

State Legislated Actions on Tobacco Issues 2009

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The American Lung Association assumes sole responsibility for the content of the 21st edition of SLATI.

Disclaimer

State Legislated Actions on Tobacco Issues, 21st Edition, 2009, is strictly for informational purposes and does not constitute legal services or representation. For legal advice, a practicing attorney who has a thorough knowledge of the current law in the state or locality and who is informed about all the relevant details of the situation should be consulted.

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American Lung Association
Washington National Office
1301 Penn. Ave., NW, Suite 800
Washington, DC 20004-1725
Phone: (202) 785-3355
Fax: (202) 452-1805
www.lungusa.org

American Lung Association
New York National Office
14 Wall Street, Suite 8C
New York, NY 10005
Phone: (212) 315-8700
Fax: (212) 608-3219
www.lungusa.org

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Foreword

State Legislated Actions on Tobacco Issues (SLATI) 2009 is the American Lung Association's comprehensive annual summary of state tobacco control laws. It provides information on state tobacco control laws in a number of different areas, including smoking restrictions, tobacco taxes, laws restricting youth access to tobacco products and funding for state tobacco prevention and cessation programs as of January 2, 2010.

SLATI has been published every year since 1988 and exclusively by the American Lung Association since 1996. The report is the only resource of its kind—summarizing state tobacco control laws on an annual basis.

Key Highlights of 2009:

Smoking Restrictions: Two states—Michigan and Wisconsin—approved legislation that will prohibit smoking in almost all public places and workplaces, including restaurants and bars. Both laws take effect in 2010. These states join 23 other states¹ and the District of Columbia that have already met the American Lung Association's *Smokefree Air Challenge* by passing comprehensive smokefree workplace laws.

South Dakota also passed legislation closing loopholes in its current law that allows smoking in restaurants, bars and gaming establishments in 2009. However, opponents were successful in referring the law to the ballot in November 2010 where voters will decide whether to let the law take effect.

North Carolina took an historic step in 2009 by prohibiting smoking in all restaurants and bars statewide. That the number one tobacco-producing state in the country can protect its workers in restaurants and bars from secondhand smoke sends a strong message, any state can pass these lifesaving laws.

Tobacco Excise Taxes: A whopping 14 states—Arkansas, Connecticut, Delaware, Florida, Hawaii, Kentucky, Mississippi, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, Vermont and Wisconsin—as well as the District of Columbia increased their state cigarette taxes in 2010. As of January 1, 2010, the average state cigarette tax stood at \$1.34 per pack—an increase of 15 cents since January 1, 2009, and a dramatic increase from only 44.6 cents per pack on January 1, 2002.

Rhode Island took over the top cigarette tax rate in the country at \$3.46 per pack, becoming the first state to have a cigarette tax rate of over \$3.00 per pack. Connecticut also increased its cigarette tax to \$3.00 per pack in 2009. Eleven other states—Alaska, Arizona, Hawaii, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Vermont and Washington—as well as the District of Columbia have a cigarette tax of \$2.00 or higher. South Carolina continues to have the lowest cigarette tax in the country at 7 cents per pack. New York City, NY continues to have the highest combined state and local cigarette tax at \$4.25 per pack.

Higher cigarette taxes keep children from starting to smoke, motivate adults to stop and reduce future tobacco-related health care costs.² For instance, Rhode Island's cigarette tax increased from 71 cents in 2001 to \$2.46 in 2007, and their high school smoking rate has decreased from 24.8 percent in 2001 to 15.1 percent in 2007, one of the lowest in the country.³ Cigarette tax increases also raise revenue, a portion of which can and should be used to fund tobacco prevention and cessation programs. In FY2010, six states—Arizona, California, Colorado, Michigan, Oregon and South Dakota—are funding their entire tobacco prevention and cessation programs through tobacco excise tax revenues. Five more states—Idaho, Iowa, Louisiana, Oklahoma and Utah—use tobacco tax revenue to partially fund their programs.

Tobacco Control Program Funding: Sadly, despite the large number of states increasing their cigarette taxes, a large number of states also slashed funding for vital tobacco prevention and cessation programs in fiscal year 2010 (July 1, 2009 to June 30, 2010 for most states). In fact, seven states—Colorado, Maryland, Massachusetts, New York, Pennsylvania, Washington and Wisconsin—and the District of Columbia cut funding for their programs by over 25 percent from the previous fiscal year. New Hampshire is spending no state money on tobacco prevention and cessation programs in FY2010 despite increasing its cigarette tax by 45 cents per pack in 2009.

However, there was good news in North Dakota where funding was increased substantially, bringing the state above the level recommended by the U.S. Centers for Disease Control and Prevention (CDC)

when federal funding from CDC is included. It is the only state funding at or above CDC's recommended level⁴ in FY2010. The funding increase was driven by a ballot initiative approved by North Dakota voters in November 2008. Four other states—Arkansas, Florida, Oklahoma and South Carolina—also increased funding by a significant amount for tobacco prevention/cessation programs in FY2010.

Evidence shows that tobacco prevention and cessation programs are a wise investment for states. A study published in the January 2008 issue of the *American Journal of Public Health* found that if all states spent the initial minimum levels recommended by CDC on tobacco control programs between 1995 and 2003, there would have been between 2.2 million and 7.1 million fewer smokers.⁵ Despite this and other evidence, very few states are funding tobacco prevention and cessation programs at levels that would truly make a difference.

SLATI Online

The American Lung Association's *State Legislated Actions on Tobacco Issues (SLATI)* is also available online at <http://slati.lungusa.org> and that version is updated regularly to reflect changes in laws taking effect throughout the year. We hope that all readers will find *SLATI* informative and an incentive to join with the American Lung Association in the fight against the nation's number one preventable cause of death and disease, tobacco use. To get involved, call 1-800-LUNGUSA or go to www.lungusa.org.



Charles D. Connor
President and Chief Executive Officer

1. Additional states that have passed comprehensive smokefree air laws: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Utah, Vermont and Washington.
2. It is estimated that a 10 percent increase in the price of cigarettes decreases consumption by 7 percent for youth and 4 percent for adults. See Tauras, J., et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001.
3. Centers for Disease Control and Prevention. Youth Risk Behavior Survey, 2001 and 2007.
4. To see CDC's recommended funding level for each state, go to: http://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm.
5. Farrelly MC, Pechacek TF, Thomas KY, Nelson D. The Impact of Tobacco Control Programs on Adult Smoking. *Am J Public Health*. 2008 Feb.; 98(2): 304-9.

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This overview summarizes state tobacco control laws in effect in all 50 states and the District of Columbia in the different areas covered by State Legislated Actions on Tobacco Issues (SLATI) as of January 2, 2010.

A Restrictions on Smoking in Public Places and Workplaces

All 50 states and the District of Columbia have laws/policies restricting or prohibiting smoking in certain places.

- 23 states—Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Utah, Vermont and Washington—and the District of Columbia prohibit smoking in almost all public places and workplaces, including restaurants and bars.
- 3 states—Michigan, South Dakota and Wisconsin—have passed legislation prohibiting smoking in almost all public places and workplaces, including restaurants and bars, but the laws have not taken effect yet.
- New Hampshire and North Carolina prohibit smoking in some public places, including all restaurants and bars.
- 4 states—Florida, Idaho, Louisiana and Nevada—prohibit smoking in most public places and workplaces, including restaurants, but exempt stand-alone bars;
- 18 states prohibit smoking in some, but not all public places and workplaces and/or limit smoking indoors to designated areas or rooms.

In addition, 12 states partially or totally prevent (preempt) local communities from passing laws/ordinances restricting smoking stronger than state law.

B Tobacco Excise Taxes

Taxes on Cigarettes:

All 50 states and the District of Columbia impose an excise tax on cigarettes. These taxes range

from a high of \$3.46 per pack in Rhode Island to a low of \$0.07 per pack in South Carolina. The national average for state cigarette excise taxes (as of January 1, 2010) is \$1.34 per pack.

- 14 states—Arkansas, Connecticut, Delaware, Florida, Hawaii, Kentucky, Mississippi, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, Vermont and Wisconsin—as well as the District of Columbia increased their tax on cigarettes in 2009.
- 3 states—Massachusetts, New Hampshire and New York—and the District of Columbia increased their cigarette tax in 2008; Hawaii and Vermont implemented scheduled increases passed in previous years.

Taxes on Tobacco Products Other Than Cigarettes:

Forty-nine states and the District of Columbia have excise taxes on tobacco products other than cigarettes. Pennsylvania is the only state that does not impose a tax on other tobacco products (except little cigars are taxed at the same rate as cigarettes).

- In 31 states, the excise tax is calculated as a percentage of the wholesale sales price to retailers, the manufacturer's invoice price or the price at which the tobacco entered the state.
- 18 states—Alabama, Arizona, Connecticut, Delaware, Iowa, Kentucky, Maine, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, Texas, Utah, Vermont and Wyoming—and the District of Columbia tax some or all tobacco products by the weight of the tobacco package.

In addition:

- 7 states—Hawaii, Iowa, Massachusetts, New Hampshire, New Mexico, Pennsylvania and Vermont—and the District of Columbia have tried to address the problem of certain cigarettes being sold as “little cigars” by adding language to the definition of cigarette to include “little cigars” or by establishing special tax rates for certain “little cigars” that equal the state's cigarette tax rate.

C Youth Access

Age Restrictions on Sales of Tobacco Products:

All 50 states and the District of Columbia prohibit the sale of tobacco products to minors. Most states define minors as persons less than 18 years of age; however, four states—Alabama, Alaska, New Jersey and Utah—define minors as persons less than 19 years of age. Also:

- 38 states and the District of Columbia require retailers to post signs at or near the point of purchase stating that selling tobacco products to minors is illegal.
- 18 states and the District of Columbia require a person selling tobacco products to check the identification of a purchaser who appears to be under a certain age.

Minor Purchase/Possession/Use of Tobacco Products:

Forty-five states penalize minors for tobacco-related offenses. Of these states, 38 states prohibit minors from possessing and/or using tobacco products. Penalties for violation often include a fine and/or alternative penalties like the following:

- 26 of these states order minors who are guilty of a tobacco-related offense to perform community service as well as, or in lieu of, a fine.
- 9 of these states—Florida, Minnesota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas and Vermont—may suspend the driver's license of a minor who violates their law.
- 17 states—Colorado, Florida, Georgia, Idaho, Illinois, Missouri, Montana, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington and Wyoming—require minors to attend smoking education/cessation programs in addition to, or in lieu of, other penalties.

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

Placement of Tobacco Products:

Twenty-six states—Alabama, Alaska, Arkansas,

California, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont and Wyoming—restrict customer access to cigarettes and/or tobacco products in retail stores.

- 10 of these states—Alabama, Alaska, California, Idaho, Massachusetts, New Mexico, New York, Oklahoma, Oregon and Wyoming—completely prohibit customers from having direct access to all tobacco products in retail stores, and/or have language prohibiting the use of self-service displays.

Almost all of the above laws do not apply to tobacco retail/specialty stores, which are often required to prohibit persons under 18 (or 19 in certain states) from entering.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Tobacco Product Samples:

Twenty-two states and the District of Columbia restrict where free samples of tobacco products can be distributed to the general public or virtually prohibit the free distribution of tobacco products entirely.

- Minnesota and Massachusetts prohibit the sampling of tobacco products entirely except for single-serving samples distributed in tobacco stores.
- Nebraska bans samples, coupons and rebate offers for smokeless tobacco products.
- Oregon prohibits sampling of smokeless tobacco products in places/areas where persons under 21 are not allowed to enter.
- 5 states—Connecticut, New York, Utah, Washington and Wisconsin—and the District of Columbia prohibit giving away samples except in specific locations such as places inaccessible to minors, and/or in a manufacturer's place of business.
- 4 states—Hawaii, Idaho, Illinois and New Hampshire—prohibit giving away samples of tobacco products in many public places.
- The remaining 9 states restrict sampling to specific venues or within a certain distance

of schools when minors are using them.

All 50 states and the District of Columbia prohibit the distribution of tobacco products to minors.

Minimum Tobacco Product Sales Amounts:

30 states and the District of Columbia prohibit selling cigarettes in packs of less than 20 and/or as single cigarettes. Of those:

- 11 states—Alabama, Colorado, Hawaii, Louisiana, Maine, Montana, New Jersey, Ohio, Rhode Island, Vermont and West Virginia—explicitly prohibit cigarette sales in packs of less than 20 and as single cigarettes.
- 12 states—Arizona, California, Connecticut, Delaware, Iowa, Kentucky, Maryland, New York, North Dakota, Tennessee, Texas and Utah—prohibit cigarette sales in packs of 20, but do not include language prohibiting sales of single cigarettes.
- 7 states—Arkansas, Illinois, Massachusetts, Michigan, Missouri, New Hampshire and Pennsylvania—and the District of Columbia prohibit sales of single cigarettes, but do not include language prohibiting cigarette sales in packs of less than 20.

In addition, among all 50 states and the District of Columbia:

- 25 states require cigarettes and sometimes other tobacco products to be sold in their original packaging as placed there by the manufacturer. Among these:
 - 10 states make all tobacco products subject to this requirement
 - 4 states make some or most tobacco products subject to this requirement
 - 11 states make only cigarettes subject to this requirement
- 11 states prohibit sales of roll-your-own tobacco in an individual package or container that contains less than 0.6 ounces of tobacco.

E Restrictions on Sales of Tobacco Products in Vending Machines

Forty-eight states and the District of Columbia restrict the placement of tobacco product vending machines; only New Hampshire and New Jersey do not.

- Idaho and Vermont prohibit the sale of tobacco products through vending machines.
- 19 states prohibit tobacco vending machines everywhere except for bars, taverns and other places where minors are not permitted by law.
- Nevada prohibits vending machines except in public areas where people under 21 years of age are prohibited from loitering.
- 26 states otherwise restrict vending machine access or locations

Twenty-five states require owners, operators and/or supervisors of tobacco vending machines to post warning signs on the machines advising of age restrictions for purchase or sales.

F Tobacco Licensing Requirements

All 50 states and the District of Columbia require the licensing of certain entities that sell tobacco products. Licensing laws range from requiring only distributors, or the party responsible for payment of excise taxes, to have licenses (Arizona and Illinois) to requiring wholesalers, distributors, manufacturers, retailers and vending machine operators to obtain licenses (Arkansas and California).

- Laws in 27 states and the District of Columbia include provisions that penalize a retailer who furnishes tobacco products to minors by a possible suspension or revocation of their license for multiple offenses.

G Smoking Protection Laws

Regrettably, 29 states and the District of Columbia have passed some form of smoker protection legislation that prohibits some or all employers from discriminating against employees or prospective employees based on their use of tobacco products. The American Lung Association does not support elevating smokers to a protected class.

H Advertising and Promotion

Eight states and the District of Columbia have some restrictions on tobacco advertising and promotion.

- Texas prohibits tobacco advertising within 1,000 feet of a church, public or private school and requires purchasers of tobacco

advertising to pay a fee of 10 percent of the gross sales price of any tobacco advertising.

- California restricts tobacco advertising in all state-owned buildings and billboard advertising within 1,000 feet of any public school or playground.
- Kentucky prohibits tobacco billboard advertising within 500 feet of schools.
- Illinois, Michigan and West Virginia require health warnings to be posted on smokeless tobacco billboard advertising.
- Utah prohibits the display on any billboard, streetcar, sign, bus or placard of an advertisement for tobacco products, except that dealers in tobacco products may have a sign at their place of business indicating that they sell tobacco.
- Delaware prohibits advertising any tobacco products within 200 feet of any public or private school but does not prohibit the display of any message or advertisement opposing the use of tobacco products. In addition, any such message or advertisement may not contain the brand name of any tobacco product or the name of any tobacco company.
- The District of Columbia prohibits all tobacco advertising on the Washington Metropolitan Area Transit System, which operates its bus and subway systems.

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

I Tobacco Product Disclosure

Six states require tobacco product disclosure information. Requirements include:

- Massachusetts and Texas require tobacco manufacturers to disclose any added constituent of tobacco products other than tobacco, water and reconstituted tobacco sheet made wholly from tobacco.
- Massachusetts, Texas and Utah require disclosure of the nicotine yield for each brand of cigarettes.
- Minnesota and Utah require tobacco manufacturers to disclose any of the following substances in their unburned or burned states: ammonia or any compound of am-

monia, arsenic, cadmium, formaldehyde and lead.

- New Hampshire requires its state Department of Health and Human Services to obtain from the Massachusetts Department of Public Health a list of additives for each brand of tobacco products sold.
- Connecticut required its Commissioner of Public Health to issue regulations concerning how the commissioner will obtain nicotine yield ratings for each brand of tobacco product.

J Tobacco Divestment

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

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

K Tobacco Liability

Industry Protection:

Thirty-five states have enacted legislation that places a cap on the bond required to appeal lawsuit judgments that award money damages. Of these states:

- 14 states apply these caps on appeal bonds to all lawsuit judgments.
- 15 states apply the caps only to lawsuit judgments involving companies that signed the Master Settlement Agreement/separate state tobacco settlement.
- 2 states—Florida and Hawaii—have separate statutes applying a cap to both tobacco settlement signatories and all other parties.
- 4 states—Georgia, Idaho, Kentucky and Mississippi—apply these caps to the punitive damages portion of a lawsuit judgment only.

The amount of the cap on bonds to appeal lawsuit money judgments varies from state to state:

- 4 states—California, Hawaii, Minnesota and Oregon—have capped the appeal bond required at \$150 million;
- Alabama has set the limit at \$125 million;
- 8 states—Florida, Iowa, Kentucky, Mississippi, New Mexico, Pennsylvania, Washington and Wisconsin—have set the limit at \$100 million;
- Tennessee has set the limit at \$75 million;
- 7 states—Louisiana, Missouri, Nebraska, Nevada, New Jersey, Ohio and Rhode Island—have set the limit at \$50 million.
- 11 states—Arkansas, Colorado, Georgia, Indiana, Kansas, Michigan, North Carolina, Oklahoma, South Dakota, Texas and Virginia have imposed a limit of \$25 million.
- West Virginia has set the limit at \$100 million each for compensatory and punitive damages.
- Idaho has set the level at \$1 million for punitive damages only, while a judgment in South Carolina is automatically appealed.

Almost all of these laws include an exception for intentional dissipation of assets by the defendant. No appeal bond is required to appeal a lawsuit judgment in Connecticut, Maine, Massachusetts, New Hampshire and Vermont.

■ Use of Tobacco Settlement Dollars

Forty-six states and the District of Columbia receive annual payments from certain cigarette companies as part of the Master Settlement Agreement (MSA), a lawsuit settlement signed in 1998 between those states and the companies. Four states—Florida, Minnesota, Mississippi and Texas—settled their lawsuits separately with the cigarette companies prior to the MSA.

States account for and use the annual payments from the MSA in a variety of ways. Seventeen states—Alaska, Arkansas, California, Iowa, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Virginia, Washington, West Virginia and Wisconsin—and the District of Columbia have set up arrangements to sell to specified entities all or part of their annual Master Settlement Agreement revenue, which is also called securitization.

(Securitization involves selling or pledging

expected tobacco settlement payments to a state-created corporate entity for the purpose of issuing bonds backed by tobacco settlement funds. The state then receives a lump sum payment up front.)

■ Fire Safety Standards for Cigarettes

Forty-three states and the District of Columbia have laws in effect setting fire-safety standards for cigarettes to help prevent cigarette-caused fires. Six additional states—Mississippi, Missouri, Nevada, North Dakota, Ohio and South Dakota—have enacted legislation setting fire safety standards for cigarettes that had not taken effect yet as of January 2, 2010. The fire safety standards in all these states are identical to the standard in the first state to implement this type of legislation, New York.

■ Tobacco Control Program Funding

Forty-nine states and the District of Columbia have allocated money from annual Master Settlement Agreement payments, tobacco excise tax revenues and/or general fund revenue to tobacco control and prevention programs in FY2010 (July 1, 2009 to June 30, 2010 for most states).

- The amounts range from \$209,000 for tobacco prevention and cessation programs in Tennessee to \$77.1 million in California.
- New Hampshire is spending no new state money for tobacco prevention and cessation programs this fiscal year.
- In terms of a percentage of the level recommended by the Centers for Disease Control and Prevention (CDC), North Dakota ranks highest in its allocation of funds for tobacco prevention and cessation programs, and is the only state that funds its tobacco prevention and cessation program above the CDC-recommended level.

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TOBACCO CONTROL LEGISLATION PASSED IN 2009—BY ISSUE

Below is a quick summary of tobacco control legislation passed in 2009 by specific issue.

Smoking Restrictions/ Smokefree Air Laws:

- Nine states—Arkansas, Hawaii, Maine, Michigan, North Carolina, South Dakota, Vermont, Virginia and Wisconsin—strengthened their state laws restricting/prohibiting smoking in public places and workplaces.
- Illinois and Nevada added narrow exemptions and/or clarified penalty and enforcement provisions in their state laws restricting/prohibiting smoking in public places and workplaces.
- Nebraska and New Hampshire added an exemption for cigar bars to their state laws restricting/prohibiting smoking in public places and workplaces.
- Oregon passed a law requiring disclosure of smoking policies in most rental agreements involving multi-unit housing.
- Maine passed legislation prohibiting smoking in outdoor eating areas of restaurants and bars and certain outdoor areas in state parks and historic sites.

Tobacco Taxes:

- Fourteen states—Arkansas, Connecticut, Delaware, Florida, Hawaii, Kentucky, Mississippi, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, Vermont and Wisconsin—and the District of Columbia passed legislation increasing their tax on cigarettes.
- Twelve states—Arkansas, Connecticut, Florida, Hawaii, Kentucky, New Hampshire, New York, North Carolina, Rhode Island, Texas, Vermont and Wisconsin—increased their taxes on tobacco products other than cigarettes.
- Six states—Colorado, Montana, New Hampshire, New Jersey, Oregon and Washington—changed the way tobacco tax revenue is distributed in state law temporarily or permanently.
- Three states—Hawaii, New Mexico and Pennsylvania—changed their taxes on little cigars to match the tax rate on cigarettes.

- Six states—Maine, Nebraska, Oregon, Texas, Utah and Wyoming—and the District of Columbia changed their taxes on snuff/moist snuff to a weight-based tax; Wisconsin changed its weight-based tax on moist snuff back to a percentage of price tax.

Tobacco Settlement Dollars:

- Eleven states—Colorado, Hawaii, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Oklahoma, Utah and Washington—changed their state laws allocating Master Settlement Agreement (MSA) payments. Pennsylvania changed its law for FY2010 and FY2011 only.
- Mississippi passed a law putting a fee on cigarettes sold by manufacturers that have not signed on to the state's tobacco settlement agreement with certain cigarette companies.

Tobacco Cessation Coverage:

- Oregon and Rhode Island passed new laws or strengthened existing laws requiring private health insurers to cover tobacco cessation services.
- Colorado passed legislation expanding coverage for tobacco cessation services under certain policies/contracts providing coverage for health care services.
- Colorado also passed a law that allows private health insurers and the state high risk pool to offer incentives to beneficiaries participating in wellness and prevention programs, including programs that encourage tobacco cessation.
- Connecticut passed legislation setting up a system to provide additional people in the state with health insurance; tobacco cessation services would be part of the required standard benefits package once the law is implemented.

Fire-Safety Standards for Cigarettes:

- Eleven states—Alabama, Arkansas, Michigan, Mississippi, Missouri, Nebraska, New Mexico, Ohio, South Dakota and West Virginia—as well as the District of Columbia passed legislation setting fire-safety standards for cigarettes.

- New Hampshire and Pennsylvania amended existing laws setting fire safety standards for cigarettes.

Youth Access Laws/Tobacco Product Licensing:

- Eight states—Connecticut, Hawaii, Maine, New York, Ohio, Oklahoma, Rhode Island, Washington—amended or enacted new laws governing licensing or registration of entities that deal in tobacco products and/or increased license fees on such entities.
- Nine states—Alabama, Arkansas, Delaware, Illinois, Louisiana, Oregon, South Dakota, Utah, West Virginia—amended or enacted new laws restricting youth access to tobacco products.

Tobacco Liability:

- Florida and Oklahoma passed legislation amending laws that cap the amount of the bond required to appeal a lawsuit judgment.

Internet Sales of Tobacco Products:

- Four states—Maine, South Dakota, Utah and Washington—passed a law prohibiting the delivery, order and/or purchase of tobacco products ordered by mail or over the Internet to anyone in the state except specific licensed entities.
- Florida and Nevada passed new legislation or amended existing laws restricting sales of tobacco products ordered by mail or over the Internet.

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TOBACCO CONTROL LEGISLATION PASSED IN 2009—BY STATE

Below is a list and short description of state tobacco control legislation passed during 2009 in each state. The list primarily covers the areas of state tobacco control law that are tracked by [State Legislated Actions on Tobacco Issues \(SLATI\)](#).

ALABAMA

Tobacco Control Program Funding: Allocated \$751,480 to tobacco prevention and cessation programs in FY2010.

FY2010 MSA Payment Annual Budget (H.B. 383) enacted 5/13/09 and effective 10/1/09 & FY2010 General Appropriations (H.B. 746) enacted 5/14/09 and effective 10/1/09.

Youth Access Laws: Places restrictions on sales of tobacco products through vending machines, prohibits the sale of tobacco products via self service displays except in tobacco specialty stores, requires signs be posted at the point of purchase and on vending machines and prohibits minors from using false identification to purchase tobacco products.

H.B. 391 enacted 5/20/09 and effective 8/1/2009.

Fire Safety Standards: Requires all cigarettes sold in Alabama to self-extinguish when not being smoked to help prevent cigarette-caused fires.

S.B. 311 enacted 5/21/09 and effective 1/1/2010.

ALASKA

Tobacco Control Program Funding: Allocated \$8,115,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 81) enacted 5/21/09 and effective 7/1/09.

ARIZONA

Tobacco Control Program Funding: Allocated \$22,119,300 for tobacco control and prevention programs in FY2010.

FY2010/FY2011 Appropriations (S.B. 1188) enacted and effective 7/1/09 (FY2010) and 7/1/10 (FY2011).

ARKANSAS

Tobacco Control Program Funding: Allocated \$22,214,426 for tobacco prevention and cessation programs in FY2010.

FY2010 Tobacco Prevention and Control Program Budget (H.B. 1286) enacted 4/9/09 and effective 7/1/09 and Arkansas Tobacco Control Board - Youth Access Enforcement Budget (H.B. 1175) enacted 4/6/09 and effective 7/1/09.

Tobacco Taxes: Increases the cigarette tax by 56 cents to \$1.15 per pack and increases the tax on tobacco products other than cigarettes by 36% of the manufacturer's selling price.

H.B. 1204 enacted 2/17/09 and effective 3/1/09.

Smoking Restrictions/Smokefree Air: Prohibits smoking on the entire campus of state-supported institutions of higher education.

H.B. 2007 enacted 4/1/09 and effective 8/1/2010.

Tobacco Taxes: Changes the provisions regarding the tax on cigarettes in cities close to the state borders in Arkansas.

H.B. 1204 enacted and effective 2/17/09.

Youth Access Laws: Amends various provisions related to state laws on selling tobacco products to minors.

H.B. 1858 enacted 4/3/09 and effective 7/31/09.

Fire Safety Standards: Requires cigarettes sold in Arkansas to self-extinguish when not being smoked to help prevent cigarette-caused fires.

H.B. 1402 enacted 3/31/09 and effective 1/1/2010.

Novelty Lighters: Prohibits the sale or distribution of novelty lighters as specified and defined.

S.B. 154 enacted 3/10/09 and effective 7/31/09.

CALIFORNIA

Tobacco Control Program Funding: Appropriated \$77,123,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (S.B. 1, 3rd special session 2009) enacted 2/20/09 and effective 7/1/09 & FY2010 Budget Revisions (A.B. 1, 4th special session 2009) enacted and effective 7/28/09.

COLORADO

Tobacco Control Program Funding: Allocated \$11,100,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (S.B. 09-259) enacted 5/1/09 and effective 7/1/09; S.B. 09-271 enacted and effective 6/1/09; and Exec. Order D-017-09 issued 8/29/09 and effective 9/1/09.

Tobacco Cessation Coverage: Allows private health insurers and Colorado's high risk pool to offer incentives to beneficiaries participating in wellness and prevention programs, including programs that encourage tobacco cessation.

H.B. 09-1012 enacted 4/25/09 and effective 7/1/09.

Tobacco Taxes: Eliminates the state sales tax exemption for cigarettes for two years from July 1, 2009 to June 30, 2011. The exemption still applies to local sales taxes.

H.B. 09-1342 enacted 6/1/09 and effective 7/1/09.

Tobacco Cessation Coverage: Expands required coverage for tobacco cessation services under certain policies/contracts providing coverage for health care services.

H.B. 09-1204 enacted 6/1/09 and effective 1/1/2010.

Tobacco Taxes/Tobacco Control Program Funding: Authorizes the transfer of some or all monies in certain funds that receive tobacco tax revenues from the tobacco tax enacted by constitutional amendment for FY2010. Reduces the appropriation for tobacco prevention/cessation programs in FY2010.

S.B. 09-271 enacted and effective 6/1/09.

Tobacco Taxes: Declares a state fiscal emergency for FY2010, which allows revenue from the portion of the cigarette/tobacco products taxes enacted by constitutional amendment to be used for specified health-related purposes.

S.J.R. 09-35 enacted and effective 4/28/09.

Tobacco Taxes: Transfers all interest and income earned in FY2009 through FY2012 by tobacco tax revenues distributed to the Tobacco Tax Cash Fund and additional program funds to the state general fund.

S.B. 09-270 enacted and effective 5/1/09.

Use of Tobacco Settlement Dollars: Makes small change to provisions concerning how Master

Settlement Agreement (MSA) money is used.

H.B. 09-1223 enacted and effective 4/3/09.

Use of Tobacco Settlement Dollars: Transfers monies received by the state from the MSA and dedicated to several programs by existing law to the state general fund in FY2009 and FY2010.

S.B. 09-210 enacted and effective 4/16/09.

Use of Tobacco Settlement Dollars/Tobacco Taxes: Changes the amounts of tobacco tax revenue and MSA dollars transferred to several funds for FY2009, FY2010 and FY2011.

S.B. 09-264 enacted and effective 5/1/09.

Use of Tobacco Settlement Dollars: Makes changes to the way MSA dollars are allocated in certain fiscal years, and transfers MSA dollars in certain fiscal years to the state general fund.

S.B. 09-269 enacted and effective 6/1/09.

CONNECTICUT

Tobacco Control Program Funding: Allocated \$6,127,745 for tobacco prevention and cessation programs in FY2010.

Allocation made by decision of the Tobacco and Health Trust Fund Board of Trustees, see their FY2010 report, issued 12/09.

Tobacco Taxes: Increases the cigarette tax by \$1.00 to \$3.00 per pack. Increases taxes on snuff and other tobacco products as well.

H.B. 6802 (2nd special session 2009) enacted (became law without governor's signature) 9/8/09 and effective 10/1/09.

Use of Tobacco Settlement Dollars: Transfers \$1,991,982 in FY2010 and \$1,841,982 in FY2011 from the Tobacco and Health Trust Fund to various programs. Transfers \$10 million in FY2010 and FY2011 after May 1 of each year from the Tobacco and Health Trust Fund to the state general fund.

H.B. 6802 (2nd special session 2009) enacted (became law without governor's signature) and effective 9/8/09.

Tobacco Product Licensing: Increases license fees for most entities dealing in tobacco products in Connecticut.

H.B. 6802 (2nd special session 2009) enacted (became law without governor's signature) 9/8/09 and effective 10/1/09.

Use of Tobacco Settlement Dollars: Transfers \$17 million from the Tobacco and Health Trust Fund and \$3 million from the Biomedical

Research Trust Fund to the state general fund to cover expenses in FY2009.

H.B. 5095 enacted and effective 1/15/09.

Use of Tobacco Settlement Dollars: Transfers an additional \$572,000 from the Tobacco and Health Trust Fund to the state general fund to cover expenses in FY2009.

H.B. 6602 enacted 3/3/09 and effective 4/1/09.

Tobacco Cessation Coverage: Sets up a system to provide additional people with health insurance in Connecticut. Tobacco cessation services are included as part of the standard benefits package, and the Health Care Advisory Committee must make recommendations on improving health outcomes, including on tobacco cessation.

H.B. 6600 enacted (by veto override) 7/20/09 and parts effective 7/1/09 and 7/1/2011.

DELAWARE

Tobacco Control Program Funding:

Appropriated \$10,059,500 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 290) enacted and effective 7/1/09.

Tobacco Taxes: Increases the cigarette tax by 45 cents to \$1.60 per pack.

H.B. 211 enacted 7/1/09 and effective 7/31/09.

Youth Access Laws: Requires persons that sell tobacco products to check the identification of a purchaser who appears to be under 27 years of age. Also, requires all tobacco products to be inaccessible to customers without the assistance of a cashier or other employee.

H.B. 269 enacted and effective 7/22/09.

DISTRICT OF COLUMBIA

Tobacco Control Program Funding: Allocated \$850,000 for operation of the city tobacco cessation quitline in FY2010.

B18-203 passed by the City Council 9/22/09, signed by mayor 12/18/09, expected to pass U.S. Congressional Review period and become effective 3/2/10.

Tobacco Taxes: Increases the cigarette tax by 50 cents to \$2.50 per pack. Creates a new definition for little cigars, and taxes each little cigar at the same rate as cigarettes. Creates a tax on moist snuff of 30 cents per ounce.

B18-443 passed by the City Council 9/22/09, signed by mayor 10/15/09 and effective 10/15/09; Emergency Act, by law expires 1/13/10.

FLORIDA

Tobacco Control Program Funding:

Appropriated \$65,841,232 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (S.B. 2600) enacted 5/27/09 and effective 7/1/09.

Tobacco Taxes: Establishes an additional surcharge on cigarettes of \$1.00 per pack, and on tobacco products of 60% of the wholesale price. Sets up a system for collecting taxes on sales of tobacco products on Native American reservations.

S.B. 1840 enacted 5/27/09 and effective 7/1/09.

Internet Sales of Tobacco Products: Restricts/regulates delivery sales of cigarettes defined as those ordered by phone, mail, fax or over the Internet.

S.B. 1840 enacted 5/27/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Authorizes the transfer of \$700 million from the Lawton Chiles Endowment Fund to the state general fund. The amount of the transfer may be reduced by any economic stimulus dollars received by the state from the federal government.

S.B. 2 (first special session 2009), sect. 52 enacted 1/27/09 and effective 6/15/09.

Tobacco Liability: Limits the bond required to appeal lawsuit judgments for state tobacco settlement signatories in cases involving persons who claim or have been determined to be members of a former class action that was decertified in whole or in part.

S.B. 2198 enacted and effective 6/16/09.

GEORGIA

Tobacco Control Program Funding: Allocated \$2,149,875 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 119) enacted 5/11/09 and effective 7/1/09.

HAWAII

Tobacco Control Program Funding: Expected non-federal expenditure of \$7,894,299 for tobacco prevention and cessation programs in 2009/2010.

FY2010-FY2011 Budget (S.B. 200) enacted 6/29/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011); and expenditure for calendar year 2009 from Hawaii Tobacco Prevention and Control Trust Fund.

Tobacco Taxes: Increases the cigarette tax by an additional 40 cents and moves up an already scheduled 20 cent increase to take effect the same date. Increases the cigarette tax an additional 20 cents in both 2010 and 2011. Total cigarette tax will be \$3.00 per pack.

H.B. 1175 enacted 5/7/09 and effective 6/30/09.

Use of Tobacco Settlement Dollars: Changes the way money received from the Master Settlement Agreement is distributed, including reducing the amount that is dedicated to the Hawaii Tobacco Prevention and Control Trust Fund for tobacco prevention/cessation programs.

S.B. 292 enacted 6/12/09 and effective 7/1/09.

Tobacco Taxes: Increases the tax on little cigars as defined to be the same as the tax on cigarettes. Increases the tax on regular cigars as defined to 50 percent of the wholesale price and the tax on other tobacco products to 70 percent of the wholesale price.

H.B. 895 enacted (by veto override) 5/8/09 and effective 9/30/09 & 10/1/09.

Smoking Restrictions/Smokefree Air: Prohibits smoking in correctional facilities except for smoking areas for employees and volunteers of a correctional facility in an area outside the secure confines of the correctional facility.

S.B. 1073 enacted 6/8/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Authorizes the transfer of \$20 million from the Hawaii Tobacco Settlement Special Fund to the state general fund. Also allows the transfer of interest earned by the same fund and the Tobacco Enforcement Special Fund from July 1, 2009 to June 30, 2015 to the general fund.

S.B. 884 enacted 5/28/09 and effective 6/1/09.

Tobacco Product Licensing: Makes the law requiring retailers to get permits to sell tobacco products permanent.

S.B. 528 enacted 4/30/09 and effective 6/30/09.

IDAHO

Tobacco Control Program Funding: Allocated \$1,775,700 for tobacco prevention and cessation programs in FY2010.

FY2010 Millennium Income Fund Appropriations (S.B. 1200) enacted 4/23/09 and effective 7/1/09 & FY2010 Appropriation for the Department of Health and Welfare - Public Health Service Appropriations (S.B. 1221) enacted 4/24/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Transfers \$331,800 from the Idaho Millennium Fund to the Millennium Income Fund to cover program expenditures in FY2009.

H.B. 85 enacted and effective 3/3/09.

ILLINOIS

Tobacco Control Program Funding: Appropriated \$8,500,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 2206) enacted and effective 7/15/09.

Smoking Restrictions/Smokefree Air: Clarifies that the definition of smoking in the state smoke-free law does not apply to American Indian religious rituals, ceremonies or activities.

S.B. 1685 enacted (by amendatory veto override) 10/28/09 and effective 1/1/2010.

Smoking Restrictions/Smokefree Air: Adds several narrow exceptions to the Illinois smoke-free workplace law, and clarifies penalties and enforcement provisions of the law.

S.B. 2757 enacted and effective 2/4/09.

Use of Tobacco Settlement Dollars: Transfers \$10 million from the Tobacco Settlement Recovery Fund to the state general fund.

S.B. 1433 enacted and effective 7/15/09.

Youth Access Laws: Prohibits the possession of tobacco products by minors and sets out penalties for violation.

H.B. 799 enacted and effective 8/10/09.

Youth Access Laws: Further restricts where sampling of tobacco products can take place.

H.B. 604 enacted 8/14/09 and effective 1/1/2010.

INDIANA

Tobacco Control Program Funding: Allocated \$10,859,308 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (H.B. 1001a) enacted 6/30/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011)

IOWA

Tobacco Control Program Funding: Allocated \$10,125,870 for tobacco prevention and cessation programs in FY2010.

FY2010 Appropriations for Health and Human Services (H.F. 811) enacted 5/26/09 and effective 7/1/09.

KANSAS

Tobacco Control Program Funding: Appropriated \$1,000,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 2354) enacted 4/13/09 and effective 7/1/09.

KENTUCKY

Tobacco Control Program Funding: Appropriated \$2,840,300 for tobacco prevention and cessation programs in FY2010.

FY2009-FY2010 Biennial Budget (H.B. 406) enacted 4/14/08 and effective 7/1/08 (FY2009) and 7/1/09 (FY2010).

Tobacco Taxes: Increases the cigarette tax by 30 cents to 60 cents per pack. Increases taxes on snuff and other tobacco products besides cigarettes as well.

H.B. 144 enacted 2/13/09 and effective 4/1/09.

Tobacco Settlement: Makes some additions and amendments to statutes dealing with enforcement of the Master Settlement Agreement.

S.B. 48 enacted 3/24/09 and effective 7/1/09.

LOUISIANA

Tobacco Control Program Funding: Allocated \$7,839,931 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 1) enacted 6/24/09 and effective 7/1/09.

Youth Access Laws: Prohibits the sale of tobacco products by self-service display except in certain retail businesses as defined.

H.B. 368 enacted 6/26/09 and effective 8/15/09.

Novelty Lighters: Prohibits the sale of novelty lighters in Louisiana as defined.

H.B. 199 enacted 6/18/09 and effective 1/1/2010.

MAINE

Tobacco Control Program Funding: Allocated \$10,800,513 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (Pub. Law 2009, chap. 213 - L.D. 353) enacted 5/28/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Smoking Restrictions/Smokefree Air: Prohibits smoking in all workplaces not open to the public and within 20 feet of entrances/exits to such places.

Public Law 2009, chap. 300 (L.D. 1429) enacted 6/8/09 and effective 9/11/09.

Outdoor Smoking Restrictions: Prohibits smoking in outdoor eating areas as specified.

Public Law 2009, chap. 140 (L.D. 820) enacted 5/14/09 and effective 9/11/09.

Outdoor Smoking Restrictions: Prohibits smoking within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.

Public Law 2009 (L.D. 67) enacted and effective 5/1/09.

Internet Sales of Tobacco Products: Prohibits certain sales of tobacco products except to licensed tobacco distributors and retailers. Premium cigars as defined are exempt from these requirements.

Public Law 2009, chap. 398 (L.D. 1230) enacted 6/15/09 and effective 10/1/09.

Tobacco Taxes: Changes the tax on chewing tobacco and snuff to a weight-based tax of a minimum of \$2.02/oz., increases for packages sold to consumers that weigh more than one ounce.

Public Law 2009, chap. 213, part H (L.D. 353, part H) enacted 5/28/09 and effective 7/1/09.

Tobacco Retail Licensing: Makes some changes to laws requiring retailers of tobacco products to obtain licenses.

Public Law 2009, chap. 199 (L.D. 462) enacted and effective 5/26/09.

Flavored Tobacco Products: Approves rules on exemptions from the ban on flavored cigarettes and cigars scheduled to take effect July 1, 2009.

Resolve 2009, chap. 3 (L.D. 81) enacted and effective 3/6/09.

MARYLAND

Tobacco Control Program Funding: Allocated \$5,500,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 100) enacted 4/13/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars/Tobacco Control Program Funding: Reduced the amount required to be included in the state budget for tobacco prevention and cessation programs to \$7 million from \$21 million previously for FY2010 and FY2011 only.

H.B. 101 enacted 5/19/09 and effective 7/1/09.

Tobacco Settlement: Repeals all statutes related to the Tobacco Authority of the state of Maryland and transfers any money in the Tobacco Authority Fund to the state general fund.

S.B. 74 enacted 4/14/09 and effective 10/1/09.

MASSACHUSETTS

Tobacco Control Program Funding: Allocated \$4,501,770 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 4129) enacted 6/29/09 and effective 7/1/09.

MICHIGAN

Tobacco Control Program Funding: Appropriated \$2,598,400 for tobacco prevention and cessation programs in FY2010.

FY2010 Department of Community Health Budget (S.B. 4436) enacted and effective 10/29/09.

Smoking Restrictions/Smokefree Air: Prohibits smoking in almost all public places and workplaces in Michigan, including restaurants and bars. Exempts the gaming floors of existing casinos, existing cigar bars and existing tobacco specialty retail stores.

H.B. 4377 enacted 12/18/09 and effective 5/1/2010.

Use of Tobacco Settlement Dollars: Transfers \$37.5 million from the 21st Century Jobs Trust

Fund to the state general fund in FY2010.

H.B. 4182 enacted and effective 12/17/09.

Fire Safety Standards: Requires all cigarettes sold in Michigan to self-extinguish when not being smoked to help prevent cigarette-caused fires.

S.B. 264 enacted 6/25/09 and effective 1/1/2010.

Use of Tobacco Settlement Dollars: Allocates \$9 million of the annual Master Settlement Agreement payment that has not been securitized to be used to help fund development of state convention facilities for the 2009/2010 fiscal year only.

S.B. 588 enacted 7/1/09 and effective 7/2/09.

MINNESOTA

Tobacco Control Program Funding: Allocated \$20,272,231 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Health and Human Services Budget (H.F. 1362) enacted 5/14/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011) and FY2010 ClearWay Minnesota Operating Budget.

MISSISSIPPI

Tobacco Control Program Funding: Appropriated \$11,400,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Department of Health Appropriations (H.B. 55, 2nd special session 2009) enacted 6/30/09 and effective 7/1/09.

Tobacco Taxes: Increases the cigarette tax by 50 cents to 68 cents per pack.

H.B. 364 enacted 5/13/09 and effective 5/15/09.

Tobacco Settlement/Non-Participating Manufacturers: Imposes a 25 cent per pack fee on cigarettes sold by manufacturers that did not sign on to the state's settlement agreement with the major tobacco companies. This fee is in addition to the regular tax on cigarettes.

S.B. 2001 (2nd special session 2009) enacted 6/30/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Makes some changes to the way settlement payments are distributed, and moves back the date range to pay back \$240 million plus interest transferred in 2005 from the Health Care Trust Fund to FY2011 to FY2018.

H.B. 1505 enacted and effective 5/13/09.

Use of Tobacco Settlement Dollars: Allows monies in the Health Care Trust Fund to be used to fill deficits in the state Medicaid program as specified.

H.B. 71 (2nd special session 2009) enacted 6/30/09 and effective 7/1/09.

Fire Safety Standards: Requires all cigarettes sold in Mississippi to self-extinguish when not being smoked to help prevent cigarette-caused fires.

S.B. 2249 enacted 3/30/09 and effective 7/1/2010.

MISSOURI

Tobacco Control Program Funding:

Appropriated \$1,200,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Department of Health and Senior Services Budget (H.B. 10) enacted 6/25/09 and effective 7/1/09.

Fire Safety Standards: Requires all cigarettes sold in Missouri to self-extinguish when not being smoked to help prevent cigarette-caused fires.

H.B. 205 enacted 7/10/09 and effective 1/1/2011.

