



TOBACCO LAWS

Affecting California

2004

Fully updated, user-friendly guide to laws regulating secondhand smoke exposure, the sale of tobacco products, tobacco advertising and sponsorship, and more

Technical Assistance Legal Center (TALC) • <http://talc.phi.org>



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INTRODUCTION

CONTENTS AND ORGANIZATION

This booklet provides a thorough overview of tobacco laws that affect California. It is designed as a resource for tobacco control advocates, government attorneys, local law enforcement agencies, and anyone who is working on tobacco control issues. The booklet includes information on California state laws and regulations related to tobacco, as well as on certain federal laws and regulations that apply within California.¹ It also describes portions of the 1998 Master Settlement Agreement (MSA) between the Attorneys General of 46 states (including California) and the major tobacco companies.

The information in this booklet is current as of January 2004. It includes tobacco-related laws that are effective as of January 1, 2004. This booklet replaces earlier versions of the booklet, which were published by TALC in February 2003 and August 2000.

This booklet does not contain information on the numerous local ordinances in California that regulate tobacco use, sales, or distribution. Many of these ordinances are stricter than state or federal law. For example, local governments in California have passed ordinances to limit exposure to secondhand smoke in places where smoking is permitted by state law (e.g., hotel lobbies). Local governments in California also have enacted ordinances to supplement state laws regarding how tobacco products are sold. For instance, state law bans the self-service display of cigarettes, while numerous local laws also ban the self-service display of cigars and smokeless tobacco products.

The laws in this booklet are divided into 10 topic areas:

- Secondhand Smoke
- Tobacco Sales
- Tobacco Advertising
- Tobacco Sponsorship and Promotion
- Tobacco Samples, Coupons, and Gifts
- Tobacco Warning Labels
- Tobacco Tax Law
- Licensing and Reporting
- Master Settlement Agreement (MSA) Funds
- Related Laws

¹This booklet does not include every instance in which the word "tobacco" is mentioned in state or federal law. However, the booklet contains information on the laws that are relevant to tobacco control implementation and enforcement efforts in California. If you note any omissions in the booklet, please contact TALC.



Each topic area contains multiple entries that summarize specific laws or regulations within that topic area. Every entry begins with a heading (e.g., “Workplaces”) and a citation to the applicable law (e.g., “California Labor Code section 6404.5”). The entry might list multiple citations if different provisions of California law apply or if some combination of state law, state regulations, federal law, federal regulations, or the MSA applies.

Each entry is then organized as follows:

- **SCOPE:** This section provides a brief overview of the applicable law. It may also include “Notes” that further explain or interpret the given law.
- **EXCEPTION:** Where relevant, this section contains any major exceptions to the general rules set forth in the applicable law.
- **ENFORCEMENT:** This section provides information about the agency charged with enforcing the law. In some instances no enforcement agency or mechanism is specified within the applicable law. Note, however, that California Penal Code section 830.1 gives designated state and local law enforcement officers the general authority to enforce California laws that are punishable as felonies, misdemeanors, and infractions.
- **PENALTY:** This section specifies the penalties, if any, that may be imposed for violating the law.

DISCLAIMERS

This booklet is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform an independent evaluation of the issues raised in these materials. If you notice any inaccuracies or misstatements, please let TALC know and we will correct the information in the next edition.

FINDING THE ACTUAL LAWS

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

- **California Laws**
www.leginfo.ca.gov/calaw.html

This website is the easiest place to find the California laws. To locate a particular code section, check the box next to the type of code (e.g.,



“Penal Code”), type the number of the section in the keyword(s) box, and click on the search button under the keyword(s) box. To browse an entire code (as opposed to a particular section), check the box next to the type of code and click on the search button without typing anything into the keyword(s) box.

- **California Regulations**

<http://ccr.oal.ca.gov>

This website provides access to the California Code of Regulations. To open these regulations, click on “California Code of Regulations” on the left bar. To find a specific regulation, click on the appropriate “Title” (e.g., “Title 17. Public Health”) on the left bar. After clicking on a Title, the page provides several useful search options to help in finding a specific regulation.

- **Federal Laws**

<http://uscode.house.gov/usc.htm>

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

- **Federal Regulations**

<http://www.gpoaccess.gov/cfr/index.html>

This website provides access to the Code of Federal Regulations (C.F.R.). The left bar contains several search options, and the center of the page has a Quick Search function.

- **Master Settlement Agreement**

<http://caag.state.ca.us/tobacco/pdf/1msa.pdf>

This website contains the entire Master Settlement Agreement between the Attorneys General of 46 states (including California) and the major tobacco companies.

HOW TO GET COPIES OF THIS BOOK

To order more copies of this booklet, contact TALC at (510) 444-8252 or talc@phi.org. Alternatively, you may download the booklet from TALC’s website at <http://talc.phi.org>.







SECONDHAND SMOKE

1. WORKPLACES

California Labor Code Sections 6404.5, 2698–2699

SCOPE: It is against the law to smoke in an enclosed space at a place of employment (any place where employment is carried on). No employer shall knowingly or intentionally permit smoking in an enclosed space at a place of employment.

Note: This law applies to all workplaces meeting the law’s criteria, including bars, private clubs, dues-paying clubs, fraternal organizations, and veterans’ clubs. Other provisions of California law prohibit smoking in specific workplaces, such as publicly owned theaters, publicly owned buildings, and health clinics. This booklet does not summarize the older, more specific laws, since the smoking restrictions within California Labor Code section 6404.5 apply to those workplaces in a more restrictive manner.

Note: This law applies to places of employment, regardless of whether any employees are present at the time. So, for example, if a group holds an evening fundraising event (such as a bingo game) in a school cafeteria or church hall, and that cafeteria or hall is a place of employment during the day, the attendees of the fundraising event are prohibited from smoking.

Note: In many cases, volunteers may be considered employees for the purposes of determining whether a space is a “place of employment.” For instance, a person who provides unpaid services but who receives some other kind of benefit from these services (such as reduced price admission) may be considered an employee. (See, e.g., Legis. Counsel Op. 24807, 9 (Dec. 20, 1997).)

Note: This law does not preempt regulation by local ordinance of any area not defined as a “place of employment.” (See, e.g., *City of San Jose v. Dep’t of Health Services*, 66 Cal. App. 4th 35, 44 (1998).)

EXCEPTION: The following exceptions to the law may be eliminated through local ordinances. “Place of employment” does not include:

- A business that is solely operated by the owner(s). (**Note:** Merely giving employees shares of stock does not make the business owner-operated.)
- Up to 65 percent of the hotel/motel guest rooms. (**Note:** Hotels and motels may choose to be 100 percent smoke-free).
- Up to 25 percent or 50 percent (depending on square footage) of hotel/motel lobbies if designated for smoking by the management. (**Note:**



Lobby is defined as a common public area, which has been interpreted to exclude the hotel bar area.)

- Meeting and banquet rooms in a hotel/motel, except while food and beverage functions are taking place.
- Retail or wholesale tobacco shops (businesses whose main purpose is the sale of tobacco products) and private smokers' lounges (any enclosed area in or attached to a retail/wholesale tobacco shop dedicated to tobacco use).
- Cabs of trucks or tractors, if nonsmoking employees are not present.
- Warehouse facilities (with more than 100,000 sq. ft. of total floor space, and 20 or fewer full-time employees working at the facility), but not areas utilized as office space.
- Theatrical production sites, if smoking is an integral part of the story. (**Note:** The First Amendment could prohibit a local ban on smoking in theatrical productions.)
- Medical research and treatment sites, if smoking is integral to the research and treatment being conducted.
- Private residences, except for those licensed as family day care homes during hours of operation and in those areas where children are present.
- Patient smoking areas in long-term health facilities.
- Employee breakrooms designated by employers for smoking, provided they meet the following criteria: (1) air from the room is exhausted directly to the outside by an exhaust fan; (2) the employer complies with applicable state and federal ventilation standards; (3) the room is located in a non-work area; and (4) there are sufficient nonsmoking breakrooms to accommodate nonsmokers.
- Small businesses (with five or fewer employees) when all four of the following conditions are met: (1) the smoking area is not accessible to minors; (2) all employees who enter the smoking area consent to permit smoking; (3) air from the smoking area is exhausted directly to the outside by an exhaust fan; and (4) the employer complies with all applicable state and federal ventilation standards. (**Note:** This exception is extremely limited and difficult to meet. For example, it does not apply to bars. (See 82 Ops. Cal. Atty. Gen. 190 (1999).) In addition, minors may not be excluded arbitrarily in order to meet the first condition. (See 79 Ops. Cal. Atty. Gen. 8 (1996).)

ENFORCEMENT: This section may be enforced by local law enforcement agencies including local health departments, as determined by the local



governing body. The enforcement agency may refer the violation to the California Occupational Safety and Health Administration (Cal-OSHA) for further enforcement; however, Cal-OSHA is not required to respond to a complaint until after a third conviction under California Labor Code section 6404.5. In addition, under California Labor Code section 2699, an aggrieved employee or former employee may bring a civil action if Cal-OSHA fails to act upon a complaint.

PENALTY: Violations are punishable as infractions, subject to a fine of up to \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and for each subsequent violation within one year. (*Note:* Cal-OSHA's fines are potentially much greater; Cal-OSHA has fined a violator over \$50,000.) Under California Labor Code section 2699, the amount of the civil penalty depends on how many employees were employed at the time of the violation, how many employees were affected by the violation, and how long the violation continued. The penalties under California Labor Code section 2699 must be split between the private plaintiff and the state, but the plaintiff may recover attorneys' fees.

2. APARTMENT COMPLEXES AND MULTI-UNIT RESIDENCES

California Labor Code Sections 6404.5, 2698–2699

SCOPE: The common areas of apartment or condominium buildings or complexes (such as hallways, stairwells, recreation rooms, and laundry rooms) are subject to the workplace smoking prohibitions contained in Labor Code section 6404.5 if those areas are enclosed and are places of employment.

