of the organization; or if the employee fails to comply with the requirements of the employer's substance abuse prevention program. This section shall not prohibit an employer from offering, imposing, or having in effect a health, disability, or life insurance policy distinguishing between employees for the type or price of coverage based on the use or nonuse of lawful products if differential rates assessed employees reflect actuarially justified differences in the provision of employee benefits; the employer provides written notice to employees setting forth the differential rates imposed by insurance carriers; and the employer contributes an equal amount to the insurance carrier on behalf of each employee of the employer. The employee against whom the violation occurs may bring a civil action within one year from the date of the alleged violation against the employer to obtain lost wages or benefits, an order of reinstatement without loss or position, seniority, or benefits or an order directing the employer to offer employment to the prospective employee.

N.C. GEN. STAT. § 95-28.2 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of \$25 million or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be \$25 million. If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation shall not apply and the appellant shall be required to make an undertaking in the full amount.

N.C. GEN. STAT. § 1-289 (2000).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

The Health and Wellness Trust Fund Commission allocated \$17,100,000 for tobacco control and prevention related initiatives in FY2008 from a portion of annual state MSA payments.

The Health and Wellness Trust Fund was created in the office of the state Treasurer and by statute receives 25 percent of the annual Master Settlement Agreement payments over the next 25 years. The money in the fund is to be used for addressing the health needs of underserved populations, to fund programs and initiatives that include research, education, prevention, and treatment of health problems in the state, and to develop a comprehensive, community-based plan with an emphasis on reducing youth tobacco use. In the years 2001 through 2025, one half of the funds can be used for grants and programs and the other half will create a reserve fund.

N.C. GEN. STAT. §§ 147-86.30 et seq. (2000).

Non-Monetary Provisions

The Health and Wellness Trust Fund is to be administered by a commission of 18 (speaker of the house, president pro tem of the senate, and the governor appoint six members each) with the help of an advisory committee (includes secretary of Health and Human Services, State Health Director, dean of UNC School of Public Health, as well as others considered necessary). The Commission will develop criteria for awarding grants, programs, and initiatives to be funded, as well as criteria to measure the outcomes of funded programs. The Commission is free to expend all funds for settlement years 1998, 1999, and 2000.

N.C. GEN. STAT. §§ 147-86.30 et seq. (2000).

M Fire Safety Standards

North Carolina has enacted legislation requiring cigarettes sold in North Carolina to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on January 1, 2010.

H.B. 1785 enacted 8/24/07 and effective 1/1/10.



A Smokefree Air**Public Places**

Smoking is prohibited in almost all public places, which are defined as an enclosed area to which the public has access or in which the public is permitted, including a publicly owned building or office, and enclosed areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public (see statute citation for a detailed list). Exemptions include: private residences except when being used as home-based child care facilities; designated smoking rooms in hotels and motels; retail tobacco stores, provided that smoke does not infiltrate into places where smoking is prohibited; outdoor areas of places of employment, except a sports arena; areas in owner-operated businesses that have no employees and are not generally accessible to the public; bars, including separately enclosed bar areas in restaurants, hotels and bowling centers; places of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the sponsor; and separately enclosed areas in truck-stops accessible only to adults. Smoking as part of a traditional Native American ceremony is allowed.

N.D. CENT. CODE §§ 23-12-9 to 23-12-11 (2007).

Government Buildings

Smoking is prohibited in public places, the definition of which includes places owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes. The state office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Private Workplaces

Smoking is prohibited in places of employment

which are defined as areas under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs. Outdoor areas of places of employment and areas in owner-operated businesses that have no employees and are not generally accessible to the public are exempt.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Schools

Smoking is prohibited in public places, the definition of which includes public and private educational facilities.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Child Care Facilities

Smoking is prohibited in public places, the definition of which includes all child care facilities subject to licensure by the Department of Human Services, including those operated in private homes when any child cared for under that license is present.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Smoking is not permitted in an early childhood facility at any time during which a child who receives services from that facility is present and receiving such services.

N.D. CENT. CODE § 50-11.1-02.2 (1993).

Health Care Facilities

Smoking is prohibited in public places, the definition of which includes any office or institution providing health care services, including a hospital, clinic, ambulatory surgery center, outpatient care facility, nursing, basic, or assisted living facility, and laboratory. Smoking is allowed by a patient in or on the grounds of a licensed hospital if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff and by a resident in or on the grounds of a licensed basic care facil-

ity or a licensed nursing facility if approved by the board of the facility.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Restaurants

Smoking is prohibited in public places the definition of which includes restaurants. Separately enclosed bar areas of restaurants are exempt.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Bars

Smoking is allowed in bars, which are defined as places devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Penalties/Enforcement

An individual who smokes in an area in which smoking is prohibited is guilty of an infraction. An owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply is guilty of an infraction, subject to a fine not to exceed \$100 for the first violation, not to exceed \$200 for a second violation within one year, and not to exceed \$500 for each additional violation within one year of the preceding violation. State agencies with statutory jurisdiction over a state-owned building or office shall enforce these provisions. These agencies include the Fire Marshal Department, state Department of Health, Department of Human Services, Legislative Council, and Office of Management and Budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may adopt administrative rules to ensure compliance, including referral of violations to an appropriate law enforcement agency for enforcement.

N.D. CENT. CODE §§ 23-12-10.2 & 23-12-11 (2005).

Preemption

A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions on smoking than those provided by state law. Nothing in this act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protec-

tion from the hazards of environmental tobacco smoke.

N.D. CENT. CODE § 23-12-10.2 (2005).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 44 cents

Date last changed: July 1, 1993 — from 29 cents to 44 cents

Year first enacted: 1925

N.D. CENT. CODE §§ 57-36-06 & 57-36-32 (1993).

All revenue from the cigarette tax is credited to the General Fund, except three cents of the tax is distributed to incorporated cities in North Dakota, based on population.

N.D. CENT. CODE §§ 57-36-31 & 57-36-32 (1993).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$20,617,000

Other Tobacco Products

Cigars and Pipe Tobacco: 28% of the wholesale purchase price;

Chewing Tobacco: 16 cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce;

Snuff: 60 cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

N.D. CENT. CODE § 57-36-25 (2001).

All revenue from the taxes on other tobacco products is credited to the General Fund.

N.D. CENT. CODE § 57-36-25 (2001).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may conduct compliance surveys, after coordination with the appropriate local law enforcement authority. An individual under 18 years of age may purchase and possess tobacco as part of a

compliance survey program when acting with the permission of the individual's parent or guardian, and while acting under the supervision of any law enforcement authority.

N.D. CENT. CODE § 12.1-31-03 (2001).

Penalties for Sales to Minors

It is an infraction for any person to sell or furnish tobacco products to a minor or procure tobacco products to or for a minor. "Sell" includes dispensing from a vending machine under the control of the actor. A city or council may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors, which includes prohibitions in addition to those mentioned above.

N.D. CENT. CODE § 12.1-31-03 (2001).

Photo ID

None

Sign Posting

None

Bidis

The sale of the tobacco product commonly referred to as "bidis" or "beedies" is prohibited. "Bidis" or "beedies" means a product containing tobacco which is wrapped in temburni leaf or tendu leaf.

N.D. CENT. CODE § 12.1-31-10 (2003).

Penalties to Minors

It is a non-criminal offense for a minor to purchase, possess, smoke or use tobacco in any form. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. This does not prohibit minors from taking part in compliance surveys. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors, which includes prohibitions in addition to those mentioned above. Any ordinance or resolution adopted must include provisions deeming a violation a noncriminal violation and must provide for a fee of not less than \$25 for a minor

14 years of age or older who has been charged with an offense.

N.D. CENT. CODE § 12.1-31-03(2-4) (2007).

Placement of Tobacco Products

None

Internet Sales

It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the Internet, unless: 1) before mailing or shipping the product, the person receives from the individual a copy of a valid government-issued identification and a signed statement from the individual providing a certification of certain specified information; 2) the person verifies the date of birth or age of the individual against a commercially available data base or obtains a photocopy of the government-issued identification; 3) sends a notice with specified information to the prospective consumer; 4) in the case of an order by the Internet, receives payment via debit card, credit card or check; 5) and employs a method of shipping that the purchaser be the addressee, have an adult of legal minimum purchase age sign for the package and present a photo ID if they appear to be under 27 years of age. The person must also provide specified information to the state Tax Commissioner. A person that generally violates this chapter is subject to a fine of \$1,000 for the first offense and a fine of \$1,000 to \$5,000 for the second and subsequent offenses. Knowingly violating these provisions is a Class C felony. Knowingly and falsely submitting a certification in another person's name is a non-criminal violation subject to the fines listed above. Failure to pay the tax is subject to a penalty of 50 percent of the tax due but unpaid.

N.D. CENT. CODE § 51-30-01 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is an infraction for any person to furnish or procure tobacco products to or for a minor.

N.D. CENT. CODE § 12.1-31-03 (2001).

Single Cigarettes

All cigarettes sold or distributed must be in packages containing 20 or more cigarettes each. All packages of roll-your-own smoking tobacco sold or distributed in this state must be in packages containing at least 0.6 ounces of tobacco.

N.D. CENT. CODE § 57-36-07 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines**Placement**

It is unlawful to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except a vending machine that is located in an area in which minors are not permitted access; or a vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product. Tobacco product vending machines can not contain nontobacco products other than matches.

N.D. CENT. CODE § 12.1-31-03.1 (2007).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is an infraction.

N.D. CENT. CODE § 12.1-31-03.1 (2007).

F Licensing Requirements**Requirements**

Dealers (retailers) and distributors must obtain a license for each place of business from the Attorney General to sell tobacco products at wholesale or retail. Licenses are valid for one year from July 1st to June 30th and must be renewed annually.

N.D. CENT. CODE § 57-36-02 (1991).

Fee

\$15 annually for a dealer license and \$25 annually for a distributor license.

N.D. CENT. CODE § 57-36-02 (1991).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It is discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of participation in lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related interests of the employer. It is also a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

N.D. CENT. CODE §§ 14-02.4-01 et seq. (1993).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/Tobacco Settlement**Tobacco Control Program Funding**

Appropriated \$3,134,198 for tobacco control and prevention programs for FY2008 from the state's annual MSA payment. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Department of Health Budget

(H.B. 1004) enacted 5/3/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

Non-Monetary Provisions

Establishes a community health grant program, the purpose of which is to prevent or reduce tobacco usage in the state by strengthening community-based public health programs and by providing assistance to public health units and communities. The program must, to the extent funding is available, follow guidelines concerning tobacco prevention programs recommended by the Centers for Disease Control and Prevention.

N.D. CENT. CODE §§ 23-38-01 et seq. (2001).

M Fire Safety Standards

None

■ ■ ■



A Smokefree Air

Public Places

Smoking is prohibited and no proprietor shall permit smoking in a public place or place of employment as defined. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment. Smoking is still allowed in: private residences, except during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present; up to 20 percent of sleeping rooms in hotels, motels and other lodging facilities; family-owned and operated places of employment in which all employees are related to the owner; nursing homes subject to certain conditions; retail tobacco stores that makes more than 80 percent of its gross revenue from the sales of tobacco products; outdoor patios as defined; and private clubs with no employees.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Government Buildings

Smoking is prohibited and no proprietor shall permit smoking in places of employment. “Place of employment” is defined as an enclosed area under the direct or indirect control of an employer that the employer’s employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees. The definition of “employer” then includes the state and any political subdivisions of the state. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Private Workplaces

Smoking is prohibited and no proprietor shall permit smoking in places of employment. “Place of employment” is defined as an enclosed area under the direct or indirect control of an employer that the employer’s employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees. Smoking is still allowed in home-based businesses except during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present; and family-owned and operated places of employment in which all employees are related to the owner, but only if the enclosed areas of the place of employment are not open to the public, are in a free standing structure occupied solely by the place of employment, and smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Schools

Smoking is prohibited in public places and places of employment, the definitions of which include the indoor areas of schools. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Child Care Facilities

Smoking is prohibited in public places and places of employment, the definitions of which include indoor areas of child care facilities. Home-based child care and adult care facilities are specifically

included during their hours of operation. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Health Care Facilities

Smoking is prohibited in public places and places of employment, the definitions of which include indoor areas of health care facilities. Smoking is allowed in nursing homes only to the extent necessary to comply with section 3721.13(A)(18) of the Ohio Revised Code. If an indoor smoking area is provided by a nursing home for residents of the nursing home, the designated indoor smoking area shall be separately enclosed and separately ventilated so that tobacco smoke does not enter, through entrances, windows, ventilation systems, or other means, any areas where smoking is otherwise prohibited under this chapter. Only residents of the nursing home may utilize the designated indoor smoking area for smoking. A nursing home may designate specific times when the indoor smoking area may be used for such purpose. No employee of a nursing home shall be required to accompany a resident into a designated indoor smoking area or perform services in such area when being used for smoking. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Restaurants

Smoking is prohibited in public places and places of employment, the definitions of which cover restaurants, including restaurants with attached bars. Smoking is allowed on outdoor patios of restaurants if they are physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Bars

Smoking is prohibited in public places and places of employment, the definitions of which cover bars. Smoking is allowed on outdoor patios of bars if they are physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area. Smoking is also prohibited in areas immediately adjacent to entrances to and exits from public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Penalties/Enforcement

“No-smoking” signs or the international “No Smoking” symbol shall be conspicuously posted in and ashtrays shall be removed from every public place and place of employment where smoking is prohibited by this chapter, including at each entrance. The law will be enforced by the Ohio Department of Health and its designees. The department will promulgate rules to implement and enforce the law, including the schedule of fines for violation. Smoking in a public place or place of employment after being requested not to is subject to a maximum fine of \$100. Violation by proprietor of a public place or place of employment is subject to minimum fine of \$100 and a maximum fine of \$2,500 after a warning letter for a first violation. Each day of violation will be a separate offense and fines for the proprietor will be progressive based on prior violations. Fines will double for intentional violations.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.25

Date last changed: July 1, 2005 — from 55 cents to \$1.25

Year first enacted: 1931

OHIO REV. CODE ANN. § 5743.02 (2005).

After all refunds of tax, as certified by the state Tax Commissioner, are paid, all remaining revenue from the tax on cigarettes is distributed to the General Revenue Fund.

OHIO REV. CODE ANN. § 5743.02 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$992,281,000

Other Tobacco Products

All other tobacco products: 17% of the wholesale price

OHIO REV. CODE ANN. § 5743.51 (1995).

After all refunds of tax, as certified by the state Tax Commissioner, are paid, all remaining revenue from the tax on other tobacco products is distributed to the General Revenue Fund.

OHIO REV. CODE ANN. § 5743.51 (1995).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions

Penalties for Sales to Minors

No manufacturer, distributor, wholesaler or retailer of tobacco products, or employee thereof, shall sell or otherwise distribute tobacco products to any person under 18. First violation constitutes a fourth degree misdemeanor and subsequent violations constitute a misdemeanor of the third degree. It is an affirmative defense if the minor was accompanied by a parent, spouse older than 18, or legal guardian, or the person selling or distributing the tobacco product was a parent, spouse older than 18, or legal guardian.

OHIO REV. CODE ANN. § 2927.02 (2002).

A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification

card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes or other tobacco products. If the information deciphered by the transaction scan fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes or other tobacco products to the card holder. It will be an affirmative defense to a charge of selling or distributing tobacco products to minors if all of the following occurred: a card holder attempting to purchase or receive cigarettes or other tobacco products presented a driver's or commercial driver's license or an identification card; a transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid; and the cigarettes or other tobacco products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan. This does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine if the person is in fact 18 years or older and the picture on the identification is the card holder.

OHIO REV. CODE ANN. §§ 2927.021 & 2927.022 (2000).

Photo ID

None

Sign Posting

No person shall give away, sell or distribute tobacco products in any place that does not have posted a sign stating that giving, selling, or otherwise distributing tobacco products to a minor is prohibited by law. Violation constitutes a fourth degree misdemeanor for the first offense and a third degree misdemeanor for each subsequent violation.

OHIO REV. CODE ANN. § 2927.02 (2002).

Penalties to Minors

No child shall do any of the following unless accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child: use,

consume, or possess cigarettes, other tobacco products, or papers used to roll cigarettes; purchase or attempt to purchase cigarettes, other tobacco products, or papers used to roll cigarettes; order, pay for, or share the cost of cigarettes, other tobacco products, or papers used to roll cigarettes; or accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes. No child shall knowingly furnish false information concerning that child's name, age, or other identification for the purpose of obtaining cigarettes, other tobacco products, or papers used to roll cigarettes. If a juvenile court finds that a minor violated this division it may do either or both of the following: require the minor to attend a youth smoking education program or other smoking treatment program approved by the court, if one is available; or impose a fine of not more than \$100. If the minor disobeys a juvenile court order the court may increase the fine imposed upon the minor; and/or require the minor to perform not more than 20 hours of community service; and/or suspend for a period of 30 days the temporary instruction permit, probationary driver's license, or driver's license issued to the minor. It is not a violation for a minor to accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes if the minor is required to do so in the performance of their duties as an employee; or while participating in an inspection or compliance check conducted by a federal, state, local, or corporate entity at a location at which tobacco products are sold or distributed.

OHIO REV. CODE ANN. § 2151.87 (2000).

Placement of Tobacco Products

None

Internet Sales

No person shall cause to be shipped any cigarettes to any person in this state other than an authorized recipient of tobacco products. No common carrier, contract carrier, or other person shall knowingly transport cigarettes to any person in this state that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the common carrier, contract carrier, or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient

of tobacco products. An authorized recipient of tobacco products is: a licensed cigarette wholesaler, a licensed distributor of tobacco products, an export warehouse proprietor, an operator of a customs bonded warehouse, an officer, employee, or agent of the state or federal government acting in the person's official capacity, a department, agency, instrumentality, or political subdivision of this state or the federal government and a person having a consent for consumer shipment issued by the state Tax Commissioner. No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this state in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes." Violation is subject to a fine of up to \$1,000 for each violation.

OHIO REV. CODE ANN. § 2927.023 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No manufacturer, distributor, wholesaler or retailer of tobacco products, or agent or employee thereof, shall give or otherwise distribute tobacco products to any person under 18. The first violation is a fourth degree misdemeanor and subsequent violations are a third degree misdemeanor.

OHIO REV. CODE ANN. § 2927.02 (2002).

Single Cigarettes

No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes; or agent or employee thereof, shall manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco. Selling cigarettes in a smaller quantity than that placed in the pack or other container by the manufacturer is also unlawful. Violation is a fourth degree misdemeanor for the first offense and third degree misdemeanor for subsequent offenses.

OHIO REV. CODE ANN. § 2927.02 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sales from vending machines are prohibited unless the machine is in an office, factory, business or other place not open to the general public, or in a place where persons under 18 are not permitted. Vending machines are also allowed in locations where they are in the immediate vicinity, plain view, and control of the owner or operator of the establishment. In such locations, vending machines shall not be located in an unmonitored coatroom, restroom, hallway or outer waiting room, and must be inaccessible to the public when the place is closed.

OHIO REV. CODE ANN. § 2927.02 (2002).

Penalty

Violations are a misdemeanor of the fourth degree for the first offense and a misdemeanor of the third degree for subsequent offenses.

OHIO REV. CODE ANN. § 2927.02 (2002).

F Licensing Requirements

Requirements

Retailers and wholesalers must obtain a license from the County Auditor of the county in which they wish to do business to sell cigarettes. A separate license shall be issued for each place of business specified on the required license application. Manufacturers and importers of cigarettes are required to obtain a license from the state Tax Commissioner. All licenses are valid for one year starting on the fourth Monday of May.

OHIO REV. CODE ANN. § 5743.15 (2005).

Distributors of tobacco products are required to obtain a license from the Department of Taxation. Separate licenses are issued for each place of business on the required license application and are valid for one year commencing on the 1st day of February.

OHIO REV. CODE ANN. § 5743.61 (1993).

Fee

\$30 annually for a retail cigarette license for the first five places of business, and \$25 annually for each additional place of business; \$200 annually for a wholesale cigarette license; and \$100 annu-

ally for a tobacco product distributor license.

OHIO REV. CODE ANN. §§ 5743.15 (2005) & 5743.61 (1993).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

An appeal does not operate as a stay of execution of a judgment until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved, except that the bond shall not exceed \$50 million, excluding interest and costs, as directed by the court that rendered the final order, judgment, or decree that is sought to be superseded or by the court to which the appeal is taken.

OHIO REV. CODE ANN. § 2505.09 (2002).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

The Tobacco Use Prevention and Control Foundation (TUPCF) allocated \$45,025,347 for tobacco control and prevention programs for FY2007 from a portion of annual state MSA payments.

In 2007, Ohio securitized all of its future annual MSA payments, and repealed the statute requiring

deposit of the payments in the Tobacco Master Settlement Agreement Fund. Many of the various trust funds created to receive portions of the MSA payment still exist, but will receive no more money from future MSA payments.

OHIO REV. CODE ANN. §§ 183.01 to 183.35 (2007).

The Tobacco Use Prevention and Cessation Trust Fund and the Tobacco Use Prevention and Control Endowment Fund were created. A portion of the money from the state's MSA payments was deposited into the trust fund in 2000 and 2001. The money was then transferred to the endowment fund, and available for use in funding a comprehensive tobacco control program. The trust fund was supposed to receive money in 2002 to 2006, but it was diverted by the legislature to other purposes. And in 2007, future state MSA payments were securitized meaning no future money from the MSA will go to the trust fund.

OHIO REV. CODE ANN. §§ 183.03 to 183.09 (2007).

Certain percentages of the annual settlement payments in specific years also went to the Law Enforcement Improvements Trust Fund, the Southern Ohio Agricultural and Community Development Trust Fund, the Ohio Public Health Priorities Trust Fund, the Biomedical Research and Technology Transfer Trust Fund, the Education Facilities Trust Fund, the Education Facilities Endowment Fund, and the Education Technology Trust Fund. To see specific percentages, check code citation below.

OHIO REV. CODE ANN. §§ 183.02 et seq. (2000).

Non-Monetary Provisions

The Tobacco Use Prevention and Control Foundation was created to manage a state tobacco control program funded by a portion of state MSA payments (see above). The foundation is overseen by a 23-member board that includes several representatives recommended by public health groups, including the American Lung Association. Board members serve five-year terms. The board is also tasked with hiring an executive director and employees. The Foundation prepared a plan to reduce tobacco use by Ohioans with an emphasis on reducing use by youth, minority and regional populations, pregnant women and others who may be disproportionately affected by the use of tobacco. Programs may include: youth-focused

media campaigns, school and community based youth educational programs, retailer education and compliance efforts and mentoring programs designed to prevent or reduce tobacco use by students.

OHIO REV. CODE ANN. §§ 183.03 to 183.09 (2007).

Securitization

The sale and assignment of all of the state's future payments expected to be received under the Master Settlement Agreement to the Buckeye Tobacco Settlement Financing Authority is authorized. The authority can then issue and sell bonds and other obligations although the aggregate principal amount of these bonds can not exceed \$6 billion dollars. At least 75 percent of the net proceeds of the sale of obligations by the authority shall be deposited into the school building program assistance fund.

OHIO REV. CODE ANN. §§ 183.51 & 183.52 (2007).

M Fire Safety Standards

None



A Smokefree Air**Public Places**

Smoking is prohibited in any indoor place used by or open to the public, all parts of a zoo to which the public may be admitted, whether indoors or outdoors and on public transportation. Exceptions are made for licensed charitable bingo games during their hours of operation, up to 25 percent of hotel rooms, retail tobacco stores, and veterans' organizations. If smoking is to be permitted in any space exempted, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and be under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within 15 feet of any entrance, exit or air intake.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

The gaming areas and the areas where simulcast wagering is conducted by an Oklahoma Horse Racing Commission licensee shall not be subject to the state restrictions on smoking in public places if the following conditions are met: each gaming or simulcast area in which smoking is permitted shall be fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape to nonsmoking areas when a door is opened, and no air from a smoking area is re-circulated to nonsmoking areas of the building and no exhaust from such gaming or simulcast area shall be located within 25 feet of any entrance, exit, or air intake.

OKLA. STAT. ANN. tit. 3A, § 208.12 (2004).

Government Buildings

Smoking is not permitted in any building owned or operated by the state of Oklahoma or political subdivisions or within 25 feet of the entrance or exit, except one designated smoking room is al-

lowed. The designated smoking room shall not be used for the conduct of public business; and shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is re-circulated to nonsmoking areas of the building. No smoking exhaust shall be located within 25 feet of any entrance, exit or air intake.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

Private Workplaces

Smoking is not permitted in any indoor workplace except private offices, workplaces in which the only employees are the owner and immediate family, or workplaces occupied only by one or more smokers. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted directly to the outside in such a manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within 15 feet of any entrance, exit or air intake.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

Schools

Smoking is prohibited in all primary and secondary schools. Nothing in this section shall be construed to prohibit educational facilities from having more restrictive policies regarding smoking and the use of other tobacco products in the buildings or on the grounds of the facility.

OKLA. STAT. ANN. tit. 63, § 1-1523 (2003).

Child Care Facilities

No person shall smoke in a licensed child care facility or in a private residence used as a child care facility during its hours of operation. The definition of "child care facility" includes a foster family home. In addition to any other penalties, the Department of Human Services shall impose administrative fines of \$50 for the first offense,

\$100 for the second offense in a one year period and \$250 for a third or subsequent offense in a one year period against childcare facilities for violations.

OKLA. STAT. ANN. tit. 63, §§ 1-1521 et seq. (2007).

Health Care Facilities

Smoking is prohibited except in medical research or treatment centers, if smoking is integral to the research or treatment. Nursing homes may designate smoking rooms.

OKLA. STAT. ANN. tit. 63, §§ 1-1521 et seq. (2007).

Restaurants

As of March 1, 2006, smoking areas in restaurants are required to be enclosed and separately ventilated. Outdoor seating areas of the restaurant are exempt except smoking shall not be allowed within 15 feet of any exterior public doorway or any air intake of a restaurant.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2003).

Bars

Bars, taverns, and cigar bars are exempted from the prohibition on smoking in public places. If smoking is to be permitted in any space exempted, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within 15 feet of any entrance, exit, or air intake. Any employer may choose a more restrictive smoking policy, including being totally smokefree.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2003).

Other

Custody of, guardianship of or any visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to a foreseeable risk of material harm. This could apply to secondhand smoke if you can establish that secondhand smoke can cause a foreseeable risk

of material harm.

OKLA. STAT. ANN. tit. 10, § 21.1(D)(3) (2004).

Penalties/Enforcement

The person who owns or operates a place where smoking or tobacco use is prohibited by law shall be responsible for posting a sign or decal at each entrance to the building indicating that the place is smokefree. Any person who knowingly violates this act is guilty of a misdemeanor and shall be punished by a fine of \$10 to \$100. The Oklahoma State Board of Health is the designated enforcement agency.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

Preemption

The state legislature by adopting the above intends to preempt any other regulation promulgated to control smoking in public places and to standardize laws that governmental subdivisions may adopt to control smoking. Cities and towns may enact and enforce laws prohibiting and penalizing conduct under provisions of this act, but the provisions of such laws shall be the same as provided in this act and the enforcement provisions under such laws shall not be more stringent than those of this act.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.03

Date last changed: January 1, 2005 — from 23 cents to \$1.03

Year first enacted: 1933

OKLA. STAT. tit. 68, §§ 302, 302-1, 302-2, 302-4 & 302-5 (2005).

State sales taxes are no longer collected on cigarettes and tobacco products pursuant to the legislative referendum passed on November 2, 2004.

OKLA. STAT. tit. 68, § 1355(11) (2005).

Cigarette tax revenue is distributed as follows:

Eighteen cents to the Oklahoma Building Bonds of 1992 Sinking Fund and 5 cents to the General Revenue Fund. The remaining 80 cents is distributed based on the following percentages: 22.06

percent to the Health Employee and Economy Improvement Act Revolving Fund; 3.09 percent to the Comprehensive Cancer Center Debt Service Revolving Fund; 7.50 percent to the Trauma Care Assistance Revolving Fund; 3.09 percent to the Oklahoma State University College of Osteopathic Medicine Revolving Fund; 26.38 percent to the Oklahoma Health Care Authority Medicaid Program Fund; 2.65 percent to the Department of Mental Health and Substance Abuse Services Revolving Fund; 0.44 percent to the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund; one percent to the Teachers' Retirement System Revolving Fund; 2.07 percent to the Education Reform Revolving Fund; 0.66 percent to the Tobacco Prevention and Cessation Revolving Fund, which in part funds the state tobacco prevention program; 16.83 percent to the General Revenue Fund; and 14.23 percent to municipalities and counties that levy a sales tax, in the proportions which total municipal and county sales tax revenue was apportioned by the Oklahoma Tax Commission in the preceding month.

OKLA. STAT. tit. 68, §§ 302, 302-1, 302-2, 302-4 & 302-5 (2005).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$192,763,000

Other Tobacco Products

Chewing tobacco, smokeless tobacco and snuff: 60% of the factory list price;

Smoking Tobacco: 80% of the factory list price;

Little Cigars (not weighing more than three lbs. per thousand): 72 cents per cigar;

Cigars (weighing more than three lbs. per thousand): 13 cents per cigar

OKLA STAT. tit. 68, §§ 402, 402-1, 402-2 & 402-3 (2005).

Revenue from 50 percent of the tax on chewing tobacco, smokeless tobacco and snuff; 50 percent of the tax on smoking tobacco; 18 cents of the tax on little cigars; and 4 cents of the tax on regular cigars goes to the General Revenue Fund. The remaining revenue (50 percent of the tax on chewing tobacco, smokeless tobacco and snuff; 50 percent of the tax on smoking tobacco; 54 cents of the tax on little cigars; and 9 cents of the tax on regular cigars) is distributed based on the same percent-

ages specified for 80 cents of the cigarette tax. See above for details.

OKLA STAT. tit. 68, §§ 402-2, 402-3 & 404 (2005).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Alcoholic Beverage Laws Enforcement (ABLE) Commission is authorized and empowered to enforce most youth access laws. The ABLE Commission shall enforce those provisions in a manner that can reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under 18 years of age. Persons under 18 years of age may be enlisted by the ABLE Commission, a municipality or town, or a county to assist in compliance checks and enforcement if written parental consent has been provided and the testing is conducted under the direct supervision of the ABLE Commission or another authorized law enforcement agency. This shall not apply to the use of persons under 18 to test compliance if the test is being conducted by or on behalf of a retailer of cigarettes at any location where the retailer is authorized to sell cigarettes. Any other use of minors to test compliance shall be unlawful and punishable by a fine of \$100. The ABLE commission shall notify storeowners when one of their employees has been determined to be in violation by the ABLE commission or convicted of a violation by a municipality. No agency or other political subdivision of the state may adopt any ordinance or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products.

OKLA. STAT. ANN. tit. 37, §§ 600.10 (1994) & 600.11 (2004).

Penalties for Sales to Minors

It is unlawful for any person to sell, give or furnish in any manner any tobacco product to another person who is under 18 years of age. This does not apply to an employee under 18 handling tobacco products as part of his employment. Persons who violate this law shall be fined not more than \$100 for the first offense, not more than \$200 for the

second offense within a two-year period, not more than \$300 for the third offense within a two-year period and the license to sell tobacco products may be suspended for no more than 30 days, not more than \$300 for a fourth and subsequent offense in a two-year period and the license to sell tobacco products may be suspended for no more than 60 days. If the sale is made by the employee of the owner of the store, the employee shall be guilty of the violation and shall be subject to the fine. Each violation of any employee of an owner of a store licensed to sell tobacco products shall be a violation against the owner for purposes of a license suspension. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought pursuant to this section. A person cited for violating this section shall be deemed to have reasonably relied upon proof of age, and that person shall be found not guilty of a violation of this section if the person proves that the individual who purchased or received the tobacco product presented a driver's license or other form of government-issued photo identification purporting to establish that the individual was 18 years of age or older and the person cited for the violation confirmed the validity of the identification by performing a transaction scan by means of a transaction scan device. This does not relieve any person cited for a violation from exercising reasonable diligence to determine whether the physical description and picture appearing on the driver's license was that of the person who presented it. County sheriffs may enforce this law. Cities and towns may enact and municipal police officers may enforce ordinances, but the provisions of ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.3 (2004).

It is unlawful to sell, give or furnish in any manner to another person who is under 18 any material or device used in the smoking, chewing, or other method of consumption of tobacco, including cigarette papers, pipes, holders of smoking materials of all types, and other items designed primarily for the smoking or ingestion of tobacco products. Violation is an administrative fine not to exceed \$100 for each offense.