MONTANA

Tobacco Control Program Funding:

Appropriated \$8,393,183 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (H.B. 2) enacted 5/14/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Taxes: Dedicates a small portion of cigarette tax revenue to the construction of a state veterans' home in southwestern Montana in FY2010 and FY2011.

H.B. 213 enacted 5/6/09 and effective 7/1/09.

NEBRASKA

Tobacco Control Program Funding:

Appropriated \$3,524,850 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (L.B. 315) enacted 5/19/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Taxes: Changes the tax on moist snuff to a weight-based tax of 44 cents per ounce.

L.B. 89 enacted 3/18/09 and effective 10/1/09.

Smoking Restrictions/Smokefree Air: Adds an exemption for cigar bars as specified and de-

fined to Nebraska's smokefree workplace law. Prevents local communities from removing this exemption.

L.B. 355 enacted 4/22/09 and effective 8/30/09.

Use of Tobacco Settlement Dollars: Changes the way future annual Master Settlement Agreement payments are distributed.

L.B. 316 enacted and effective 5/19/09.

Fire Safety Standards: Requires all cigarettes sold in Nebraska to self-extinguish when not being smoked to help prevent cigarette-caused fires.

L.B. 198 enacted 5/19/09 and effective 1/1/2010.

NEVADA

Tobacco Control Program Funding: Allocated \$2,872,025 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (S.B. 431) enacted by veto override 5/29/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Smoking Restrictions/Smokefree Air: Allows smoking again at convention facilities hosting certain specified conventions.

A.B. 309 enacted (became law without governor's signature) 6/9/09 and effective 12/9/09.

Use of Tobacco Settlement Dollars/Tobacco Control Program: Makes some changes to the way money is distributed to Nevada's tobacco prevention/cessation program, and requires program to be consistent with Centers for Disease Control and Prevention Best Practices.

S.B. 340 enacted 5/26/09 and effective 7/1/2010.

Fire Safety Standards: Requires all cigarettes sold in Nevada to self-extinguish when not being smoked to help prevent cigarette-caused fires.

A.B. 229 enacted 6/3/09 and effective 6/3/2010.

Internet Sales of Tobacco Products: Amends existing law governing certain sales of cigarettes by removing requirements that are unlawful due to a U.S. Supreme Court decision in 2008.

S.B. 48 enacted and effective 5/11/09.

Novelty Lighters: Prohibits the sale of novelty lighters in Nevada as specified and defined.

A.B. 266 enacted (became law without governor's signature) 5/29/09 and effective 1/1/2010.

NEW HAMPSHIRE

Tobacco Control Program Funding: Allocated no state money for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (H.B. 1) enacted 6/30/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Taxes: Increases the cigarette tax by 45 cents to \$1.78 per pack. Adds snuff and cigars, excluding premium cigars as defined, to the definition of tobacco product for tax purposes and increases that tax as well. Also, increases the amount of tobacco tax revenue distributed to the state general fund.

H.B. 2 enacted 6/30/09 and effective 7/1/09.

Smoking Restrictions/Smokefree Air: Allows smoking again in cigar bars that generate 60 percent or more of their quarterly gross revenue from cigar-related products as defined, and follows other specified restrictions. A city/town must have voted to allow beer, wine and/or liquor be sold as specified for a cigar bar license to be issued for an establishment in that city/town.

H.B. 392 enacted 8/7/09 and effective 1/1/2010.

Fire Safety Standards: Authorizes the Department of Safety to charge a fee for certification and re-certification of cigarettes under the state fire safety standard and provides that the funds shall be used to support fire safety education.

H.B. 193 enacted 6/22/09 and effective 1/1/2010.

NEW JERSEY

Tobacco Control Program Funding: Allocated \$7,560,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (A.B. 4100) enacted 6/29/09 and effective 7/1/09.

Novelty Lighters: Prohibits the sale of novelty lighters in New Jersey as specified and defined.

A.B. 3207 enacted 11/20/09 and effective 6/1/10.

Tobacco Taxes: Increases the cigarette tax by 12.5 cents to \$2.70 per pack. Also, increases the amount of cigarette tax revenue dedicated to the Health Care Subsidy Fund.

A.B. 4103 enacted 6/29/09 and effective 7/1/09.

NEW MEXICO

Tobacco Control Program Funding: Appropriated \$9,515,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 2) enacted 4/7/09 and effective 7/1/09.

Tobacco Taxes: Changes the definition of cigarette to include cigars that look like cigarettes, roll-your-own tobacco, bidis and kreteks. This means the tax rate on cigarettes will apply to these products now as well.

S.B. 219 enacted 4/7/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Makes a few changes to the way annual Master Settlement Agreement payments are distributed, including transferring the remaining 50 percent of these payments received in FY2009 and FY2010 from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund.

S.B. 79 enacted and effective 2/6/09.

Fire Safety Standards: Requires all cigarettes sold in New Mexico to self extinguish when not being smoked to help prevent cigarette-caused fires.

H.B. 70 enacted 4/8/09 and effective 1/1/2010.

NEW YORK

Tobacco Control Program Funding: Allocated \$55,175,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Department of Health and Mental Hygiene Annual Budget (A.B. 154) enacted and effective 4/7/09.

Tobacco Taxes: Increases the tax on tobacco products other than snuff to 46 percent of the wholesale price.

A.B. 157 enacted and effective 4/7/09.

Tobacco Product Licensing: Increases the fees for certificates of registration for selling tobacco products at retail or through a vending machine. Also, increases the penalty for selling tobacco products without a registration certificate.

A.B. 158 enacted 4/7/09 and effective 9/1/09 and 1/1/2010.

NORTH CAROLINA

Tobacco Control Program Funding: Allocated \$18,341,837 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (S.B. 202) enacted and effective 8/7/09 (FY2010) and 7/1/10 (FY2011); and allocation by decision of the Health and Wellness Trust Fund Commission, effective 7/1/09.

Tobacco Use/State Prisons: Prohibits the use of tobacco products by inmates, visitors and staff on the premises of state correctional facilities except for approved religious purposes.

S.B. 167 enacted 8/28/09 and effective 3/1/2010.

Smoking Restrictions/Smokefree Air: Prohibits smoking in restaurants and bars statewide; cigar bars, tobacco shops and private clubs as defined are exempted. Preemption of stronger local ordinances was also partially repealed.

H.B. 2 enacted 5/19/09 and effective 1/2/2010.

Tobacco Taxes: Increases the cigarette tax by 10 cents to 45 cents per pack. Increases the tax on other tobacco products to 12.8% of the cost price of the product.

S.B. 202 enacted 8/7/09 and effective 9/1/09.

Use of Tobacco Settlement Dollars: Redirects \$10 million total from the annual Master Settlement Agreement payment from two trust funds where the payment is deposited by law to the state general fund on or after April 30, 2010.

S.B. 202 enacted and effective 8/7/09.

Tobacco Use/State Health Plan: Prevents employees and dependents that use tobacco products enrolled in the state health plan from accessing the “standard” plan option as of July 1, 2010. Use of a plan-approved tobacco cessation program allows them to continue accessing the “standard” plan option.

S.B. 287 enacted and effective 4/23/09.

Novelty Lighters: Prohibits the sale of novelty lighters in the state as specified and defined.

S.B. 652 enacted 6/30/09 and effective 10/1/09.

NORTH DAKOTA

Tobacco Control Program Funding:

Appropriated \$8,196,248 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Department of Health Budget

(S.B. 2004) enacted 5/7/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011); and FY2010-FY2011 Biennial Budget for the Office of Management and Budget (H.B. 1015) enacted 5/11/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Fire Safety Standards: Requires all cigarettes sold in North Dakota to self extinguish when not being smoked to help prevent cigarette-caused fires.

H.B. 1368 enacted 5/1/09 and effective 8/1/2010.

OHIO

Tobacco Control Program Funding: Allocated \$6,000,000 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (H.B. 1) enacted and effective 7/17/09 (FY2010) & 7/1/10 (FY2011).

Fire Safety Standards: Requires all cigarettes sold in Ohio to self-extinguish when not being smoked to help prevent cigarette-caused fires.

H.B. 500 enacted 1/6/09 and effective 2/1/2010.

Tobacco Product Licensing: Changes provisions related to obtaining retail and wholesale cigarette licenses and tobacco product distributor licenses. Increases the fees for obtaining such licenses.

H.B. 1 enacted 7/17/09 and effective 1/1/2010.

OKLAHOMA

Tobacco Control Program Funding: Allocated \$19,798,734 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Department of Health Budget (S.B. 216) enacted 6/1/09 and effective 7/1/09 & interest generated by the Tobacco Settlement Endowment Trust Fund and certified for use in FY2010.

Tobacco Product Licensing: Amends licensing provisions and increases fees for licenses of certain entities involved in manufacturing, selling or distributing tobacco products.

S.B. 608 enacted 6/2/09 and effective 1/1/2010.

Tobacco Possession/Correctional Facilities: Prohibits people, including residents, from bringing into or possessing tobacco products in a certified secure detention facility or certified juvenile detention facility.

S.B. 595 enacted 5/11/09 and effective 11/1/09.

Use of Tobacco Settlement Dollars: Designates certain funding for capital expenditures and operating expenses incurred by the University

of Oklahoma Health Sciences Center and the Oklahoma State University College of Osteopathic Medicine as a purpose dollars in the Tobacco Settlement Endowment Trust Fund can be used for.

S.B. 267 enacted 5/13/09 and effective 11/1/09.

Tobacco Liability: Limits the appeal bond required to appeal judgments for money in lawsuits to \$25 million, regardless of the value of the judgment. Adds an additional limitation for MSA signatories as well. Eliminates the need for an appeal bond in the case of punitive damages.

H.B. 1603 enacted 5/21/09 and effective 11/1/09.

OREGON

Tobacco Control Program Funding:

Appropriated \$6,612,500 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Department of Human Services Biennial Budget (S.B. 5529) enacted and effective 7/16/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Cessation Coverage: Requires health benefit plans as defined to provide payment, coverage or reimbursement of at least \$500 for a tobacco use cessation program as defined for persons enrolled in the plan that are 15 years or older.

S.B. 734 enacted and effective 6/24/09.

Tobacco Taxes: Changes the tax on moist snuff to a weight-based tax of \$1.78 per ounce, but sets a minimum tax of \$2.14 per retail container.

H.B. 2672 enacted 7/16/09 and effective 9/27/09.

Youth Access Laws/Vending Machines: Prohibits the sale of tobacco products in vending machines except in places that are completely off-limits to minors.

H.B. 2136 enacted 6/26/09 and effective 1/1/2010.

Rental Housing/Smoking: Requires rental agreements to include a disclosure of the smoking policy for the premises on which a rental unit is located, except for manufactured dwellings and floating homes as defined.

H.B. 2135 enacted 5/26/09 and effective 1/1/2010.

Youth Access Laws/Tobacco Settlement:

Prohibits free sampling of smokeless tobacco products except in places that prohibit persons under 21 from entering. Enacts enforcement leg-

islation related to the Smokeless Tobacco Master Settlement Agreement.

H.B. 2672 enacted 7/16/09 and effective 1/1/2010.

Novelty Lighters: Prohibits the sale of novelty lighters in Oregon as specified and defined.

H.B. 2365 enacted and effective 3/4/09.

Tobacco Taxes: Allows expenses for the administration of cigarette and other tobacco products taxes to be paid from cigarette and other tobacco product taxes. Also, allows the Department of Revenue to inspect places where cigarettes and tobacco products are sold for specified purposes.

S.B. 300 enacted 7/23/09 and effective 1/1/2010.

PENNSYLVANIA

Tobacco Control Program Funding: Allocated \$17,674,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Allocation based on 35 PA STAT § 5701.306, effective 7/1/09 and H.B. 1614 enacted and effective 10/9/09.

Tobacco Taxes: Increases the cigarette tax by 25 cents to \$1.60 per pack. Defines little cigars and assesses a tax on them equal to the tax on cigarettes.

H.B. 1531 enacted 10/9/09 and effective 11/1/09.

Use of Tobacco Settlement Dollars: Redirected some of the annual Master Settlement Agreement monies to the Tobacco Settlement Fund or state general fund, including 25 percent and then 37.5 percent of the remaining money supposed to go to tobacco control programs. Changed other provisions related to the Tobacco Settlement for FY2010 only.

H.B. 1614 enacted and effective 10/9/09.

Fire Safety Standards: Makes a few small changes to the law setting fire safety standards for cigarettes.

H.B. 1342 enacted 6/29/09 and effective 6/30/09.

RHODE ISLAND

Tobacco Control Program Funding: Allocated \$703,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 5983) enacted 6/30/09 and effective 7/1/09.

Tobacco Cessation Coverage: Strengthens the requirement that private insurance plans cover tobacco cessation treatments by requiring coverage for all medications approved for use by the U.S. Food and Drug Administration and 16 half-hour evidence-based counseling sessions. Allows this requirement to change in the future based on the U.S. Public Health Service guidelines for treating tobacco dependence.

H.B. 5823 enacted and effective 11/4/09 & S.B. 540 enacted and effective 11/13/09.

Tobacco Product Licensing: Makes it harder to acquire a new retail tobacco license to avoid paying penalties for repeated sales of tobacco products, and makes other changes to retail tobacco licensing laws.

H.B. 5607/S.B. 408 enacted and effective 11/13/09.

Tobacco Taxes: Increases the cigarette tax by \$1.00 to \$3.46 per pack, the highest in the country. Increases the tax on most tobacco products other than cigarettes as well.

H.B. 5019 enacted (became law without the governor's signature) and effective 4/10/09.

SOUTH CAROLINA

Tobacco Control Program Funding:

Appropriated \$2,000,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 3560) enacted 5/19/09 and effective 7/1/09.

SOUTH DAKOTA

Tobacco Control Program Funding:

Appropriated \$5,000,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 1300) enacted 3/18/09 and effective 7/1/09.

Smoking Restrictions/Smokefree Air: Eliminates remaining loopholes for most restaurants with liquor licenses, bars and gaming facilities in South Dakota's current smokefree law.

S.B. 1240 enacted 3/19/09 and supposed to take effect 7/1/09 (implementation delayed at least until November 2010).

Internet Sales of Tobacco Products: Prohibits the shipping or delivery of tobacco products to individual consumers in the state.

H.B. 1080 enacted 3/5/09 and effective 7/1/09.

Youth Access Laws: Prohibits the sale of tobacco products through self-service displays except in tobacco specialty stores that earn 75 percent or more of their sales from tobacco products.

S.B. 100 enacted 3/12/09 and effective 7/1/09.

Fire Safety Standards: Requires all cigarettes sold in South Dakota to self-extinguish when not being smoked to help prevent cigarette-caused fires.

H.B. 1280 enacted 3/13/09 and effective 1/1/2011.

TENNESSEE

Tobacco Control Program Funding:

Appropriated \$209,000 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (S.B. 2392) enacted 6/25/09 and effective 7/1/09.

Tobacco Use/Surcharge: Moves back the date when any proposed surcharge for use of tobacco products on state employee healthcare plans could be implemented until January 1, 2011.

S.B. 205 enacted and effective 6/25/09.

TEXAS

Tobacco Control Program Funding:

Appropriated \$13,400,000 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (S.B. 1) enacted 6/19/09 and effective 9/1/09 (FY2010) & 9/1/10 (FY2011).

Tobacco Taxes: Increases the tax on tobacco products other than cigarettes and cigars to a weight-based tax, which increases gradually to \$1.22 per ounce after FY2013. Cans or packages that weigh less than 1.2 ounces are taxed at the same rate as a can or package that weighs 1.2 ounces.

H.B. 2154 enacted 6/16/09 and effective 9/1/09.

UTAH

Tobacco Control Program Funding: Allocated \$7,131,700 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (S.B. 2) enacted 3/31/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Changes the amounts of money allocated to certain programs through the Tobacco Settlement Restricted

Account, including slightly reducing dedicated funding for tobacco prevention and cessation programs.

H.B. 302 enacted and effective 3/25/09.

Internet Sales of Tobacco Products: Prohibits the order or purchase of cigarettes and tobacco products by the Internet, telephone, mail/delivery service or electronic means except by a licensed person.

S.B. 228 enacted 3/25/09 and effective 5/12/09.

Youth Access Laws: Adds cigars, cigarette tobacco and pipe tobacco as products that require sales to occur in face-to-face exchange except under specified circumstances. Exempts retail stores that make a certain percentage of sales from tobacco products and deny access to persons under age 19.

H.B. 456 enacted 3/25/09 and effective 5/12/09.

VERMONT

Tobacco Control Program Funding:

Appropriated \$4,805,039 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 441) enacted 6/2/09 and effective 7/1/09; and H.B. 442 enacted 6/9/09 and effective 7/1/09.

Smoking Restrictions/Smokefree Air: Prohibits smoking in virtually all workplaces in Vermont except for owner-operated businesses with no employees and the state veterans' home.

S.B. 7 enacted 5/27/09 and effective 7/1/09.

Tobacco Taxes: Increases the cigarette tax by 25 cents to \$2.24 per pack. Changes the definitions of tobacco products and snuff and adds a definition for new smokeless tobacco for tobacco tax purposes. Increases the tax on tobacco products and establishes a tax on new smokeless tobacco.

H.B. 441 enacted 6/2/09 and effective 7/1/09.

Use of Tobacco Settlement Dollars: Unspent money in the fund where Master Settlement Agreement payments are directed at the end of FY2009 will not be transferred to the Tobacco Trust Fund as specified under current law. Investment earnings from the Tobacco Trust Fund in FY2010 will also be transferred to the other fund.

H.B. 441 enacted 6/2/09 and effective 7/1/09.

VIRGINIA

Tobacco Control Program Funding: Allocated \$12,300,000 for tobacco prevention and cessation programs in FY2010.

FY2009-FY2010 Biennial Budget (H.B. 30) enacted 5/9/08 and effective 7/1/08 (FY2009) & 7/1/09 (FY2010); and H.B. 1600 enacted and effective 4/8/09 (FY2009) and 7/1/09 (FY2010).

Use of Tobacco Settlement Dollars: For FY2010, transfers \$7,306,000 from the Tobacco Settlement Fund, where 10 percent of Master Settlement Agreement payments are directed by law, to the state general fund and replaces this money with federal stimulus dollars.

H.B. 1600 enacted and effective 4/8/09.

Smoking Restrictions/Smokefree Air: Limits smoking to separately enclosed and separately ventilated areas in restaurants and bars.

S.B. 1105/H.B. 1703 enacted 3/6/09 and 3/9/09 respectively and effective 12/1/09.

Tobacco Control Funding/Program: Changes the name of the Virginia Tobacco Settlement Foundation to the Virginia Foundation for Healthy Youth, and allows up to 50 percent of the money to be spent on childhood obesity programs.

S.B. 1112/H.B. 2456 enacted 3/27/09 and effective 7/1/09.

Novelty Lighters: Prohibits the sale of novelty lighters as defined to persons under age 18 and requires they be sold in non-public areas of retail establishments.

H.B. 2578 enacted 3/30/09 and effective 7/1/09.

WASHINGTON

Tobacco Control Program Funding:

Appropriated \$17,656,000 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (H.B. 1244) enacted 5/19/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Internet Sales of Tobacco Products: Prohibits the shipping or transport of any tobacco product ordered or purchased by mail or through the Internet to anyone other than a licensed wholesaler or retailer.

S.B. 5340 enacted 4/29/09 and effective 7/24/09.

Use of Tobacco Settlement Dollars: Allows the transfer of excess fund balances in the Tobacco

Prevention and Control Account during FY2010 and FY2011 to the state general fund. Also, allows less than the full Master Settlement Agreement strategic contribution payment to be transferred to the Life Sciences Discovery Fund.

H.B. 1244, sect. 937 enacted and effective 5/19/09.

Use of Tobacco Settlement Dollars/Tobacco

Taxes: Changes the way certain monies received from the Master Settlement Agreement and certain tobacco tax revenues are distributed.

S.B. 5073 enacted 5/14/09 and effective 7/1/09.

Tobacco Product Licensing: Provides the state Liquor Control Board with administrative authority to approve, deny, suspend, and revoke retail, wholesale, or distributor cigarette and tobacco products licenses.

H.B. 1435 enacted 4/21/09 and effective 7/24/09.

Novelty Lighters: Prohibits the sale of novelty lighters in Washington if the Director of Fire Protection determines they should be.

S.B. 5011 enacted 4/29/09 and effective 7/24/09.

WEST VIRGINIA

Tobacco Control Program Funding:

Appropriated \$5,687,358 for tobacco prevention and cessation programs in FY2010.

FY2010 Annual Budget (H.B. 2010) enacted 6/5/09 and effective 7/1/09.

Youth Access Laws: Prohibits the sale of cigarettes in packages of less than 20 cigarettes, as single cigarettes, or in any other form than an original factory-wrapped package with the required health warning.

H.B. 2360 enacted 5/4/09 and effective 7/10/09.

Fire Safety Standards: Requires cigarettes sold in West Virginia to self-extinguish when not being smoked to help prevent cigarette-caused fires.

S.B. 456 enacted 5/8/09 and effective 1/1/2010.

WISCONSIN

Tobacco Control Program Funding: Allocated \$6,850,000 for tobacco prevention and cessation programs in FY2010.

FY2010-FY2011 Biennial Budget (A.B. 75) enacted 6/29/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Taxes: Increases the cigarette tax by 75 cents to \$2.52 per pack. Increases the tax on other tobacco products and moist snuff, and changes the tax on moist snuff back to a percentage of price system.

A.B. 75 enacted 6/29/09 and effective 9/1/09.

Smoking Restrictions/Smokefree Air: Prohibits smoking in almost all public places and workplaces, including restaurants and bars. Existing cigar bars and tobacco retail stores are exempt. Stronger local ordinances for certain outdoor areas are also preempted.

S.B. 181 enacted 5/18/09 and effective 7/5/2010.

WYOMING

Tobacco Control Program Funding: Allocated \$4,755,599 for tobacco prevention and cessation programs in FY2010.

FY2009-FY2010 Biennial Budget (S.B. 1) enacted 3/5/08 and effective 7/1/08 (FY2009) & 7/1/09 (FY2010); and H.B. 1 (Biennial Budget revisions) enacted and effective 3/5/09 (FY2009) & 7/1/09 (FY2010).

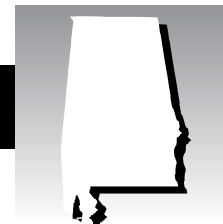
Tobacco Taxes: Changes the tax on moist snuff to a weight-based tax of 60 cents per ounce.

H.B. 67 enacted 2/27/09 and effective 7/1/09.

Youth Cessation: Allows minors 12 years or older who smoke or use tobacco products to access tobacco cessation programs approved by the Department of Health without the consent of a parent or guardian.

S.B. 35 enacted 3/12/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

No person shall smoke in a public place or at a public meeting except in enclosed, well-ventilated areas designated as smoking areas by the person in charge. Exemptions include: 1) retail tobacco stores and tobacco businesses; 2) limousines used under private hire by an individual or corporation; and 3) hotel and motel rooms rented to guests, except for those rooms designated by the hotels and motels as “no smoking” rooms. Nothing in this section shall be construed to prevent any owner, operator, manager, or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility.

ALA. CODE §§ 22-15A-1 et seq. (2003).

Government Buildings

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

ALA. CODE § 22-15A-1 et seq. (2003).

Private Workplaces

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

ALA. CODE § 22-15A-1 et seq. (2003).

Schools

Smoking is prohibited except in enclosed and well-ventilated areas at schools, other school facilities or enclosed school-sponsored events for

grades K-12.

ALA. CODE § 22-15A-1 et seq. (2003).

Child Care Facilities

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

ALA. CODE §§ 22-15A-1 et seq. (2003).

Health Care Facilities

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

ALA. CODE § 22-15A-1 et seq. (2003).

Restaurants

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

ALA. CODE § 22-15A-1 et seq. (2003).

Bars

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

ALA. CODE § 22-15A-1 et seq. (2003).

Penalties/Enforcement

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

ALA. CODE §§ 22-15A-1 et seq. (2003).

State Preemption of Local Laws

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

B Tobacco Excise Taxes**Tax on Cigarettes**

Tax rate per pack of 20: 42.5 cents

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

Year first enacted: 1927

ALA. CODE § 40-25-2 (2004).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (October 1, 2007 to September 30, 2008): \$141,632,000

Use of Cigarette Tax Revenue

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

- 1) 6.06 percent to the State Public Welfare Trust Fund;
- 2) 9.09 percent to be used for the following purposes in the following order: 1) as much as is necessary to pay the principal and interest that will mature during the then current fiscal year on certain bonds issued by the State Industrial Development Authority; 2) any remaining revenue goes into a special fund designated the “General and Mental Health Fund”;
- 3) 12.12 percent to be used for the following purposes in the following order: 1) as much as is necessary to pay, at their respective maturities, the principal and interest that will mature during the then current fiscal year on bonds issued for acquisition and construction of mental health facilities or bonds issued by the Alabama Mental Health Finance Authority; 2) any remaining revenue is put into the “General and Mental Health Fund”;
- 4) 6.06 percent for the following purposes in the following order: 1) as much as is necessary to pay, the principal and interest that will mature during the then current fiscal year on all bonds that may be issued by the State Parks Development Authority; 2) any remaining revenue is designated

to a special fund called the “State Parks Fund”;

- 5) 67.67 percent to the General Fund.

The remaining 61.18 percent of all cigarette tax revenue is allocated as follows:

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

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

ALA. CODE § 40-25-23 (2004).

Taxes on Other Tobacco Products

Chewing tobacco: 1.5 cents per ounce;

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

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

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

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

ALA. CODE § 40-25-2 (2004).

Use of Tax Revenue from Other Tobacco Products

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

ALA. CODE § 40-25-23 (2004).

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

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

The Alabama Alcoholic Beverage Control Board shall enforce state and federal laws that prohibit

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

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

Penalties for Sales to Minors

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

ALA. CODE § 13A-12-3 (1975).

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

a permit is one year.

ALA. CODE § 28-11-9 (1997).

Photo ID

No provisions

Sign Posting

Any person who distributes tobacco or tobacco products within Alabama shall post conspicuously at each location of distribution a sign that is likely to be read by those seeking to purchase or obtain tobacco or tobacco products. Each sign shall state that: 1) Alabama law strictly prohibits the purchase of tobacco products by persons under the age of 19, and 2) proof of age is required for the purchase of tobacco products. Violation by an Alabama Alcoholic Beverage Control Board permit holder is subject to the same penalties as for selling or distributing tobacco products to minors.

ALA. CODE §§ 28-11-9 (1997) & 28-11-15 (2009).

Penalties to Minors

It is unlawful for any minor to purchase, use, possess, or transport tobacco or tobacco products within Alabama. It is also unlawful for any minor to present or offer to another person proof of identification which is false, fraudulent, or not actually their own in order to buy, attempt to buy, receive, or otherwise obtain any tobacco or tobacco products. It shall not be unlawful for a minor employee of a tobacco permit holder to handle, transport, or sell tobacco or tobacco products if the minor employee is acting within the line and scope of employment and the permit holder, or an employee of the permit holder who is 21 years of age or older, is present. Minors shall be fined no less than \$10 and no more than \$50 for each violation.

ALA. CODE §§ 28-11-13 & 28-11-14 (2009).

Placement of Tobacco Products

No tobacco or tobacco product shall be distributed at retail through a self-service display as defined unless such display is a vending machine as permitted under existing law or is located in a tobacco specialty store, which must derive at least 75 percent of its revenue from tobacco or tobacco products. Violation by an Alabama Alcoholic Beverage Control Board permit holder is subject to the same penalties as for selling or distributing tobacco products to minors.

ALA. CODE §§ 28-11-6.2 (2009) & 28-11-9 (1997).

Internet Sales of Tobacco Products

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

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

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

Any person who gives to any minor any cigarettes,

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

ALA. CODE § 13A-12-3 (1975).

Minimum Tobacco Product Sales Amounts

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

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

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No tobacco or tobacco product shall be distributed by use of a vending machine unless such machine: 1) is located in an area in which minors are not permitted access; or 2) Dispenses tobacco or tobacco products through the operation of a device that requires the tobacco permit holder or an employee to control the distribution of the product. Tobacco or tobacco products placed together with any non-tobacco product, other than matches, in a vending machine is also prohibited.

ALA. CODE § 28-11-6.1 (2009).

Penalties

Violation by an Alabama Alcoholic Beverage Control Board permit holder is subject to the same penalties for selling or distributing tobacco products to minors.

ALA. CODE § 28-11-9 (1997).

Sign Posting

Any person who distributes tobacco or tobacco products within this state shall post conspicuously at each vending machine a sign that is likely to be read by those seeking to purchase or obtain tobacco or tobacco products. Each sign shall state that: 1) Alabama law strictly prohibits the purchase of tobacco products by persons under

the age of 19, and 2) proof of age is required for the purchase of tobacco products. Violation by an Alabama Alcoholic Beverage Control Board permit holder is subject to the same penalties as for selling or distributing tobacco products to minors.

ALA. CODE §§ 28-11-9 (1997) & 28-11-15 (2009).

F Licensing Requirements

Requirements

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

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

Any person who distributes tobacco or maintains a tobacco vending machine must obtain a permit from the Alabama Alcoholic Beverage Control Board for each location or vending machine. A permit is nontransferable and must be renewed annually. Failure to obtain or display a valid permit is a misdemeanor offense subject to a fine of not less than \$100 or more than \$500 for the first offense and not less than \$500 and not more than \$1,500 for subsequent offenses.

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

Fees

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

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

License Suspension for Sales to Minors

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

ALA. CODE § 28-11-9 (1997).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total supersedeas bond that is required of all appellants collectively shall not exceed \$125 million, regardless of the amount of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.

ALA. CODE § 6-12-4 (2006).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

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

ALA. CODE §§ 41-15B-1 to 41-15B-8 (2005).

Each year the legislature enacts a separate bill allocating the state's annual Master Settlement Agreement payments dedicated to the Children's First Trust Fund. Up to \$225,000 per fiscal year is provided for administration of the trust fund.

Of the remaining revenue, 10 percent goes to the Department of Public Health for the state Children's Health Insurance Program, tobacco control and prevention programs for youth, and the Alabama Qualified Health Center Grant Program; 22 percent to the state Board of Education; 20 percent to the Alabama Department of Human Resources; 5 percent to the Children's Trust Fund; 5 percent to the State Multiple Needs Children's Fund; 5 percent to the Department of Mental Health and Mental Retardation; 10 percent to the Juvenile Probation Services Fund; 17 percent to the Department of Youth Services; 3.5 percent to the Medicaid Agency; 1 percent to the Alcoholic Beverage Control Board which includes enforcement of youth access to tobacco laws; 1 percent to the Department of Forensic Sciences; and 0.5 percent to the Department of Rehabilitation Services. To get more details on the specific programs funded, see the statutes listed below.

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

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

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

Alabama Code. A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale in violation of the above standard is subject to a civil penalty not to exceed \$100 for each pack of cigarette sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each violation.

ALA. CODE §§ 8-17-270 to 8-17-281 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$751,840

FY2010 Federal Tobacco Control Program
Funding: \$1,326,917

FY2010 Total Tobacco Control Program
Funding: \$2,078,397

Funding level recommended by CDC:
\$56,700,000

Percentage of CDC-recommended level: 3.7%

State Funding Details:

Alabama allocated \$751,840 to tobacco prevention and cessation programs from the state's annual MSA payment and the state general fund in FY2010 (October 1, 2009 to September 30, 2010). In FY2009, \$1,178,425 was allocated.

FY2010 MSA Payment Annual Budget (H.B. 383) enacted 5/13/09 and effective 10/1/09 & FY2010 General Appropriations (H.B. 746) enacted 5/14/09 and effective 10/1/09.



M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes may be sold or offered for sale in Alabama or offered for sale or sold to persons located in Alabama unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 8-17-272 Alabama Code; 2) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 8-17-273 Alabama Code and 3) the cigarettes have been marked in accordance with section 8-17-274



A State Smoking Restrictions

Public Places

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

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

Government Buildings

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

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

Private Workplaces

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

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

Schools

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

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

Child Care Facilities

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

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

Health Care Facilities

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

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

Restaurants

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

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

Bars

No restrictions

Penalties/Enforcement

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

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

State Preemption of Local Laws

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

B Tobacco Excise Taxes**Tax on Cigarettes**

Tax rate per pack of 20: \$2.00

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

Year first enacted: 1949

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

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

ALASKA STAT. § 43.50.200 (2005).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$63,819,000

Use of Cigarette Tax Revenue

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

ALASKA STAT. § 43.50.140 (2005).

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

ALASKA STAT. § 43.50.190 (2005).

Taxes on Other Tobacco Products

All other tobacco products: 75% of the wholesale price

ALASKA STAT. § 43.50.300 (1997).

Use of Tax Revenue from Other Tobacco Products

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

ALASKA STAT. § 43.50.350 (1997).

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

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

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

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

Penalties for Sales to Minors

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

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

Photo ID

No provisions

Sign Posting

A person who holds a business license endorsement shall post on the licensed premises a warning sign that must be at least 6 inches by

18 inches and must read, in lettering at least 1.25 inches high, “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 19 IS ILLEGAL.” The sign shall be displayed in a manner conspicuous to a person purchasing or consuming tobacco products on the licensed premises. The department shall, without charge, furnish warning signs to a person who holds an endorsement issued under this section or a person who requests the sign with the intention of displaying it.

ALASKA STAT. § 43.70.075(f) (2001).

Penalties to Minors

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

ALASKA STAT. § 11.76.105 (1995).

Placement of Tobacco Products

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

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

Internet Sales of Tobacco Products

A person who is not licensed under this chapter may not ship or cause to be shipped cigarettes to a person in Alaska unless the person receiving the cigarettes is: 1) licensed under this chapter; 2) an operator of a customs bonded warehouse; or 3) an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter. A person who is licensed under this chapter may not ship or cause to be shipped cigarettes to a person in Alaska unless the person

receiving the cigarettes is: 1) licensed under this chapter; 2) holds a tobacco endorsement under section 43.70.075 Alaska Statutes; 3) is an operator of a customs bonded warehouse; 4) is an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter; or 5) is an individual 19 years of age or older receiving the cigarettes for personal consumption and the tax imposed on the cigarettes has been paid. A common or contract carrier may not knowingly transport cigarettes to a person in Alaska unless the person shipping the cigarettes is licensed under this chapter and before shipment provides the common or contract carrier with a copy of the person’s current license issued by the department and an affidavit certifying that the person receiving the cigarettes is a person specified or licensed under this chapter; or the person receiving the cigarettes is a person specified or licensed under this chapter and before receipt, provides the common or contract carrier with a copy of the person’s current license issued by the department. If the cigarettes are transported by a common or contract carrier to a home or residence, it is presumed that the common or contract carrier knew that the person receiving the cigarettes was not a person specified or licensed under this section. A person who violates the provisions of this section is guilty of a class A misdemeanor if the person unlawfully ships, causes to be shipped, or transports at least one but fewer than 5,000 cigarettes; and a class C felony if the person unlawfully ships, causes to be shipped, or transports 5,000 or more cigarettes. In addition to the criminal penalty, the Department of Revenue and Taxation may assess a civil fine of not more than \$5,000 for each violation.

ALASKA STAT. § 43.50.105 (2004).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

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

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

Minimum Tobacco Product Sales Amounts

A business license endorsement holder may not sell cigarettes to another person unless the cigarettes are sold in groups of at least 20 and the cigarettes are in the manufacturer’s original cigarette pack or contained in a cigarette carton or box; or differs in any respect from the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of warnings or of any other information upon a package of cigarettes that is sold within the United States. Violation is a Class B misdemeanor. In addition, the business license endorsement may be suspended for 45 days for a first violation or 90 days for a second violation within 24 months.

ALASKA STAT. § 43.70.075(g-k) (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

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

ALASKA STAT. § 11.76.100(b) (1998).

Penalties

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

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

Sign Posting

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

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

F Licensing Requirements

Requirements

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

ALASKA STAT. § 43.50.010 & 43.70.075 (2007).

Fees

Manufacturers: \$50 per year;

Distributors and Wholesaler-Distributors: \$50 per year;

Vending Machine Operators: \$50 per year;

Direct-Buying Retailers: \$50 per year;

Buyers: \$25 per year;

Business License Endorsement for Retailers and Vending Machine Operators: \$100 per year.

ALASKA STAT. §§ 43.50.030 (2005) & 43.70.075 (2007).

License Suspension for Sales to Minors

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

ALASKA STAT. § 43.70.075 (2007).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

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

bacco control program.

ALASKA STAT. § 37.05.580 (2001).

The remaining 80 percent of the annual MSA payments was sold through the Alaska Housing Finance Corporation as bonds in previous years for a lump sum payment up front. See Securitization section below for more details.

Securitization

The Commissioner of Revenue is authorized to sell to the Alaska Housing Finance Corporation the right to receive a total of 80 percent annually of the revenue derived from the Master Settlement Agreement. Forty percent of these payments were sold in 2000, and an additional 40 percent were sold in 2001.

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

M Fire Safety Standards

To help prevent cigarette-caused fires, a person may not sell or offer to sell cigarettes in Alaska, or sell or offer to sell cigarettes to another person located in Alaska, unless: 1) the cigarettes are tested under section 18.74.030 Alaska Statutes and satisfy the performance standard in section 18.74.030(d) Alaska Statutes or satisfy an alternative performance standard under section 18.74.040 Alaska Statutes; 2) the cigarettes have been marked as required by section 18.74.130 Alaska Statutes; and 3) a certification has been submitted by the manufacturer of the cigarettes under section 18.74.080 Alaska Statutes. A manufacturer, wholesale dealer, agent, or another person who knowingly sells or offers to sell cigarettes other than through retail sale and in violation of the above standard is subject to a civil penalty not to exceed \$10,000 for a first violation and \$25,000 for each violation that is not a first violation. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer that knowingly sells or offers to sell cigarettes in violation of the above standard is subject to a civil penalty not to exceed \$500 for a first violation and \$2,000 for each violation that is not a first violation in which the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes; and a civil penalty not to exceed \$1,000 for a first violation and \$5,000 for each violation that is not a first violation in which the total number of cigarettes sold or offered for sale is over 1,000 cigarettes.

Penalties may not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 for a first violation and not exceeding \$250,000 for each violation that is not a first violation.

ALASKA STAT. §§ 18.74.010 to 18.74.290 (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program

Funding: \$8,115,000

FY2010 Federal Tobacco Control Program

Funding: \$1,155,593

FY2010 Total Tobacco Control Program

Funding: \$9,270,593

Funding level recommended by CDC:

\$10,700,000

Percentage of CDC-recommended level: 86.6%

State Funding Details:

Alaska appropriated \$8,115,000 for tobacco control and prevention programs from the Tobacco Use Education and Cessation Fund in the state general fund in FY2010 (July 1, 2009 to June 30, 2010). In FY2009, \$7,856,000 was appropriated.

FY2010 Annual Budget (H.B. 81) enacted 5/21/09 and effective 7/1/09.

Tobacco Control Program Related Laws

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

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





A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all public places and workplaces, including restaurants and bars. “Public place” is defined as any enclosed area to which the public is invited or permitted; see statute cited below for a detailed list. Exemptions include: 1) private residences except when used as a licensed child care, adult day care or health care facility; 2) up to 50 percent of hotel/motel rooms; 3) retail tobacco stores as defined that are physically separated, so that smoke does not infiltrate into areas where smoking is prohibited; 4) veterans and fraternal clubs as defined when they are not open to the general public; 5) smoking as part of a Native American religious ceremony; 6) outdoor patios as long as smoke does not enter into places where smoking is prohibited; and 7) smoking as part of a theatrical performance. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places and places of employment, excluding outdoor patios.

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

Government Buildings

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

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

Private Workplaces

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

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

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

Schools

Tobacco products are prohibited on school grounds, inside school buildings, in school parking lots or playing fields, in school buses or vehicles, or at off-campus school-sponsored events. “School” means any public, charter or private school where children attend classes in kindergarten programs or grades one through 12. This does not apply to an adult who employs tobacco products as a necessary component of a school-sanctioned, tobacco prevention or cessation program established pursuant to Arizona Revised Statute section 15-712. A person who violates this section is guilty of a petty offense.

ARIZ. REV. STAT. § 36-798.03 (2000).

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

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

Child Care Facilities

Smoking is prohibited in “public places,” which are defined as any enclosed area to which the public is invited or permitted. Smoking is also prohibited in “places of employment,” which are defined as an enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment. Although not specifically mentioned, these definitions do include child care facilities. Smoking in

private residences is specifically prohibited if it is a child care or adult day care facility. By rule, smoking is also prohibited within 20 feet of entrances/exits, windows and ventilation intakes to public places, excluding outdoor patios.

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

Health Care Facilities

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

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

Restaurants

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

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

Bars

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

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

Penalties/Enforcement

“No smoking” signs shall be clearly and conspicuously posted by the owner or person in charge of a

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

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

State Preemption of Local Laws

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

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.00

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

Year first enacted: 1933

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

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$388,870,000

Use of Cigarette Tax Revenue

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

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

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

was also passed by voters in 2006.

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

Sixty cents of the cigarette tax is distributed to the Tobacco Products Tax Fund. Forty-two cents of each \$1.00 in the fund is deposited in the Proposition 204 Protection Account which helps fund health insurance coverage for more uninsured residents; five cents of each \$1.00 is deposited in the Health Research Fund to be used for research into tobacco-related diseases; 27 cents of each \$1.00 is deposited in the Medically Needy Account, which is used to provide health insurance for low-income residents; 20 cents of each \$1.00 is deposited in the Emergency Health Services Account where it is to be used for reimbursement of uncompensated care, primary care services and trauma center readiness costs as appropriated by the legislature; four cents of each \$1.00 is deposited in a health care adjustment account; and two cents of each \$1.00 goes to the Health Education Account for tobacco prevention programs. This increase in the cigarette tax was passed by voters in 2002.

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

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

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

The remaining 18 cents of the cigarette tax is distributed as follows: 19.44 percent to state school aid, 11.11 percent to the corrections fund, and the remainder to the general fund.

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

Taxes on Other Tobacco Products

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

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

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

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

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

Use of Tax Revenue from Other Tobacco Products

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

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

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

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

The revenue from the other tobacco product taxes levied by Arizona Revised Statute section 42-3251 is deposited in the Tobacco Tax and Health Care Fund where it is distributed in the same manner as 40 cents of the cigarette tax (see above).

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

The revenue from the other tobacco product taxes levied in Arizona Revised Statute section 42-3052 is deposited 50 percent to the Corrections Fund and 50 percent to the general fund.

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

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Arizona Attorney Generals' office, through an interagency service agreement (ISA) with the Arizona Department of Health Services - Tobacco

Education and Prevention Program (ADHS-TEPP), monitor compliance with and enforce laws restricting the availability and sale of tobacco products to minors. The attorney general's office is required under this agreement to conduct compliance inspections, in coordination with local law enforcement agencies, of tobacco retailers in all 15 counties to determine whether they are illegally selling tobacco products to minors, and to recruit, train and coordinate youth volunteers to participate in these compliance inspections.

ISA between Arizona Attorney General and ADHS-TEPP (2009).

Penalties for Sales to Minors

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

ARIZ. REV. STAT. § 13-3622 (1978).

Photo ID

No provisions

Sign Posting

No provisions

Bidis

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

ARIZ. REV. STAT. § 36-798.01 (2000).

Penalties to Minors

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

ARIZ. REV. STAT. § 36-3622 (1978).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

Any person accepting an order for a delivery sale shall comply with specific age-verification requirements, including obtaining a certification from the consumer before delivery and verifying the information against a commercially available database or receiving a photocopy of a government-issued identification; specific disclosure requirements; specific shipping requirements including using a delivery service that requires a

signature from the consumer or another person of legal minimum purchase age and proof in the form of a photographic government-issued identification that the individual is the consumer or adult residing at the address; specific registration and reporting requirements; and specific tax collection requirements. Violation by an adult is a Class Five felony and for the first violation the person shall be fined \$1,000 or five times the retail value of tobacco products involved, whichever is greater. For the second and subsequent violations, the fine is \$5,000 or five times the retail value of the tobacco products involved, whichever is greater. An adult who knowingly submits a false certification is guilty of a Class Five felony and for each offense shall be fined \$10,000 or five times the retail value of the tobacco products involved, whichever is greater. A minor submitting a false certification is guilty of a petty offense. Failure to pay the appropriate taxes is a penalty of five times the retail value of the tobacco products involved in addition to any other penalty. Pipe tobacco and cigars are excluded from these requirements.

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

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

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

ARIZ. REV. STAT. § 36-798.05 (2000).

State Preemption of Local Laws

No broad provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products. Local communities are specifically allowed to pass stronger ordinances concerning placement of and signage on tobacco product vending machines.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

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

ARIZ. REV. STAT. § 13-3622 (1978).

Minimum Tobacco Product Sales Amounts

It is unlawful to manufacture, sell, or distribute in this state, either a package or other container of cigarettes with fewer than 20 cigarettes or a package of roll-your-own tobacco that contains less than 0.6 ounces of tobacco. This does not prohibit the sale or distribution of such products in specially licensed tobacco stores that only admit people over 21 years of age. A violation of this section is a Class Three misdemeanor.

ARIZ. REV. STAT. § 36-798.04 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to bars and employee lounges that are not open to the public and if the business does not employ minors. Stronger local ordinances are specifically allowed concerning placement of or signage on tobacco product vending machines.

ARIZ. REV. STAT. § 36-798.02 (2000).

Penalties

Violation of the restrictions on tobacco product vending machines is a petty offense. Stronger local ordinances are specifically allowed concerning placement of or signage on tobacco product vending machines.

ARIZ. REV. STAT. § 36-798.02 (2000).