Note: Owners of apartment buildings and condominium associations may adopt a policy which designates all or part of a building as smoke-free, including individual apartments and condominiums. Owners may include a lease provision prohibiting smoking in a rental unit. Owners also may adopt a policy to regulate or ban smoking in outdoor locations on the property.

Note: Tenants with certain physical impairments may have other legal remedies available to prevent drifting smoke from entering their residences. Individuals with disabilities as defined under state or federal law (which could include asthma under certain circumstances) are entitled to reasonable accommodations and/or modifications of policies from their landlords to ensure equal access to and enjoyment of their housing. See entries 86 and 87 for more information on remedies available to people with disabilities.

ENFORCEMENT: See entry 1 for an explanation of how the California Labor Code may be enforced. Complaints alleging a violation of the California Fair Employment and Housing Act may be filed with the California Department of Fair Employment and Housing. (California Government Code section 12960.) Complaints alleging a violation of the Federal Fair Housing Act may be filed with the U.S. Department of Housing and Urban Development. (42 U.S.C. section 3610.)

PENALTY: See entry 1 for penalties available under the California Labor Code. Financial penalties, injunctive relief (a court order to stop a continuing violation of the law), and attorneys' fees are available under state and federal anti-discrimination laws. (42 U.S.C. sections 3612-3614; California Government Code section 12987.)

3. STATE, COUNTY, AND CITY BUILDINGS

California Government Code Sections 7596–7598

SCOPE: Smoking is prohibited:

- inside a building occupied and owned (or leased) by the state, a county, a city, or a California Community College district;
- in an outdoor area within 20 feet of a main exit, entrance, or operable window of such a building; and
- in a passenger vehicle owned by the state.

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

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

EXCEPTION: Smoking may be allowed in any outdoor area of a public building unless otherwise prohibited by state law or local ordinance and a sign describing the prohibition is posted by the state, county, or city agency, or other appropriate entity. “Inside” a building does not include covered parking lots, residential space/private living areas, or state prison yards.

ENFORCEMENT: Not specified.

PENALTY: Not specified.



4. TOT LOTS AND PLAYGROUNDS

California Health and Safety Code Section 104495

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

EXCEPTION: The law does not apply to private property or to public sidewalks within 25 feet of a playground or tot lot area.

ENFORCEMENT: Not specified.

PENALTY: Violations are punishable as infractions, subject to a fine of \$250 per violation.

5. SCHOOLS

California Education Code Section 48901

SCOPE: No elementary or secondary school shall permit the smoking or use of tobacco or nicotine products by students of the school while the students are on campus, are attending school-sponsored activities, or are under the supervision and control of school district employees.

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

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

PENALTY: Not specified.

California Education Code Sections 48900(h), 48900(r)

SCOPE: A student who possesses or uses tobacco products may be suspended or expelled if the act is related to school activity or attendance, for instance:

- while on school grounds;



- while going to or coming from school or a school-sponsored activity; or
- during the on- or off-campus lunch period.

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

PENALTY: The student may be suspended or expelled.

California Health and Safety Code Section 104420(p)

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

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

PENALTY: Any school district or county office of education that does not have a tobacco-free policy on July 1 of any given year shall not be eligible to apply for Proposition 99 funds for that fiscal year. (See entry 53 for a description of Proposition 99.)

20 U.S.C. Sections 6083(a), 6083(f)(1)

SCOPE: Federal law prohibits smoking within any indoor facility utilized for kindergarten, elementary, or secondary education or library services for children.

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

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

PENALTY: Violators may be liable for a civil penalty of up to \$1,000 for each violation, may be subject to an administrative compliance order, or both, as determined by the Secretary of Education. Each day a violation continues shall constitute a separate violation.



6. DAY CARE FACILITIES UNDER CALIFORNIA LAW

California Health and Safety Code Sections 1596.795, 1596.890

SCOPE: Smoking on the premises of a licensed day care center shall be prohibited. Smoking shall be prohibited in a private residence that is licensed as a family day care home during the hours of operation as a family day care home and in those areas of the family day care home where children are present. The law allows for more stringent local ordinances.

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

EXCEPTION: This law does not prohibit smoking in family day care homes before or after hours of operation as a day care facility.

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

PENALTY: Violators are guilty of a misdemeanor punishable by a \$1,000 fine, imprisonment in the county jail for no more than 180 days, or both.

7. DAY CARE AND HEALTH CARE FACILITIES UNDER FEDERAL LAW

20 U.S.C. Sections 6083(b), 6083(f)

SCOPE: Federal law prohibits smoking within any indoor facility used for health care, day care, or early childhood development (Head Start) services for children that are funded by the federal government, or used by the employees of the provider of such services.

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

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

Note: However, California Health and Safety Code section 1596.795 (see entry 6) prohibits smoking in family day care homes during the hours of operation.

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

PENALTY: Violators may be liable for a civil penalty of up to \$1,000 for each violation, may be subject to an administrative compliance order, or both, as determined by the Secretary of Education. Each day a violation continues shall constitute a separate violation.



8. RESTAURANTS AND BARS: FOOD HANDLING

California Health and Safety Code Sections 114020(d), 113935

SCOPE: Employees may not use tobacco in any form in locations where food is prepared, served, or stored, or where utensils are cleaned or stored.

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

ENFORCEMENT: Not specified.

Note: This law has been used in conjunction with and as an alternative to California Labor Code section 6404.5 in actions against bar owners and their staff where smoking by bar staff occurs.

PENALTY: Each violation is a misdemeanor, punishable by a fine of \$25 to \$1,000, imprisonment in the county jail for up to six months, or both.

9. PUBLIC TRANSPORTATION

California Health and Safety Code Sections 118925–118945

SCOPE: Smoking is prohibited on any aircraft or Amtrak train, except to the extent permitted by federal law. Smoking is also prohibited on public transportation systems and in any vehicle of an entity receiving transit assistance from the state. The law contains sign posting requirements. The law allows for more restrictive local ordinances.

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

Note: See entry 11 for the federal law governing smoking on airline flights. For more information on Amtrak's smoking regulations, see <http://www.amtrak.com/plan/smoking.html>.

ENFORCEMENT: Not specified.

PENALTY: Violations are infractions punishable by a fine of up to \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and for each subsequent violation within one year.

California Penal Code Section 640

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



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

ENFORCEMENT: Not specified.

PENALTY: Violations are infractions subject to a fine of up to \$250 and 48 hours of community service.

10. BUSES FOR YOUTH/PARATRANSIT VEHICLES

California Vehicle Code Sections 336, 12523(d)(2), 12523.5(d)(2), 13369(b)(4)

SCOPE: Drivers of a youth bus (a bus other than a school bus used to transport children) may not smoke while operating the bus. Operators of public paratransit vehicles (motor vehicles designed to carry no more than 24 persons each that provide local transportation to the public) may not smoke.

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

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

PENALTY: A violation may result in the denial, suspension, or revocation of a certificate to drive a youth bus or general paratransit vehicle.

11. AIRLINE FLIGHTS

49 U.S.C. Section 41706

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

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

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

PENALTY: Not specified.



12. LOCAL SECONDHAND SMOKE ORDINANCES

California Health and Safety Code Section 118910

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

Note: Several state laws permit cities and counties to pass secondhand smoke ordinances that have stricter restrictions than those in the state law. (See entries 1, 3, 4, 6, and 9 for a description of those state laws.) Many cities and counties have implemented secondhand smoke ordinances that are more restrictive than the state laws covering workplaces, government buildings, tot lots and playgrounds, day care facilities, and public transit vehicles. For example, some local jurisdictions have passed ordinances banning smoking on outdoor restaurant patios, within 30 feet of county government buildings, on beaches, and on golf courses.

ENFORCEMENT: Not specified. (**Note:** Various local agencies can be authorized to enforce local secondhand smoke ordinances.)

PENALTY: Not specified. (**Note:** A local secondhand smoke ordinance could impose a range of penalties.)







TOBACCO SALES



13. SELLING/GIVING TOBACCO PRODUCTS TO MINORS UNDER PENAL CODE SECTION 308

California Penal Code Sections 308(a), 308(d), 308(e), 308(f), 830.1

SCOPE: It is unlawful for any person, firm, or corporation to sell, give, or in any way furnish to a minor any tobacco product or paraphernalia if that person, firm, or corporation knows or should have grounds to know that the recipient is a minor.

Proof that a retailer, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of legal age (such as identification) shall be a defense to any action under section 308. Each individual franchise or location of a business shall be treated as a separate entity for purposes of determining liability for the second and subsequent violations of section 308.

Section 308(e) states that cities and counties may not adopt any ordinance or regulation that is inconsistent with section 308.

Note: A California court has interpreted the section 308(e) preemption clause to mean that cities and counties cannot adopt ordinances or regulations that affect the penal aspects of selling to minors (e.g., what age group can buy tobacco products and what penalties are imposed for selling to minors). The court affirmed the power of a city or county to regulate business activity in order to discourage violations of section 308. (See *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383, 402-403 (1993).)

EXCEPTION: The Director of Corrections may sell or supply tobacco products to a minor who is at least 16 years old and who is confined in a correctional facility, if the parent or guardian of the minor consents.

ENFORCEMENT: Penal Code section 308(a) authorizes a city attorney, county counsel, or district attorney to bring a civil action to enforce the law. Local law enforcement officers have the general authority to enforce this law under Penal Code section 830.1.

PENALTY: Violators are subject to either a criminal action for misdemeanor or a civil action punishable by a fine of \$200 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. Twenty-five percent of penalties collected goes to the prosecuting agency. Another 25 percent goes to the city or county for the administration and cost of the community service work penalty provided in section 308(b) (discussed in entry 26). Section 308 allows local law enforcement to cite both business owners and



employees who actually sell the tobacco product or paraphernalia. See entry 66 for a description of license-related penalties that attach to section 308 violations.