OKLA. STAT. ANN. tit. 37, § 600.13 (2004).

Photo ID

A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be less than 18 years of age. "Proof of age" means a driver's license, license for identification only, or other generally accepted means of identification that describes the individual as 18 years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid. If an individual engaged in the sale or distribution of tobacco products has demanded proof of age from a prospective purchaser or recipient who is not under 18 years of age, the failure to subsequently require proof of age shall not constitute a violation. Penalties for violation are the same as those for selling or distributing tobacco products to minors. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of municipal ordinances shall be the same as provided for in this section, and the penalty provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.3 (2004).

Sign Posting

Every person who sells tobacco at retail shall post at the place of business a sign that states "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE." The sign shall also provide the number for the ABLE Commission for reporting violations of youth access laws. Violators shall be fined \$50 for each day such offense occurs. No agency or other political subdivision of the state may adopt any ordinance or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products.

OKLA. STAT. ANN. tit. 37, §§ 600.5 (2004) & 600.10 (1994).

Bidis

Any person who shall furnish to any minor by gift, sale or otherwise any bidis shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine in the amount of not less than

\$25 or more than \$200 and by imprisonment in the county jail for a term of not less than 10 days or more than 90 days for each offense.

OKLA. STAT. ANN. tit. 21, § 1241 (2002).

Penalties to Minors

It is unlawful for a person who is under 18 years of age to purchase, receive, or have in their possession a tobacco product; or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under 18 years of age to handle tobacco products when required in the performance of the employee's duties. Minors found guilty shall be fined \$100 for a first offense and \$200 for subsequent offenses within a one-year period. If they fail to pay within 90 days, their driver's license may be suspended, or not be issued or renewed. Cities and towns may enact and municipal police officers may enforce ordinances, but the provisions of ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.4 (1997).

Any minor in possession of tobacco products who is asked where and from whom such products were obtained by any police officer, constable, juvenile court officer, truant officer, or teacher, and who refuses to furnish such information shall be guilty of a misdemeanor. If the minor is 16 years of age or older, they shall be sentenced to a fine of \$5 or imprisonment in the county jail for up to five days. If younger than 16, the minor shall be certified to the juvenile court for such action that court deems proper.

OKLA. STAT. tit. 21, § 1242 (1985).

Placement of Tobacco Products

It is unlawful for any person or retail store to display or offer for sale tobacco products in any manner that allows public access to the tobacco product without assistance from the person displaying the tobacco product or an employee or the owner of the store. These provisions shall not apply to retail stores which do not admit into the store persons under 18 years of age. Violation is subject to an administrative fine of not more than \$200 for each violation. Cities and towns may

enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of municipal ordinances shall be the same as provided for in this section and the penalty provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.10A (2004).

Internet Sales

No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless first the person obtains a certification from the prospective customer that includes reliable confirmation the purchaser is over 18, and a statement verifying the consumer's age and address, and indicates that the purchaser understands that signing another person's name to the certification and/or sales to people under the age of 18 is illegal. The person must make a good faith effort to verify the information against a commercially available database or obtain a photocopy of the government issued ID of the purchaser. The person must also use a delivery service that requires the purchaser placing the delivery sale, or another adult of legal minimum purchase age residing at the purchaser's address, to sign to accept delivery of the shipping container and supply proof of age, in the form of a valid, government-issued identification bearing a photograph of the individual, unless the individual appears to be over 27 years of age. A first violation of the above provisions is a fine of up to \$1,000. A second and subsequent violation is a penalty of at least \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. Knowingly violating the above provisions is a fine of \$10,000, or five times the retail value of the cigarettes involved, whichever is greater and/or up to five years in prison. Failing to collect or remit taxes is a penalty of five times the retail value of the cigarettes involved in addition to any other penalty.

OKLA. STAT. ANN. tit. 68, §§ 317.1 to 317.8 (2003).

Other Provisions

Each individual employed as a retail clerk shall be informed of state law regarding sales of tobacco products to minors and shall sign a form attesting to their understanding of this law and promising as a condition of their employment to obey the law.

OKLA. STAT. ANN. tit. 37, § 600.6 (1997).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It shall be unlawful for any person to distribute tobacco products or product samples to anyone under 18, and in or on any public street, sidewalk, or park that is within 300 feet of any playground, school, or other facility when the facility is being used primarily by persons under 18. Violators shall be fined not more than \$100 for the first offense, not more than \$200 for the second offense, and not more than \$300 for any subsequent offense. If they fail to pay within 90 days, their driver's license may be suspended, or not be issued or renewed. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of municipal ordinances shall be the same as provided for in this section, and the penalty provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.8 (2004).

Single Cigarettes

It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer. Violators will be fined \$200 for each offense. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of such ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.9 (1997).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines containing tobacco products shall be located in the following areas: areas of factories, businesses, offices or other places that are not open to the public; and places that are open to the public, but to which persons under 18 are not admitted. No agency or other political subdivision of the state may adopt any ordinance or regulation

concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products.

OKLA. STAT. tit. 37, §§ 600.7 (2004) & 600.10 (1994).

F Licensing Requirements

Requirements

Retailers, distributors, wholesalers and manufacturers must obtain a license from the state Tax Commission to sell cigarettes. Distributors, wholesalers and manufacturers' licenses shall be valid for one year and a retailer's license is valid for three years unless suspended or revoked. A separate license is required for each place of business and must at all times be conspicuously displayed in the place of business. No agency or other political subdivision of the state may adopt any ordinance or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products.

OKLA. STAT. tit. 68, § 304 (2003) & tit. 37 § 600.10 (1994).

Fee

\$30 every three years for a retail cigarette license; \$25 annually for each place of business for a manufacturer, wholesaler or distributor of cigarettes.

OKLA. STAT. tit. 68, § 304 (1994).

License Suspension for Sales to Minors

For a third violation of the law prohibiting the sale of tobacco products to minors, the license to sell tobacco products may be suspended for not more than 30 days in addition to any other penalties. For a fourth and subsequent violations the license to sell tobacco products may be suspended for not more than 60 days in addition to any other penalties. Failure to pay an administrative fine as a result of a violation of the sales to minors' law within 90 days will also result in a license suspension. Cities and towns may enact and municipal police officers may enforce ordinances, but the provisions of ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

OKLA. STAT. ANN. tit. 37, § 600.3 (2004).

G Smoker Protection Laws

It is unlawful for an employer to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions, or privileges of employment because the individual is a nonsmoker or smokes or uses tobacco products during non-working hours or require as a condition of employment that any employee or applicant abstain from tobacco use during non-working hours. This shall not apply when the restriction on smoking relates to a bona fide occupational requirement or an applicable collective bargaining agreement which prohibits or allows off-duty use of tobacco products. The sole remedy for any individual claiming to be aggrieved by a violation of this law shall be a civil action for damages, including all wages and benefits deprived the individual by reason of the violation.

OKLA. STAT. ANN. tit. 40, § 500 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

The appeal bond required in any action or litigation involving a tobacco product manufacturer that is a party to the Master Settlement Agreement or a party to the Smokeless Tobacco Master Settlement Agreement shall be in an amount not to exceed 100 percent of the judgment, exclusive of interest and costs, or \$25 million, whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted

equal to the full amount of security required

OKLA. STAT. ANN. tit. 12, § 990.4 (2001).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$14,212,000 for tobacco control and prevention programs for FY2008 from the state general fund, state tobacco tax revenue and interest generated by the Tobacco Settlement Endowment Trust Fund (MSA money).

FY2008 Annual Department of Health Budget (H.B. 1234) enacted 3/28/07 and effective 7/1/07 & interest generated by the Tobacco Settlement Endowment Trust Fund and certified for use in FY2008.

On November 7, 2000 the voters of Oklahoma approved State Question 692, a legislative constitutional amendment which added Section 40 to Article 10 of the state Constitution. The measure created the Tobacco Settlement Endowment Trust Fund. A percentage of the payments received by the state from tobacco companies are to be deposited in the fund. The percentage goes from 50 percent for the fiscal year ending June 30, 2002, to 75 percent for any fiscal year ending June 30, 2007, and after. Monies not deposited in the trust fund shall be subject to legislative appropriation. The trust fund is managed by the Board of Directors. The earnings from the trust fund may be expended by the Board of Directors for certain purposes, including tobacco prevention and cessation programs, health care, education, other children's services and programs for senior adults.

OK CONSTITUTION § 10-40 (2000) & OKLA. STAT. ANN. tit. 62, §§ 2301 to 2310 (2003).

Non-Monetary Provisions

The State Treasury created the "Tobacco Use Reduction Fund", a revolving fund administered by the state Department of Health. The fund is not subject to fiscal year limitations and shall consist of all monies appropriated by the state Legislature, any other funds that may be appropriated by the Board of Directors of the Tobacco Settlement Endowment Trust Fund, and all other monies including gifts, grants and other funds that may be directed thereto. All monies credited to the fund may be used for the state Plan for Tobacco Use Prevention and Cessation, overseen by the 20-member Tobacco Use Prevention and

Cessation Advisory Committee, which is to meet at least four times a year. On or before January 1, 2002, the Committee shall review and recommend a plan that is in compliance with nationally recognized guidelines or scientific evidence of effectiveness. Such eligible programs shall include media campaigns targeting youth, school and community based education programs, prevention and or cessation programs for youth and adults. At least 70 percent of the dollar value of the contracts awarded in each year shall be dedicated to such programs. An annual evaluation shall be provided by an independent contractor to determine the effectiveness of programs by measuring tobacco consumption, smoking rates and the effectiveness of any other programs that were funded. Additionally, the plan shall provide for administration of the Oklahoma Youth Tobacco Survey to measure tobacco use and behaviors towards tobacco use by those in grades six through 12. Any money in the fund at the end of a fiscal year shall be retained for use in the next year.

OKLA. STAT. ANN. tit. 63, §§ 1-229.1 et. seq. (2001).

M Fire Safety Standards

None





A Smokefree Air

Public Places

No person shall smoke in a public place. "Public place" means any enclosed indoor area open to and frequented by the public, except hospitals pursuant to ORS 441.815, including but not limited to restaurants, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores. The following areas are not subject to these restrictions: retail businesses primarily engaged in the sale of tobacco or tobacco products; rooms or halls being used by a charitable, fraternal or religious organization to conduct bingo games; bowling centers; rooms designated by the owner or person in charge of a hotel or motel as rooms in which smoking is permitted; and employee lounges designated by an employer for smoking subject to certain restrictions listed under "Private Workplaces" below.

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

Note: Oregon passed legislation in 2007 that eliminates most of the exemptions above. The new law will take effect January 1, 2009.

S.B. 571 enacted 6/26/07 and effective 1/1/09.

The use of lighted tobacco in any form in vehicles engaged in transporting passengers in regularly scheduled service is prohibited.

OR. ADMIN. RULE. CHAP. 860, DIV. 65, PUBLIC UTILITY COMMISSION. (2001).

Government Buildings

Smoking is prohibited in all places of employment, including all places of public employment except for employee lounges designated by an employer for smoking subject to certain restrictions listed under "Private Workplaces" below.

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

Private Workplaces

Smoking is prohibited in all places of employment except for employee lounges designated by an employer for smoking if it is not accessible to minors, the air in the lounge is exhausted directly to the

outside by an exhaust fan and not re-circulated to other parts of the building, the lounge is located in a non-work area where no employee is required to enter as part of the employee's work responsibilities, not including custodial or maintenance work carried out in a lounge when it is unoccupied, and there are sufficient nonsmoking lounges to accommodate nonsmokers.

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

Schools

No student, staff member, or school visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-school hours, in any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or on school grounds, athletic grounds or parking lots.

OR ADMIN. RULES 581-021-0110 (2006).

Smoking is prohibited in many public places, including educational facilities.

OR. REV. STAT. §§ 433.835 et. seq. (2001).

Child Care Facilities

Smoking is prohibited in all public places defined as any indoor area open to and frequented by the public. Smoking is also prohibited in any enclosed places of employment, except in employee lounges subject to certain restrictions listed under "Private Workplaces." These definitions cover child care facilities, and private residences used as child care facilities, except for an employee lounge subject to certain restrictions listed under "Private Workplaces".

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

Children in the custody of the State Office for Services to Children and Families (SOSCF) shall not be exposed to second hand smoke in the foster parent/relative caregiver's home or vehicle.

OR ADMIN. RULES § 413-200-0346(3)(b) (2001).

Health Care Facilities

Smoking is prohibited in all public places defined as any indoor area open to and frequented by

the public. Smoking is also prohibited in any enclosed places of employment, except in employee lounges subject to certain restrictions listed under “Private Workplaces”. These definitions cover health care facilities, except hospitals pursuant to ORS 441.815. See below.

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

No hospital employee, patient or visitor shall smoke any cigar, cigarette or tobacco in any form in any: room of the hospital in which more than one patient is accommodated, unless the room is specifically designated for smoking; or other areas where patient care is provided in the hospital. The administrator or person in charge of a hospital shall designate reasonable areas in lobbies and waiting rooms where smoking is not permitted, and shall designate a reasonable number of rooms in the hospital where smoking is not permitted.

OR. REV. STAT. § 441.815 (1983).

Restaurants

Smoking is prohibited in restaurants unless the restaurant is posted off-limits to minors or areas of the restaurant are posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission.

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

Bars

None

Other

Upon request, the Department of Human Services may waive the provisions of ORS 433.835 to 433.875 and 433.990(5) for any public place if it determines that there are valid reasons to do so; and a waiver will not significantly affect the health and comfort of nonsmokers.

OR. REV. STAT. § 433.865 (2001).

Note: Oregon passed legislation in 2007 that repeals the waiver provision above. The new law will take effect January 1, 2009.

S.B. 571 enacted 6/26/07 and effective 1/1/09.

Penalties/Enforcement

An employer, except those specifically exempted, shall post the appropriate signs. The Department of Human Services is responsible for adopting and

implementing rules; and enforcing compliance with these rules. Violation of provisions relating to improper designation of smoking areas and sign-posting requirements are punishable by a fine totaling no more than \$50 per day, not to exceed \$1,000 within a 30-day period.

OR. REV. STAT. §§ 433.835 to 433.990 (2001).

Preemption

A local government may not prohibit smoking in any areas listed as exemptions under “Public Places” unless the local government prohibition was passed before July 1, 2001. “Local government” means any county, district, municipality, port or political subdivision of this state.

OR. REV. STAT. § 433.863 (2001).

Note: Oregon passed legislation in 2007 that repeals preemption of stronger local ordinances. The new law will take effect January 1, 2009.

S.B. 571 enacted 6/26/07 and effective 1/1/09.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.18

Date last changed: January 1, 2004 — from \$1.28 to \$1.18

Year first enacted: 1966

OR. REV. STAT. §§ 323.030 & 323.031 (2004).

The revenue from 58 cents of the cigarette tax is first deposited into a suspense account in the state Treasury, and used to reimburse state Department of Revenue, state Police, and state Department of Justice for administration and enforcement of the tax. After the payment of administrative and enforcement expenses, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly and disabled individuals. Of the money going to the General Fund, 51.92 percent is dedicated to medical assistance under the Oregon Health Plan and 5.77 percent is credited to the Tobacco Use Reduction Account.

OR. REV. STAT. § 323.455 (2003).

The revenue from the other 60 cents of the cigarette tax is first deposited into a suspense account in the state Treasury, and used to reimburse the state Department of Revenue, state Police, and state Department of Justice for administration and enforcement of the tax. After the payment of administrative and enforcement expenses, 97.9 percent is distributed to the Oregon Health Plan Fund, 0.467 percent is appropriated to the Department of Administrative Services for the cities of this state, 0.467 percent is appropriated to the Department of Administrative Services for the counties of this state, 0.467 is appropriated to the Department of Transportation to be transferred to the Elderly and Disabled Special Transportation Fund, and 0.7 percent is credited to the Tobacco Use Reduction Fund.

OR. REV. STAT. § 323.457 (2003).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$232,628,000

Other Tobacco Products

Cigars: 65% of the wholesale sales price of cigars, but not to exceed 50 cents per cigar;

All other tobacco products: 65% of the wholesale sales price.

OR. REV. STAT. § 323.505 (2003).

The revenue from the taxes on other tobacco products is first deposited into a suspense account in the state Treasury, and used to reimburse state Department of Revenue, state Police, and state Department of Justice for administration and enforcement of the tax. Remaining revenue is then credited to the General Fund where 41.54 percent is used for medical assistance under the Oregon Health Plan and 4.62 percent is credited to the Tobacco Use Reduction Account.

OR. REV. STAT. § 323.625 (2003).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Human Resources shall coordinate with law enforcement agencies to conduct

random, unannounced inspections of tobacco retailers and wholesalers to ensure compliance with laws designed to discourage the use of tobacco by minors. The department shall adopt rules concerning these inspections providing that inspection may only take place in areas open to the public and during the hours that tobacco products are sold or distributed, and shall not be more frequent than once a month in any single establishment unless a compliance problem exists or is suspected. A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors.

OR. REV. STAT. ANN. §§ 167.401 (1999) & 431.853 (1993).

Penalties for Sales to Minors

A person commits the crime of endangering the welfare of a minor if the person knowingly distributes, sells, or causes to be sold any tobacco product or device for the use of tobacco to a person less than 18 years of age. A violation is a Class A violation punishable by a fine of not less than \$100.

OR. REV. STAT. ANN. § 163.575 (1991).

Photo ID

None

Sign Posting

Notice shall be posted in a location clearly visible to the seller and purchaser that the sale of tobacco products to persons under 18 years of age is prohibited. Violation constitutes a civil penalty of between \$100 and \$500.

OR. REV. STAT. ANN. §§ 431.840 (2001) & 431.845 (1991).

Bidis

The definition of "tobacco products" includes bidis making it unlawful to knowingly distribute, sell or cause to be sold bidis to a person less than 18 years of age. Violation is a Class A violation punishable by a fine of \$100.

OR. REV. STAT. ANN. § 431.840 (2001).

Penalties to Minors

It is unlawful for any person under the age of 18 to possess tobacco products. Any person who violates this law is guilty of a Class D violation.

OR. REV. STAT. ANN. § 167.400 (1999).

No person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products. Any person who violates this is guilty of a violation. For the first offense, in lieu of any other penalty, the person may be ordered to participate in a tobacco education program or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products. A person may be ordered to participate in such a program only once. For a second violation, in addition to any other penalty, a person who is convicted through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. This does not apply to minors involved in efforts to test compliance.

OR. REV. STAT. ANN. § 167.401 (1999).

Placement of Tobacco Products

A person having authority over the location of cigarettes and other tobacco products in a retail store may not locate cigarettes or other tobacco products in a location in the store where the cigarettes or other tobacco products are accessible by store customers without assistance by a store employee. This does not apply if the location at which the cigarettes or tobacco products are sold is a store or other establishment at which persons under 18 years of age are prohibited. Violation is a Class B violation. Each day of violation constitutes a separate offense.

OR. REV. STAT. ANN. § 167.407 (2005).

Internet Sales

Prior to the first delivery of tobacco to a consumer

relating to a delivery sale purchase order the person shall comply with specific age-verification requirements, including obtaining a certification from the prospective consumer and verifying the information against a commercially available database of government collected information and a photocopy of a government-issued identification; the requirement to get a cigarette or tobacco products distributor's license; specific disclosure requirements; specific shipping requirements, including use of a delivery service that requires a signature from the consumer or another adult of legal purchasing age upon delivery and proof, in the form of a government-issued identification; and specific reporting requirements. A first violation is subject to a fine of \$1,000 or five times the retail value of the tobacco involved, whichever is greater. A second violation is a \$5,000 fine or five times the retail value of the tobacco involved, whichever is greater. Knowingly violating this law or knowingly submitting a false certification under the name of another person is subject to a \$10,000 fine or five times the retail value of the tobacco involved, whichever is greater, or may be imprisoned for up to five years.

OR. REV. STAT. §§ 323.700 to 323.730 (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful to distribute free tobacco products to persons under 18 years of age as part of a marketing strategy to encourage the use of tobacco products. Violation constitutes a civil penalty of between \$100 and \$500.

OR. REV. STAT. §§ 431.840 (2001) & 431.845 (1991).

Single Cigarettes

It is unlawful to sell cigarettes in any form other than a sealed package. Violation constitutes a civil penalty of between \$100 and \$500.

OR. REV. STAT. §§ 431.840 (2001) & 431.845 (1991).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are prohibited in areas legally accessible to minors, except for taverns, industrial

plants and hotels and motels. Cities and counties by ordinance or resolution shall not regulate vending machines that dispense tobacco products in any form and that are in any manner accessible to minors.

OR. REV. STAT. §§ 167.402 (1999) & 167.404 (1991).

Penalty

Violation is punishable by a fine of up to \$250 for each day the violation exists. Cities and counties by ordinance or resolution shall not regulate vending machines that dispense tobacco products in any form and that are in any manner accessible to minors.

OR. REV. STAT. §§ 167.402 (1999) & 167.404 (1991).

F Licensing Requirements

Requirements

Wholesalers and distributors must obtain a license to sell cigarettes from the Department of Revenue. A separate license is required for each place of business.

OR. REV. STAT. §§ 323.105 & 323.107 (2003).

Fee

No fee for distributors, no fee specified for wholesalers.

OR. REV. STAT. §§ 323.105 & 323.107 (2003).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during non-working hours, except when the restriction relates to a bona fide occupational requirement. This section does not apply if an applicable collective bargaining agreement prohibits off-duty use of tobacco products. A civil action may be filed in circuit court for a violation.

OR. REV. STAT. §§ 659A.315 & 659A.885 (2005).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In any civil action, against a tobacco product manufacturer, or against an affiliate or successor of a tobacco product manufacturer subject to the requirements of the Master Settlement Agreement, the supersedeas undertaking required as a condition of a stay of judgment throughout all appeals or discretionary appellate review shall be established in the manner provided by the laws and court rules of this state applicable to supersedeas undertakings, but the amount of the supersedeas undertaking may not exceed \$150 million. If at any time after the posting of the supersedeas undertaking the court determines that a tobacco product manufacturer, affiliate or successor, outside of the ordinary course of its business, is purposely dissipating or diverting assets for the purpose of avoiding payment on final judgment in the action, the court may condition continuance of the stay on an order requiring that the tobacco product manufacturer, affiliate or successor post a supersedeas undertaking in an amount up to the full amount of the judgment.

OR. REV. STAT. § 19.312 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$7,900,000 for tobacco control and prevention programs from a portion of tobacco tax revenue in FY2008. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Department of Human Services Biennial Budget (H.B. 5031) enacted and effective 7/3/07 (FY2008) & 7/1/08 (FY2009).

The Tobacco Settlement Funds Account is established as an account in the General Fund. Except as specified otherwise, the account shall consist of all moneys received from the Master Settlement Agreement (MSA). On June 1 of each odd-numbered year, \$700,000 is transferred to a

Tobacco Enforcement Fund. All other moneys in the account are appropriated as directed by the legislature.

OR. REV. STAT. § 293.537 (2003).

The Health Care Trust Fund was established in the state Treasury. The trust fund shall consist of moneys from the MSA as directed by the legislature. Earnings on the trust fund are appropriated to the Department of Administrative Services to be used only for the purpose of financing health programs.

OR. REV. STAT. § 293.540 (2001).

Non-Monetary Provisions

The Tobacco Use Reduction Account was established in the General Fund. Amounts credited to the account are continuously appropriated to the Department of Human Services for the funding of prevention and education programs designed to reduce cigarette and tobacco use. The department shall develop and adopt rules for awarding grants to programs for educating the public on the risk of tobacco use, including, but not limited to, educating children on the health hazards and consequences of tobacco use, and promoting enrollment in smoking cessation programs and programs that prevent smoking-related diseases including cancer and other diseases of the heart, lungs and mouth.

OR. REV. STAT. §§ 431.832 & 431.834 (1997).

M Fire Safety Standards

To help prevent cigarette-caused fires a person may not distribute or offer to sell a cigarette within this state unless the cigarette is of a variety the State Fire Marshal has determined to have reduced ignition propensity. For a cigarette to be determined to have reduced ignition propensity, it must meet the ignition propensity testing requirements in ORS 476.770. A cigarette manufacturer must submit a written certification with specific requirements outlined in ORS 476.780. The cigarette packages deemed to meet the standard must also be marked pursuant to ORS 476.785. The State Fire Marshal may impose a civil penalty for violation. For a person that distributes or offers to sell cigarettes to a wholesale or retail dealer, \$10,000 or five times the wholesale invoice cost of the cigarettes involved in the violation, whichever is greater. For a person that distributes or offers to

sell not more than 1,000 cigarettes to consumers, \$500, and for a distribution or offer of more than 1,000 cigarettes, \$1,000 or five times the retail value of the cigarettes involved in the violation, whichever is greater. For a continuing violation, each day that a person distributes or offers to sell cigarettes after being notified by the State Fire Marshal is a separate violation subject to civil penalty.

OR. REV. STAT. §§ 476.755 to 476.806 (2008).





A Smokefree Air

Public Places

No person shall smoke in areas designated as non-smoking by the proprietor or person in charge of a public place or at a public meeting. A “public place” is defined as an enclosed, indoor area used by the general public, which includes: a workplace, an educational facility, a health facility, an auditorium, an arena, a theater, a museum, a restaurant, a concert hall, and any other facility during the period of its use for a performance or exhibit of the arts. Exempt from this act are private social functions where the space utilized is under the control of the sponsor and not the proprietor; factories, warehouses and similar places of work not frequented by the general public; bar areas in liquor licensee establishments; restaurants seating fewer than 75 persons; areas in public places commonly referred to as lobbies and hallways; hotel and motel rooms; and tobacco retail stores.

35 PA. STAT. § 1230.1 (1988).

Smoking is prohibited on any public conveyance owned or operated by the Port Authority, including buses, street railway cars, light rail vehicles, a commuter rail train or incline.

55 PA. CONS. STAT. ANN. § 560.1 (1992).

Government Buildings

No person shall smoke in an area designated non-smoking by the proprietor or person in charge of a public place, or at a public meeting. The definition of “public place” includes enclosed, indoor areas owned or operated by state or local governmental agencies, which are used by the general public, or serve as workplaces for public employees or meeting places for public bodies. Such areas include offices, educational facilities, health facilities, auditoria, arenas, meeting rooms and public conveyances. Employers shall develop, post and implement a policy to regulate smoking in the workplace, provided that nothing in this section or any local law, rule or regulation shall impair or diminish any contractual agreement, collective bargaining agreement, rights or procedures.

35 PA. STAT. §§ 1230.1 (1988).

Private Workplaces

No person shall smoke in an area designated non-smoking by the proprietor or person in charge of a public place, or at a public meeting. The definition of “public place,” includes private workplaces used by the general public. Factories, warehouses and similar places of work not frequented by the general public are exempt. Employers that are not exempt shall develop, post and implement policies to regulate smoking in the workplace, provided that nothing in this statute, or any local law, rule or regulation, affects any contractual agreement or collective bargaining agreement, rights, or procedures. The employer shall provide a copy of the smoking policy to any employee upon request.

35 PA. STAT. §§ 1230.1 (1988).

Schools

Tobacco use or possession by pupils is prohibited in school buildings; and school buses or buses, vans or other vehicles owned by, leased by or under the control of a school district; and on school property owned by, leased by or under the control of a school district. Tobacco use by any person other than a pupil is prohibited in school buildings; and on buses, vans or other vehicles owned by, leased by or under the control of a school district; and on property owned by, leased by or under the control of a school district. The board of school directors may designate certain areas on property owned by, leased by or under the control of the school district where tobacco use by persons other than pupils is permitted. Such areas shall be no less than 50 feet from school buildings, stadiums or bleachers. The board of school directors may designate smoking areas for employees and shall establish policy to enforce the prohibition of tobacco use under this section and may further establish a policy relating to tobacco use at school-sponsored events which are held off school premises. This section supersedes any municipal ordinance or school board regulation to the contrary.

35 PA. STAT. § 1223.5 (2000).

Child Care Facilities

No person shall smoke in areas designated as non-

smoking by the proprietor or person in charge of a public place or at a public meeting. A “public place” is defined as an enclosed, indoor area used by the general public. The definition of “public place,” includes private workplaces used by the general public, which includes child care facilities.

35 PA. STAT. §§ 1230.1 (1988).

Health Care Facilities

Smoking is prohibited in hospital patient care areas, nonsmoking patient rooms, and nonsmoking public areas. Only patients may smoke in patient rooms designated as smoking. Violators may be fined up to \$10 and the costs of prosecution.

35 PA. CONS. STAT. § 361 (1977).

Smoking is restricted to designated areas in other health facilities.

35 PA. STAT. §§ 1230.1 (1988).

Restaurants

Restaurants with seating capacities of 75 or more shall provide smoking and non-smoking areas reasonably calculated to address the needs of their clientele. The size of the smoking area may be increased or decreased by the proprietor or person in charge, according to need. Restaurants with fewer than 75 seats shall either provide a non-smoking section or post a notice at each entrance stating that there is no smoking policy.

35 PA. STAT. § 1230.1 (1988).

Bars

None

Penalties/Enforcement

A violation of the law restricting smoking in public places is subject to a civil fine of not more than \$50. The Department of Health shall promulgate and adopt rules and regulations as are necessary and reasonable to implement the provisions of this section. No proprietor or person in charge of a public place who establishes a policy or designates areas pursuant to this section shall be subject to any action in any court by any party other than the Department of Health or local board or department of health under this section.

35 PA. STAT. § 1230.1 (1988).

Preemption

This act shall preempt and supersede any local ordinance or rule concerning this subject matter, except that this preemption shall not apply to local rules or regulations that were adopted by cities of the second class and were in effect prior to September 1, 1988.

35 PA. STAT. § 1235.1 (1988).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.35

Date last changed: January 7, 2004 — from \$1.00 to \$1.35

Year first enacted: 1935

72 PA. STAT. § 8206 (2004).

There is established in the General Fund a special account to be known as the Health Care Provider Retention Account. Eighteen and fifty-two hundredths per cent of cigarette tax revenue shall be deposited in the account. Funds in the account shall be subject to an annual appropriation and shall be administered as provided by law.

72 PA. STAT. § 8211 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$1,033,959,000

Other Tobacco Products

Chewing tobacco and snuff: None

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

Compliance checks conducted by the state Department of Health, a single county authority created pursuant to the Pennsylvania Drug and Alcohol Abuse Control Act, a county or municipal health department or a primary contractor pursuant to Chapter Seven of the Tobacco Settlement Act to assess compliance with federal and state law shall be conducted only in consultation with the Department of Health and the local law en-

forcement agency for the municipality where the compliance check is being conducted and shall only be conducted once every 30 days. A minor participating in a compliance check must be at least 14 years of age, complete a course of training approved by the Department of Health and furnish the Department of Health with a signed, written parental consent agreement allowing the minor to participate in the compliance check. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Penalties for Sales to Minors

A person is guilty of a summary offense if they sell or furnish tobacco products to a minor. Violators will be fined between \$100 and \$250 for a first offense, \$250 to \$500 for a second offense, and \$500 to \$1,000 for subsequent offenses. Retailers will be fined between \$100 and \$500 for a first offense, \$500 to \$1,000 for a second offense, \$1,000 to \$3,000 for a third offense, and \$3,000 to \$5,000 for subsequent offenses. In addition, upon the third conviction of a retailer in a 24-month period, the Department of Health may, after the opportunity for a hearing, suspend the retailer's cigarette license for up to 30 days. Upon a fourth conviction in any 24-month period, the department may, after the opportunity for a hearing, suspend the license for up to 60 days. An affirmative defense is available for retailers if prior to the date of the alleged violation the retailer has adopted and implemented a written policy, which includes specific requirements relating to the sale of tobacco products by employees, see statute cited for more detailed information. This affirmative defense may be used by a retailer no more than three times at each retail location in a 24-month period. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Photo ID

None

Sign Posting

None

Penalties to Minors

A minor is guilty of a summary offense if the minor purchases or attempts to purchase a tobacco product, or knowingly falsely represents himself to be at least 18 years of age to a person for the purpose of purchasing or receiving a tobacco product. A minor who violates this section shall be sentenced to any or all of the following: to not more than 75 hours of community service; to complete a tobacco use prevention and cessation program approved by the Department of Health; a fine not to exceed \$200; or a 30-day suspension of motor vehicle operating privileges. This does not apply to minors used to test compliance as long as they do not use or consume the tobacco product. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Placement of Tobacco Products

A person may not display or offer for sale tobacco products in any manner which enables an individual other than the retailer or an employee of the retailer to physically handle tobacco products prior to purchase unless the tobacco products are located within the line of sight, or under the control, of a cashier or other employee during business hours, except that this paragraph shall not apply to retail stores which derive 75 percent or more of sales revenues from tobacco products. Violation is subject to the same penalties as for selling tobacco products to a minor. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Internet Sales

It shall be unlawful for any person in the business of selling cigarettes to take an order for cigarettes through the mail or through any telecommunications means, including by telephone, facsimile or the Internet, if in providing for the sale or delivery of the cigarettes pursuant to the order the person mails the cigarettes, or ships the cigarettes sold by him to the purchaser by carrier in or affecting interstate commerce, and the person fails to comply with each of the following procedures. Before mailing or shipping the cigarettes, the person receives from the purchaser a copy of a valid government-

issued document that provides the name, address and date of birth of the purchaser; and a signed statement from the purchaser stating that they are of legal minimum age. The person shall also verify the age of the purchaser against a commercially available database, or obtain a photocopy of their government-issued identification. In the case of an order for cigarettes that occurs pursuant to an advertisement on the Internet or in any newspaper or print or other media, the person receives payment by credit card or check for the order before mailing or shipping the cigarettes. Payment must be made by credit card issued to, or check issued by, the person purchasing the cigarettes. The person employs a method of mailing or shipping the cigarettes requiring that the purchaser be the addressee and be the person who signs for the delivery of the cigarettes. A first violation is subject to a fine of not more than \$1,000. The second or subsequent violations are subject to a fine of \$1,000 to \$5,000. Any person who knowingly violates this section or submits a certification in another person's name shall be fined \$10,000 and/or imprisoned for not more than five years. Failure to pay the required tax is 50 percent of the tax due but unpaid, in addition to any other penalty.