Sign Posting

Tobacco vending machines must have a sign measuring at least 80 square inches that states "IT IS ILLEGAL FOR A MINOR TO PURCHASE CIGARETTES OR TOBACCO PRODUCTS AND, UPON CONVICTION, A FINE UP TO \$300 MAY BE IMPOSED." Stronger local ordi-

nances are specifically allowed concerning placement of or signage on tobacco product vending machines.

ARIZ. REV. STAT. § 36-798.02 (2000).

F Licensing Requirements

Requirements

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

ARIZ. REV. STAT. § 42-3201 (2006).

Fees

\$25 annually.

ARIZ. REV. STAT. § 42-3201 (2006).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Arizona Tobacco Litigation Settlement Fund is established consisting of all monies received by Arizona from the Master Settlement Agreement between the state and certain cigarette companies. The Director of the Arizona Health Care Cost Containment System Administration shall administer the fund. Monies in the fund do not revert

to the state general fund and are continuously appropriated. Monies in the fund are allocated to the following purposes in the following order: 1) to fully implement and fund programs and services required as a result of the expanded definition of an “eligible person” under the Arizona Health Care Cost Containment System (state Medicaid program); 2) to health-related programs specified in section 5-22(E) of the Arizona Revised Statutes; 3) any remaining funds can be used for expanded programs in the Arizona Health Care Cost Containment System.

ARIZ. REV. STAT. § 36-2901.02 (2001).

Funding Level Recommended by CDC:
\$68,100,000

Percentage of CDC-Recommended Level:
34.4%

State Funding Details:

Arizona allocated \$22,119,300 for tobacco control and prevention programs from a portion of state tobacco tax revenue in FY2010 (July 1, 2009 to June 30, 2010). In FY2009, \$22,413,100 was allocated.

FY2010/FY2011 Appropriations (S.B. 1188) enacted and effective 7/1/09 (FY2010) and 7/1/10 (FY2011).



M Fire Safety Standards

To help prevent cigarette-caused fires, cigarettes may not be sold or offered for sale in Arizona or offered for sale or sold to persons located in Arizona unless: 1) the cigarettes are tested pursuant to the test method and meet the performance standard prescribed in section 41-2170.01 Arizona Revised Statutes; 2) the manufacturer files a written certification with the state fire marshal pursuant to section 41-2170.02 Arizona Revised Statutes; and 3) the cigarettes are marked pursuant to section 41-2170.03 Arizona Revised Statutes. A manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$25,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$1,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$25,000 and not to exceed \$100,000 for each false certification.

ARIZ. REV. STAT. §§ 41-2170 to 41.2170.08 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$22,119,300

FY2010 Federal Tobacco Control Program
Funding: \$1,281,398

FY2010 Total Tobacco Control Program
Funding: \$23,400,698



A State Smoking Restrictions

Public Places

Smoking is prohibited in most public places and enclosed areas of places of employment, including almost all restaurants. See the definition of “public place” and “place of employment” under Arkansas Code section 20-27-1803 for more details on places covered. This does not apply to: 1) private residences, except when used as a licensed child care, adult daycare, or health care facility; 2) designated guest smoking rooms in hotels/motels, except in hotels/motels with more than 25 rooms, no more than 20 percent of the rooms may be designated smoking; 3) all workplaces with fewer than three employees that are not public places; 4) a retail tobacco store, if secondhand smoke from the store does not infiltrate into places where smoking is prohibited; 5) areas within long-term care facilities that are designated by the facility as a smoking area or for supervised patient smoking only; 6) outdoor areas of places of employment; 7) all workplaces of any manufacturer, importer or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities; 8) all restaurants and bars licensed by the state of Arkansas that prohibit at all times persons less than 21 years of age from entering the premises, if secondhand smoke does not infiltrate into areas where smoking is prohibited; and 9) designated smoking areas on the gaming floor of any franchisee of the Arkansas Racing Commission.

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

Government Buildings

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

ARK. CODE ANN. § 20-27-1804 (2006).

Smoking any cigarette, cigar, pipe, or other tobacco product in the State Capitol Building is prohibited. Violation is a misdemeanor punishable by a fine of \$25.

ARK. CODE ANN. § 22-3-220 (2000).

Private Workplaces

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

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

Schools

Smoking or use of tobacco in enclosed areas, buildings, or facilities of a public elementary or secondary school, or on any property owned or leased by a public school district is prohibited. A copy of this statute shall be posted in a conspicuous location at every entrance to each building owned or leased by a public school district and every school bus used to transport public school students. Violation of this provision is a misdemeanor punishable by a fine of \$10 to \$100.

AR CODE ANN. § 6-21-609 (1999).

To the extent not covered above, smoking is prohibited in public places, the definition of which includes educational facilities.

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

Child Care Facilities

Smoking is prohibited in all licensed child care facilities.

ARK. CODE ANN. § 20-78-217 (1997).

Health Care Facilities

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

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

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

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

Restaurants

Smoking is prohibited in public places, the definition of which includes restaurants. The term restaurant includes the bar area of a restaurant. Licensed restaurants that do not allow persons

under 21 to enter at any time are exempt from these restrictions as long as smoke does not infiltrate into areas where smoking is prohibited.

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

Bars

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

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

Penalties/Enforcement

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

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

Vehicles

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

ARK. CODE ANN. §§ 20-27-1901 to 20-27-1904 (2006).

State Preemption of Local Laws

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

in direct conflict with this subchapter.

ARK. CODE ANN. § 20-27-1808 (2006).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.15

Date last changed: March 1, 2009 – from 59 cents to \$1.15

Year first enacted: 1925

ARK. CODE ANN. §§ 26-57-208(1) (2009); 26-57-802 (2007); 26-57-803(a) (2009); & 26-57-804 (2009); 26-57-806 (2009) & 26-57-1101 (2007).

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

ARK. CODE ANN. §§ 26-57-208(1) (2009); 26-57-802 (2007); 26-57-803(a) (2009); & 26-57-804 (2009); 26-57-806 (2009) & 26-57-1101 (2007).

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

ARK. CODE ANN. § 26-57-801 (1987).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$125,680,000

Taxes on Other Tobacco Products

All other tobacco products: 68% of the manufacturer's list price.

ARK. CODE ANN. §§ 26-57-208(2) (2007); 26-57-803(b) (2007); 26-57-805 (2007); 26-57-807 (2009) & 26-57-1102 (2007).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

Pursuant to a Memorandum of Agreement with the Arkansas Department of Health and Human Services—Division of Health (ADHHS-DOH), the Arkansas Tobacco Control Board (ATCB) shall administer the enforcement of youth access laws in Arkansas, including conducting unannounced investigations in retail establishments that sell tobacco products.

MEMO OF AGREEMENT BETWEEN ADHHS-DOH & ATCB (2009).

Minors are allowed to be used in compliance checks as long as they appear to be under 18 years of age; if asked state their actual age and present their true identification; written consent has been received from a parent or guardian; and the minor is being directed by an employee of the Arkansas Tobacco Control Board or the state Office of Alcohol and Drug Abuse Prevention or an authorized representative of a business acting pursuant to a self-compliance program.

ARK. CODE ANN. §§ 5-27-227(c) (2009).

Penalties for Sales to Minors

It is unlawful for any person to give, barter or sell tobacco products or cigarette papers to a minor less than 18 years of age. A person who violates the above is subject to a fine of not more than \$100 per violation. An employee of an Arkansas retail cigarette and tobacco permit holder in violation is subject to a fine of not more than \$100. A retail permit holder or license holder is subject to penalties as specified in the paragraph below.

ARK. CODE ANN. § 5-27-227(a&i) (2009).

The Arkansas Tobacco Control Board may assess penalties for selling tobacco products to minors or other youth access laws as follows: 1) after receipt of a notice from the Board or other enforcing agency as specified, a civil penalty not to exceed \$250 for a first violation within a 48-month period; 2) a civil penalty not to exceed \$500, and suspension of the permit or license to sell tobacco products for not more than two days for a second violation within a 48-month period; 3) a civil penalty not to exceed \$1,000 and suspension of the permit or license to sell tobacco products for not more than seven days for a third violation in a 48-month period; 4) a civil penalty not to exceed \$2,000 and suspension of the license or permit to

sell tobacco products for a period not to exceed 14 days for a fourth or subsequent violations in a 48-month period; and after five or more violations within a 48 month period, a license or permit may be revoked in addition to any civil penalties. The court shall consider specific factors when reviewing a possible violation, including whether the business has adopted a written policy prohibiting the sale of tobacco products to minors and has taken other specified actions to reduce illegal tobacco sales. An affirmative defense is available for a retailer or employee of a retailer if they reasonably relied on proof of age when making the sale.

ARK. CODE ANN. § 26-57-256(d-k) (2009).

A person who sells tobacco in any form or a cigarette paper may deny the sale of tobacco in any form or a cigarette paper to any person.

ARK. CODE ANN. § 5-27-227(d) (2009).

Sign Posting

Signs must be posted in a conspicuous place by persons who have been issued a permit or license under the Arkansas Tobacco Products Tax Act of 1977 stating that the sale of tobacco products to or purchase or possession of tobacco products by a minor is prohibited by law. Violators are subject to the same penalties as selling or distributing tobacco products to minors.

ARK. CODE ANN. § 5-27-227(e) (2009).

Penalties to Minors

It is unlawful for a minor to use, possess, purchase or attempt to purchase tobacco in any form or cigarette papers. It is also unlawful to use falsified identification or someone else's identification for the purpose of obtaining or attempting to obtain tobacco products or cigarette papers. This does not apply if the minor is acting as an agent of a retail permit holder within the scope of employment. This also does not prohibit minors from participating in compliance checks as specified, provided parental consent is obtained.

ARK. CODE ANN. § 5-27-227(b&c) (2009).

Placement of Tobacco Products

It is unlawful for a person who has been issued a permit or license under the Arkansas Tobacco Products Act of 1977, to sell or distribute a cigarette product through a self-service display. "Self-service display" is defined as a display that

contains a cigarette product that is located in an area where customers are permitted, and in which the cigarette product is readily accessible to a customer without the assistance of a salesperson. This does not apply to a retail tobacco store as defined. Violation is subject to the same penalties as for selling or distributing tobacco products to minors.

ARK. CODE ANN. § 5-27-227(g) (2009).

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for any manufacturer or any person who has been issued a permit or license under the Arkansas Tobacco Products Act of 1977, to distribute free samples or coupons for samples to any person under the age of 18 and in or on any public street or sidewalk within 500 feet of any playground, public school or other facility being used primarily by people under 18. Violation is subject to the same penalties as for selling tobacco products to minors.

ARK. CODE ANN. §§ 5-27-227(f) (2009).

Minimum Tobacco Product Sales Amounts

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

ATCB RULES & REGS § 4.2 (2005).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines may only

be placed in: 1) restricted areas within a factory, business, office or other structure to which members of the general public are not given access; 2) in premises that have a permit for the sale of alcoholic beverages for on-site consumption; or 3) places where the vending machine is under the supervision of the owner or their employee.

ARK. CODE ANN. § 5-27-227(h) (2009).

Penalties

The owner of a vending machine that violates the restrictions on placement of tobacco product vending machines is subject to the same penalties as for selling or distributing tobacco products to a minor.

ARK. CODE ANN. § 5-27-227(a&i) (2009).

Sign Posting

It is unlawful for any person who has been issued a permit or a license under the Arkansas Tobacco Products Tax Act of 1977 to fail to display in a conspicuous manner on any tobacco product vending machine a sign stating that the sale of tobacco products to or purchase or possession of tobacco products by a minor is prohibited by law. Violators are subject to the same penalties as selling tobacco products to minors.

ARK. CODE ANN. § 5-27-227(e) (2009).

F Licensing Requirements

Requirements

No person shall deal with, or otherwise do business in, tobacco products in this state without having registered with the Director of Tobacco Control Board and obtained a permit or license for that purpose. Manufacturers need only to register with the Director of Finance and Administration. The Tobacco Control Board shall have responsibility for the issuance, suspension and revocation of licenses and permits. Selling cigarettes or tobacco products without the appropriate license is a Class C misdemeanor for the first offense and a Class B misdemeanor for subsequent offenses.

ARK. CODE ANN. § 26-57-214 (2009).

Fees

Between \$20-\$50 for retail cigarette/tobacco permits depending on weekly gross sales; \$500 for wholesale cigarette permits; \$500 for wholesaler permits for other tobacco products; and \$100 for

a vending machine permit plus \$10 per machine for vending machine licenses.

ARK. CODE ANN. § 26-57-219 (1997).

License Suspension for Sales to Minors

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

ARK. CODE ANN. § 26-57-256(d-k) (2009).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

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

ARK. CODE ANN. § 16-55-214 (2005).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Initiated Act 1 was passed in November 2000 by the voters of Arkansas, which created a fund, held separate from the state Treasury, known as the Tobacco Settlement Cash Holding Fund, to be administered by the state Board of Finance. All monies received as part of the Master Settlement Agreement were directed to this fund. Beginning in 2002, tobacco settlement payments shall be distributed as follows: the first \$5 million received in each calendar year shall be transferred to the Tobacco Settlement Debt Service Fund; and the amounts remaining shall be transferred to the Tobacco Settlement Program Fund. The funds in the Tobacco Settlement Program Fund will then be distributed as follows: 31.6 percent will go the Prevention and Cessation program account to fund tobacco prevention and cessation programs administered by the Arkansas Department of Health, 15.8 percent to the Targeted State Needs program account, 22.8 percent to the Arkansas Biosciences Institute program account and 29.8 percent to the Medicaid Expansion program account.

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

Securitization

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

ARK. CODE ANN. § 19-12-106 (2000).

The Arkansas Cancer Research Center of the University of Arkansas for Medical Sciences is designated as a Capital Improvement Project relating to health care services, health education, or health-related research for which tobacco settlement revenue bonds can be issued. Additional tobacco settlement revenue bonds can be issued under the following conditions: no more than \$5 million per

year may be used on debt service for the project, allocation to debt service on the project shall not commence until the bonds issued in 2001 are no longer outstanding and no more than \$40 million in bonds may be issued for the project.

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

M Fire Safety Standards

To help prevent cigarette-caused fires, except as provided in section 20-27-2104(h) Arkansas Code, cigarettes shall not be offered for sale in Arkansas or offered for sale or sold to persons located in Arkansas unless: 1) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 20-27-2104 Arkansas Code; 2) A written certification has been filed by the manufacturer with the Director of the Arkansas Tobacco Control Board under Section 20-27-2105 Arkansas Code; and 3) The cigarettes have been marked in accordance with Section 20-27-2106 Arkansas Code. A manufacturer, wholesaler, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

ARK. CODE ANN. §§ 20-27-2101 to 20-27-2112 & 19-6-811 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$22,214,426

FY2010 Federal Tobacco Control Program
Funding: \$1,104,566

FY2010 Total Tobacco Control Program
Funding: \$23,318,992

Funding Level Recommended by CDC:
\$36,400,000

Percentage of CDC-Recommended Level:
64.1%

State Funding Details:

Arkansas allocated \$22,214,426 for tobacco control and prevention programs for FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment. In FY2009, \$15,982,716 was appropriated.

FY2010 Tobacco Prevention and Control Program Budget (H.B. 1286) enacted 4/9/09 and effective 7/1/09 and Arkansas Tobacco Control Board—Youth Access Enforcement Budget (H.B. 1175) enacted 4/6/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

Smoking is prohibited in all enclosed spaces of places of employment, except for designated break-rooms that are separately ventilated directly to the outside and located in a non-work area where no one is required to enter as part of their work responsibilities. "Enclosed space" includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building. The exceptions to this law are: 1) 65 percent of rooms in a hotel, motel, or similar transient lodging establishment; 2) a percentage of all lobby areas in hotel, motel, or similar establishments; 3) meeting and banquet rooms, except while food, beverage or exhibit functions are taking place; 4) retail or wholesale tobacco shops; 5) cabs of motor trucks when only smokers are present; 6) warehouse facilities; 7) theatrical production sites, if smoking is an integral part of the story; 8) medical research or treatment sites, if smoking is integral to those functions; 9) private residences when not in use as family day care centers; and 10) patient areas in long-term health care facilities.

CA LABOR CODE § 6404.5 (2007).

Government Buildings

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

CA GOVT. CODE §§ 7596 to 7598 (2007).

Private Workplaces

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

work responsibilities. Warehouse facilities and the cabs of motor trucks when only smokers are present are also exempt.

CA LABOR CODE § 6404.5 (2007).

Schools

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

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

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

CA HEALTH & SAFETY CODE § 104420 (2000).

Child Care Facilities

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

CA HEALTH & SAFETY CODE § 1596.795 (1993).

Health Care Facilities

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

CA LABOR CODE § 6404.5 (2007).

By request from the director of a state hospital listed in section 4100 of the California Welfare and Institutions Code, the Director of Mental Health may prohibit the possession or use of tobacco products on the grounds of the requesting facility, except on the premises of residential

staff housing where patients are not present. The prohibition shall also include an exemption for departmentally-approved religious ceremonies. As part of the implementation plan for the policy change, the department shall provide any requesting patient with a smoking cessation plan that may include, at minimum, an individual medical treatment plan, counseling, prescription drugs, or nicotine replacement, as determined to be medically necessary and appropriate. The store or canteen at any facility subject to the prohibition shall also not sell tobacco products.

CA WELFARE & INSTITUTIONS CODE § 4138 (2009).

Restaurants

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

CA LABOR CODE § 6404.5 (2007).

Bars

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

CA LABOR CODE § 6404.5 (2007).

Other State Smoking Restrictions and Provisions

Tobacco Use Restrictions for Outdoor Playgrounds and Tot Lot Sandbox Areas:

Tobacco use is prohibited within 25 feet of any playground or tot lot sandbox area as defined. Disposing of cigarette butts, cigar butts, or any other tobacco related waste within 25 feet of a playground or tot lot sandbox area is also prohibited. Violation is an infraction and subject to a fine of \$250 for each violation.

CA HEALTH AND SAFETY CODE § 104495 (2001).

Tobacco Use Restrictions for Prisons/ Detention Facilities—Department of Corrections:

The possession or use of tobacco products by inmates under the jurisdiction of the Department

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

CA PENAL CODE § 5030.1 (2005).

Tobacco Use Restrictions for Juvenile Detention Facilities:

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

CA WELFARE & INSTITUTIONS CODE § 1712.5 (2005).

Smoking Allowed Again if Standard for Secondhand Smoke Exposure Set by Certain Federal Agencies:

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

CA LABOR CODE § 6404.5 (2007).

Penalties/Enforcement

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

including, but not limited to, local health departments, as determined by the local governing body.

CA LABOR CODE § 6404.5 (2007).

Vehicles

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

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

State Preemption of Local Laws

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

CA LABOR CODE § 6404.5 (2007).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 87 cents

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

Year first enacted: 1959

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

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$954,888,000

Use of Cigarette Tax Revenue

Distribution of Tobacco Tax Revenues:

10 cents to the General Fund for state budget purposes;

2 cents to the Breast Cancer Fund, for research, prevention and screening programs;

25 cents to programs funded under Proposition 99, which was enacted by voters in 1988 - 25 percent of this revenue is directed toward programs established under the Health Education Account and the Research Account, including

an anti-smoking media campaign, project grants, public and private school-based programs, local and state-wide community-based health education programs, and behavioral and biomedical research. Most of the remaining revenues go toward medical care programs, including uncompensated health care for the medically indigent and a small portion to environmental resource programs;

50 cents goes to the California Children and Families First Trust Fund, for the purpose of promoting, supporting, and improving the early development of children.

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

Taxes on Other Tobacco Products

All other tobacco products: 41.11% of the wholesale price (changes annually July 1)

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

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

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

Use of Tax Revenue from Other Tobacco Products

Revenue from the tax on other tobacco products equivalent to a cigarette tax of 87 cents per pack is directed to programs funded under Proposition 99, which was passed by voters in 1988, including tobacco prevention and cessation programs; and revenue from the tax on other tobacco products equivalent to a cigarette tax of 50 cents per pack is directed to the California Children and Families First Trust Fund. See “Use of Cigarette Tax Revenue” section above for further details.

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

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health Services is primarily responsible for enforcement of the Stop Tobacco Access to Kids Enforcement (STAKE) Act, and shall establish and develop a program to reduce

the availability of tobacco products to persons less than 18 years of age. As part of this enforcement, the department is required to conduct random, on-site sting inspections at retail sites and shall enlist the assistance of persons that are 15 and 16 years of age in conducting these inspections, subject to certain guidelines. In carrying out its responsibilities, the department may conduct inspections in response to public complaints or at retail sites where violations have previously occurred. The department may also enter into a contract to allow local law enforcement agencies to conduct these inspections in their local jurisdictions.

CA BUS. & PROF. CODE §§ 22952 & 22957 (1994).

Penalties for Sales to Minors

Every person, firm, or corporation that knowingly sells, gives, or in any way furnishes tobacco products or paraphernalia, including blunt wraps to a minor is guilty of an infraction and shall be subject either to criminal action for a misdemeanor or to civil action punishable by a fine of \$200 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. If a defendant, or their employee or agent, demanded, was shown and reasonably relied upon a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof shall have a defense against prosecution. A specific violation prosecuted under this section shall not be subject to civil penalties that can be assessed by the Department of Health Services. No city or county shall adopt an ordinance or regulation inconsistent with this specific provision.

CA PENAL CODE § 308 (2006).

The Department of Health Services may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years tobacco products or tobacco paraphernalia. Penalties range from \$400 to \$600 for the first violation to \$5,000 to \$6,000 for the fifth and subsequent violations within a five-year period. A person, firm or corporation against which a civil penalty has been brought can not be prosecuted under section 308 of the California Penal Code (see above). Civil penalties in this section are assessed against the owner or owners of the business

and not the employees.

CA BUS. & PROF. CODE § 22958 (2008).

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

CA PENAL CODE § 308 (2006).

Photo ID

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

CA BUS. & PROF. CODE § 22956 (1994).

Sign Posting

Signs must be posted at each point of purchase stating that selling tobacco products to anyone less than 18 years of age is illegal and subject to penalties, and that the law requires that all persons selling tobacco products check the identification of any purchaser of tobacco products who reasonably appears to be under 18 years of age. The sign shall include a specified toll-free telephone number for persons to report unlawful sales to minors. Violation is subject to a civil penalty of \$200 for the first offense and \$500 for subsequent offenses. A person, firm or corporation against whom a civil penalty has been brought can not be prosecuted under section 308 of the Penal Code.

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

Every tobacco retailer shall conspicuously post in their place of business the notice required above, and unless civil penalties have been assessed under section 22958 of the Business and Professions Code, shall be punished by a fine of \$50 for the first offense, \$100 for the second offense, \$250 for the third offense, and \$500 for the fourth and subsequent violations or imprisonment for not more than 30 days. No city or county shall adopt an ordinance or regulation inconsistent with this specific provision.

CA PENAL CODE § 308 (2006).

Bidis

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

CA PENAL CODE § 308.1 (2001).

Penalties to Minors

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

CA PENAL CODE § 308 (2006) & CA BUS. & PROF. CODE § 22952 (1994).

Placement of Tobacco Products

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

CA BUS. & PROF. CODE § 22962 (2007).

Internet Sales of Tobacco Products

Any person selling, distributing or engaging in the non-sale distribution of tobacco products directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the Internet, shall comply with the following provisions. Before distributing or selling the tobacco product through any of these means the distributor, seller or non-sale distributor shall attempt to match the

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

CA BUS. & PROF. CODE § 22963 (2008).

State Preemption of Local Laws

No broad provision prohibiting local communities from passing stronger ordinances restricting youth access to tobacco products. However, section 308 of the California Penal Code does prevent local communities from passing laws inconsistent with that specific statute.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for any person, agent, or employee of a person in the business of selling or distributing smokeless tobacco or cigarettes to engage

in the non-sale distribution of such products to any person in any public building, park or playground, or on any public sidewalk, street, or other public grounds or any private property that is open to the general public. Non-sale distribution is defined as giving smokeless tobacco or cigarettes to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution of any of the above in connection with the sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers shall not constitute non-sale distribution. Violators are liable for a civil penalty of not less than \$200 for the first violation, \$500 for the second violation, and \$1,000 for each succeeding violation. This does not apply to public places where minors are prohibited by law.

CA HEALTH & SAFETY CODE § 118950 (2008).

Minimum Tobacco Product Sales Amounts

A person, firm, corporation or business may not manufacture for sale, distribute, sell or offer to sell any cigarette, except in a package containing at least 20 cigarettes. A person, firm, corporation or business may not manufacture for sale, distribute, sell or offer to sell any roll-your-own tobacco, except in a package containing at least 0.6 ounces of tobacco. Violators are liable for a civil penalty of \$200 for the first violation and up to \$1,000 for subsequent violations.

CA PENAL CODE § 308.3 (2001).

No stamp or meter impression may be affixed to, or made upon, any package of cigarettes if the package does not comply with all requirements of the Federal Cigarette Labeling and Advertising Act (Title 15 United States Code Section 1331 and following) for the placement of labels, warnings or any other information upon a package of cigarettes that is to be sold within the United States. Violation is subject to revocation of a distributor's license and shall constitute unfair competition under Section 17200 of the California Business and Professions Code.

CA REV. & TAX CODE § 30163 (1998).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

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

CA BUS. & PROF. CODE § 22960 (1995).

Penalties

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

CA BUS. & PROF. CODE § 22958 (2008).

Sign Posting

No provisions

F Licensing Requirements

Requirements

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

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

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

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

Fees

Retailers: One time fee of \$100 per location;

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

Manufacturers & Importers of cigarettes: After January 1, 2004, a fee commensurate with their respective market share of cigarettes manufac-

tured or imported by the manufacturer and sold in California in the next calendar year as estimated by the state Board of Equalization;

Manufacturers and Importers of Tobacco Products:

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

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

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

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

CA LABOR CODE §§ 96(k) (1999) & 98.6 (2005).

H Advertising & Promotion

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

information or images to the public.

CA GOVT. CODE § 19994.335 (1993).

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

CA BUS. & PROF. CODE § 22961 (1997).

Note: Enforcement of section 22961 of the Business and Professions Code may be affected by the U.S. Supreme Court decision in *Lorillard Tobacco Company v. Reilly*, decided in 2001.

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

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

CA HEALTH & SAFETY CODE § 104558 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The rights to all of California's annual

Master Settlement Agreement payments distributed to the state have been sold to the California Infrastructure and Economic Development Bank to obtain a lump sum payment up front. See Securitization section below for more information.

Securitization

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

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

M Fire Safety Standards

To help prevent cigarette-caused fires a person shall not sell, offer, or possess for sale in California cigarettes not in compliance with the following requirements: 1) the cigarettes are tested by the manufacturer in accordance with the test method prescribed in subdivision (a) of section 14952 California Health and Safety Code; 2) the cigarettes meet the performance standard specified in subdivision (b) of Section 14952 California Health and Safety Code; 3) the cigarettes meet the marking requirements in Section 14954 California Health and Safety Code; and 4) a written certification is filed by the manufacturer with the State Fire Marshal in accordance with section 14953 California Health and Safety Code. Any manufacturer or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part is subject to a civil penalty not to exceed \$10,000 for each sale. Any retailer, distributor, or wholesaler that knowingly sells or offers to sell cigarettes in violation of this part is subject to a civil penalty not to exceed \$500 for each sale or offer for sale of less than 50 packages of cigarettes and a civil penalty not to exceed \$1,000 for a sale or offer for sale of more than 50 packages of cigarettes. Knowingly making

a false certification is subject to a civil penalty of \$10,000 in addition to any other penalty.

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

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$77,123,000

FY2010 Federal Tobacco Control Program
Funding: \$1,873,958

FY2010 Total Tobacco Control Program
Funding: \$78,996,958

Funding Level Recommended by CDC:
\$441,900,000

Percentage of CDC-Recommended Level:
17.9%

State Funding Details:

California appropriated \$77,123,000 for tobacco prevention and cessation programs from a portion of state tobacco excise tax revenue in FY2010 (July 1, 2009 to June 30, 2010). In FY2009, \$77,693,000 was appropriated.

FY2010 Annual Budget (S.B. 1, 3rd special session 2009) enacted 2/20/09 and effective 7/1/09 & FY2010 Budget Revisions (A.B. 1, 4th special session 2009) enacted and effective 7/28/09.

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A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants, bars and casinos. See Colorado Revised Statute section 25-14-204 for a detailed list. Smoking is also prohibited within 15 feet or other distance specified by local communities of entryways to indoor areas where smoking is prohibited. This does not apply to: 1) private homes, private residences and private automobiles except if any such home, residence or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation; 2) limousines under private hire; 3) up to 25 percent of hotel/motel rooms rented to guests; 4) any retail tobacco business; 5) a cigar-tobacco bar as defined; 6) an airport smoking concession; 7) the outdoor area of any business; 8) a place of employment that is not open to the public and is under the control of an employer that employs three or fewer employees, provided that employees who request to work in a smokefree work area shall be provided with one; 9) a private non-residential building on a farm or ranch that has annual gross income of less than \$500,000; and 10) designated smoking areas for residents of assisted living facilities and their guests, provided the area is fully enclosed and ventilated. The owner or manager of a place not specifically listed or exempted may post signs prohibiting smoking or limiting it to designated areas, which shall have the effect of including the place/area in the list of indoor areas where smoking is prohibited.

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

Government Buildings

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

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

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

Private Workplaces

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

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

Schools

The board of education of each school district must adopt policies and rules that mandate a prohibition of the use of all tobacco products on the grounds of all public nursery schools, day care centers, child care facilities, Head Start programs, kindergarten, and elementary and secondary education facilities through grade 12. This prohibition pertains to all students, teachers, staff, and visitors on school property and at school-sponsored events. Smoking is also prohibited in all vehicles used by the school for the purpose of transporting students, workers, visitors, or any other persons. Signs regarding such prohibition and the consequences of violation shall be displayed prominently on all school property to ensure compliance. This does not apply to the use of a tobacco product in a limited classroom demonstration to show the health hazards of tobacco use. Schools are also allowed to enact more stringent policies or rules.

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

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

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

Child Care Facilities

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

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

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

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

Health Care Facilities

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

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

Restaurants

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

fied by local authority of entryways to food service establishments.

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

Bars

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

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

Penalties/Enforcement

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

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

State Preemption of Local Laws

A local authority may enact, adopt and enforce smoking regulations that cover the same subject matter as the above state law. No local authority may adopt any local regulation of smoking that

is less stringent than the above state law, except a local authority may specify a radius of less than 15 feet for the area included within an entryway.

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

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 84 cents

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

Year first enacted: 1964

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

From July 1, 2009 to June 30, 2011, the state sales tax applies to the sale of cigarettes. Local sales taxes still do not apply to the sale of cigarettes.

H.B. 09-1342 enacted 6/1/09 and effective 7/1/09.

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$195,867,000

Use of Cigarette Tax Revenue

The Tobacco Tax Cash Fund is created in the state treasury. All moneys from the cigarette tax (64 cents per pack) imposed pursuant to Art. X, Sect. 21 of the Colorado Constitution is deposited in this fund. All interest and income from monies in the cash fund shall also be credited to the cash fund, except in FY2009 through FY2012 the interest and income shall be deposited in the general fund. In each fiscal year, three percent of the money deposited in the fund plus three percent of the interest earned from moneys in the fund shall be appropriated to the state general fund, old-age pension fund and municipal and county governments to compensate for lost tax revenue from lower tobacco product sales, except in FY2009 through FY2012 only 3 percent of money in the cash fund shall be appropriated. The Health Care Expansion Fund, Primary Care Fund, Tobacco Education Programs Fund, and the Prevention, Early Detection and Treatment Fund are created in the state treasury, which will receive 46 percent, 19 percent, 16 percent and 16 percent respectively of the moneys deposited in the fund plus the same respective percentages of the interest from monies in the Tobacco Tax Cash Fund in each fiscal year, except in FY2009 through FY2012 as specified

above. Any interest and income earned from monies in the respective funds during FY2009 through FY2012 are also transferred to the state general fund. The Tobacco Education Programs Fund money is used to fund the state tobacco prevention/cessation program. This portion of the cigarette tax is levied pursuant to a constitutional amendment passed by voters in November 2004.

COLO. REV. STAT. ANN. § 24-22-117 (2009).

Note: The legislature has declared by resolution a state fiscal emergency for FY2010 (July 1, 2009 to June 30, 2010), so cigarette tax revenues from the portion of the cigarette tax enacted by constitutional amendment can be used for certain specified health-related purposes in FY2010. Additional legislation, authorized the appropriation of all monies in the Tobacco Education Programs Fund and the Prevention, Early Detection and Treatment Fund, and up to \$15 million in the Primary Care Fund for any health-related purpose and to serve populations enrolled in the Children's Basic Health Plan and the Colorado Medical Assistance program at January 1, 2005 enrollment levels in FY2010.

S.J.R. 09-35 enacted and effective 4/28/09 & S.B. 09-271 enacted and effective 6/1/09.

Of the revenue generated from the 20 cents of the cigarette tax enacted by the legislature pursuant to the statute cited below, 15 percent goes to the general fund and 85 percent goes to the old-age pension fund.

COLO. REV. STAT. § 39-28-110 (2005).

Taxes on Other Tobacco Products

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

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

Use of Tax Revenue from Other Tobacco Products

The revenue from the tax on tobacco products other than cigarettes (20% of the manufacturer's list price) imposed pursuant to Art. X, Sect. 21 Colorado Constitution is deposited in the Tobacco Tax Cash Fund. Moneys are then distributed to several funds from there, including the Tobacco Education Programs Fund, which funds the state tobacco prevention program. See "Use of Cigarette Tax Revenue" section for specific per-

centages and relevant details. This portion of the other tobacco products tax is levied pursuant to a constitutional amendment passed by voters in November 2004.

COLO. REV. STAT. ANN. § 24-22-117 (2009).

Note: The legislature has declared by resolution a state fiscal emergency for FY2010 (July 1, 2009 to June 30, 2010), so tobacco tax revenues from the portion of the tobacco tax enacted by constitutional amendment can be used for certain specified health-related purposes in FY2010. Additional legislation, authorized the appropriation of all monies in the Tobacco Education Programs Fund and the Prevention, Early Detection and Treatment Fund, and up to \$15 million in the Primary Care Fund for any health-related purpose and to serve populations enrolled in the Children's Basic Health Plan and the Colorado Medical Assistance program at January 1, 2005 enrollment levels in FY2010.

S.J.R. 09-35 enacted and effective 4/28/09& S.B. 09-271 enacted and effective 6/1/09.

Of the revenue generated from the other tobacco products tax (20% of the manufacturer's list price) enacted by the legislature pursuant to the statute cited below, 15 percent is distributed to the general fund and 85 percent to the old-age pension fund.

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

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

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

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

Penalties for Sales to Minors

No retailer shall sell or permit the sale of cigarettes or tobacco products to minors. Violators receive a written warning for the first violation; a \$250 fine for the second violation within a 24-month period; a \$500 fine for a third violation within a 24-month period; a \$1,000 fine for a fourth violation within a 24-month period; and \$1000 to \$15,000 for a fifth and subsequent violations within a 24-month period. It is an affirmative defense if the employer has adopted and enforced a written policy against selling cigarettes to minors, required employees to verify the age of the tobacco product customer by way of photographic identification and had established and imposed disciplinary sanctions for noncompliance. This affirmative defense can only be used two times at each establishment within a 24-month period.

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

A person shall not give, sell, distribute or offer for sale to any person under 18 years of age any cigarettes or tobacco products. Violation is a Class 2 petty offense subject to a fine of \$200. It is an affirmative defense to prosecution that the person furnishing the tobacco product was presented and reasonably relied upon a document that identified the individual as being over 18.

COLO. REV. STAT. ANN. § 18-13-121 (2008).

Photo ID

Before selling a cigarette or tobacco product to any individual, a person shall request and examine a government-issued photo identification that establishes that the individual is 18 years of age or older. This requirement is waived if the person appears older than 30 years of age. Violation is a petty offense subject to a fine of \$200.

COLO. REV. STAT. ANN. § 18-13-121 (2008).

Sign Posting

Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign. The warning sign shall be displayed in a prominent place in the building at all times and shall read as follows: WARNING: IT IS ILLEGAL FOR ANY PERSON UNDER 18 YEARS OF AGE TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A \$100 FINE MAY BE IMPOSED. Failure to

post such a sign is subject to a written warning for a first offense; \$50 fine for a second violation within a 24-month period; \$100 fine for a third violation within a 24-month period; \$250 fine for a fourth violation in a 24-month period; and \$250 to \$1,000 fine for a fifth and subsequent violations in a 24-month period.

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

Penalties to Minors

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

COLO. REV. STAT. ANN. § 18-13-121(2) (2008).

Possession of tobacco products by a person less than 18 years of age is prohibited. It shall not be an offense if the person was acting at the direction of a governmental agency authorized to enforce or ensure compliance with laws prohibiting the sale of tobacco products to minors. Violation is a noncriminal offense.

COLO. REV. STAT. ANN. § 25-14-301 (2008).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person shall not give, or distribute to any person

under 18 years of age any cigarettes or tobacco products. Violation is a Class Two petty offense subject to a fine of \$200. It is an affirmative defense to prosecution that the person furnishing the tobacco product was presented and reasonably relied upon a document that identified the individual as being over 18.

COLO. REV. STAT. ANN. § 18-13-121 (2008).

Minimum Tobacco Product Sales Amounts

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

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

No person shall import into Colorado any package of cigarettes that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package. Violation is a Class One misdemeanor.

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

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sale of cigarettes or tobacco products through vending machines is restricted to factories, businesses, offices, or other places not open to the general public; places where persons under 18 are not permitted access; or establishments where the vending machine dispenses cigarettes through the operation of a device that enables an adult employee of the establishment to prevent the dispensing of cigarettes to minors.

COLO. REV. STAT. ANN. § 24-35-503 (2008).

Penalties

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

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

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

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

Sign Posting

No provisions

F Licensing Requirements

Requirements

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

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

Fees

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

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

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

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

claiming to be aggrieved by this section is a civil suit for damages.

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

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

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

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

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Tobacco Litigation Settlement Cash Fund was created to receive annual Master Settlement Agreement payments. Interest from the investment of these funds starting in FY2002 is credited to the Breast and Cervical Cancer Prevention and Treatment Fund. This money is available for expenditure by the legislature each year on specified programs, but in FY2007 and FY2008, up to \$1 million shall be transferred to the Colorado

Autism Treatment Fund at the end of the fiscal year. Any money in the fund left unspent at the end of a fiscal year is transferred to the Short-Term Innovative Health Program Grant Fund. The Healthcare Supplemental Appropriations and Overexpenditures Account was also created in the cash fund. Interest earned on any moneys in the account is credited to the Breast and Cervical Cancer Prevention and Treatment Fund. From the April 2007 MSA payment, \$24.4 million of money not required for other programs shall be credited to the account, and is available for overexpenditures or supplemental appropriations to the Children's Basic Health Plan Trust or Colorado Benefits Management System as specified for FY2007, FY2008, FY2009 or FY2010. If not appropriated/used as specified by April 15, 2010, the money will be transferred to the state general fund.

COLO. REV STAT ANN. § 24-22-115 (2009).

All disputed MSA payments as defined received from July 1, 2008 to June 30, 2011 are transferred to the general fund. Of the MSA payments received in FY2009 that are not disputed payments, \$15.4 million in strategic contribution payments shall be allocated in FY2009 and \$84.6 million of the remaining MSA payments shall be allocated in FY2010 to programs as specified in subsections 1 and 1.5 of section 24-75-1104.5 Colorado Revised Statutes. All remaining MSA dollars received in FY2009 that are not disputed payments and not allocated to tobacco settlement programs are transferred to the state general fund. On June 1, 2009, \$1.1 million was transferred from the Tobacco Litigation Settlement Cash Fund to the state general fund, to accommodate the transfer; the allocation to the Short-Term Innovative Health Program Grant Fund shall be reduced by \$1.1 million in FY2010.

COLO. REV STAT ANN. § 24-75-1104.5(5&6) (2009).

Except as otherwise specified above, MSA money in the Tobacco Litigation Settlement Cash Fund is distributed to the following programs per fiscal year starting in FY2004, except for \$15.4 million in strategic contribution payments and in FY2011 and each fiscal year thereafter the lesser of \$65 million or all other settlement moneys shall be allocated in each fiscal year they are received by the state and in FY2010 the lesser of \$65 million

or all other settlement moneys shall be transferred to the state general fund on June 30, 2010 and not allocated: 1) 12 percent to the Colorado Nurse Home Visitor Program, not to exceed \$19 million in any fiscal year (changes in subsequent fiscal years); 2) 3 percent not to exceed \$5 million to the Comprehensive Primary and Preventive Care Grant Program, except in FY2010, the transfer was reduced by \$2.4 million, which was transferred to the general fund; 3) 24 percent not to exceed \$30 million to the Children's Basic Health Plan Trust; 4) \$200,000 to the State Dental Loan Repayment Program; 5) 8 percent not to exceed \$8 million to the Fitzsimmons Trust Fund; 6) 5 percent not to exceed \$8 million to the Read-to-Achieve Program; 7) 4 percent not to exceed \$5 million to the Tony Grampas Youth Services Program; 8) 3.5 percent not to exceed \$5 million to the AIDS Drug Assistance Program, except for FY2009, the transfer was reduced by \$65,000, which was transferred to the state general fund; 9) \$300,000 to pay the state's share of the "Child Mental Health Treatment Act"; 10) \$1 million to the Autism Treatment Fund to pay a portion of the state's share of the annual funding required by the "Home and Community Based Services for Children with Autism Act"; and 11) 2 percent not to exceed \$2 million to the Colorado HIV and AIDS Prevention Grant Program.

COLO. REV STAT ANN. § 24-75-1104.5(1) (2009).

In FY2008 and each fiscal year thereafter, any MSA payments received and allocated in the current fiscal year and the portion of all other settlement monies received by the state in the preceding fiscal year remaining after the programs in the paragraph above have been fully funded are distributed as follows: 1) 49 percent to the University of Colorado at Denver and Health Sciences Center; 2) 12 percent to Offender Mental Health Services Fund; 3) 8.5 percent to the Colorado Indigent Care Program through a special account in the Comprehensive Primary and Preventative grant fund, except for FY2009, the transfer was reduced by \$977,356, which was transferred to the state general fund; 4) 7 percent to the Public Health Services Support Fund, except for FY2009, the transfer was reduced by \$140,070, which was transferred to the state general fund; 5) 5 percent to the Children's Basic Health Plan Trust; 6) 4.5 percent to the Supplemental State Contribution Fund; 7) 4

percent to the Supplemental Tobacco Litigation Settlement Moneys Account of the Colorado Immunization Fund; 8) 3 percent to the Division of Alcohol and Drug Abuse; 9) 6 percent to the Short-Term Innovative Health Program Grant Fund, and 10) 1 percent to the Supplemental Tobacco Litigation Settlement Moneys Account of the Pediatric Specialty Hospital Fund, except in FY2009, \$317,000 was transferred and the difference was transferred to the state general fund.

COLO. REV STAT ANN. § 24-75-1104.5(1.5) (2009).

M Fire Safety Standards

To help prevent cigarette-caused fires, except as otherwise provided in paragraph (g) of subsection 2 of 24-33.5-1214 Colorado Revised Statutes, no cigarettes shall be sold or offered for sale in Colorado, or offered for sale or sold to persons located in Colorado, after July 31, 2009, unless: (A) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in subsection 2 of 24-33.5-1214 Colorado Revised Statutes; (B) A written certification has been filed by the manufacturer with the Director of the Division of Fire Safety in accordance with subsection 3 of 24-33.5-1214 Colorado Revised Statutes; and (C) The cigarettes have been marked in accordance with subsection 4 of 24-33.5-1214 Colorado Revised Statutes. A manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells or offers to sell cigarettes, other than at retail, in violation of the above requirements is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

COLO. REV. STAT. ANN. §§ 24-33.5-1202 & 24-33.5-1214 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$11,100,000

FY2010 Federal Tobacco Control Program
Funding: \$1,326,312

FY2010 Total Tobacco Control Program
Funding: \$12,426,312

Funding Level Recommended by CDC:
\$54,400,000

Percentage of CDC-Recommended Level:
22.8%

State Funding Details:

Colorado allocated \$11,100,000 for tobacco prevention and cessation programs from a portion of the state's tobacco tax revenue in FY2010 (July 1, 2009 to June 30, 2010). In FY2009, \$26,400,000 was allocated.

FY2010 Annual Budget (S.B. 09-259) enacted 5/1/09 and effective 7/1/09; S.B. 09-271 enacted and effective 6/1/09; and Exec. Order D-017-09 issued 8/29/09 and effective 9/1/09.

Note: Colorado's original allocation for tobacco prevention and cessation programs in FY2010 was reduced by \$4 million by S.B. 09-271 in June 2009 and then by an additional \$7 million by Executive Order D-017-09, issued August 2009.

Tobacco Control Program Related Laws

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

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

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A State Smoking Restrictions

Public Places

Smoking is prohibited in many public places, specifically including: state and local government buildings; any area of a health care institution; any area of a retail food store; any restaurant; any bar/tavern; within a school building while school is in session or student activities are being conducted; any passenger elevator; in any dormitory of any public or private institution of higher education; and any dog racing track or off track betting facility. Exemptions include: 1) correctional facilities; 2) designated smoking areas in psychiatric facilities; 3) public housing projects; 4) classrooms where demonstration smoking is taking place as part of a medical or scientific experiment or lesson; 5) smoking rooms provided by employers pursuant to section 31-40q Connecticut General Statutes, 6) outdoor areas of restaurants subject to certain conditions; and 7) tobacco bars as defined. The operator of a hotel, motel or similar lodging may allow guests to smoke in not more than 25 percent of their rooms. Nothing in this section shall be construed to require any smoking area in any building.

CONN. GEN. STAT. § 19a-342 (2003).

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

CONN. GEN. STAT. § 53-198 (1985).