14. SELLING/GIVING TOBACCO PRODUCTS TO MINORS UNDER THE STAKE ACT

California Business and Professions Code Sections 22958, 22952(f), 22957 (STAKE Act)

SCOPE: It is unlawful for any person, firm, or corporation to sell, give, or in any way furnish any tobacco product or paraphernalia (including cigarettes and cigarette papers) to a person under the age of 18.

EXCEPTION: Violations by one retail location will not be counted against other retail locations of the same corporation or business. Violations against a prior owner of a single franchise location shall not be counted against a new owner of the same single franchise location.

ENFORCEMENT: The Food and Drug Branch (FDB) of the California Department of Health Services or delegated local law enforcement agencies may enforce this law. Enforcers must use the protocols specified in entry 15 in order to cite violators under section 22958 of the STAKE Act.

Note: No local law enforcement agencies currently have this delegated authority, so this law is enforced exclusively by the FDB. (In contrast, Penal Code section 308 is enforced exclusively by local law enforcement.)

PENALTY: Violators may be penalized under either this section or California Penal Code section 308 for a violation; they may not be penalized under both for the same incident. Violators are subject to a civil penalty of \$200-\$300 for the first violation; \$600-\$900 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; or \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period. Any civil penalty imposed under the STAKE Act shall be enforced against the owner and not the employees of the retail establishment. See entry 66 for a description of license-related penalties that attach to retailer violations of the STAKE Act.



15. COMPLIANCE CHECKS FOR SALES TO MINORS

**California Business and Professions Code Section 22952 (STAKE Act)
California Code of Regulations, Title 17, Section 6901**

SCOPE: The California Department of Health Services (DHS) must use youth decoys in on-site inspections to determine if retailers are making illegal sales of tobacco products to minors. DHS is authorized to use youth decoys to investigate illegal sales to minors by telephone, mail, or the internet.

DHS may conduct such inspections at random, in response to public complaints (e.g., on the 1-800-5ASK-4-ID phone line), or at retail sites where violations have previously occurred. Participating youth must be 15 or 16 years old; must act under the direct supervision of a peace officer at all times during an inspection; and must show identification with their correct age, if asked. However, if a retailer merely requests verbal confirmation of a youth decoy's age, the decoy may lie. A photograph or video recording of the youth decoy must be taken prior to each inspection or shift of inspections.

Following the completion of an on-site sale, the participating peace officer must reenter the retail establishment to inform the seller of the inspection, and following an attempted sale, DHS must notify the retail establishment of the inspection.

EXCEPTION: A valid defense to an action under section 22952 is that the youth decoy's appearance was not that which could be generally expected of a person under 18 years of age.

ENFORCEMENT: The Food and Drug Branch (FDB) of the California Department of Health Services or delegated local law enforcement agencies may enforce the law.

Note: No local law enforcement agencies currently have this delegated authority, so this law is enforced exclusively by the FDB.

PENALTY: See entry 14 for a discussion of the penalties for selling tobacco to minors in violation of the STAKE Act.

16. THE SYNAR AMENDMENT

42 U.S.C. Section 300x-26

45 C.F.R. Section 96.130

SCOPE: In order to receive the annual Substance Abuse Prevention and Treatment federal block grant, a state must have and enforce a law



prohibiting the sale of tobacco products to individuals under the age of 18. (See entries 14 and 15 for a description of the California law that meets this requirement.) The state must conduct annual inspections to ensure compliance with the law and must report the results of these inspections to the U.S. Department of Health and Human Services (DHHS).

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

PENALTY: For a state that reports more than a 20 percent rate of illegal sales to youth, the annual Substance Abuse Prevention and Treatment federal block grant may be reduced by up to 40 percent of the amount originally allocated to the state.

17. ID CHECK REQUIREMENTS FOR RETAILERS

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

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

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

ENFORCEMENT: The Food and Drug Branch (FDB) of the California Department of Health Services or delegated local law agencies may enforce the law.

Note: No local law enforcement agencies currently have this delegated authority, so this law is enforced exclusively by the FDB.

PENALTY: Not specified. See entry 14 for a discussion of the penalties for selling tobacco to minors in violation of the STAKE Act.

18. SIGN POSTING REQUIREMENT FOR RETAILERS

*California Business and Professions Code Sections 22952, 22957
(STAKE Act)*

California Code of Regulations, Title 17, Section 6902(a)

California Penal Code Sections 308(c), 830.1

SCOPE: Every store that sells tobacco must post a boldly printed, contrasting-color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors. The sign must state that the law requires retailers to check the identification of anyone who reasonably appears to be under 18 years of age.



The sign must contain the following words: “The Sale of Tobacco Products to Persons Under 18 Years of Age Is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.”

The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (at least 3.66 inches by 8.5 inches), and the required notice must meet specified font sizes.

ENFORCEMENT: The Food and Drug Branch (FDB) of the California Department of Health Services or delegated local law agencies may enforce this law under California Business and Professions Code section 22952. (**Note:** No local law enforcement agencies currently have this delegated authority, so this law is enforced exclusively by the FDB.) Local law enforcement officers have the general authority to enforce this law under Penal Code section 830.1.

PENALTY: Violators who fail to post the sign are subject to a fine of \$10 for the first offense and \$50 for each succeeding violation of this provision, or by imprisonment for not more than 30 days. See entry 66 for a description of license-related penalties that attach to retailer violations of the STAKE Act.

19. SELF-SERVICE SALES OF CIGARETTES

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

SCOPE: It is unlawful to sell, offer for sale, or display cigarettes through a self-service display, which is an open display of cigarettes that is accessible to the public without the assistance of the clerk. The law allows local governments to pass or enforce ordinances that are stricter than state law.

Note: The law does not apply to tobacco products other than cigarettes, such as smokeless tobacco or cigars.

EXCEPTION: This law does not change the provision existing in state law that allows tobacco to be sold through a vending machine located in a business licensed for on-sale alcohol sales (usually a bar) so long as the vending machine is at least 15 feet away from the entrance and inside the premises. (See entry 23 for a description of this law.)

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

PENALTY: Violators are subject to civil fines of \$200-\$300 for the first violation; \$600-\$900 for the second violation within a five year period;



\$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five year period; or \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period. See entry 66 for a description of license-related penalties that attach to retailer violations of the STAKE Act.

20. BIDIS

California Penal Code Sections 308.1, 830.1

SCOPE: It is unlawful to sell, offer to sell, distribute, or import bidis (also known as beedies), defined as products containing tobacco wrapped in temburni leaf or tendu leaf.

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

EXCEPTION: The law does not apply to businesses that prohibit minors, such as bars or stores that sell only tobacco products and have a legally valid policy denying access to minors.

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

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

21. SINGLE CIGARETTE SALES

California Penal Code Sections 308.2, 830.1

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

ENFORCEMENT: Not specified. Local law enforcement officers have the general authority to enforce this law under Penal Code section 830.1.

PENALTY: Violations are classified as infractions.

22. MINIMUM PACK SIZE

California Penal Code Sections 308.3, 830.1

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

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

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

23. VENDING MACHINES

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

SCOPE: Tobacco products shall not be sold, offered for sale, or distributed from vending machines.

EXCEPTION: Vending machines may be located in a premises issued an on-sale public premises license to sell alcoholic beverages (usually a bar), provided that the machine is at least 15 feet away from the entrance and inside the premises. Local governments may pass a law completely banning tobacco vending machines.

ENFORCEMENT: The Food and Drug Branch (FDB) of the California Department of Health Services or delegated local law enforcement agencies may enforce this law.

Note: No local law enforcement agencies currently have this delegated authority, so this law is enforced exclusively by the FDB.

PENALTY: Violators are subject to a civil penalty of \$200-\$300 for the first violation; \$600-\$900 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; or \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period. See entry 66 for a description of license-related penalties that attach to retailer violations of the STAKE Act.



24. MAIL ORDER/INTERNET TOBACCO SALES

California Business and Professions Code Section 22963 (STAKE Act)

SCOPE: Tobacco products may not be distributed or sold to minors via public or private postal services. The law includes directives designed to ensure that people who order by mail, fax, phone, or the internet are 18 years of age or older. For example, distributors or sellers must *either* (1) match the name, address, and date of birth provided by the customer to information contained in a database of individuals verified to be 18 or older, or (2) require the customer to submit verification of age, including a copy of a valid form of government identification. The law establishes a two carton minimum on each order of cigarettes. It also mandates that all applicable purchases must be made by personal check or credit card and that the distributor or seller must call purchasers to confirm their orders.

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

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

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

25. HOME DELIVERY OF UNSOLICITED TOBACCO PRODUCTS

California Penal Code Sections 308b, 830.1

SCOPE: It is unlawful for a person to knowingly deliver or cause to be delivered any unsolicited tobacco products to any residence in California. (See entry 44 for more information on mailing unsolicited samples of smokeless tobacco products.)

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

ENFORCEMENT: Not specified. Local law enforcement officers have the



general authority to enforce this law under Penal Code section 830.1.

PENALTY: A violation of this section is a misdemeanor and shall be considered a nuisance within the meaning of California Civil Code section 3479.

26. PURCHASE/POSSESSION OF TOBACCO PRODUCTS BY MINORS

California Penal Code Sections 308(b), 308(e), 308(f), 830.1

SCOPE: It is unlawful for any person under the age of 18 years to purchase, receive, or possess any tobacco product or paraphernalia. No city or county shall adopt any ordinance or regulation inconsistent with this section.

EXCEPTION: A minor confined in a correctional facility who is at least 16 years old may purchase or obtain tobacco products from the Director of Corrections if that minor has the consent of a parent or guardian.

ENFORCEMENT: Not specified. Local law enforcement officers have the general authority to enforce this law under Penal Code section 830.1.

PENALTY: Violators are subject to a fine of \$75 or 30 hours of community service work. (**Note:** The addition of local court costs may increase the \$75 fine.)