PA FISCAL CODE (P.L. 343, No. 176) § 231-A (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person is guilty of a summary offense if they furnish tobacco products to a minor. Violation is subject to the same penalties as for selling tobacco products to a minor. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Single Cigarettes

A person may not display or offer for sale a cigarette out of a pack of cigarettes. Violation is subject to the same penalties as for selling tobacco products to a minor. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A vending machine containing a tobacco product may not be located or placed in a location accessible to minors. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Penalty

Violation is a summary offense and is subject to the same penalties as for selling tobacco products to a minor. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 (2002).

F Licensing Requirements

Requirements

Retailers and wholesalers must obtain and must conspicuously display at their place of business a license from the Department of Revenue to sell cigarettes. A license is also required for each vending machine. Licenses are valid for one year and must be renewed annually. Any person selling or distributing cigarettes without a license is subject to a fine of \$250 to \$1,000, costs of prosecution and/or imprisonment for not more than 30 days. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

Fee

\$25 annually for a retail license; \$500 annually for a wholesale license; and \$25 annually for a vending machine license.

72 PA. CONS. STAT. § 208-A (1993).

License Suspension for Sales to Minors

Upon the third conviction of a retailer for violating the law prohibiting the sale or distribution of tobacco products to minors in a 24 month period, the Department of Health may, after the opportunity for a hearing, suspend the retailer's cigarette license for up to 30 days. Upon a fourth conviction

in any 24 month period, the department may, after the opportunity for a hearing, suspend the license for up to 60 days. These provisions shall preempt and supersede any local ordinance or rule on this subject after January 1, 2002.

18 PA. CONS. STAT. § 6305 & 53 PA. CONS. STAT. § 301 (2002).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

The appeal bond required to appeal a lawsuit judgment for a signatory, a successor of a signatory or an affiliate of a signatory to the Master Settlement Agreement is limited to \$100 million, regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, the court may enter an order that is necessary to protect the appellee and that requires the appellant to post an appeals bond in an amount up to the total amount of the judgment.

Amendment to the Tobacco Settlement Act of 2001 (Act No. 55, H.B. 1718) (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$31,673,000 for tobacco control and prevention programs from a portion of the state's annual MSA payment.

FY2008 Allocation based on the Tobacco Settlement Act of 2001, effective 7/1/07 and H.B. 1295 enacted and effective 7/17/07.

Note: The Tobacco Settlement Act of 2001 calls

for 12 percent of the annual MSA payment to be spent on tobacco control programs, but H.B. 1295 shifted 25 percent of this amount to other purposes for FY2008.

A special fund known as the Tobacco Settlement Fund was established to receive all payments received from the Master Settlement Agreement. Also, within the Tobacco Settlement Fund, the Health Endowment Account for Long-Term Hope, and Health Venture Investment Fund were established. This law divided the money received based on percentages of actual money received each year. Twelve percent went to the Department of Health for tobacco use prevention and cessation programs, 8 percent for deposit into the Health Account, 13 percent to the Department of Public Welfare for home and community-based care services, 19 percent total for health and related research efforts, 10 percent to the uncompensated care payment program, 30 percent for health investment insurance and the purchase of Medicaid benefits for workers with disabilities and 8 percent for expansion of the Pacenet program.

PA Act 77, H.B. 2; Tobacco Settlement Act of 2001 (2001).

Non-Monetary Provisions

A comprehensive Tobacco Use Prevention and Cessation Program was created within the Department of Health. Components of the program include: statewide, community, and school programs to reduce tobacco use, chronic disease programs to reduce the burden of tobacco-related diseases, enforcement of youth access laws, efforts designed to counter tobacco influences and increase health-related messages, tobacco cessation programs with a priority for serving the uninsured and low income population, program evaluation, and effective administration to coordinate state and local programs. The Tobacco Use Prevention and Cessation Advisory Committee was also established within the Department of Health, whose powers and duties are to collect and review information relating to tobacco use prevention and cessation, and make annual recommendations to the department regarding program priorities. Consideration shall be given to prevention and cessation programs operating in minority communities and those demographic groups which suffer from disproportionately high rates of lung cancer or other tobacco-related diseases, efforts

which would lower tobacco use among school-age children, and the delivery of cessation services by approved health care practitioners.

PA Act 77, H.B. 2; Tobacco Settlement Act of 2001 (2001).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking shall be prohibited in almost all enclosed public places and places of employment, including all restaurants and bars. For a detailed list of public places covered, see R.I. Gen. Laws § 23-20.10-3. Exempt from this prohibition are private residences, except when used as a licensed child care, adult day care or health care facility; up to 50 percent of designated hotel and motel rooms; retail tobacco stores as long as smoke doesn't drift into other areas designated as non-smoking; private and semiprivate rooms or designated areas in assisted living residences and nursing facilities; outdoor places of employment; and smoking bars. This also does not apply to a stage performance provided that smoking is part of the theatrical production. Pari-mutual facilities (casinos) shall provide designated smoking and nonsmoking gaming areas in their facilities. The designated nonsmoking gaming area shall be physically separated from any smoking area and shall be required to have separate and distinct ventilation systems so as to prohibit the migration of smoke into the nonsmoking area. Any bar or restaurant located in a pari-mutual facility shall be nonsmoking and be physically separate from any smoking area and shall have a separate ventilation system so as to prohibit the migration of smoke into the restaurant except for bars which are presently in existence, located in, and not physically separated from a designated smoking area.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Bingo games held in nonsmoking facilities are permitted to award a higher amount of total prizes in any one night than games held in smoking facilities. Prizes may total a maximum of \$6,050 in cash and merchandise in nonsmoking facilities and \$4,250 in smoking facilities.

R.I. GEN. LAWS § 11-19-32 (1995).

Government Buildings

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas,

auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. The definition of "place of employment" includes all public places of employment, including vehicles being used by more than one employee. An employer may provide an outdoor smoking area, but the area must be physically separated from the enclosed workplace so as to prevent the migration of smoke into the workplace. This prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application for employment.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Private Workplaces

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. The definition of "place of employment" includes vehicles being used by more than one employee. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility. An employer may provide an outdoor smoking area, but the area must be physically separated from the enclosed workplace so as to prevent the migration of smoke into the workplace. This prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application for employment.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Schools

Smoking is prohibited in all primary and secondary schools, indoor athletic facilities, school administration buildings, playgrounds, school buses and outdoor areas within 25 feet of any school building. The governing body of each school in Rhode Island shall be responsible for the development of enforcement procedures to prohibit tobacco

product usage by any person utilizing school facilities. All facilities used by a school, whether owned, leased or rented, shall be subject to the provisions of this chapter. Governing bodies of schools are liable for a civil penalty of not less than \$50 but not to exceed \$500. Nothing contained in this chapter shall be construed to restrict the power or authority of any Rhode Island city, town or other legal subdivision to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimal applicable standards to establish smokefree schools.

R.I. GEN. LAWS § 23-20.9-1 et seq. (1993).

Smoking shall be prohibited in all enclosed public places, including primary, secondary and post-secondary education facilities.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Child Care Facilities

No person shall smoke, chew, or otherwise use tobacco products in the buildings or outdoor play areas of a licensed child day care center, or in any vehicle used by the center for transporting children or in outside areas on the grounds or premises within 25 feet of buildings or outdoor play areas; provided, further, that smoking shall not occur on grounds or premises within the children's view. The administrator of a child day care center shall post in a conspicuous place in the center a notice stating that smoking is prohibited in the facility and its vehicles and on its grounds. No person shall smoke, chew, or otherwise use tobacco products within the household or outdoor play areas of a family day care home or a group family day care home, or in outside areas within 25 feet of the home or outdoor play areas; nor shall smoking occur in any area within the children's view, during the period of time when individuals receiving day care services are present. Smoking may be permitted during hours in which individuals receiving day care are not present; provided, however, that the day care provider shall notify the parent, custodian, or guardian of each individual receiving day care services that smoking routinely occurs in the home during hours when the home is not in operation. Nothing in this section shall be construed to prohibit a city or town from enacting or enforcing an ordinance relating to tobacco use in a facility providing day care services if the

ordinance is more stringent than this section.

R.I. GEN. LAWS § 23-28.15-23 (2000).

Smoking shall be prohibited in all enclosed public places, including licensed child care and adult day care facilities.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Health Care Facilities

Smoking shall be prohibited in all enclosed public places, including health care facilities and the lobbies, hallways and other common areas of nursing homes. "Health care facility" is defined as an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. Private and semi-private rooms or designated areas in assisted living residences and nursing facilities are exempt.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Restaurants

Smoking shall be prohibited in all enclosed public places, including restaurants. "Restaurant" is defined as an eating establishment, including, but not limited to, coffee shops, cafeterias, and private and public school cafeterias, which gives or offers for sale food to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Bars

Smoking shall be prohibited in all enclosed public places, including bars. Smoking bars are exempt. "Smoking bar" means an establishment whose business is primarily devoted to the serving of tobacco products for consumption on the premises, in which the annual revenues generated by tobacco sales are greater than 50 percent of the total revenue for the establishment and the serving of food or alcohol is only incidental to the consumption of such tobacco products. Smoking

bars are required to provide a proper ventilation system which will prevent the migration of smoke into the street.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Penalties/Enforcement

No-smoking signs must be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager or other person in control of that place. An employer who violates the prohibition on smoking in public places or places of employment is liable for a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1,000 for the third violation. Each day the violation is committed or permitted to continue shall constitute a separate offense. Any citizen who desires to register a complaint under this chapter may initiate such a complaint with the Department of Health. The Department of Health, local fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.46

Date last changed: July 1, 2004 — from \$1.71 to \$2.46

Year first enacted: 1939

R.I. GEN. LAWS § 44-20-12 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$123,546,000

Other Tobacco Products

Cigars, pipe tobacco products and smokeless tobacco other than snuff: 40% of the wholesale price, except the tax shall not exceed 50 cents per cigar from July 1, 2006 to June 30, 2008;

Snuff: \$1.00/oz. or proportionate rate on all fractional parts of an ounce

R.I. GEN. LAWS § 44-20-13.2 (2006).

All proceeds collected from the taxes on other tobacco products are paid into the general fund.

R.I. GEN. LAWS § 44-20-13.2 (2006).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Mental Health, Retardation, and Hospitals shall coordinate and promote the enforcement of the provisions of this chapter and serve as the primary liaison from this department to other state or local agencies, departments, or divisions on issues pertaining to preventing children's access to tobacco. It shall investigate violations of this chapter concurrently with other state and local officials. It shall utilize unannounced statewide compliance checks of retail tobacco over-the-counter sales, mail-order sales initiated via mail, facsimile, telephone or Internet ordering or other types of electronic communications, and tobacco vending machine sales as part of investigating compliance with the provisions of this chapter. Underage individuals, acting as agents of the Department of Mental Health, Retardation, and Hospitals and with the written permission of a parent or guardian, may purchase, with impunity from prosecution, tobacco products for the purposes of law enforcement or government research involving monitoring compliance with this chapter, provided that the underage individuals are supervised by an adult law enforcement official. Any individual participating in an unannounced compliance check of over-the-counter or vending machine sales must state their accurate age if asked by the sales representative of the retail establishment being checked.

R.I. GEN. LAWS § 11-9-13.6 (2001).

Penalties for Sales to Minors

No person shall sell, give or deliver any tobacco in the form of cigarettes, bidi cigarettes, cigars, pipe tobacco, chewing tobacco, or snuff to a person

less than 18 years of age. No specific penalties are mentioned.

R.I. GEN. LAWS § 11-9-13 (2001).

A person that holds a license issued under chapter 20 of title 44, or an employee or agent of that person, is prohibited from selling, distributing or delivering a tobacco product to any individual that is less than 18 years of age. Violation is punishable by a fine of \$250 for a first violation, \$500 for a second violation within any 36 month period, \$1,000 and a 14 day suspension of license for a third violation within any 36 month period, and a fine of \$1,500 and a 90 day suspension of the license to sell tobacco products for each violation in excess of three. The license holder is responsible for all violations that occur at the location for which the license is issued. The court shall suspend the imposition of a license suspension if the court finds that the license holder has taken measures to prevent the sale of tobacco to minors and the license holder can demonstrate to the court that those measures have been taken and that employees have received training. No person shall sell tobacco products, at retail, without first being trained in the legal sale of tobacco products. Dealers shall maintain records indicating that the provisions of this section were reviewed with all employees who conduct or will conduct tobacco sales. Each employee who sells or will sell tobacco products shall sign an acknowledgement form attesting that the provisions of this section were reviewed with them.

R.I. GEN. LAWS §§ 11-9-13.8 (2001) & 11-9-13.13 (2005).

Photo ID

None

Sign Posting

Signs provided by the Department of Mental Health, Retardation and Hospitals shall be posted at each cash register, vending machine or any other place where tobacco products are sold and shall contain in bold lettering a minimum of 3/8 inch high on a white background the following wording: "THE SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST RHODE ISLAND LAW (SECTION 11-9-13.8 (A) (1), RHODE ISLAND STATUTES). PHOTO ID

FOR PROOF OF AGE IS REQUIRED FOR PURCHASE." The signs shall also provide a phone number at the Department of Mental Health, Retardation and Hospitals where violations can be reported. Violation is punishable by a fine of \$35 to \$500 per civil violation.

R.I. GEN. LAWS §§ 11-9-13.6(2), 11-9-13.7 & 11-9-13.13 (2001).

Bidis

Any person is prohibited from selling tobacco products to minors. The definition of "tobacco product" includes bidi cigarettes. License holders face the same penalties as for selling or distributing tobacco products to minors.

R.I. GEN. LAWS §§ 11-9-13, 11-9-13.8, & 11-9-13.13 (2001).

Penalties to Minors

No person under 18 years of age shall purchase any tobacco in the form of cigarettes, bidi cigarettes, cigars, pipe tobacco, chewing tobacco or snuff. Specific penalty is not given.

R.I. GEN. LAWS § 11-9-13 (2001).

No person under 18 shall smoke, chew or possess, when such possession is clearly visible, tobacco in any form in or on any public street, place or resort. Violators shall be fined not more than \$75 or required to perform up to 20 hours of community service, or attend an approved tobacco treatment program at the discretion of the minor charged.

R.I. GEN. LAWS § 11-9-14 (2007).

Placement of Tobacco Products

None

Internet Sales

No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the state. Each person accepting a purchase order for a delivery sale shall comply with specific age verification requirements, including before the first sale obtaining a certification from the prospective consumer that includes reliable confirmation and a signed statement that the person is of the legal minimum purchase age, and makes a good faith effort to verify the information against a commercially available database or receives a photocopy of the

individual's government-issued identification; specific disclosure requirements; specific shipping requirements, including use of a method of mailing, shipping or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container and proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that they are either the addressee or another adult of legal minimum purchase age residing at the consumer's address; specific registration and reporting requirements; and specific tax collection requirements. A first violation of any provision of this chapter shall be punishable by a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation shall be punishable by a fine of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater. Any person who knowingly violates any provision of this chapter, or who knowingly and falsely submits a required certification in another person's name, shall, for each such offense, be fined \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, and/or imprisoned for not more than five years. Any person failing to collect or remit to the administrator any tax required in connection with a delivery sale, shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

R.I. GEN. LAWS §§ 44-20.1-1 et seq. (2005).

Any person selling or distributing tobacco products in the form of cigarettes, cigars, pipe tobacco, chewing tobacco, or snuff directly to a consumer via the United States Postal Service, or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile, or the Internet, shall, before distributing or selling the tobacco product through any of these means, receive both a copy of a valid form of government identification showing date of birth to verify the purchaser is age 18 years or over and an attestation from the purchaser certifying that the information on the government identification truly and correctly identifies the purchaser and the purchaser's cur-

rent address, and deliver the tobacco product to the address of the purchaser given on the valid form of government identification and by a postal or package delivery service method that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package. The distribution, or sale or conveyance of tobacco products to persons under the age of 18 via the United States Postal Service or by any other public or private postal or package delivery service is prohibited. A minimum fine of \$1,000 shall be assessed against any distributor or seller for each delivery of a tobacco product to a person less than 18 years of age.

R.I. GEN. LAWS § 11-9-13.11 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

The distribution of free tobacco products or coupons or vouchers redeemable for free tobacco products to any person less than 18 years of age shall be prohibited. Further, the distribution of free tobacco products or coupons or vouchers redeemable for free tobacco products shall be prohibited, regardless of the age of the person to whom the products, coupons, or vouchers are distributed, within 500 feet of any school. Violators are subject to a \$500 fine for each violation.

R.I. GEN LAWS § 11-9-13.10 (2001).

Single Cigarettes

A person that holds a license issued under chapter 20 of title 44, or an employee or agent of that person, is prohibited from selling, distributing or delivering a tobacco product in any other form than an original factory-wrapped package or as a single cigarette. Violators are subject to a \$500 fine for each violation.

R.I. GEN. LAWS §§ 11-9-13.8 & 11-9-13.13 (1996).

No cigarettes shall be sold in packs which contain less than 20 cigarettes. Violation is subject to a fine of \$75 for the first offense, \$150 for the second offense, and \$500 for subsequent offenses. In the event that there are no offenses in three successive years from the date of the

last offense, the next offense shall be treated as a first offense.

R.I. GEN. LAWS § 11-9-13.1 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No cigarettes or any other tobacco product shall be sold from any device or vending machine which is in an area not continuously supervised and in direct line of sight of an authorized person employed by the person, firm, or corporation that owns the business occupying the premises in which the vending machine is located. The vending machine shall also be equipped with an electronic locking device which will not allow the machine to dispense the product unless it is unlocked from a secured position inaccessible to the public and under the supervision of an authorized person employed by the business owner. Direct line of sight shall mean that the vending machine and the purchaser of cigarettes must be visible to the authorized person pressing the unlock button while the unlock button is being activated. Locking devices are not required on machines located in an establishment licensed to sell alcoholic beverages, which limits access to persons over the age of 21 years. Tobacco products shall not be sold from vending machines containing non-tobacco products.

R.I. GEN. LAWS § 11-9-13.1 (2001).

Penalty

The owner of a business where a tobacco vending machine in violation of these provisions is located shall be subject to a fine of \$75 for the first offense, \$150 for the second offense, and \$500 for subsequent offenses. In the event that there are no offenses in three successive years from the date of the last offense, the next offense shall be treated as the first offense.

R.I. GEN. LAWS § 11-9-13.1 (2001).

Sign Posting

Signs provided by the Department of Mental Health, Retardation and Hospitals shall be posted on each tobacco product vending machine and shall contain in bold lettering a minimum of 3/8 inch high on a white background the following wording: "THE SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO PERSONS

UNDER THE AGE OF 18 IS AGAINST RHODE ISLAND LAW (SECTION 11-9-13.8 (A) (1), RHODE ISLAND STATUTES). PHOTO ID FOR PROOF OF AGE IS REQUIRED FOR PURCHASE." The signs shall also provide a phone number at the Department of Mental Health, Retardation and Hospitals where violations can be reported. Violation is punishable by a fine of \$35 to \$500 per civil violation.

R.I. GEN. LAWS §§ 11-9-13.6(2), 11-9-13.7 & 11-9-13.13 (2001).

F Licensing Requirements

Requirements

Dealers, importers and distributors must obtain a license from the state Tax Administrator to sell cigarettes. A dealer's license is also required for each cigarette vending machine. A separate application and license is required for each place of business operated by a distributor or dealer; provided, that an operator of vending machines for cigarette products is not required to obtain a distributor's license for each machine. A dealer's and importer's license is valid through June 30th of the succeeding year unless suspended or revoked. A dealer must renew the license by February 1st of that same year. A distributor's license is valid until May 31st of the succeeding year unless suspended or revoked, and may be renewed anytime before this date. Any distributor or dealer who sells, offers for sale, or possesses with intent to sell, any tobacco products without a license shall be subject to penalties specified in R.I. GEN. LAWS § 11-9-13.15.

R.I. GEN. LAWS §§ 44-20-2 to 44-20-6 (2007).

Fee

Dealers/Vending Machines: \$25 for each place of business/vending machine annually;

Distributors: \$100 or \$1,000 annually, depending on if the distributor affixes tax stamps;

Importers: \$1,000 annually

R.I. GEN. LAWS § 44-20-4 (2007).

License Suspension for Sales to Minors

License holders are subject to a 14-day suspension of their license for a third violation of the sales to minors' law within three years, and a 90-day suspension of the license for any violations in excess of three. These suspensions can be waived

if the licensee has a documented employee training program in place and meets other specified conditions.

R.I. GEN. LAWS §§ 11-9-13.8 & 11-9-13.13 (2001).

G Smoker Protection Laws

No employer or agent of any employer shall require, as a condition of employment, that any employee refrain from smoking or using tobacco products outside the course of their employment, or otherwise discriminate against an individual with respect to their compensation, terms, conditions or privileges of employment for such use. The court may award up to three times the actual damages to a prevailing employee or prospective employee. Nonprofit organizations which as one of their primary purposes or objectives discourage the use of tobacco products by the general public are exempt from this law.

R.I. GEN. LAWS § 23-20.10-14 (2005).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$940,475 for tobacco control and prevention programs from the state general fund.

FY2008 Appropriations (H.B. 5300) enacted by veto override 6/21/07 and effective 7/1/07.

Securitization

The Rhode Island Tobacco Settlement Financing Corporation was created as a public corporation of the state having a legal existence separate from the state. On or before June 30, 2002, the state

shall sell and assign to and the corporation shall acquire all or a portion of the state's tobacco receipts. The corporation is authorized to issue bonds backed by the state's tobacco receipts, and revenue is deposited into trust funds.

R.I. GEN. LAWS §§ 42-133-1 et seq. (2002).

Additionally, the Tobacco Settlement Financing Authority was authorized in June 2007 to sell bonds by August 1, 2007 backed by residual interest from the previously sold MSA payments to raise additional money not to exceed \$195 million dollars. The net proceeds from this sale are deposited in the Tobacco Settlement Financing Trust, and then used as specified.

H.B. 5300 enacted by veto override and effective 6/21/07.

M Fire Safety Standards

Rhode Island has enacted legislation requiring cigarettes sold in Rhode Island to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on September 1, 2008.

S.B. 106/H.B. 5257 enacted (became law without governor's signature) 7/5/07 and 7/7/07 respectively and effective 9/1/08.





A Smokefree Air

Public Places

Smoking is prohibited in elevators and public conveyances, except for taxis. Smoking is restricted in arenas, auditoria of public theaters or public performing arts centers to designated areas in foyers, lobbies or other common areas. Smoking is also allowed as part of a legitimate theatrical performance.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Government Buildings

Smoking is restricted to designated areas in buildings leased or operated by the state or any of its political subdivisions, but is permitted in private enclosed offices. Smoking policies in the state Capitol and legislative office buildings shall be determined by the office of government having control over such buildings.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Private Workplaces

None

Schools

Smoking is restricted in public schools and pre-schools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries. Private offices and teacher lounges which are not adjacent to classrooms or libraries are excluded unless the offices and lounges are included specifically in a directive by the local school board. This section does not prohibit school district boards of trustees from providing for a smoke-free campus.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Smoking on school buses is prohibited while the bus is in operation.

S.C. CODE ANN. § 59-67-150 (1962).

Child Care Facilities

Smoking is prohibited in licensed day care facilities.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Health Care Facilities

Smoking in health care facilities is restricted to designated employee break areas. Nothing in this chapter prohibits or precludes a health care facility from being smoke free.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Restaurants

None

Bars

None

Penalties/Enforcement

The owner, manager or agent in charge of the premises shall make reasonable efforts to prevent designated smoking areas from impinging upon designated smokefree areas by the use of existing physical barriers and ventilation systems and by conspicuously posting the appropriate signs. A person who smokes in a smokefree area or a person in charge, who fails to meet these requirements, is guilty of a misdemeanor and, upon conviction, must be fined between \$10 and \$25.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Preemption

No specific provisions concerning preemption in state law.

Note: Although there is no specific preemption clause in S.C. CODE ANN. §§ 44-95-10 et seq., another section of the South Carolina code dealing with youth access laws could possibly preempt stronger local smokefree ordinances. Unless and until the issue is resolved by a definitive court ruling or further legislative action we do not consider South Carolina's law to prevent local communities from passing stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 7 cents

Date last changed: July 1, 1977 — from 6 cents to 7 cents

Year first enacted: 1923

S.C. CODE ANN. § 12-21-620 (1977).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$27,719,000

Other Tobacco Products

All other tobacco products: 5% of the manufacturer's price.

S.C. CODE ANN. § 12-21-620 (1977).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Director of the Department of Revenue shall provide for the enforcement of Section 16-17-502 in a manner that reasonably may be expected to reduce the extent to which tobacco products are sold or distributed to persons under the age of 18 and annually shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the section. The department shall designate an enforcement officer to conduct the annual inspections. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation.

S.C. CODE ANN. §§ 16-17-503 & 16-17-504 (1996).

Penalties for Sales to Minors

It shall be unlawful for any person to sell, furnish, give, or provide a tobacco product to any minor under the age of 18 years. It is also unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual's age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated pursuant to this subsection. An individual who knowingly violates these provisions is guilty of a misdemeanor punishable by a fine of \$100 to \$200 for a first offense, \$200 to \$300 for a second offense within three years of the first offense and

\$300 to \$400 for a third or subsequent offense within three years of the first offense. In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program. A retail establishment that distributes tobacco products must train all retail sales employees regarding the unlawful distribution of tobacco products to minors. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation.

S.C. CODE ANN. § 16-17-500 (2006).

Photo ID

It is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is defined as a driver's license or identification card issued by this state or a United States Armed Services identification card.

S.C. CODE ANN. §§ 16-17-500 & 16-17-501 (2006).

Sign Posting

None

Penalties to Minors

A minor under the age of 18 years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing a tobacco product. A minor who knowingly violates this provision in person, by agent, or in any other way commits a non-criminal offense and is subject to a civil fine of \$25. The civil fine is subject to all applicable court costs, assessments, and surcharges. In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution. If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of 90 days beginning from the date provided by the court. If the

minor does not have a driver's license or permit, the court may delay the issuance of the minor's driver's license or permit for a period of 90 days beginning from the date the minor applies for a driver's license or permit. This section does not apply to the possession of a tobacco product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

S.C. CODE ANN. § 16-17-500 (2006).

Placement of Tobacco Products

None

Internet Sales

None

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for a person to distribute a tobacco product sample to a person under the age of 18. A person engaged in sampling shall demand proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be under the age of 18. Violation of this law is subject to a civil penalty of not more than \$25 for a first offense, not more than \$50 for a second offense and not less than \$100 for a third or subsequent offense. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought pursuant to this section. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation.

S.C. CODE ANN. §§ 16-17-502 & 16-17-504 (1996).

Single Cigarettes

It is unlawful to sell, hold for sale, or distribute a package of cigarettes if the package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, for the placement of labels, warnings, or any other information upon a package of cigarettes. A person who knowingly sells, holds for sale, or distributes cigarette packages in violation of this is guilty of a misdemeanor and, upon conviction, shall be

imprisoned not more than three years and/or be subject to a \$1,000 fine.

S.C. CODE ANN. § 16-17-505 (1996).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful to sell a tobacco product through a vending machine unless the vending machine is located in an establishment, which is open only to individuals who are 18 years of age or older; or where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation.

S.C. CODE ANN. §§ 16-17-500 (2006) & 16-17-504 (1996).

Penalty

Violation is subject to the same penalties as selling or giving tobacco products to minors. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation.

S.C. CODE ANN. §§ 16-17-500 (2006) & 16-17-504 (1996).

F Licensing Requirements

Requirements

Every person engaged in the business of purchasing, selling or distributing tobacco products at wholesale or through vending machines shall file with the Department of Revenue for a license to do so. When such business is conducted at two or more separate places, a separate license for each place of business shall be required. However, a person whose business is conducted through vending machines needs to obtain only one license but shall maintain an up-to-date list of the location of each vending machine operated under this license.

S.C. CODE ANN. §§ 12-21-660 & 12-21-670 (1993).

Fee

None

License Suspension for Sales to Minors
None

G Smoker Protection Laws

The use of tobacco products outside the workplace must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee. No specific penalties specified for violation.

S.C. CODE ANN. § 41-1-85 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

The appeal of a judgment awarding relief in a civil action, under any legal theory, involving a signatory of the Master Settlement Agreement, or a successor to or affiliate of a signatory to the agreement, automatically stays the execution of that judgment. The stay is effective upon the filing of the notice of appeal and during the entire course of appellate review of the judgment.

S.C. CODE ANN. § 11-47-40 (2004).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$2,000,000 for tobacco control and prevention programs from the state general fund.

FY2008 Annual Budget (H.B. 3620) enacted 6/29/07 and effective 7/1/07.

South Carolina established the Healthcare Tobacco Settlement Trust Fund in the state treasury. Earnings on this fund must be credited to the fund. The principal must remain in the fund and only the interest earnings may be appropriated and used for a variety of public health policy

purposes, which can include youth smoking cessation and prevention programs coordinated by the Department of Health and Environmental Control and the Department of Alcohol and Other Drug Abuse Services.

S.C. CODE ANN. § 11-11-170 (2000).

Non-Monetary Provisions

The legislature directed the Department of Health and Environmental Control to develop and implement a youth smoking prevention plan for the purpose of preventing and reducing cigarette smoking by minors. The youth smoking prevention plan must address prevention, cessation, and control of smoking by minors and may include but is not limited to media campaigns; school based youth programs; community based youth programs; business, community, and school partnerships; programs focusing on the enforcement and administration of state minor-related tobacco laws, including retailer education; surveillance and evaluation; chronic disease and health-related programs. To assist in carrying out the purposes of the plan, the department may award youth smoking prevention grants to local agencies, organizations, and entities based on criteria developed by the department. The state plan further shall provide for a grant for an annual statewide school-based survey to measure cigarette use and behavior towards cigarette use by individuals in grades six through 12. Grants must be funded from proceeds received by the state in the settlement agreement. The South Carolina Youth Smoking Prevention Advisory Commission was also established to advise the department in the development, implementation, and evaluation of the state youth smoking plan.

S.C. CODE ANN. § 44-128-30 et seq. (2000).

Securitization

South Carolina created the Tobacco Settlement Revenue Management Authority. The purpose of the authority is to receive all of the state's tobacco receipts and to issue bonds payable solely from and secured solely by the state's tobacco receipts. The authority is governed by a board, which consists of five members: the Governor or his designee, the state Treasurer, the Comptroller General, the chairman of the Senate Finance Committee, and the chairman of the House Ways and Means Committee. The state's tobacco re-

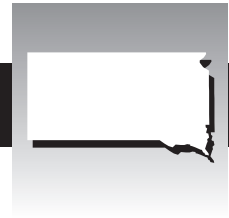
ceipts due to the state after June 30, 2001 and the right to receive them as they are distributed from the escrow are assigned to the authority. All bonds must be secured solely by and payable solely from the state's tobacco receipts or the portion of the state's tobacco receipts the board determines to pledge for payment. The authority may not issue any bond with a scheduled maturity later than 30 years after the date of issuance.