Government Buildings

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

CONN. GEN. STAT. § 19a-342 (2003).

Private Workplaces

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

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

CONN. GEN. STAT. § 31-40q (2003).

Schools

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

CONN. GEN. STAT. § 19a-342 (2003).

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

CONN. GEN. STAT. § 53-198 (1985).

Child Care Facilities

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

CT ADMIN CODE § 19a-79-7(d)(6) (1993).

In family day care facilities, the provider or staff members may not smoke while engaged in care-giving activities requiring direct physical contact with children, including, but not limited to feeding, diapering, dressing and rocking. The provider shall make it known in advance if smoking will be occurring in the facility to parents who are considering placing their children in the provider's care. The provider shall also ensure that all cigarettes, cigars, pipes, ashes, butts, lighters and matches are kept out of the reach of children.

CT ADMIN CODE § 19a-87b-9 (1993).

Health Care Facilities

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

CONN. GEN. STAT. § 19a-342 (2003).

Restaurants

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

CONN. GEN. STAT. § 19a-342 (2003).

Bars

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

CONN. GEN. STAT. § 19a-342 (2003).

Penalties/Enforcement

In each room, elevator, area or building in which smoking is prohibited by this section, the person in control of the premises shall post or cause to be posted in a conspicuous place signs stating that smoking is prohibited by state law. Violation of laws prohibiting smoking in public places or failure to post the required signs is an infraction.

CONN. GEN. STAT. § 19a-342 (2003).

State Preemption of Local Laws

The provisions of this section shall supersede and

preempt the provisions of any municipal law or ordinance relative to smoking effective prior to, on, or after October 1, 1993.

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

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

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$3.00

Date last changed: October 1, 2009 – from \$2.00 to \$3.00

Year first enacted: 1935

CONN. GEN. STAT. § 12-296 (2009).

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

CONN. GEN. STAT. § 12-412-108 (2000).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$329,500,000

Taxes on Other Tobacco Products

Snuff: 55 cents/oz. and a proportionate rate on all fractional parts of an ounce;

All other tobacco products: 27.5% of the whole-sale sales price

CONN. GEN. STAT. § 12-330(c) (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

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

CONN. GEN. STAT. § 12-315a (1998).

Penalties for Sales to Minors

Any person employed by a dealer or distributor who sells, gives, or delivers tobacco in any form to a minor, other than a minor who is delivering or accepting delivery in their capacity as an employee, shall be assessed a civil penalty by the Commissioner of Revenue Services of not more than \$200 for the first offense and \$250 for subsequent offenses within 18 months. Any dealer or distributor who has sold, given or delivered cigarettes or tobacco products to a minor, other than a minor who is delivering or accepting delivery in their capacity as an employee, or if their employee has done so, shall be assessed a civil penalty of \$350 for the first violation, \$750 for the second violation within 18 months and a fine of \$750 and license suspension for at least 30 days for the third offense within 18 months.

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

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

CONN. GEN. STAT. § 12-295a(d) (2007).

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

excuse the seller from exercising reasonable diligence to determine whether the person attempting to purchase tobacco products is 18 years of age or older and whether the description and picture appearing on the ID presented by a card holder is that of the card holder.

CONN. GEN. STAT. § 53-344 (2001).

Photo ID

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

CONN. GEN. STAT. § 53-344a (1992).

Sign Posting

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

CONN. GEN. STAT. § 12-286a (2007).

Penalties to Minors

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

CONN. GEN. STAT. § 53-344 (2001).

If the Commissioner of Revenue Services finds, after a hearing, that a minor has purchased cigarettes or tobacco products, the commissioner shall assess such minor a civil penalty of not more than \$100 for the first violation and not more than \$150 for any subsequent offenses.

CONN. GEN. STAT. § 12-295a(a) (2007).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

Bans the transport of cigarettes by tobacco product manufacturers to anybody in the state except:

1) cigarette distributors and dealers; 2) an export warehouse proprietor or operator of a customs bonded warehouse; or 3) a person who is an officer, employee or agent of the United States Government, this state or a department, agency, instrumentality or political subdivision of the United States or of this state, when such person is acting in accordance with such person's official duties. A common or contract carrier is barred from transporting cigarettes to a residential dwelling and anybody who is not reasonably believed to be one of the above persons. Persons selling cigarettes shall require, as a condition of delivery, that the customer who is receiving the cigarettes shall sign an acknowledgment of receipt and provide proper proof of age. Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor and, for a second or subsequent violation, shall be guilty of a Class D felony.

CONN. GEN. STAT. § 12-285c (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

The Commissioner of Revenue Services may authorize a dealer or distributor to give or deliver any cigarette or tobacco product in connection with the promotion or advertisement of such product without receiving monetary compensation from the person receiving the tobacco product, provided the distribution is on the premises of a licensed dealer or at any event or establishment with an area limited to adult access only, the sample of cigarettes contains no less than two cigarettes, and the taxes on such cigarettes have been paid. The licensed dealer or distributor shall be liable for any gift or delivery of tobacco to minors on his premises by any person

conducting a promotion or advertisement.

CONN. GEN. STAT. § 12-314a (1996).

Minimum Tobacco Product Sales Amounts

The sale of cigarettes other than in an unopened package containing 20 or more cigarettes originating with the manufacturer which bears the health warning required by law is prohibited. Violation is subject to a civil penalty of \$50 for a first offense, \$250 for a second offense and \$500 for the third and subsequent offenses. The license to sell tobacco products may also be suspended or revoked.

CONN. GEN. STAT. § 12-314 (2001)

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No cigarettes may be dispensed from any machine other than a cigarette vending machine or a restricted cigarette vending machine. A cigarette vending machine may be placed only in an area, facility or business which is accessible to adults only, or may be placed in an area frequented by persons of all ages provided the machine is placed in an area accessible to adults only.

CONN. GEN. STAT. § 12-289a (1996).

Penalties

Violation of the restrictions on the placement of vending machines is subject to a civil penalty of \$250 for a first violation and \$500 for a second violation within 18 months. A third violation within 18 months is subject to a civil penalty of \$500 and removal of the vending machine for a period of one year.

CONN. GEN. STAT. § 12-289a (1996).

Sign Posting

Notice must be posted and maintained on the front of each vending machine and restricted vending machine stating that it is illegal to sell or give tobacco products to minors and it is illegal for minors to purchase tobacco products or misrepresent their age to do so. Violation is punishable by a fine of not more than \$100.

CONN. GEN. STAT. § 12-286a (2007).

F Licensing Requirements

Requirements

Dealers (retailers), distributors, including vending machine operators and manufacturers who sell cigarettes must be licensed by the Commissioner of Revenue Services. All licenses are renewable annually unless suspended or revoked. Any person who knowingly sells, offers for sale or possesses with intent to sell any cigarettes, without a license, shall be fined not more than \$500 or imprisoned for not more than three months, or both, for each offense. Each day of such unauthorized operation may be deemed a separate offense. Any person who fails to secure or renew a license shall forfeit as a penalty for each day of operation without such license the sum of \$5.

CONN. GEN. STAT. §§ 12-285b (2009), 12-286 (2000), 12-287 (2009), 12-288 (2009) & 12-291a (1993).

Distributors who deal in tobacco products other than cigarettes must also be licensed by the Commissioner of Revenue Services. The license must be displayed on the premises covered by the license.

CONN. GEN. STAT. § 12-330b (2009).

Fees

Dealers/Retailers (includes persons operating fewer than 25 cigarette vending machines): \$50 annually;

Distributors: (includes persons operating 25 or more cigarette vending machines): \$1,000 annually;

For distributors who sell cigarettes as a distributor exclusively to retail stores which such distributor is operating the fee is \$315 to \$1,250 annually depending on the number of retail stores operated;

Distributors of tobacco products other than cigarettes: \$200 annually.

CONN. GEN. STAT. §§ 12-285b, 12-287, 12-288 & 12-330b (2009).

License Suspension for Sales to Minors

The Commissioner of Revenue Services may suspend the license of any dealer or distributor for not less than 30 days for a third violation of selling or distributing tobacco products to minors, following a hearing.

CONN. GEN. STAT. § 12-295a (2007).

G Smoker Protection Laws

No employer or agent of any employer shall require, as a condition of employment that any employees or prospective employees refrain from using tobacco products outside the course of their employment, or otherwise discriminate with respect to compensation, terms, conditions or privileges of employment. Any nonprofit organization or corporation whose primary purpose is to discourage use of tobacco products by the general public shall be exempt from the provisions of this section.

CT GEN. STAT. ANN. § 31-40s (2003).

H Advertising & Promotion

No provisions

I Product Disclosure

The Commissioner of Public Health shall adopt regulations that specify the manner in which said commissioner shall obtain information from public sources concerning the nicotine yield ratings for each brand of tobacco product including, but not limited to, cigarettes sold or offered for sale in this state.

CONN. GEN. STAT. § 19a-74a (1999).

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits.

L Tobacco Settlement

Use of Tobacco Settlement Dollars

A Tobacco Settlement Fund was created where all annual Master Settlement Agreement (MSA) payments are deposited. In FY2002, and each fiscal year thereafter, \$12 million is dedicated to the Tobacco and Health Trust Fund, \$4 million is dedicated to the Biomedical Research Trust Fund, an unspecified amount each year to the general fund, and any remainder to the Tobacco and Health Trust Fund. In addition to the above, in FY2005, and each fiscal year thereafter, \$100,000

is appropriated to the Department of Revenue Services and \$25,000 is appropriated to the office of the Attorney General for the enforcement of MSA complimentary enforcement legislation and in FY2008 to FY2015, \$10 million is transferred to the Stem Cell Research Fund.

CONN. GEN. STAT. § 4-28e (2005).

A Tobacco and Health Trust Fund was created, which consists of money transferred from the Tobacco Settlement Fund, and money from various other sources. The trust fund is administered by a board of 17 trustees, except the board's duties were suspended during FY2004 and FY2005. In FY2009 and each fiscal year thereafter, the board may recommend authorization of disbursement for such purposes of up to one-half of the annual disbursement from the Tobacco Settlement Fund to the Tobacco and Health Trust Fund from the previous fiscal year, pursuant to section 4-28e, up to a maximum of \$6 million per fiscal year, and the net earnings from the principal of the trust fund from the previous fiscal year.

CONN. GEN. STAT. § 4-28f (2008).

Note: For FY2009, \$17,572,000 was transferred from the Tobacco and Health Trust Fund to the state general fund. For FY2010 and FY2011, \$1,991,982 and \$1,841,982 respectively was transferred from the Tobacco and Health Trust Fund to various specified programs, and an additional \$10 million will be transferred after May 1 of each fiscal year to the state general fund.

H.B. 5095 enacted and effective 1/15/09; H.B. 6602 enacted 3/3/09 and effective 4/1/09; & H.B. 6802 (2nd special session 2009) enacted (became law without governor's signature) 9/8/09 and effective 10/1/09.

M Fire Safety Standards

To help prevent cigarette-caused fires, on and after July 1, 2008, no holder of a cigarette manufacturer's license shall sell cigarettes, or offer cigarettes for sale, to consumers within Connecticut, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, unless such cigarettes shall: (1) Have been tested in accordance with the test method and meet the performance standard specified in section 29-418 Connecticut General Statutes; (2) have been listed in a written certification submitted to the Office

of the State Fire Marshal in accordance with section 29-419 Connecticut General Statutes; and (3) are sold in packages marked in accordance with section 29-421 Connecticut General Statutes. The Commissioner of Revenue Services may suspend or revoke the holder's cigarette manufacturer's license in the same manner as provided in section 12-295 of the Connecticut General Statutes for the suspension or revocation of the license of a dealer or distributor. Civil penalties apply to specific violations of reporting requirements as well.

CONN. GEN. STAT. §§ 29-416 to 29-423 (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$6,050,000

FY2010 Federal Tobacco Control Program
Funding: \$1,079,069

FY2010 Total Tobacco Control Program
Funding: \$7,129,069

Funding Level Recommended by CDC:
\$43,900,000

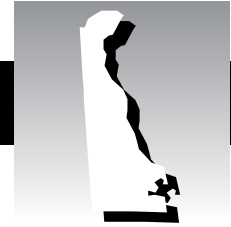
Percentage of CDC-Recommended Level:
16.2%

State Funding Details:

The Connecticut Tobacco and Health Trust Fund Board of Trustees allocated \$6,050,000 for tobacco control and prevention programs for FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment. In FY2009, \$7,412,456 was allocated.

Allocations made by decision of the Tobacco and Health Trust Fund Board of Trustees, see their FY2010 report, issued 12/09.





A State Smoking Restrictions

Public Places

Smoking is not permitted in any indoor enclosed area to which the general public is invited or permitted, including restaurants, bars and gaming facilities; see the state law cited below for a more detailed list. The only exceptions are for: 1) private homes and automobiles, except when being used for child care or day care or when a vehicle is being used for the public transportation of children or as part of health care or day care transportation; 2) indoor areas where private social functions are being held when seating arrangements are under the control of the sponsor of the function; 3) privately-hired limousines; 4) up to 25 percent of hotel rooms rented to guests; and 5) fund raising functions sponsored by volunteer fire, ambulance or rescue companies, or by a fraternal benefit society.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Government Buildings

Smoking is prohibited in all public buildings. A "public building" is defined as any building owned or operated by the state, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government. Smoking is also specifically prohibited in public meetings, jury waiting and deliberation rooms, and courtrooms.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Private Workplaces

Smoking is prohibited in all workplaces.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Schools

Smoking is specifically prohibited in public and nonpublic schools. Smoking is also prohibited in any other educational and vocational institutions.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Child Care Facilities

Smoking is prohibited in all child day care facilities, including home-based child care facilities.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Health Care Facilities

Smoking is prohibited in all health care facilities, including hospitals, clinics and doctor's offices. Smoking is also prohibited in retirement communities and nursing homes, not including private residences.

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Restaurants

Smoking is prohibited in all "food service establishments" which are defined as any indoor area open to the public or portion thereof in which the principal business is the sale of food for on-premises consumption including, but not limited to, restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment. Any establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a "restaurant" is considered a "food service establishment."

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Bars

Smoking is prohibited in "bars," which are defined as any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages. Any establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a "taproom or tavern," is considered a "bar."

DEL. CODE ANN. tit. 16, §§ 2901 et seq. (2002).

Penalties/Enforcement

Where smoking is permitted, the person in charge shall display signs stating "Warning: Smoking Permitted". Violators of Delaware's Clean Indoor Air Act will be fined \$100 for a first offense and at least \$250 for each subsequent offense. The

Delaware Department of Labor and Department of Health are responsible for the regulation, implementation, and enforcement of the Clean Indoor Air Act.

DEL. CODE ANN. tit. 16, §§ 2905 to 2907 (2002).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.60

Date last changed: July 31, 2009 – from \$1.15 to \$1.60

Year first enacted: 1949

DEL. CODE ANN. tit. 30, § 5305(a) (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$116,902,000

Taxes on Other Tobacco Products

Moist snuff: 54 cents/oz. and a proportionate rate on all fractional parts of an ounce;

All other tobacco products: 15% of the wholesale price

DEL. CODE ANN. tit. 30, § 5305(b& c) (2008).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Safety and Homeland Security or its delegates shall be responsible for conducting annual, random, unannounced inspections at locations where tobacco products are sold or distributed to test compliance. Persons under the age of 18 may be enlisted by the department or its delegates to test compliance provided that such persons may be used only under the direct supervision of the department, its employees or delegates and only when written parental consent has been provided. The department shall adopt and publish guidelines for the use of persons under 18

in inspections. The department may enter into an agreement with any local law enforcement agency for delegation of inspection and enforcement within the local agency's jurisdiction.

DEL. CODE ANN. tit. 11 § 1125 (1996).

Penalties for Sales to Minors

It shall be unlawful for any person to sell or distribute any tobacco product to another person who has not attained the age of 18 years or to purchase any tobacco product on behalf of another such person, except that this section shall not apply to the parent or guardian of another such person. Violators shall be fined \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third and all subsequent offenses within 12 months. The court may also order the Department of Finance to suspend the defendant's license for sale of tobacco products for a period not to exceed six months for the second and subsequent violations. It shall be an affirmative defense that the purchaser or recipient of tobacco products who had not reached the age of 18 years presented to the accused proof of age which set forth information that would lead a reasonable person to believe that such individual was 18 years of age or older. The person in charge of the establishment where the violation occurred shall be guilty of the violation and shall be subject to the fine only if the retail licensee has received written notice of the above provisions from the Department of Safety and Homeland Security. The person in charge of the establishment where the alleged violation occurred shall have an affirmative defense if such person or entity can establish that, prior to the date of the violation, they had adopted and enforced a written policy against selling tobacco products to persons under 18 years of age; had informed its employees of the applicable laws regarding the sale of tobacco products to persons under 18 years of age; required employees to sign a form indicating that they have been informed of and understand the written policy required herein; required employees to verify the age of tobacco product customers by means of photographic identification; and had established and enforced disciplinary sanctions for noncompliance. This affirmative defense is available only twice at one retail location during any 12-month period.

DEL. CODE ANN. tit. 11 §§ 1116, 1121, 1122 & 1123 (1996).

Photo ID

A person engaged in the sale or distribution of tobacco products shall have the right to demand proof of age from a prospective purchaser or recipient of such products. Such person shall demand proof of age from a prospective purchaser or recipient who is under 27 years of age. "Proof of age" means a driver's license or other identification with a photograph of the individual affixed thereon that indicates that the individual is 18 years old or older. Violation is subject to the same penalties as for selling or distributing tobacco products to minors.

DEL. CODE ANN. tit. 11, §§ 1115(4) (1996), 1116(b&c) (2009), & 1126 (1996).

Sign Posting

A person engaged in the sale or distribution of tobacco products shall post conspicuously at each point of purchase a notice stating that selling tobacco products to anyone under 18 is illegal, that the purchase of tobacco products by anyone under 18 is illegal, and that a violator is subject to fines. The notice shall also state that all persons selling tobacco products are required, under law, to check the proof of age of any purchaser of tobacco products under the age of 27 years. The notice shall include a toll-free number to the Department of Safety and Homeland Security to report unlawful sales to minors. Owners who fail to post a notice shall be subject to a fine of \$100.

DEL. CODE ANN. tit. 11, § 1117 (2009).

Penalties to Minors

It shall be unlawful for any person who is not 18 or older to purchase tobacco products, to accept receipt of a sample, to exchange a coupon for a tobacco product, or to present or offer another person a purported proof of age which is false, fraudulent, or not actually their own proof of age, for the purpose of purchasing or receiving any tobacco product. Violators shall be fined \$50 or ordered to perform 25 hours of community service for the first offense, \$50 fine and 50 hours of community service for the second and all subsequent offenses within 12 months of prior offenses.

DEL. CODE ANN. tit. 11, § 1124 (1996).

Placement of Tobacco Products

It shall be unlawful for any person who owns, operates, or manages a business establishment

where tobacco products are offered for sale over the counter at retail to maintain such products in any display accessible to customers that is not under the control of a cashier or other employee. This prohibition shall not apply to business establishments to which persons under the age of 18 are not admitted, unless accompanied by an adult, tobacco vending machines as permitted under existing law or to tobacco stores. "Under the control" means customers cannot readily access the tobacco products without the assistance of a cashier or other employee. A display that holds tobacco products behind locked doors shall be construed as under the control of a cashier or other employee. Violators are subject to the same penalties as for selling or distributing tobacco products to minors.

DEL. CODE ANN. tit. 11 §§ 1119(c) (2009) & 1121 (1996).

Internet Sales of Tobacco Products

Places restrictions on sales of tobacco products by mail, over the phone, or by the Internet by requiring prior to delivery a copy of government issued identification and a certification that this information is true and uses a delivery service that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package. Reporting of delivery sales of tobacco products to the Department of Finance is required. Cigars and pipe tobacco are exempt from most of the above requirements. A first violation of this subchapter is a \$1,000 fine or five times the retail value of any tobacco product involved, whichever is greater; a second and subsequent violation is a fine of \$5,000 or five times the retail value of the cigarettes involved. Any person who knowingly violates any provision of this subchapter, or who knowingly and falsely submits a certification in another person's name, shall, for each such offense, be fined \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five years, or both. Failure to collect or remit taxes in connection with a delivery sale is five times the retail value of any tobacco product involved in addition to any other penalty.

DEL. CODE ANN. tit. 30, §§ 5361 to 5369 (2007).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New*

Hampshire Motor Transport Association, decided February 20, 2008.

State Preemption of Local Laws

All stronger municipal or county ordinances restricting youth access to tobacco products enacted after June 30, 1996 are preempted by state law.

DEL. CODE ANN. tit. 11 § 1127 (1996).

Note: This law preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to almost all laws in Sections C, D & E of Delaware's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It shall be unlawful for any person to distribute tobacco product samples or coupons for subsequent receipt of free or discounted tobacco products to another person under age 18. A person engaged in sampling shall have the right to demand proof of age from a prospective recipient of samples or of coupons for the redemption of tobacco products. Violators are subject to the same penalties as for selling or distributing tobacco products to minors. In addition, both affirmative defenses listed under the "Penalties for Sales to Minors" category are available for a violation of this section.

DEL. CODE ANN. tit. 11 §§ 1118, 1121, 1122 & 1123 (1996).

Minimum Tobacco Product Sales Amounts

No person shall distribute a tobacco product for commercial purposes unless the product is in a sealed package provided by the manufacturer with the required health warning and tax stamp. No person shall distribute any pack of cigarettes containing fewer than 20 cigarettes. Violators are subject to the same penalties as for selling or distributing tobacco products to minors.

DEL. CODE ANN. tit. 11, §§ 1120 & 1121 (1996).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It shall be unlawful for any person to distribute

or permit the distribution of tobacco products through the operation of a vending machine in a public place, except in a taproom, tobacco shop, or in premises in which a person who has not attained the age of 18 years is prohibited by law from entering. A tobacco vending machine must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner or supervisor of the premises.

DEL. CODE ANN. tit. 11 § 1119 (1996).

Penalties

Violators are subject to the same penalties as for selling or distributing tobacco products to minors.

DEL. CODE ANN. tit. 11, §§ 1121 (1996).

Sign Posting

No provisions

F Licensing Requirements

Requirements

No person shall engage in or conduct the business of manufacturing, purchasing, selling, consigning or distributing tobacco products in Delaware or acting as an affixing agent without having first obtained the appropriate license or licenses from the Department of Finance. Licenses are to be renewed annually. Selling tobacco products without a license is subject to a fine of \$100 to \$1,000 and/or imprisonment for not more than 90 days.

DEL. CODE ANN. Tit. 30, §§ 5307, 5311& 5343 (1977).

Fees

Wholesalers - each place of business: \$200 annually;

Retailers - each place of business: \$5 annually;

Vending machine operators - each machine: \$3 annually.

DEL. CODE ANN. tit. 30 § 5308 (1977).

License Suspension for Sales to Minors

By court order, the Department of Finance may suspend the license for the sale of tobacco products for a period not to exceed six months for the second and subsequent violations of applicable youth access laws.

DEL. CODE ANN. tit. 11, § 1121 (1996).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No person, firm, corporation, partnership or other organization shall advertise any tobacco products within 200 feet of any public or private school, excluding institutions of higher education. This section shall not apply to advertisements inside of a commercial establishment, except outward-facing advertisements placed in windows. This section shall not be construed to prohibit the display of any message or advertisement opposing the use of tobacco products. Any message or advertisement opposing the use of tobacco products that is placed within 200 feet of a school may not contain the brand name of any tobacco product or the name of any tobacco company. This section shall also not be construed to prohibit an advertisement stating that a commercial establishment sells tobacco products, provided that the advertisement is on the premises or property of the commercial establishment and does not identify any tobacco product brand or any tobacco product manufacturer by name. Whoever is found to be in violation of this section by the Superior Court shall be fined up to \$1,000 for the first offense and up to \$5,000 for each subsequent offense.

DEL. CODE ANN. tit. 6, § 2507 (2000).

Note: Enforcement of the above law may be affected by the U.S. Supreme Court decision in *Lorillard Tobacco Company v. Reilly*, decided in 2001.

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

A special fund is created in the Department of Finance called the Delaware Health Fund.

All annual payments received from the Master Settlement Agreement between the state of Delaware and certain cigarette companies shall be deposited or transferred into the fund. Interest or other income earned on moneys in the Delaware Health Fund shall be deposited or transferred to the fund, and moneys in the fund do not lapse or revert to the state general fund. Moneys from the Delaware Health Fund shall be expended for specific health-related purposes, including tobacco prevention and cessation programs and initiatives. See the statute cited below for more information. No money shall be expended from the Delaware Health Fund unless included in the annual state appropriations act.

DEL. CODE ANN. tit. 16, § 137 (1999).

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes may be sold or offered for sale in Delaware or offered for sale or sold to persons located in Delaware unless: 1) such cigarettes have been tested in accordance with the test method and meet the performance standard specified in title 16, section 7117 Delaware Code; 2) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with title 16, section 7118 Delaware Code; and 3) the cigarettes have been marked in accordance with title 16, section 7119 Delaware Code. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale in violation of the above standard shall be subject to a civil penalty not to exceed \$100 for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any such person or entity exceed \$100,000 during any 30-day period. A retail dealer who knowingly sells or offers to sell cigarettes in violation of the above standard shall be subject to a civil penalty not to exceed \$100 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any retail dealer exceed \$25,000 during any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 and not exceeding \$250,000 for each violation.

DEL. CODE ANN. tit. 16 §§ 7116 to 7125 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$10,059,550

FY2010 Federal Tobacco Control Program
Funding: \$669,573

FY2010 Total Tobacco Control Program
Funding: \$10,729,123

Funding Level Recommended by CDC:
\$13,900,000

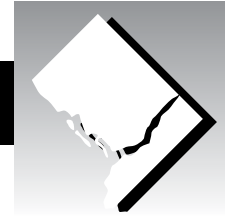
Percentage of CDC-Recommended Level:
77.2%

State Funding Details:

Delaware appropriated \$10,059,500 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the Delaware Health Fund where all Master Settlement Agreement payments are directed. In FY2009, \$10,665,600 was appropriated.

FY2010 Annual Budget (H.B. 290) enacted and effective 7/1/09.

■ ■ ■



A State Smoking Restrictions

Public Places

The Department of Health is authorized to conduct inspections of all “places of employment” and “public places” to ensure that the activity of smoking in such places, which is hereby prohibited, is not taking place. A “public place” is defined as an enclosed area to which the public is invited or in which the public is permitted, including restaurants and bars/taverns. The definition excludes a private residence, unless it is used as a child care, adult day care, or health care facility. Exemptions include: 1) a retail store that is used primarily for the sale of tobacco products and accessories in which the total annual revenue generated by the sale of non-tobacco products or accessories is no greater than 25 percent of total revenue, provided, that it does not share space with any other establishment; 2) tobacco bars as defined; 3) an outdoor area of a restaurant, tavern, club, brew pub, or nightclub; 4) hotel and motel rooms; 5) a medical treatment, research, or nonprofit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program; and 6) theatrical productions. An economic hardship waiver is also provided, see the *Other State Smoking Restrictions and Provisions* section.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Smoking is prohibited on public passenger vehicles that seat 12 or more. Carriers may refuse to transport violators. Violation is also punishable by a fine of \$10 to \$50 for the first offense, and by a fine of \$50 to \$100 and/or by up to 10 days imprisonment for subsequent violations.

D.C. CODE ANN. §§ 35-251 et seq. (1992).

Government Buildings

Smoking is prohibited in “places of employment,” which includes places of public employment. “Place of employment” is defined as an enclosed area under the control of a public employer that employees normally frequent dur-

ing the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias and hallways.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Private Workplaces

Smoking is prohibited in “places of employment,” which are defined as an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways and vehicles owned by a private employer, if the vehicle is used by more than one person, and excludes a private residence, unless it is used as a child care, adult day care or health care facility.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Schools

Smoking is prohibited in educational facilities.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

The use of tobacco and tobacco products on public school premises shall be prohibited at all times, except that adults may use tobacco and tobacco products in designated smoking areas on public school premises established pursuant to guidelines promulgated by the Superintendent of Schools.

D.C. MUN.REG. § 3502.5 (1992).

Child Care Facilities

Smoking is prohibited in child care facilities. Child care and adult day care facilities in private residences are specifically included.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Health Care Facilities

Smoking is prohibited in health care facilities. Health care facilities in private residences are specifically included in the language of the law. A medical treatment, research, or nonprofit institu-

tion where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program is exempt.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Restaurants

Smoking is prohibited in restaurants.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Bars

Smoking is prohibited in “public places” the definition of which includes brew pubs, clubs, nightclubs and taverns. “Tobacco bars,” which are defined as restaurants, taverns, brew pubs, clubs or nightclubs that generate 10 percent or more of their total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines, or the rental of on-site humidors and outdoor areas of any of these types of establishments are permanently exempted.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Other State Smoking Restrictions and Provisions

Economic Hardship Waiver from Smoking Restrictions for Certain Businesses:

The Mayor may grant an economic hardship waiver from the requirements of the above law; provided, that prior to the granting of a waiver, the applicant establishes, to the satisfaction of the Mayor, that compliance with the requirements has caused or will cause undue financial hardship. An economic hardship waiver shall be based on regulations to be issued by the Mayor. Public places and places of employment who receive an economic hardship waiver shall have been in existence on or before January 1, 2007; not permit smoking in an area that exceeds 25 percent of the total area if the place of employment or public place is a restaurant; and be subject to conditions or restrictions as may be necessary to minimize the adverse effects of smoking.

D.C. CODE ANN. § 7-731, Part B, §§ 4915 to 4921 (2006).

Penalties/Enforcement

In any place, elevator or vehicle in which smoking is prohibited; the owner, manager, or person in charge of the place shall post or cause to be posted

specified warning signs. Signs shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number in a manner that gives notice to the public of the applicable law. Smoking in a prohibited area is subject to a fine of \$100 to \$1,000 for a first offense, and \$200 to \$1,000 for subsequent offenses. Obscuring, removing, defacing, mutilating or destroying any posted sign is subject to a fine of \$500. Failing to post or maintain the required warning signs and failing to notify a person observed to be smoking to stop the activity shall be punishable by a fine of \$500; each day the violation continues is a separate offense. The D.C. Department of Health is the designated enforcement agency.

D.C. CODE ANN. §§ 7-731, Part B, §§ 4915 to 4921 (2006) & 7-1704 (1991).

State Preemption of Local Laws

No specific provision concerning preemption of smoking restrictions in city law; laws were approved by the District of Columbia city council and mayor, and there is no elected lawmaking body beneath the council/mayor.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.50

Date last changed: October 1, 2009 – from \$2.00 to \$2.50

Year first enacted: 1949

D.C. CODE ANN. § 47-2402(a) (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$22,417,000

Taxes on Other Tobacco Products

Little Cigars (weighing less than 4 1/2 lbs./thousand): 12.5 cents per little cigar;

Moist snuff: 30 cents/oz. and a proportionate rate on all fractional parts of an ounce;

All Other Tobacco Products (excluding premium cigars and pipe tobacco): 12% of the gross receipts from the sale of or charges for the tobacco product

D.C. CODE ANN. §§ 47-2001(2006), 47-2002 (2006), 47-2402.01 (2009) & 47-2402.02 (2009).

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

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in city law

Penalties for Sales to Minors

No person shall sell, give or furnish any tobacco products to any person less than 18 years of age. Violation is a misdemeanor punishable by a fine of between \$100 and \$500 and/or imprisonment for not more than 30 days for the first offense. A person who commits subsequent violations shall be fined \$500 to \$1,000, imprisoned for not more than 90 days, or both. Any license to sell cigarettes may be suspended for the first or second violation, and shall be revoked for a third violation.

D.C. CODE ANN. § 22-1320 (1991).

Photo ID

Any person who sells any cigarette or other tobacco product that has reasonable cause to believe that a person that attempts to purchase the product is under 18 years of age shall require that the purchaser present identification that indicates their age. Violation is a misdemeanor punishable by the same penalties as for selling or furnishing tobacco products to minors.

D.C. CODE ANN. § 22-1320 (1991).

Sign Posting

The owner or person in charge of a place of business that sells tobacco products shall post a warning sign that states that it is illegal for minors to purchase tobacco products and that includes a surgeon general's warning. The sign shall clearly state the maximum fine for a violation of this section. The sign shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number to give notice of the law to the public.

D.C. CODE ANN. § 22-1320 (1991).

Penalties to Minors

No provisions

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

No specific provision concerning preemption of laws restricting youth access to tobacco products in city law; laws were approved by the District of Columbia city council and mayor, and there is no elected lawmaking body beneath the council/mayor.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products**Samples**

No person, agent, or employee of any person shall, in the course of doing business, distribute any free cigarettes or other tobacco product to any person on any public street, public sidewalk, public park, playground, in a public building, other public property, or private property open to the public, except that free cigarettes or other tobacco products may be distributed at a tobacco store, a convention, or a conference catering to adults. Violators will be fined not less than \$250 per violation.

D.C. CODE ANN. § 7-1731 (1991).

Minimum Tobacco Product Sales Amounts

Cigarettes may not be sold in numbers less than the number contained in the original package. The sale of loose cigarettes from opened or original packages is prohibited. Violation is subject to a fine of 500 percent of the retail value of the cigarettes involved or \$5,000, whichever is greater.

D.C. MUN. REGS. Tit. 9, § 1016 (2000).

No person shall sell or distribute in the District any cigarettes the package of which does not comply with all requirements imposed by or under federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including the precise warning labels specified in section Four of the Federal Cigarette Labeling and Advertising Act. Violation is subject to a fine of up to \$5,000 and/or up to three years in prison.

DC CODE ANN. §§ 47-2419 (2001) & 47-2421 (2005).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to licensed taverns or nightclubs, establishments that restrict admittance to persons under 18 years of age, or a licensed restaurant. These vending machines shall be located in an area that is in the immediate vicinity, in plain view and control of a responsible employee, so that any tobacco purchase is readily observable by an employee.

D.C. CODE ANN. § 47-2404(b)(3) (1991).

Penalties

Violation is subject to loss of the license to operate a vending machine.

D.C. CODE ANN. § 47-2404(f) (2003).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Cigarette wholesalers, retailers, and vending machine operators must obtain a license from the Mayor. Licenses must be renewed at least annually unless suspended or revoked. Licenses are required for each place of business and vending machine.

D.C. CODE ANN. § 47-2404 (2003)

Fees

Wholesaler's license: \$50 annually;

Retailer's license: \$15 annually;

Vending machine operators' license: \$15 for each machine.

The mayor may adjust license fees by regulation.

D.C. CODE ANN. § 47-2404 (2003).

License Suspension for Sales to Minors

The Mayor may suspend any license issued under this law to any person convicted of a first or second violation of selling, giving or furnishing tobacco products to minors and shall revoke the license for a third or subsequent offense.

D.C. CODE ANN. §§ 47-2404 (2003) & 22-1320 (1991).

G Smoker Protection Laws

No person shall refuse to hire or employ any applicant for employment, or discharge or otherwise discriminate against any employee with respect to compensation or any other term, condition, or privilege of employment, on the basis of the use of tobacco products by the applicant or employee. An employee or applicant for employment who is aggrieved by violation of this section shall have the right to a private cause of action against the person after exhausting all other options. The person is entitled to recover any damages, including lost or back wages and salary.

D.C. CODE ANN. § 7-1703.3 (1993).

H Advertising & Promotion

The Washington Metropolitan Area Transit Authority prohibited tobacco and alcohol advertising on all system rail cars and buses.

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The District of Columbia has sold the rights to almost all of the annual payments it was supposed to receive from the Master Settlement Agreement (MSA) to a Tobacco Settlement Financing Corporation for lump sum payments up front, see Securitization section below for more details.

A Community Health Care Financing Fund was established within the city general fund where proceeds from the 2006 sale of future MSA payments and other revenue as specified was deposited. Money in the fund shall be used to directly pay to promote health care and for the delivery of health care related services in the District, including the construction of health care facilities and the operation of health care related programs.

The monies were then allocated for a number of specific purposes, including a three-year tobacco prevention and cessation program called the DC Tobacco-Free Families Campaign (no longer operating due to loss of funding); see law cited below for more details.

D.C. CODE ANN. §§ 7-1931 & 1932 (2007).

Securitization

In 2000, the District of Columbia securitized most of its Master Settlement Agreement revenue, and in 2006 transferred additional money to the Tobacco Settlement Financing Corporation. Proceeds from the initial bond sale went into a trust to pay off some of the city's debt, and an additional bond sale by the Tobacco Settlement Financing Corporation was authorized in 2006 to finance the costs of the National Capital Medical Center, healthcare related issues, other capital projects, or for debt defeasance.

D.C. CODE ANN. §§ 7-1801.01 et seq. & 7-1831.01 et seq. (2006).

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarette may be sold or offered for sale in the District of Columbia unless: 1) It has been tested in accordance with the test method and meets the performance standard specified in section 7-1753 District of Columbia Code; 2) the manufacturer has filed a written certification with the Mayor, or the Mayor's delegate, in accordance with section 7-1754 District of Columbia Code; and 3) it has been marked in accordance with subsection (b) of section 17-1754 District of Columbia Code. A manufacturer or wholesale dealer, who knowingly fails to comply with any of the provisions of this act, or regulations promulgated pursuant to this act, shall be subject to a civil penalty not to exceed \$10,000 for each violation, not to exceed \$100,000 during any 30-day period. A retail dealer, who knowingly fails to comply with any of the provisions of this act, or regulations promulgated pursuant to this act, shall be subject to a civil penalty not to exceed \$5,000 for each violation, not to exceed \$25,000 during any 30-day period. Each day of violation shall constitute a separate violation and, unless provided otherwise by regulation, the prescribed penalty shall be applicable to each separate violation. In addition to any other penalty, any corporation, partnership, sole proprietor,

limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

D.C. CODE ANN. §§ 7-1751 to 7-1757 (2009).

N Tobacco Control Program Funding

FY2010 City Tobacco Control Program
Funding: \$850,000

FY2010 Federal Tobacco Control Program
Funding: \$531,753

FY2010 Total Tobacco Control Program
Funding: \$1,381,753

Funding Level Recommended by CDC:
\$10,500,000

Percentage of CDC-Recommended Level:
13.2%

City Funding Details:

The District of Columbia allocated \$850,000 for operation of the city tobacco cessation quitline in FY2010 (October 1, 2009 to September 30, 2010) from Master Settlement Agreement dollars. In FY2009, \$3,600,000 was allocated to the DC Tobacco-Free Families Campaign.

B18-203 passed by the City Council 9/22/09, signed by mayor 12/18/09, expected to pass U.S. Congressional Review period and become effective 3/2/10.





A State Smoking Restrictions

Public Places

Smoking is prohibited in most public places and workplaces, including restaurants and non-tribal gaming facilities. Exempt from this law are: 1) stand-alone bars as defined, 2) retail tobacco shops as defined, 3) designated hotel rooms, 4) tobacco manufacturing facilities, 5) customs smoking rooms in an international airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security, 6) smoking cessation programs approved by the Department of Health or medical or scientific research conducted therein, and 7) membership associations as defined as long as no one is engaged in work.

FLA. STAT. ch. 386.201 et seq. (2003).

Government Buildings

Smoking is prohibited in all enclosed indoor workplaces, including state and local government workplaces. "Enclosed indoor workplace" means any place where one or more persons engage in work, and which place is predominantly or totally bounded on all sides and above by physical barriers.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Private Workplaces

Smoking is prohibited in all enclosed indoor workplaces. "Enclosed indoor workplace" means any place where one or more persons engage in work, and which place is predominantly or totally bounded on all sides and above by physical barriers.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Schools

Smoking is prohibited in all enclosed, indoor workplaces, including all educational facilities. It is unlawful for any person under 18 years of age to smoke tobacco in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.

FLA. STAT. ch. 386.203, 386.204 & 386.212 (2003).

Child Care Facilities

Smoking is prohibited in all enclosed, indoor workplaces, including child care facilities.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Health Care Facilities

Smoking is prohibited in all enclosed, indoor workplaces, including health care facilities.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Restaurants

Smoking is prohibited in enclosed, indoor workplaces, including restaurants. The bar areas of a restaurant are included.

FLA. STAT. ch. 386.203 & 386.204 (2003).

Bars

Stand-alone bars are specifically exempted. "Stand-alone bar" is defined as a separate establishment that makes no more than 10 percent of its gross revenue from the sale of food.

FLA. STAT. ch. 386.203 & 386.2045 (2003).

Penalties/Enforcement

A person who smokes in a nonsmoking area commits a non-criminal violation, punishable by a fine of no more than \$100 for the first violation and \$500 for subsequent violations. Signs designating smoking areas must be posted in appropriate areas. The Department of Health or other enforcement authority as specified, upon notification of observed violations, shall issue to the person in charge of such enclosed indoor workplace, a notice to comply. If such person fails to comply within 30 days, the department or division shall assess a civil penalty against them of not less than \$250 and not to exceed \$750 for the first violation and not less than \$500 and not to exceed \$2,000 for each subsequent violation. If a person refuses to comply after being assessed the penalty, the appropriate enforcement authority may file a complaint in the specific county circuit court to force compliance. The Department of Health, the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall enforce this part based upon each

department's specific areas of regulatory authority and shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators.

FLA. STAT. ch. 386.207 (2003).

State Preemption of Local Laws

Regulation of smoking is expressly preempted to the state, and the above restrictions on smoking supersede any stronger municipal or county ordinance on the subject.

FLA. STAT. ch. 386.209 (2003).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax/surcharge per pack of 20: \$1.339

Date last changed: July 1, 2009 – from 33.9 cents to \$1.339

Year first enacted: 1943

FLA. STAT. ch. 210.02 (1990) & 210.011 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$405,061,000

Use of Cigarette Tax Revenue

Revenue from the cigarette tax levied by section 210.02 Florida statutes is distributed as follows minus a service charge of 0.3 percent to the state general fund and a 0.9 percent transfer to the Alcoholic Beverage and Tobacco Trust Fund: 1) 2.9 percent to the Revenue Sharing Trust Fund for counties; 2) 29.3 percent to the Public Medical Assistance Trust Fund for the funding of indigent care; 3) 1.47 percent from July 1, 2004 through June 30, 2016 to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute for constructing, furnishing, and equipping a cancer research facility at the University of South Florida; 4) and the remaining revenue is transferred to the state general fund.

FLA. STAT. ch. 210.20 (2003).

Revenue from the \$1.00 surcharge on cigarettes levied by section 210.011 Florida statutes shall be deposited in the Health Care Trust Fund within the Agency for Health Care Administration.

FLA. STAT. ch. 210.011(9) (2009).

Taxes on Other Tobacco Products

Tax/surcharge on all other tobacco products except cigars: 85% of the wholesale sales price

FLA. STAT. ch. 210.30 (1991) & 210.276 (2009).

Use of Tax Revenue from Other Tobacco Products

Revenue from the 25 percent of the wholesale sales price tax on tobacco products levied by section 210.30 Florida statutes shall be deposited in the state general fund.

FLA. STAT. ch. 210.70 (1991).

Revenue from the 60 percent of the wholesale sales price surcharge on tobacco products levied by section 210.276 Florida statutes shall be deposited in the Health Care Trust Fund within the Agency for Health Care Administration.

FLA. STAT. ch. 210.276 (7) (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Alcoholic Beverages and Tobacco is the designated enforcement authority for all youth access laws and the sign posting requirement. Law enforcement officers may also enforce all youth access laws. A county or municipality may designate certain of its employees or agents as tobacco product enforcement officers. An applicant for a permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this chapter.

FLA. STAT. ch. 569.004, 569.12, & 569.14 (1997).

Penalties for Sales to Minors

It is unlawful to sell, deliver, barter, or furnish, directly or indirectly, any tobacco product to any person under 18 years of age. Violation is a misdemeanor of the second degree punishable by a fine of \$500, repeat violations within one year are a misdemeanor of the first degree punishable by a \$1,000 fine for a second violation, \$2,000

fine and 20 day suspension of the retailer's permit for a third violation, and revocation of a retailer's cigarette permit for a fourth and subsequent violations. All civil penalties may be substituted with license or permit suspensions using the ratio of one day for each \$50. A person charged with a violation has a complete defense if a prudent person would believe the buyer or recipient to be 18 years of age or older; the buyer falsely evidenced that they were 18 years of age or older; and carefully checked specified forms of identification and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

FLA. STAT. ch. 569.101 (1997) & FL ADMIN. CODE § 61A-2.022 (1997).

The Division of Alcoholic Beverages and Tobacco may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a minor if they qualify as a responsible retail dealer; the dealer provided the training program required to the employee before the violation occurred; and the dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

FLA. STAT. ch. 569.008 (1997).

Photo ID

No provisions

Sign Posting

Any dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business stating that the sale of tobacco products to persons under 18 is against Florida law and proof of age is required for purchase. At the check-out counter a sign must contain the following language: "IF YOU ARE NOT BORN BEFORE THIS DATE (INSERT DATE AND YEAR) YOU CANNOT BUY TOBACCO PRODUCTS." Failure to comply with this requirement is a misdemeanor of the second degree punishable by a \$500 fine.

FLA. STAT. ch. 569.14 (1997).

Penalties to Minors

It is unlawful for minors to knowingly possess any tobacco product or misrepresent their age for the purpose of purchasing, or attempting to purchase

a tobacco product from a person or a vending machine. Penalty for the first violation within a 12-week period is 16 hours of community service or a \$25 fine and the minor must attend a school approved anti-tobacco program. Penalty for the second violation in a 12-week period is a \$25 fine. Third or subsequent violations within a 12-week period can result in suspension or revocation of a person's driver's license. Any law enforcement officer designated as a tobacco product enforcement officer is authorized to issue a citation to minors possessing or attempting to purchase tobacco products.