TOBACCO ADVERTISING



27. OUTDOOR ADVERTISING

Master Settlement Agreement Sections II(ii), III(c), III(d)

SCOPE: The Master Settlement Agreement (MSA) prohibits outdoor tobacco advertising, defined as billboards, signs and placards in arenas, stadiums, shopping malls, and video game arcades, and any other tobacco ads that are outdoors, or on the inside surface of a window but facing outward.

EXCEPTION: The MSA does not restrict:

- Ads that are less than 14 square feet, and are either outside a tobacco retail store but on store property, or on the window of a tobacco retail store facing outward. (MSA section II(ii).)
- Ads inside a tobacco retail store that are not placed on a window facing outward. (MSA section II(ii).)
- Ads located inside an adult-only facility (where the operator ensures that no minors are present). (MSA section III(d)(6).)
- Ads outside an adult-only facility advertising the event with a brand name for the duration of the event, and no more than fourteen days before the event. (MSA section II(ii).)
- Billboards advertising a tobacco brand-sponsored event at the site of the event for 90 days before the initial sponsored event and 10 days after the last sponsored event. (MSA section III(c)(3)(E)(ii).)
- Ads outside a tobacco manufacturing facility. (MSA section II(ii).)

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

28. FEDERAL PREEMPTION

15 U.S.C. Sections 1331–1341

SCOPE: The Federal Cigarette Labeling and Advertising Act (FCLAA) establishes a comprehensive federal program governing cigarette labeling and advertising. (For an explanation of the FCLAA's warning label



requirements and its ban on television advertising, see entries 47 and 36, respectively). The FCLAA also contains a preemption clause that prohibits state and local laws and regulations from imposing any requirements or prohibitions based on smoking and health with respect to the advertising or promotion of cigarettes. (15 U.S.C. section 1334(b).)

Note: Tobacco companies have sued state and local governments for passing laws that allegedly impose requirements or prohibitions with respect to the advertising or promotion of cigarettes that are based on smoking and health. In *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), the U.S. Supreme Court struck down Massachusetts regulations banning cigarette advertising within 1,000 feet of schools because it found that the state regulations were preempted by the FCLAA.

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

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

ENFORCEMENT: The preemption clause is enforced through lawsuits in which aggrieved private parties (e.g., tobacco companies, retailers) sue state or local governments in court.

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

29. BILLBOARDS

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

SCOPE: No tobacco advertising is permitted on any outdoor billboard located within 1,000 feet of any public or private elementary, junior high, or high school, or public playground. A local government may pass a more restrictive law.

EXCEPTION: A message or advertisement opposing the use of tobacco products is not prohibited unless such a message is within an



advertisement that promotes tobacco products.

ENFORCEMENT: The Food and Drug Branch of the California Department of Health Services or delegated local law enforcement agencies may enforce this law.

Note: This law is not currently being enforced. It is largely superseded by the broader limits on tobacco billboards in the Master Settlement Agreement. (See entry 27 for more information on these limits.) Moreover, the law may be preempted by federal law in light of the U.S. Supreme Court decision, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001). (See entry 28 for more information about this decision.)

PENALTY: Violators are subject to a civil penalty of \$200-\$300 for the first violation; \$600-\$900 for a second violation within a five-year period; \$1,200-\$1,800 for a third violation within a five-year period; \$3,000-\$4,000 for a fourth violation within a five-year period; or \$5,000-\$6,000 for a fifth or subsequent violation within a five-year period.

30. STOREFRONT ADVERTISING

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

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

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

Note: This law is not preempted by the FCLAA (see entry 28) because it applies generally to advertising of all types, not specifically to advertising of cigarettes.

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

ENFORCEMENT: This law may be enforced by the California Department of Alcoholic Beverage Control.

PENALTY: Violations are classified as misdemeanors, subject to a fine of not more than \$1,000 or not more than six months’ imprisonment.



31. STATE BUILDING ADVERTISING

California Government Code Section 19994.35

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

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

ENFORCEMENT: Not specified.

PENALTY: Not specified.

32. TRANSIT ADVERTISING ON PUBLIC AND PRIVATE VEHICLES

Master Settlement Agreement Sections II(xx), III(d), III(c)(3)(E)

SCOPE: The Master Settlement Agreement (MSA) prohibits tobacco transit ads, defined as ads on or within private or public vehicles, and placed at, on, or within a bus stop, taxi stand, transportation waiting area, train station, airport, or similar location.

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

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

33. CARTOON CHARACTERS

Master Settlement Agreement Sections II(l), III(b)

SCOPE: The Master Settlement Agreement (MSA) prohibits the use of cartoons in tobacco advertising and packaging.

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

34. YOUTH TARGETING

Master Settlement Agreement Section III(a)

SCOPE: The Master Settlement Agreement (MSA) prohibits the direct or indirect targeting of youth in tobacco advertising, promotion, and marketing.

ENFORCEMENT: The state Attorney General may enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

35. VIDEO GAMES

California Penal Code Sections 308.5, 830.1

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



ENFORCEMENT: Not specified. Local law enforcement officers have the general authority to enforce this law under Penal Code section 830.1.

PENALTY: A violation of this section is a misdemeanor.

36. TELEVISION/RADIO CIGARETTE ADVERTISING

15 U.S.C. Sections 1335, 1338, 1339

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

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

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

Note: Information on filing complaints to the FCC is located on the FCC's website: <http://www.fcc.gov/cgb/complaints.html>.

PENALTY: Violators shall be guilty of a misdemeanor and subject to a fine of not more than \$10,000.

37. TELEVISION/RADIO SMOKELESS TOBACCO ADVERTISING

15 U.S.C. Sections 4402(e)-(f), 4404, 4405

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

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

Note: Information on filing complaints to the FCC is located on the FCC's website: <http://www.fcc.gov/cgb/complaints.html>.

PENALTY: Violators shall be guilty of a misdemeanor and subject to a fine of not more than \$10,000.

38. FISH AND GAME DEPARTMENT MATERIALS

California Fish and Game Code Section 211

SCOPE: Publications of regulations and public information provided by private entities under contract with the California Department of Fish and Game shall not contain advertisements for tobacco products.

ENFORCEMENT: Not specified.

PENALTY: Not specified.





TOBACCO SPONSORSHIP AND PROMOTION

39. SPONSORSHIP

Master Settlement Agreement Sections II(j), III(c)(1)–III(c)(6)

SCOPE: The Master Settlement Agreement (MSA) allows one brand name sponsorship for each tobacco company in any 12-month period. A national or multi-state series or tour (e.g., Skoal Racing) will count as one brand name sponsorship. The MSA prohibits brand name sponsorship of events in which the intended audience is comprised of a significant percentage of youth (“significant percentage” is not defined); events in which participants or contestants are under the age of 18; concerts; and football, basketball, soccer, baseball, or hockey games. (MSA section III(c).)

The MSA prohibits naming a stadium or arena with a brand name and prohibits tobacco companies from paying football, basketball, baseball, soccer, or hockey leagues in exchange for use of a brand name. (MSA section III(c)(5)-(6).)

EXCEPTION: The MSA exempts the following sponsorship activities:

- Events at adult-only facilities (where minors are not present and cannot see inside). (MSA section II(j).)
- Vehicles bearing a brand name used in a brand-sponsored event. (MSA section III(c)(3)(E).)
- Billboards for the brand-sponsored event at the site of the event for 90 days before and 10 days after the event. (MSA section III(c)(3)(E).)
- Corporate name sponsorship. (MSA section III(c)(4).)

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

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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



40. BRAND NAME MERCHANDISE

Master Settlement Agreement Sections III(f), III(c)(3)(C)

SCOPE: The Master Settlement Agreement (MSA) prohibits the sale or distribution of apparel (e.g., hats, T-shirts) or other merchandise which bears a tobacco product brand name.

EXCEPTION: These provisions do not apply to apparel or other merchandise distributed or sold by a third party at the site of a brand name sponsorship, under certain circumstances.

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

41. TOBACCO BRAND NAMES

Master Settlement Agreement Section III(j)

SCOPE: Tobacco brands may not be named after any nationally recognized brand or trade name of a non-tobacco product or any nationally recognized sports team, entertainment group, or celebrity.

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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



42. PRODUCT PLACEMENT

Master Settlement Agreement Section III(e)

SCOPE: The Master Settlement Agreement (MSA) prohibits payments by tobacco companies for product placement in the movies, television, theater, video games, or other performances.

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

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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



TOBACCO SAMPLES, COUPONS, AND GIFTS

43. SAMPLES AND COUPONS: CIGARETTES AND SMOKELESS TOBACCO

California Health and Safety Code Section 118950 Board of Equalization Regulation 4081

SCOPE: Free or nominal-cost cigarettes or smokeless tobacco products (or coupons or rebate offers for such products) may not be distributed on public grounds or on private grounds that are open to the public.

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

Every package of legally issued samples must be clearly marked as a sample and must contain the wording “Not for Sale. Applicable state tax has been paid.” Local governments may pass and enforce related ordinances that are stricter than state law.

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

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

ENFORCEMENT: Not specified. The state Attorney General may enforce this law.

PENALTY: Violators are liable for a civil penalty of not less than \$200 for the first item distributed, \$500 for the second item, and \$1,000 for each item after that.

Master Settlement Agreement Section III(g)

SCOPE: The distribution of free samples of tobacco products is prohibited.

EXCEPTION: This section does not apply to the distribution of tobacco products in an adult-only facility (where the operator ensures that no



minors are present). Nor does this section apply to tobacco products provided to adults in exchange for proof of purchase or through special promotions such as “two-for-one” offers, or for consumer testing.

Note: The California Attorney General reached a settlement with R. J. Reynolds Tobacco Company in December 2001 restricting how that company distributes cigarettes for the purposes of consumer testing. For instance, the settlement requires R. J. Reynolds to mail free cigarettes only to adults who have given prior consent.