S.C. CODE ANN. §§ 11-49-10 et seq. (2000).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in any public place or place of employment except restaurants licensed to sell alcohol, bars, sleeping rooms in hotels, video lottery establishments, and tobacco and liquor stores.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Government Buildings

Smoking is prohibited in all places of employment, which includes all public workplaces.

S.D. CODIFIED LAWS § 22-36-2 (2002).

By executive order, smoking is prohibited in all buildings owned, leased, or occupied by the executive branch and in all vehicles owned by the state. Outdoor smoking areas may be established.

EXEC. ORDER 92-10 (1992).

Private Workplaces

No person may smoke tobacco or carry any lighted tobacco product in any place of employment. A place of employment is any enclosed indoor area under the control of a public or private employer, including work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, and hallways.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Schools

Smoking is prohibited in any elementary or secondary school buildings.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Child Care Facilities

Smoking is prohibited in any registered or unregistered day care program, day care center, day care cooperative, or family day care home during the time in which children who are not family members of the day care provider are receiving care. A private residence is not a public place unless it is used for day care.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Health Care Facilities

Smoking is prohibited in medical and dental clinics, nursing homes, and hospitals.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Restaurants

Smoking is prohibited in some restaurants, but restaurants licensed to sell alcohol are excluded.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Bars

Bars are specifically excluded from the law prohibiting smoking in public places and workplaces.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Penalties/Enforcement

Violation of the restrictions on smoking is a petty offense. Nothing prohibits a person or a public entity from voluntarily regulating the use of tobacco products on the person's or entity's property.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Preemption

The state legislature is the exclusive regulator of all matters relating to the use of tobacco products.

S.D. CODIFIED LAWS § 10-50-64 (1995).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.53

Date last changed: January 1, 2007 – from 53 cents to \$1.53

Year first enacted: 1923

S.D. CODIFIED LAWS § 10-50-3 (2007).

The first \$30 million in cigarette tax revenue collected annually shall be deposited in the general fund. All revenue in excess of \$30 million collected annually shall be deposited in the Tobacco Prevention and Reduction Trust Fund. Five million of the revenue deposited annually in the trust fund pursuant to this section shall be used to implement the tobacco prevention and reduction program. Thirty-three percent of any

revenue deposited in the tobacco prevention and reduction trust fund in excess of five million shall be transferred to the property tax reduction fund. Another 33 percent of any revenue deposited in the tobacco prevention and reduction trust fund in excess of five million shall be transferred to the Education Enhancement Tobacco Tax Fund. The remaining 34 percent of any revenue deposited in the tobacco prevention and reduction trust fund in excess of five million shall be transferred to the Health Care Tobacco Tax Fund.

S.D. CODIFIED LAWS § 10-50-52 (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$26,689,000

Other Tobacco Products

All other tobacco products: 35% of the wholesale purchase price

S.D. CODIFIED LAWS § 10-50-61 (2007).

Revenue from the tax on all other tobacco products is distributed the same way as cigarette tax revenue, see Cigarettes section above.

S.D. CODIFIED LAWS § 10-50-52 (2007).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

Each county's states attorney or the local law enforcement officer they designate shall annually conduct unannounced, random inspections at various locations where tobacco products are sold or distributed to ensure compliance with this law. Minors may be enlisted to test compliance if the testing is conducted under the supervision of the designated authority and written parental consent has been provided. Any other use of minors to test compliance with this act is unlawful and the responsible party shall be guilty of a Class Two misdemeanor. No person may be charged with more than one violation in any 24 hour period which results from sales to persons purchasing during unannounced random inspections. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion,

and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-3 (1994), 34-46-5.1 (1999) & 34-46-6 (1994).

Penalties for Sales to Minors

It is unlawful for a person to knowingly distribute a tobacco product to a person under the age of 18. It is also unlawful to purchase a tobacco product on behalf of, or to give a tobacco product to, any person under the age of 18. Violation is a Class Two misdemeanor. Reliance on proof of age of the purchaser or recipient is a complete defense. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2 (2007), 34-46-5 (1999) & 34-46-6 (1994).

Photo ID

None

Sign Posting

None

Penalties to Minors

It is unlawful for a minor to purchase or attempt to purchase or receive or attempt to receive, possess or consume tobacco products. Violation is a Class Two misdemeanor. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2 (2007), 34-46-5 (1999) & 34-46-6 (1994).

It is a petty offense for any minor to purchase, attempt to purchase, possess, or consume any smokeless tobacco product or to misrepresent their age for the purpose of purchasing or attempting to purchase any smokeless tobacco product.

S.D. CODIFIED LAWS § 26-10-20 (1986).

Any merchant who has reasonable grounds to believe that a minor has illegally purchased, attempted to purchase, possess, or consume a tobacco product may detain the minor, on the premises of the merchant's establishment, in a reasonable manner and for a reasonable length of time to request identification; to verify the identification; to make reasonable inquiry as to

whether the minor has violated § 34-46-2 of the S. D. Codified Laws in any manner; to inform a law enforcement officer of the detention of the person and surrender that person to the custody of a law enforcement officer; or to inform a law enforcement officer or the parents, guardian, or other private person interested in the welfare of that minor of this detention and to surrender custody of the minor to that person. If a merchant chooses to implement these provisions, then the merchant shall conspicuously post a notice on the merchant's premises stating that any person who the merchant reasonably believes is under the age of 18 and has attempted to purchase tobacco products will be detained and surrendered to a law enforcement officer. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2.1, 34-46-2.2 (2000) & 34-46-6 (1994).

Placement of Tobacco Products

None

Internet Sales

No person may make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age. No person may mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to the consumer the person complies with: specific age-verification requirements, including obtaining from the consumer a signed statement that certifies the consumer's address and that the consumer is at least 18 years of age and making a good faith effort to verify the information contained in the certification against a commercially available database, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order; specific disclosure requirements; specific shipping requirements, including use of a method of mailing, shipping, or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container, and provide proof in the form of a valid government-issued identification bear-

ing a photograph of the individual who signs to accept delivery of the shipping container; specific registration and reporting requirements; and all other laws applicable to cigarette sales within the state. A first violation is subject to a civil penalty of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater and subsequent violations are punishable by a civil penalty of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater. Any person who knowingly violates any of the above provisions or who knowingly and falsely submits a certification in another person's name shall for each offense be fined \$10,000 or five times the retail value of the cigarettes involved, whichever is greater. Any person failing to collect or remit any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

S.D. CODIFIED LAWS §§ 10-50-93 to 10-50-98 (2005).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful to distribute tobacco product samples in or on a public street, sidewalk, or park that is within 500 feet of a playground, school or other facility when it is being used primarily by persons under the age of 18. Violation is a Class Two misdemeanor. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2 (2007), 34-46-5 (1999) & 34-46-6 (1994).

Single Cigarettes

It is unlawful to sell cigarettes other than in an unopened package originating with the manufacturer and depicting the warning labels required by federal law. Violation is a Class Two misdemeanor. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2 (2007), 34-46-5 (1999) & 34-46-6 (1994).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines containing tobacco products may be located only in the following areas: a factory, business, office, or other place not open to the general public; a place that is open to the public but to which persons under the age of 18 are denied access; or a licensed establishment that sells alcoholic beverages for on-site consumption. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2 (2007) & 34-46-6 (1994).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is a Class Two misdemeanor. A person is not liable for more than one violation on a single day. The legislature is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. COD. LAWS §§ 34-46-5 (1999) & 34-46-6 (1994).

Sign Posting

Each cigarette vending machine shall have posted in a conspicuous place on the machine a warning to persons under 18 stating that they are prohibited by law from purchasing cigarettes from the machine. Violation constitutes a petty offense.

S.D. CODIFIED LAWS §§ 26-10-24 (1992).

F Licensing Requirements

Requirements

Each person, except a retailer, engaging in the business of selling cigarettes or tobacco products, including any distributor or wholesaler, shall secure a license from the Secretary of Revenue and Regulation. A separate application and license is required for each wholesale outlet when a person owns or controls more than one place of business. A license is valid for one year beginning July 1st unless suspended or revoked, and may be renewed annually. Each person selling cigarettes or tobacco products at retail shall register with the Department of Revenue and Regulation. A separate registration is required for each retail outlet

operated within the state. Except for retailers, selling cigarettes or tobacco products without a license or registration is a petty offense.

S.D. COD. LAWS §§ 10-50-9 (2007) & 10-50-12 (2003).

Fee

Wholesaler or distributor license: \$150 annually;
Retailer registration: no fee

S.D. CODIFIED LAWS §§ 10-50-9 (2007) & 10-50-11 (1995).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It is a discriminatory or unfair employment practice for an employer to terminate the employment of an employee due to that employee's engaging in any use of tobacco products off the premises of the employer during non-working hours unless such a restriction relates to a bona fide occupational requirement or it is necessary to avoid a conflict of interest with the responsibilities of the employer. The sole remedy for a person claiming to be aggrieved by a violation of this law shall be a civil suit for damages including all wages and benefits lost. Health or life insurance policies may make a distinction between employees for the type or cost of coverage based upon the employees' use of tobacco products.

S.D. CODIFIED LAWS § 60-4-11 (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

The South Dakota Supreme Court promulgated rules capping the total appeal bond for all appellants in a case to \$25 million, regardless of the judgment amount. If the appellee proves by a

preponderance of the evidence that an appellant whose bond has been so limited has been dissipating assets outside the ordinary course of business to avoid payment of a judgment, the court may require the appellant to execute a bond in an amount up to the full amount of the judgment.

S.D. CODIFIED LAWS § 15-26A-26 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$5,000,000 for tobacco control and prevention programs from state tobacco tax revenue.

FY2008 Annual Budget (H.B. 1281) enacted 3/13/07 and effective 7/1/07.

Non-Monetary Provisions

The Tobacco Prevention and Reduction Program was created in the Department of Health. The department was charged with the development of a strategic state-wide plan to prevent and reduce tobacco use. An annual report will detail the progress toward meeting program goals and objectives, including changes in tobacco consumption, use rates, and attitudes towards tobacco, especially among children and other high risk populations. The annual report will be made available to the public on the Department of Health's website.

S.D. CODIFIED LAWS §§ 34-46-7 to 34-46-11 (2004).

Securitization

At any one time or from time to time, all or any portion of the right, title, and interest of the state of South Dakota in, to, and under the Master Settlement Agreement, including the right to receive and collect tobacco settlement revenues, may be sold, conveyed, or otherwise transferred by the state to the South Dakota Building Authority or to a corporation established by the authority in exchange for the net proceeds of bonds and a right to the residual interest in tobacco settlement revenues. The net proceeds of bonds shall be deposited to the Permanent Tobacco Settlement Development Trust Fund, and the residual interest in tobacco settlement revenues shall be deposited to the Tobacco Settlement Residual Fund.

S.D. CODIFIED LAWS § 5-12-49 (2001).

Note: South Dakota sold its rights to approximately \$700 million from the Master Settlement Agreement through a bond issue in August 2002. Approximate proceeds from the bond sale were \$275 million.

M Fire Safety Standards

None



A Smokefree Air

Public Places

Smoking is prohibited in most enclosed public places and workplaces in Tennessee, including most restaurants. See TN CODE ANN. § 39-17-1804 for a detailed list. Exempted from this are age-restricted venues that do not allow persons under 21 to enter at any time; 25 percent of hotel/motel rooms, provided that all smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited; all premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities; non-enclosed areas of public places as specified; residents in licensed nursing homes and long-term care facilities, provided that smoke does not infiltrate into areas where smoking is prohibited; workplaces with three or fewer employees in a private room not accessible to the general public; private clubs as long as they aren't established to avoid compliance with this law; private homes, private residences and private motor vehicles except under specified circumstances; retail tobacco stores that prohibit minors on their premises; and commercial vehicles when such vehicle is occupied solely by the operator.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Government Buildings

Smoking is prohibited in most enclosed public places, the definition of which includes all places of public employment.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Smoking shall be prohibited in all buildings that are owned or operated by the state of Tennessee, including state correctional facilities, except for those sleeping rooms in state park inns and cabins that are designated as smoking rooms or cabins. Smoking is also prohibited in all motor vehicles that are owned, leased, or operated by the state of Tennessee. Cities, counties, and counties having a

metropolitan form of government are specifically allowed to regulate the use of tobacco products in buildings owned or leased by such political subdivisions.

TENN. CODE ANN. § 4-4-121 (2007).

Private Workplaces

Smoking is prohibited in most enclosed public places, the definition of which includes most places of private employment. Exempted are private businesses with three or fewer employees where, in the discretion of the business owner, smoking may be allowed in an enclosed room not accessible to the general public. Smoke from such room shall not infiltrate into areas where smoking is prohibited. All premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities are also exempt.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Schools

Smoking is prohibited in most enclosed public places, the definition of which includes both public and private educational facilities.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

The University of Tennessee and the board of regents may adopt uniform policies prohibiting smoking in all student dormitories. With respect to public institutions of higher education, upon the adoption of smoking policies by the administrative head of such institution, the administrative head is not required to provide an indoor smoking area in each student dormitory or other facility. The administrative head of each institution is encouraged to provide for reasonable smoke-free zones at all building entrances and exits.

TENN. CODE ANN. § 49-7-135 (2005).

Child Care Facilities

Smoking is prohibited in most enclosed public places, the definition of which includes child care and adult day care facilities. Home-based child

care and adult day care facilities are specifically included.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Health Care Facilities

Smoking is prohibited in most enclosed public places, the definition of which includes health care facilities. Health care facilities are defined as an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. Licensed nursing homes and long-term care facilities are exempt, provided that such exemption shall only apply to residents of such facilities and that resident smoking practices shall be governed by the policies and procedures established by such facilities.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Restaurants

Smoking is prohibited in restaurants unless they do not allow people under 21 to enter at all times. A person must submit an acceptable form of identification to gain entry.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Bars

In Tennessee, what are commonly referred to as bars do not exist because they are considered restaurants under existing state law. So, the restrictions on smoking in restaurants apply (see above).

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Penalties/Enforcement

“No Smoking” signs shall be conspicuously posted where smoking is prohibited. The law shall be enforced by the state Department of Health or the state Department of Labor and Workforce Development in those enclosed public places where each department has jurisdiction. If neither department otherwise regulates an enclosed public place, the Department of Labor and Workforce Development shall enforce. Any person who de-

sires to register a complaint under this part may initiate such complaint with either or both departments. A person who knowingly smokes in an area where smoking is prohibited is subject to a civil penalty of \$50. A person who owns, manages, operates or otherwise controls any public place and knowingly fails to comply is subject to a written warning for the first violation, a \$100 civil penalty for a second violation in one year, and a \$500 civil penalty for a third or subsequent violation in one year. Each day on which a violation is committed is considered a separate offense.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2007).

Preemption

This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994 by any agency or political subdivision of the state is void.

TENN. CODE ANN. § 39-17-1551 (1994).

Note: Preemption does not apply to cities, counties and counties having a metropolitan form of government in buildings owned or leased by such political subdivisions; and special school districts in buildings owned or leased by such entities.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 62 cents

Date last changed: July 1, 2007 – from 20 cents to 62 cents

Year first enacted: 1925

TENN. CODE ANN. § 67-4-1004 (2007).

The revenue from 20 cents of the cigarette tax is distributed as follows: four percent for administrative expenses; \$82,500 annually to provide the special sinking fund to pay the principal and interest on the Tennessee rural public school building and repair bonds; \$225,000 to provide the special sinking fund to pay the principal and interest on the Tennessee rural public school building and repair bonds; and the remainder is applied to the general state school fund to be used for public education, grades one through twelve;

The revenue from another 40 cents of the cigarette

tax is distributed as follows: All revenue goes to an education trust fund, provided that \$21 million is allocated to the Department of Agriculture's Tennessee Agriculture Enhancement Program;

The remaining two cents is distributed to the Trauma System Fund to fund state trauma centers.

TENN. CODE ANN. § 67-4-1025 (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$115,462,000

Other Tobacco Products

All other tobacco products: 6.6% of the wholesale cost price

TENN. CODE ANN. § 67-4-1005 (2002).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Agriculture shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this law. Law enforcement efforts may involve the use of individuals under the age of 18 if a parent has consented to this action. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994 by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1504, 39-17-1509 (1999) & 39-17-1551 (1994).

Penalties for Sales to Minors

It is unlawful for any person to sell or distribute any tobacco product to another person who is under 18 or to purchase a tobacco product on behalf of such person. It is unlawful for any person to persuade, entice, send or assist a person who is under 18 years of age to purchase, acquire, receive or attempt to purchase, acquire or receive a tobacco product. This shall not be deemed to preclude law enforcement efforts involving the use of

individuals less than 18 years of age. A person who violates these provisions shall receive a warning letter for the first violation, a civil penalty of not more than \$500 for a second violation, not more than \$1,000 for a third violation and not more than \$1,500 for a fourth or subsequent violation within a five-year period. A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty for a violation. When assessing a civil penalty, the Commissioner of Agriculture is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the violation to occur, including, but not limited to, the owner, manager or employee of a store at which tobacco products are sold at retail. Before selling tobacco products, all employees are required to undergo training regarding state law restricting youth access to tobacco products and sign a statement to this effect. That statement can be used by the owner or manager as an affirmative defense against the civil penalty for a second violation, and may be used as a mitigating factor for subsequent violations. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1504 (1999), 39-17-1509 (1999) & 39-17-1551 (1994).

Photo ID

A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be less than 27 years of age. "Proof of age" means a driver's license or other generally accepted means of identification that describes the individual as 18 years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Penalties for violation are the same as those for selling or distributing tobacco products to minors. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or

political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1504 (1999), 39-17-1509 (1999) & 39-17-1551 (1994).

Sign Posting

Every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half square inches, to ensure that it is likely to be read at each point of sale, stating the following: "STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO PRODUCTS OR SMOKING PARAPHERNALIA TO PERSONS UNDER THE AGE OF 18. PROOF OF AGE MAY BE REQUIRED. Penalties are the same as those for selling or distributing tobacco products to minors. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994 by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1506 (1999), 39-17-1509 (1999) & 39-17-1551 (1994).

Bidis

Prohibits the sale of bidis to minors, by including them in the definition of tobacco product. Violation is subject to the same penalties as selling or distributing tobacco products to minors. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994 by any agency or political subdivision of the state is void.

TENN. CODE ANN. § 39-17-1503 (2002) & 39-17-1551 (1994).

Penalties to Minors

It is unlawful for a person under 18 to possess a tobacco product, to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age that is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco product. A violation is a civil offense with a penalty of not less than \$10 and not more than \$50. The juvenile court may also impose community service work not to exceed 50 hours or successful completion of a prescribed teen

court program for a second or subsequent violation within a one-year period. A minor assisting a law enforcement officer in a compliance check is not subject to these penalties. It is not unlawful for a person under 18 years of age to handle or transport tobacco or tobacco products as a part of and in the course of such person's employment, provided the person is under the supervision of another employee who is at least 21 years of age. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1505 (2001) & 39-17-1551 (1994).

Placement of Tobacco Products

None

Internet Sales

Each seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall: provide a prominent and clearly legible statement to each prospective consumer with specified information; include a clear and conspicuous statement upon the package, as specified; and use a method of mailing, shipping, or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age, to sign to accept delivery of the shipping container; and restrict delivery to an adult of legal minimum purchase age. A first violation of the above provisions is subject to a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation is subject to a fine of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater. Violation by a delivery service is subject to a fine of \$500.

TENN. CODE ANN. § 67-4-1029 (2005).

Other Provisions

In the case of distribution by mail, the distributor of tobacco products shall obtain from the addressee an affirmative statement that such person is 18 years of age or older, and shall inform the recipient that such person is strictly prohibited from

distributing any tobacco product to any person under 18 years of age. Violation is subject to the same penalties as selling or distributing tobacco products to minors. The required statement can be used as an affirmative defense in case of violation. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1504 (1999), 39-17-1509 (1999) & 39-17-1551 (1994).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person shall distribute tobacco product samples in or on any public street, sidewalk, or park. Violation is subject to the same penalties as selling or distributing tobacco products to minors. A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1504 (1999), 39-17-1509 (1999) & 39-17-1551 (1994).

Single Cigarettes

No tobacco product manufacturer or cigarette retailer may directly or indirectly manufacture, sell or distribute any pack or other container of cigarettes containing fewer than 20 cigarettes, or any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco.

TENN. CODE ANN. § 47-18-2003 et seq. (1999).

It is unlawful for any person to sell cigarettes or smokeless tobacco products except in the original, sealed package in which they were placed by the manufacturer that bears the health warning required by federal law. Violation is subject to the same penalties as selling or distributing tobacco products to minors. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco

products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1508 (1999), 39-17-1509 (1999) & 39-17-1551 (1994).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines may only be located in the following areas: in areas of factories, businesses, offices, or other places that are not open to the public; in places that are open to the public but to which persons under the age of 18 are denied access; in places where alcoholic beverages are sold for consumption on the premises, only if the machine is under the constant supervision of the owner or their employee and is inaccessible when the establishment is closed; and, in other places if the machine is under the continuous supervision of an employee, or the machine can only be operated by the use of a token purchased from the proprietor prior to each purchase, and is inaccessible to the public when the establishment is closed. In any place where supervision of a vending machine is required, the person responsible for that supervision or sale of token shall demand proof of age from a prospective purchaser if an ordinary person would conclude on the basis of appearance that the prospective purchaser might be less than 27 years of age. A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1507 (1999), 39-17-1509 (1999) & 39-17-1551(1994).

Penalty

A person who violates the restrictions on placement of tobacco product vending machines is subject to the same penalties as those for selling or distributing tobacco products to minors. This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March

15, 1994 by any agency or political subdivision of the state is void.

TENN. CODE ANN. §§ 39-17-1509 (1999) & 39-17-1551 (1994).

F Licensing Requirements

Requirements

Every person engaged in the business of selling, distributing, or handling tobacco products must obtain a license from the Commissioner of Revenue. Licenses expire on May 31st of each year. Retailers are not specifically mentioned.

TENN. CODE ANN. § 67-4-1015 (1988).

Fee

\$25 for each wholesale warehouse; \$10 for each distributor.

TENN. CODE ANN. § 67-4-1015 (1988).

License Suspension for Sales to Minors
None

G Smoker Protection Laws

No employee, including employees of state and local government, shall be discharged or terminated solely for participating or engaging in the use of an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law, if such employee participates or engages in such use in a manner which complies with all applicable employer policies regarding such use during times at which such employee is working; and/or if such employee participates or engages in such activity during times when such employee is not working. This section shall not be used for frivolous lawsuits, and anyone trying to do so is subject to sanction.

TENN. CODE ANN. § 50-1-304 (1990).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

If a plaintiff in a civil action obtains a judgment under any legal theory, the amount of the appeal bond necessary to stay execution during the course of all appeals or discretionary reviews of that judgment by any appellate court shall be set in accordance with applicable laws or court rules, except that the total appeal bond that is required of all appellants shall not exceed \$75 million regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that are necessary to protect the appellee and require the appellant to post a bond in an amount up to the total value of the judgment.

TENN. CODE ANN. § 27-1-124 (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

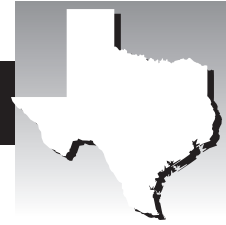
Appropriated \$10,000,000 for tobacco control and prevention programs from the state general fund.

FY2008 Annual Budget (S.B. 2334) enacted 6/28/07 and effective 7/1/07.

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is restricted to designated areas in elevators, enclosed theaters or movie houses, libraries, museums, transit system or intrastate buses, planes, and trains. An exception is made for a participant in an authorized theatrical performance.

TEX. PENAL CODE ANN. § 48.01 (1997).

Government Buildings

None

Private Workplaces

None

Schools

Students are prohibited from smoking or using tobacco products on school property or at any off-campus school-sanctioned activity.

TEX. EDUC. CODE ANN. § 21.927 (1987).

Smoking or possession of a burning tobacco product is restricted to designated areas in public primary and secondary schools.

TEX. PENAL CODE ANN. § 48.01 (1997).

Child Care Facilities

Smoking is prohibited in licensed child care centers, and on the premises, on the playground, in transportation vehicles, or during field trips of, or sponsored by, these facilities.

TX ADMIN. CODE tit. 40, Part 19, Subchapter S, Div. 1 § 746.3703(d) (1995).

Smoking is prohibited during operating hours in any child care home, and in the garage, on the playground, in transportation vehicles, or during field trips of, or sponsored by, these facilities.

TX ADMIN. CODE tit. 40, Part 19, Subchapter S, Div. 1 § 747.3503(d) (1990).

Smoking is prohibited in foster homes by caregivers and other adults, and in motor vehicles while transporting foster children. Foster children may not use or possess tobacco products.

TX ADMIN. CODE tit. 40, Part 19, Subchapter O, Div. 2 § 749.2931 (2007).

Health Care Facilities

Smoking is restricted to designated areas in hospitals.

TEX. PENAL CODE ANN. § 48.01 (1997).

Restaurants

None

Bars

None

Penalties/Enforcement

Signs must be posted stating that smoking is prohibited. Failure to post such signs is punishable by a fine not to exceed \$500. Facilities to extinguish smoking materials shall be provided in all conveyances and public places where smoking is restricted. A person who smokes in a nonsmoking area is punishable as a Class C misdemeanor. It is a defense to prosecution that the conveyance or public place in which the offense takes place does not have prominently displayed notice that smoking is prohibited by state law and that an offense is punishable by a fine not to exceed \$500, or that the conveyance or public place does not provide facilities for the extinguishment of smoking materials.

TEX. PENAL CODE ANN. § 48.01 (1997).

Preemption

No specific provision concerning preemption in state law; cities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.41

Date last changed: January 1, 2007 – from 41 cents to \$1.41

Year first enacted: 1931

TEX. TAX CODE ANN. § 154.021 (2007).

All proceeds from the additional \$1.00 of the cigarette tax that went into effect on January 1, 2007 shall be deposited to the credit of the Property Tax Relief Fund established as a special fund in the state Treasury.

TEX. TAX CODE ANN. § 154.6035 (2006).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$491,945,000

Other Tobacco Products

Cigars: 1) one cent per 10 or fraction of 10 on cigars weighing less than three pounds per thousand;

2) \$7.50 per 1,000 on cigars that weigh more than three pounds per thousand and sell at factory list price for 3.3 cents or less each;

3) \$11 per thousand on cigars that weigh more than three pounds per thousand, sell at factory list price for more than 3.3 cents each, and contain no substantial amount of non-tobacco ingredients;

4) \$15 per thousand on cigars that weigh more than three pounds per thousand, sell at factory list price for more than 3.3 cents each, and contain a substantial amount of non-tobacco ingredients;

All other tobacco products: 40% of the manufacturer's list price.

TEX. TAX CODE ANN. §§ 155.021(1991) & 155.0211 (2007).

All proceeds from the increase in the tax on other tobacco products that went into effect on January 1, 2007 shall be deposited to the credit of the Property Tax Relief Fund established as a special fund in the state Treasury.

TEX. TAX CODE ANN. § 155.2415 (2006).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The state Comptroller shall enforce this section in partnership with local law enforcement agencies. At least annually, random, unannounced inspections of various locations where cigarettes or tobacco are sold or delivered are required. Minors

may be used in compliance checks if they have written parental consent, are younger than 17, and have an appearance that would cause a reasonably prudent retailer to request identification.

TEX. HEALTH & SAFETY CODE ANN. § 161.088 (1999).

Penalties for Sales to Minors

A person commits an offense if the person, with criminal negligence, sells, gives, or causes to be sold or given a cigarette or tobacco product to someone who is younger than 18 years of age; or sells, gives, or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age. Violation is a Class C misdemeanor. It is a defense to prosecution that the person to whom the cigarette or tobacco product was sold or given presented to the defendant proof of identification. If the offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

TEX. HEALTH & SAFETY CODE ANN. § 161.082 (1998).

Photo ID

A person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification. A proof of identification satisfies this requirement if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government. A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation.

TEX. HEALTH & SAFETY CODE ANN. § 161.083 (1998).

Sign Posting

Each person who sells cigarettes or tobacco at retail shall post a sign in a location that is conspicuous to all employees and customers and

that is close to the place at which cigarettes or tobacco products may be purchased. The sign must state: "PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING A TOLL-FREE TELEPHONE NUMBER. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT." Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.084 (2007).

Penalties to Minors

An individual who is younger than 18 years of age commits an offense if the individual possesses, purchases, consumes, or accepts a cigarette or tobacco product; or falsely represents themselves to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product. Exceptions are if the minor is with an adult parent, guardian, or spouse of the individual; if it is a requirement of the minor's employment; or if the minor is participating in a compliance check. A violation is punishable by a fine not to exceed \$250. Upon conviction, a court shall require the youth to attend a tobacco awareness program provided by the commissioner or if the program is not available, eight to 12 hours of tobacco-related community service. The court may require the parent or guardian of the defendant to attend the tobacco awareness program with the youth. The court may also suspend or deny issuance of a driver's license or permit for up to 180 days, if the youth does not demonstrate they have completed the tobacco awareness program or community service requirement.

TEX. HEALTH & SAFETY CODE ANN. §§ 161.252 (1998), 161.253 (1998) & 161.254 (1999).

Placement of Tobacco Products

A retailer or other person may not offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to cigarettes

or tobacco products. This does not apply to a facility or business that is not open to persons younger than 18 years of age at any time, that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment or a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code. Violation is a Class C misdemeanor.

TX HEALTH & SAFETY CODE ANN. § 161.086 (1999).

Internet Sales

A person may not mail or ship cigarettes in connection with a delivery sale unless before mailing or shipping the cigarettes the person accepting the delivery sale order complies with specific age verification requirements, including a certification from the consumer and verification by the seller before delivery; specific disclosure requirements; specific shipping requirements, including use of a delivery service that requires a signature on delivery and a photo identification; specific registration and reporting requirements; and specific tax collection requirements. General violation of these provisions is a Class C misdemeanor for the first violation, and a Class B misdemeanor for subsequent violations. A knowing violation or someone who knowingly submits a certification in another person's name is a third degree felony. Failure to collect taxes is a civil penalty of five times the value of the cigarettes involved in addition to any other penalty.

TEX. HEALTH & SAFETY CODE §§ 161.451 et seq. (2003).

Other Provisions

Employees engaged in the retail sale of tobacco products must sign a form stating the law has been fully explained to them and that they agree to comply with the law. Violation of this requirement is a Class C misdemeanor. It is a defense to prosecution to show proof that the employee did complete, sign and date the forms required.

TEX. HEALTH & SAFETY CODE ANN. § 161.085 (2001).

This subchapter does not preempt local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation,

ordinance, or requirement is compatible with and equal to or more stringent than a requirement prescribed by this subchapter or relates to an issue that is not specifically addressed by this subchapter.

TEX. HEALTH & SAFETY CODE ANN. § 161.089 (1997).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

A person or permit holder is prohibited from distributing a free sample of a cigarette or tobacco product, or a coupon that may be redeemed for a free or discounted cigarette or tobacco product, to persons younger than 18 years of age. A coupon, sample cigarette or tobacco product may not be redeemable through the mail or courier delivery. Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.087 (1997).

Single Cigarettes

It is an offense to sell cigarettes in quantities less than an individual package containing at least 20 cigarettes. Violation is subject to a fine of \$100.

TEX. TAX CODE ANN. § 154.504 (1997).

A person may not affix a cigarette tax stamp to a package of cigarettes if the package does not comply with the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information for a package of cigarettes to be sold within the United States.

TEX. TAX CODE ANN. § 154.0415 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to facilities that are not open to persons younger than 18 years of age at any time and premises for which a person holds a package store permit issued under the Alcoholic Beverage Code.

TEX. HEALTH & SAFETY CODE ANN. § 161.086 (1999).

Penalty

Violation of the restrictions on placement of tobacco product vending machines is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.086 (1999).

Sign Posting

Each person who sells cigarettes by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which cigarettes or tobacco products may be purchased. The sign must state: "PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING A TOLL-FREE TELEPHONE NUMBER. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT." Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.084 (2007).

F Licensing Requirements

Requirements

A person may not engage in business as a distributor, wholesaler, manufacturer or retailer of cigarettes or other tobacco products unless they have received the proper permit from the state Comptroller. The definition of "retailer" includes selling cigarettes through a vending machine. A separate permit is required for each place of business. Permits expire on the last day of February of each year, except a retailer's permit which expires on the last day of May of each even-numbered year. Combination permits for cigarettes and other tobacco products are available.

TEX. TAX CODE ANN. §§ 154.101 to 154.111 (2001) & 155.041 to 155.049 (2001).