FLA. STAT. ch. 569.11 (2001).

Placement of Tobacco Products

The sale or delivery of tobacco products is prohibited, except when under the direct control or line of sight of the dealer or the dealer's agent or employee. These provisions shall not apply to an establishment that prohibits persons less than 18 years of age on the licensed premises, or to the sale or delivery of cigars and pipe tobacco. Violation is subject to an administrative fine of up to \$1,000 and possible suspension of the permit to sell tobacco products.

FLA. STAT. ch. 569.006 & 569.007 (1997).

Internet Sales of Tobacco Products

A retailer must obtain an appropriate license from the Division of Alcoholic Beverages and Tobacco before accepting a delivery sale of tobacco products defined as sales of tobacco products by phone, fax, mail, delivery service or the Internet. Delivery sales of tobacco products to persons under 18 are prohibited. Each person accepting an order for a delivery sale must comply with: 1) specific age verification requirements, including obtaining a certification with certain information from the prospective customer and making a good faith effort to verify the information in the certification against a commercially available database as specified or by obtaining a photocopy or other image of government-issued ID; 2) specific disclosure requirements; 3) specific shipping requirements, including use of a method of mailing, shipping, or delivery which obligates the delivery service to require a person over 18 to sign for the shipping container and show photo ID if they appear to be under age 27; 4) specific registration and reporting requirements; 5) specific tax col-

lection requirements; 6) specific licensing and tax stamp requirements; and 7) all laws of this state generally applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments. Violation of the above requirements by an adult is a misdemeanor of the first degree punishable as specified and is subject to: a \$1,000 fine or five times the retail value of the tobacco products involved, whichever is greater, for a first offense; and a \$5,000 fine or five times the retail value of the tobacco products involved, whichever is greater, for a second or subsequent offense. An adult knowingly submitting a false certification is also a misdemeanor of the first degree punishable as specified and is also subject to for each violation a fine of \$10,000 or five times the retail value of the tobacco products involved, whichever is greater. Violation by a person under 18 is a misdemeanor of the 3rd degree punishable as specified.

FLA. STAT. ch. 210.095 (2009).

Note: Some parts of this law may not be able to be enforced due to the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

Retail dealers can qualify as responsible retail tobacco products dealers if they provide a training program for their employees that addresses the use and sale of tobacco products including the laws concerning sales to minors and methods and procedures to prevent such sales.

FLA. STAT. ch. 569.008 (1997).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

The gift of sample tobacco products to any person under the age of 18 is prohibited. Violation is subject to the same penalties as selling or distributing tobacco products to minors. A person

charged with a violation has a complete defense if a prudent person would believe the buyer or recipient to be 18 years of age or older or the buyer falsely evidenced that they were 18 years of age or older.

FLA. STAT. ch. 569.0075 (1997).

Minimum Tobacco Product Sales Amounts

It is unlawful for any person to sell or distribute any cigarettes the package of which does not comply with all requirements imposed by or under federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act. Violation is a felony of the third degree subject to a fine not to exceed \$5,000 and/or up to five years in prison.

FLA. STAT. ch. 210.185 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sales from a vending machine are only permissible from a machine that is equipped with an operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine. The lock-out device must include a mechanism to prevent the machine from functioning if the power source for the lock-out device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time. This provision does not apply to establishments that prohibit persons under age 18 on the licensed premises or to sales of cigars or pipe tobacco.

FLA. STAT. ch. 569.007 (1997).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is subject to an administrative fine of up to \$1,000 and possible suspension of the permit to sell tobacco products.

FLA. STAT. ch. 569.006 (1997)

Sign Posting

No provisions

F Licensing Requirements**Requirements**

Wholesale dealers and manufacturers of cigarettes must obtain a cigarette permit from the Division of Alcoholic Beverages and Tobacco. All places of business must be listed on the application for a cigarette permit. Distributors must also obtain a license to sell tobacco products other than cigarettes from the division. A separate application is required for each place of business.

FLA. STAT. ch. 210.15 (2005) & ch. 210.35 (1991).

Retail tobacco dealers and vending machine owners must obtain permits from the Division of Alcoholic Beverages and Tobacco for each place of business where they sell tobacco products. Retail permits must be renewed annually. Selling tobacco products at retail without a license is a noncriminal violation subject to a fine of \$500.

FLA. STAT. ch. 569.003 & ch. 569.005 (1997).

Fees

Retail or vending machine license: \$50 annually; Wholesale dealers and manufacturers of cigarettes: \$100 annually; Distributors of tobacco products other than cigarettes: \$25 annually

FLA. STAT. ch. 569.003 (1992), ch. 210.15 (2005) & 210.40 (1991).

License Suspension for Sales to Minors

The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may suspend a retailer's permit to sell tobacco products for 20 days for a third violation or revoke the permit for a fourth violation if the retailer or their employee violates state laws concerning sale of tobacco to minors, sampling, or placement of tobacco vending machines.

FLA. STAT. ch. 569.006 (1997).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability**Industry Protection**

In any civil action involving a signatory or a successor, parent or affiliate of a signatory to Florida's tobacco settlement agreement, the bond required to be furnished during the pendency of all appeals or discretionary appellate reviews of any judgment in such litigation shall be set pursuant to applicable laws or court rules, except that the total cumulative value of the bond to stay execution of the judgment may not exceed \$100 million for all appellants collectively, regardless of the total value of the judgment. In civil actions against the same entities above, brought by or on behalf of persons who claim or have been determined to be members of a former class action that was decertified in whole or in part, the trial courts shall automatically stay the execution of any judgment, upon provision of security as required, see statute cited for further details. If, after notice and hearing, a plaintiff proves by a preponderance of the evidence that a defendant who posted such bond or equivalent surety is purposefully dissipating assets outside the ordinary course of business to avoid payment of the judgment, the court may enter necessary orders as to that defendant to protect the plaintiff, including an order that the bond or equivalent surety be posted in an amount up to the full amount of the judgment against that defendant. This section does not apply to any past, present, or future action brought by the State of Florida against one or more signatories to the settlement agreement.

FLA STAT. ch. 569.23 (2009).

In any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety as provided in this section, shall stay the execution of any judgment, or portion thereof, entered on account of punitive damages pending completion of any appellate review of the judgment. The required bond or equivalent surety acceptable to the court for imposition of the stay shall be the lower of: the amount

of the punitive-damages judgment, plus twice the statutory rate of interest; or 10 percent of the net worth of the defendant as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment for punitive damages; provided that in no case shall the amount of the required bond or equivalent surety exceed \$100 million, regardless of the amount of punitive damages. If, at any time after notice and hearing, the court finds that a defendant who has posted a bond or equivalent surety is purposefully moving assets with the intent to avoid the punitive damages judgment, the court shall increase the bond or equivalent surety to the amount of the punitive damages judgment, plus twice the statutory rate of interest. If the defendant does not post the additional bond required by the court, the stay shall be revoked.

FLA. STAT. ch. 768.733 (2000).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Florida voters approved a constitutional amendment in November 2006 that will dedicate 15 percent of future tobacco settlement payments, adjusted for inflation each year, to the state tobacco control and prevention program. Implementing legislation was approved in May 2007 and the program took effect in the fiscal year starting July 1, 2007 (FY2008).

FL CONST. Art. X § 27 (2006) & FLA. STA. ch. 381.84 (2007).

Money from the state of Florida's tobacco settlement is initially deposited into the Department of Financial Services Tobacco Settlement Clearing Trust Fund. Monies are then allocated to the Department of Health Tobacco Settlement Trust Fund, the Department of Children and Family Services Tobacco Settlement Trust Fund, the Agency for Healthcare Administration Tobacco Settlement Trust Fund, the Department of Elderly Affairs Tobacco Settlement Trust Fund, the Biomedical Research Trust Fund in the Department of Health or the Agency for Persons with Disabilities Tobacco Settlement Trust Fund as appropriated by the legislature.

FLA. STA. ch. 20.195 (2003), ch. 20.425 (2003), ch. 17.41 (2004), ch. 430.42 (2003), ch. 20.435(g) (2004) & 20.1971 (2005).

In 1999, the legislature established the Lawton Chiles Endowment Fund for Health & Human Services, and transferred \$1.1 billion in FY2000, and \$200 million in FY2001, FY2002 & FY2003 from the Tobacco Settlement Clearing Trust Fund. The earnings of the endowment are appropriated through the general budget process to various agency trust funds by the legislature to help fund specified programs.

FLA. STA. ch. 215.5601 (2004).

Note: The FY2009 annual budget bill passed in June 2008 authorized the transfer of \$354,437,854 in principal from the Lawton Chiles Endowment Fund to the Department of Financial Services Tobacco Settlement Clearing Trust Fund to pay for specified appropriations. The same legislation authorized up to \$1 billion to be transferred from the Lawton Chiles Endowment Fund to cover a budget deficit under certain conditions. Then, a supplemental appropriations bill passed in January 2009 authorized the transfer of \$700 million in principal from the endowment fund to the state general fund in June 2009. The amount of the transfer may possibly be reduced by federal economic stimulus funds received by the state.

H.B. 5001 enacted 6/11/08 and effective 6/11/08 and 7/1/08 & S.B. 2 (first special session 2009), sect. 52 enacted 1/27/09 and effective 6/15/09.

Securitization

Created the Tobacco Settlement Financing Corporation as a not-for-profit public benefits corporation to purchase any or all of the state's right to the tobacco settlement agreement and issue bonds to pay the purchase price therefore which will be used to fund the Lawton Chiles Endowment Fund. Issuance of bonds by the Corporation is subject to approval by the legislature. The total principal amount of bonds issued shall not exceed \$3.0 billion and the amount of bonds issued in any single fiscal year shall not exceed \$1.5 billion beginning with FY 2001.

FLA. STAT ch. 215.56005 (2003).

Note: No bonds financed by tobacco settlement moneys have been issued to date.

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in paragraph (f) of subsection 4 of

section 633.042 Florida Statutes, no cigarettes may be sold or offered for sale in Florida, or sold or offered for sale to persons located in Florida, unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in subsection 4 of section 633.042 Florida statutes; 2) a written certification has been filed by the manufacturer with the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation in accordance with subsection 5 of section 633.042 Florida Statutes; and 3) the cigarettes have been marked in accordance with subsection 6 of section 633.042 Florida Statutes. A manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

FLA. STAT. ch. 633.042 (2010).

Tobacco Control Program Related Laws

Requires the state Department of Health conduct a comprehensive, statewide tobacco education and prevention program consistent with the recommendations for effective program components contained in the Centers for Disease Control and Prevention (CDC)'s 1999 Best Practices for Comprehensive Tobacco Control Programs, as amended by the CDC. The program is required to have a number of components, for more information see the statute cited. A 23-member Tobacco Education and Use Prevention Advisory Council was also created within the department to provide advice as to the direction and scope of the program. The council will have several members from public health organizations, including the American Lung Association of Florida.

FLA. STA. ch. 381.84 (2007).



Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$65,841,232

FY2010 Federal Tobacco Control Program
Funding: \$1,873,958

FY2010 Total Tobacco Control Program
Funding: \$67,715,190

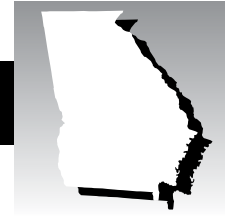
Funding Level Recommended by CDC:
\$210,900,000

Percentage of CDC-Recommended Level:
32.1%

State Funding Details:

Florida appropriated \$65,841,232 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual tobacco settlement payment. In FY2009, \$59,519,954 was appropriated.

FY2010 Annual Budget (S.B. 2600) enacted 5/27/09 and effective 7/1/09.



A State Smoking Restrictions

Public Places

Smoking is prohibited in many enclosed public places. "Public places" are defined as an enclosed area to which the public is invited or permitted; see the statute cited below for a more detailed list of places this definition covers. A private residence is not a public place unless it is used as a licensed child care, adult day-care or health care facility. Exemptions include: 1) 20 percent of hotel/motel rooms; 2) retail tobacco stores as defined, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited; 3) long-term care facilities as defined; 4) outdoor areas of places of employment; 5) smoking areas in international airports; 6) private and semiprivate rooms in health care facilities; 7) all workplaces of any entity dealing with tobacco products; 8) bars and restaurants as specified; 9) convention facility meeting and assembly rooms in convention facilities not owned, leased or operated by state or local government when these places are used for private functions as long as persons under 18 are prohibited from attending or working at the function; 10) smoking areas designated by employers as specified; 11) parts of workplaces open to the general public by appointment only; and 12) private clubs, military officer clubs and noncommissioned officer clubs. An owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

GA. CODE ANN. §§ 31-12A-1 et seq. (2005).

Smoking tobacco in any form is prohibited in a public transit bus, rapid rail car, rapid rail station or intermodal bus station. Violation is a misdemeanor subject to a fine of \$50 to \$100 for a first violation and \$100 to \$250 fine and/or ten days in jail for the second and subsequent violations.

GA. CODE ANN. § 16-12-120 (1998).

Government Buildings

Smoking shall be prohibited in all enclosed fa-

cilities of, including buildings owned, leased, or operated by, the state of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

GA. CODE ANN. § 31-12A-3 (2005).

Private Workplaces

Smoking is prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment. Exceptions include outdoor areas of places of employment, and all workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities. Designated smoking areas are allowed in workplaces if they are located in a non-work area where no person is required to enter as part of their work responsibilities, have a separate ventilation system that exhausts directly to the outside, and is for use by employees only. Additionally, smoking is allowed in common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment.

GA. CODE ANN. §§ 31-12A-5 & 31-12A-6 (2005).

Schools

Smoking is prohibited in educational facilities.

GA. CODE ANN. §§ 31-12A-2(10) & 31-12A-4 (2005).

Child Care Facilities

Smoking is prohibited in many enclosed public places and enclosed areas within places of employment, which includes all child care facilities. The term “place of employment” also includes home-based child care facilities.

GA. CODE ANN. §§ 31-12A-1 et seq. (2005).

Health Care Facilities

Smoking is prohibited in health care facilities. “Health care facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. Long-term care facilities as defined are exempt as well as private and semiprivate rooms in healthcare facilities as long as all patient(s) have permission to smoke from their treating physician.

GA. CODE ANN. §§ 31-12A-2 & 31-12A-4 (2005).

Restaurants

Smoking is prohibited in restaurants unless the restaurant denies access to persons under 18 and does not employ persons under 18. Smoking is also allowed in private rooms in restaurants if the room is enclosed, separately ventilated from the rest of the building and the air is exhausted directly to the outside.

GA. CODE ANN. §§ 12-31A-2, 12-31A-4 & 12-31A-6 (2005).

Bars

Smoking is allowed in bars unless the bar allows access to persons under 18 and/or employs persons under 18. Smoking is also allowed in private rooms in bars if the room is enclosed, separately ventilated from the rest of the building and the air is exhausted directly to the outside.

GA. CODE ANN. §§ 12-31A-2, 12-31A-4 & 12-31A-6 (2005).

Penalties/Enforcement

“No-smoking” signs may be clearly and conspicuously posted and ashtrays must be removed by the owner, operator, manager, or other person in

control of every public place and place of employment where smoking is prohibited. A person who smokes in a nonsmoking area is guilty of a misdemeanor and shall be punished by a fine of \$100 to \$500. The Department of Human Resources and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance and are allowed to enter upon and inspect the premises of any establishment or business at any reasonable time and in a reasonable manner.

GA. CODE ANN. §§ 31-12A-8 to 31-12A-11 & 16-12-2 (2005).

State Preemption of Local Laws

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

GA. CODE ANN. § 31-12A-12 (2005).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 37 cents

Date last changed: July 1, 2003 — from 12 cents to 37 cents

Year first enacted: 1923

GA. CODE ANN. § 48-11-2 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$211,087,000

Taxes on Other Tobacco Products

Loose or Smokeless tobacco: 10% of the wholesale cost price;

Cigars: 23 % of the wholesale cost price;

Little cigars (weighing not more than 3 lbs./thousand): 5 cents/cigar

GA. CODE ANN. § 48-11-2 (2003).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The State Revenue Commissioner, acting through special agents or enforcement officers, shall annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under the age of 18 years may be enlisted to test compliance; provided, however, that such persons may be used to test compliance only if the testing is conducted under the direct supervision of such special agents or enforcement officers, and written parental consent has been provided. Any other use of persons under the age of 18 years to test compliance with this article shall be unlawful and the person or persons responsible for such use shall be subject to specified penalties.

GA. CODE ANN. § 16-12-175 (2000).

Penalties for Sales to Minors

It is unlawful for any person to knowingly sell or barter, directly or indirectly, any cigarettes or tobacco-related objects to a minor; to knowingly allow a minor to operate a vending machine that dispenses tobacco products; to purchase any cigarettes or tobacco products or objects for any minor unless the minor is the child of the purchaser; or to advise, counsel or compel any minor to smoke, inhale, chew, or use cigarettes or tobacco-related objects. Violation is a misdemeanor. This shall not apply with respect to the sale of cigarettes, tobacco products, or tobacco-related objects by a person when such person has been furnished with proper identification showing that the person to whom the cigarettes, tobacco products, or tobacco-related objects are sold is 18 years of age or older.

GA. CODE ANN. § 16-12-171 (1996).

Photo ID

In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom cigarettes or tobacco-related objects are to be sold or otherwise furnished is actually 18 years of age or older, it shall be the duty of the person selling or otherwise furnishing such cigarettes or tobacco-related objects to request to see and to be furnished with proper identification in order to verify the age of such person. "Proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date

of birth and includes, without being limited to, a passport, military identification card, driver's license, or a state identification card. Violation is a misdemeanor. The failure to make such request and verification in any case where the person to whom the cigarettes or tobacco-related objects are sold or otherwise furnished is less than 18 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such cigarettes or tobacco-related objects did so knowingly.

GA. CODE ANN. § 16-12-170(5) & 16-12-171 (1996).

Sign Posting

Any person owning or operating a place of business where tobacco products are sold shall in a conspicuous place post a sign containing the following statement: "SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, OR TOBACCORELATED OBJECTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Any person who fails to comply with this requirement shall be guilty of a misdemeanor.

GA. CODE ANN. § 16-12-172 (1993).

Penalties to Minors

It shall be unlawful for any minor to purchase, attempt to purchase or possess for personal use cigarettes or tobacco-related objects, except this shall not apply when a parent or guardian of such minor gives the cigarettes or tobacco-related objects to the minor and possession is in the home of the parent or guardian and such parent or guardian is present. It is also unlawful for minors to misrepresent their age or identity to purchase cigarettes or tobacco-related objects. A minor who commits an offense may be punished by requiring 20 hours of community service, requiring attendance at a lecture or discussion on the health hazards of smoking, or a combination of both.

GA. CODE ANN. § 16-12-171(b)(1) (2007).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass

stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for a person to distribute tobacco product samples at no cost to any person under 18 years of age, or for any person under this age to receive such samples. A person distributing tobacco product samples shall require proof of age if an ordinary person would conclude that an individual is younger than 18. Samples may not be distributed on public streets, sidewalks, or parks within 500 feet of schools or playgrounds when they are being used primarily by persons under 18 years of age. Any violation of this section is a misdemeanor.

GA. CODE ANN. § 16-12-174 (1993).

Minimum Tobacco Product Sales Amounts

No tax stamp may be affixed to, or made upon, any package of cigarettes or loose or smokeless tobacco if the package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, for the placement of labels, warnings, or any other information upon a package of cigarettes or loose or smokeless tobacco that is to be sold within the United States. Violation is a misdemeanor. In addition, the applicable license to deal in tobacco products may be revoked upon violation.

GA. CODE ANN. § 48-11-23.1 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

The sale of cigarettes or tobacco related objects from vending machines is restricted to locations not readily accessible to minors, including, but not limited to: 1) factories, businesses, offices; 2) places where alcoholic beverages are offered for sale; 3) areas where minors are not permitted; and 4) rest areas adjacent to roads and highways of the state. Vending machines are also permitted in areas under continuous supervision of an employee of the establishment who will observe the

purchase of tobacco products from the machine. Non-tobacco products, other than matches, are not allowed to be dispensed from vending machines that dispense tobacco products.

GA. CODE ANN. § 16-12-173 (2007).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is a misdemeanor. The sentence for a first offense shall be a fine not to exceed \$300.

GA. CODE ANN. § 16-12-173 (2007).

Sign Posting

Any person who maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, or tobacco-related objects shall place or cause to be placed in a conspicuous place on such vending machine a sign containing the following statement: "THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, OR TOBACCO RELATED OBJECTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Violation constitutes a misdemeanor provided, however, penalty for the first offense is a fine not to exceed \$300.

GA. CODE ANN. § 16-12-173 (2007).

F Licensing Requirements

Requirements

Cigarette and cigar manufacturers, dealers (retailers), and distributors must be licensed to sell tobacco products from the state Revenue Commissioner. A separate license shall be required for each place of business. Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year unless suspended or revoked. Dealer's licenses are valid indefinitely unless suspended or revoked.

GA. CODE ANN. § 48-11-4 (2004).

Fees

Tobacco dealers/retailers: Free of charge;

Manufacturer, importer and distributor licenses: initial \$250 annual fee per place of business, annual renewal fee of \$50;

Cigarette and other tobacco product vending ma-

chine licenses: \$1 per machine annually.

GA. CODE ANN. § 48-11-4 (2004).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The “Civil Litigation Improvement Act of 2000” limited the amount of the supersedeas bond for the punitive damages portion of a civil judgment to \$25 million and provided that such limitation shall not apply if the court finds after notice and hearing that the appellee has proved by a preponderance of the evidence that the appellant is purposefully dissipating or secreting its assets or diverting assets outside the jurisdiction of the United States.

GA. CODE ANN. § 5-6-46 (2000).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: Proceeds from the Master Settlement Agreement between the state of Georgia and certain cigarette companies are distributed each year through the annual appropriations process except for any money directed by appropriation to the One Georgia Authority, see Securitization section below.

Securitization

Created the One Georgia Authority as an instrumentality of the state, and not a state agency, and a public corporation performing an essential governmental function. The authority

may issue bonds for the purpose of facilitating economic development, for the improvement of public health, safety, and welfare and for other public purposes through the provision of financing and financial assistance. Any bonds, revenue bonds, or securities of any kind may only be secured by obligation of a business, enterprise, or proceeds paid to the state of Georgia pursuant to funds received by the state from the tobacco settlement. The Authority shall not have outstanding at any one time bonds and notes for financing of enterprises exceeding \$1 billion.

GA. CODE ANN. § 50-34-1 et seq. (2000).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (h) of Georgia Code section 25-14-3, no cigarettes may be sold or offered for sale in Georgia or offered for sale or sold to persons located in Georgia, unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in Georgia Code section 25-14-3; 2) a written certification has been filed by the manufacturer in accordance with Georgia Code section 25-14-4; and 3) the cigarettes have been marked in accordance with Georgia Code section 25-14-5. A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

GA. CODE ANN. §§ 25-14-1 to 25-14-11 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$2,149,875

FY2010 Federal Tobacco Control Program
Funding: \$1,094,478

FY2010 Total Tobacco Control Program

Funding: \$3,244,353

Funding Level Recommended by CDC:
\$116,500,000

Percentage of CDC-Recommended Level: 2.8%

State Funding Details:

Georgia allocated \$2,149,875 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment. In FY2009, \$2,281,670 was allocated.

FY2010 Annual Budget (H.B. 119) enacted 5/11/09 and effective 7/1/09.

■ ■ ■



A State Smoking Restrictions

Public Places

Smoking is prohibited in all enclosed and partially enclosed places open to the public, including all restaurants and bars, see section 328J-3 for a detailed list. Smoking is also prohibited in all enclosed or partially enclosed areas of places of employment, and enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums, and amphitheaters. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Exemptions include: 1) private residences, except when used as a licensed child care, adult day care, or health care facility; 2) 20 percent of hotel/motel rooms rented to guests as specified; 3) retail tobacco stores as defined, provided that smoke from these places shall not infiltrate into areas where smoking is prohibited; 4) private and semiprivate rooms in nursing homes and long-term care facilities as specified; 5) outdoor areas of places of employment; 6) all areas covered by this chapter when smoking is part of a production being filmed; and 7) state correctional facilities, provided that smoking is only allowed by employees and volunteers of a correctional facility in an area outside the secure confines of the facility restricted from access by inmates or detainees.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Government Buildings

Smoking shall be prohibited in all enclosed or partially enclosed areas, including buildings and vehicles owned, leased, or operated by the state or any county. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Smoking areas for employees and volunteers are allowed outside the secure confines of state correctional facilities.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Private Workplaces

Smoking shall be prohibited in all enclosed or partially enclosed areas of places of employment. "Place of employment" is defined as an area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to auditoriums, cafeterias, classrooms, clubs, common work areas, conference rooms, elevators, employee lounges, hallways, medical facilities, meeting rooms, private offices, restrooms, and stairs. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Outdoor areas of places of employment are exempt.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Schools

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including both public and private educational facilities. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Use of tobacco is prohibited in all public schools and at all public school functions, grades kindergarten through 12th grade. The Department of Education shall provide affected public employees with breaks throughout the work day during which they may smoke at locations off-campus. The Department of Education shall also provide a smoking cessation program for public employees who are interested in participating.

HAW. REV. STAT. § 302A-102 (2004).

Child Care Facilities

Smoking shall be prohibited in all enclosed or par-

tially enclosed areas open to the public, including licensed child care and adult day care facilities. Home-based child care facilities are included. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Health Care Facilities

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including health care facilities. “Health care facility” is defined as an office or institution, including all waiting rooms, hallways, private rooms, semi-private rooms, and wards, which provides care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. Health care facilities in private residences are specifically included. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, are exempt.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Restaurants

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including restaurants. “Restaurant” is defined as an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” includes a bar

area within the restaurant and outdoor areas of restaurants. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Bars

Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including bars and nightclubs. “Bar” is defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises regardless of whether food is served, including but not limited to taverns, cocktail lounges, and cabarets, including outdoor areas of bars. “Nightclub” is defined as an establishment in which live entertainment is provided or facilities for dancing by patrons either by live entertainment or recorded music may be provided, regardless of whether alcoholic beverages are served. Smoking is also prohibited within a presumptively reasonable minimum distance of 20 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

Penalties/Enforcement

Clearly legible signs that include the words “Smoking Prohibited by Law” or the international “No Smoking” symbol shall be clearly and conspicuously posted in and at the entrance to every place open to the public and place of employment where smoking is prohibited by the owner, operator, manager, or other person in control of that place. A person who smokes in an area where smoking is prohibited shall be guilty of a violation and fined not more than \$50. Police officers are empowered to issue citations. A person who owns, manages, operates, or otherwise controls any place or facility designated by this chapter and fails to comply with this chapter shall be guilty of a violation and fined not more than \$100 for a first violation, not more than \$200 for a second violation within one year of the first violation and \$500 for each additional violation within one year of the first violation. Violation may also result in the suspension or revocation of any permit or license issued to the person or the place for the premises on

which the violation occurred. Each day on which a violation occurs will be considered a separate offense. Enforcement of this law will be under the jurisdiction of the Department of Health.

HAW. REV. STAT. §§ 328J-1 to 328J-15 (2009).

State Preemption of Local Laws

Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter, and nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter.

HAW. REV. STAT. § 328J-15 (2006).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.60

Date last changed: July 1, 2009 – from \$2.00 to \$2.60

Year first enacted: 1939

HAW. REV. STAT. § 245-3 (2009).

Note: Cigarette taxes are scheduled by legislation passed in 2009 to increase again by 20 cents on July 1, 2010 and July 1, 2011, which will bring Hawaii's total cigarette tax to \$3.00 per pack.

H.B. 1175 enacted 5/7/09 and effective 6/30/09.

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$101,560,000

Use of Cigarette Tax Revenue

All moneys collected shall be paid into the state treasury as state realizations, provided that of the moneys collected under the tax imposed pursuant to:

1) section 245-3(a)(8) Hawaii statutes after June 30, 2009, and prior to July 1, 2010 - 2 cents per cigarette to the Hawaii Cancer Research Special Fund (HCRSF), 0.75 cents per cigarette to the Trauma System Special Fund (TSSF), 0.75 cents per cigarette to the Community Health Centers Special Fund (CHCSF), 0.5 cents per cigarette to the Emergency Medical Services Special Fund (EMSSF);

2) section 245-3(a)(9) Hawaii statutes after June 30, 2010, and prior to July 1, 2011 - 2 cents per cigarette to the HCRSF, 1 cent per cigarette to the TSSF, 1 cent per cigarette to the CHCSF, and 1 cent per cigarette to the EMSF; and

3) section 245-3(a)(10) Hawaii statutes after June 30, 2011 - 2 cents per cigarette to the HCRSF, 1.5 cents per cigarette to the TSSF, 1.25 cents per cigarette to the CHCSF and 1.25 cents per cigarette to the EMSF.

HAW. REV. STAT. § 245-15 (2009).

Taxes on Other Tobacco Products

Little cigars (ring gauge of less than 30): 13 cents/cigar;

Larger cigars (ring gauge of 30 or more): 50% of the wholesale price;

All other tobacco products: 70% of the wholesale price

HAW. REV. STAT. § 245-3 (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Hawaii Department of Health, Alcohol and Drug Abuse Division, has a cooperative agreement with the University of Hawaii, Cancer Research Center of Hawaii to give technical assistance to police departments in conducting tobacco sale inspections to enforce Hawaii Revised Statute section 709-908. They are required to complete a minimum number of compliance checks per contract year, and recruit minor volunteers ages 15 to 17 to assist with the inspections. The Cancer Research Center must follow certain requirements concerning minor volunteers such as obtaining written parental consent and ensure that minors do not carry false identification or lie during compliance checks.

Annual Memorandum of Agreement (2009).

The Hawaii Department of Health, Alcohol and Drug Abuse Division, has a cooperative agreement with police departments across the islands to enforce Hawaii Revised Statutes section 709-908 by conducting a certain number of inspections by

minor volunteers of places where tobacco products are sold at retail.

Annual Memorandums of Agreement with Police Departments (2009).

Penalties for Sales to Minors

No person shall sell or furnish tobacco to a minor under 18 years of age. Any person who violates this law shall be fined not more than \$500 for the first offense and \$500 to \$2,000 for subsequent offenses. Retail clerks and not the owner of the store are cited for violations.

HAW. REV. STAT. § 709-908 (1998).

Photo ID

No provisions

Sign Posting

Signs using the statement “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 IS PROHIBITED” shall be posted at or near the point of sale where tobacco products are sold in letters at least one-half inch high. Any person who violates this law shall be fined \$500 for the first offense and \$500 to \$2,000 for subsequent offenses.

HAW. REV. STAT. § 709-908 (1998).

Penalties to Minors

Any minor under the age of 18 who purchases any tobacco product shall be fined \$10 for the first offense and \$50 or 48 to 72 hours of community service for subsequent offenses. This provision does not apply if a person under the age of 18, with parental notification, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the Department of Health.

HAW. REV. STAT. § 709-908 (1998).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

It is unlawful to ship cigarettes to a person or entity that is not: licensed to sell or possess tobacco products by the state, an export warehouse proprietor, or an operator of a customs-bonded warehouse. This does not apply if the cigarettes are exempt from taxes, all applicable Hawaii taxes are paid, or the person or entity has fully complied with the federal Jenkins Act and includes a speci-

fied notice on the shipping container. Violation is a Class C felony if 1,000 or more cigarettes are shipped illegally, and a misdemeanor if less than 1,000 cigarettes are shipped illegally. A delivery service is exempt if it is not a knowing participant in violating this law. Other tobacco products are excluded from these requirements.

HAW. REV. STAT. § 245-16 (2004).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful to distribute sample tobacco products on or in any public street, sidewalk, or park or within 1,000 feet of any school attended by minors. The distribution of tobacco promotional materials or tobacco coupons within 1,000 feet of any school attended by minors is prohibited. This statute does not apply to commercial establishments where distribution is not visible to the public or establishments that prohibit minors. Violators will be fined not more than \$1,000.

HAW. REV. STAT. § 328K-22 (1999).

Minimum Tobacco Product Sales Amounts

It is unlawful to sell single cigarettes or packs of cigarettes containing less than 20 cigarettes. It is unlawful to sell cigarettes other than in sealed packages originating with the manufacturer and bearing the health warning required by law. Violators will be fined no more than \$2,500 for the first offense and \$100 to \$5,000 for any subsequent offense. Knowingly violating this section is a Class C felony.

HAW. REV. STAT. § 712-1257 (2000).

It shall be unlawful for an entity to possess, keep, store, retain, transport, sell, or offer to sell, distribute, acquire, hold, own, import, or cause to be imported into the state any cigarette the package of which does not comply with all requirements imposed by federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including, but not limited to, the specific warning labels specified in the federal Cigarette Labeling and Advertising Act. Any person who knowingly violates this section shall be guilty of a Class C felony, and upon conviction thereof, shall be fined not more than \$10,000, and/or may be imprisoned for one to five years.

HAW. REV. STAT. §§ 245-51 (2003) & 245-53 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

The sale of cigarettes from vending machines is prohibited unless the vending machine is located in a bar, cabaret, or any other establishment for which the minimum age of admission is 18. It is also unlawful to sell cigarettes from a lunch wagon within 1,000 feet of any public or private elementary or secondary school grounds.

HAW. REV. STAT. § 328K-21 (1996).

Penalties

Violations are subject to a fine of up to \$1,000 per day for each violation.

HAW. REV. STAT. § 328K-21 (1996).

Sign Posting

A sign stating “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 IS PROHIBITED” shall be posted on or near any vending machine in letters at least one-half inch high. A person who fails to post the appropriate sign shall be fined \$500 for the first offense and \$500 to \$2,000 for subsequent offenses.

HAW. REV. STAT. § 709-908 (1998).

F Licensing Requirements

Requirements

It shall be unlawful for any person to engage in

the business of a wholesaler or dealer in the state without having received a license issued by the Department of Taxation; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business. The license shall be renewable annually on July 1st for the 12 months ending the succeeding June 30th. The license may be suspended, revoked or not renewed by the department for specified reasons.

HAW. REV. STAT. § 245-2 (2005).

Every retailer engaged in the retail sale of cigarettes and other tobacco products shall obtain a retail tobacco permit. Permits shall be valid for one year, from December 1 to November 30, and renewable annually. A separate retail tobacco permit shall be obtained for each place of business owned, controlled, or operated by a retailer. A retail tobacco permit shall be non-assignable and nontransferable from one entity to another, and shall be displayed at all times in a conspicuous place at the place of business. Sales of cigarettes and tobacco products from vending machines are subject to the licensing requirements. Beginning March 1, 2007, a person or entity that knowingly fails to obtain the required permit and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports 5,000 or more cigarettes is guilty of unlawful tobacco retailing in the 1st degree punishable as a misdemeanor for the 1st offense and a Class C felony for subsequent offenses within five years of the first offense. A person or entity that knowingly fails to obtain the required permit and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports fewer than 5,000 cigarettes or any tobacco products is guilty of unlawful tobacco retailing in the 2nd degree punishable as a petty misdemeanor for the 1st offense and a misdemeanor for subsequent offenses within five years of the first offense.

HAW. REV. STAT. §§ 245-2.5 to 245-2.7 (2009).

Fees

Wholesalers and dealers: \$2.50 per license application;

Retailers: \$20 per permit.

HAW. REV. STAT. § 245-2 & 245-2.5(c) (2005).

License Suspension for Sale to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability**Industry Protection**

In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed \$150 million, regardless of the amount of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the full amount of the judgment.

HAW. REV. STAT. § 328L-7 (2004).

In any civil action brought under any legal theory, the amount of a supersedeas bond or other form of security necessary to stay execution of a judgment granting legal, equitable, or any other form of relief during the entire course of all appeals or discretionary review of that judgment by all appellate courts shall be set in accordance with applicable law, except that the total amount of the supersedeas bond or other form of security that is required of any party shall not exceed \$25 million regardless of the amount of the judgment that is appealed. If the party posting the bond is a “small business concern,” the required supersedeas bond

is capped at \$1 million. If a party in whose favor the judgment has been entered proves to a court by a preponderance of the evidence that an appellant who has posted a supersedeas bond is intentionally dissipating assets outside the ordinary course of its business for the purpose of avoiding payment of the judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment appealed. This statute does not apply to MSA signatories, which are covered by a separate, existing statute (see above).

HAW. REV. STAT. § 607-26 (2006).

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

Hawaii established the Tobacco Settlement Special Fund into which all monies received from the Master Settlement Agreement are deposited as well as interest and earnings from this money. The first \$350,000 of this money goes into the Tobacco Enforcement Special Fund. The remaining money is distributed as follows: 1) 15 percent to the Emergency and Budget Reserve Fund, 2) 25 percent to the Department of Health for health promotion and disease prevention programs, 3) 6.5 percent into the Tobacco Prevention and Control Trust Fund, 4) 28 percent into a University Revenue Undertakings Fund and 5) 25.5 percent to the state general fund. The percentages above are scheduled to change back to the percentages as they stood before the effective date of Act 264, session laws of Hawaii 2007 on June 30, 2015.

HAW. REV. STAT. § 328L-2 (2009).

Note: On June 1, 2009, \$20 million was transferred from the Tobacco Settlement Special Fund to the state general fund to plug a budget deficit in FY2009. Any interest earned through short-term investment of moneys in the Tobacco Settlement Special Fund and Tobacco Enforcement Special Fund from July 1, 2009 to June 30, 2015 can be deposited into the state general fund as well.

S.B. 884 enacted 5/28/09 and effective 6/1/09.

There is established the Hawaii Tobacco Prevention and Control Trust Fund as a separate fund of a nonprofit entity having a board of directors and qualifying under section 501(c)(3) of

the Internal Revenue Code of 1986, as amended, into which shall be deposited a set percentage of the annual MSA payments. Up to 50 percent of the total market value of the trust fund on the preceding June 30th may be spent for tobacco prevention and control, including, but not limited to, reducing cigarette smoking and tobacco use among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco is a risk factor.

HAW. REV. STAT. § 328L-5 (2001).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in sections 132C-7 and 132C-8 Hawaii Revised Statutes, no cigarettes may be sold or offered for sale in Hawaii or offered for sale or sold to persons located in Hawaii unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 132C-3 Hawaii Revised Statutes; 2) the manufacturer has filed a written certification with the state Fire Council in accordance with section 132C-4(a) Hawaii Revised Statutes; and 3) the cigarettes have been marked in accordance with section 132C-4(b) Hawaii Revised Statutes. A manufacturer, wholesaler or any other person or entity that knowingly sells cigarettes, except by licensed retail sales, in violation of the above requirements is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. A manufacturer that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

HAW. REV. STAT. §§ 132C-1 to 132C-8 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$7,894,299

FY2010 Federal Tobacco Control Program
Funding: \$926,456

FY2010 Total Tobacco Control Program
Funding: \$8,820,755

Funding Level Recommended by CDC:
\$15,900,000

Percentage of CDC-Recommended Level: 58%

State Funding Details:

Expected non-federal expenditure of \$7,894,299 for tobacco prevention and cessation programs in 2009/2010 from the state general fund, Master Settlement Agreement (MSA) moneys expended by the Hawaii Tobacco Prevention and Control Trust Fund and MSA moneys allocated to the state Department of Health. In 2008/2009, \$10,546,090 was expended.

FY2010-FY2011 Budget (S.B. 200) enacted 6/29/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011); and expenditure for calendar year 2009 from Hawaii Tobacco Prevention and Control Trust Fund.

Tobacco Control Program Related Laws

Hawaii established a Tobacco Prevention and Control Advisory Board to develop, in collaboration with the state Department of Health, a strategic plan for tobacco prevention and control.

HAW. REV. STAT. § 328L-6 (1999).



A State Smoking Restrictions

Public Places

No person shall smoke in a public place, publicly-owned building or office or at a public meeting, except in the following places which may contain smoking areas or be designated as smoking areas in their entirety: 1) bars as defined; 2) retail tobacco stores as defined; 3) buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function; 4) hotel and motel rooms designated as smoking rooms; 5) theatrical production sites, if smoking is an integral part of the story in the theatrical production; 6) certain areas of owner-operated businesses; 7) any office or business, other than child care facilities, located within the proprietor's private home as specified; 8) Idaho state veterans homes in designated areas, provided that physical barriers and ventilation systems are used to reduce smoke in adjacent nonsmoking areas; and 9) designated employee break-rooms established by a small business owner employing five or fewer employees subject to certain conditions.

IDAHO CODE §§ 39-5501 et seq. (2007).

Government Buildings

Smoking is prohibited in any publicly-owned buildings or offices. These are defined as any enclosed indoor place or portion of a place owned, leased or rented by any state, county or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, municipal or county taxes.

IDAHO CODE §§ 39-5501 et seq. (2007).

By Executive Order, smoking is prohibited in all state-owned or state-leased buildings, facilities, or areas occupied by state employees except for custodial care and full-time residential facilities. Policies governing smoking in custodial care and

full-time residential facilities may be determined by the directors of such facilities.

Exec. Order 2005-10 (2005).

Private Workplaces

Smoking is prohibited in many private workplaces. However, small businesses with five or fewer employees can establish designated employee break-rooms as long as the following conditions are met: the break-room is not accessible to minors; the break-room is separated from other parts of the building by a floor to ceiling partition; the break-room is not the sole means of entrance or exit to the establishment or its restrooms and is located in an area where no employee is required to enter as part of the employee's work responsibilities, the term "work responsibilities" does not include custodial or maintenance work performed in a break-room when it is unoccupied; and "Warning: Smoking Permitted" signs are prominently posted in the smoking break-room and properly maintained by the employer. Smoking is also allowed in areas of owner-operated businesses with no employees other than the owner-operator, that are not commonly open to the public, and any office or business, other than child care facilities, located within the proprietor's private home when all such offices and/or businesses occupy less than 50 percent of the total area within the private home. Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment.

IDAHO CODE §§ 39-5501 et seq. (2007).

Schools

Smoking is prohibited in public or private elementary or secondary school buildings and educational facilities and within 20 feet of entrances and exits of such buildings or facilities.

IDAHO CODE §§ 39-5501 et seq. (2007).

Child Care Facilities

Smoking is prohibited in any child care facility subject to licensure under the laws of Idaho, including those operated in private homes, when

any child cared for under that license is present.

IDAHO CODE §§ 39-5501 et seq. (2007).

Health Care Facilities

Smoking is prohibited in hospitals and within 20 feet of public entrances and exits to such facilities. Smoking is also prohibited in the common areas of nursing homes.

IDAHO CODE §§ 39-5501 et seq. (2007).

Restaurants

Smoking is prohibited in restaurants. Restaurant is defined as an eating establishment including, but not limited to, coffee shops, cafes, cafeterias, and private and public school cafeterias, which give or offer for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term restaurant shall include a bar area within a restaurant.

IDAHO CODE §§ 39-5501 et seq. (2007).

Bars

Smoking is allowed. Bar is defined as any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where: the service of food is incidental to the consumption of such beverages, or no person under the age of 21 years is permitted except employees, musicians and singers, and all public entrances are clearly posted with signs warning patrons that it is a smoking facility and that persons under 21 years of age are not permitted. The term bar does not include any area within a restaurant.

IDAHO CODE §§ 39-5501 et seq. (2007).

Penalties/Enforcement

Any employer or other person in charge of a public place or publicly-owned building or office who knowingly or intentionally permits the smoking of tobacco products is subject to a fine not to exceed \$100. An employer, or other person in charge of a public place or publicly-owned building, or the agent or employee of such person, who observes a person smoking in apparent violation shall ask the person to extinguish all lighted tobacco products. If the person persists in violating, the employer, person in charge, agent or employee shall ask the person to leave the premises. Any person who refuses to either extinguish all lighted

tobacco products or leave the premises is guilty of an infraction and is subject to a fine not to exceed \$50. Any violation may be reported to a law enforcement officer.

IDAHO CODE §§ 39-5506 & 39-5507 (2004).

State Preemption of Local Laws

Nothing in this chapter shall be interpreted to prevent local, county or municipal governments from adopting ordinances or regulations more restrictive than the provisions contained herein.

IDAHO CODE § 39-5511 (2004).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 57 cents

Date last changed: June 1, 2003 — from 28 cents to 57 cents

Year first enacted: 1945

IDAHO CODE § 63-2506 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$46,192,000

Use of Cigarette Tax Revenue

Revenues from the cigarette tax are distributed as follows: 5.1746 cents to the public school income fund to provide substance abuse programs in the state public schools, and 5.1746 cents to the Department of Juvenile Corrections for county juvenile probation services. After that an unspecified amount is distributed to the state refund account sufficient to pay current refund claims. Then 17.3 percent of the balance is distributed to a permanent building fund, 0.4 percent is distributed to the central tumor registry account, 1 percent is distributed to the cancer control account, an amount equal to the annual general fund appropriation for bond levy equalization pursuant to section 33-906 Idaho Code is distributed annually to the state general fund, and all remaining monies go to a permanent building fund to be used to repair, remodel and restore the state capitol building. Once that project has been certified as completed, remaining monies go to an economic recovery reserve fund.

IDAHO CODE §§ 63-2506 & 63-2520 (2005).

Taxes on Other Tobacco Products

All other tobacco products: 40% of the wholesale sales price

IDAHO CODE §§ 63-2552 (1972) & 63-2552a (1994).

Use of Tax Revenue from Other Tobacco Products

1) The revenue from the other tobacco products tax imposed by Idaho Code section 63-2552 is distributed as follows: an unspecified amount to the state refund account sufficient to pay current refund claims and the balance is distributed to the general fund;

2) The revenue from the other tobacco products tax imposed by Idaho Code section 63-2552a is distributed as follows: 50 percent to the public school income fund to pay for substance abuse programs in the public schools and 50 percent to the Department of Juvenile Corrections for county juvenile probation services.