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

44. SAMPLES AND PROMOTIONAL OFFERS: SMOKELESS TOBACCO

***California Business and Professions Code Sections 17537.3, 17207,
17534, 17535***

Board of Equalization Regulation 4081

SCOPE: Free samples of smokeless tobacco products may not be distributed within a two block radius of any premises or facility whose primary purpose is directed toward persons under the age of 18, including schools, clubhouses, and youth centers when those premises are being used for their primary purposes.

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

Mailing unsolicited samples of smokeless tobacco as part of an advertising program is prohibited. (See entry 25 for more information on home delivery or unsolicited tobacco products.)

Every package of legally issued samples must be clearly marked as a

sample and must contain the wording “Not for Sale. Applicable state tax has been paid.”

ENFORCEMENT: Actions for injunction may be brought by the state Attorney General, district attorney, county counsel, city attorney, or city prosecutor, or by a private individual.

PENALTY: Violations are classified as misdemeanors. Violators of an injunction are subject to a penalty of up to \$6,000 for each violation.

45. PROOF OF PURCHASE GIFTS

Master Settlement Agreement Section III(h)

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

ENFORCEMENT: The state Attorney General is authorized to enforce this provision. Potential violations can be reported to the Attorney General by calling (916) 565-6486 or by completing an on-line complaint form at <http://caag.state.ca.us/tobacco/contact.htm>.

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

46. LOTTERY

26 U.S.C. Sections 5723(c), 5762

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

ENFORCEMENT: Federal law enforcement authorities, including the U.S. Department of Justice and the Internal Revenue Service, may enforce this law.

PENALTY: For each offense, violators are subject to a fine of up to \$1,000, up to one year’s imprisonment, or both.





TOBACCO WARNING LABELS



47. CIGARETTE WARNING LABELS

15 U.S.C. Sections 1333, 1338, 1339

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

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

PENALTY: Violators are guilty of a misdemeanor and subject to a fine of not more than \$10,000.

48. SMOKELESS TOBACCO WARNING LABELS

15 U.S.C. Sections 4402, 4404, 4405

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

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

PENALTY: Violators are guilty of a misdemeanor and subject to a fine of not more than \$10,000.

49. CIGAR WARNING LABELS

FTC Agreements, File Numbers 0023199-0023205

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



Note: For more information about this agreement, see the FTC's web site at www.ftc.gov/opa/2000/06/cigars.htm.

ENFORCEMENT: The FTC is charged with enforcing this agreement.

PENALTY: Not specified.

California Health and Safety Code Sections 104550–104552

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

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

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

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

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







TOBACCO TAX LAW



50. FEDERAL TOBACCO TAX

26 U.S.C. Sections 5701–5704, 5761–5763

SCOPE: The manufacturer or importer of tobacco manufactured or imported into the United States shall pay taxes in the amount specified for each type of tobacco product. For example, the federal tax on cigarettes is 39 cents per package.

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

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

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

51. OVERVIEW OF CALIFORNIA STATE TOBACCO TAXES

California Revenue and Taxation Code Sections 30001–30481

SCOPE: Under the “Cigarette and Tobacco Products Tax Law,” California imposes three taxes on the distribution of cigarettes: a tax of 12 cents per package of 20 cigarettes; a “Proposition 99 surtax” of 25 cents per package of 20 cigarettes; and a “Proposition 10 surtax” of 50 cents per package of 20 cigarettes. (See entries 52-54 for more details on these taxes and surtaxes.) Thus, each stamp or meter impression costs 87 cents per package of cigarettes. Non-cigarette tobacco products are subject to a surtax that is set annually by the Board of Equalization (BOE). The surtax rate is calculated to be equivalent to the total tax on cigarettes. Distributors are the entities responsible for paying state tobacco taxes.

EXCEPTION: Tobacco taxes do not apply to:

- sales to armed services;
- sales to the United States Veterans’ Administration;
- distributions that are exempt from taxation under federal tax law;
- distributions by a manufacturer to a licensed distributor;
- sales to a law enforcement agency for use in criminal investigations;



- sales to a common carrier engaged in interstate or foreign commerce;
- sales by the original importer to a licensed distributor;
- certain sales or gifts to veterans; and
- use or consumption of untaxed cigarettes brought into the state in a single lot of not more than 400 cigarettes (i.e., two cartons) by an individual for his own use or consumption.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: Anyone who intentionally engages in tax evasion under the Cigarette and Tobacco Products Tax Law is guilty of a misdemeanor if the amount of tax liability is less than \$25,000 in any one-year period and is guilty of a felony if the amount of tax liability is \$25,000 or more in any one-year period. (California Revenue and Taxation Code sections 30477, 30480.) Each felony offense shall be punished by imprisonment and/or a fine of not less than \$5,000 and not more than \$20,000. See entries 63, 67, 69-72, 75, 77, 80 for license-related penalties associated with the violation of tobacco tax laws.

52. 12 CENTS-PER-PACKAGE TOBACCO TAX

California Revenue and Taxation Code Sections 30101, 30102–30111, 30461.6

SCOPE: Every distributor shall pay a tax upon his or her distribution of cigarettes at the rate of 12 cents per package. The Breast Cancer Act of 1993 (effective January 1, 1994) earmarks 2 cents of the 12 cents-per-package tobacco tax for breast cancer research and control.

EXCEPTION: See entry 51.

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

PENALTY: See entry 51 for a description of the penalties for tax evasion under the Cigarette and Tobacco Products Tax Law.

53. PROPOSITION 99 SURTAX

*California Revenue and Taxation Code Sections 30121–30130
California Health and Safety Code Sections 104350–104480,
104500–104545*

SCOPE: Proposition 99 (effective January 1, 1989) imposes a surtax of 25 cents per package of 20 cigarettes (with an equivalent surtax for other tobacco products). Proposition 99 revenues are allocated to the Cigarette and Tobacco Products Surtax Fund. The revenues are earmarked for health



education against tobacco, tobacco-related disease research, health care for medically indigent families, and certain types of environmental programs. (California Revenue and Taxation Code section 30122(a).)

The revenues are deposited according to the following formula: 20 percent in the Health Education Account; 35 percent in the Hospital Services Account; 10 percent in the Physician Services Account; five percent in the Research Account; five percent in the Public Resources Account; and 25 percent in the Unallocated Account. (California Revenue and Taxation Code section 30124.)

The California Department of Health Services and the California Department of Education administer and implement tobacco prevention funds as directed by Health and Safety Code sections 104350-104480. The Tobacco Education Resource and Oversight Committee (TEROC) advises the state departments on policy development, integration, and evaluation of tobacco education programs. (California Health and Safety Code section 104365.)

EXCEPTION: See entry 51.

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

PENALTY: See entry 51 for a description of the penalties for tax evasion under the Cigarette and Tobacco Products Tax Law.

54. PROPOSITION 10 SURTAX

California Revenue and Taxation Code Sections 30131–30131.6
California Health and Safety Code Sections 130100–130155

SCOPE: Proposition 10 (effective January 1, 1999) imposes a surtax of 50 cents per package of 20 cigarettes sold in California. It also imposes an equivalent surtax on other types of tobacco products.

Proposition 10 created the California Children and Families Program to promote and support early childhood development programs. This program is administered by state and county commissions. The state commission receives 20 percent of the tax revenues to spend in a variety of ways. The remaining 80 percent of the revenues is divided among county commissions in each of the state's 58 counties. The county commissions fund programs that create information systems and services to promote early childhood development and school readiness.

EXCEPTION: See entry 51.

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



PENALTY: See entry 51 for a description of the penalties for tax evasion under the Cigarette and Tobacco Products Tax Law.

55. TAX STAMPS/METER IMPRESSIONS

California Revenue and Taxation Code Sections 30161–30165

Board of Equalization Regulations 4048, 4054, 4081

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

California Revenue and Taxation Code section 30163 prohibits affixing tax stamps to any package of cigarettes if any one of the following occurs:

- The package does not comply with federal laws requiring health warnings. (See entry 47.)
- The package is labeled “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or with similar wording indicating that the manufacturer did not intend that the product be sold in the United States.
- The package has been altered by adding or deleting the federal warnings or labels.
- The package was imported into the United States after January 1, 2000, in violation of federal law. (See 26 U.S.C. section 5754.)
- The package bears a brand name of a participating manufacturer of the Master Settlement Agreement (MSA) and is imported by an entity other than the participating manufacturer.

By January 1, 2005, the BOE must replace the cigarette tax stamps and meter impressions previously affixed to cigarettes with a stamp or meter impression that can be read by a scanner or similar device.

EXCEPTION: Stamps or meter impressions need not appear on tobacco products legally given away as samples. However, the manufacturer giving away such samples must notify the BOE in advance of the sampling, report the distribution, and pay the tax due. Each package of samples must be



clearly marked as a sample and must contain the wording “Not for Sale. Applicable state tax has been paid.”

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTIES: The BOE shall revoke the license issued to a distributor under the California Revenue and Taxation Code if the distributor violates California Revenue and Taxation Code section 30163. Violations of section 30163 shall constitute unfair competition under California Business and Professions Code section 17200 and are punishable as such. (See entry 89 for a discussion of section 17200’s unfair competition law.) See entries 56-59 and 69 for penalties that attach to various violations relating to tax stamps and meter impressions.

56. BLACK MARKET CIGARETTES

California Revenue and Taxation Code Sections 30474, 30474.5

SCOPE: Persons who knowingly hold for sale, offer for sale, or sell cartons of cigarettes without the required tax stamp or meter impression are in violation of the law. (See entry 55 for a description of the tax stamp and meter impression requirements.)

Note: The term “black market” cigarettes refers to cigarettes that are sold without proper payment of applicable taxes and labeling requirements.