Fee

\$180 for a retail cigarette or other tobacco product permit every two years; \$300 for a distributor's cigarette or other tobacco product permit annually; and \$300 for a wholesaler's cigarette or other tobacco product permit annually.

TEX. TAX CODE ANN. §§ 154.111 & 155.049 (2001).

License Suspension for Sales to Minors

None

G Smoker Protection Laws

None

H Advertising & Promotion

A sign containing an advertisement for cigarettes or tobacco products may not be closer than 1,000 feet to a church or public or private school. A sign is defined as an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard that is used to advertise or inform and visible from the main-traveled way of a street or highway. This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise; a sign in a facility where professional sports events are held at least 10 times during a 12 month period; a sign that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school. A purchaser of advertising must pay a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state. Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE §§ 161.121 to 161.125 (1997).

I Product Disclosure

Each manufacturer shall file with the Department of Health an annual report for each cigarette or tobacco product distributed in this state, stating the identity of each ingredient in the cigarette or tobacco product listed in descending order according to weight, measure, or numerical count, other than: tobacco; water; or reconstituted tobacco sheet made wholly from tobacco. They shall also report the nicotine yield rating for the cigarette or tobacco product. This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity. Each manufacturer shall also assign a nicotine yield rating to each cigarette or tobacco product distributed in the state. The department standards must be developed so that the nicotine yield rating reflects, as accurately as possible, nicotine intake for an average consumer of the cigarette or tobacco product. The information

included in these reports is public information and is not confidential, unless it is determined by the Attorney General that its disclosure would constitute an unconstitutional taking of property; if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health; or the information is determined a trade secret under state or federal law. Failing to file the required report can result in a prohibition on the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer by court order.

TEX. HEALTH & SAFETY CODE §§ 161.352 to 161.355 (1999).

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

When a judgment is for money, the amount of security to suspend execution of the judgment during appeal of the judgment must equal the sum of costs and compensatory damages awarded in the judgment and interest from the expected duration of appeal except the security required to be posted can not exceed 50 percent of the judgment debtor's net worth or \$25 million, whichever is less. On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in the required amount the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm. Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

TEX. CIVIL PRACTICE & REMEDIES CODE § 52.006 (2003).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Allocated \$12,483,003 for tobacco control and

prevention programs for FY2008 from state tobacco settlement payments and the state general fund. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Budget (H.B. 1) enacted 6/15/07 and effective 9/1/07 (FY2008) & 9/1/08 (FY2009).

A tobacco settlement endowment was created with the tobacco settlement monies. The interest from the endowment, about \$10 million a year, is supposed to be spent on a tobacco prevention program.

TEX. GOV'T CODE ANN. §§ 403.1041 et seq. & TEX. HEALTH & SAFETY CODE § 12.131 (1999).

Non-Monetary Provisions

The Commissioner of Public Health shall develop and implement a public awareness campaign designed to reduce tobacco use by minors. The campaign may use advertisements or similar media to provide educational information about tobacco use. The commissioner shall develop and implement a grant program to support youth groups that include as a part of the group's program components the reduction of tobacco use by the group's members.

TEX. HEALTH & SAFETY CODE ANN. §§ 161.301 & 161.302. (1997).

M Fire Safety Standards

Texas has enacted legislation requiring cigarettes sold in Texas to self-extinguish when not being smoked based on the specified performance standard to help prevent cigarette-caused fires. The law will go into effect on January 1, 2009.

H.B. 2935 enacted 6/15/07 and effective 1/1/09.



A Smokefree Air**Public Places**

Smoking is prohibited in almost all enclosed indoor places of public access, the definition of which includes all restaurants, taverns and private clubs. See the statute citation below for a detailed list. This prohibition does not apply to: areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator; until January 1, 2009, taverns, Class B private clubs and Class D private clubs that are licensed on or before May 15, 2006 or were licensed by this date but underwent a change in ownership after, provided that to allow smoking a Class B private club may not allow persons under 21 except active military to enter; separately ventilated smoking areas in Salt Lake City International Airport; and guest rooms in hotels, motels, and other similar lodging facilities, except for the common areas where smoking is prohibited, including lobbies and dining areas. In addition, smoking tobacco as part of a traditional religious ceremony of an American Indian Tribe is exempt from the prohibition.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Note: Under legislation passed in 2006 and additional legislation passed in 2007, smoking will be allowed in bars/taverns, Class B private clubs and Class D private clubs subject to certain conditions until January 1, 2009.

S.B. 19 enacted 3/16/06 and effective 5/1/06, 1/1/07 and 1/1/09 & H.B. 273 enacted 2/27/07 and effective 4/30/07.

Government Buildings

Smoking is prohibited in all publicly owned buildings and offices. These buildings include any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or any agency supported by appropriation of, or by contracts or grants from funds derived from, the collection of federal, state, county or municipal taxes.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Private Workplaces

Smoking is prohibited in enclosed indoor places of public access, the definition of which includes any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business. Areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator are exempt.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Schools

Smoking is prohibited in public or private elementary and secondary school buildings and educational facilities and the property on which those facilities are located.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Child Care Facilities

Smoking is prohibited in any licensed or certified child care facilities or programs, including those in private homes, when children being cared for are present. Smoking is also prohibited in any child care not subject to licensure or certification when any child cared for by the provider, other than the child of the provider, is present.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Health Care Facilities

Smoking is prohibited in all common areas of nursing homes and hospitals including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas and restrooms.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Restaurants

Smoking is prohibited in restaurants, cafes, and cafeterias.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Bars

Smoking is allowed in bars/taverns until January 1, 2009 as long as they were licensed on or before May 15, 2006 or were licensed by this date, but

underwent a change in ownership after May 15, 2006.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Other

Allows for a prohibition on smoking in a rental agreement or lease.

UTAH CODE ANN. § 57-22-5 (1)(h) (1997).

Gives condominium associations the authority to restrict smoking in units, common areas and facilities. Common areas include yard space.

UTAH CODE ANN. § 57-8-16 (7) (1997).

Secondhand smoke is defined as a nuisance when it drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit more than once in each of two or more consecutive seven-day periods, and which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action. This does not apply to residential rental units available for temporary rental or hotel or motel rooms. The cause of action is waived if the rental agreement explicitly says tobacco smoke may drift into the apartment.

UTAH CODE ANN. § 78-38-1 (1997).

Note: The above amendments were passed by the Utah Legislature in 1997. They specifically apply to tobacco smoke that drifts into any residential unit a person rents, leases or owns from another residential or commercial unit. They are not part of the Utah Clean Indoor Air Act, which governs smoking in public places and workplaces.

Penalties/Enforcement

A first violation of the Utah Indoor Clean Air Act is a civil penalty of not more than \$100. A second and subsequent violation is a civil penalty of \$100 to \$500. The state Department of Health and local health departments are responsible for enforcement.

UTAH CODE ANN. §§ 26-38-1 et seq. (2007).

Preemption

This law supersedes any ordinance enacted by a governing body of a political subdivision that restricts smoking in a place of public access and

that is not essentially identical to the provisions of this chapter. Outdoor places of public access owned and operated by a political subdivision, a state institution of higher education, or a state institution of public education are exempt from preemption.

UTAH CODE ANN. § 26-38-6 (2007).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 69.5 cents

Date last change: May 6, 2002— from 51.5 cents to 69.5 cents

Year first enacted: 1923

UTAH CODE ANN. § 59-14-204 (2002).

The tax rates specified in this section shall be increased by the state tax commission by the same amount as any future reduction in the federal excise tax on cigarettes.

UTAH CODE ANN. § 59-14-204 (2002).

There is created within the General Fund a restricted account known as the “Cigarette Tax Restricted Account.” \$250,000 of the revenues generated by the increase in the cigarette tax enacted during the 1997 general session shall be annually deposited into the account. The Department of Health shall expend these funds for a tobacco prevention and control media campaign targeted towards children. Twenty-two percent of the revenue generated from the cigarette tax increase during the 2002 general session shall also be deposited in the Cigarette Tax Restricted Account and annually appropriated to the Department of Health for tobacco prevention, reduction, cessation, and control programs. Also, 15 percent and 21 percent of the revenue from the cigarette tax increase in the 2002 general session is deposited in the account where it is appropriated to the University of Utah Health Sciences Center for the Huntsman Cancer Institute for cancer research and University of Utah Health Sciences Center for medical education at the University of Utah School of Medicine, respectively.

UTAH CODE ANN. § 59-14-204 (2002).

There is imposed an equity assessment of 35 cents/pack of 20 cigarettes on tobacco product manufacturers not participating in the Master Settlement

Agreement. This equity assessment is in addition to other taxes on cigarettes. The purposes of this equity assessment are to recover health care costs to the state imposed by nonparticipating manufacturers; to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers; to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement; to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and to fund enforcement and administration of Master Settlement Agreement provisions.

UTAH CODE ANN. § 59-14-214 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$57,847,000

Other Tobacco Products

All other tobacco products: 35% of the manufacturer's selling price.

UTAH CODE ANN. § 59-14-302 (2002).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

A peace officer may investigate possible violations of retail establishments that sell tobacco products to minors by requesting a person under the legal age to attempt to purchase tobacco products from the establishment. Written parental consent must be obtained prior to any attempt and the minor must be under the supervision and direction of the peace officer. A purchase attempted under this section shall be conducted on a random basis, but not more often than four times within a 12-month period at any one retail establishment unless there is reasonable suspicion to believe the retail establishment has sold tobacco to a person less than 19 years of age.

UTAH CODE ANN. § 77-39-101 (1998).

Penalties for Sales to Minors

Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, or tobacco in any form to any person under 19 years of age is guilty of a Class C misdemeanor on the first offense, a Class B misdemeanor on the second offense, and a Class A misdemeanor on subsequent offenses.

UTAH CODE ANN. § 76-10-104 (2000).

If, following an investigation or issuance of a citation or information, an enforcing agency (the State Department of Health and/or local health departments) determines that a licensee or any employee has sold tobacco to a person younger than 19 years of age, the enforcing agency may impose upon the licensee the following administrative penalties not more than \$300 for a first violation; not more than \$750 for a second violation within 12 months; and \$1,000 for a third and subsequent violations within a 12-month period. A licensee is also subject to a license suspension for not more than 30 days for a third violation and license revocation for one year for a fourth and subsequent violation. In determining the amount of the monetary penalty to be imposed for an employee's violation the hearing officer shall reduce the penalty by at least 50 percent if he determines the licensee has implemented a documented employee training program, and the employee has completed that training program within 30 days of commencing duties of selling tobacco products. If the hearing officer determines regarding a first offense at a location, that the licensee has not implemented a documented training program with a written curriculum for employees at that location regarding compliance with this chapter, the hearing officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's initiating a training program for employees at that location within 30 days after the hearing date. If the training program is not implemented, the penalty shall be promptly imposed.

UTAH CODE ANN. §§ 26-42-103 & 26-42-106 (1998).

It is unlawful for any person to knowingly sell, offer for sale, give or furnish any clove cigarette in this state. For purposes of this section "clove cigarette" means any cigarette which contains more than 10 percent, by weight, of raw eugenia caryophyllata or caryophyllus, commonly known as clove. Any person who violates this section is

guilty of a Class B misdemeanor.
UTAH CODE ANN. § 76-10-105.3 (2002).

Photo ID

None

Sign Posting

None

Penalties to Minors

Any 18 year old who buys or attempts to buy, accepts or possesses any tobacco product shall be guilty of a Class C misdemeanor and is subject to a minimum fine of \$60; and participation in a court-approved tobacco education program, which may include a participation fee. Any person under the age of 18 who buys or attempts to buy, accepts or possesses any tobacco product is subject to the jurisdiction of the juvenile court and a minimum fine of \$60 and participation in a court-approved tobacco education program, which may include a participation fee.

UTAH CODE ANN. § 76-10-105 (2002).

Placement of Tobacco Products

A retailer must sell cigarettes and smokeless tobacco products only in a direct, face-to-face exchange between the retailer and the consumer, including through vending machines and self-service displays. Exceptions include mail-order sales, if the delivery service requires the person who accepts and signs for the delivery to verify his age and obtains the signature of the person taking the delivery; and vending machines and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian. A first offense is a Class C misdemeanor; a second offense is a Class B misdemeanor; and a third and all subsequent offenses are a Class A misdemeanor. Any ordinance, regulation or rule adopted by the governing body of a political subdivision or state agency that affects the advertising, sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. § 76-10-105.1 (2004).

Internet Sales

None

Other Provisions

It is a Class C misdemeanor for the proprietor of any place of business to knowingly permit persons under 19 to frequent their place of business while they are using tobacco.

UTAH CODE ANN. § 76-10-103 (1973).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for a manufacturer, wholesaler, or retailer to give or distribute tobacco products without charge, except to adults at professional conventions where the general public is excluded and to persons of legal age upon their purchase of tobacco products. Violation is a Class C misdemeanor for the first offense and a Class B misdemeanor for subsequent offenses.

UTAH CODE ANN. § 76-10-112 (1989).

Single Cigarettes

A licensee may not barter, sell, exchange, or offer for sale cigarettes in an individual package or container that contains less than 20 cigarettes or roll-your-own tobacco in an individual package or container that contains less than 0.6 ounces of tobacco.

UTAH CODE ANN. § 59-14-202 (1999).

A licensee may not barter, sell, exchange, or offer for sale cigarettes in a package which does not comply with federal law, including 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information. Violation is a Class B misdemeanor.

UTAH CODE ANN. §§ 59-14-210 (2002) & 59-14-211 (2004).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines must be located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian.

Any ordinance, regulation, or rule adopted by the governing body of a political subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. § 76-10-105.1 (2004).

Penalty

Violation is a class C misdemeanor for the first offense, a class B misdemeanor for the second offense, and a class A misdemeanor for subsequent offenses. Any ordinance, regulation, or rule adopted by the governing body of a political subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. § 76-10-105.1 (2004).

F Licensing Requirements

Requirements

It is unlawful for any person in this state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale without first having obtained a license from the state Tax Commission. A separate license is required for each place of business. Licenses are valid for three years from the date of issuance unless suspended or revoked. Any person engaging in the business of manufacturing, importing, distributing, or selling or offering to sell cigarettes without holding a valid license that is currently not suspended or revoked is guilty of a class B misdemeanor for each offense.

UTAH CODE ANN. §§ 59-14-201 to 59-14-203 (2004).

Fee

\$30 for a cigarette license and \$20 for renewal every three years.

UTAH CODE ANN. § 59-14-201 (2004).

License Suspension for Sales to Minors

The state Tax Commission shall suspend or revoke the licenses to sell tobacco of any business upon receipt of notice from the enforcing agency (the state Department of Health and/or local health departments) that there has been a third or fourth violation of Section 26-40-103 (UT youth access law). A third violation within a 12-month period is

subject to a license suspension for not more than 30 days and a fourth or subsequent violation is subject to license revocation for one year.

UTAH CODE ANN. §§ 59-14-203.5 & 26-42-103 (1998).

G Smoker Protection Laws

None

H Advertising & Promotion

It is a class B misdemeanor for any person to display on any billboard, streetcar sign, streetcar, bus, placard or on any other object or place of display any advertisement of any tobacco product, except that a dealer in tobacco products may have a sign on the front of his place of business stating that he deals in the articles. This law does not prohibit advertisements of tobacco products in any newspaper, magazine, or other periodical in the state. Any ordinance, regulation or rule adopted by the governing body of a political subdivision or state agency that affects the advertising, sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. §§ 76-10-102 (1986) & 76-10-105.1 (1998).

Note: This section also required warnings on newspaper, magazine or periodical advertisements for smokeless tobacco products. However, the language of this provision defers to any subsequently enacted federal law for the specific warning language required to be placed in smokeless tobacco advertisements. Shortly thereafter, the federal Comprehensive Smokeless Tobacco Health Education Act of 1986 was enacted and said that no other statement relating to the use of smokeless tobacco products and health shall be required by any state or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

15 U.S.C. § 4406(b) (1986).

I Product Disclosure

The Department of Health shall annually obtain publicly available information regarding cigarettes and tobacco products from other states and sources concerning: (1) the presence of the following substances in detectable levels in a burned

state and, if the cigarette or tobacco product is typically burned when consumed, in a burned state: (a) ammonia or ammonia compounds; (b) arsenic; (c) cadmium; (d) formaldehyde; and (e) lead; and (2) a nicotine yield rating for the cigarette or tobacco product for which a rating has been developed. Information obtained by the department is a public record and may be disclosed and disseminated generally by the department.

UTAH CODE ANN. §§ 26-40-101 et seq. (1998).

J Tobacco Divestment

None

K Tobacco Liability

None

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$7,262,700 for tobacco control and prevention programs from a portion of the state's annual MSA payments and state cigarette tax revenue.

FY2008 Annual Budget (H.B. 1) enacted 2/2/07 and effective 7/1/07.

Utah created the "Tobacco Settlement Restricted Account", a restricted account in the general fund. The account shall consist of until July 1, 2003, 50 percent of all funds received from the Master Settlement Agreement; from July 1, 2003 to July 1, 2004, 80 percent of these funds; from July 1, 2004 to July 1, 2005, 70 percent of these funds; from July 1, 2005 to July 1, 2007, 75 percent of these funds; and on and after July 1, 2007, 60 percent of these funds. Funds will be appropriated from this account in the following order: \$10.3 million for the children's health insurance program, \$4 million for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs; \$1.49 million for expansion of the drug court program; \$510,000 for a drug board pilot program; and \$4 million to the University of Utah Health Sciences Center.

UTAH CODE ANN. § 63-97-201 (2005).

Utah created a Permanent State Trust Fund under Utah Constitution Article XXII, Section Four to receive a portion of the annual payments from

the Master Settlement Agreement. The principal of the trust fund is invested in perpetuity, and can be transferred to the General Fund only by a vote of three-quarters of both houses of the legislature and concurrence by the governor. The interest income from the trust fund is transferred to the general fund where by statute 50 percent is returned to the permanent trust fund. The account shall consist of until July 1, 2003, 50 percent of all funds received from the Master Settlement Agreement; from July 1, 2003 to July 1, 2004, 20 percent of these funds; from July 1, 2005 to July 1, 2007, 25 percent of these funds; and after July 1, 2007, 40 percent of these funds.

UTAH CONSTITUTION Art. XXII, Section 4 (2000) & UTAH CODE ANN. § 63-97-301 (2005).

M Fire Safety Standards

Utah has enacted legislation requiring cigarettes sold in Utah to self-extinguish when not being smoked based on the specified performance standard to help prevent cigarette-caused fires. The law will go into effect on July 1, 2008.

S.B. 200 enacted 3/19/07 and effective 7/1/08.





A Smokefree Air

Public Places

The possession of lighted tobacco products in any form is prohibited in the common areas of all enclosed indoor places of public access and publicly owned buildings and offices. See the definition of “public places” in tit. 18 § 37-1741 of the Vermont Statutes for a more detailed list of places covered. Workplace smoking areas and areas not commonly open to the public of owner-operated businesses with no employees are exempt.

VT STAT. ANN. tit. 18, §§ 37-1741 et seq. (2005).

Government Buildings

Smoking is prohibited entirely in the common areas of buildings and offices owned, leased, or rented by state, county, or municipal governments, or by agencies supported by appropriation of, or by contracts or grants from, funds derived from federal, state, county, or municipal taxes.

VT STAT. ANN. tit. 18, §§ 37-1741 et seq. (2005).

Private Workplaces

Each employer who operates a workplace shall establish, or negotiate through the collective bargaining process, a written smoking policy. The policy must prohibit smoking throughout the workplace or restrict it to designated enclosed areas. Smoking is prohibited in areas used or visited regularly by non-smoking employees. Employers may designate up to 30 percent of an employee cafeteria or lounge as a smoking area and may permit smoking in designated unenclosed areas only if the layout of the workplace is such that smoking will not be a physical irritant to any non-smoking employee, and 75 percent of the employees in the designated areas agree to allow smoking. The requirement that it be in writing only applies to employers who regularly employ at least ten employees who work more than 15 hours per week. The employer shall post a copy of the smoking policy in a conspicuous location at the place of employment, and copies shall be provided to an employee upon request. The definition of

“workplace” does not include areas commonly open to the public. Areas not commonly open to the public of owner-operated businesses with no employees are exempt.

VT STAT. ANN. tit. 18, §§ 28-1421 et seq. (1988) & tit. 18 § 1743 (2005).

Schools

No person shall be permitted to use tobacco on public school grounds and no student shall be permitted to use tobacco at public school-sponsored functions. Each public school board shall adopt policies prohibiting the possession and use of tobacco products by students at all times while under the supervision of school staff. These policies shall include confiscation and appropriate referrals to law enforcement authorities.

VT STAT. ANN. tit. 16, § 1-140 (1997).

Child Care Facilities

Smoking is prohibited entirely in the common areas of buildings supported by appropriation of, or by contracts or grants from, funds derived from federal, state, county, or municipal taxes, which includes childcare facilities.

VT STAT. ANN. tit. 18, §§ 37-1741 (2005) & 37-1742 (1993).

Health Care Facilities

Smoking is prohibited in the common areas of nursing homes and hospitals.

VT STAT. ANN. tit. 18, §§ 37-1741 (2005) & 37-1742 (1993).

Restaurants

Smoking is prohibited in all enclosed indoor places of public access, the definition of which includes restaurants.

VT STAT. ANN. tit. 18, §§ 37-1741 (2005) & 37-1742 (1993).

Bars

Smoking is prohibited in all enclosed indoor places of public access, the definition of which includes bars and cabarets.

VT STAT. ANN. tit. 18, §§ 37-1741 (2005) & 37-1742 (1993).

Penalties/Enforcement

A proprietor, or the agent or employee of the proprietor, who observes a person violating this law, must ask that person to extinguish all lighted tobacco products. If the person refuses, they will be asked to leave the premises.

VT STAT. ANN. tit. 18, § 37-1745 (1993).

An employee may file a complaint with the Department of Health for an employer's failure to comply with workplace smoking restrictions. If the complaint is based on an employer's alleged failure to establish a smoking policy or post the policy the department shall not initiate an action until it has given the employer written notice of the alleged violation and 10 days to come into voluntary compliance. Failure to come into compliance is subject to an administrative penalty of \$100.

VT STAT. ANN. tit. 18, § 28-1426 (1988).

In addition, the Commissioner of Health, or a local board of health, may bring an action in the superior court of the county in which a violation has occurred or is occurring, to enforce the provisions of this title. The court may grant temporary and permanent injunctive relief, and levy civil penalties of up to \$10,000 for each violation. Any person who violates a provision of this title shall be fined not more than \$5,000. Each violation shall be a separate offense and, in the case of a continuing violation, each day's continuance shall be deemed a separate violation. When appropriate, all efforts shall be made to secure voluntary compliance.

VT STAT. ANN. tit. 18, §§ 3-124, 3-130 & 3-131 (1985).

Preemption

Nothing in this chapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as state law.

VT STAT. ANN. tit. 18, §§ 1746 (1993) & 1428 (1988).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$1.79

Date last changed: July 1, 2006 – from \$1.19 to \$1.79

Year first enacted: 1937

VT. STAT. ANN. tit. 32, § 7771 (2006).

Vermont has passed a two-phase increase in its cigarette tax. On July 1, 2006, the cigarette tax increased by \$0.60 to \$1.79 per pack. And on July 1, 2008, the cigarette tax will increase again by \$0.20 to \$1.99 per pack.

H.B. 861 enacted 5/25/06 and effective 7/1/06 and 7/1/08.

The tax on cigarettes now also applies to little cigars and roll-your-own tobacco. The tax is \$1.79 per little cigar and \$1.79 per 0.09 ounce of roll-your-own tobacco.

VT. STAT. ANN. tit. 32, § 7771 (2006).

Revenue from the cigarette tax is distributed as follows: 84.5 percent to the State Health Care Resources Fund, which finances health care coverage for beneficiaries of the state health care assistance programs under the global commitment to health care waiver approved by the Centers for Medicare and Medicaid Services, and 15.5 percent to the Catamount Fund to be used to help fund the Catamount Health assistance program.

VT STAT. ANN. tit. 33, §§ 1901d & 1986 (2007).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$46,204,000

Other Tobacco Products

Snuff: \$1.49/oz. or fractional part thereof;

All other tobacco products: 41% of the wholesale price.

VT. STAT. ANN. tit. 32, § 7811 (2006).

Vermont has passed a two-phase increase in its tax on snuff and has changed the way it taxes snuff to a weight-based formula. On July 1, 2006, the tax on snuff increased to \$1.49/oz. And on July 1, 2008, the tax on snuff will increase again to \$1.66/oz.

H.B. 861 enacted 5/25/06 and effective 7/1/06 and 7/1/08.

All the revenue generated by the tobacco products tax shall be credited to the State Health Care Resources Fund. This fund finances health care coverage for beneficiaries of the state health care assistance programs under the global commitment

to health care waiver approved by the Centers for Medicare and Medicaid Services.

VT STAT. ANN. tit. 33 § 1901d (2007).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance Enforcement

The Departments of Health and Liquor Control shall inspect for violations of chapter 40 of Title 7 whenever either department conducts any other inspection. Violations shall be reported to the Department of Liquor Control for enforcement, and notices of violation shall be mailed to the alleged violator within 24 hours after the report. The Department of Liquor Control shall conduct or contract for compliance checks of tobacco licensees as frequently and as comprehensively as necessary to assure consistent statewide compliance with the prohibition on sales to minors of at least 90 percent for 17-year old buyers. An individual under the age of 18 in a compliance test shall not be in violation of 7 V.S.A. § 1005.

Sec. 12 & 13, VT ACT 58 (1997).

Penalties for Sales to Minors

It is unlawful for a person to sell or provide tobacco products to a person less than 18 years of age. Violators shall be subject to a civil penalty of not more than \$100 for the first offense and not more than \$500 for subsequent offenses.

VT STAT. ANN. tit. 7, §§ 1003 & 1007 (1997).

Any violation by a tobacco licensee of the youth access law after a first sale violation or during a compliance check conducted within six months of a previous violation shall be considered a multiple violation and shall result in the minimum license suspension, in addition to other penalties. Minimum license suspensions for multiple violations shall be assessed as follows: for a second violation, suspension for one weekday; three violations, suspension for two weekdays; four violations, suspension for three weekdays; and five violations, three weekend days, Friday through Sunday.

SEC. 13, VT ACT 58 (1997).

Photo ID

A person shall exhibit proper proof of their age upon demand of a person licensed under this chapter, an employee of a licensee or a law enforcement officer. If the person fails to provide such proof of age, the licensee shall be entitled to refuse to sell tobacco products to the person. As used in this section, “proper proof” means a photographic motor vehicle operator’s license, a valid passport, a United States Military identification card or a photographic non-driver motor vehicle identification card obtained from the Department of Motor Vehicles.

VT STAT. ANN. tit. 7, § 1004 (1997).

Sign Posting

A person licensed under this chapter shall post in a conspicuous place on the premises a printed copy of the provisions of sections requiring proof of age and penalties to minors for purchasing tobacco products or misrepresenting their age to do so. Persons failing to post such signs shall be guilty of a misdemeanor and fined not more than \$100.

VT. STAT. ANN. tit. 7, § 1006 (1992).

Bidis

The sale and the purchase of bidis is prohibited. A person who holds a tobacco license who sells bidis as prohibited by this subsection shall be fined not more than \$500. A person who purchases bidis from any source shall be fined not more than \$250.

VT. STAT. ANN. tit. 7, § 1003(e) (2000).

Penalties to Minors

A person less than 18 years of age shall not possess or purchase tobacco products or misrepresent their age to do so. A minor who possesses tobacco is subject to a civil penalty of \$25. Failure to pay this penalty within 60 days will result in suspension or delay of the minor’s driver’s license. A minor that misrepresents their age shall be fined not more than \$50 or provide up to 10 hours of community service, or both.

VT STAT. ANN. tit. 7, § 1005 (1997).

Each public school board shall adopt policies prohibiting the possession and use of tobacco products by students at all times while under the supervision of school staff. These policies shall

include confiscation and appropriate referrals to law enforcement authorities.

VT STAT. ANN. tit. 16, § 140 (1997).

Placement of Tobacco Products

Except contracts in existence prior to March 31, 1997, no person holding a tobacco license shall display or store tobacco products where those products are accessible to consumers without direct assistance by the sales personnel. This does not apply to displays of tobacco products in stores where minors are not permitted; unopened cigarette cartons and smokeless tobacco in unopened multi-pack containers of 10 or more packages as long as the removal of cartons or multi-packs from the display can be observed by a store employee; and cigars or pipe tobacco stored in a humidor as long as the removal of these products from the humidor can be observed by a store employee.

VT STAT. ANN. tit. 7, § 1003 (1997).

Internet Sales

None

Other Provisions

An applicant for a tobacco license that does not hold a liquor license shall be granted a tobacco license only after the applicant has met with a liquor control investigator for the purpose of being informed about the Vermont tobacco laws pertaining to the purchase, storage and sale of tobacco products. A corporation, partnership or association shall designate a director, partner or manager to comply with these requirements. This training must be completed at least once every three years. The holder of the license must ensure that every employee involved in the sale of tobacco products completes a training program approved by the Department of Liquor Control before the employee begins selling or providing tobacco products and at least once every 24 months thereafter. A licensee may comply with this requirement by conducting its own training program on its premises using information and materials furnished by the Department of Liquor Control. A licensee who fails to comply with the requirements of this subsection shall be subject to suspension of the tobacco license for no less than one day.

VT STAT. ANN. tit. 7, § 1002a (2002).

No individual under the age of 16 may sell tobacco products.

VT STAT. ANN. tit. 7, § 1002(g) (2006).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

It is unlawful for any person to furnish tobacco products to a person less than 18 years of age. A person who furnishes tobacco products to a person less than 18 years of age shall be fined not more than \$100 for a first offense and not more than \$500 for subsequent offenses.

VT STAT. ANN. tit. 7, §§ 1003 & 1007 (1991).

Single Cigarettes

No person holding a tobacco license shall sell cigarettes individually or in packs that contain fewer than 20 cigarettes.

VT STAT. ANN. tit. 7, § 1003(f) (2002).

No person shall affix a cigarette stamp to or sell or offer for sale in this state any package or container of cigarettes if the container or package does not comply with all the requirements of the federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

VT STAT. ANN. tit. 32, § 7786 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

All vending machines selling tobacco products are prohibited.

VT STAT. ANN. tit. 7, § 1003 (1997).

F Licensing Requirements

Requirements

Wholesale dealers and distributors must obtain a license from the Commissioner of Taxes to sell cigarettes or tobacco products. A separate application and license is required for each wholesale outlet. Licenses are valid indefinitely unless suspended or revoked. Any wholesale dealer or distributor who shall sell, offer for sale or pos-

ness with intent to sell, any cigarettes or tobacco products, or both, without having first obtained a license shall be fined not more than \$25 for the first offense and \$25 to \$200 for subsequent offenses.

VT STAT. ANN. tit. 32, §§ 7731, 7732, 7734 & 7735 (1981).

Cigarette and other tobacco product retailers, including those who provide a vending machine for their sale, must obtain a license from the legislative body of the municipality where the products are to be sold. Licenses expire on April 30th of each year. Each tobacco license shall be prominently displayed on the premises identified in the license. On or before the fifteenth of each month, the city or town clerk shall submit to the board the names, addresses and license numbers of all persons to whom a tobacco license was issued during the previous month. Each year on or before May 15th, the city or town clerk shall submit to the board a list of all tobacco licenses that have been renewed for that year.

VT STAT. ANN. tit. 7, § 1002 (1997).

Fee

\$10 annually for a retail tobacco license; those applying for an alcohol and tobacco license need only pay the fee for the alcohol license; wholesalers and distributors, no charge.

VT. STAT. ANN. tit. 7, § 1002 (1997) & tit. 32 § 7732 (1981).

License Suspension for Sales to Minors

Any violation by a tobacco licensee of the youth access law after a first sale violation or during a compliance check conducted within six months of a previous violation shall be considered a multiple violation and shall result in the minimum license suspension, in addition to other penalties. Minimum license suspensions for multiple violations shall be assessed as follows: for a second violation, suspension for one weekday; three violations, suspension for two weekdays; four violations, suspension for three weekdays; and five violations, three weekend days, Friday through Sunday.

SEC. 13, VT ACT 58 (1997).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary lawsuit judgments.

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$5,224,947 for tobacco control and prevention programs from the state's annual MSA payment.

FY2008 Annual Budget (H.B. 537) enacted 6/4/07 and effective 7/1/07.