IDAHO CODE §§ 63-2552a (1994) & 63-2564 (1972).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health and Welfare must conduct at least one random, unannounced inspection per year at all locations where tobacco products are sold or distributed at retail to ensure compliance. These inspections must be done with the assistance of a minor except permittees that hold a “minor exempt permit.” A “minor exempt permittee” is a permittee whose revenues from the sale of alcoholic beverages for on-site consumption comprise at least 55 percent of total revenues; or whose products and services are primarily obscene, pornographic, profane or sexually oriented; or if minors are not allowed in the location and such prohibition is posted clearly on all entrance doors. Minors may assist with random, unannounced inspections with the written consent of a parent or legal guardian. When assisting with these inspections, minors shall not provide false identification, nor make any false statement regarding their age. Each year, the department shall conduct random, unannounced

inspections equal to the number of permittees multiplied by the violation percentage reported for the previous year multiplied by a factor of ten.

IDAHO CODE § 39-5710 (2003).

Penalties for Sales to Minors

It is illegal to sell, distribute or offer tobacco products to minors. For a non-permittee, selling or distributing tobacco products to a minor is subject to a fine of \$100. Any permittee who sells or distributes tobacco products to minors shall be notified in writing about the potential fines for further violations for a first violation. For a second violation, a permittee shall not be fined if the permittee can show that a training program was in place for the employee and the permittee has a form signed by that employee on file stating that they understand the tobacco laws dealing with minors and the unlawful purchase of tobacco, but if no training program is in place the permittee will be fined \$200. For a third violation within two years, the permittee shall be fined \$200 and the permit may be suspended for up to seven days. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined \$400. Effective training and employment practices by the permittee, as determined by the Department of Health and Welfare shall be a mitigating factor in determining permit suspension. For a fourth and subsequent violations within a two year period, the permittee shall be fined \$400 and the permit shall be revoked until such time that the permittee demonstrates an effective training plan, but in no case shall the revocation be for less than 30 days. It is an affirmative defense to prosecution that the person furnishing the tobacco product was presented with and relied on a photographic identification identifying the purchaser as being 18 years of age or older.

IDAHO CODE §§ 39-5705 (1998) & 39-5708 (2001).

Photo ID

No provisions

Sign Posting

Retailers may display a sign within a place of business where tobacco products are sold or distributed. The sign must state: “STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE

AGE OF 18 YEARS OLD. PROOF OF AGE REQUIRED. ANYONE WHO SELLS OR DISTRIBUTES TOBACCO TO A MINOR IS SUBJECT TO STRICT FINES AND PENALTIES. MINORS ARE SUBJECT TO FINES AND PENALTIES.”

IDAHO CODE § 39-5704 (1998).

Penalties to Minors

It is illegal for a minor to purchase, receive, possess, sell, distribute, use or consume tobacco products. It is unlawful for a minor to provide false identification, or make any false statement regarding their age in an attempt to obtain tobacco products. This does not bar minors from participating in compliance checks. A minor may possess but not sell or distribute tobacco products in the course of employment, for duties such as stocking shelves or carrying purchases to customers' vehicles. A violation is a misdemeanor punishable by imprisonment not exceeding six months and/or a fine not exceeding \$300. In addition the court may require the minor and the minor's parents or legal guardian to attend tobacco awareness programs or perform community service in programs related to tobacco awareness.

IDAHO CODE § 39-5703 (1998).

Placement of Tobacco Products

It is unlawful to sell or distribute tobacco products from self-service displays. Customers are not allowed access to tobacco products except through the assistance of the seller. Stores with tobacco products compromising at least 75 percent of total merchandise are exempt from requiring vendor assisted sales, if minors are not allowed in the store and such prohibition is posted clearly on all entrance doors. Tobacco product permittees are subject to the same penalties listed under the “Penalties for Sales to Minors” section upon violation except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE §§ 39-5706 (1998) & 39-5708 (2001).

Internet Sales of Tobacco Products

No permittee shall mail or ship tobacco products in connection with a delivery sale order unless, before mailing or shipping such tobacco products, the permittee accepting the delivery

sale order first obtains from the prospective customer a certification which includes proof of age that the purchaser is at least 18 years old, the credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped match the credit card company's address for the cardholder. Prior to making delivery sales or shipping tobacco products in connection with any such sales, every business shall obtain a permit from the Department of Health and Welfare. Violation by a permittee or non-permittee is subject to the same penalties as other youth access laws.

IDAHO CODE §§ 39-5714 to 39-5718 (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

Nothing in state law restricting youth access to tobacco products shall be construed to prohibit local units of government from passing ordinances which are more stringent than state law. Provided however, local units of government shall not have the power to require a permit or license for the sale or distribution of tobacco products.

IDAHO CODE § 5713 (1998).

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is illegal to sell or distribute tobacco products for free or below cost to members of the general public in public places or at public events. Tobacco product permittees are subject to the same penalties listed under the “Penalties for Sales to Minors” section upon violation except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE §§ 39-5707 (1998) & 39-5708 (2001).

Minimum Tobacco Product Sales Amounts

It is illegal to sell or distribute tobacco products other than in the federally required sealed package provided by the manufacturer with all the required warning labels and health warnings. Tobacco product permittees are subject to the same penalties listed under the “Penalties for Sales to Minors” section upon violation except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE §§ 39-5707 (1998) & 39-5708 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful to sell or distribute tobacco products from a vending machine.

IDAHO CODE § 39-5706 (1998).

Penalties

Tobacco product permittees are subject to the same penalties listed under the “Penalties for Sales to Minors” section upon violation, except a permittee shall be fined \$200 for a second violation and notified in writing of penalties for further violations.

IDAHO CODE § 39-5708 (2001).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesalers must obtain a permit from the state Tax Commission to sell cigarettes. The permit is non-assignable and will remain in force indefinitely. Failure to possess a valid permit is subject to, after receiving a written notice from the state Tax Commission, a civil penalty of \$100, with each day constituting a separate offense. A permit is also required of all distributors of tobacco products other than cigarettes.

IDADO CODE §§ 63-2503 (2006) & 63-2554 (2007).

Retailers must obtain a tobacco permit to sell or distribute tobacco products from the state Department of Health and Welfare. Permits shall be issued annually and a separate permit is

required for each place of business. Any person who sells tobacco products without a permit is guilty of a misdemeanor punishable by up to six months in county jail, and/or a \$300 fine. If the sale or distribution of tobacco products was to a minor, the fine shall be no less than \$500 or more than \$1,000. The court may impose an additional fine of \$1,000 per day beginning the day following the date of citation as long as the illegal tobacco sales or distribution continues.

ID CODE §§ 39-5704 & 39-5709 (1998).

Fees

Wholesalers: \$50; Retailers: free of charge.

IDAHO CODE §§ 63-2503 (1974) & 39-5704 (1998).

License Suspension for Sales to Minors

Any permittee who sells or distributes tobacco products to minors may have his permit suspended for seven days for a third violation. Effective training and employment practices by the permittee shall be a mitigating factor in determining permit suspension. For the fourth and subsequent violations the permit shall be revoked until such time that the permittee demonstrates an effective training plan to the Department of Health and Welfare, but in no case shall the revocation be for less than 30 days.

IDAHO CODE § 39-5708 (2001).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that por-

tion of the punitive damages that exceeds \$1 million if the party or parties found liable seek a stay of enforcement of the judgment during the appeal. If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, the waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

IDAHO CODE § 13-202 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Idaho Millennium Permanent Endowment Fund, the Idaho Millennium Fund and the Idaho Millennium Income Fund were put into the Idaho Constitution when voters approved in November 2006, 58 to 42 percent, a constitutional amendment submitted by the legislature. This makes it much more difficult for money in the funds to be appropriated for other purposes than specified.

IDAHO CONSTITUTION Art. VII § 18 (2006).

There is hereby created in the state treasury the Idaho Millennium Permanent Endowment Fund. The fund shall consist of 80 percent of the moneys received by the state of Idaho on and after January 1, 2007, pursuant to the Master Settlement Agreement (MSA), money provided by legislative appropriations, or other specified sources. The moneys received annually for deposit to the fund, including earnings, shall forever remain inviolate and intact. On the 1st business day of July, the state treasurer shall distribute to the Idaho Millennium Income Fund five percent of the Idaho Millennium Permanent Endowment Fund's average monthly fair market value of the first 12 months of the preceding 24 months.

IDAHO CODE §§ 67-1801 & 67-1802 (2007).

There is hereby created in the state treasury the Idaho Millennium Fund. The fund shall consist of 20 percent of the moneys after January 1, 2007, received pursuant to the MSA, funds provided by legislative appropriation, or other specified sources. Money in the fund is not subject to appropriation or distribution, except as provided below.

On the first business day of July, the state treasurer shall distribute to the Idaho Millennium Income Fund five percent of the Idaho Millennium Fund's average monthly fair market value for the first 12 months of the preceding 24 months. The balance of the Millennium Fund shall not exceed \$100 million, and any amount in excess will be transferred to the Millennium Permanent Endowment Fund.

IDAHO CODE §§ 67-1803 to 67-1805 (2007).

There is hereby created in the state treasury the Idaho Millennium Income Fund. The fund shall consist of distributions from the Millennium Permanent Endowment Fund, the Idaho Millennium Fund and such moneys that may be provided by legislative appropriations. The uses of this fund shall be determined by legislative appropriation.

IDAHO CODE § 67-1806 (2007).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (7) of section 39-8903 Idaho Code, no cigarettes may be sold or offered for sale in Idaho or offered for sale or sold to persons located in Idaho unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 39-8903, Idaho Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 39-8904, Idaho Code; and 3) the cigarettes have been marked in accordance with section 39-8905, Idaho Code. A manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells cigarettes, other than through retail sale, in violation of the above requirements shall be subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

IDAHO CODE §§ 39-8901 to 39-8911 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program

Funding: \$1,775,700

FY2010 Federal Tobacco Control Program

Funding: \$1,141,438

FY2010 Total Tobacco Control Program

Funding: \$2,917,138

Funding Level Recommended by CDC:

\$16,900,000

Percentage of CDC-Recommended Level:

17.3%

State Funding Details:

Idaho allocated \$1,775,700 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment and state cigarette tax revenue. In FY2009, \$2,350,300 was allocated.

FY2010 Millennium Income Fund Appropriations (S.B. 1200) enacted 4/23/09 and effective 7/1/09 & FY2010 Appropriation for the Department of Health and Welfare - Public Health Service Appropriations (S.B. 1221) enacted 4/24/09 and effective 7/1/09.

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A State Smoking Restrictions

Public Places

No person shall smoke in a public place or in any place of employment, including restaurants, bars and casinos or within 15 feet of any entrance, exit, window that opens or ventilation intake serving a public place or place of employment. See the definitions of public place and place of employment in the statutes cited below for more details on locations covered. Smoking is still allowed in: 1) private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public; 2) retail tobacco stores as defined; 3) private and semi-private rooms in nursing homes and long-term care facilities under specified conditions; 4) up to 25 percent of hotel/motel rooms subject to certain conditions; 5) enclosed laboratories, not open to the public, in an accredited university or government facility where smoking is exclusively conducted for the purpose of medical or scientific health-related research; and 6) Common smoking rooms in long-term care facilities operated under the authority of the Illinois Department of Veterans' Affairs as specified. The definition of smoking in the law does not include smoking that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Government Buildings

Smoking is prohibited in public places, the definition of which includes places open to the public owned by the state of Illinois or any public entity. Smoking is also prohibited in places of employment, the definition of which includes all public places of employment. For the above, smoking is also prohibited within 15 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. No person may smoke in any vehicle owned, leased, or operated by the state or a political subdivision of the state.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Private Workplaces

Smoking is prohibited in all places of employment as defined, including a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment".

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Schools

Each school board and Board of Education in cities of over 500,000 people shall prohibit the use of tobacco on school property by any school personnel, student or other person when such property is being used for any school purposes. The school board may not authorize or permit any exception to the prohibition at any place or at any time, including without limitation outside of school buildings or before or after the regular school day. "School purposes" include but are not limited to, all events, activities or other use of school property that are authorized by school officials including all interscholastic or extracurricular athletic, academic or other sponsored events in which pupils participate.

105 ILL. COMP. STAT. 5/10-20.5b & 5/34-18.11 (1995).

To the extent not covered in the law above, smoking is prohibited in educational facilities. Smoking is also specifically prohibited in any portion of the living quarters, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies, and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Child Care Facilities

Smoking tobacco products is prohibited in any area of an operating child care center regardless of whether children are present. Smoking tobacco products is prohibited in any area of a day care home, or group day care home in which daycare

services are being provided, while those children are present. This does not prohibit smoking in the home in the presence of a person's own children or of children to whom day care services are not then being provided. Violation is a Class A misdemeanor and in case of an association or corporation, imprisonment may be imposed upon its officers who knowingly participated in the violation. It is a violation if any person responsible for the operation of a day care center, day care home, or group day care home knowingly allows or encourages any violation.

225 ILL. COMP. STAT. 10/5.5 (1994) & 10/18 (1984).

Smoking is prohibited in public places and places of employment, including child care facilities. This specifically includes private residences or home-based businesses that provide licensed child care, foster care, adult care or other similar social service care on the premises.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Health Care Facilities

Smoking is prohibited in public places the definition of which includes hospitals, nursing homes and other healthcare facilities and clinics as defined. Smoking is still allowed in private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Patients, individuals who accompany a patient, and emergency medical services personnel may not smoke while inside an ambulance or SEMSV. The Department of Public Health may impose a civil penalty on an individual who violates this subsection in the amount of \$100.

210 ILL. COMP. STAT. 50/3.155 (2001).

Restaurants

Smoking is prohibited in restaurants. Restaurant is defined as an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and a kitchen or catering

facility in which food is prepared on the premises for serving elsewhere. The definition specifically includes a bar area within a restaurant.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Bars

Smoking is prohibited in bars/taverns. Bar is defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10 percent of its gross revenue from the sale of food consumed on the premises. "Bar" includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.

410 ILL. COMP. STAT. 82/1 et seq. (2010).

Penalties/Enforcement

"No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in each public place and place of employment where smoking is prohibited. A person who smokes in an area where smoking is prohibited shall be fined \$100 for a first offense and \$250 for each subsequent offense. A person who owns, operates, or otherwise controls a public place or place of employment and allows smoking to occur shall be fined \$250 for the first violation, \$500 for the second violation within one year after the first violation and \$2,500 for each additional violation within one year after the first violation. Each day a violation occurs is a separate offense. The state Department of Health, state-certified local public health departments and local law enforcement agencies shall enforce the provisions of this act through the issuance of citations as specified and may assess the fines above. A telephone number will be established to report violations. An action may be instituted in circuit court to enjoin repeated violations.

410 ILL. COMP. STAT. 82/20 (2008), 82/40 (2009), 82/45 (2009) & 82/50 (2009).

State Preemption of Local Laws

Any home-rule unit of local government, any non-home rule municipality or any non-home rule county within the unincorporated territory of the county in this state may regulate smoking in public places, but that regulation must be no less restrictive than state law. In addition, any home rule unit of local government, any non-home rule municipality, or any non-home rule county within

the unincorporated territory of the county may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a “public place” under state law.

410 ILL. COMP. STAT. 82/65 (2008).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 98 cents

Date last changed: July 1, 2002 — from 58 cents to 98 cents

Year first enacted: 1941

35 ILL. COMP. STAT. 130/2 (2006).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$594,510,000

Use of Cigarette Tax Revenue

Except for \$9 million in revenue from 8 cents of the cigarette tax and all revenue from 14 cents of the cigarette tax dedicated to the Common School Fund, revenue from the cigarette tax is distributed each month as follows:

1) There shall be paid into the General Revenue Fund an amount that, when added to the amount paid into the Common School Fund above for that month, equals \$29,200,000; then from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund;

2) From the moneys remaining, \$5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund;

3) Then the moneys remaining, if any, shall be paid into the Long Term Care Provider Fund.

35 ILL. COMP. STAT. 130/2 (2006).

Taxes on Other Tobacco Products

All other tobacco products: 18% of the wholesale purchase price

35 ILL. COMP. STAT. 143/10-10 (1995).

Use of Tax Revenue from Other Tobacco Products

All the revenue from the excise tax on tobacco products other than cigarettes goes to the Long Term Care Provider Fund of the State Treasury.

35 ILL. COMP. STAT. 143/10-10 (1995).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Illinois Liquor Control Commission is designated as the agency responsible for complying with federal regulations regarding sales of tobacco products to minors, including conducting the required compliance inspections. The commission also created the Kids Can’t Buy ‘Em Here (KCBEH) Campaign. Approximately, \$1 million in grants are awarded to some, but not all communities each year for retailer education and to perform tobacco compliance checks on retailers.

Illinois Liquor Control Commission KCBEH Campaign website (2010).

Penalties for Sales to Minors

No person shall sell, buy for, distribute samples of or furnish tobacco in any form to a minor. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense in a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 IL COMP. STAT. 675/1 et seq. (2009).

No person shall knowingly sell, deliver or give away cigarette papers or other tobacco accessories to minors. No person shall knowingly offer, sell, barter, exchange, deliver or give away cigarette paper except from premises or an establishment where other tobacco products are sold. Violators shall be guilty of a Class C misdemeanor.

720 ILL. COMP. STAT. 685/1 et seq. (2001).

Photo ID

No provisions

Sign Posting

No person may sell or offer to sell cigarettes at retail unless a sign with the message “SURGEON GENERAL’S WARNING: SMOKING BY

PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT,” printed on white cards in red letters at least one-half inch in height, is posted in a conspicuous place upon the premises. Failure to post such a warning sign is a business offense for which a fine of up to \$1,000 each day may be imposed.

410 ILL. COMP. STAT. 85/1 et seq. (1991).

Any place of business where tobacco accessories are sold shall conspicuously post a sign warning that the sale of tobacco accessories to minors or minors misrepresenting their age to procure such a sale is prohibited by law. Violation is a Class C misdemeanor.

720 ILL. COMP. STAT. 685/1 et seq. (2001).

Bidis

No person shall knowingly sell, barter, exchange, deliver, or give away a bidi cigarette to another person, nor shall a person cause or permit or procure a bidi cigarette to be sold, bartered, exchanged, delivered, or given away to another person. Violation is a petty offense for which the offender may be fined for a first offense up to \$500, for a second offense within a two-year period not less than \$250 and not more than \$500 and for a third or subsequent offense within a two-year period not less than \$500 and not more than \$1,000.

720 ILL. COMP. STAT. 685/4 (a-5) & 685/5 (2001).

Penalties to Minors

No person under 18 years of age shall buy any tobacco product, or in the furtherance or facilitation of obtaining any tobacco product display or use a false or forged identification card or transfer, alter, or deface an identification card. It is not a violation if the minor purchases a tobacco product as part of an enforcement action or effort to determine compliance. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense within a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1 (2010) & 675/2 (2009).

No minor under 18 years of age shall buy tobacco in any of its forms, or in the furtherance or faci-

tation of obtaining any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms display or use a false or forged identification card or transfer, alter, or deface an identification card. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense within a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1 (a)&(a-6) (2009) and 675/2 (2009).

Any minor who uses false or forged identification to obtain cigarette papers or other tobacco accessories shall be guilty of a Class C misdemeanor.

720 ILL. COMP. STAT. 685/1 et seq. (2001).

No minor under 16 years of age may sell any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms at a retail establishment selling tobacco products. This does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense within a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1(a-5) (2010) and 675/2 (2009).

Placement of Tobacco Products

All single packs of cigarettes must be sold from behind the counter, in an age restricted area or in a sealed display case. Any other tobacco products must be sold in the line of sight, which means visible to a cashier or other employee. These restrictions do not apply to a retail tobacco store that derives 90 percent of its revenue from tobacco and tobacco-related products, does not allow people under 18 to enter the premises unless accompanied by a parent or legal guardian and posts a sign on the main entrance stating that persons under the age of 18 are prohibited from entering unless accompanied by a parent or legal guardian. Violation is a petty offense subject to a fine of \$100 to \$1,000.

720 ILL. COMP. STAT. 677/1 et seq. (2005).

Internet Sales of Tobacco Products

It is unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes in Illinois unless the person shipping the cigarettes is licensed as a distributor or the per-

son delivers the cigarettes to a licensed distributor; or ships them to an export warehouse proprietor or an operator of a customs bonded warehouse. A common or contract carrier may transport cigarettes to any individual person in this state only if the carrier reasonably believes such cigarettes have been received from a person who is licensed as a distributor. A common or contract carrier may not complete the delivery of any cigarettes unless the purchaser displays a government-issued identification that shows the person is at least 18, and signs a written statement certifying the purchaser's address and age. First violation is a Class A misdemeanor and the Illinois Department of Revenue shall impose a civil penalty of \$5,000. Second and subsequent violations are a Class Four felony and a civil penalty of \$5,000 for each violation.

720 ILL. COMP. STAT. 678/1 et seq. (2004).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person shall not distribute without charge samples of any tobacco product to any other person, regardless of age: 1) within a retail establishment selling tobacco products, unless the retailer has verified the purchaser's age with a government issued identification; 2) from a lunch wagon; or 3) on a public way as a promotion or advertisement of a tobacco manufacturer or tobacco product. This does not apply to the distribution of a tobacco product sample in any adult-only facility. Violators are guilty of a petty offense and shall be fined \$200 for the first offense, \$400 for the second offense in a 12-month period and \$600 for subsequent offenses within a 12-month period.

720 ILL. COMP. STAT. 675/1 (2010) & 675/2 (2009).

Minimum Tobacco Product Sales Amounts

The sale or distribution by any person of a tobacco product, including but not limited to a single or loose cigarette, that is not contained within a sealed container, pack or package as provided by the manufacturer, which bears the health warning required by federal law, is prohibited. Violation is subject to a fine of \$200 for a first offense, \$400 for a second offense within 12 months, and \$600 for the third and subsequent offenses within 12 months.

720 ILL. COMP. STAT. 675/1(d) & 675/2 (2009).

It is unlawful for any person to sell or distribute in this state; to acquire, hold, own, possess, or transport, for sale or distribution in this state; or to import, or cause to be imported into this state for sale or distribution in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act. Violation is subject to a civil penalty of 500 percent of the retail value of the cigarettes involved or \$5,000, whichever is greater. A distributor who violates this provision may also have his license suspended or revoked.

35 ILL. COMP. STAT. 130/3-10 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines are restricted to: 1) places to which minors under 18 years of age are not permitted access; 2) places where alcoholic beverages are sold and consumed on the premises and vending machine operation is under the direct supervision of the owner or manager; or 3) places where the vending machine can only be operated by the owner or an employee over age 18 either directly or through a remote control device if the device is inaccessible to all customers. Other products except matches may not be sold in tobacco product vending machines.

720 ILL. COMP. STAT. 675/1(b) (2010).

Penalties

Violation is subject to a fine of \$200 for a first offense, \$400 for a second offense within 12 months, and \$600 for the third and subsequent offenses within 12 months.

720 ILL. COMP. STAT. 675/2 (2009).

Sign Posting

No person may sell cigarettes at retail using a cigarette vending machine unless a sign with the message "SURGEON GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT," printed on a white card in red letters at least one-half inch in height, is displayed in plain view on the machine. Failure to post such a warning sign is a business offense for which a fine of up to \$1,000 each day may be imposed.

410 ILL. COMP. STAT. 85/1 et seq. (2001).

F Licensing Requirements

Requirements

Distributors must obtain a license from the Department of Revenue to sell cigarettes and other tobacco products. All licenses are valid for one year from the date of issuance unless suspended or revoked.

35 ILL. COMP. STAT. 130/4 (2002) & 143/10-20 (2002).

Fees

\$250 annually for cigarettes; no charge for other tobacco products.

35 ILL. COMP. STAT. 130/4 & 142/10-20 (2002).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It shall be unlawful for an employer to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products off the premises of the employer during nonworking hours. This does not apply to any employer that is a non-profit organization that, as one of its primary purposes or objectives, discour-

ages the use of one or more lawful products by the general public; or to the use of those lawful products which impairs an employee's ability to perform the employee's assigned duties. It is also not a violation for an employer to offer, impose or have in effect a health, disability or life insurance policy that makes distinctions between employees for the type of coverage or the price of coverage based upon the employees' use of lawful products, provided that differential premium rates charged employees reflect a differential cost to the employer; and employers provide employees with a statement delineating the differential rates used by insurance carriers.

820 ILL. COMP. STAT. 55/5 (1987).

H Advertising & Promotion

All outdoor billboard advertisements for smokeless tobacco shall bear one of the following statements in capital letters: "WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER. WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS. WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES." The manufacturer, packager or importer of the product shall rotate the warnings every four months. Any outdoor billboard advertisement that does not conform to these provisions shall be deemed a nuisance affecting the public health. No other warning, format or type style in any outdoor billboard advertisement shall be required by any state or local statute or regulation.

410 ILL. COMP. STAT. 75/2 (1987).

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

There is created a special fund in the state treasury known as the Tobacco Settlement Recovery Fund

into which shall be deposited all monies received from the Master Settlement Agreement between the state of Illinois and certain cigarette companies. Money in the fund is appropriated through the regular annual budget process or as otherwise specified.

30 ILL. COMP. STAT. 106/6z-43 (2007).

M Fire Safety Standards

To help prevent cigarette-caused fires, on and after the effective date of this Cigarette Fire Safety Standard Act, no cigarettes shall be sold or offered for sale to any person in Illinois unless: 1) cigarettes have been tested in accordance with the test method prescribed in chapter 425 section 8/15 Illinois Compiled Statutes, 2) the cigarettes meet the performance standard specified in chapter 425, section 8/20 Illinois Compiled Statutes; and 3) a written certification has been filed by the manufacturer with the Office of the State Fire Marshal and the Office of Attorney General in accordance with chapter 425, section 8/30 Illinois Compiled Statutes. Any manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells cigarettes in violation of the above is subject to a civil penalty not to exceed \$10,000 for each sale. Any retail dealer that knowingly sells or offers to sell cigarettes in violation of the above is subject to a civil penalty not to exceed \$500 for each sale or offer for sale of less than 1,000 cigarettes and a civil penalty not to exceed \$1,000 for each sale or offer for sale of more than 1,000 cigarettes. Knowingly making a false certification is subject to a civil penalty of \$10,000 in addition to any other penalty.

425 ILL. COMP. STAT. 8/1 et seq. (2008).

State Funding Details:

Illinois appropriated \$8,500,000 for tobacco prevention and cessation programs for FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment. The same amount was appropriated in FY2009.

FY2010 Annual Budget (H.B. 2206) enacted and effective 7/15/09.



N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$8,500,000

FY2010 Federal Tobacco Control Program
Funding: \$1,180,546

FY2010 Total Tobacco Control Program
Funding: \$9,680,546

Funding Level Recommended by CDC:
\$157,000,000

Percentage of CDC-Recommended Level: 6.2%



A State Smoking Restrictions

Public Places

Smoking is restricted to designated areas in “public buildings”. A “public building” is an enclosed structure or part of an enclosed structure: 1) occupied by an agency of state or local government; 2) used as a classroom building or a dining area at a state educational institution; 3) used as a public school; 4) licensed as a health facility under Indiana Code sections 16-21 or 16-28; 5) used as a station for paid firefighters or paid police officers; 6) licensed as a child care center or child care home or registered as a child care ministry under Indiana Code section 12-17.2, 7) licensed as a hospital under Indiana Code section 16-21 or a county hospital subject to Indiana Code section 16-22; or 8) used as a provider’s office. Smoking is prohibited in a school bus during a school week or when it is being used for specified purposes. Smoking is also prohibited in the retail area of a grocery or drug store, or the dining area of a restaurant designated as non-smoking by the proprietor.

IND. CODE. §§ 16-41-37-1 et seq. (2003).

Government Buildings

Smoking is restricted to designated areas in “public buildings,” the definition of which includes an agency of state or local government. “Agency” is defined as a board, commission, department, agency, authority, or other entity exercising a part of the executive, administrative, legislative, or judicial power of the state or local government.

IND. CODE. §§ 16-41-37-1 et seq. (2003).

Private Workplaces

No restrictions

Schools

Smoking is restricted to designated areas in “public buildings.” Public schools and classroom buildings and dining areas at a state educational institution are included in the definition of “public buildings.” Smoking is also prohibited in a school bus during a school week or while the school bus is being used for the transportation of school children to and from the following: school,

school athletic games or contests, or other school functions.

IND. CODE §§ 16-41-37-1 et seq. (2003).

Child Care Facilities

Smoking is restricted to designated areas in “public buildings.” Places licensed as a child care center or child care home or registered as a child care ministry are included in the definition of “public buildings.”

IND. CODE §§ 16-41-37-1 et seq. (2003).

Health Care Facilities

Smoking is restricted to designated areas in “public buildings.” Places licensed as a health facility or a hospital, a county hospital or used as a healthcare provider’s office are included in the definition of “public buildings.”

IND. CODE §§ 16-41-37-1 et seq. (2003).

Restaurants

Smoking is prohibited in the dining area of a restaurant that is designated and posted as the restaurant’s nonsmoking area by the restaurant’s proprietor. The proprietor of a restaurant shall post conspicuous signs at each entrance to the restaurant, informing the public of the establishment’s smoking policy.

IND. CODE §§ 16-41-37-1 et seq. (2003).

Bars

No restrictions

Penalties/Enforcement

The official in charge of a public building shall post a conspicuous sign that reads “Smoking is Prohibited by State Law Except in Designated Smoking Areas” or other similar language. A person who smokes in a nonsmoking area commits a class B infraction punishable by a fine of up to \$1,000 for the first offense which becomes a Class A infraction punishable by a fine of up to \$10,000 if the person has three previous violations within the preceding 12 months. Also the person may be removed by the official in charge of the public building for failing to refrain from smoking when

asked to do so.

IND. CODE §§ 16-41-37-1 et seq. (2003) & 34-28-5-4 (1998).

State Preemption of Local Laws

A county, city, town, or other governmental unit is not prohibited from adopting an ordinance more restrictive than the above requirements.

IND. CODE. § 16-41-37-9 (1996).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 99.5 cents

Date last changed: July 1, 2007 -- from 55.5 cents to 99.5 cents

Year first enacted: 1947

IND. CODE § 6-7-1-12(a) (2007).

A tax is also imposed on all cigarette papers, wrappers, or tubes, made or prepared for the purpose of making cigarettes. On cigarette papers, the tax is \$0.005 per 50 papers, and for tubes, the tax is \$0.01 per 50 tubes or fractional part thereof.

IND. CODE § 6-7-1-12(b) (2002).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$505,611,000

Use of Cigarette Tax Revenue

Cigarette tax revenue is distributed as follows:

- 1) 4.22 percent to the "Cigarette Tax Fund," which is then allocated to the Department of Natural Resources for specified purposes, the Clean Water Indiana Fund and to cities and towns in Indiana based on population;
- 2) 0.6 percent to the "Mental Health Centers Fund," which is then allocated to the Division of Mental Health and Addiction for specified purposes;
- 3) 53.68 percent to the General Fund;
- 4) 5.43 percent to the Pension Relief Fund;
- 5) 27.05 percent to the Indiana check-up plan trust fund;
- 6) 2.46 percent to the state general fund for the purpose of paying appropriations for Medicaid

Current Obligations, for provider reimbursements;

7) 4.1 percent to the state general fund for the purpose of paying any appropriation for a health initiative; and

8) 2.46 percent to the state general fund for the purpose of reimbursing the state general fund for a specified tax credit.

IND. CODE § 6-7-1-28.1 (2008).

Taxes on Other Tobacco Products

All other tobacco products: 24% of the wholesale price

IND. CODE § 6-7-2-7 (2007).

Use of Tax Revenue from Other Tobacco Products

Twenty-five percent of the revenue from the tax on other tobacco products is deposited in the affordable housing and community development fund. The remaining revenue is distributed the same way as cigarette tax revenue (see above).

IND. CODE §§ 6-7-2-17 & 6-7-1-28.1 (2007).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Mental Health and Addiction shall coordinate the conduct of random, unannounced inspections at locations where tobacco products are sold or distributed. Only the Indiana Alcohol and Tobacco Commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off-duty law enforcement officers to conduct the inspections. Minors may be used in an enforcement action as long as they are overseen by the division of government conducting the inspection, are not recruited at the scene of a possible violation and have written permission from their parents or legal guardian.

IND. CODE §§ 7.1-6-2-2 (2001) & 7.1-6-2-4 (1997).

Penalties for Sales to Minors

A retail establishment that sells or distributes tobacco to a minor commits a Class C infraction. For a sale to take place the buyer must pay the seller for the tobacco products. Violation is subject to a civil penalty of up to \$200 if an establishment has received no citations/summons in the previous 180 days, up to \$400 if an establishment has received one citation/summons in the previous 180 days, up to \$700 if an establishment has received two citations/summonses in the previous 180 days, and up to \$1,000 if an establishment has been issued three or more citations/summonses in the previous 180 days. A person who violates this law at least six times in any 180-day period commits habitual illegal sale of tobacco, a Class B infraction, and the tobacco sales certificate may be suspended by the Indiana Alcohol and Tobacco Commission. The commission may mitigate civil penalties against a certificate holder if they have a training program for their employees as specified. It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco. It is a defense if the buyer produced a driver's license or photo ID that showed the buyer was of legal age to make the purchase; and the appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the legal age. It is also a defense if the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco: agriculture, processing, transporting, wholesaling, or retailing. Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than 18 years of age who bought or received the tobacco is also issued a citation or summons.

IND. CODE § 35-46-1-10.2 & 7.1-3-18.5-8 (2008).

A person who knowingly sells or distributes tobacco to a minor or purchases tobacco for delivery to another person who is a minor commits a Class C infraction punishable by a fine of up to \$500. For a sale to take place the buyer must pay the seller for the tobacco products. It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise

consume the tobacco. The same affirmative defenses available to retailers are also available to persons who sell tobacco products to minors (see above). Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than 18 years of age who bought or received the tobacco is also issued a citation or summons.

IND. CODE §§ 35-46-1-10 (2003) & 7.1-3-18.5-8 (2008).

Photo ID

No provisions

Sign Posting

A location selling tobacco at retail shall post and maintain in a conspicuous place signs stating: 1) "The sale of tobacco to persons under 18 years of age is forbidden by Indiana law;" 2) "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight;" and 3) that displays a toll free number for assistance to callers in quitting smoking. Violation is a Class C infraction punishable by a fine of up to \$500 for the owner or person who has control over the establishment.

IND. CODE § 35-46-1-11 (2008).

Penalties to Minors

A minor who purchases, accepts tobacco for personal use or possesses tobacco commits a Class C infraction for which a fine of up to \$500 may be adjudged. It is a defense to prosecution if the accused person acted in the ordinary course of employment in a business concerning tobacco agriculture, tobacco processing, tobacco transporting, tobacco wholesaling, or tobacco retailing.

IND. CODE § 35-46-1-10.5 (1997).

Placement of Tobacco Products

The owner of a retail establishment that sells or distributes cigarettes through a self-service display, other than a coin operated machine, commits a Class C infraction. As used in this section, "self-service display" means a display that contains cigarettes in an area where a customer is permitted and has access to cigarettes without assistance from a sales person. This does not apply to a self-service display in a retail establishment that has a primary

purpose to sell cigarettes and prohibits entry by persons less than 18 years of age.

IND. CODE § 35-46-1-11.8 (2007).

Internet Sales of Tobacco Products

A merchant may not mail or ship cigarettes as part of a delivery sale unless, before mailing or shipping the cigarettes, the merchant: obtains from the prospective customer a written statement signed by the prospective customer stating the customer's address and date of birth, makes a good faith effort to verify the information by using a federal or commercially available data base and receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser. Merchants that are not cigarette manufacturers are prohibited from making delivery sales to Indiana residents or retailers that are not distributors except under specified circumstances. Violation is subject to a civil penalty not to exceed \$5,000. A merchant who mails or ships cigarettes as part of a delivery sale shall use a mailing or shipping service that requires the customer or a person at least 18 years of age designated by the customer to sign to accept delivery of the cigarettes; and to present a valid driver's license or identification card unless the person appears to be over 27 years of age. Violation by a delivery service is up to a \$1,000 fine. Violations by merchants range from \$1,000 to \$2,000 for a first violation to \$10,000 for a fifth violation in five years. Signing another person's name to a certification is a \$1,000 fine.

IND. CODE § 24-3-5 et seq. (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

A retail establishment whose primary purpose is the sale of tobacco products may not allow an individual who is less than 18 years of age to enter the retail establishment. The retail establishment must conspicuously post on all entrances a sign that states: 1) "It is unlawful for a person less than 18 years old to enter this store;" and 2) that displays a toll free number for assistance to callers in quitting smoking. Violation is a Class C infraction subject to the same penalties as a retail establishment that sells tobacco products to minors.

The Indiana Alcohol and Tobacco Commission may mitigate civil penalties against a certificate holder if they have a training program for their employees that cover specific topics related to tobacco sales.

IND. CODE §§ 35-46-1-11.7 & 7.1-3-18.5-8 (2008).

Businesses, whose primary activity is the sale of tobacco or tobacco products and accessories, may not operate within 200 feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes. A violation of this section is a Class C misdemeanor. This section does not apply to businesses operating as a tobacco business before April 1, 1996.

IND. CODE § 35-46-1-11.2 (1997).

State Preemption of Local Laws

Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, a bylaw, or a rule of: a county; a city; a township; a department, a board, or an agency of a county, city or township; or any other political subdivision or agency of the state is void, regardless of when enacted.

IND. CODE §§ 16-41-39 et seq. (1996).

Note: This law preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to almost all laws in Sections C, D & E of Indiana's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A retail establishment that distributes tobacco to a minor commits a Class C infraction punishable by the graduated civil penalties listed under the 1st paragraph of the "Penalties for Sales to Minors" section. All provisions and affirmative defenses from that section apply to the distribution of tobacco products by retailers as well.

IND. CODE §§ 35-46-1-10.2 & 7.1-3-18.5-8 (2008).

A person that knowingly distributes tobacco to

a minor commits a Class C infraction punishable by a civil penalty of up to \$500. All provisions and affirmative defenses from the 2nd paragraph of the “Penalties for Sales to Minors” section apply to the distribution of tobacco products by persons as well.

IND. CODE §§ 35-46-1-10 (2003) & 7.1-3-18.5-8 (2008).

Minimum Tobacco Product Sales Amounts

It is unlawful for a person to sell cigarettes other than in an unopened package originating with the manufacturer that bears the health warning required by federal law. A violation of this law is a Class C infraction punishable by a fine of up to \$500.

IND. CODE § 7.1-6-2-3 (1997).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines are restricted to areas of licensed premises accessible to persons over 18 years of age; private industrial or office locations; private clubs, if they are accessible only to persons over age 18; and riverboats where entry is limited to persons who are at least 21 years of age and on which lawful gambling is authorized. Vending machines can not be located in these areas if a vending machine is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than 18 years of age.

IND. CODE § 35-46-1-11.5 (2003).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is a Class C infraction punishable by a civil penalty of \$50 for a first violation; \$250 for a second violation within 90 days; and the vending machine shall be impounded upon a third violation within 90 days. An owner of a retail establishment may not be issued a citation or summons for a violation more than once every two business days for each business location. The Indiana Alcohol and Tobacco Commission may mitigate civil penalties against a certificate holder if they have a training program

for their employees that cover specific topics related to tobacco sales.

IND. CODE §§ 35-46-1-11.5 (2003) & 7.1-3-18.5-8 (2008).

Sign Posting

The following notices must be posted on vending machines located in a public place: 1) “If you are under 18 years of age, you are forbidden, by Indiana law, to buy tobacco from this machine” or a substantially similar message; 2) “Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight”; and 3) that displays a toll free number for assistance to callers in quitting smoking. Failing to post a notice on a vending machine is a Class C infraction.

IND. CODE § 35-46-1-11 (2008).

F Licensing Requirements

Requirements

Distributors must obtain a registration certificate to sell cigarettes or a license to sell other tobacco products from the Department of State Revenue. All registration certificates and licenses shall be valid for one year from the date of issuance unless revoked or suspended. A separate registration certificate or license is required for each place of business. Distributing cigarettes without a registration certificate or other tobacco products without a license is a Class B misdemeanor.

IND. CODE §§ 6-7-1-16 (1992); 6-7-1-23 (1978); 6-7-2-8 (1987) & 6-7-2-18 (1987).

Retailers must obtain a tobacco sales certificate from the Indiana Alcohol and Tobacco Commission to sell tobacco products. A separate certificate is required for each place where tobacco products are sold or distributed. A certificate is valid for one year after the date of issuance and is nontransferable. Selling tobacco products at retail without a certificate is a Class A infraction.

IND. CODE §§ 7.1-3-18.5 et seq. (2003).

Manufacturers must obtain a license from the Indiana Alcohol and Tobacco Commission for their principal place of business. The commission shall determine the duration of a license, but a license may not be valid for more than three years. The license issued under this section is

nontransferable.

IND. CODE §§ 24-3-6 et seq. (2005).

Fees

Distributors: \$500 annually for cigarettes, \$25 annually for other tobacco products.

Retailers: \$50 per location.

IND. CODE §§ 6-7-1-16 (1992), 6-7-2-8 (1987), & 71-3-18.5 (2003).

License Suspension for Sales to Minors

A person who sells or distributes tobacco products to minors at least six times in any 180-day period commits habitual illegal sale of tobacco, a Class B infraction, and the tobacco sales certificate may be suspended by the Indiana Alcohol and Tobacco Commission. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly. An ordinance, bylaw, or rule of any county, city, township, other political subdivision, or agency of the state, is void.

IND. CODE §§ 35-46-1-11 (2008) & 16-41-39 et seq. (1996).

G Smoker Protection Laws

An employer may not require, as a condition of employment, an employee or prospective employee to refrain from using tobacco products outside the course of the employee's or prospective employee's employment. An employer also may not discriminate against an employee with respect to compensation and benefits, or terms and conditions of employment based on the employee's or prospective employee's use of tobacco products outside the course of employment. However, an employer may implement financial incentives intended to reduce tobacco use, and related to employee health benefits provided by the employer. An employee or prospective employee may bring civil action against the employer to enforce this law. This does not apply to an employer that is a church, a religious organization, or a school or business conducted by a religious organization.

IND. CODE §§ 22-5-4-1 et seq. (2006).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

An appeal bond that an appellant must post to stay execution on a judgment while an appeal is pending may not exceed \$25 million regardless of the total amount of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that are necessary to protect the appellee, and require the appellant to post a bond that is equal to the total amount of the judgment.

IND. CODE § 34-49-5-3 (2002).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

There is created the Indiana Tobacco Master Settlement Agreement Fund for depositing and distributing the money received by the state under the Master Settlement Agreement between the state of Indiana and certain cigarette companies. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Money in the fund is appropriated to various state programs, including the Tobacco Use Prevention and Cessation Trust Fund, through the regular biennial appropriations process.

IND. CODE § 4-12-1-14.3 (2003).

The Indiana Tobacco Use Prevention and Cessation Trust Fund is established. Money may be spent from the fund by the Indiana Tobacco Prevention and Cessation Executive Board for grants and other expenses to implement the long range state plan to reduce the use of tobacco products in Indiana. The fund consists of: (1) amounts, if any, that another statute requires to be distributed to the fund from the Indiana Tobacco Master Settlement Agreement Fund; (2) appropriations to the fund from other sources; (3) grants, gifts, and donations intended for deposit in the fund; and (4) interest that accrues from money in the fund.

Money in the fund does not revert to the state general fund at the end of a state fiscal year.

IND. CODE § 4-12-4-10 (2001).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in section 22-14-7-19 Indiana Code, cigarettes may not be sold or offered for sale in Indiana unless the cigarettes: (1) have been tested according to the test method and meet the performance standard specified in 22-14-7-13 or 22-14-7-15 Indiana Code; (2) have been certified under section 22-14-7-21 Indiana Code; and (3) have been marked under section 22-14-7-23 Indiana Code. A manufacturer, wholesale dealer, agent or another person or entity that knowingly sells cigarettes, other than through retail sale, in violation of the above requirements shall be subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

IND. CODE §§ 22-14-7 et seq. (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$10,859,308

FY2010 Federal Tobacco Control Program
Funding: \$1,037,550

FY2010 Total Tobacco Control Program
Funding: \$11,896,858

Funding Level Recommended by CDC:
\$78,800,000

Percentage of CDC-Recommended Level:
15.1%

State Funding Details:

Indiana appropriated \$10,859,308 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment and from the state general fund. In FY2009, \$15,066,000 was appropriated.

This is the first year of the FY2010-FY2011 biennial budget.

FY2010-FY2011 Biennial Budget (H.B. 1001a) enacted 6/30/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Control Program Related Laws

The Indiana Tobacco Use Prevention and Cessation Executive Board is created to direct the expenditure of dollars from the Tobacco Use Prevention and Cessation Trust Fund. The governing board consists of government and health officials, including representatives of the American Lung Association in Indiana. The Executive Board will develop a long range state plan to coordinate state efforts to reduce the use of tobacco products, based on Best Practices for Comprehensive Tobacco Control Programs as published by the Centers for Disease Control and Prevention. An advisory board was also created to assist the executive board as specified.

IND. CODE §§ 4-12-4 et seq. (2000).