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

PENALTY: Persons who knowingly hold for sale, offer for sale, or sell cartons of cigarettes without the required tax stamp or meter impression shall be guilty of a misdemeanor and fined no more than \$1,000, imprisoned for up to one year, or both. Moreover, such persons shall pay two fines, each amounting to \$100 per violating carton of 200 cigarettes or portion thereof. The first fine shall be divided evenly between the local prosecuting jurisdiction and the BOE. The second fine shall be deposited in the “Unlawful Sales Reduction Fund.” This fund shall be used to support local grantees in multi-agency efforts to reduce sales of untaxed cigarettes.

57. SEIZURE AND SALE UPON DELINQUENCY

California Revenue and Taxation Code Sections 30355–30358

SCOPE: The Board of Equalization (BOE) is authorized to seize any property subject to the lien of unpaid tobacco taxes and thereafter sell the



property at public auction to satisfy the tax, interest, and the cost associated with the seizure and auction.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: Seizure and sale of the property subject to the lien.

58. POSSESSION OR SALE OF FALSE STAMPS

California Revenue and Taxation Code Section 30473.5

SCOPE: It is illegal to possess, sell, or offer to sell or to buy or offer to buy any false or fraudulent tax stamps or meter impressions. (See entry 55 for additional information on tax stamps and meter impressions.)

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

PENALTY: Anyone who possesses, sells, offers to sell, buys, or offers to buy any false or fraudulent tax stamps or meter impressions in a quantity of less than 2,000 is guilty of a misdemeanor punishable by a fine not to exceed \$5,000, imprisonment not exceeding one year in a county jail, or both. Anyone who possesses, sells, offers to sell, buys, or offers to buy any false or fraudulent stamps or meter impressions in a quantity of 2,000 or greater is guilty of a misdemeanor punishable by a fine not to exceed \$50,000, imprisonment not exceeding one year in a county jail, or both. The BOE shall destroy any stamps seized under this section.

59. POSSESSION OR SALE OF COUNTERFEIT PRODUCTS

California Revenue and Taxation Code Section 30474.1

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

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

PENALTY: If less than two cartons are seized, violators are subject to a fine of up to \$5,000, imprisonment not to exceed one year, or both, as well as the revocation of a distributor, wholesaler, or manufacturer license. If two or more cartons are seized, violators are subject to a fine of up to \$50,000, imprisonment not to exceed one year, or both, as well as the revocation of a distributor, wholesaler, or manufacturer license.



60. MAIL ORDER/INTERNET CIGARETTE TAXATION

California Revenue and Taxation Code Section 30101.7

15 U.S.C. Sections 375-378

SCOPE: In order to sell cigarettes to a person in California over the internet, on the phone, or via any other non-“face-to-face” sales method, the seller must meet the following conditions: (1) it must fully comply with all of the requirements of the Jenkins Act (15 U.S.C. sections 375-378); and (2) it must either pay all applicable California taxes, or include a visible warning on such cigarettes that the buyer is responsible for unpaid state taxes and that the buyer’s name and address have been reported to a state tax collection agency.

The Board of Equalization must provide information to the state Attorney General regarding a seller’s failure or attempt to comply with the Jenkins Act. The Attorney General must provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the Jenkins Act.

Note: The Jenkins Act regulates taxes on cigarettes sold or transferred in interstate commerce. It applies to cigarette sellers who ship or advertise to out-of-state buyers who are not distributors. Such sellers must make two filings with the state into which they are shipping or advertising. First, they must file their name and address. Second, they must file a monthly report documenting every shipment into the state. The report must include the name and address of each buyer, the brand, and the quantity shipped. Violations of the Jenkins Act are a misdemeanor punishable by a \$1,000 fine, imprisonment for up to six months, or both, but violators can be prosecuted only in federal court.

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

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





LICENSING AND REPORTING



61. OVERVIEW OF THE CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003

California Business and Professions Code Sections 22970–22995

SCOPE: The California Cigarette and Tobacco Products Licensing Act of 2003 (AB 71–Horton) (the Licensing Act) was passed to counter the untaxed sale and distribution of tobacco products in California by organized crime syndicates, street gangs, and international terrorist groups. The Licensing Act sets up a licensing scheme for retailers, distributors, wholesalers, manufacturers, and importers.

The Licensing Act adds Division 8.6 (sections 22970 through 22995) to the California Business and Professions Code. Division 8.6 contains seven main chapters setting forth: general provisions and definitions (Chapter 1); licensing requirements for tobacco retailers (Chapter 2); licensing requirements for tobacco distributors and wholesalers (Chapter 3); licensing requirements and fees for tobacco manufacturers and importers (Chapter 4); inspection protocols, prohibitions, and penalties (Chapter 5); requirements for disposition of funds collected under the Licensing Act (Chapter 6); and a directive about the duration of the law (Chapter 7). The Licensing Act shall remain in effect until January 1, 2010, at which point it shall be automatically repealed.

Along with the Licensing Act, AB 71 amended various sections of the California Health and Safety Code, the California Revenue and Taxation Code, the California Government Code, and the California Penal Code.

See entries 62-82 and 56-59 for greater detail on the Licensing Act and the other provisions described above.

ENFORCEMENT: The Board of Equalization is charged with administering and enforcing this law and has the authority to grant, suspend, and revoke licenses issued under this law. Other state and local law enforcement agencies may enforce several provisions of the law.

PENALTY: See entries 62-79 for penalties that attach to violations of the Licensing Act.

62. DISPOSITION OF FUNDS

California Business and Professions Code Section 22990

SCOPE: All money collected pursuant to the Licensing Act shall be deposited in the Cigarette and Tobacco Products Compliance Fund. Upon



appropriation by the Legislature, funds are available for expenditure solely for the purpose of implementing, enforcing, and administering the Licensing Act.

ENFORCEMENT: Not applicable.

PENALTY: Not applicable.

63. TOBACCO RETAILER LICENSE REQUIREMENT

California Business and Professions Code Sections 22972–22973.1

SCOPE: By June 30, 2004, tobacco retailers must be licensed by the Board of Equalization (BOE) for each tobacco retail location. For the purposes of this law, a “retailer” is someone who sells tobacco products from a building or a vending machine. Each retailer must pay a one-time license fee of \$100 for each retail location. The license is not assignable or transferable, and it must be renewed annually for no fee. A retailer may not obtain a license if the retailer has been issued a license that is suspended or revoked. Licenses will not be issued for any location where a license has been suspended or revoked in the last five years, unless a new owner obtained the property in an arms-length transaction.

Note: Although a clerk is an agent of a retailer, clerks need not obtain licenses.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: The BOE will suspend, revoke, or decline to grant a license if the retailer has not complied with specified license, tax, and sales to youth laws. (See entries 65, 66, 74-76, and 79.)

64. LOCAL RETAILER LICENSING LAWS

California Business and Professions Code Section 22971.3

SCOPE: The Licensing Act contains anti-preemption language that explicitly allows local jurisdictions to pass their own licensing ordinances. Section 22971.3 states that nothing in the Licensing Act preempts or supersedes any local tobacco control law other than those laws related to the collection of state taxes. Moreover, local licensing laws may provide for the suspension and revocation of a local license for any violation of a state tobacco control law.

Note: Local jurisdictions can pass licensing ordinances that have stronger public health provisions than the Licensing Act. For example, a

local licensing law could include the following components: language making it a violation of the local license to break any local, state, or federal tobacco control law; an annual fee that funds local enforcement; an enforcement plan that requires a specific number of compliance checks per retail outlet per year; a ban on tobacco sales by mobile vendors; and a “private right of action” provision allowing any person to sue a retailer for violating the local licensing law.

ENFORCEMENT: Not specified. (*Note:* Local law enforcement agencies are generally authorized to enforce local licensing laws.)

PENALTY: Not specified. (*Note:* A local licensing law could impose a range of penalties for license violations, including suspension, revocation, an injunction, a fine, and imprisonment.)

65. RETAILER DISPLAY OF LICENSE

California Business and Professions Code Sections 22972, 22974.5

SCOPE: A retailer shall conspicuously display the license at each retail location in a manner visible to the public.

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

PENALTY: A retailer who fails to display the license shall be liable for a \$500 fine. In addition, the penalties listed in entry 77 apply.

66. RETAILER STAKE ACT AND PENAL CODE SECTION 308 VIOLATIONS

California Business and Professions Code Section 22974.8

SCOPE: Retailers convicted of either a STAKE Act violation (see entries 14, 15, 17-19, 23, 24, and 29) or a Penal Code section 308 violation (see entries 13 and 18) shall be penalized under the Licensing Act, but only if the most recent official statewide youth purchase survey conducted pursuant to Business and Professions Code section 22952 finds that 13 percent or more of youth were able to purchase cigarettes. (See entry 16 for an explanation of the youth purchase survey requirements under the Synar Amendment.) Convictions by a retailer at one retail location shall not be accumulated against other locations owned by that retailer. Convictions of violations accumulated against a prior retail owner at a retail location shall not be accumulated against a new retail owner of the same retail location.



Note: Retailers will not be subject to penalties under this section in 2004 because the 2003 official statewide rate of illegal tobacco sales to minors was 12.2 percent, which is below the 13 percent “trigger” required by the law.

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

PENALTY: If the most recent official youth purchase survey conducted pursuant to Business and Professions Code section 22952 finds that 13 percent or more youth were able to purchase cigarettes, the following penalties apply:

- Upon a first conviction, the retailer shall receive a warning letter from the BOE and shall receive training from the California Department of Health Services.
- Upon a second conviction within 12 months, the retailer shall be fined \$500.
- Upon a third conviction within 12 months, the retailer shall be fined \$1,000.
- Upon a fourth to seventh conviction within 12 months, the BOE shall suspend the retailer’s license for 90 days.
- Upon an eighth conviction within 24 months, the board shall revoke the retailer’s license.