Non-Monetary Provisions

The Vermont Tobacco Evaluation and Review Board, an independent state board, was created to work in partnership with the agency of human services and the Department of Health in establishing the annual budget, program criteria and policy development, and to review and evaluate the tobacco prevention and treatment programs. By June 1, 2001, the department and the board shall jointly establish a plan for reducing adult and youth smoking rates by 50 percent in the following 10 years. By June 1 of each year, the department and the board shall jointly establish goals for reducing adult and youth smoking rates in the following two years. The program shall be comprehensive and research-based, and shall include the following components: (1) community-based programs; (2) school-based programs; (3) tobacco cessation programs; (4) counter marketing activities; (5) enforcement activities; (6) surveillance and evaluation activities; (7) policy initiatives. The Department of Liquor Control shall administer the component of the program that relates to enforcement activities and the Department of Education shall administer school-based programs.

VT STAT. ANN. tit. 18, §§ 9501 et seq. (2000).

M Fire Safety Standards

No cigarettes may be manufactured in this state or sold or offered for sale to any person in this state unless the cigarettes have been tested in accordance with the specified test method and meet the specified performance standard. The manufacturer must also file a written certification with the Commissioner of Public Safety attesting that each cigarette has been tested in accordance with and has met the required performance standard. Cigarettes that have been certified must also follow specific marking requirements. Each cigarette must be recertified every three years. A manufacturer, wholesale dealer, unlicensed retailer, or any other person that knowingly sells cigarettes, except by licensed retail sales, in violation of the above requirements is subject to a civil penalty not to exceed \$10,000 for each sale. A manufacturer that knowingly makes a false certification is subject to a civil penalty not to exceed \$10,000 for each false certification. A licensed retail dealer that knowingly sells or offers for sale cigarettes in violation of the above is subject to a civil penalty not to exceed \$500 for each sale or offer of sale of 1,000 cigarettes or fewer, or a civil penalty not to exceed \$1,000 for each sale or offer of sale of more than 1,000 cigarettes. Any other person that violates any provision of this section is subject to a civil penalty not to exceed \$1,000 for each violation. The Attorney General may file an action in superior court for a violation.

VT STAT. ANN. tit. 20, § 2757 (2006).



A Smokefree Air**Public Places**

Smoking shall be prohibited in elevators, except in any open material hoist elevator not intended for use by the public; public school buses; the interior of any public elementary, intermediate, and secondary school; hospital emergency rooms; local or district health departments; polling rooms; indoor service lines and cashier lines; public restrooms in any building owned or leased by the Commonwealth or any agency thereof; the interior of a licensed child day center that is not also used for residential purposes; and public restrooms of health care facilities. The Commonwealth or any agency thereof and every locality shall provide reasonable no-smoking areas, considering the nature of the use and the size of the building, in any building owned or leased by the Commonwealth or any agency thereof or a locality. The proprietor or other person in charge of an educational facility, except any public elementary, intermediate, or secondary school; health care facility; or a retail establishment of 15,000 square feet or more serving the general public, including, but not limited to, department stores, grocery stores, drug stores, clothing stores, shoe stores, and recreational facilities shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building. Restaurants having a seating capacity of 50 or more must have a no-smoking area sufficient to meet customer demand.

VA. CODE ANN. §§ 15.2-2801 to 15.2-2810 (2002).

Any person who smokes or uses an open flame within 20 feet of a pump used to fuel motor vehicles or a fueling tanker being used to deliver gasoline to a gasoline station is guilty of a Class 3 misdemeanor if smoking or the use of an open flame is prohibited by a sign at the pump. Any person who causes a fire or explosion as a result of a violation of this section is guilty of a Class 1 misdemeanor.

VA. CODE ANN. § 46.2-819.4 (2007).

Government Buildings

By executive order, smoking is prohibited in of-

fices and buildings occupied by executive branch agencies and institutions, including institutions of higher education. Smoking in correctional facilities shall be in accordance with guidelines set by the Director of the Department of Corrections; and smoking in state mental health and mental retardation facilities and in mental health units at state teaching hospitals shall be in accordance with guidelines set by the Commissioner of Mental Health, Mental Retardation, and Substance Abuse Services. Smoking is also prohibited in state-owned vehicles except smoking in state police vehicles shall be in accordance with policy set by the Superintendent of State Police.

2006 Exec. Order 41, effective 1/1/07.

Unless prohibited by executive order above, the commonwealth or any agency thereof and every locality shall provide reasonable no-smoking areas, considering the nature of the use and the size of the building, in any building owned or leased by the Commonwealth or any agency thereof or a locality. The provisions of this chapter shall not apply to office, work or other areas of the Department of Corrections which are not entered by the general public in the normal course of business or use of the premises. Smoking is prohibited in public restrooms in any building owned or leased by the Commonwealth or any agency thereof. Smoking is also prohibited in local/district health departments.

VA. CODE ANN. §§ 15.2-2800 (2001) & 15.2-2801 (2002).

Private Workplaces

None

Schools

Smoking is prohibited in the interior of any public elementary, intermediate, and secondary school and in public school buses. The person(s) in charge of other educational facilities shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.

VA. CODE ANN. §§ 15.2-2800 (2001) & 15.2-2801 (2002).

Child Care Facilities

Smoking is prohibited in any child day care center that is not also used for residential purposes. This does not apply to any portion of a building not used by a child day care center.

VA. CODE ANN. §§ 15.2-2800 (2001) & 15.2-2801 (2002).

Health Care Facilities

Smoking is prohibited in hospital emergency rooms and public restrooms of health care facilities. Reasonable no-smoking areas must be designated in health care facilities, including hospitals and nursing homes.

VA. CODE ANN. §§ 15.2-2800 (2001) & 15.2-2801 (2002).

Any person who smokes or uses an open flame within 25 feet of a medical oxygen source in a health care facility when the area is posted as an area where smoking and open flame are prohibited is guilty of a Class 2 misdemeanor.

VA. CODE ANN. § 18.2-511.1 (2007).

Restaurants

Any restaurant having a seating capacity of 50 or more persons shall have a designated no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area, the following shall not be included as seating capacity: seats in any bar or lounge area of a restaurant and seats in any separate room or section of a restaurant which is used exclusively for private functions.

VA. CODE ANN. §§ 15.2-2800 (2001) & 15.2-2801 (2002).

Bars

There is no legal distinction between restaurants and bars in Virginia, so establishments that are commonly known as bars may be subject to the restrictions on smoking listed above under “Restaurants.”

VA. CODE ANN. §§ 15.2-2800 (2001) & 15.2-2801 (2002).

Penalties/Enforcement

The proprietor or other person in charge of a space subject to the restrictions on smoking in the Virginia Clean Indoor Air Act shall post signs conspicuous to public view stating “Smoking

Permitted” or “No Smoking,” and in restaurants, signs conspicuous to ordinary public view at or near each public entrance stating “No-Smoking Section Available.” Failure to post the required signs or continuing to smoke in a non-smoking area after being asked not to is punishable by a civil penalty not to exceed \$25. Any law-enforcement officer may issue a summons regarding a violation of the restrictions on smoking in public places.

VA. CODE ANN. §§ 15.2-2801 (2002), 15.2-2803 (1997) & 15.2-2808 (1997).

Preemption

No ordinances enacted by a locality prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter. Unless specifically permitted in this chapter, ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established by state law.

VA. CODE ANN. § 15.2-2803 (2002).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 30 cents

Date last changed: July 1, 2005 — from 20 cents to 30 cents

Year first enacted: 1960

VA. CODE ANN. § 58.1-1001 (2007).

Roll-your-own tobacco is now included in the definition of cigarette and 0.09 ounces of roll-your-own tobacco is the same as one cigarette. However, the excise tax on roll-your-own tobacco is still 10 percent of the manufacturers’ sales price.

VA. CODE ANN. § 58.1-1001 (2007).

All revenue generated by the cigarette tax is deposited into the Virginia Health Care Fund. Monies in the fund are used for the provision of health care services.

VA. CODE ANN. §§ 58.1-1018 & 32.1-367 (2004).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$172,136,000

Other Tobacco Products

All other tobacco products: 10% of the manufacturers' sales price

VA. CODE ANN. § 58.1-1021.02 (2005).

All revenue generated by the other tobacco products tax is deposited into the Virginia Health Care Fund. Monies in the fund are used for the provision of health care services.

VA. CODE ANN. §§ 58.1-1021.05 (2005) & 32.1-367 (2004).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration (Synar Amendment) the Department of Agriculture and Consumer Services may promulgate regulations which allow the department to undertake the activities necessary to comply with such regulations.

VA. CODE ANN. § 18.2-371.2 (2003).

Penalties for Sales to Minors

No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including, but not limited to, cigarettes, cigars, bidis and wrappings. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 18 years of age as required by law shall be a defense to any action brought under this subsection. Violation by an individual or a separate retail establishment, except for the sale of bidis, shall be punishable by a civil penalty not to exceed \$100 for the first violation, up to \$200 for a second violation and up to \$500 for subsequent violations. If the retail establishment has a youth access training program, the court shall suspend all penalties. If the court finds that there is no training program then it may impose a penalty not to exceed \$1,000.

VA. CODE ANN. § 18.2-371.2 (2003).

Photo ID

No person shall sell a tobacco product, including, but not limited to, cigarettes, cigars, bidis, and wrappings, to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age.

VA. CODE ANN. § 18.2-371.2 (2003).

Sign Posting

Retail establishments that sell tobacco products shall post signs indicating that the sale of tobacco products to any person under the age of 18 is prohibited by law. Proprietors in violation of this requirement may be charged with a civil penalty not to exceed \$50.

VA CODE ANN. § 18.2-371.2 (2003).

Bidis

No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including bidis. A violation by an individual or by a separate retail establishment that involves the sale, distribution or purchase of a bidi shall be punishable by a civil penalty in the amount of \$500 for a first violation, \$1,000 for a second violation, and \$2,500 for a third or subsequent violation.

VA. CODE ANN. § 18.2-371.2 (2003).

Penalties to Minors

No person less than 18 years of age shall purchase, attempt to purchase or possess any tobacco product, including but not limited to cigarettes, cigars, bidis and rolling papers. This shall not apply to the possession of tobacco products by a person less than 18 years of age making a delivery of tobacco products in pursuance of his employment. Violators shall be punishable by a civil penalty not to exceed \$100 for the first violation, and \$250 for subsequent violations. In lieu of the civil penalty, a judge may prescribe up to 20 hours of community service for a first violation and up to 40 hours of community service for a second violation.

VA. CODE ANN. § 18.2-371.2 (2003).

Placement of Tobacco Products

None

Internet Sales

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer such person complies with specific age verification requirements, including obtaining a certification from the prospective consumer and verifying the information in the certification; disclosure requirements; shipping requirements, including use of a delivery service that requires a signature to accept delivery and a photographic identification of the person accepting delivery; registration and reporting requirements; and tax collection requirements. A first violation of these provisions is a civil penalty of up to \$1,000. A second and subsequent violation is a civil penalty of up to \$10,000. Knowingly submitting a false certification is a civil penalty of \$5,000 for each offense. Failure to collect or remit taxes is a civil penalty of up to five times the retail value of the cigarettes involved, in addition to any other penalty. The law also makes selling or possessing counterfeit cigarettes illegal, and prescribes penalties.

VA. CODE ANN. §§ 18.2-246.6 et seq. (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes**Samples**

No person shall distribute to any person less than 18 years of age any tobacco product, including, but not limited to, cigarettes, cigars, bidis and wrappings. Violation is subject to the same penalties as selling tobacco products to minors. The affirmative defenses listed under “Penalties for Sales to Minors” are also available.

VA. CODE ANN. § 18.2-371.2 (2003).

Single Cigarettes

Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. Violators are subject to a civil penalty not to exceed \$50.

VA. CODE ANN. § 18.2-371.2 (2003).

E Restrictions on the Sale of Tobacco Products in Vending Machines**Placement**

Vending machines must be located in a place that is not open to the general public and is not generally accessible to minors. An establishment that prohibits the presence of minors unless accompanied by an adult is not open to the general public.

VA. CODE ANN. § 18.2-371.2 (2003).

Penalty

A violation of the restrictions on placement of tobacco product vending machines is subject to the same penalties as selling or distributing tobacco products to minors.

VA. CODE ANN. § 18.2-371.2 (2003).

Sign Posting

Where any tobacco product is sold from a vending machine notice shall also be posted on the machine in a conspicuous manner and place indicating that the purchase or possession of tobacco products by minors is unlawful. Violation by an individual or a separate retail establishment shall be subject to the same penalties provided for sale or distribution of tobacco products to minors.

VA. CODE ANN. § 18.2-371.2 (2003).

F Licensing Requirements**Requirements**

No person shall engage in the business of selling or dealing in tobacco products as a distributor without first having received a separate license from the Department of Taxation for each location or place of business. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor’s licenses are valid for a period of three years from the date of issue unless sooner revoked by the department.

VA. CODE ANN. §§ 58.1-1021.04:1 & 58.1-1021.04:2 (2006).

Fee

Each distributor’s license must be accompanied by a fee prescribed by the Department of Taxation.

VA. CODE ANN. § 58.1-1021.04:1 (2006).

License Suspension for Sales to Minors
None

G Smoker Protection Laws

No employee of or applicant for employment with the Commonwealth or any of its political subdivisions shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of their employment, provided that this section shall not apply to specified classes of employees.

VA. CODE ANN. § 2.2-2902 (1989).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In any civil litigation under any legal theory, the amount of the appeal bond or irrevocable letter of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of appellate review by any courts shall be set in accordance with applicable laws or court rules, except that the total appeal bond or irrevocable letter of credit that is required of an appellant and all of its affiliates shall not exceed \$25 million, regardless of the value of the judgment. If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the appeal bond or irrevocable letter of credit requirement has been limited or waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts for the purpose of evading the judgment, the limitation or waiver granted shall be rescinded and a court may require the appellant to post a bond or irrevocable letter of credit in an amount up to the

full amount of the judgment.

VA. CODE ANN. § 8.01-676.1 (2000).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$14,481,658 for tobacco control and prevention programs from the state's annual MSA payments. This is the second year of the FY2007-FY2008 biennium.

FY2007-FY2008 Biennial Budget (H.B. 5002a, 2006 1st special session) enacted 6/30/06 and effective 7/1/06 (FY2007) & 7/1/07 (FY2008).

The Virginia Tobacco Settlement Fund was created. Ten percent of the Master Settlement Agreement monies are allocated to the fund, subject to the sale of this money to the Virginia Tobacco Settlement Foundation Endowment. The monies are used for the purposes of discouraging, eliminating or preventing the use of tobacco products by minors, including, but not limited to, educational and awareness programs on the health effects of tobacco use on minors and laws restricting the distribution of tobacco products to minors.

VA. CODE ANN. § 32.1-360 (2007).

The Virginia Health Care Fund was created into which shall be deposited 40 percent of the annual MSA payment. Monies deposited to the Fund shall be used solely for the provision of health care services. Health care services include, but are not limited to, Medicaid payments, disease diagnosis, prevention and control, and community health services.

VA. CODE ANN. §§ 32.1-366 & 32.1-367 (2004).

The Tobacco Indemnification and Community Revitalization Fund was also created. Fifty percent of the monies received from the Master Settlement Agreement shall be deposited into the fund subject to the sale of this money to the Tobacco Settlement Financing Corporation. If the sale occurs, all the investment income from the Tobacco Indemnification and Community Revitalization Endowment from the lump sum payment from the sale of this money shall be deposited in the Tobacco Indemnification and Community Revitalization Fund. Upon request by the Tobacco Indemnification and Community Revitalization Commission, 10 percent of the principal from this

endowment may be transferred to the Tobacco Indemnification and Community Revitalization Fund, and 15 percent of the principal may be transferred upon a 2/3 vote of the commission.

VA. CODE ANN. §§ 3.1-1109.1 & 3.1-1111 (2002).

Non-Monetary Provisions

The Virginia Tobacco Settlement Foundation was created to assist in determining the appropriate recipients of monies in the Tobacco Settlement Fund. The foundation shall be administered by a board of governors consisting of twenty-three members including five designated representatives from public health organizations, which can include the American Lung Association of Virginia.

VA. CODE ANN. §§ 32.1-355 to 32.1-357 (2000).

Securitization

Authorizes the governor to securitize 50 percent of revenues from the annual Master Settlement Agreement payments and creates the Tobacco Indemnification and Community Revitalization Endowment to receive the lump sum payment to the state. Also creates the Tobacco Settlement Financing Corporation and authorizes it to issue bonds all at once or from time to time backed by the 50 percent of MSA payments.

H.B. 698 enacted 4/4/02 and effective 7/1/02 & VA. CODE ANN. §§ 3.1-1111 (2004) & 3.1-1111.1 (2001).

Authorizes the governor to securitize the 10 percent of MSA payments that currently go to the Virginia Tobacco Settlement Foundation, and creates the Virginia Tobacco Settlement Foundation Endowment to receive the lump sum payment that would be received by the state. Also authorizes the Tobacco Settlement Financing Corporation to issue bonds backed by the 10 percent of MSA payments. To date this securitization has not occurred.

H.B. 3111 enacted 3/13/07 and effective 7/1/07 & VA. CODE ANN. §§ 32.1-360 & 32.1-361.1 (2007).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in virtually all public places, including restaurants, bars and non-tribal casinos. “Public place” is defined as that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public. See statute citation for a specific list of what are classified as “public places.”

Government Buildings

Smoking is prohibited in “public places,” which includes buildings and vehicles owned in whole or in part by the state of Washington or other public entity that are open to the public. Smoking is also prohibited in “places of employment,” which include any area under the control of a public employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve “public places” and “places of employment.” The definition of “public place” also includes state legislative chambers and immediately adjacent hallways.

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Private Workplaces

Smoking is prohibited in “public places,” which

includes buildings and vehicles owned in whole or in part by private persons or entities that are open to the public, and regardless of whether a fee is charged for admission. Smoking is also prohibited in “places of employment,” which include any area under the control of a private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve “public places” and “places of employment.” See statute for a specific list of what are classified as “public places.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Schools

Each school district board of directors must adopt a written policy prohibiting the use of all tobacco products on public school property. The policy shall include, but not be limited to, a requirement that students and school personnel be notified of the prohibition, the posting of signs prohibiting the use of tobacco products, sanctions for students and school personnel who violate the policy, and a requirement that school district personnel enforce the prohibition.

WASH. REV. CODE § 28A.21.310 (1997).

Smoking is prohibited in “public places,” the definition of which includes schools and educational facilities, and includes a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited.

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Child Care Facilities

Smoking is prohibited in “public places,” which means any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, including child care facilities.

A “public place” includes a private residence when used to provide licensed child care, foster care, adult care, or other similar social service care on the premises. Smoking is also prohibited in “places of employment,” which include any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Smoking is prohibited in the living space of any home or facility caring for foster children and in motor vehicles while transporting foster children. Adults are permitted to smoke outside away from children. This does not apply to traditional or spiritual Native American or religious ceremonies involving the use of tobacco.

WA ADMIN. CODE § 388-148-0185 (2004).

Health Care Facilities

Smoking is prohibited in “public places,” which means any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, including health care facilities. A “public place” includes a private residence when used to provide licensed child care, foster care, adult care, or other similar social service care on the premises. Smoking is also prohibited in “places of employment,” which include any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Restaurants

Smoking is prohibited in “public places,” the definition of which includes restaurants. Smoking

is also prohibited in “places of employment,” which are defined as any area under the control of a public or private employer which employees are required to pass through during the course of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employments.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Bars

Smoking is prohibited in “public places,” the definition of which includes bars and taverns. Smoking is also prohibited in “places of employment,” which are defined as any area under the control of a public or private employer which employees are required to pass through during the course of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Penalties/Enforcement

Owners or the person in charge must post signs in a conspicuous place at the entrance to the public place prohibiting smoking. Intentionally smoking in a “public place” or “place of employment” or removal or defacement of signs are punishable by a civil fine of up to \$100. Any person passing by or through a public place while on a public sidewalk or public right of way has not intentionally violated this chapter. After an initial warning, violation by an owner or person in charge of a “public place” or “place of employment” is subject to up to a \$100 civil fine each day the violation continues. Local law enforcement agencies enforce the law against individual smokers and local health departments enforce the law against owners or persons in charge of “public places” or “places of employment.” Owners, operators, managers, employers, or other persons who own or control a “public place” or “place of employment” may seek to rebut the presumption that 25 feet is a reasonable minimum distance by making application to the Director of the local health department or district in which the “public place” or “place of employment” is located. The presumption will be rebutted if the applicant

can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such “public place” or “place of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Preemption

The Washington Supreme Court ruled unanimously that the prohibition on smoking in almost all public places and workplaces in Pierce County, WA can not go into effect because the ordinance prohibits what state statute specifically allows in this case prohibiting smoking where state law allows businesses to decide whether to allow smoking or not. This means that localities in Washington are preempted from enacting clean indoor air ordinances stronger than state law.

Entertainment Industry Coalition v. Tacoma-Pierce County Health Department et al., decided 2/10/05 (2005).

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: \$2.025

Date last changed: July 1, 2005 — from \$1.425 to \$2.025

Year first enacted: 1935

WASH. REV. CODE §§ 82.24.020 (1994), 82.24.026 (2005), 82.24.027 (1999), & 82.24.028 (2002).

Sixty cents of the cigarette tax is distributed as follows: 21.7 percent to the Health Services Account, 2.8 percent to the general fund, 2.3 percent to the Violence Reduction and Drug Enforcement Account, 1.7 percent to the Water Quality Account, and the remaining revenue to the Education Legacy Trust Account.

WASH. REV. CODE § 82.24.026 (2005).

Sixty cents of the cigarette tax is allocated to the Health Services Account. Ten percent of this money is transferred to the Tobacco Prevention and Control Account to be used to help fund the state tobacco prevention and control program. A minimum funding level of \$26.24 million was set for this program. The remaining revenue either remains in the Health Services Account or is transferred to several other accounts for specified

purposes. This increase was the result of Initiative 773, which was approved by voters in November 2001.

WASH. REV. CODE §§ 82.24.028 & 43.72.900 (2002).

Eight cents of the cigarette tax is distributed to the Water Quality Account until June 30, 2021.

WASH. REV. CODE § 82.24.027 (1999).

Twenty-two cents of the cigarette tax is distributed to the general fund, 10.5 cents of the cigarette tax is distributed to the Violence Reduction and Drug Enforcement Account, and 41 cents of the cigarette tax is distributed to the Health Services Account.

WASH. REV. CODE § 82.24.020 (1994).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$423,869,000

Other Tobacco Products

Cigars: 75% of the taxable sales price not exceeding 50 cents per cigar;

All other tobacco products: 75% of the taxable sales price

WASH. REV. CODE § 82.26.020 (2005).

The revenue from other tobacco product taxes is distributed as follows: 37 percent to the general fund, 50 percent to the Health Services Account, and 13 percent to the Water Quality Account until July 1, 2021 and after that into the general fund.

WASH. REV. CODE § 82.26.020 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Liquor Control Board and the board’s authorized agents or employees shall have the full power to conduct random, unannounced, inspections with local county health departments or districts and local law enforcement agents to assure compliance with these laws. Persons under 18 may be used with parental authorization for participation in controlled purchases for enforcement purposes.

WASH. REV. CODE §§ 70.155.110 (1993) & 70.155.080 (2002).

Penalties for Sales to Minors

Every person who sells or gives, or permits to be sold or given to any person under the age of 18 any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor. The Liquor Control Board may fine a licensed person who violates this provision \$100 for the first violation within any two-year period; \$300 for the second violation within any two year period; \$1,000 and suspension of license for a period of six months for the third violation within any two year period; \$1,500 and suspension of license for one year for the fourth violation within any two year period, and revocation of a license with no chance of reinstatement for five years for the fifth or subsequent violation within any two year period. Any person other than a licensee who commits an offense may be fined \$50 for the first violation and \$100 for any subsequent violation. It is a defense to a prosecution under this section that the person making a sale reasonably relied on any of the officially issued identification specified in RCW 70.155.090(1).

WASH. REV. CODE §§ 26.28.080 (1994) & 70.155.005 et seq. (1993).

Photo ID

Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer, sampler, or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears their signature and photograph: Liquor control authority card of identification of a state or province of Canada; driver's license, instruction permit, or identification card of a state or province of Canada; "identi-card" issued by the Washington state Department of Licensing; United States Military identification; passport; or Merchant Marine identification card issued by the United States Coast Guard.

WASH. REV. CODE § 70.155.090 (1993).

Sign Posting

A licensee shall display a sign concerning the prohibition of tobacco sales to minors, which shall be posted so that it is clearly visible to any person purchasing tobacco products from

the licensee. The sign shall read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED." Penalties for licensees and all other persons are the same as selling or giving tobacco products to a minor. Penalties are assessed by the Liquor Control Board.

WASH. REV. CODE §§ 70.155.020 (1993), & 70.155.100 (1998).

Penalties to Minors

Individuals under 18 who purchase, possess, attempt to purchase or obtain any tobacco product are guilty of a Class Three civil infraction, punishable by a fine not to exceed \$50, participation in up to four hours of community service, or both. The court may also require participation in a smoking cessation program.

WASH. REV. CODE § 70.155.080 (2002).

Placement of Tobacco Products

None

Internet Sales

It is unlawful for a person who mails, ships, or otherwise delivers cigarettes in connection with a "delivery sale" to fail to obtain in writing verification of the receiver's address and that the receiver of the cigarettes is not a minor; fail to either verify the information contained in the certification provided by the prospective consumer against a commercially available data base, or obtain a photocopy of an officially issued identification containing the bearer's age, signature, and photograph; and contract only with private carriers who employ delivery agents who will verify the receiver of the cigarettes is not a minor upon delivery. A first violation of these provisions is a Class C felony punishable by up to five years in prison and a fine of \$10,000, and second and subsequent violations are a Class B felony punishable by up to 10 years in prison and a \$20,000 fine. Violation by a delivery service is a gross misdemeanor punishable by up to a year in jail and a fine of \$5,000. Failure to collect or remit taxes is a fine of five times the value of the cigarettes involved in addition to any other penalties.

WASH. REV. CODE § 70.155.105 (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person may distribute or offer to distribute samples in a public place. However, sampling is permitted in areas where minors are not permitted, in stores that have a retailer's license, and at or adjacent to outdoor construction sites. Sampling is also prohibited in or on a public street, sidewalk, park that is within 500 feet of a playground, school, or other facility being used primarily by persons under the age of 18. No person shall engage in the business of sampling without receiving a license from the state Liquor Control Board. Violation by licensees and by all others is a fine of \$300 for each violation.

WASH. REV. CODE §§ 70.155.050 (1993), 70.155.060 (1993), & 70.155.100 (1998).

No person shall give or distribute coupons for tobacco products if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store. The penalty for licensees and all others is a fine of \$1,000 for each violation.

WASH. REV. CODE §§ 70.155.070 (1993), & 70.155.100 (1998).

Single Cigarettes

No person shall sell or permit to be sold cigarettes not in the original unopened package to which the required stamp has been affixed. This does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of 60 percent of annual gross sales from the sale of tobacco products. Penalties assessed against the licensee by the Liquor Control Board for violation are the same as selling or giving tobacco products to minors. Any person other than a licensee who commits a violation may be fined \$100 for each offense.

WASH. REV. CODE §§ 70.155.040 (1993), & 70.155.100 (1998).

No stamp may be affixed to, or made upon, any container or package of cigarettes if the container or package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the

United States.

WASH. REV. CODE § 82.24.035 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sales of tobacco products from vending machines are prohibited unless the machines are located at industrial work sites where minors are not employed or fully within premises where minors are not permitted. Vending machines must not be less than ten feet from all entrances or exits on the premises except if architecturally impractical.

WASH. REV. CODE § 70.155.030 (1994).

Penalty

Violations of this provision by licensees and all others are punishable by a fine of \$100 for each day the violation occurs.

WASH. REV. CODE § 70.155.100 (1998).

F Licensing Requirements

Requirements

Wholesalers and retailers of cigarettes must obtain a license from the state Department of Revenue. A separate license is required for each place of business. Purchasing, selling, consigning, or distributing cigarettes in this state without a license is a Class C felony.

WASH. REV. CODE §§ 82.24.500 to 82.24.540 (2003).

Licenses must be obtained to distribute tobacco product samples at no or nominal cost from the Liquor Control Board. A sampler's license expires on the thirtieth day of June of each year and must be renewed annually. A copy of the license must be carried by the person at all times. Sampling without a license is subject to a \$300 fine for each violation.

WASH. REV. CODE §§ 70.155.050 (1993), & 70.155.100 (1998).

Distributors and retailers of tobacco products other than cigarettes must be licensed by the state Department of Revenue. Each license expires on the master license expiration date and can be continued upon payment of the required fee. Selling other tobacco products without a license is a Class C felony.

WASH. REV. CODE §§ 82.26.150 to 82.26.190 (2005).

Fee

\$650 for each cigarette wholesaler for the first place of business, \$115 for any additional places of business; \$93 annually for each cigarette retailer, and an additional \$30 for each vending machine.

WASH. REV. CODE §§ 82.24.520 (1986) & 82.24.530 (1992).

\$500 annually for manufacturers whose employees distribute samples, not less than \$50 annually for all other samplers.

WASH. REV. CODE § 70.155.050 (1993).

\$650 for distributors of other tobacco products for the first place of business and \$115 for each additional place of business unless they already hold a cigarette wholesaler license for the same place of business; \$93 for retailers of other tobacco products at each place of business unless they hold a cigarette retailer license for the same place of business.

WASH. REV. CODE §§ 82.26.160 & 82.26.170 (2005).

License Suspension for Sales to Minors

Starting with the third violation, the state Liquor Control Board may suspend or revoke a license if the licensee violates state laws concerning sale of tobacco products to minors, sign posting at the point of sale, or distribution of cigarettes outside of their original packages.

WASH. REV. CODE §§ 70.155.005 et seq. (1993).

G Smoker Protection Laws

None

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory involving a signatory, a successor of a signatory or any

affiliate of a signatory to the Master Settlement Agreement, the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed \$100 million, regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the amount of the judgment.

WASH. REV. CODE § 43.340 (2006).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$27,191,000 for tobacco control and prevention programs for FY2008 from the state general fund and revenue generated from retailer licensing fees. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Budget (H.B. 1128) enacted 5/15/07 and effective 7/1/07 (FY2008) & 7/1/08 (FY2009).

Note: During the 2008 legislative session, \$50 million dollars was transferred from the state general fund to the Tobacco Prevention and Control Account to help keep funding for the state tobacco control program at the same level for the next several years.

H.B. 1128 enacted and effective 5/15/07.

Moneys received by the state of Washington in accordance with the settlement of the state's legal action against tobacco product manufacturers, exclusive of costs and attorneys' fees, shall be deposited in the tobacco settlement account except as these moneys are sold or assigned. Moneys in the tobacco settlement account may only be transferred to the health services account for the purposes set forth in RCW 43.72.900, and to the tobacco prevention and control account to help fund the tobacco prevention and control program. Master Settlement Agreement strategic contribution payments received in 2008 through 2017 will be distributed to the Life Sciences Discovery Fund.

WASH. REV. CODE § 43.79.480 (2005).

Securitization

The securitization of part of the annual Master Settlement Agreement payments was authorized to acquire a lump sum payment of \$450 million up front. The Tobacco Settlement Authority was created as an independent entity of the state to complete the transaction.

WASH. REV. CODE § 43.340.005 et seq. (2002).

M Fire Safety Standards

None





A Smokefree Air

Public Places

None

Government Buildings

It is the responsibility of the appointing authority to ensure that all state places of employment maintain a smokefree environment and to make both state employees and the public aware of their responsibility to ensure this smokefree environment. Therefore, smoking by employees of the state is prohibited in their places of employment and in adjacent nonsmoking spaces. Appointing authorities are not required to make accommodations for individual outdoor smoking areas. Public waiting rooms and receiving areas shall be smokefree, and smoking restrictions shall be actively enforced by the individuals responsible for those areas. State residential facilities, including, but not limited to, hospitals, group homes, and prisons shall comply with this policy to the maximum extent possible.

WV Div. of Personnel Policy, Smoking Restrictions in the Workplace (2004).

Private Workplaces

None

Schools

No person shall distribute or use any tobacco product at all times in any building, property or vehicle leased, owned or operated by a county board of education, a Regional Education Service Agency (RESA), the State Department of Education or the State Board of Education. This policy shall apply to any private building, or other property, including automobiles or other vehicles used for school activities when students or staff are present. Individuals supervising students off school grounds are prohibited from distributing or using any tobacco product while in the presence of students or any time while engaged in any activities directly involving students.