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A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all public places and enclosed areas of places of employment, including restaurants and bars. Smoking is also prohibited in the seating areas of outdoor sports arenas, stadiums, amphitheaters and other entertainment venues where members of the general public assemble to witness entertainment events; outdoor seating or serving areas of restaurants; public transit stations, platforms, and shelters under the authority of the state or its political subdivisions; and the grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions with a few exceptions. Smoking is allowed in: 1) private residences unless used as child care facility, child care home or health care provider location; 2) 25 percent of hotel/motel rooms subject to specified conditions; 3) retail tobacco stores as defined, as long as smoke does not infiltrate into smokefree areas; 4) private and semiprivate rooms in long-term care facilities under certain conditions; 5) private clubs with no employees except when being used for a function to which the general public is invited, and as long as smoke does not infiltrate into smokefree areas, and the club is not set up to avoid compliance with the law; 6) outdoor areas of places of employment except where prohibited above; 7) limousines under private hire; 8) vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger; 9) privately owned vehicles not otherwise defined as a place of employment or public place; 10) cabs of motor trucks or truck tractors if no nonsmoking employees are present; 11) an enclosed area within a place of employment or public place that provides a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program; 12) farm tractors, farm trucks, and implements of husbandry when being used for their intended purposes; 13) gaming floors of casinos, not including bars or restaurants on the

gaming floor; and 14) the Iowa veterans home.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Government Buildings

Smoking is prohibited in public places, which includes public buildings and vehicles owned, leased, or operated by or under the control of the state government or its political subdivisions and including the entirety of the private residence of any state employee any portion of which is open to the public. Smoking is also prohibited on the grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions except: 1) the Iowa state fairgrounds, or fairgrounds as defined in section 174.1 of the Iowa Code, 2) institutions administered by the Department of Corrections, except that smoking on the grounds shall be limited to designated smoking areas and 3) facilities of the Iowa national guard as defined in section 29A.1 of the Iowa Code, except that smoking on the grounds shall be limited to designated smoking areas.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Private Workplaces

Smoking is prohibited in all enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer. Place of employment does not include a private residence, unless the private residence is used as a child care facility, a child care home, or as a health care provider location. This also does not apply to vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Schools

Smoking is prohibited in public places, which in-

cludes all public and private educational facilities. Smoking is also prohibited on school grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds. These provisions apply to public and private colleges and universities.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Child Care Facilities

Smoking is prohibited in public places, which includes child care facilities and child care homes. Private residences that serve as a child care facility or child care home are specifically included.

IOWA CODE §§ 142D.1 to 142D.9 & 237A.3B (2008).

Health Care Facilities

Smoking is prohibited in public places, including health care provider locations. Health care provider location is defined as an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to a hospital as defined; a long-term care facility; an adult day services program as defined; clinics, laboratories, and the locations of professionals regulated pursuant to Title IV, subtitle III, and includes all enclosed areas of the location including waiting rooms, hallways, other common areas, private rooms, semiprivate rooms, and wards within the location. Smoking is allowed in private and semiprivate rooms in long-term care facilities, occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, as long as smoke does not infiltrate into smokefree areas.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Restaurants

Smoking is prohibited in public places, which includes restaurants. Restaurant means eating establishments, including private and public school cafeterias, which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant. Smoking is also prohibited in the outdoor seating and service areas of restaurants.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Bars

Smoking is prohibited in public places, which includes bars. “Bar” means an establishment where one may purchase alcoholic beverages for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

Penalties/Enforcement

The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area where smoking is prohibited shall clearly and conspicuously post in and at every entrance “no smoking” signs or the international “no smoking” symbol. This requirement includes vehicles that are covered. All ashtrays shall be removed as well. This law shall be enforced by the Department of Public Health as specified. An employee or private citizen may bring legal action to enforce this chapter. Owners, operators, managers or other persons in charge that fail to comply shall pay a civil penalty of not more than \$100 for the first violation, not more than \$200 for a second violation with one year and not more than \$500 for any subsequent violation in one year. In addition, violation may result in suspension or revocation of applicable permits/licenses.

IOWA CODE §§ 142D.1 to 142D.9 (2008).

State Preemption of Local Laws

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

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.36

Date last changed: March 15, 2007 — from 36 cents to \$1.36

Year first enacted: 1921

IOWA CODE § 453A.6(1) (2007).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$229,457,000

Use of Cigarette Tax Revenue

All revenue from the cigarette tax is deposited in the state General Fund. However, beginning July 1, 2007, the first \$127,600,000 in revenue from the cigarette and other tobacco product taxes is appropriated annually to the Health Care Trust Fund created in the office of the state Treasurer. Moneys in the fund shall be separate from the General Fund of the state and shall not be considered part of the General Fund of the state. Moneys in the fund shall be used only for purposes related to health care, substance abuse treatment and prevention, and tobacco use prevention, cessation, and control.

IOWA CODE §§ 453A.35 & 453A.35A (2007).

Taxes on Other Tobacco Products

Little Cigars: \$1.36 per cigar;

Snuff: \$1.19/oz. and a proportionate rate on fractional parts of an ounce;

All other tobacco products: 50% of the wholesale sales price

IOWA CODE § 453A.43 (2007).

Use of Tax Revenue from Other Tobacco Products

All revenue from the taxes on other tobacco products is deposited in the state General Fund. However, beginning July 1, 2007, the first \$127,600,000 in revenue from the cigarette and other tobacco product taxes is appropriated annually to the Health Care Trust Fund created in the office of the state Treasurer, and used as specified under the "Use of Cigarette Tax Revenue" section above.

IOWA CODE §§ 453A.35 & 453A.35A (2007).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in state law

Penalties for Sales to Minors

A person shall not sell, give or otherwise supply tobacco products to any person less than 18 years of age. This also applies to sales of cigarettes or

tobacco products through a vending machine. For a person, other than a retailer, violation is a simple misdemeanor. For violations of youth access laws by an employee of a retailer, the scheduled fine is as follows: \$100 for a first offense, \$250 for a second offense and \$500 for a third offense. If a retailer or employee of a retailer commits a violation, the Department of Revenue and Finance, a local authority, or the Department of Public Health shall also assess a civil penalty of \$300 for a first violation. Failure to pay the fine shall result in automatic suspension of the permit for a period of 14 days. For a second violation within a period of two years, the retailer shall be assessed a \$1,500 fine or the retailer's permit shall be suspended for a period of 30 days based on the retailer's preference. For a third violation within three years, the retailer shall be assessed a fine of \$1,500 and have their permit suspended for 30 days. For a fourth violation within three years, the retailer will be assessed a fine of \$1,500 and have their permit suspended for 60 days. For a fifth violation in four years, the retailer's permit shall be revoked. If an employee of a retailer commits a violation, the retailer shall not be charged with a violation if the employee took the state tobacco compliance employee training program or an in-house training program substantially similar to it. This defense may only be asserted once every four years for violations occurring at the same business location.

IOWA CODE §§ 453A.2 (2003), 453A.22 (2003) & 805.8C(3)(b) (2001).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

A minor shall not smoke, use, possess, purchase or attempt to purchase any tobacco products. This does not apply if a minor employee possesses the tobacco products as part of their employment responsibilities, and are employed by a person who holds a valid retail tobacco product permit. The penalty for a first offense is \$50, for the second offense \$100 and \$250 for the third or subsequent offenses. In addition, a person who violates this section is subject to the following: For a first offense, performance of eight hours of community work requirements, unless waived by the court;

for a second offense, performance of 12 hours of community work requirements; for a third or subsequent offense, performance of 16 hours of community work requirements. A person shall not be guilty of a violation if conduct that would otherwise constitute a violation is performed, under the supervision of law enforcement, to assess compliance with cigarette and tobacco products laws.

IOWA CODE §§ 453A.2 (2003), 453A.3 (2004) & 805.8C (3)(c) (2004).

A person who is under the age of 18, who alters or displays or has in the person's possession a fictitious or fraudulently altered driver's license or nonoperator's identification card and who uses the license or card to purchase or attempt to purchase tobacco products commits a simple misdemeanor punishable by a fine of \$100.

IOWA CODE §§ 321.216C (2001) & 805.8A (3)(c) (2004).

If a retailer or employee of a retailer has reasonable belief that a driver's license or other identification offered by a person seeking to buy a tobacco product is altered or falsified, they may retain the license or identification. It must be forwarded within 24 hours to the appropriate law enforcement agency of the holder's jurisdiction for further investigation.

IOWA CODE § 453A.4 (2000).

Placement of Tobacco Products

Retailers are prohibited from selling cigarettes or tobacco products, in a quantity of less than a carton, through the use of a self-service display. Violation is grounds for revocation of the retailer's permit.

IOWA CODE § 453A.36A (1998).

Internet Sales of Tobacco Products

No provisions

Other Provisions

The Alcoholic Beverages Division of the Iowa Department of Commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of tobacco retailers to inform the employees about state and federal laws and regulations regarding the sale of cigarettes and tobacco products to persons less than 18 years of age. The training program shall be free of cost.

IOWA CODE § 453A.5 (2003).

State Preemption of Local Laws

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

IOWA CODE § 453A.56 (1991).

Note: This provision preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to almost all laws in Sections C, D, E & F of Iowa's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person shall not give away any cigarettes or tobacco products to any person under 18 years of age or at all within 500 feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under 18 for recreational, educational, or other purposes. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under 18 years of age. Cigarette samples must have a cigarette tax stamp affixed to them.

IOWA CODE § 453A.39 (2004).

Minimum Tobacco Product Sales Amounts

Cigarettes shall be sold in packages of only 20 or more cigarettes. No penalty is specified for violation.

IOWA CODE § 453A.6(7) (2007).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are restricted to places where the retailer ensures that no person younger than

18 years of age is present or permitted to enter at any time.

IOWA CODE § 453A.36 (2000).

Penalties

Violation of the restrictions on the placement of tobacco product vending machines by a retailer is subject to the civil penalties listed under the “Penalties for Sales to Minors” section.

IOWA CODE § 453A.22 (2003).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesalers, distributors, and cigarette vendors must obtain a state permit to sell cigarettes from the Department of Revenue. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities. All permits expire on June 30 of each year. Selling or distributing cigarettes without a valid permit is subject to a civil penalty of \$200 for a first violation, \$500 for a second violation and \$1,000 for a third and subsequent violations.

IOWA CODE § 453A.13 (2000) & 453A.31 (2004).

Distributors of other tobacco products must obtain a state license from the Director of the Department of Revenue. Retailers of other tobacco products must obtain a permit from the respective city or county where they are located, except a retailer who already has a retailer permit under Iowa Code section 453A.13 need not obtain a separate retailer permit under this section. A separate license is required for each place of business, and licenses expire on June 30th following the date of issue unless sooner revoked.

IOWA CODE §§ 453A.44 (1994) & 453A.47A (2005).

Fees

Retailer cigarette permit: \$50 to \$100 annually, depending on local population size;

Wholesaler, distributor, or cigarette vendor permit: \$100 annually;

Tobacco products distributor license: \$100 annually unless the person already has a permit of any kind to deal in cigarettes.

IOWA CODE §§ 453A.13 (2000) & 453A.44 (1994).

License Suspension for Sales to Minors

If a retailer or employee of a retailer commits a violation of the sales to minors’ law, including vending machine violations, the Department of Revenue and Finance, a local authority, or the Department of Public Health shall assess a civil penalty for a first violation. Failure to pay the fine shall result in automatic suspension of the permit for a period of 14 days. For a second violation within a period of two years, the retailer shall be assessed a fine or have his permit suspended for a period of 30 days, whichever the retailer prefers. For a third violation within three years, the retailer shall have his permit suspended for 30 days. For a fourth violation within three years, the retailer shall have his permit suspended for 60 days. For a fifth violation in four years, the retailer shall have his permit revoked.

IOWA CODE § 453A.22 (2003).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

If a judgment or order appealed from is for money, the supersedeas bond required shall not exceed 110 percent of the amount of the money judgment except the court may set a higher bond amount based on specific findings. However, in no case shall a bond exceed \$100 million, regardless of the value of the money judgment. This limitation shall not apply in cases where the court finds that the

defendant intentionally dissipated the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment.

IOWA CODE § 625A.9 (2) (2004).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

A Tobacco Settlement Trust Fund was established, separate and apart from all other public moneys of the state, under control of the Tobacco Settlement Authority. The fund shall consist of Master Settlement Agreement moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. The fund consists of three accounts: 1) the Tax-Exempt Bonds Proceeds Restricted Capital Funds Account where most of the net proceeds from tax exempt bonds issued due to the original securitization of MSA payments were deposited; 2) the FY 2009 Tax-Exempt Bond Proceeds Restricted Capital Funds Account where the net proceeds from tax-exempt bonds issued after July 1, 2008 as a result of the securitization of any remaining tobacco settlement payments were deposited and 3) the Endowment for Iowa's Health Account where the net proceeds of any taxable or tax-exempt bonds issued to provide funds for the purposes specified in section 12E.3A Iowa Code, any portion of the state's MSA payments not sold to the Tobacco Settlement Authority and any additional money appropriated by the state were deposited. For FY2010 and each fiscal year thereafter, the moneys deposited in the Endowment for Iowa's Health Account are transferred to the state general fund, and shall be used as specified in section 12E.3A Iowa Code, including for the tobacco use prevention and control initiative.

IOWA CODE § 12E.12 (2008).

Securitization

The Tobacco Settlement Authority was created as a public instrumentality and agency of the state to sell, pledge, or assign, as security or consideration, all or a portion of the state's share of the Master Settlement Agreement. The authority shall issue tax-exempt bonds as necessary in amounts determined by the authority for deposit in the Tax-Exempt Bond Proceeds Restricted Capital Funds Account of the Tobacco Settlement Trust Fund, to be used for capital projects, certain debt

service on outstanding obligations which funded capital projects, and attorney fees related to the Master Settlement Agreement. The authority may also issue taxable bonds or tax-exempt bonds to provide additional funding for the Healthy Iowans Tobacco Trust. In addition, the authority may issue tax-exempt bonds if the securitization of any remaining tobacco settlement payments will result in the deposit of not less than \$183 million for tax-exempt bonds issued after July 1, 2008.

IOWA CODE §§ 12E.1 to 12E.18 (2008).

M Fire Safety Standards

To help prevent cigarette-caused fires, beginning January 1, 2009, cigarettes shall not be sold or offered for sale to any person in Iowa unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 101B.4; 2) a written certification has been filed by the manufacturer with the department and in accordance with section 101B.5 Iowa Code; and 3) the cigarettes have been marked in accordance with section 101B.7 Iowa Code. A manufacturer, wholesaler, agent, or other person who knowingly sells cigarettes at wholesale in violation of the above is subject to a civil penalty not to exceed \$5,000 for a first offense and not to exceed \$10,000 for subsequent offenses for each sale of cigarettes, provided that the total penalty assessed shall not exceed \$50,000 in any 30-day period. A retailer that knowingly sells or offers to sell cigarettes in violation of the above is subject to a civil penalty not to exceed \$500 for a first offense and \$2,000 for subsequent offenses for each sale or offer for sale of less than 1,000 cigarettes and a civil penalty not to exceed \$1,000 for a first offense and \$5,000 for subsequent offenses for each sale or offer for sale of more than 1,000 cigarettes. The penalty against a retailer can not exceed \$25,000 in a 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$25,000 for a first offense and not to exceed \$100,000 for a second or subsequent offense.

IOWA CODE §§ 101B.1 to 101B.10 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$10,125,870

FY2010 Federal Tobacco Control Program

Funding: \$1,011,630

FY2010 Total Tobacco Control Program

Funding: \$11,137,500

Funding Level Recommended by CDC:

\$36,700,000

Percentage of CDC-Recommended Level:

30.3 %

State Funding Details:

Iowa allocated \$10,125,870 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from state tobacco tax revenue, the state general fund and federal stimulus dollars. In FY2009, \$10,375,280 was allocated.

FY2010 Appropriations for Health and Human Services (H.F. 811) enacted 5/26/09 and effective 7/1/09.

Tobacco Control Program Related Laws

Iowa established a tobacco use prevention and control initiative that will specifically address reduction of tobacco use by youth and pregnant women, promotion of compliance by minors and retailers with tobacco sales laws and ordinances, and enhancement of the capacity of youth to make healthy choices and provide for extensive involvement of youth in attaining these results. The initiative will be administered by a division of Tobacco Use Prevention and Control, which was required to be established in the Iowa Department of Public Health. A Commission on Tobacco Use Prevention and Control was also created in the Department of Public Health consisting of 14 members, among others three appointed by the governor from tobacco-control related organizations, members of youth organizations and state legislators from the House of Representatives and Senate.

IOWA CODE §§ 142A.1 to 142A.10 (2009).



A State Smoking Restrictions**Public Places**

Smoking is restricted to designated areas in enclosed indoor areas open to, or used by, the general public including, but not limited to: restaurants; retail stores; health care institutions or any other place where health care services are provided to the public; educational facilities; libraries; courtrooms; state, county or municipal buildings; restrooms; grocery stores; museums; theaters; auditoriums; arenas; and recreational facilities. Smoking is prohibited entirely in passenger elevators; on public means of transportation; and on school buses.

KAN. STAT. ANN. §§ 21-4009 to 21-4013 (1987).

Government Buildings

Smoking is restricted to designated areas in state, county or municipal buildings.

KAN. STAT. ANN. §§ 21-4009 & 21-4010 (1987).

No person shall smoke in any area, room, hallway, or other place in the state capitol and no area shall be designated as a smoking area.

KAN. STAT. ANN. § 21-4016 (1993).

Private Workplaces

No restrictions

Schools

The use of tobacco products in any public school building is prohibited. A school building is defined as an enclosed building used for pupil attendance purposes by the board of education of a unified school district. Not included are buildings or portions thereof used for residential purposes or leased from the school district for nonschool sponsored activities.

KAN. STAT. ANN. §§ 72-53, 107 (1988).

Smoking is restricted to designated areas in all other educational facilities. Smoking is prohibited on school buses.

KAN. STAT. ANN. §§ 21-4009 & 21-4010 (1987).

Child Care Facilities

Smoking is prohibited in day care homes, group

day care homes and family day care homes while children are present. Outside areas on the premises of the facility are specifically excluded from this law. The Secretary of Health and Environment may levy a civil fine of up to \$500 against any day care home for a first or second violation, and suspend the license for third or subsequent violations.

KAN. STAT. ANN. § 65-530 (1994).

Smoking is restricted to designated areas in places open to or used by the general public, including child care facilities not covered above.

KAN. STAT. ANN. §§ 21-4009 & 21-4010 (1987).

Health Care Facilities

Smoking is prohibited in “medical care facilities” which includes general or special hospitals, ambulatory surgery centers or recuperation centers, and any licensed psychiatric hospital. A smoking area may be established within a licensed long-term care unit if such area is well ventilated.

KAN. STAT. ANN. § 21-4017 (1993).

Smoking is restricted to designated areas in other health care institutions or places where health care services are provided to the public.

KAN. STAT. ANN. §§ 21-4009 & 21-4010 (1987).

Restaurants

Smoking is restricted to designated areas in restaurants.

KAN. STAT. ANN. §§ 21-4009 & 21-4010 (1987).

Bars

No restrictions

Penalties/Enforcement

The proprietor or other person in charge of a public place shall post signs designating smoking and nonsmoking areas. Any person found guilty of smoking in a nonsmoking area is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs, as required, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the Department of Health

and Environment, or a local department of health, may institute an action in any court of competent jurisdiction to enjoin repeat violations.

KAN. STAT. ANN. § 21-4012 (1987).

State Preemption of Local Laws

Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act.

KAN. STAT. ANN. § 21-4013 (1987).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 79 cents

Date last changed: January 1, 2003 — from 70 cents to 79 cents

Year first enacted: 1927

KAN. STAT. ANN. § 79-3310 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$112,559,000

Use of Cigarette Tax Revenue

All proceeds from the cigarette tax go to the state general fund.

KAN. STAT. ANN. § 79-3387 (2001).

Taxes on Other Tobacco Products

All other tobacco products: 10% of the wholesale sales price

KAN. STAT. ANN. § 79-3371 (1972).

Use of Tax Revenue from Other Tobacco Products

All proceeds from the tax on other tobacco products go to the state general fund.

KAN. STAT. ANN. § 79-3387 (2001).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Director of Taxation shall administer and enforce the provisions of the Kansas Cigarette and

Tobacco Products Act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right to inspect all premises, records and invoices pertaining to the wholesale distribution, retail sale or sampling of cigarettes or tobacco products within the city at all reasonable times. No person shall engage or direct a minor to violate any provision of this act for purposes of determining compliance with provisions of this act unless such person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and such person is an officer having authority to enforce this act; an authorized representative of the attorney general; a county attorney or a district attorney; or an authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with the provisions of this act.

KAN. STAT. ANN. §§ 79-3326 & 79-3394 (1996).

It is unlawful to prevent the Director of Taxation or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away. Violation is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Penalties for Sales to Minors

It is a Class B misdemeanor punishable by a minimum fine of \$200 for any person to: (1) Sell, give or furnish any cigarettes or tobacco products to any person less than 18 years of age; or (2) buy any cigarettes or tobacco products for any person less than 18 years of age. It is a defense to prosecution if the defendant is a licensed retail dealer or employee thereof; the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and the person under 18 years of age exhibited a driver's license, or other official document containing a photograph, showing they were of legal age to purchase or receive cigarettes or tobacco products. The person who violates this law shall be the individual directly selling, furnishing or dis-

tributing the cigarettes or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

KAN. STAT. ANN. § 79-3322 (2000).

In addition to or in lieu of any other civil or criminal penalty provided by law, the Secretary of Revenue or their designee, upon a finding that a licensee has violated any provision of the Kansas Cigarette and Tobacco Products Act, including selling, giving or furnishing tobacco products to minors, shall impose on such licensee a civil fine not exceeding \$1,000 for each violation. In determining the fine to be imposed, the Secretary of Revenue or their designee shall consider it to be a mitigating circumstance if the employee had completed a training program in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

KAN. STAT. ANN. § 79-3391 (2001).

Whenever the Director of Taxation has reason to believe that any person licensed under this act has violated any of the provisions of this act, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's license or licenses. Within 10 days after the mailing of the notice, the person may request a hearing in writing before the director. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which the license or licenses were suspended or revoked.

KAN. STAT. ANN. § 79-3309 (1996).

Photo ID

No provisions

Sign Posting

It is unlawful for any person who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "BY LAW, CIGARETTES AND TOBACCO PRODUCTS MAY BE SOLD ONLY TO PERSONS 18 YEARS OF AGE AND

OLDER." Violation is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both.

KAN. STAT. ANN. §§ 79-3321& 79-3322 (2000).

Penalties to Minors

It is unlawful for any person under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products. It is unlawful for any person who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products. Violation is a tobacco infraction punishable by a fine of \$25.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

The following restrictions are placed on Internet, telephone, and mail order sales of cigarettes: 1) each person engaged in the business of selling cigarettes to persons who reside in Kansas shall obtain a license, and shall have a valid Kansas cigarette tax stamp affixed to each package; 2) all retail cigarette dealers, whether located in or outside Kansas, shall have a registration certificate and be subject to the provisions of the Kansas retailers' sales tax act; 3) all cigarette sales transactions over the Internet, telephone, or by mail order shall not be completed unless before each delivery the seller has obtained a certification from the purchaser that includes a reliable confirmation that the purchaser is at least 18 years of age; that the cigarettes purchased are not intended for consumption by an individual who is younger than 18; and a written statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least 18 years of age; 4) the retail cigarette dealer shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser; 5) all invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the Internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller; 6) cigarette packages being shipped are also subject to certain labeling requirements.

Violation of the requirement to obtain a license, certification requirement, or verification requirement is a severity level eight, non-person felony. Violations of all other requirements are misdemeanors punishable by a fine of not more than \$1,000 and/or imprisonment for one year. Other tobacco products are excluded from these requirements.

KAN. STAT. ANN. § 79-3333 (2004).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for any person to distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) in an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility. Violation is a misdemeanor punishable by a fine of not more than \$1,000, up to one year in prison, or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

Minimum Tobacco Product Sales Amounts

It is unlawful to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States. Violation is a misdemeanor punishable by a fine of not more than \$1,000, up to one year in prison, or both.

KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful for any person to sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except: (1) installation and use behind the counter; (2) installation and use in a commercial building or industrial plant; or (3) vending machines with lockout devices requiring operation by a person supervising the machine.

KAN. STAT. ANN. § 79-3321 (2000).

Penalties

Violators are guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000, up to one year in prison, or both.

KAN. STAT. ANN. § 79-3322 (2000).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Retailers, wholesalers, and vending machine operators must be licensed to sell cigarettes. Licenses are renewed every two years. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. Selling cigarettes without a license is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year, or both.

KAN. STAT. ANN. §§ 79-3303 (2001), 79-3321(2000) & 79-3322 (2000).

Distributors must be licensed to sell or deal in tobacco products. A separate license is required for each place of business. Each license shall expire on December 31st following its date of issue unless sooner revoked. Selling tobacco products without a distributor's license is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both.

KAN. STAT. ANN. §§ 79-3373 (1996); 79-3374 (1972); 79-3375 (1972); 79-3321 (2000) & 79-3322 (2000).

Fees

Retail License: \$25 for each establishment every two years;

Wholesale dealer's license: \$50 for each establishment every two years;

Vending Machines: \$50 for a vending machine distributor license, no fee for a vending machine operator license and \$25 for each vending machine every two years;

Distributor's License for Tobacco Products: \$25 per year.

KAN. STAT. ANN. §§ 79-3304 (1996) & 79-3374 (1972).

License Suspension for Sales to Minors

The Director of Taxation, after a hearing, can suspend the license of any person licensed under the Kansas Cigarette and Tobacco Products Act for violations of this act for a period not to exceed one year.

KAN. STAT. ANN. § 79-3309 (1996).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory, involving a signatory or a successor to a signatory of the Master Settlement Agreement, the maximum appeal bond that any appellant in the litigation may be required to post to stay execution on a judgment during an appeal or discretionary review shall be set in accordance with existing law and court rules, except that in no case shall an appeal bond for any individual appellant and its successors, individually or collectively exceed \$25 million, regardless of the total value of the judgment. If it is proved by a

preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent the dissipation or diversion of assets.

KAN. STAT. ANN. § 50-6a05 (2005).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

There is established in the state treasury the Kansas Endowment for Youth Fund where all monies received by the state from the Master Settlement Agreement between the state of Kansas and certain cigarette companies is directed. This fund is considered a trust fund and the money in it is invested as specified. Money can be transferred to the Children's Initiatives Fund as specified (see below) and used to pay for the operating expenses of the Kansas Children's Cabinet and board of trustees, which advises the governor and legislature on the use of money in the Children's Initiatives Fund.

KAN. STAT. ANN. § 38-2101 (1999).

There is established in the state treasury the Children's Initiatives Fund. All moneys credited to the fund shall be used for the purposes of providing additional funding for programs, projects, improvements, services and other purposes directly or indirectly beneficial to the physical and mental health, welfare, safety and overall well-being of children as specified. On July 1 of each fiscal year after July 1, 2002, money equal to 102.5 percent of the money transferred to the Children's Initiatives Fund from the Kansas Endowment for Youth Fund in the previous fiscal year will be transferred between the two funds. Appropriations to various programs are controlled by the legislature through the normal appropriations process. The amount of the transfer from the Kansas Endowment for Youth Fund to the Children's Initiatives Fund can also be increased or decreased by the legislature.

KAN. STAT. ANN. § 38-2102 (1999).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (h) of section 31-603 Kansas

Statutes, no cigarettes may be sold or offered for sale in Kansas or offered for sale or sold to any person located in Kansas unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 31-603 Kansas Statutes; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 31-604 Kansas Statutes, and amendments thereto; and 3) the cigarettes have been marked in accordance with section 31-605 Kansas Statutes, and amendments thereto. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements shall be subject to a civil penalty not to exceed \$500 for each pack of cigarettes sold or offered for sale. Penalties shall not exceed \$100,000 in any 30-day period. A retail dealer or vending machine operator is subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

KAN. STAT. ANN. §§ 31-601 to 31-613 (2009).

Tobacco Control Program Related Laws

A tobacco use prevention and control fund was established from which expenditures can be made for a comprehensive, statewide tobacco use prevention and control program. The comprehensive statewide tobacco use prevention and control program shall support tobacco use prevention and control activities including: Community programs to prevent and reduce tobacco use through local involvement and partnerships; school-based programs to prevent and reduce tobacco use; tobacco cessation programs for youth and adults; special projects to reduce the disparities in smoking prevalence among various populations; restriction of youth access to tobacco products; surveillance of smoking rates; and any other activities determined by the secretary to be necessary to implement the program. An independent evaluation of the program is required as well as a state tobacco control report that breaks down information relevant to tobacco control efforts by county.

FY2005 Annual Budget (H.B. 2675) enacted 4/19/04 and effective 5/5/04.



N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$1,000,000

FY2010 Federal Tobacco Control Program
Funding: \$1,245,400

FY2010 Total Tobacco Control Program
Funding: \$2,245,400

Funding Level Recommended by CDC:
\$32,100,000

Percentage of CDC-Recommended Level: 7%

State Funding Details:

Kansas appropriated \$1,000,000 for tobacco prevention and cessation programs for FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment. The same amount was appropriated in FY2009.

FY2010 Annual Budget (H.B. 2354) enacted 4/13/09 and effective 7/1/09.



A State Smoking Restrictions

Public Places

No broad restrictions. Smoking is prohibited or restricted in many state government workplaces and in schools. See sections below for further details.

Government Buildings

By executive order, smoking is prohibited in all office buildings and common areas occupied by state executive branch employees. This also applies to state correctional facilities except the maximum security prison at Eddyville, KY. This order does not apply to state legislative or judicial branch employees.

EXEC. ORDER 2006-0807 (2006).

Smoking is restricted to designated areas of the state Capitol or state Capitol Annex. The governing authority for each branch of state government, each in regard to space allocated to and occupied by that respective branch of state government, may designate one or more smoking areas in the Capitol and Capitol Annex. Each smoking area shall be an enclosed area that is not a public area, is clearly designated as a smoking area, and is maintained by a ventilation system that does not disburse the smoke or smoke byproducts into any other area of the Capitol or Capitol Annex. "Public area" is defined as any hallway, office shared by more than one person, stairwell, restroom, meeting room, cafeteria, or conference room.

KY REV. STAT. ANN. § 61.167 (2004).

Except as otherwise specified for the Capitol and Capitol Annex above, a policy for smoking in governmental office buildings or workplaces shall be adopted by state government. This policy shall apply to all state-owned or operated office buildings, workplaces, and facilities, including but not limited to state-operated hospitals and residential facilities for the mentally retarded, state-operated veterans' nursing homes and health facilities, and any correctional facility owned, operated or under the jurisdiction of the state. Any policy relating to smoking in state office buildings or workplaces

shall be by executive order of the governor or action of the General Assembly and shall require the governmental authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or prohibit indoor smoking.

KY REV. STAT. ANN. § 61.165 (2006).

Except as otherwise specified for the Capitol and Capitol Annex above, a policy for smoking in governmental office buildings or workplaces may be adopted by county, municipal, special district, urban-county, charter county or consolidated local governments. Any policy adopted may apply to any office buildings, workplaces, or facilities that are owned, operated, or under the jurisdiction of that government, including but not limited to jails and detention facilities. Any such policy shall be adopted in writing by the legislative body of the government and shall require the government authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or prohibit indoor smoking.

KY REV. STAT. ANN. § 61.165 (2006).

Private Workplaces

No restrictions

Schools

Any person, except adult employees of the school system who smoke in a room on the school premises designated by the superintendent or principal for the purpose, who smokes tobacco products in any school building or any part of any building used for school purposes, or upon school grounds, while children are assembled there for lawful purposes, except in areas in secondary schools designated and supervised by the superintendent or principal for the purpose, shall be fined not less

than \$1 nor more than \$5.

KY. REV. STAT. ANN. § 438.050 (1988).

Each board of regents or trustees for each of the state postsecondary education institutions shall adopt a written policy relating to smoking in all buildings owned, operated, or under the jurisdiction of the state postsecondary education institutions that shall either provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or prohibit indoor smoking.

KY REV. STAT. ANN. § 61.165 (2006).

Child Care Facilities

No restrictions

Health Care Facilities

No restrictions

Restaurants

No restrictions

Bars

No restrictions

Penalties/Enforcement

No provisions

State Preemption of Local Laws

On April 22, 2004 the Kentucky Supreme Court ruled 6-1 that Lexington's smokefree air ordinance was not preempted by existing state law, and did not violate the private property rights of business owners. This allows the smokefree air ordinance Lexington passed in 2003 to go into effect, and provides legal justification for other Kentucky communities seeking to enact local smokefree air ordinances.

Lexington-Fayette County Food and Beverage Association v. Lexington-Fayette Urban County Government, et al. (2004).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 60 cents

Date last changed: April 1, 2009 – from 30 cents to 60 cents

Year first enacted: 1936

KY. REV. STAT. ANN. § 138.140(1-3) (2009).

A tax was added to sales of cigarette papers in the state at a rate of 25 cents per package of 32 sheets.

KY. REV. STAT. ANN. § 138.140(6)(a-c) (2006).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$177,809,000

Use of Cigarette Tax Revenue

There is created the "Cancer Research Institutions Matching Fund" in the state Treasury where one cent of the cigarette tax is deposited. One half of the moneys in the fund are available to the University of Kentucky and the other half of the moneys in the fund are available to the University of Louisville for cancer research.

KY. REV. STAT. ANN. § 164.043 (2005).

One-half cent of the cigarette excise tax goes to the Tobacco Research Trust Fund. Money appropriated to the fund goes to the Tobacco Research and Development Center at the University of Kentucky.

KY REV. STAT. §§ 248.510 et seq. (2002).

Taxes on Other Tobacco Products

Snuff: 19 cents per unit (unit = hard container capable of containing not more than 1.5 ounces);

All other tobacco products: 15% of the wholesale price.

KY. REV. STAT. ANN. § 138.140(4)&(5) (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually random, unannounced inspections of retail establishments where tobacco products are sold or distributed for the purpose of enforcing the provisions of Kentucky Revised Statutes sections 438.305 to 438.340. The departments shall also ensure that targeted inspections are conducted at those retail establishments where,

and at those times when, persons under the age of 18 are most likely to purchase tobacco products. Persons under the age of 18 may be used to test compliance only if the testing is conducted under the direct supervision of the Department of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained.

KY REV. STAT. ANN. §§ 438.330 to 438.340 (2000).

Penalties for Sales to Minors

No person shall sell or cause to be sold any tobacco product at retail to any person under the age of 18, or solicit any person under the age of 18 to purchase any tobacco product at retail. The first violation is subject to a fine of \$100 to \$500 and subsequent violations are subject to a fine of \$500 to \$1,000.

KY REV. STAT. ANN. § 438.310 (2000).

Photo ID

Any person selling tobacco products must require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of 18. "Proof of age" means a driver's license or other documentary or written evidence that the individual is 18 years of age or older.

KY REV. STAT. ANN. § 438.310 (2000).

Sign Posting

Notice must be posted in a conspicuous place stating that it is illegal to sell tobacco products to persons under the age of 18. Fines are \$100 to \$500 for the first violation and \$500 to \$1,000 for subsequent violations.

KY REV. STAT. ANN. § 438.310 (2000).

Penalties to Minors

No person under the age of 18 shall possess or use tobacco products. This does not apply to minors participating in compliance inspections, receipt of a tobacco product from a family member or from an employer when required in the performance of the person's duties. Any tobacco product found in the possession of a person under the age of 18 in plain view of a law enforcement officer shall be confiscated by the officer making the charge.

KY REV. STAT. § 438.350 (2000).

Except when participating in compliance inspections, it is unlawful for any person under the age of 18 to purchase or accept receipt of or attempt to purchase or accept receipt of a tobacco product, or to offer false proof of age. It shall not be unlawful for such a person to accept receipt of a tobacco product from a family member, or from an employer when required in the performance of the person's duties. Violations shall be punishable by a fine of \$50 and 20 hours of community service for a first offense within a one-year period, and a fine of \$200 and 40 hours of community service for a second or subsequent offense within a one-year period.

KY REV. STAT. ANN. § 438.311 (2000).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

Other Provisions

All retail sales clerks must signify in writing that they understand that it is illegal under state law for persons to sell or distribute tobacco products to persons under 18 and for minors to purchase such products. The owner of the retail establishment shall keep the signed notice in a place that is easily accessible to persons conducting a compliance inspection. Any owner of a retail establishment who violates this provision is subject to a fine of \$100 to \$500 for each violation.

KY REV. STAT. ANN. § 438.325 (2000).

State Preemption of Local Laws

It is the intent of the Legislature that Kentucky Revised Statutes sections 438.305 to 438.340 shall be enforced in an equitable and uniform manner throughout the Commonwealth. For the purpose of equitable and uniform enforcement, the provisions of Kentucky Revised Statutes sections 438.305 to 438.340 shall supersede any subsequently enacted local law, ordinance, or regulation which relates to the use, display, sale, or distribution of tobacco products.

KY REV. STAT. ANN. § 438.300 (1996).

Note: The above provision preventing local communities from passing stronger ordinances restricting youth access to tobacco products ap-

plies to almost all laws in Sections C, D & E of Kentucky's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute samples of these products, free of charge or otherwise, to any person under 18 years old. Violators shall be fined not less than \$1,000 or more than \$2,500 for each offense.

KY REV. STAT. ANN. § 438.313 (2000).

Minimum Tobacco Product Sales Amounts

No person may sell cigarettes in units of fewer than 20 cigarettes. Violation is a fine of not less than \$100 or more than \$500.

KY REV. STAT. ANN. § 438.317 (2000).

No person shall sell or distribute in this commonwealth any cigarettes the package of which does not comply with all requirements imposed by or in accordance with federal law regarding warnings, and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States including, but not limited to, the precise warning label specified in the Federal Cigarette Labeling and Advertising Act. The Revenue Cabinet may suspend or revoke the license and impose a civil penalty not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000 for a licensee upon violation. Any person who violates this section is guilty of a Class D felony and, in addition, may be subject to a fine of \$5,000 plus costs of prosecution.

KY REV. STAT. ANN. §§ 248.752, 248.756 & 248.762 (2002).

E Restrictions on the Sale of Tobacco Products In Vending Machines

Placement

The sale or purchase of tobacco products dispensed through a vending machine is prohibited

to any person under the age of 18. Vending machines from which tobacco products are dispensed shall be located in the line of sight of the cashier for the retail establishment. This does not apply to vending machines located in factories, or bars or taverns to which minors are not permitted access.

KY REV. STAT. ANN. § 438.315 (2000).

Penalties

Any owner of a retail establishment violating this section shall be subject to a fine of \$100 to \$500 for each violation.

KY REV. STAT. ANN. § 438.315 (2000).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesalers and vending machine operators are required to be licensed by the Revenue Cabinet. Wholesalers must secure a license for each place of business and all licenses must be renewed annually.

KY REV. STAT. ANN. § 138.195 (1988).

Fees

Wholesalers: \$500 per year; Vending Machine Operators: \$25 per year

KY REV. STAT. ANN. § 138.195 (1988).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is an unlawful practice for an employer to fail or refuse to hire, or to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because the individual is a smoker or nonsmoker; limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect their status as an employee because the individual is a smoker or nonsmoker; or require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employ-

ment, as long as the person complies with any workplace policy concerning smoking.

KY. REV. STAT. ANN. § 344.040 (1994).

H Advertising & Promotion

No cigarette or tobacco product advertising shall be posted on a billboard with display space larger than 50 square feet located within 500 feet of any elementary or secondary school building or adjacent school-owned property. Violators shall be fined at least \$100 for each offense.

KY. REV. STAT. ANN. § 438.047 (1992).

Note: Enforcement of the above law may be affected by the U.S. Supreme Court decision in *Lorillard Tobacco Company v. Reilly*, decided in 2001.

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

If the appellee in a civil action obtains a judgment for punitive or exemplary damages and the appellant seeks a stay of enforcement of the judgment in order to obtain review by an appellate court, the supersedeas bond for the punitive damages portion of the judgment on appeal shall not exceed \$100 million. If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the punitive damages judgment, the limitation granted shall be rescinded and the bond requirement shall be reinstated for the full amount of the judgment.

KY REV. STAT. ANN. § 411.187 (2000).

In a civil action against a tobacco grower for damages alleged to have occurred as a result of use or consumption of tobacco products, in order for liability to be found against a grower, the plaintiff must prove by clear and convincing evidence that

the tobacco that caused the alleged damage was planted, cultivated, and harvested by that specific grower and not by any other person. In a similar civil action against a warehouseman, the plaintiff must prove by clear and convincing evidence that the tobacco that caused the alleged damage was sold by that specific warehouseman and not by any other person. If the suit is dismissed or the defendant prevails at trial, the defendant may be entitled to three times the entire cost of defending the action.

KY. REV. STAT. ANN. § 454.455 (1998).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Kentucky established in the state treasury a permanent and perpetual fund to be known as the Tobacco Settlement Agreement Fund to which shall be credited any funds designated to Kentucky from the Master Settlement Agreement (MSA). Moneys in the fund are distributed as follows: 50 percent to the Rural Development Fund, 25 percent to the Early Childhood Development Fund and 25 percent to the Kentucky Health Care Improvement Fund.

KY REV. STAT. § 248.654 (2000).

The Kentucky Health Care Improvement Fund was created in the state treasury for the purpose of receipt and expenditure of moneys to improve health care and access to health insurance in the state. Twenty-five percent of the annual MSA payments is credited to this fund. Most funding for the state tobacco control program comes from this fund.

KY REV. STAT. ANN. § 194A.055 (2000).

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes shall be sold or offered for sale in Kentucky or offered for sale or sold to persons located in Kentucky unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standards specified in section 227.772 Kentucky Revised Statutes, 2) a written certification has been filed by the manufacturer with the state fire marshal as specified in section 227.774 Kentucky Revised Statutes and 3) the cigarettes have been marked as specified

in section 227.776 Kentucky Revised Statutes. A manufacturer, wholesale dealer or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above is subject to a civil penalty not to exceed \$10,000 per each sale for the first offense, and not to exceed \$25,000 per sale for subsequent offenses. In no case, shall the penalty exceed \$100,000 for each 30-day period. A retailer that knowingly sells cigarettes in violation of the above is subject to a civil penalty not to exceed \$500 the first offense and not to exceed \$2,000 for subsequent offenses for each sale and offer for sale of less than 1,000 cigarettes; and a civil penalty not to exceed \$1,000 for the first offense and not to exceed \$5,000 for subsequent offenses for each sale and offer for sale of more than 1,000 cigarettes. The penalty against any one retailer shall not exceed \$25,000 in a 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty not to exceed \$75,000 for a first offense and not to exceed \$250,000 for each subsequent offense in addition to any other penalty. This law shall not apply if a federal reduced cigarette ignition propensity standard is adopted and becomes effective.

KY REV. STAT. ANN. §§ 227.770 to 227.784 (2008).

FY2009-FY2010 Biennial Budget (H.B. 406) enacted 4/14/08 and effective 7/1/08 (FY2009) and 7/1/09 (FY2010).

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Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$2,840,300

FY2010 Federal Tobacco Control Program
Funding: \$1,139,397

FY2010 Total Tobacco Control Program
Funding: \$3,979,697

Funding Level Recommended by CDC:
\$57,200,000

Percentage of CDC-Recommended Level: 7%

State Funding Details:

Kentucky appropriated \$2,840,300 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment and the state general fund. In FY2009, \$3,303,000 was appropriated.



A State Smoking Restrictions

Public Places

Smoking is prohibited in any public place, any enclosed place of employment, any public building or any school. "Public place" is defined as an enclosed area to which the public is invited or in which the public is permitted which is not a public building, including restaurants. Exceptions include: 1) private homes, private residences and private automobiles except if being used for child care or day care; 2) limousines under private hire; 3) up to 50 percent of hotel/motel guest rooms; 4) retail tobacco businesses as defined; 5) bars as defined; 6) outdoor areas of places of employment; 7) private or semi-private rooms or apartments in assisted living and long-term care facilities; 8) gaming establishments except smoking is prohibited within restaurants in the gaming establishment; 9) all workplaces of any manufacturer, importer, wholesaler or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities; 10) convention facilities under certain conditions; 11) designated and well-ventilated smoking rooms in nursing homes under certain conditions; 12) a hotel or motel room operated by a gaming operation; and 13) outdoor patios.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Government Buildings

Smoking is prohibited in all public buildings, which are defined as any building owned by the legislative, executive or judicial branches of state government; any parish, city or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency; and any other separate corporate instrumentality or entity of state or local government. State correctional facilities became smokefree on August 15, 2009.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Private Workplaces

Smoking is prohibited within any enclosed area of a place of employment, which is defined as an area

under the control of an employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility. Outdoor areas of places of employment; and workplaces of any manufacturer, importer, wholesaler or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities are exempt.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Schools

Smoking is prohibited in any school, which is defined as any elementary or secondary school building, the campus of any school, any buildings on the campus, and all school buses.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

The use of tobacco products is prohibited in all elementary and secondary school buildings. Smoking is restricted on the grounds of elementary and secondary school property to areas specifically designated as smoking areas. Smoking is prohibited on any school bus transporting children to or from school. The governing authority of each public and private school may provide for appropriate penalties, including, but not limited to, disciplinary action or a fine not to exceed \$200 or both.

LA. REV. STAT. ANN. § 17:240 (1994).

Child Care Facilities

Smoking is prohibited in places of employment, the definition of which covers child care facilities. Private residences, homes or vehicles are specifically included if they are being used as child care or day care facilities or for day care transportation.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Health Care Facilities

Smoking is prohibited in public places, the defi-

nition of which includes health care facilities. Private and semiprivate rooms or apartments in assisted living residences, and other long-term care facilities that are occupied by one or more persons, who are all smokers and who have requested in writing to be placed in a room where smoking is permitted; provided that smoke from such rooms or apartments does not infiltrate into areas where smoking is prohibited are exempt. Also exempt are designated and well ventilated smoking rooms in nursing homes which permit smoking, provided that the designated smoking room is not the reception area, lobby, waiting room, dining room, or any other room or area defined as a public place.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Restaurants

Smoking is prohibited in restaurants. "Restaurant" is defined as an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The bar area of a restaurant is specifically included. Restaurants in gaming establishments are covered as well.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Bars

Smoking is allowed in bars, which are defined as a business that holds a Class A-General retail permit and the primary purpose of such business is to serve alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges and cabarets.