67. DISTRIBUTOR AND WHOLESALER LICENSE REQUIREMENTS

California Business and Professions Code Sections 22975–22977.2

SCOPE: By June 30, 2004, tobacco distributors and wholesalers must be licensed by the Board of Equalization (BOE). This license requirement is in addition to the license requirements in the California Revenue and Taxation Code (see below in this entry for descriptions of the applicable California Revenue and Taxation Code provisions). The distributor or wholesaler must pay an annual license fee of \$1,000. The license is not assignable or transferable, and it must be renewed annually. A distributor or wholesaler may not obtain a license if that distributor or wholesaler has been issued a license that is suspended or revoked. Licenses will not be issued for any business where a license has been suspended or revoked in the last five years, unless a new owner obtained the business in an arms-length transaction.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: The BOE will suspend, revoke, or decline to grant a license if the distributor or wholesaler has not complied with specified license and tax laws. (See entries 69-71, 74-76, and 79.)

California Revenue and Taxation Code Sections 30140–30149

SCOPE: Tobacco distributors must be licensed by the Board of Equalization (BOE) for each place of business. License applicants must submit a security deposit (minimum of \$1,000) to the BOE. The security is conditioned upon the lawful performance of all tobacco tax related requirements.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: The license may be revoked for failure to comply with applicable rules and regulations. Distributing without a license is a misdemeanor.

California Revenue and Taxation Code Sections 30155–30159

SCOPE: Tobacco wholesalers must be licensed separately for each place of business. This free license must be prominently displayed at each place of business.

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

PENALTY: The license may be suspended or revoked for failure to comply with applicable rules and regulations. Engaging in wholesaling without a license is a misdemeanor.

68. DISTRIBUTOR AND WHOLESALER REPORTING REQUIREMENTS

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

SCOPE: Any distributor or wholesaler of tobacco products, and any cigarette vending machine operator, shall annually report to the California Department of Health Services, the names and addresses of those persons to whom they provide tobacco products, including dealers.

Cigarette vending machine operators granted a seller's permit shall annually report to the department the name and the address of each location where cigarette vending machines are placed. The data provided shall be deemed confidential by the department and shall be exempt from



disclosure under the California Public Records Act.

ENFORCEMENT: The Food and Drug Branch (FDB) of the California Department of Health Services or delegated local law agencies may enforce this law.

Note: No local law enforcement agencies currently have this delegated authority, so this law is enforced exclusively by the FDB.

PENALTY: Not specified.

69. POSSESSION OR SALE OF UNSTAMPED PACKAGES BY RETAILERS, DISTRIBUTORS, OR WHOLESALERS

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

SCOPE: Retailers, distributors, wholesalers, and all other persons are prohibited from possessing, storing, owning, or selling a package of cigarettes that bears a counterfeit tax stamp or that lacks a tax stamp. (See entry 55 for more information on tax stamps.)

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

PENALTY: The unstamped packages are subject to seizure and forfeiture, and violations are misdemeanors punishable by the following:

- If less than 20 packages are seized: For a first violation, a fine of \$1,000, imprisonment not to exceed one year, or both; for a second or subsequent violation within 5 years, a fine of \$2,000 to \$5,000, imprisonment not to exceed one year, or both, and the license shall be revoked.
- If 20 or more packages are seized: For a first violation, a fine of \$2,000, imprisonment not to exceed one year, or both; for a second or subsequent violation within 5 years, a fine of \$5,000 to \$50,000, imprisonment not to exceed one year, or both, and the license shall be revoked.
- In addition, the penalties listed in entry 77 apply.



70. POSSESSION OR SALE OF TOBACCO PRODUCTS ON WHICH TAX IS DUE BY RETAILERS, DISTRIBUTORS, OR WHOLESALERS

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

SCOPE: Retailers, distributors, wholesalers, and all other persons are prohibited from possessing, storing, owning, or selling a tobacco product on which tax is due. Retailers, distributors, and wholesalers have the burden of proving that the tax has been paid.

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

PENALTY: The illegal packages are subject to seizure and forfeiture. In addition, the penalties listed in entry 77 apply.

71. REVOCATIONS FOR TAX LAW VIOLATIONS BY RETAILERS, DISTRIBUTORS, OR WHOLESALERS

California Business and Professions Code Sections 22974.4, 22978.6

SCOPE: The license of a retailer, distributor, or wholesaler shall be revoked if (1) the license-holder has been convicted of a felony pursuant to California Revenue and Taxation Code sections 30473 or 30480 (relating to counterfeiting and tax evasion); or (2) the license-holder has had any permit or license revoked under any provision of the California Revenue and Taxation Code.

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

PENALTY: Revocation of the license.

72. MANUFACTURER AND IMPORTER LICENSE REQUIREMENT

California Business and Professions Code Section 22979

SCOPE: Commencing on January 1, 2004, every manufacturer and importer must be licensed by the Board of Equalization (BOE). In order to obtain and maintain a license, the manufacturer or importer must:

- Supply a list to the BOE of all brand families manufactured or imported, and update the list whenever necessary to keep the list accurate.
- Consent to the jurisdiction of the California courts for the purposes of enforcing the tobacco licensing laws.
- Certify upon application for a license and annually thereafter that the



manufacturer is a participating manufacturer in the Master Settlement Agreement or is in full compliance with California law regarding non-participating manufacturers.

- Certify upon application for a license and annually thereafter that all packages manufactured or imported comply with the tax stamp/meter impression laws (see entry 55) and with the ingredient reporting provisions of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. section 1335a).

ENFORCEMENT: The BOE has the authority to grant, suspend, and revoke licenses issued under this law.

PENALTY: The BOE will suspend, revoke, or decline to grant a license if the manufacturer or importer has not complied with specified license and reporting requirements.

73. MANUFACTURER AND IMPORTER ADMINISTRATIVE FEE

California Business and Professions Code Section 22979.2

SCOPE: On or before January 1, 2004, every manufacturer and importer must pay an administrative fee of one cent per package of cigarettes manufactured or imported by the manufacturer or importer and shipped into California in 2001. This law contains special rules for manufacturers and importers that begin operations in California after the law's enactment.

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

PENALTY: The penalties listed in entry 77 apply.

74. RECORD RETENTION BY ALL LICENSEES

California Business and Professions Code Sections 22974, 22978.1, 22979.4

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

ENFORCEMENT: The BOE and state and local law enforcement agencies are authorized to enforce this law.

PENALTY: The penalties listed in entry 77 apply.



75. TRANSACTIONS WITH OTHER ENTITIES SUBJECT TO THE LICENSING ACT

California Business and Professions Code Section 22980.1

SCOPE: No entity shall sell or purchase tobacco products to or from an entity that is required to be licensed under the Licensing Act but that does not have a license or that has a suspended or revoked license. No entity shall acquire any package of cigarettes to which the required tax stamp or meter impression may not be properly affixed (see entry 55) or that fails to comply with the ingredient reporting provisions of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. section 1335a).

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

PENALTY: The penalties listed in entry 77 apply.

76. SALES BY AN UNLICENSED ENTITY

California Business and Professions Code Section 22980.2

SCOPE: It is a misdemeanor to sell tobacco products without the license required by the Licensing Act.

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

PENALTY: The penalties listed in entry 77 apply. Each day of continued sales without a valid license after notification by a law enforcement agency that a valid license is required shall constitute a separate violation. Continued sales after notification by the BOE that a license has been suspended or revoked shall result in the seizure and forfeiture of all tobacco products in the possession of the person making such sales.

77. PENALTIES APPLICABLE TO ALL LICENSEES

California Business and Professions Code Section 22981

SCOPE: Except as otherwise provided, any violation of the Licensing Act is a misdemeanor.

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

PENALTY: Each offense shall be punished by a fine not to exceed \$5,000, imprisonment not to exceed one year, or both.



California Business and Professions Code Sections 22974.7, 22978.7, 22979.7

SCOPE: In addition to any other penalty, the Board of Equalization (BOE) may suspend or revoke a license upon a finding that a licensed retailer, distributor, wholesaler, manufacturer, or importer has violated any provision of the Licensing Act.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: In addition to any other penalty for violations of the Licensing Act, the BOE may (1) for a first offense, revoke or suspend a license; and (2) for a second or subsequent offense, revoke or suspend a license, and impose a civil penalty not to exceed the greater of five times the retail value of the tobacco products, or \$5,000.

California Business and Professions Code Section 22980.3

SCOPE: In addition to any other fines or penalties for violations of the Licensing Act, the Board of Equalization (BOE) may suspend or revoke a license upon a conviction under the Licensing Act or the tobacco tax laws.

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: For a first conviction, the penalty is a written notice from the BOE detailing the suspension and revocation provisions of this law, and the BOE at its discretion may suspend the license for up to 30 days. For a second conviction within four years, the license shall be revoked, but a previously licensed applicant may apply for a new license six months after a revocation. Violations at one location are not counted against other locations of that same licensee or against a new owner at the same licensed location.

78. BOARD OF EQUALIZATION LICENSING DATABASE

California Business and Professions Code Sections 22973.2, 22978, 22979.3

SCOPE: Upon request, the Board of Equalization shall provide its database of licenses issued to retailers, distributors, wholesalers, manufacturers, and importers to the California Department of Health Services, the office of the Attorney General, a law enforcement agency, or any agency authorized to enforce local tobacco control ordinances. The database may be used only for the purposes of enforcing tobacco control laws, and its use must

adhere to all state laws, policies, and regulations governing the use of personal information and privacy.

ENFORCEMENT: Not applicable.

PENALTY: Not applicable.

79. INSPECTIONS

California Business and Professions Code Section 22980

SCOPE: Any peace officer or authorized Board of Equalization (BOE) employee may enter and inspect any place where tobacco products are sold, produced, or stored or any site where evidence of activities involving evasion of tobacco product taxes may be discovered.

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

PENALTY: The penalties listed in entry 77 apply to anyone who fails to permit an inspection.

California Revenue and Taxation Code Sections 30435–30436, 30471

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

ENFORCEMENT: The BOE is authorized to enforce this law.