WV CSR §§ 126-66-1 et seq. (1998).

The use of tobacco products while the school is occupied for school purposes is restricted to fac-

ulty or staff lounges or offices that students do not have access to. Violation is punishable by a fine of \$1 to \$5 for each offense.

W. VA. CODE § 16-9A-4 (1987).

Child Care Facilities

Staff members of child care centers shall not use tobacco in any form while engaged in any food service activities, feeding children or administering to the children's needs. Smoking is also prohibited in all children's areas. "Child care center" is defined as any child care facility providing nonresidential child care for seven or more children for all or part of a day. The term "child care center" includes: day care centers, family day care facilities, nursery schools, and preschools. Violators are guilty of a misdemeanor punishable by a fine of not more than \$200, imprisonment for not more than 30 days or both the fine and imprisonment.

WV CSR §§ 64-21-10 & 64-21-20 (1997).

Health Care Facilities

None

Restaurants

None

Bars

None

Other

The West Virginia Regional Jail and Correctional Facility Authority shall prohibit the use or possession of tobacco products by inmates held in facilities operated solely by the authority. The authority may establish smoking cessation programs to facilitate the prohibition.

W. VA. CODE § 31-20-5b (1997).

Preemption

No specific language concerning preemption in state law. In West Virginia, 54 out of 55 counties had regulations restricting smoking of varying strength promulgated by county boards of health as of January 1, 2008.

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: 55 cents

Date last changed: May 1, 2003 — from 17 cents to 55 cents

Year first enacted: 1947

W. VA. CODE § 11-17-3 (2003).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$107,680,000

Other Tobacco Products

All other tobacco products: 7% of the wholesale price

W. VA. CODE § 11-17-3 (2001).

C Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The commissioner of the West Virginia Alcohol Beverage Control Administration, the superintendent of the West Virginia state police, the sheriffs of the counties of this state and the chiefs of police of municipalities of the state shall periodically conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under 18 years of age may be enlisted to test compliance with these sections if the tests are conducted under the direct supervision of the acting authority and written parental consent is first obtained. Any other use of a minor is a misdemeanor, punishable by the same fine listed below.

W. VA. CODE § 16-9A-7 (1998).

Penalties for Sales to Minors

No person, firm or corporation may sell, give or furnish, or cause to be sold or furnished any tobacco product or cigarette paper to a minor. Firms or corporations that violate these provisions are guilty of a misdemeanor and shall be fined \$25 for the first offense; \$100 to \$200 for the second offense, if it occurs within two years of the first conviction; \$250 to \$500 for the third offense, if it occurs within two years of the first conviction;

\$250 to \$500 for the fourth offense, if it occurs within five years of the first conviction; and \$1,000 to \$5,000 for the fifth and any subsequent offenses, if the fifth or subsequent offense occurs within five years of the first conviction. Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of 18 years any tobacco product, in any form, is guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100; and for a second or subsequent offense, shall be fined \$100 to \$500. It is an affirmative defense to prosecution if the buyer or recipient falsely evidenced that he was 18 years of age or older; the appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

W. VA. CODE §§ 16-9A-2 (2000) & 16-9A-7 (1998).

Photo ID

None

Sign Posting

None

Bidis

The possession, importation, distribution and sale of bidis is prohibited. Violation is a misdemeanor and is subject to a fine of up to \$500. Second and subsequent violations are subject to a fine of not less than \$1,000 and not more than \$5,000 for each offense and/or a possible jail term for up to six months.

W. VA. CODE § 16-9A-9 (2001).

Penalties to Minors

No person under the age of 18 years shall have on or about their person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or,

any pipe, snuff, chewing tobacco or tobacco product. This does not apply to minors participating in compliance inspections. Any person violating the provisions of this section shall for the first violation be fined \$25 and be required to serve eight hours of community service; for a second violation, the person shall be fined \$50 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$100 and be required to serve 24 hours of community service.

W. VA. CODE § 16-9A-3 (2000).

Placement of Tobacco Products

None

Internet Sales

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer, the person complies with specific age verification requirements, including, obtaining a certification from the prospective consumer, including date of birth and verification of this information; disclosure requirements; shipping requirements including use of a delivery service that requires the person to sign to accept delivery and to display a photographic identification; registration and reporting requirements; and tax collection requirements. A first violation of any provision of this article shall be a misdemeanor punishable by a fine of \$500 or five times the retail value of the cigarettes involved, whichever is greater. Any person who knowingly violates any provision of this article or who knowingly and falsely submits a certification in another person's name shall be guilty of a misdemeanor and be fined \$1,000 or ten times the retail value of the cigarettes involved, whichever is greater, or confined not more than six months, or both. Failure to collect or remit taxes is a civil penalty of five times the retail value of the cigarettes involved, in addition to any other penalty.

W. VA. CODE §§ 16-9E-1 to 16-9E-8 (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person, firm or corporation may give or furnish, or cause to be given or furnished any tobacco

product or cigarette paper to a minor. Violators are guilty of a misdemeanor and subject to the same fines as selling tobacco products to minors.

W. VA. CODE § 16-9A-2 (2000).

Single Cigarettes

None

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No person or business entity may offer for sale any cigarette or other tobacco product in a vending machine. An establishment is exempt from this prohibition if individuals under the age of 18 years are not permitted to be in the establishment or if the establishment is licensed by the Alcohol Beverage Control Commission as a Class A licensee.

W. VA. CODE § 16-9A-8 (2000).

Penalty

Any person or business entity, which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$250.

W. VA. CODE § 16-9A-8 (2000).

F Licensing Requirements

Requirements

Each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail shall apply for and receive a license. The cigarette license application shall be a part of the business registration certificate application or the renewal application for a business registration certificate. Any person or company who sells any cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail without obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 or more than \$250.

W. VA. CODE § 11-12-4a (2000).

Fee

None

License Suspension for Sales to Minors

None

G Smoker Protection Laws

It shall be unlawful for any public or private employer to refuse to hire any individual or to discharge any employee or otherwise disadvantage or penalize any employee with respect to compensation, terms, conditions or privileges of employment solely because such individual uses tobacco products off the premises of the employer during non-working hours. This section does not apply to a nonprofit organization, which, as one of its primary purposes or objectives, discourages the use of one or more tobacco products by the general public. An employer may offer a health, disability or life insurance policy that makes distinctions between employees for type or price of coverage based on the employee's use of tobacco products provided, that any differential premium rates charged to employees must reflect differential costs to the employee and provided, that the employer must provide employees with a statement delineating the differential rates used by its insurance carriers.

W. VA. CODE § 21-3-19 (1992).

H Advertising & Promotion

Any outdoor billboard advertisement for smokeless tobacco products must conspicuously display one of the following statements: "WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER; WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS; WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES." The warnings shall be rotated every four months by the manufacturer, package, or importer of such products in an alternating sequence. Any outdoor billboard advertisement that does not conform to the provisions of this section shall be deemed a nuisance affecting public health. No other warning, format or type style in any billboard advertisement shall be required by any state or local statute or regulation.

W. VA. CODE § 16-9A-5 (1987).

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability**Industry Protection**

The bond that any appellant who is a signatory or a successor to a signatory of the Master Settlement Agreement or who controls or is under common control with a signatory of the Master Settlement Agreement may be required to post to stay execution on a judgment during an appeal in any cause of action shall be set in accordance with existing law except that an appeal bond may not exceed \$100 million for compensatory damages and all other portions of a judgment other than punitive damages and \$100 million for punitive damages unless the appellee proves by a preponderance of the evidence that the appellant or appellants are purposefully dissipating or diverting assets outside of the ordinary course of its business to the effect that the ability to pay the ultimate judgment is impaired.

W. VA. CODE § 4-11A-4 (2001).

**L Tobacco Control Program Funding/
Tobacco Settlement****Tobacco Control Program Funding**

Appropriated \$5,663,118 for tobacco control and prevention programs for FY2008 from the state general fund.

FY2008 Annual Budget (H.B. 2007) enacted 3/23/07 and effective 7/1/07.

In FY2006 and each fiscal year thereafter, the first \$30 million of the state's annual Master Settlement Agreement (MSA) payment is deposited in the Workers Compensation Debt Reduction Fund, and any amount exceeding this is deposited in the Tobacco Settlement Fund (see below). MSA strategic contribution payments received beginning in 2008 shall be deposited in their entirety in the Workers Compensation Debt Reduction Fund. On the date of the sale of the state's share of future MSA payments to the Tobacco Settlement Finance Authority the transfers above shall no longer be required.

W. VA. CODE § 4-11A-2 (2007).

The Tobacco Settlement Fund is created as a special revenue account in the state treasury. Fifty percent of the annual MSA payment before FY2006 and any amount in excess of \$30 million in FY2006 and each fiscal year thereafter are deposited into the fund. These funds are available for appropriation

by the legislature for: reserve funds for continued support of the programs offered by the public employees insurance agency, funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government, funding for public health programs, services and agencies, and funding for any state owned or operated health facilities. On the date of the sale of the state's share of future MSA payments to the Tobacco Settlement Finance Authority the transfers above shall no longer be required.

W. VA. CODE § 4-11A-3 (2007).

In 2006, there was created in the state treasury a fund known as the Revenue Shortfall Reserve Fund_Part B. All the money from what was previously the West Virginia Tobacco Settlement Medical Trust Fund was transferred into this fund. The legislature can make an appropriation from this fund for revenue shortfalls, emergency revenue needs caused by acts of God/natural disasters or for other fiscal needs as determined solely by the legislature, except the money can not be appropriated unless the money in the main Revenue Shortfall Reserve Fund has been expended. The interest earned on moneys in this fund can be appropriated by the legislature for: reserve funds for continued support of the programs offered by the public employees insurance agency, funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government, funding for public health programs, services and agencies, and funding for any state owned or operated health facilities.

W. VA. CODE § 11B-2-220(f) & (g) (2006).

Securitization

The Tobacco Settlement Finance Authority is created to sell, pledge or assign the state's share of the MSA sold to the authority pursuant to one or more sales agreements. The sale of the state's share of the MSA shall be executed by executive order of the governor, but the lump sum payment received by the state shall not be less than \$800 million.

W. VA. CODE §§ 4-11A-3 to 4-11A-17 (2007).

M Fire Safety Standards

None





A Smokefree Air

Public Places

Smoking is prohibited in or on the grounds of a Type One secured correctional facility and on motor buses. Smoking is restricted to designated areas in other public conveyances, indoor theaters, public passenger elevators, retail stores, and public waiting rooms. Exceptions to this law include rooms used for private functions under the sponsor's control, most types of correctional facilities, and rooms occupied exclusively by smokers. The person in charge of the places where smoking is restricted may not designate an entire building as a smoking area.

WIS. STAT. § 101.123 (2004).

Government Buildings

By executive order, smoking is prohibited in all state office buildings under the control of cabinet secretaries.

Exec. Order #89 (2005).

The use of all tobacco products is prohibited at any Division of Disability and Elder Service (DDES) facility. This prohibition extends to all buildings and grounds of each DDES facility. The prohibition includes staff, patients/residents, visitors, renters, vendors, and any other individuals on the grounds of any facility. The only exception is for ceremonial use of tobacco by Native American patients/residents.

WI Admin. Code 60-05.00 (2005).

Smoking is restricted to designated areas in any enclosed indoor area of a state, county, city, village, or town building.

WIS. STAT. § 101.123 (2004).

No person may smoke in the state capitol building or in the immediate vicinity of the state capitol. Violation is subject to a fine of \$50.

WI STAT. ANN. § 101.123 (2)(ar) (2000).

Private Workplaces

Smoking is restricted to designated areas in any space that serves as an office. An office is defined

as any area that serves as a place of work at which the principal activities consist of professional, clerical or administrative services. Exceptions include any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale, and offices occupied exclusively by smokers.

WIS. STAT. § 101.123 (2004).

Schools

The use of all tobacco products is prohibited on premises controlled by a school board, except that the school board may allow the use of tobacco products on premises owned by the school district and rented to another person for noneducational purposes.

WIS. STAT. § 120.12(20) (2001).

No person may smoke in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory.

WIS. STAT. § 101.123(2)(bv) (2004).

Smoking is restricted to designated areas in any other educational facility, which is any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

WIS. STAT. § 101.123 (2004).

Child Care Facilities

Smoking is prohibited on the premises, indoors or outdoors, of a day care center, when children who are receiving day care services are present.

WIS. STAT. § 101.123 (2004).

Health Care Facilities

Smoking is restricted to designated areas in inpatient health care facilities. Smoking is prohibited in hospitals or physician's offices except in hospitals that have as a primary purpose the care and treatment of mental illness, alcoholism, or drug abuse.

WIS. STAT. § 101.123 (2004).

Restaurants

Smoking is restricted to designated areas in restaurants, unless the restaurant's liquor sales account for more than 50 percent of the receipts, or the seating capacity is less than 50 persons.

WIS. STAT. § 101.123 (2004).

Bars

None

Other

The possession and use of tobacco products is prohibited in and on all Department of Corrections owned and leased property. Exceptions can be made for specific circumstances such as for possession or use in inmate religious activities. The policy became effective September 1, 2006.

WI Dept. of Corrections Policy (2006).

Penalties/Enforcement

The person in charge or their agent shall post notice of the designation of a smoking area in or near the area designated. If an entire room is designated a smoking area, they shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. Individuals who willfully violate the restrictions on smoking will be fined not more than \$10. State or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations.

WIS. STAT. § 101.123 (2004).

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes**Cigarettes**

Tax rate per pack of 20: \$1.77

Date last changed: January 1, 2008 – from 77 cents to \$1.77

Year first enacted: 1939

WIS. STAT. § 139.31 (2008).

Revenue Collected

Revenue collected from the cigarette tax in FY2006

(July 1, 2005 to June 30, 2006): \$301,490,000

Other Tobacco Products

Moist snuff: \$1.31/oz.;

Cigars: 50% of the manufacturer's list price, not exceeding 50 cents per cigar;

All other tobacco products: 50% of the manufacturer's list price

WIS. STAT. § 139.76(1) (2008).

G Youth Access**Age Restrictions on Sales of Tobacco Products**

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

A governmental regulatory authority may conduct unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with the state sales to minors' law or a local ordinance. The Department of Health and Family Services may contract with a local health department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person to conduct these investigations. No retailer may be subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated the law or a local ordinance in the most recent investigation. With the permission of their parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette or tobacco product if the person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority; if questioned about their age during the course of an investigation, the minor shall state their true age; a minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer; the appearance of a minor may not be materially altered so as to indicate greater age; and a photograph or videotape of the minor shall be made before or after the investigation.

WIS. STAT. § 254.916 (2001).

Penalties for Sales to Minors

No retailer, manufacturer or distributor, or agent, employee or independent contractor thereof, may sell or provide for nominal or no consideration cigarettes or tobacco products to any person under the age of 18. Vending machine operators are not liable for this provision if they were unaware of the purchase. Violation is punishable by a fine of up to \$500 for the first offense; and between \$200 and \$500 for the second and subsequent violations within 12 months. Upon the second violation within 12 months, the license to sell tobacco products shall also be suspended for not more than three days; for a third violation within 12 months, the license shall be suspended for three to 10 days; and for a fourth violation within 12 months, the license shall be suspended for 15 to 30 days. It is a defense to prosecution that the purchaser falsely represented that they had attained the age of 18 and presented an identification card; that the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18; and that the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

Photo ID

None

Sign Posting

Retailers shall post signs in areas within their premises where tobacco products are sold to consumers stating that the sale of tobacco products to minors is unlawful. Failure to post such notice is punishable by a fine of \$25. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

Penalties to Minors

No person under 18 years of age may possess, purchase or falsely represent their age in an attempt to purchase tobacco products. This does not apply

to a minor during employment or a minor who is participating in a compliance check. Violation is subject to seizure of the tobacco product by a law enforcement officer. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 254.92 (2001).

Placement of Tobacco Products

None

Internet Sales

Requires direct marketers of cigarettes, which are sales of cigarettes to consumers where the consumer is not physically present, to register and provide certain information to the Department of Revenue. Direct marketers are also required to pay all applicable taxes on their products; verify the consumer's name and address and that they are at least 18 years of age using a database with information based on public records or receive from the consumer at the time of purchase a photocopy of a government-issued ID; for sales over the Internet, obtain the purchaser's E-mail address and receive payment by debit card, credit card or check prior to shipping; and the person making the delivery is required to check a government-issued ID to verify the person receiving the cigarettes is at least 18 years of age, if the person is not the addressee, the person must sign a statement saying the addressee is 18 years of age. Violation is subject to a penalty of \$100 to \$1,000 and/or 10 days to 90 days in jail.

WIS. STAT. §§ 139.345 (2005) & 139.44(5) (2001).

Other Provisions

At the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with applicable youth access laws and the penalties for violation. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the Department of Health and Family Services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent,

employee, or independent contractor. Upon violation, a citation will be given to the retailer and his employee if the employee has undergone this training. A citation will be issued only to the retailer if the employee has not undergone this training.

WIS. STAT. § 134.66 (2003).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No manufacturer, distributor, jobber, subjobber or retailer, or their employees or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless they are accompanied by a parent or guardian or spouse who has attained the age of 18 years. Providing cigarettes or tobacco products at no or nominal cost to persons under age 18 is also prohibited. Violation is subject to the same penalties as selling tobacco products to minors, including license suspensions for multiple violations. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

Single Cigarettes

No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed. Violation is subject to the same penalties as selling tobacco products to minors, including license suspensions for multiple violations. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

No person may sell or distribute in this state, acquire, store, possess, or transport for sale or distribution in this state, import or cause to be imported into this state for sale or distribution, or affix stamps to a cigarette package that does not comply with 15 U.S.C. 1333 and 15 U.S.C. 1335 or other federal law.

WIS. STAT. § 139.31 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No retailer may place a vending machine within 500 feet of a school. Vending machines are restricted to places where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless accompanied by a parent, guardian or spouse who is 18 or older. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

Penalty

Violation is subject to the same penalties as selling tobacco products to minors, including license suspensions for multiple violations. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

Sign Posting

A vending machine operator shall attach a notice in a conspicuous place on the front of their machine stating that the purchase of tobacco products by persons under 18 years of age is unlawful and violators may be fined up to \$50. Failure to post such notice is punishable by a fine of \$25. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (2003).

F Licensing Requirements

Requirements

Multiple retailers (a person who operates 10 or more retail outlets), distributors, manufacturers and vending machine operators must obtain a state permit from the Department of Revenue to sell cigarettes. A separate license is required for each place of business. Distributors are also required to obtain a permit to distribute tobacco products from the Department of Revenue.

WIS. STAT. §§ 139.34 (2001) & 139.79 (1997).

No person shall in any manner, or upon any

pretense, or by any device, directly or indirectly, sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license or permit without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised. A city, village, or town clerk may not issue a license unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over the counter or in a vending machine, or both. Licenses expire on June 30th of every year unless suspended or revoked. A separate license is required for each place of business.

WIS. STAT. § 134.65 (2001).

Fee

Not less than \$5 or more than \$100 annually for a retail license from a city, village or town; no fees specified for Department of Revenue permits.

WIS. STAT. § 134.65 (2001).

License Suspension for Sales to Minors

Punishments for violations of the sales to minors law include a three day suspension of the applicable license for the second violation within 12 months and progressive suspensions for subsequent offenses within that period. The maximum suspension provided is 15 to 30 days for four or more violations within 12 months. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section.

WIS. STAT. § 134.66 (1993).

G Smoker Protection Laws

No employer, labor organization, employment agency, licensing agency or other person may engage in any act of employment discrimination against any individual on the basis of use or non-use of lawful products off the employer's premises during non-working hours. This section does not apply to nonprofit corporations that have as one of their primary purposes or objectives the encouragement or discouragement of the general public from using this lawful product. It is acceptable for employers to offer a life, health or disability insurance policy under which the type or price

of coverage varies for employees based on their usage of this lawful product when the policy meets certain conditions.

WIS. STAT. §§ 111.31 et seq. (1991).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

Industry Protection

During the pendency of an appeal of a judgment in any civil action, the court shall set the amount of the undertaking to be furnished by all appellants collectively in order to stay the execution of the judgment during appellate review, but the undertaking shall not exceed \$100 million. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter any order necessary to protect the appellee and may require the appellant to post a bond in an amount not to exceed the amount of the judgment.

WIS. STAT. § 808.07 (2m) (2003).

L Tobacco Control Program Funding/ Tobacco Settlement

Tobacco Control Program Funding

Appropriated \$15,000,000 for tobacco control and prevention programs for FY2008 from the state general fund. This is the first year of the FY2008-FY2009 biennium.

FY2008-FY2009 Biennial Budget (S.B. 40) enacted and effective 10/26/07 (FY2008) & 7/1/08 (FY2009).

Securitization

The Secretary of Administration is authorized to sell for cash or other consideration the state's right to receive any of the payments under the tobacco settlement agreement. The secretary may organize one or more non-stock corporations or limited liability companies for any purpose related

to the sale of the state's right to receive any of the payments under the tobacco settlement agreement and may take any action necessary to facilitate and complete the sale.

WIS. STAT. § 16.63 (2001).

M Fire Safety Standards

None



A Smokefree Air

Public Places

None

Government Buildings

Smoking is not permitted in any building under control of the Capitol Building Commission, except in specially ventilated designated smoking areas.

Wyoming State Govt Non Smoking Policy, (1989).

Private Workplaces

None

Schools

None

Child Care Facilities

None

Health Care Facilities

None

Restaurants

None

Bars

None

Penalties/Enforcement

No provisions

Preemption

No specific provision concerning preemption in state law; local communities are allowed to pass stronger smokefree ordinances.

B Tobacco Excise Taxes

Cigarettes

Tax rate per pack of 20: 60 cents

Date last changed: July 1, 2003 — from 12 cents to 60 cents

Year first enacted: 1951

WYO. STAT. ANN. § 39-18-104(a) (2003).

Thirty three and one-third percent of 12 cents of the cigarette tax is distributed to incorporated cities and towns and to boards of county commissioners in the proportion the cigarette taxes derived from sales within each incorporated city or town or county bears to total cigarette taxes collected. The remaining revenue is then distributed 61.75 percent to cities and counties as specified above and 38.25 percent to the state general fund. The other 48 cents of the cigarette tax is distributed to the state general fund.

WYO. STAT. ANN. § 39-18-111 (2005).

The state preempts the field of imposing taxes on cigarettes and no city, town or county shall impose, levy or collect taxes upon the sale, occupation or privilege of selling cigarettes.

WYO. STAT. ANN. § 39-18-103(b) (2003).

Revenue Collected

Revenue collected from the cigarette tax in FY2006 (July 1, 2005 to June 30, 2006): \$22,639,000

Other Tobacco Products

Cigars, snuff and other tobacco products: 20% of the wholesale purchase price.

WYO. STAT. ANN. § 39-18-104(c) (1989).

All revenue from the tax on other tobacco products is distributed to the state general fund.

WYO. STAT. ANN. § 39-18-111 (2005).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health, working with local law enforcement agencies and other local individuals and organizations at the discretion of the department, shall be the lead agency to ensure compliance with this article. To coordinate the enforcement of state statutes relating to the prohibition of the sale of tobacco products to minors and

to comply with applicable law, the Department of Health shall have authority to contract with or provide grants to local law enforcement agencies or other local individuals or entities having the appropriate level of enforcement authority on the local level to conduct random, unannounced inspections at retail locations where tobacco products are sold. Minors may be used with written consent of the minor’s parents or guardian. A minor shall, if questioned, state their true age and the minor’s appearance shall not be altered to make them appear to be 18 years of age or older. The person conducting the inspection shall also photograph the participant immediately before the inspection and any photographs taken of the participant shall be retained by the person conducting the inspection.

WYO. STAT. ANN. § 14-3-307 (2000).

Penalties for Sales to Minors

No individual shall sell, offer for sale, give away or deliver tobacco products to any person under the age of 18. Any individual violating this section is guilty of a misdemeanor punishable by a fine of not more than \$50 for a first violation, \$250 for a second violation and \$750 for a third or subsequent violation committed within a 24-month period. The court may allow the defendant to perform community service and be granted credit against their fine and court costs at the rate of \$5 for each hour of work performed.

WYO. STAT. ANN. § 14-3-302 (2000).

No retailer shall sell, permit the sale, offer for sale, give away or deliver tobacco products to any person less than 18 years of age. Any person violating this section is guilty of a misdemeanor punishable by a fine of not more than \$50 for a first violation; \$250 for a second violation; and \$750 for a third or subsequent violation committed within a 24-month period. In addition, any person violating this section for a third or subsequent time within a two-year period may be prohibited from selling tobacco products for not more than 180 days by court injunction. It is an affirmative defense to a prosecution under this section that, in the case of a sale, the person who sold the tobacco product was presented with, and reasonably relied upon, an identification card, which identified the person buying or receiving the tobacco product as being over 18 years of age. No penalty will be enforced for a first violation if

the retailer can show it had adopted and enforced a written policy against selling tobacco products to persons under the age of 18 years; informed its employees of the applicable laws regarding the sale of tobacco products to persons under the age of 18 years; required employees to verify the age of tobacco product customers by way of photographic identification or by means of an electronic transaction scan device; and established and imposed disciplinary sanctions for noncompliance.

WYO. STAT. ANN. § 14-3-302 (2000).

Photo ID

None

Sign Posting

Any person who sells tobacco products shall post signs informing the public of the age restrictions provided by this article at or near every display, which offers tobacco products for sale. Each sign shall be plainly visible and shall contain a statement communicating that the sale of tobacco products to persons under 18 years of age is prohibited by law. Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. § 14-3-303 (2000).

Penalties to Minors

No person under the age of 18 shall possess, use, purchase or attempt to purchase tobacco products; or misrepresent their identity or age, or use any false or altered identification for the purpose of purchasing or attempting to purchase tobacco products. Any person violating this section is guilty of a misdemeanor punishable by a fine of not more than \$50 for a first violation, not more than \$250 for a second violation, and not more than \$750 for a third or subsequent violation committed within a 24-month period. In lieu of the fine, the court may allow the defendant to perform community service or attend a tobacco cessation program and be granted credit against their fine and court costs at the rate of \$5 for each hour of work performed or each hour of tobacco cessation program attended. This does not apply to minors participating in compliance inspections.

WYO. STAT. ANN. §§ 14-3-304 & 14-3-305 (2000).

Placement of Tobacco Products

No person shall sell or offer tobacco products through a self-service display except in a business where entry by persons under 18 is prohibited. "Self service display" means any display of tobacco products that is located in an area where customers are permitted and where the tobacco products are readily accessible to a customer without the assistance of a salesperson. Violation is a misdemeanor, subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. §§ 14-3-301 & 14-3-303 (2007).

Internet Sales

None

Other Provisions

This article shall not be construed to prohibit the imposition by local law or ordinance of further regulation or prohibition upon the sale, use and possession of tobacco products to any person under 18 years of age, but the governmental entity shall not permit or authorize the sale, use or possession of tobacco products to any person under 18 years of age. However, no governmental entity shall enact any law or ordinance which changes the standards provided by WY STAT. 14-3-302(a) and (c), 14-3-303(a), 14-3-304(a) and 14-3-305(a). The governmental entity may require that sellers of tobacco products obtain a license to sell tobacco products and may deny or revoke the license in the case of reported violations of WY STAT. 14-3-302 or similar local ordinance.

WYO. STAT. ANN. § 14-3-308 (2000).

D Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes

Samples

No person shall give away or deliver tobacco products to any person under the age of 18. Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension.

WYO. STAT. ANN. § 14-3-302 (2000).

Single Cigarettes

None

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are restricted to locations in a business, factory, office, or other place not generally open to the public, and in places where persons under 18 are not permitted, including areas where alcoholic beverages are sold or dispensed.

WYO. STAT. ANN. § 14-3-303 (2000).

Penalty

Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. § 14-3-303 (2000).

Sign Posting

Signs must be posted on or upon every vending machine selling tobacco products. The signs shall be plainly visible and inform the public that the sale of tobacco products to persons under 18 is prohibited by law. Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. § 14-3-303 (2000).

F Licensing Requirements

Requirements

Wholesalers, manufacturers and importers must obtain a license to sell tobacco products from the Department of Revenue. The term wholesaler includes any person who sells or distributes for sale or resale cigarettes over the Internet or through any other means of direct or indirect mail solicitation or delivery. The license is valid through June 30th of each year and a separate license is required for each place of business. Selling or distributing tobacco products without a license is a misdemeanor subject to not more than a \$100 fine and/or six months in county jail.

WYO. STAT. ANN. §§ 39-18-101, 39-18-106 & 39-18-108 (2005).

Fee

\$10 annually.

WYO. STAT. ANN. § 39-18-106 (2001).

License Suspension for Sales to Minors

For a third or subsequent violation of the sales to minors' law within a two-year period, the court may grant an injunction against a retailer prohibiting the sale of tobacco products for a period of up to 180 days.

WYO. STAT ANN § 14-3-302 (2000).

G Smoker Protection Laws

It is a discriminatory or unfair employment practice for an employer to require as a condition of employment that any employee or prospective employee use or refrain from using tobacco products outside the course of their employment, or otherwise discriminate in matters of compensation or the terms, conditions or privileges of employment, unless it is a bona fide occupational qualification that a person not use tobacco products outside the workplace. This shall not prohibit an employer from offering, imposing or having in effect a health, disability or life insurance policy distinguishing between employees for type or price of coverage based upon the use or nonuse of tobacco products, with certain conditions. Any person claiming to be aggrieved by a discriminatory or unfair employment practice may file a complaint with the Department of Employment within 90 days of the alleged violation. The department may order the respondent to hire, reinstate or upgrade the employee, with or without back pay.

WYO. STAT. ANN. §§ 27-9-101 et seq. (1992).

H Advertising & Promotion

None

I Product Disclosure

None

J Tobacco Divestment

None

K Tobacco Liability

None

**L Tobacco Control Program Funding/
Tobacco Settlement**

Tobacco Control Program Funding

Appropriated \$5,906,829 for tobacco control and prevention programs in FY2008 from the state's annual MSA payments and the state general fund. This is the second year of the FY2007-FY2008 biennium.

FY2007-FY2008 Mental Health and Substance Abuse Biennial Budget (H.B. 91) enacted 3/10/06 and effective 7/1/06 (FY2007) & 7/1/07 (FY2008).

Wyoming created the Wyoming tobacco settlement trust fund to receive annual payments from the Master Settlement Agreement through March 15, 2002. The principal is to remain forever inviolate, and the interest, and all payments received after March 15, 2002, go to a trust fund income account. The money in this account can be spent on efforts in prevention and cessation of tobacco use through school and community-based programs and efforts to establish and implement programs to prevent, intervene in, and otherwise limit alcohol and substance abuse. This money must be appropriated by the legislature.

WYO. STAT. ANN. § 9-4-1203 (2000).

Non-Monetary Provisions

Wyoming directed the Department of Health to develop and implement comprehensive tobacco prevention, cessation and treatment programs for Wyoming and also instructed the Department of Health to develop and implement a competitive grant program to support efforts to reduce the use of tobacco products by minors. The department shall give priority to the following programs in regard to tobacco use in the state: comprehensive community based programs; public education, including use of media campaigns; youth involvement programs; school and early childhood programs; enforcement of laws related to access to tobacco products by minors; programs to promote the cessation of tobacco use and programs for the treatment of tobacco-related diseases.

WYO. STAT. ANN. § 9-4-1204 (2000).

M Fire Safety Standards

None



State Laws Prohibiting Smoking in Almost All Public Places, not Including Restaurants or Bars (29)

Arkansas	Hawaii	Nevada	South Dakota
Arizona	Idaho	New Jersey	Tennessee
Colorado	Illinois	New Mexico	Utah
Connecticut	Louisiana	New York	Vermont
Delaware	Maine	North Dakota	Washington
District of Columbia	Massachusetts	Ohio	
Florida	Minnesota	Oregon	
Georgia	Montana	Rhode Island	

State Laws Prohibiting Smoking in State and/or Local Government Buildings (30)

Arizona	Georgia	Nebraska (state only)	Rhode Island
Arkansas	Hawaii	Nevada	South Dakota
California	Idaho	New Jersey	Tennessee
Colorado	Illinois	New Mexico	Utah
Connecticut	Louisiana	New York	Vermont
Delaware	Massachusetts	North Carolina (state only)	Washington
District of Columbia	Minnesota	North Dakota	
Florida	Montana	Ohio	

State Laws Prohibiting Smoking in Private Workplaces, not Including Restaurants or Bars (19)

Arizona	Illinois	New Jersey	Rhode Island
Delaware	Louisiana	New Mexico	South Dakota
District of Columbia	Massachusetts	New York	Utah
Florida	Montana	North Dakota	Washington
Hawaii	Nevada	Ohio	

State Laws Prohibiting Smoking in Restaurants (24)

Arizona	Florida	Massachusetts	New York
Arkansas	Hawaii	Minnesota	Ohio
Colorado	Idaho	Nevada	Rhode Island
Connecticut	Illinois	New Hampshire	Utah
Delaware	Louisiana	New Jersey	Vermont
District of Columbia	Maine	New Mexico	Washington

State Laws Prohibiting Smoking in Stand-Alone Bars (18)

Arizona	Hawaii	New Hampshire	Rhode Island
Colorado	Illinois	New Jersey	Vermont
Connecticut	Maine	New Mexico	Washington
Delaware	Massachusetts	New York	
District of Columbia	Minnesota	Ohio	

	Arts/ Cultural Facilities	Child Care Facilities	Elevators	Gov't. Buildings	Gym/ Arenas	Health Care Facilities	Jury/ Court- rooms	Public Meetings	Public Transit	Restaurants	Restrooms	Retail/ Grocery Stores	Schools	Private Workplaces
Alabama	R	R	R	R	R	R	R	R	R	N	R	R	R	R
Alaska	R	P	P	R	R	R	R	R	R	R	N	R	P	R
Arizona	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Arkansas	P	P	P	P	P	P	P	P	P	R	P	P	P	R
California	V	P	P	P	V	V	P	P	P	V	P	V	P	V
Colorado	P	P	P	P	P	P	P	P	P	P	P	P	P	R
Connecticut	P	V	P	P	P	P	P	P	P	P	P	P	P	R
Delaware	P	P	P	P	P	P	P	P	P	P	P	P	P	P
District of Columbia	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Florida	P	P	P	P	P	P	R	P	P	R	P	P	P	P
Georgia	P	V	P	P	P	P	P	P	P	V	P	P	P	V
Hawaii	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Idaho	P	P	P	P	P	P	P	P	P	R	P	P	P	R
Illinois	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Indiana	N	R	N	R	N	R	N	N	N	N	N	R	R	N
Iowa	R	R	P	R	R	R	R	R	R	R	R	R	R	R
Kansas	R	P	P	R	R	R	R	R	P	R	R	R	R	N
Kentucky	N	N	N	R	N	N	N	N	N	N	N	N	R	N
Louisiana	P	P	P	P	R	P	P	P	P	R	P	P	P	P
Maine	P	P	P	V	P	V	V	P	P	P	P	P	P	V
Maryland	V	V	P	V	V	V	V	V	P	R	V	V	P	V
Massachusetts	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Michigan	R	P	P	R	R	R	R	R	R	R	R	R	P	N
Minnesota	P	P	P	P	P	P	P	P	P	P	P	P	P	R
Mississippi	N	N	N	R	N	N	R	N	R	N	N	N	P	N

R=Restriction Required P=Smoking Prohibited V=Smoking prohibited except in Separately Enclosed, Separately Ventilated Smoking Rooms N=None

Appendix B (cont.)

B

	Arts/ Cultural Facilities	Child Care Facilities	Elevators	Gov't. Buildings	Gym/ Arenas	Health Care Facilities	Jury/ Court- rooms	Public Meetings	Public Transit	Restaurants	Restrooms	Retail/ Grocery Stores	Schools	Private Workplaces
Missouri	R	P	R	R	R	R	R	R	R	R	R	R	P	R
Montana	P	P	P	P	P	P	P	P	R	R	P	P	P	P
Nebraska	R	P	R	R	R	R	P	R	R	R	R	R	R	R
Nevada	P	P	P	P	R	P	P	P	R	R	P	P	P	P
New Hampshire	R	P	P	R	R	R	R	P	P	R	R	R	P	R
New Jersey	P	P	P	P	P	P	P	P	P	P	P	P	P	P
New Mexico	P	P	P	P	P	P	P	P	P	P	P	P	P	R
New York	P	P	P	P	P	P	P	P	P	P	P	P	P	P
North Carolina	N	N	N	R	N	R	N	N	N	N	N	N	P	N
North Dakota	P	P	P	P	P	P	P	P	R	R	P	P	P	P
Ohio	P	P	P	P	R	P	P	P	P	P	P	P	P	P
Oklahoma	P	P	P	V	P	P	P	P	V	V	P	P	P	R
Oregon	P	V	P	V	P	V	P	P	R	R	P	P	P	V
Pennsylvania	R	R	N	R	R	R	R	R	N	R	N	N	P	R
Rhode Island	P	P	P	P	P	P	P	P	P	P	P	P	P	P
South Carolina	R	P	P	R	R	R	R	R	N	N	R	N	R	N
South Dakota	P	P	P	P	P	P	P	P	R	R	P	P	P	P
Tennessee	P	P	P	P	P	P	R	P	R	R	P	P	P	R
Texas	R	P	R	N	N	R	N	N	N	N	N	N	R	N
Utah	P	P	P	P	P	R	P	P	R	R	P	P	P	P
Vermont	P	P	P	P	P	P	P	P	P	P	P	P	P	R
Virginia	N	R	P	R	R	R	R	R	N	R	N	R	R	N
Washington	P	P	P	P	P	P	P	P	P	P	P	P	P	P
West Virginia	N	R	N	R	N	N	N	N	N	N	N	N	P	N
Wisconsin	R	P	R	R	N	R	R	R	R	R	N	R	P	R
Wyoming	N	N	N	R	N	N	N	N	N	N	N	N	N	N

R=Restriction Required P=Smoking Prohibited V=Smoking prohibited except in Separately Enclosed, Separately Ventilated Smoking Rooms N=None

A P P E N D I X

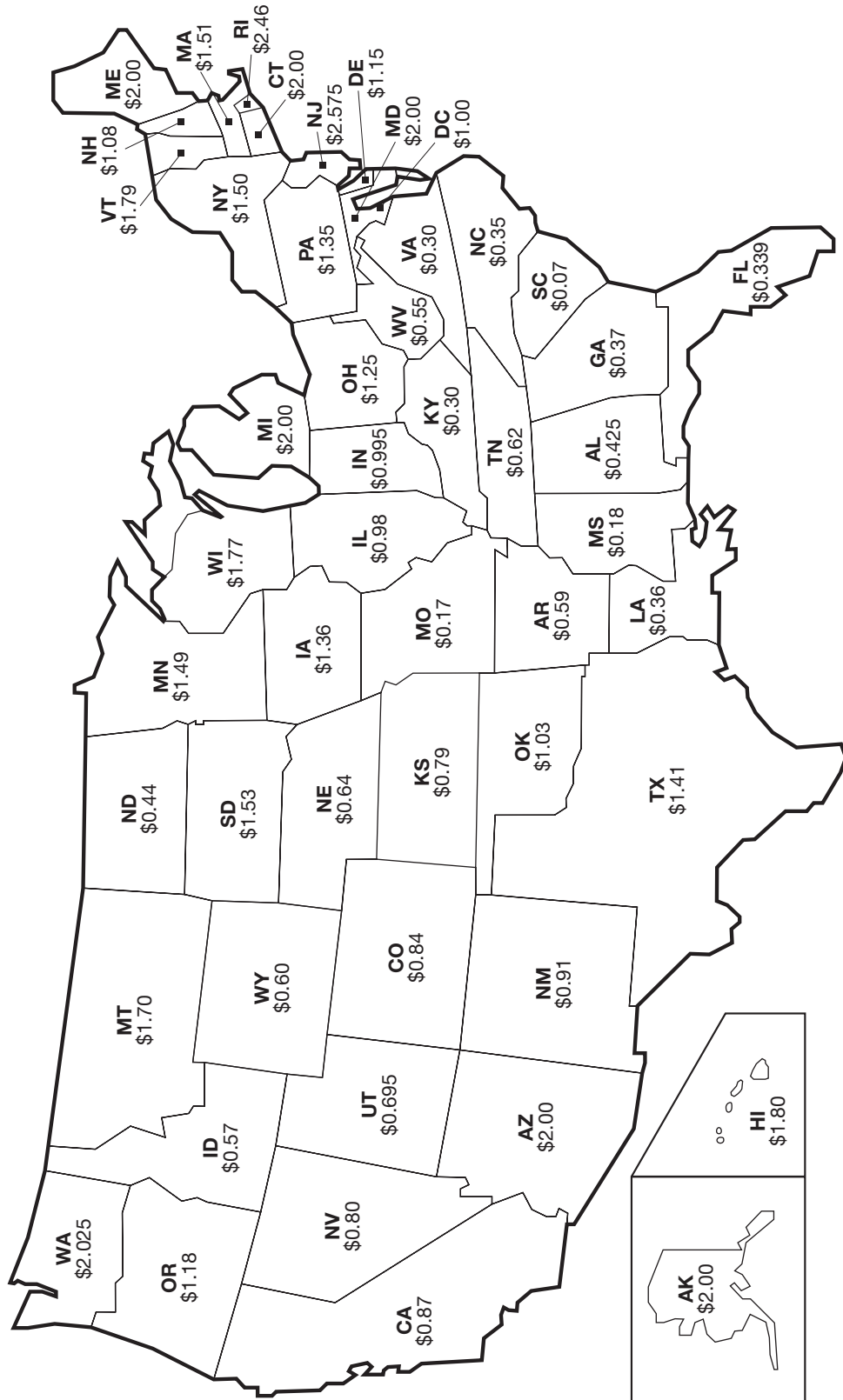
State Cigarette Tax Average as of January 1, 2008: \$1.11 per pack

Sorted by Tax Rate

State	Tax Rate (per pack of 20)
New Jersey	\$2.575
Rhode Island	\$2.46
Washington	\$2.025
Alaska	\$2.00
Arizona	\$2.00
Connecticut	\$2.00
Maine	\$2.00
Maryland	\$2.00
Michigan	\$2.00
Hawaii	\$1.80
Vermont	\$1.79
Wisconsin	\$1.77
Montana	\$1.70
South Dakota	\$1.53
Massachusetts	\$1.51
New York	\$1.50
Minnesota	\$1.49
Texas	\$1.41
Iowa	\$1.36
Pennsylvania	\$1.35
Ohio	\$1.25
Oregon	\$1.18
Delaware	\$1.15
New Hampshire	\$1.08
Oklahoma	\$1.03
District of Columbia	\$1.00
Indiana	\$0.995
Illinois	\$0.98
New Mexico	\$0.91
California	\$0.87
Colorado	\$0.84
Nevada	\$0.80
Kansas	\$0.79
Utah	\$0.695
Nebraska	\$0.64
Tennessee	\$0.62
Wyoming	\$0.60
Arkansas	\$0.59
Idaho	\$0.57
West Virginia	\$0.55
North Dakota	\$0.44
Alabama	\$0.425
Georgia	\$0.37
Louisiana	\$0.36
North Carolina	\$0.35
Florida	\$0.339
Kentucky	\$0.30
Virginia	\$0.30
Mississippi	\$0.18
Missouri	\$0.17
South Carolina	\$0.07

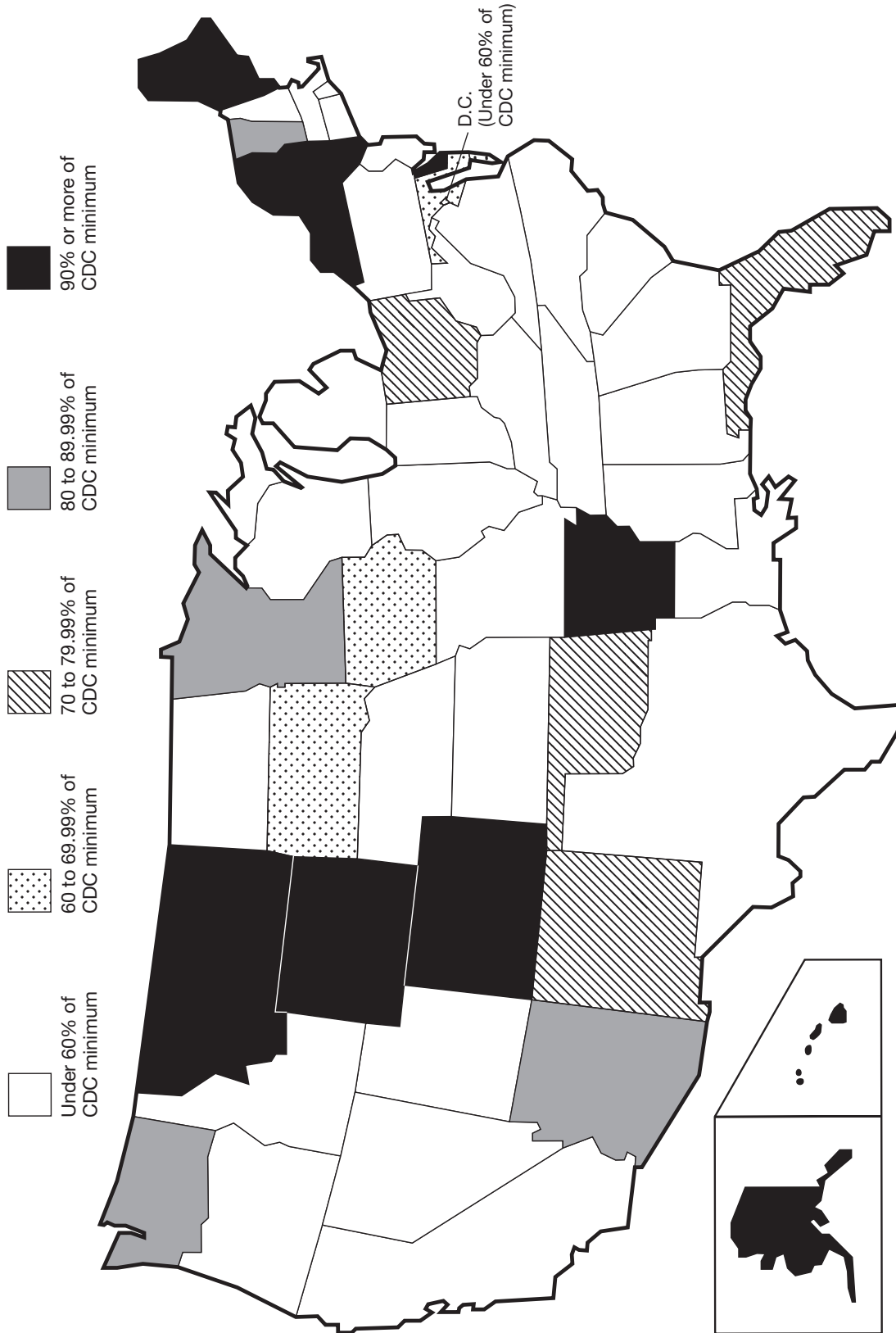
Sorted Alphabetically by State Name

State	Tax Rate (per pack of 20)
Alabama	\$0.425
Alaska	\$2.00
Arizona	\$2.00
Arkansas	\$0.59
California	\$0.87
Colorado	\$0.84
Connecticut	\$2.00
Delaware	\$1.15
District of Columbia	\$1.00
Florida	\$0.339
Georgia	\$0.37
Hawaii	\$1.80
Idaho	\$0.57
Illinois	\$0.98
Indiana	\$0.995
Iowa	\$1.36
Kansas	\$0.79
Kentucky	\$0.30
Louisiana	\$0.36
Maine	\$2.00
Maryland	\$2.00
Massachusetts	\$1.51
Michigan	\$2.00
Minnesota	\$1.49
Mississippi	\$0.18
Missouri	\$0.17
Montana	\$1.70
Nebraska	\$0.64
Nevada	\$0.80
New Hampshire	\$1.08
New Jersey	\$2.575
New Mexico	\$0.91
New York	\$1.50
North Carolina	\$0.35
North Dakota	\$0.44
Ohio	\$1.25
Oklahoma	\$1.03
Oregon	\$1.18
Pennsylvania	\$1.35
Rhode Island	\$2.46
South Carolina	\$0.07
South Dakota	\$1.53
Tennessee	\$0.62
Texas	\$1.41
Utah	\$0.695
Vermont	\$1.79
Virginia	\$0.30
Washington	\$2.025
West Virginia	\$0.55
Wisconsin	\$1.77
Wyoming	\$0.60



**Net Cigarette Excise Tax Revenue Collected In Fiscal Year 2006
(July 1, 2005 to June 30, 2006 for most states)**

State	Revenue Collected in FY2006
Alabama	.\$151,012,000
Alaska	.\$57,535,000
Arizona	.\$283,148,000
Arkansas	.\$128,534,000
California	.\$1,026,495,000
Colorado	.\$206,113,000
Connecticut	.\$267,542,000
Delaware	.\$84,727,000
District of Columbia	.\$22,754,000
Florida	.\$426,680,000
Georgia	.\$222,314,000
Hawaii	.\$85,702,000
Idaho	.\$46,246,000
Illinois	.\$633,869,000
Indiana	.\$339,369,000
Iowa	.\$89,480,000
Kansas	.\$119,055,000
Kentucky	.\$158,892,000
Louisiana	.\$118,883,000
Maine	.\$151,497,000
Maryland	.\$271,076,000
Massachusetts	.\$425,635,000
Michigan	.\$1,126,111,000
Minnesota	.\$390,965,000
Mississippi	.\$45,368,000
Missouri	.\$99,873,000
Montana	.\$81,759,000
Nebraska	.\$65,786,000
Nevada	.\$130,060,000
New Hampshire	.\$142,008,000
New Jersey	.\$788,891,000
New Mexico	.\$60,480,000
New York	.\$939,941,000
North Carolina	.\$165,885,000
North Dakota	.\$20,617,000
Ohio	.\$992,281,000
Oklahoma	.\$192,763,000
Oregon	.\$232,628,000
Pennsylvania	.\$1,033,959,000
Rhode Island	.\$123,546,000
South Carolina	.\$27,719,000
South Dakota	.\$26,689,000
Tennessee	.\$115,462,000
Texas	.\$491,945,000
Utah	.\$57,847,000
Vermont	.\$46,204,000
Virginia	.\$172,136,000
Washington	.\$423,869,000
West Virginia	.\$107,680,000
Wisconsin	.\$301,490,000
Wyoming	.\$22,639,000



Includes FY2007 funding from the Centers for Disease Control and Prevention.

Chart of State Funding for Tobacco Control and Prevention Programs in FY2008

State	Settlement Expenditures	Tax Expenditures	Other State Expenditures	Total State Expenditures	CDC-Funded Expenditures	Total Expenditures	CDC Best Practice Minimum
Alabama	\$542,560	\$0	\$224,251	\$766,811	\$1,422,648	\$2,189,459	\$26,740,000
Alaska	\$0	\$0	\$7,482,200	\$7,482,200	\$1,269,882	\$8,752,082	\$8,090,000
Arizona	\$0	\$23,500,000	\$0	\$23,500,000	\$463,203	\$23,963,203	\$27,790,000
Arkansas	\$15,940,997	\$0	\$0	\$15,940,997	\$1,025,606	\$16,966,603	\$17,910,000
California	\$0	\$78,715,217	\$0	\$78,715,217	\$545,374	\$79,260,591	\$165,100,000
Colorado	\$0	\$26,000,000	\$0	\$26,000,000	\$1,457,486	\$27,457,486	\$24,550,000
Connecticut	\$0	\$0	\$0	\$0	\$1,080,790	\$1,080,790	\$21,240,000
Delaware	\$10,680,300	\$0	\$0	\$10,680,300	\$735,794	\$11,416,094	\$8,630,000
District of Columbia	\$3,600,000	\$0	\$0	\$3,600,000	\$543,900	\$4,143,900	\$7,480,000
Florida	\$57,896,788	\$0	\$75,491	\$57,972,279	\$941,153	\$58,913,432	\$78,380,000
Georgia	\$2,149,875	\$0	\$100,000	\$2,249,875	\$852,181	\$3,102,056	\$42,590,000
Hawaii	\$10,322,000	\$0	\$66,000	\$10,388,000	\$1,018,083	\$11,406,083	\$10,780,000
Idaho	\$1,249,800	\$230,000	\$0	\$1,479,800	\$1,254,328	\$2,734,128	\$11,040,000
Illinois	\$8,500,000	\$0	\$0	\$8,500,000	\$1,297,303	\$9,797,303	\$64,910,000
Indiana	\$15,000,000	\$0	\$1,200,000	\$16,200,000	\$1,140,165	\$17,340,165	\$34,780,000
Iowa	\$5,928,465	\$5,861,754	\$500,000	\$12,290,219	\$1,111,681	\$13,401,900	\$19,350,000
Kansas	\$1,000,000	\$0	\$400,000	\$1,400,000	\$1,368,571	\$2,768,571	\$18,050,000
Kentucky	\$2,356,000	\$0	\$510,000	\$2,866,000	\$1,133,322	\$3,999,322	\$25,090,000
Louisiana	\$500,000	\$7,164,897	\$0	\$7,664,897	\$1,210,563	\$8,875,460	\$27,130,000
Maine	\$16,926,452	\$0	\$0	\$16,926,452	\$1,059,957	\$17,986,409	\$11,190,000
Maryland	\$18,382,706	\$0	\$0	\$18,382,706	\$1,324,522	\$19,707,228	\$30,300,000
Massachusetts	\$0	\$0	\$12,750,000	\$12,750,000	\$1,712,656	\$14,462,656	\$35,240,000
Michigan	\$0	\$3,600,000	\$0	\$3,600,000	\$1,833,000	\$5,433,000	\$54,800,000
Minnesota	\$18,800,000	\$0	\$3,280,000	\$22,080,000	\$1,188,658	\$23,268,658	\$28,620,000
Mississippi	\$9,450,000	\$0	\$0	\$9,450,000	\$546,009	\$9,996,009	\$18,790,000
Missouri	\$200,000	\$0	\$0	\$200,000	\$1,271,089	\$1,471,089	\$32,770,000

Appendix G (cont.)
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APPENDIX

State	Settlement Expenditures	Tax Expenditures	Other State Expenditures	Total State Expenditures	CDC-Funded Expenditures	Total Expenditures	CDC Best Practice Minimum
Montana	\$8,476,567	\$0	\$0	\$8,476,567	\$1,058,500	\$9,535,067	\$9,360,000
Nebraska	\$2,500,000	\$0	\$0	\$2,500,000	\$1,363,673	\$3,863,673	\$13,310,000
Nevada	\$3,300,000	\$0	\$0	\$3,300,000	\$942,762	\$4,242,762	\$13,480,000
New Hampshire	\$0	\$0	\$1,350,000	\$1,350,000	\$1,144,746	\$2,494,746	\$10,890,000
New Jersey	\$0	\$11,000,000	\$0	\$11,000,000	\$1,400,915	\$12,400,915	\$45,070,000
New Mexico	\$9,615,000	\$0	\$0	\$9,615,000	\$1,254,089	\$10,869,089	\$13,710,000
New York	\$0	\$0	\$85,485,000	\$85,485,000	\$2,059,294	\$87,544,294	\$95,830,000
North Carolina	\$17,100,000	\$0	\$0	\$17,100,000	\$1,829,636	\$18,929,636	\$42,590,000
North Dakota	\$3,134,198	\$0	\$0	\$3,134,198	\$1,270,130	\$4,404,328	\$8,160,000
Ohio	\$0	\$0	\$44,732,438	\$44,732,438	\$1,502,208	\$46,234,646	\$61,740,000
Oklahoma	\$12,050,000	\$1,200,000	\$962,000	\$14,212,000	\$1,458,066	\$15,670,066	\$21,830,000
Oregon	\$0	\$7,900,000	\$0	\$7,900,000	\$1,202,573	\$9,102,573	\$21,130,000
Pennsylvania	\$31,673,000	\$0	\$0	\$31,673,000	\$1,417,245	\$33,090,245	\$65,570,000
Rhode Island	\$0	\$0	\$940,475	\$940,475	\$1,266,207	\$2,206,682	\$9,890,000
South Carolina	\$0	\$0	\$2,000,000	\$2,000,000	\$1,338,253	\$3,338,253	\$23,910,000
South Dakota	\$0	\$5,000,000	\$0	\$5,000,000	\$1,058,302	\$6,058,302	\$8,690,000
Tennessee	\$0	\$0	\$10,000,000	\$10,000,000	\$760,111	\$10,760,111	\$32,230,000
Texas	\$10,482,003	\$0	\$2,000,000	\$12,482,003	\$1,015,622	\$13,497,625	\$103,290,000
Utah	\$4,131,000	\$3,131,700	\$0	\$7,262,700	\$1,195,981	\$8,458,681	\$15,230,000
Vermont	\$5,224,947	\$0	\$0	\$5,224,947	\$1,252,996	\$6,477,943	\$7,910,000
Virginia	\$14,481,658	\$0	\$0	\$14,481,658	\$1,032,999	\$15,514,657	\$38,870,000
Washington	\$0	\$0	\$27,191,000	\$27,191,000	\$1,550,973	\$28,741,973	\$33,340,000
West Virginia	\$0	\$0	\$5,663,118	\$5,663,118	\$1,286,812	\$6,949,930	\$14,160,000
Wisconsin	\$0	\$0	\$15,000,000	\$15,000,000	\$1,308,942	\$16,308,942	\$31,160,000
Wyoming	\$4,125,509	\$0	\$1,781,320	\$5,906,829	\$1,139,998	\$7,046,827	\$7,380,000

H Appendix H Preemptive State Tobacco Control Laws and Affected Provisions

A P P E N D I X

State	Issue Area Where Preemption Exists	Specific Provisions Preempted
California	<i>Youth Access</i>	Only preempts the amount of fines localities may impose for violations of youth access provisions.
Connecticut	<i>Smokefree Air</i>	Any existing local ordinances relative to smoking after October 1, 1993.
Delaware	<i>Youth Access</i>	Preempts all local youth access ordinances enacted after June 30, 1996.
Florida	<i>Smokefree Air</i>	State law supersedes any municipal or county ordinance on the subject of the regulation of smoking in public places and workplaces.
Idaho	<i>Youth Access</i>	Preempts localities from issuing a permit or license for the sale or distribution of tobacco products.
Illinois	<i>Advertising</i>	Outdoor billboard advertising for smokeless tobacco products.
Indiana	<i>Youth Access</i>	Preempts local youth access ordinances concerning the sale, distribution, or display of tobacco products.
Iowa	<i>Smokefree Air;</i> <i>Youth Access</i>	Any local law or regulation which is inconsistent with or conflicts with most smokefree air and youth access laws.
Kentucky	<i>Youth Access</i>	Preempts local youth access ordinances concerning the use, display, sale and distribution of tobacco products enacted after 1998.
Louisiana	<i>Youth Access</i>	Youth access laws relating to the sale, promotion and distribution of tobacco products are preempted.
Massachusetts	<i>Youth Access</i>	The sale of cigarette rolling papers.
Michigan	<i>Smokefree Air;</i> <i>Youth Access;</i> <i>Advertising</i>	Sale or licensure of tobacco products for distribution purposes; local restrictions on smoking in restaurants and bars; and outdoor billboard advertisements for smokeless tobacco.
Mississippi	<i>Youth Access</i>	Covers youth access laws related to the sale, promotion, and distribution of tobacco products;
Missouri	<i>Youth Access</i>	Requires state, county, municipal and other local law enforcement authorities to adhere to the mandatory guidelines set out by the Supervisor of Liquor Control when using minors in tobacco retailer compliance inspections.
Montana	<i>Smokefree Air;</i> <i>Youth Access</i>	All local smokefree air ordinances, including those already in effect, until October 1, 2009; and enactment of more stringent youth access provisions.
Nevada	<i>Youth Access</i>	Preempts stronger youth access ordinances related to the sale, distribution, marketing, display, or promotion of tobacco products.
New Hampshire	<i>Smokefree Air</i>	By court decision, all local ordinances on smoking more stringent than state law are preempted.
New Mexico	<i>Youth Access</i>	All local youth access ordinances pertaining to the sale of tobacco products shall be consistent with state law.
New York	<i>Youth Access</i>	Distribution of free samples only.

State	Issue Area Where Preemption Exists	Specific Provisions Preempted
North Carolina	<i>Smokefree Air; Youth Access</i>	Local ordinances enacted after October 1, 1993 shall not exceed the state smokefree air provisions, local government buildings are exempt; preemption of youth access laws covers the sale, distribution, display or promotion of tobacco products, except in relation to vending machines.
Oklahoma	<i>Smokefree Air; Youth Access</i>	Prohibits local governing bodies from enacting more stringent smokefree air ordinances; youth access preemption covers the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products.
Oregon	<i>Smokefree Air; Youth Access</i>	Preempts all local smokefree air ordinances in places listed as exceptions under the Oregon Clean Indoor Air Act unless the local ordinance was passed before July 1, 2001; youth access preemption covers just the regulation of the placement of vending machines.
Pennsylvania	<i>Smokefree Air; Youth Access</i>	Preempts all ordinances or rules concerning the provisions in the state smokefree air law except in class A cities, the only one being Philadelphia; also preempts all stronger youth access ordinances or rules enacted after January 1, 2002.
South Carolina	<i>Youth Access</i>	Local youth access ordinances may not supersede state law or regulation.
South Dakota	<i>Smokefree Air; Youth Access</i>	Preempts all matters relating to the use of tobacco products, except a person or public entity may voluntarily regulate its use on their property; youth access preemption covers distribution, marketing, promotion and the sale of tobacco products.
Tennessee	<i>Smokefree Air; Youth Access</i>	Preempts local smokefree air or youth access ordinances and regulations enacted or promulgated after March 15, 1995, except local governments and special school districts are allowed to regulate smoking in their buildings and on their property.
Utah	<i>Smokefree Air; Youth Access; Advertising</i>	Preempts local smokefree air ordinances that are not essentially identical to state law except for certain places of outdoor public access; youth access preemption only affects the provision on placement of tobacco products; restrictions on the advertising of tobacco products are also preempted.
Virginia	<i>Smokefree Air</i>	Local smokefree air ordinances adopted after January 1, 1990 shall not contain provisions that exceed state smokefree air law.
Washington	<i>Smokefree Air</i>	By court decision, local communities are prohibited from passing more stringent smokefree air ordinances.
West Virginia	<i>Advertising</i>	Warning, format or type style in any outdoor billboard advertising for smokeless tobacco products.
Wisconsin	<i>Youth Access</i>	Local youth access provisions must strictly conform to state law—covers sales to minors, sign posting, penalties to minors, sampling, sales of single cigarettes and vending machine restrictions.

State	Year Last Amended	State Law Citation
Arizona	1991	ARIZ. REV. STAT. § 36-601.02
California		CA LABOR CODE § 96(k) & 98.6
Colorado	1990	CO REV. STAT. ANN § 24-34-402.5
Connecticut	2003	CT GEN. STAT. ANN. § 31-40s
District of Columbia	1993	D.C. CODE ANN. § 7-1703.3
Illinois	1987	820 ILL. COMP. STAT. 55/5
Indiana	2006	IND. CODE §§ 22-5-4-1 et seq.
Kentucky	1994	KY REV. STAT. ANN. § 344.040
Louisiana	1991	LA REV. STAT. ANN. § 23:966
Maine	1991	ME REV. STAT. ANN. tit. 26, § 597
Minnesota	1992	MINN. STAT. § 181.938
Mississippi	1994	MISS. CODE ANN. § 71-7-33
Missouri	1992	MO. REV. STAT. § 290.145
Montana	1993	MONT. CODE ANN. §§ 39-2-313 & 39-2-314
Nevada	1991	NEV. REV. STAT. § 613.333
New Hampshire	1991	N.H. REV. STAT. ANN. § 275:37-a
New Jersey	1991	N.J. STAT. ANN. §§ 34:6B-1 et seq.
New Mexico	1991	N.M. STAT. ANN. §§ 50-11-1 et seq.
New York	1992	N.Y. [LABOR] LAW § 201-d
North Carolina	1991	N.C. GEN. STAT. § 95-28.2
North Dakota	1993	N.D. CENT. CODE §§ 14-02.4-01 et seq.
Oklahoma	1991	OKLA. STAT. ANN. tit. 40, § 500
Oregon	1989	OR. REV. STAT. §§ 659A.315 & 659A.885
Rhode Island	2005	R.I. GEN. LAWS § 23-20.10-14
South Carolina	1991	S.C. CODE ANN. § 41-1-85
South Dakota	1991	S.D. CODIFIED LAWS § 60-4-11
Tennessee	1990	TENN. CODE ANN. § 50-1-304
Virginia	1989	VA. CODE ANN. § 2.2-2902
West Virginia	1992	W. VA. CODE § 21-3-19
Wisconsin	1991	WIS. STAT. §§ 111.31 et seq.
Wyoming	1992	WYO. STAT. ANN. §§ 27-9-101 et seq.

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