PENALTY: Tobacco products that violate the tobacco tax laws are subject to seizure and forfeiture to the state. Refusal to allow an inspection is a misdemeanor punishable by a fine not to exceed \$1,000 for each offense.

80. TAX CONSEQUENCES OF DISTRIBUTING WITHOUT A LICENSE

California Revenue and Taxation Code Sections 30210–30216

SCOPE: If anyone becomes a tobacco distributor without first securing a license, the tax on all distributed tobacco products becomes due immediately.

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

PENALTY: Unless the failure to secure a license was due to a reasonable



cause, violators are liable for a penalty of 25 percent of the amount of the tax due or \$500, whichever is greater.

81. MANUFACTURER CERTIFICATION

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

SCOPE: A manufacturer must make an annual certification to the Attorney General that it is a signatory to the Master Settlement Agreement or has complied with California law regarding non-participating manufacturers. The certification must include a complete list of brand families.

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

ENFORCEMENT: The Board of Equalization and the Attorney General are authorized to enforce this law.

PENALTY: False certifications knowingly made are a misdemeanor punishable by a fine of not more than \$1,000, up to one year in county jail, or both.

82. ATTORNEY GENERAL DIRECTORY OF COMPLIANT MANUFACTURERS

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

SCOPE: Not later than June 30, 2004, the Attorney General shall publish and maintain a website directory listing manufacturers who have complied with the required certification and listing all certified brand families of the manufacturer.

No one shall affix a tax stamp or meter impression to any package of cigarettes unless the brand family is included on the Attorney General's directory. No one shall sell, offer, possess for sale, or import for personal consumption cigarettes of a brand family not included in the Attorney General's directory. No one shall acquire, hold, own, possess, transport, or import cigarettes that the person knows or should know are intended to be distributed in violation of the requirement that tax stamps and meter impressions may only be affixed to packages of cigarettes whose brand families are included on the Attorney General's directory.

ENFORCEMENT: The Board of Equalization (BOE) and the Attorney General are authorized to enforce this law.

PENALTY: A violation shall constitute a misdemeanor and unfair competition under Business and Professions Code section 17200. In addition, distributors who violate this law are subject to a license revocation or suspension for the first offense. For the second or subsequent offense, the BOE may revoke or suspend the distributor's license and may impose a civil penalty not to exceed the greater of five times the retail value of the cigarettes or \$5,000.





MASTER SETTLEMENT AGREEMENT (MSA) FUNDS

83. MSA PAYMENTS

Master Settlement Agreement Sections IX, XI; Exhibit A

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

Note: California's share of the payments amounts to approximately \$1 billion per year. Half of that money is allocated to the state and half to local governments within the state.

ENFORCEMENT: The state Attorney General may enforce these provisions.

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

84. MSA BONDS

California Government Code Sections 63049–63049.5

SCOPE: California law allows the state to generate revenue for its general fund by selling tobacco bonds that are backed by the future flow of payments to the state by tobacco companies as required by the Master Settlement Agreement (MSA). (See entry 83 for a description of the MSA payments.)

Note: In January 2003, California sold \$3 billion in bonds that are backed by the tobacco company payments due to the state under the MSA. In September 2003, California sold an additional \$2.5 billion in bonds.

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

ENFORCEMENT: Not applicable.

PENALTY: Not applicable.



85. APPEAL BONDS

California Health and Safety Code Section 104558

SCOPE: In a civil lawsuit involving a tobacco company that has signed the Master Settlement Agreement (MSA) or that involves a successor or affiliate of such a company, the amount of the bond to be furnished during the course of an appeal shall not exceed 100 percent of the verdict or \$150 million, whichever is less. The stated purpose of the appeal bond cap is to secure the funds owed to the state by tobacco companies as required by the MSA.

EXCEPTION: If the opposing party proves by a preponderance of the evidence that a tobacco company is intentionally dissipating or diverting assets outside the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the cap may be lifted and the court may order any actions necessary to prevent dissipation or diversion of the assets.

ENFORCEMENT: The court shall set the amount of the appeal bond.

PENALTY: Not applicable.



RELATED LAWS



86. AMERICANS WITH DISABILITIES ACT (ADA)

42 U.S.C. Sections 12101–12213

SCOPE: The federal Americans with Disabilities Act (ADA) prohibits discrimination against disabled individuals. (42 U.S.C. section 12112(a).) The law applies to employers with at least 15 employees and to those who operate places where the public is invited, such as restaurants, hotels, and theaters. (42 U.S.C. section 12111(5); 42 U.S.C. section 12182.) The ADA defines a “disability” as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. (42 U.S.C. section 12102(2).)

Note: For example, a person may be “disabled” under the law if s/he is a severe asthmatic whose breathing is substantially limited.

Under the ADA, employers must provide reasonable accommodation to qualified disabled employees unless that accommodation causes an undue hardship. (42 U.S.C. sections 12112(b)(5)(A); 12111(9),(10).) In addition, places of public accommodation may not deny patrons with disabilities an equal opportunity to enjoy the goods, services, facilities, privileges, advantages, or accommodations of such a place. (42 U.S.C. section 12182.)

Note: The ADA may be used as a mechanism for disabled persons to enforce existing laws against smoking. For example, although there are no reported cases on this issue, a California bar owner who knowingly allows smoking in the bar in the presence of a disabled employee or patron may be violating the ADA, in addition to other laws.

ENFORCEMENT: Individuals may file a complaint with the Equal Employment Opportunity Commission (EEOC) or with the California Department of Fair Employment and Housing (DFEH). (42 U.S.C. section 2000e-5.) The EEOC and DFEH are obligated to investigate the complaint. A private lawsuit may be filed if the EEOC and DFEH do not file an action based on the complaint.

PENALTY: Financial penalties (limited based on the number of employees), injunctive relief (a court order to stop the violation of the ADA), and attorneys’ fees are available. (42 U.S.C. section 1981a, 42 U.S.C. section 2000e-5.)



87. FAIR EMPLOYMENT AND HOUSING ACT— CALIFORNIA (FEHA)

California Government Code Sections 12900–12996

SCOPE: The California Fair Employment and Housing Act (FEHA) prohibits discrimination based on physical disability, mental disability, or medical condition.

The law applies to both private and public employers with five or more employees. (California Government Code section 12926(d).) The law also applies to most housing accommodations. (California Government Code section 12955.) Under the law, a “physical disability” includes physiological and anatomical conditions that limit a person’s ability to participate in major life activities. (California Government Code section 12926(k).)

Note: This law is broader than the ADA, which requires a disability to “substantially” limit a major life activity. As with the ADA, a person may be “disabled” under the law if s/he is hypersensitive to tobacco and tobacco exposure interferes with a major life activity, such as breathing. (See *County of Fresno v. Fair Employment & Housing Comm’n*, 226 Cal. App. 3d 1541, 1548-1550 (1991).)

Under the FEHA, employers must engage in an interactive process to determine what accommodation is reasonable and must provide reasonable accommodation to qualified disabled employees unless that accommodation causes an undue hardship. (California Government Code section 12940(m),(n).) A landlord must allow a disabled person to make reasonable modifications to the premises. (California Government Code section 12927(c).)

Note: Like the ADA, FEHA may be used as a mechanism for disabled employees to enforce existing laws against smoking. For example, although there are no reported cases on this issue, a California bar owner who knowingly allows smoking in the bar in the presence of a disabled employee may be violating the FEHA, in addition to other laws. And, in the housing context, disabled individuals are entitled to reasonable accommodations and/or modifications of policies from their landlords to ensure equal access to and enjoyment of their housing.

ENFORCEMENT: Individuals may file a complaint with the California Department of Fair Employment and Housing (DFEH). (California Government Code sections 12960, 12980.) A private lawsuit may be filed if the DFEH does not take action within 150 days after the complaint is filed. (California Government Code section 12965(b).)



PENALTY: Financial penalties, injunctive relief (a court order to stop the violation of the law), and attorneys' fees are available. (California Government Code section 12965(b); California Code of Regulations, Title 2, section 7286.9.)

88. PROPOSITION 65

California Health and Safety Code Sections 25249.5–25249.13

SCOPE: The “Safe Drinking Water and Toxic Enforcement Act of 1986” requires notification to the public about exposure to chemicals known to the State of California to cause cancer or reproductive toxicity. This law applies to exposure to tobacco smoke. Warnings need not be made to each exposed individual. Instead, warnings may be provided by general methods such as posting notices and labels on consumer products, so long as the notice is clear and reasonable.

EXCEPTION: The law applies only to exposures that are made knowingly and intentionally. (California Health and Safety Code section 25249.6.)

ENFORCEMENT: Actions may be brought by the state Attorney General, a district attorney, a city attorney of a city with a population larger than 750,000, a full-time city prosecutor (with the consent of the district attorney), or an individual acting in the public interest.

PENALTY: Violators may be subject to an injunction to stop the violation and shall be liable for a civil penalty not to exceed \$2,500 per day for each violation.

89. UNFAIR COMPETITION LAW

California Business and Professions Code Sections 17200–17209

SCOPE: Any person who engages, has engaged, or proposes to engage in an unfair, unlawful, or fraudulent business act or practice shall be liable for a civil penalty.

Note: This general law can be used as a mechanism to enforce any tobacco control law being violated. For example, violating a tobacco control law could entail unfair competition if the violation results in increased business. The law has been used against retailers who sell tobacco to minors in violation of California Penal Code section 308. It also has been used against restaurant and bar owners who allow smoking in their establishments in violation of California Labor Code section 6404.5.



ENFORCEMENT: The law may be prosecuted by the state Attorney General, any district attorney, any private individual, or, with the consent of the district attorney in certain cases, by a county counsel, city attorney, or city prosecutor.

PENALTY: Violators are subject to an injunction to stop the behavior and a civil penalty of up to \$2,500 for each violation.





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