LA REV. STAT. ANN. §§ 40:1300.251 to 1300.263 (2008).

Private Vehicles

It shall be unlawful for the operator or any passenger in a motor vehicle to smoke cigarettes, pipes, or cigars in a motor vehicle, passenger van, or pick-up truck, when a child who is required to be restrained in a rear-facing child safety seat, a forward-facing child safety seat, a booster seat, or a motor vehicle's safety belt as required in

Louisiana Revised Statutes section 32:295 is also present in such vehicle, regardless of whether windows of the motor vehicle are down. Violation is subject to a fine of \$150 per offense, or, at the discretion of the judge may be sentenced to no less than 24 hours of community service. Violation is considered a primary offense, so police officers may stop but not search a vehicle if a violation is occurring.

LA REV. STAT. ANN. § 32:300.3 (2006).

Penalties/Enforcement

"No smoking" signs or the international "No smoking" symbol shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public building, public place and place of employment where smoking is prohibited. All ashtrays shall also be removed. Any violation may be cited by any law enforcement officer by the issuance of a citation and summons to appear before a court of proper jurisdiction. A person who smokes in a place where smoking is prohibited shall be fined \$25 for a first offense, \$50 for second offense and \$100 for a third or subsequent offense. Any employer who knowingly allows smoking in a place of employment shall be fined \$100 for a first offense, \$250 for a second offense and \$500 for a third or subsequent offense. The Department of Health and Hospitals may treat a violation as a deficiency to be assessed against any licensee or facility over which it has statutory jurisdiction.

LA REV. STAT. ANN. §§ 40:1300.261& 1300.262 (2007).

State Preemption of Local Laws

Nothing in the law above shall be construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places as set forth above.

LA REV. STAT. ANN. §§ 40:1300.255(D) (2007).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 36 cents

Date last changed: July 1, 2002 — from 24 cents to 36 cents

Year first enacted: 1926

LA. REV. STAT. ANN. § 47:841(B) (2002).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$127,960,000

Use of Cigarette Tax Revenue

The Tobacco Regulation Enforcement Fund was created in the state treasury. From the existing cigarette tax, 0.25 of one cent is dedicated to the fund to be used solely by the Office of Alcohol and Tobacco Control for tobacco regulation enforcement.

LA. REV. STAT. ANN. § 47:841(F) (2006).

Twelve cents of the cigarette tax is deposited into a fund called the “Tobacco Tax Health Care Fund.” Subject to appropriation by the legislature, seven cents of the proceeds in this fund are distributed as follows: 1) 29.2 percent for funding prevention mass media programs and evidence-based tobacco control programs within the public hospital system and the public school system and community development programs directed at cessation among children and pregnant women and the screening, prevention and treatment of tobacco use and dependence among individuals with diseases caused or exacerbated by tobacco use; 2) 42.8 percent for funding for the Louisiana Cancer Research Center of Louisiana State University Health Sciences Center in New Orleans/Tulane Health Sciences Center; and 3) 28 percent to provide funding for the Cancer Center of Louisiana State University Health Sciences Center in Shreveport;

The remaining five cents is distributed as follows: 1) 20 percent to the Office of Addictive Disorders in the state Department of Health and Hospitals; 2) 20 percent to fund the Louisiana State University Agricultural Center and the Southern University Agricultural Research and Extension Center; 3) 20 percent to Drug Abuse Resistance Programs (DARE) and; 4) 40 percent to the Office of State Police in the Department of Public Safety and Corrections.

LA. REV. STAT. ANN. § 47:841.1 (2002).

Taxes on Other Tobacco Products

Cigars: 8% to 20% depending on the manufacturer’s invoice price;

Smokeless tobacco: 20% of the invoice price

Smoking Tobacco: 33 % of the invoice price

LA. REV. STAT. ANN. § 47:841(A), (C) & (E) (2002).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The commissioner of the Office of Alcohol and Tobacco Control in the Department of Revenue and Taxation shall annually conduct random, unannounced inspections of all locations where tobacco products are sold or distributed. Minors may be enlisted to test compliance only if the testing is conducted under the direct supervision of the local law enforcement department and written parental consent has been provided. Any person under the age of 18 shall either carry the person’s own identification showing the person’s correct date of birth or shall carry no identification. A person under the age of 18 who carries identification shall, on request, present it to any seller of tobacco products. In addition, any person under the age of 18 shall truthfully answer any questions about the person’s age. Any other use of persons under the age of 18 to test compliance shall be unlawful.

LA REV. STAT. ANN. § 26:793 (1997).

Penalties for Sales to Minors

It is unlawful for any manufacturer, distributor, retailer, or other person knowingly to sell or distribute any tobacco product to a person under 18. However, it shall not be unlawful for a person under the age of 18 to accept receipt of a tobacco product from an employer when required in the performance of such person’s duties. A person who sells tobacco products to minors shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$400 for any subsequent violations.

LA REV. STAT. ANN. § 14:91.8 (1997).

Violation by a holder of a permit or certificate from the Commissioner of the Office of Alcohol and Tobacco Control may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penal-

ties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years in addition to the penalties listed above.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Photo ID

No person, agent, associate, employee, representative, or servant of any person shall sell or serve tobacco products over-the-counter in a retail establishment to any person under the age of 18 unless such person submits a driver's license, selective service card, or other lawful identification which on its face establishes the age of the person as 18 years or older and there is no reason to doubt the authenticity or correctness of the identification. Violation may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years.

LA REV. STAT. ANN. §§ 26:909 (1997),
26:911(1999) & 26:918 (1997).

Sign Posting

Signs are required at the point of purchase stating that Louisiana law prohibits the sale of tobacco to persons under 18. Owners of the establishment where a violation of this provision occurs shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$500 for any subsequent violations.

LA REV. STAT. ANN. § 14:91.8 (1997).

Violation by a holder of a permit or certificate from the Commissioner of the Office of Alcohol and Tobacco Control may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years in addition to the penalties listed above.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Penalties to Minors

It is unlawful for any person under the age of 18 to buy or possess any tobacco product. It is not

unlawful for a minor to possess tobacco if accompanied by a parent, spouse, or legal guardian, in a private residence or during the scope of the minor's employment. A minor who buys tobacco products shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$400 for any subsequent violations. A minor who possesses tobacco products shall be fined not more than \$50 for each violation.

LA REV. STAT. ANN. § 14:91.8 (1997).

Placement of Tobacco Products

The sale or delivery of tobacco products through a self-service display is prohibited unless the machine is a vending machine that complies with applicable state law. Self-service display means any display that contains tobacco products and is located in an area openly accessible to the retail dealer's customers and from which such customers can readily access tobacco products without the assistance of a salesperson, excluding locked display cases. These provisions do not apply to retail tobacco businesses or tobacconists at a particular outlet as defined.

LA REV. STAT. ANN. §§ 26:901(10) & 26:910.1 (2009).

Internet Sales of Tobacco Products

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to such consumer, the consumer's age is verified through electronic or written communication, and the person uses a method of mailing, shipping, or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery and provide photo identification. A first violation is punishable by a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation is a \$5,000 fine or five times the retail value of the cigarettes involved, whichever is greater. A knowing violation is a fine of \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, and/or up to five years in prison. Failure to collect or remit the applicable taxes is a fine of five times the retail value of the cigarettes involved, in addition to any other penalty.

LA REV. STAT. ANN. §§ 47:871 to 47:878 (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

Sale of tobacco products to a minor by a retail dealer's agent, associate, employee, representative, or servant shall be considered an act of the retail dealer for purpose of suspension, revocation or assessment of civil penalties unless the employee attends a Commissioner of the Office of Alcohol and Tobacco Control approved training program and the employer does not directly or indirectly encourage the employee to violate the prohibited sales provision.

LA REV. STAT. ANN. § 26:917 (1997).

State Preemption of Local Laws

It is the intent of the legislature that enforcement of section 14:91.8 of the Louisiana Revised Statutes shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation and application of state and local laws and regulations, the provisions of section 14:91.8 shall supersede existing or subsequently adopted local ordinances or regulations which relate to the sale, promotion, and distribution of tobacco products.

LA REV. STAT. ANN. § 14:91.8(B) (1997).

Note: Laws restricting youth access to tobacco products that are not contained in section 14:91.8 of the Louisiana Revised Statutes are not preempted by state law, and local communities can pass stronger laws.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person shall distribute or cause to be distributed to persons under 18 years of age a promotional sample of any tobacco product. Violators shall be fined not less than \$100 or more than \$500 upon conviction.

LA. REV. STAT. ANN. § 14:91.6 (1988).

Violation by a holder of a permit or certificate from the Commissioner of the Office of Alcohol

and Tobacco Control may be subject to suspension or revocation of the required certificate or permit by the Commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years in addition to the penalties listed above.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Minimum Tobacco Product Sales Amounts

No retail dealer shall sell to the public single cigarettes. Packages of cigarettes containing less than 20 cigarettes are prohibited. No smoking tobacco intended for use as roll-your-own smoking tobacco for cigarettes shall be sold or distributed in individual packages containing less than six-tenths of one ounce of smoking tobacco. Cigarettes or smokeless tobacco products must be sold in an unopened package originating with the manufacturer bearing the health warning required by federal law. Violation may be subject to suspension or revocation of the required certificate or permit by the commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years.

LA REV. STAT. ANN. §§ 26:909 (1997), 26:911 (1999), & 26:918 (1997).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines must be located in an establishment to which persons under the age of 18 are denied access and located within the unobstructed line of sight of a dealer or employee.

LA REV. STAT. ANN. § 26:910 (1997).

Penalties

Violation may be subject to suspension or revocation of the required certificate or permit by the commissioner of the Office of Alcohol and Tobacco Control and/or civil penalties of \$50 to \$500 for the first offense, \$250 to \$1,000 for the second offense in two years and \$500 to \$2,500 for a third offense within two years.

LA REV. STAT. ANN. §§ 26:909 & 26:918 (1997).

Sign Posting

Tobacco vending machines must display signs or stickers stating Louisiana law prohibits the sale of tobacco products to persons under 18. The owner of a vending machine in violation of this provision shall be fined not more than \$50 for the first violation, \$100 for the second violation, \$250 for the third violation and \$500 for any subsequent violations.

LA REV. STAT. ANN. § 14:91.8 (1997).

F Licensing Requirements**Requirements**

The Commissioner of the Office of Alcohol and Tobacco Control shall issue retail dealer registration certificates or retail dealer permits for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine; vending machine operator permits for the operator of one or more vending machines; vending machine permits for each vending machine; and wholesale dealer permits for each wholesale place of business operated by the wholesale dealer. Each registration certificate or permit shall be valid for only one year unless a different system than specified by statute is set up by administrative rule. No person shall perform any action for which a registration certificate or permit is required unless he holds the proper registration certificate or permit. Each day of business which is conducted without such a valid, unsuspended registration certificate or permit shall constitute a separate violation.

LA REV. STAT. ANN. §§ 26:901 to 26:924 (1997).

Fees

Retail dealer registration certificate or retail dealer permit: \$75 annually;

Vending machine operator permit: \$75 annually;

Permit for each vending machine: \$5 annually;

Wholesaler dealer permit: \$75 annually

LA REV. STAT. ANN. § 26:903 (1997).

License Suspension for Sales to Minors

The commissioner of the Office of Alcohol and Tobacco Control may suspend a permit previously issued or may refuse to grant a permit if, after a hearing, it is proven that a permittee has violated

any youth access laws.

LA REV. STAT. ANN. § 26:909 (1997).

G Smoker Protection Laws

As long as an individual, during the course of employment, complies with applicable law and any adopted workplace policy regulating smoking, it shall be unlawful for an employer to discriminate against the individual with respect to discharge, compensation, promotion, any personnel action or other condition, or privilege of employment because the individual is a smoker or nonsmoker or require, as a condition of employment, that the individual abstain from smoking or otherwise using tobacco products outside the course of employment. Any employer who violates the provisions of this law shall be fined up to \$250 for the first offense and up to \$500 for any subsequent offense.

LA. REV. STAT. ANN. § 23:966 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability**Industry Protection**

In order to secure and protect the monies to be received as a result of the Master Settlement Agreement (MSA) in civil litigation under any legal theory involving a signatory, successor of a signatory, or affiliate of a signatory to the MSA, except for litigation related to the MSA or any litigation where the state is a party, the security to be furnished for an appeal of any judgment in civil litigation that is required to stay the execution thereon during the course of appeal shall be determined in accordance with the Code of Civil Procedure, except that the total amount of security required shall not exceed \$50 million. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business

for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion of assets, including but not limited to, requiring the bond be posted equal to the full amount of security.

LA. REV. STAT. ANN. § 39:98.6 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Louisiana established the Millennium Trust, a permanent trust fund in the state treasury. After allocation of money to the Bond Security and Redemption Fund, a portion of the proceeds from the Master Settlement Agreement (45 percent in FY2001, 60 percent in FY2002 and 75 percent in FY2003 and each fiscal year thereafter) and all dividend and interest income and all realized capital gains on investment of the monies in the Millennium Trust shall be allocated to the Millennium Trust. All money is credited, one-third each, to the Education Excellence Fund, the Health Excellence Fund and the TOPS Fund, funds created within the Millennium Trust. Only the investment earnings from the various funds may be spent.

LA CONST., ART. VII, SECT. 10.8 (2000).

The state also established the Louisiana Fund which receives the rest of the MSA proceeds and all investment income from the Louisiana Fund. Appropriations from the Fund are limited to the following specified purposes: 1) initiatives for children through enhancements in education and health care; 2) provision of direct health care for tobacco-related illnesses; 3) initiatives to benefit the citizens of the state with respect to health care; 4) initiatives to diminish tobacco-related injury and death to Louisiana's citizens.

LA CONST., ART. VII, SECT. 10.9 (2000).

The Louisiana legislature may provide, by a two-thirds vote in both houses of the legislature, for the deposit of all or a portion of the MSA proceeds into a special trust fund in the state treasury called the Millennium Leverage Fund. A two-thirds vote of the legislature provides for the issuance of revenue bonds secured by monies in the Leverage Fund in amounts authorized by the legislature. Bond proceeds must be appropriated 25 percent each to the Health Excellence, Education

Excellence, TOPS, and Louisiana Funds, to be used for the specified purposes of each fund. Termination of the deposit of settlement revenues into the Leverage Fund is allowed pursuant to a two-thirds vote of the legislature.

LA CONST., ART. VII, SECT. 10.10 (2000).

Securitization

The Tobacco Settlement Financing Corporation was created as a separate entity from the state of Louisiana. The Corporation has the power to purchase the tobacco assets and receive, or authorize the indenture trustee to receive, the tobacco settlement payments and issue bonds.

LA REV. STAT. ANN. §§ 39:99.1 to 39:99.20 (2003).

The State Bond Commission is authorized to sell and convey up to 60 percent of the tobacco settlement funds. After June 30, 2003, the State Bond Commission shall declare its intent by granting preliminary approval and authorization to sell or convey up to 100 percent of the state allocation to the corporation. Said declaration shall first be approved by the Joint Legislative Committee on the Budget and, if approved by the legislative committee, shall then be approved by a majority of the legislature if the legislature is in session or by mail ballot if the legislature is out of session. Upon approval of the legislature, the State Bond Commission shall commence with the sale. In the event an authorized sale is made during any fiscal year commencing on or after July 1, 2003, the state treasurer, in consultation with the Commissioner of Administration, shall provide for the deposit into the Louisiana Fund an amount of the net proceeds of any sale or sales that, together with other deposits, will ensure that a sufficient amount is deposited into the Louisiana Fund to fund the appropriations from that fund for that fiscal year. The remainder of such proceeds after deposit into the Louisiana Fund and any residuals received in such state fiscal year shall be deposited into the Millennium Trust.

LA REV. STAT. ANN. § 39:99.12 (2003).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection G of section 40:1601.3 Louisiana Revised Statutes, no cigarettes may be sold or offered for sale in Louisiana or offered for

sale or sold to persons located in Louisiana unless:

- 1) the cigarettes have been tested in accordance with the test method and meet the performance standards specified in section 40:1601.3 Louisiana Revised Statutes; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 40:1601.4 Louisiana Revised Statutes; and 3) the cigarettes have been marked in accordance with section 40:1601.5 Louisiana Revised Statutes. A manufacturer that knowingly sells cigarettes in violation of the above requirements shall be subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties may not exceed \$50,000 in any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of no less than \$25,000 and not to exceed \$100,000 for each such false certification. Any person violating any other provision of this law shall be subject to a civil penalty of not to exceed \$1,000 for a first offense and not to exceed \$5,000 for subsequent offenses.

LA REV. STAT. ANN. §§ 40:1601.1 to 40:1601.11 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$7,839,931

FY2010 Federal Tobacco Control Program
Funding: \$1,101,612

FY2010 Total Tobacco Control Program
Funding: \$8,941,543

Funding Level Recommended by CDC:
\$53,500,000

Percentage of CDC-Recommended Level:
16.7%

State Funding Details:

Louisiana allocated \$7,839,931 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment and a portion of state tobacco tax revenue. In FY2009, \$7,595,570 was allocated.

FY2010 Annual Budget (H.B. 1) enacted 6/24/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

Smoking is prohibited in all enclosed areas of public places, outdoor eating areas as specified and all public restrooms. Exceptions to this law are: 1) public places when they are not open to the public; 2) theaters when smoking is part of the performance; 3) smoking during a religious ceremony or cultural activity; 4) hotel and motel rooms; 5) tobacco specialty stores as defined, provided that the on-premises service, preparation or consumption of food or drink, if the tobacco specialty store is not licensed for such service or consumption prior to January 1, 2007, is prohibited, and smoking a waterpipe or hookah is also prohibited in a tobacco specialty store that is newly licensed or that requires a new license after January 1, 2007; 6) beano or bingo games run by a federally recognized Indian tribe; and 7) designated smoking areas in an off-track betting facility or simulcast racing facility at a commercial track, subject to certain conditions, see the statute cited below for more information. During its normal business hours, a public place must be closed for at least one hour to be considered “not open to the public.” A person under 18 years of age is prohibited from entering a business licensed as a tobacco specialty store unless accompanied by a parent or legal guardian, regardless of whether smoking is allowed in that store.

ME REV. STAT. ANN. tit. 22, §§ 1541 to 1545 (2009) & 1547 (2007) & CODE of ME RULES 10-144, Ch. 249 (2006).

Government Buildings

Every employer who has one or more employees shall establish, or may negotiate through the collective bargaining process, a written policy on smoking. The definition of “employer” includes the state of Maine or a political subdivision of the state. The policy must prohibit smoking indoors, prevent secondhand smoke from circulating into enclosed areas and prohibit smoking outdoors except in designated areas, which must be at least 20 feet from entryways, vents and doorways. The policy may prohibit smoking throughout the

business facility, including outdoor areas. The employer shall post and supervise the implementation of the policy, and provide a copy of this policy to any employee upon request.

ME REV. STAT. ANN. tit. 22, § 1580-A (2009).

Private Workplaces

Every employer who has one or more employees shall establish, or may negotiate through the collective bargaining process, a written policy on smoking. The policy must prohibit smoking indoors, prevent secondhand smoke from circulating into enclosed areas and prohibit smoking outdoors except in designated areas, which must be at least 20 feet from entryways, vents and doorways. The policy may prohibit smoking throughout the business facility, including outdoor areas. The employer shall post and supervise the implementation of the policy, and shall provide a copy of this policy to any employee upon request. All enclosed areas of a business facility into which members of the public are invited or allowed are governed by the law prohibiting smoking in public places. Home-based business facilities are considered places of employment when an employee is physically present to do work there.

ME REV. STAT. ANN. tit. 22, § 1580-A (2009).

The above provisions do not apply to a business facility that is a veterans’ service organization that is not open to the public or to any other club that was not open to the public and that was in operation prior to January 1, 2004 subject to certain conditions. See the statute sections cited below for more detailed information.

ME REV. STAT. ANN. tit. 22, § 1580-A(C-1&C-2) & 1580-A(9) (2005).

Schools

Tobacco use in the buildings or on the grounds of any elementary or secondary school is prohibited at all times. Tobacco use may be permitted in classrooms only as part of a bona fide demonstration during a class lesson, with prior notice being given to the school’s administrator. The principal of the elementary or secondary school, or the principal’s designee, shall enforce the law

prohibiting and restricting tobacco use under this section.

ME REV. STAT. ANN. tit. 22, § 1578-B (2007).

Child Care Facilities

Smoking is prohibited in all child care facilities. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present. In a private residence used as a day care or baby-sitting service, smoking is prohibited in the residence, during the hours of operation as a day care or baby-sitting service; in outdoor areas on the property of that private residence, wherever a child under care may be present; and during the facility's hours of operation, in a motor vehicle owned or operated by the facility whenever a child under care is in the vehicle.

ME REV. STAT. ANN. tit. 22, §§ 1541 et seq. (2007) & CODE of ME RULES 10-144, Ch. 249 (2006).

Smoking is prohibited in a foster home when a foster child is present. When a foster child is absent from the foster home, smoking is prohibited within 12 hours prior to the child's expected return. Smoking is also prohibited in a foster parents' motor vehicle within 12 hours of transporting a foster child and whenever the foster child is present in the vehicle.

CODE OF ME RULES 10-148 § 16-9(k) (2004).

Health Care Facilities

Residential facilities, hospitals and nursing homes are considered business facilities. This means they must establish, or may negotiate through the collective bargaining process, a written policy on smoking. The policy must prohibit smoking indoors, prevent secondhand smoke from circulating into enclosed areas and prohibit smoking outdoors except in designated areas, which must be at least 20 feet from entryways, vents and doorways. The policy may prohibit smoking throughout the business facility, including outdoor areas. All enclosed areas of a business facility into which members of the public are invited or allowed are governed by the law prohibiting smoking in public places.

ME REV. STAT. ANN. tit. 22, § 1580-A (2009).

Restaurants

Smoking is prohibited in restaurants. Smoking is also prohibited in outdoor eating areas of restaurants if the outdoor eating area or any portion thereof is open and available for dining and beverage service. "Outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment as defined. An eating establishment with an outdoor eating area shall post signs, notify its patrons of the prohibition on smoking in outdoor eating areas and request that all persons comply.

ME REV. STAT. ANN. tit. 22, §§ 1541 to 1545 (2009), 1547 (2007), 1550 (2009) & CODE of ME RULES 10-144, Ch. 249 (2006).

Bars

Smoking is prohibited in lounges and taverns. Smoking is also prohibited in outdoor eating areas of lounges/taverns if the outdoor eating area or any portion thereof is open and available for dining and beverage service. "Outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment as defined. An eating establishment with an outdoor eating area shall post signs, notify its patrons of the prohibition on smoking in outdoor eating areas and request that all persons comply.

ME REV. STAT. ANN. tit. 22, §§ 1541 to 1545 (2009), 1547 (2007), 1550 (2009) & CODE of ME RULES 10-144, Ch. 249 (2006).

Penalties/Enforcement

"No Smoking" or "Smoking permitted" signs must be posted in public places where smoking is regulated. A person who violates any provision of the law governing smoking in public places or the law governing smoking in workplaces commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged, except that a fine of up to \$1,500 may be adjudged for each violation in cases when a person or employer engages in a pattern of conduct that demonstrates a lack of good faith in complying with these requirements. The Attorney General may bring an action to enforce this chapter in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable

relief and may seek to prevent or restrain actions in violation of this chapter by a person or any person controlling such person.

ME REV. STAT. ANN. Tit. 22, §§ 1543 (1993) 1545 (2005), 1548 (2005), 1580-A(4) (2005) & 1580-A(4-A) (2005) & CODE of ME RULES 10-144, Ch. 249 (2006).

Vehicles

Smoking is prohibited in motor vehicles by the operator or a passenger when a person who has not attained 16 years of age is present in that motor vehicle, regardless of whether the motor vehicle's windows are open. From September 1, 2008 to August 31, 2009, penalty is a written warning for violation; from September 1, 2009 a \$50 civil penalty must be assessed, except a law enforcement officer may give a written warning for violation.

ME REV. STAT. ANN. tit. 22, § 1549 (2008).

Other State Smoking Restrictions and Provisions

Restrictions on Smoking in Certain Outdoor Areas:

A person may not smoke tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site as defined. No penalties for violation are specified, but the Maine Center for Disease Control and Prevention shall erect signs and undertake public education initiatives regarding the above law within existing resources.

ME REV. STAT. ANN. tit. 22, § 1580-E (2009).

State Preemption of Local Laws

No specific provision concerning preemption in state law, local communities are allowed to pass stronger ordinances restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: September 19, 2005 — from \$1.00 to \$2.00

Year first enacted: 1941

ME. REV. STAT. ANN. tit. 36, § 4365 (2005).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$143,758,000

Use of Cigarette Tax Revenue

All cigarette tax revenue is credited to the state general fund.

ME. REV. STAT. ANN. tit. 36, § 4381 (2005).

Taxes on Other Tobacco Products

Smokeless tobacco, including chewing tobacco and snuff: minimum of \$2.02/oz., prorated for packages larger than one ounce;

Cigars, pipe tobacco, and other tobacco intended for smoking: 20% of the wholesale sales price

ME. REV. STAT. ANN. tit. 36, § 4403 (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health and Human Services shall enforce the tobacco retail licensing laws and sales of tobacco products through vending machines in cooperation with all law enforcement officers. Retail tobacco sales laws may be enforced by law enforcement officers or by individuals hired by contract with the Department of Health and Human Services to enforce these laws.

ME REV. STAT. ANN. tit. 22, §§ 1551-A (1995) & 1556-A (1999).

The Office of Substance Abuse within the Department of Health and Human Services shall coordinate the enforcement of the state's laws relating to the sale and use of tobacco products by minors. The office shall ensure compliance with the Synar Act, including the preparations of reports for the signature of the governor.

ME REV. STAT. ANN. tit. 5 § 20002(3) (2003).

Penalties for Sales to Minors

A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under the age of 18. This also applies to sales from cigarette vending machines. Any person who violates this law commits a civil violation for which a fine between \$50 and \$1,500, plus

court costs must be adjudged for any one offense. Any employer of a person who violates this law commits a civil violation for which a fine between \$50 and \$1,500 plus court costs must be imposed. It is an affirmative defense to prosecution that the defendant sold or distributed cigarettes, cigarette paper or any other tobacco product to a person under 18 years of age who furnished fraudulent proof of age.

ME REV. STAT. ANN. tit. 22, § 1555-B (1997).

The District Court may impose fines as listed above or revoke or suspend licenses for violation of state laws or rules related to the sale of tobacco products. License suspensions apply only to the premises where the violation occurs, but the court may order that a revocation apply to any of a licensee's premises or machines. Suspensions and revocations must be for a definite period of time.

ME REV. STAT. ANN. tit. 22, §§ 1557 to 1559 (2001).

Photo ID

Tobacco products may not be sold at retail to any person less than 27 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing the person's date of birth. Violation is subject to the same penalties listed under the "Penalties for Sales to Minors" category.

ME REV. STAT. ANN. tit. 22, § 1555-B (1997).

Sign Posting

A dealer or distributor of tobacco products shall post notice of this section prohibiting tobacco and cigarette paper sales to persons less than 18 years of age. Signs may be provided at cost by the department. Failure to post the required notice is a civil violation for which a fine between \$50 and \$200 may be imposed for the first and subsequent offenses.

ME REV. STAT. ANN. tit. 22, §§ 1552-A & 1555-B (1997).

Penalties to Minors

It is unlawful for any person under the age of 18 to offer false identification in attempting to purchase any tobacco products or to purchase, possess or use cigarettes, cigarette paper or any other tobacco product. A minor may transport cigarettes if it is in the scope of that person's employment. Any person who violates this section commits a

civil violation for which the following forfeitures may be adjudged: a fine between \$100 and \$300 and/or community service may be imposed for the first offense; a fine between \$200 and \$500 and/or community service may be imposed for the second offense; and a mandatory fine of \$500 that may not be suspended and possibly additional community service for all subsequent offenses.

ME. REV. STAT. ANN. tit. 22, § 1555-B (1997).

Placement of Tobacco Products

Tobacco products may be displayed or offered for sale only in a manner that does not allow the purchaser direct access to the tobacco products. This law does not apply to multi-unit packages of 10 or more units, tobacco specialty stores or in locations where minors are prohibited.

ME REV. STAT. ANN. tit. 22, § 1555-B (11) (1999).

Internet Sales of Tobacco Products

A tobacco product, other than premium cigars, may not be shipped to anyone other than a licensed tobacco distributor or licensed tobacco retailer in this state, and only these entities may accept delivery of tobacco products. Also, a person may not, with knowledge or reason to know of the violation, provide substantial assistance to a person in violation of the above. Violation is a civil violation punishable by a fine of \$1,000 to \$5,000. The Attorney General may also bring an action to enforce the law as specified. For sales involving premium cigars as defined, to accept an order for a delivery sale, the person must be licensed as a tobacco retailer. Then, before the first sale to a consumer the person must obtain a copy of a government issued ID, and a written statement from the customer documenting that they are at least 18 years of age, and that the customer understands that providing false information or purchasing tobacco products for a minor is illegal. The information must be confirmed against a commercially available database derived solely from government records, and specified reporting requirements must be followed. Violations of the above provisions are civil violations subject to fines from \$50 to \$1,500 for a first violation and \$1,000 to \$5,000 for subsequent violations.

ME REV. STAT. ANN. Tit. 22, §§ 1551 & 1555 C, D & F (2009).

Restrictions on Sale of Flavored Tobacco Products

A person may not sell or distribute or offer to sell or distribute any flavored cigarette or flavored cigar, defined as having a distinguishable taste or aroma that is imparted to tobacco or tobacco smoke either prior to or during consumption, other than a taste or aroma from tobacco, menthol, clove, coffee, nuts or peppers, unless the flavored cigarette/cigar was first on the market prior to January 1, 1985 based on a statement filed by the manufacturer with the Attorney General or, for products on the market after January 1, 1985, the Attorney General has made a determination through a process established by rule that the characterizing flavor and the associated packaging, promotion and brand style do not directly or indirectly target youth or encourage the initiation of smoking. Violation is a civil violation punishable by a fine of \$1,000 for a first offense and \$5,000 for subsequent offenses.

ME REV. STAT. ANN. tit. 22, § 1560-D (2007).

Note: Recent federal legislation enacted giving the U.S. Food and Drug Administration the authority to regulate tobacco products will preempt the ability of states to regulate flavored cigarettes. The flavored cigars portion of the law above will still be allowed.

Other Provisions

A person may not sell, furnish, give away or offer to sell, furnish or give away nicotine water in this state. “Nicotine water” is defined as water intended for human consumption and that contains, as an added ingredient, nicotine or an alkaloid having similar physiological activity. Violation is a civil violation subject to a fine of \$500 for the first offense, \$1,000 for a second violation and \$5,000 for the third and subsequent violations.

ME REV. STAT. ANN. tit. 22, § 1560 (2004).

State Preemption of Local Laws

Nothing in the chapter on retail tobacco sales affects the authority of municipalities to enact ordinances or regulations (or amendments to same), that are more restrictive, except that they must give notice to licensees doing business in the municipality at least 30 days prior to consideration of such ordinances, regulations,

or amendments.

ME REV. STAT. ANN. tit. 22, § 1556 (1997).

Note: The above provision specifically allowing local communities to pass stronger ordinances restricting youth access to tobacco products applies to all laws in sections C, D & E of Maine’s SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person may not furnish or give away or offer to furnish or give away a tobacco product to any person under the age of 18 or to any individual who does not demonstrate through either a driver’s license or photo identification card that the individual is at least 18. Violation is subject to the penalties listed under the “Penalties for Sales to Minors” category.

ME REV. STAT. ANN. tit. 22, § 1555-B (1997).

Minimum Tobacco Product Sales Amounts

A person may not sell cigarettes except in the original, sealed package in which the manufacturer placed them, which may not be smaller than 20 cigarettes per package, or sell cigarettes in smaller quantities than placed in the package by the manufacturer. A person who violates this section commits a civil violation for which a fine of between \$10 and \$100 may be adjudged. An employer of a person who violates this law commits a civil violation for which a fine of between \$100 and \$1,000 may be adjudged.

ME REV. STAT. ANN. tit. 22, § 1554-A (2003).

A distributor may not offer for sale or sell tobacco products if the package containing the tobacco products is subject to and does not comply with the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings or any other information for a package of tobacco products to be sold within the United States. Violation of this provision is a Class E crime for the first offense and a Class D crime for subsequent offenses.

ME REV. STAT. ANN. tit. 36 § 4404-B (2006).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Any vending machine used for the sale of tobacco products may only dispense tobacco products. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons under 18 years of age from purchasing any tobacco product from that machine. Vending machines may be located only in areas where minors, if permitted, must be accompanied by an adult.

ME REV. STAT. ANN. tit. 22, § 1553-A (1997).

Penalties

Any person in control of a facility who violates this section commits a civil violation for which a fine between \$100 to \$500 may be adjudged, or the person may be prohibited from having a cigarette vending machine located on the premises for up to six months, or both.

ME. REV. STAT. ANN. tit. 22, § 1553-A (1997).

Sign Posting

A sign must be affixed to the front of the machine warning that it is unlawful for a minor to purchase cigarettes in this state. Penalty for a violation is listed above.

ME. REV. STAT. ANN. tit. 22, § 1553-A (1997).

F Licensing Requirements

Requirements

All tobacco product retailers, including those who conduct sales through vending machines or engage in free distribution of tobacco products, must obtain a license from the Department of Human Services. A separate license shall be obtained for each place of business and vending machine. All retail licenses are valid from April 1 to March 31 of a given year unless suspended or revoked. Selling tobacco products at retail, through a vending machine or distribution of free samples without a license is subject to a fine of \$300 to \$500 plus court costs and an additional penalty of not more than 30 days imprisonment at the court's discretion for a first violation; a fine of \$500 to \$1,000 plus court costs and an additional

penalty of not more than 60 days imprisonment at the court's discretion for a second violation; and a fine of not less than \$1,000 plus courts costs and 60 days imprisonment and an additional penalty of not more than four months imprisonment at the court's discretion for a third violation.

ME REV. STAT. ANN. tit. 22, §§ 1551-A (1995), 1552 (2009) & 1554-B (2003).

A distributor of cigarettes and/or other tobacco products shall obtain a license from the state Tax Assessor. A license must be obtained for each wholesale outlet maintained by the distributor, must be prominently displayed on the premises of the wholesale outlet and is not transferable. A distributor's license expires one year from the 30th day of June next succeeding the date of issuance. A distributor who imports into this state, sells at wholesale, offers for sale at wholesale or possesses with intent to sell at wholesale any cigarettes or other tobacco products without holding the required license commits a civil violation for which a forfeiture of not less than \$250 to \$500 must be adjudged for the first violation and a forfeiture of not less than \$500 to \$1,000 must be adjudged for each subsequent violation.

ME REV. STAT. ANN. tit. 36, §§ 4362-A (2003) & 4402 (2006).

It is unlawful for any person to accept an order for a delivery sale of premium cigars as defined to a consumer in Maine unless that person is licensed as a tobacco retailer. A "delivery sale" is defined as a sale of tobacco products by phone, over the Internet, or by a delivery service. Engaging in a delivery sale without a license is subject to a fine of \$50 to \$1,500 for the first violation, and \$1,000 to \$5,000 for subsequent violations.

ME REV. STAT. ANN. tit. 22, § 1555-C (2009).

Fees

The annual fee for each retail establishment, vending machine or person engaging in free distribution of tobacco products is set according to rules promulgated by the Department of Health and Human Services.

ME. REV. STAT. ANN. tit 22, § 1552 & CODE OF ME RULES 10-144, chap. 203 § 3 (2005).

License Suspension for Sales to Minors

The District Court may impose fines or revoke or suspend licenses for violation of state laws or rules

related to the sale of tobacco products. License suspensions apply only to the premises where the violation occurs, but the court may order that a revocation apply to any of the licensee's premises or machines. Suspensions and revocations must be for a definite period of time.

ME REV. STAT. ANN. tit. 22, §§ 1557 to 1559 (2001).

G Smoker Protection Laws

An employer or an agent of an employer may not require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of employment or otherwise discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment for using tobacco products outside the course of employment as long as the employee complies with any workplace policy concerning the use of tobacco.

ME. REV. STAT. ANN. tit. 26, § 597 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits in Maine.

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Fund for a Healthy Maine is established and the state controller shall credit to the fund all moneys received from the Master Settlement Agreement between the state of Maine and certain cigarette companies; money from other public or private sources designated for the fund; and interest or investment income from the fund. Allocations from the fund are limited to the following health-related purposes: 1) Smoking prevention, cessation and control activities, in-

cluding, but not limited to, reducing smoking among children in the state; 2) Prenatal and young children's care; 3) Child care for children up to 15 years of age, including after-school care; 4) Health care for children and adults; 5) Prescription drugs for adults who are elderly or disabled; 6) Dental and oral health care to low-income persons who lack adequate dental coverage; 7) Substance abuse prevention and treatment; and 8) Comprehensive school health and nutrition programs, including school-based health centers.

ME REV. STAT. ANN. tit. 22 § 1511 (2009).

M Fire Safety Standards

Unless federal law provides otherwise, to help prevent cigarette-caused fires, cigarettes may not be sold or offered for sale in Maine or offered for sale or sold to persons located in Maine unless: 1) the cigarettes have been tested in accordance with the test methods and meet the performance standards specified in title 22, section 1555-E, subsection 2 Maine Revised Statutes; 2) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with title 22, section 1555-E, subsection 3 Maine Revised Statutes; and 3) the cigarettes have been marked in accordance with title 22, section 1555-E, subsection 4 Maine Revised Statutes. Any manufacturer, distributor, agent or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part commits a civil violation subject to a civil penalty not to exceed \$10,000 per sale for a first violation, and if previously adjudicated for a violation not to exceed \$25,000 per sale. A fine against any one person or entity may not exceed \$100,000 during any 30-day period. A tobacco retailer that knowingly sells or offers to sell 1,000 or less cigarettes in violation of this part, commits a civil violation and is subject to a civil penalty not to exceed \$500 per sale, except if previously adjudicated for a violation not to exceed \$2,000 per sale. A tobacco retailer that knowingly sells or offers to sell more than 1,000 cigarettes in violation of this part commits a civil violation and is subject to a civil penalty not to exceed \$1,000 per sale, except if previously adjudicated for a violation not to exceed \$5,000 per sale. A fine against any one retailer may not exceed \$25,000 during any 30-day period. Knowingly making a false certification is subject to a civil pen-

alty of \$75,000 in addition to any other penalty.

ME REV. STAT. ANN. tit 22 §§ 1555-E (2008).

Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$10,800,513

FY2010 Federal Tobacco Control Program
Funding: \$964,561

FY2010 Total Tobacco Control Program
Funding: \$11,765,074

Funding Level Recommended by CDC:
\$18,500,000

Percentage of CDC-Recommended Level:
63.6%

State Funding Details:

Maine allocated \$10,800,513 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment. In FY2009, \$10,896,673 was allocated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Budget (Pub. Law 2009, chap. 213 - L.D. 353) enacted 5/28/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Note: The FY2010 tobacco control program funding number above includes only dollars specifically spent on programs to reduce tobacco use. In past years, money spent on factors that drive tobacco-related chronic diseases, but not spent on reducing tobacco use specifically was included.



A State Smoking Restrictions

Public Places

Smoking is prohibited in indoor areas open to the public; indoor places in which meetings are open to the public; a government-owned or government-operated means of mass transportation, including buses, vans, trains, taxicabs, and limousines; or an indoor place of employment. This includes restaurants, bars and private clubs. This does not apply to: 1) private homes, residences, including residences used as a business or place of employment, unless being used by a person who is licensed or registered to provide day care or child care, and private vehicles, unless being used for the public transportation of children, or as part of health care or day care transportation; 2) 25 percent of hotel/motel rooms; 3) a retail tobacco business, in which the primary activity is the retail sale of tobacco products and accessories, and the sale of other products is incidental; 4) any facility of a manufacturer, importer, wholesaler, or distributor of tobacco products or of any tobacco leaf dealer or processor; and 5) a research or educational laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke. An economic hardship waiver is available until January 31, 2011, see Other Smoking Restrictions and Provisions section.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Government Buildings

Smoking is prohibited in indoor places of employment defined as a place in or about which an employee is allowed to work. Employee includes any individual employed by a governmental unit. Smoking is also prohibited in a government-owned or government-operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

By executive order smoking is prohibited in all state buildings and facilities, in all space leased or

rented by the state, and in government-operated shuttle buses. State employees are strongly encouraged to refrain from smoking in state vehicles and may not smoke when other nonsmoking passengers are present in the vehicle. State officials or employees in charge of facilities housing clients, patients, inmates, or wards of the state may prohibit or restrict smoking by residents. This order does not apply to the ground and first floor of the State House and spaces assigned to the legislative and judicial branches of government. However, these branches are called upon to establish smoke-free environments in those workspaces.

EXEC. ORDER 01.01.1992.29 (1992).

Private Workplaces

Smoking is prohibited in indoor places of employment defined as a place in or about which an employee is allowed to work. An employer is defined as a person who is engaged in commerce, industry, trade, or other business in the state and employs at least one employee in that business. The Maryland Department of Labor, Licensing and Regulation is required to adopt regulations to prohibit secondhand smoke in indoor places of employment not normally open to the general public. Any facility of a manufacturer, importer, wholesaler, or distributor of tobacco products or of any tobacco leaf dealer or processor is exempt.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Schools

The sale or use of tobacco in any form is prohibited in school buildings at all times. In addition, the sale or use of tobacco in any form is prohibited on school grounds during the official school day. Each local superintendent of schools must certify in writing to the State Superintendent of Schools that all school buildings and grounds are tobacco free. Each local school system must also post notification to students, staff, and the general public that school buildings and grounds are tobacco free.

CODE of MD REGS. (COMAR) tit. 13A §§ 02.04 et seq. (1992).

To the extent not covered above, smoking is prohibited in indoor areas open to the public and indoor places of employment, including schools and other educational facilities.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Child Care Facilities

Smoking is prohibited in indoor areas open to the public and indoor places of employment, including child care facilities. Specifically included, are home-based child care facilities that are licensed or registered as required by law, and vehicles used in day care transportation.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Health Care Facilities

Every director of a nursing home, health clinic, or physician's office shall make and carry out a plan that adequately protects the health of nonsmoking patients by regulating the smoking of tobacco products on the premises. Smoking is prohibited in hospitals except for facilities for the treatment of mental disorders; a facility where the average patient stay is more than 30 days; or in an acute care hospital and the attending physician authorizes smoking, in writing, as part of the care for the patient. Smoking permitted under this section shall be in designated areas that are considered safe and provide nonsmoking patients, family members and employees protection from tobacco smoke. Smoking may not be permitted where nonsmoking patients sleep.

MD. CODE ANN., HEALTH-GEN. § 24-205 (2008).

Notwithstanding the above, smoking is prohibited in indoor areas open to the public and indoor places of employment, including health care facilities. Vehicles used for health care transportation are specifically included.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Restaurants

Smoking is prohibited in restaurants.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Bars

Smoking is prohibited in bars/taverns.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

Other State Smoking Restrictions and Provisions

Economic Hardship Waiver for Certain Businesses:

Within 90 days from the receipt of an application for a waiver and the date that all conditions for the application for a waiver required in the regulations adopted by the Secretary of the Department of Health and Mental Hygiene have been satisfied, the health officer of a county may grant a waiver from the application of a specific provision above, if prior to the granting of the waiver, the applicant for a waiver establishes in writing that compliance would cause undue financial hardship; or other factors exist that would render compliance unreasonable. The secretary may impose conditions or restrictions on a waiver granted under this section to minimize the adverse effects of the waiver on individuals exposed to secondhand smoke; and ensure that the waiver is consistent with the purposes of this subtitle. A waiver may not be granted on or after and existing waivers terminate on January 31, 2011.

MD. CODE ANN., HEALTH-GEN. § 24-509 (2008).

Penalties/Enforcement

Signs that state "Smoking Permitted in This Room" shall be prominently posted and properly maintained by the owner, operator, manager, or other person having control of the area where smoking is allowed. Violation of the above law or regulation issued to enforce the law is subject to a written reprimand by the Secretary of the Department of Health and Mental Hygiene for a first violation, a civil penalty of \$100 for a second violation and a civil penalty of not less than \$250 for a subsequent violation. The secretary may waive a penalty giving consideration to the seriousness of the violation and any demonstrated good faith measures to comply. It is an affirmative defense to a complaint brought against a person if the person or an employee of the person: posted a "No Smoking" sign as required; removed all ashtrays and other smoking paraphernalia from all areas where smoking is prohibited; and if the violation occurred in a bar, tavern or restaurant

refused to seat or serve any individual who was smoking in a prohibited area; and if the individual continued to smoke after an initial warning, asked the individual to leave the establishment.

MD. CODE ANN., HEALTH-GEN. §§ 24-501 to 24-511 (2008) & MD. CODE ANN., LAB. & EMPLOY. §§ 5-101 & 5-608 (2008).

State Preemption of Local Laws

Nothing in this subtitle shall be construed to preempt a county or municipal government from enacting and enforcing more stringent measures to reduce involuntary exposure to environmental tobacco smoke.

MD. CODE ANN., HEALTH-GEN. § 24-510 (2008).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: January 1, 2008 – from \$1.00 to \$2.00

Year first enacted: 1958

MD. CODE ANN., TAX-GEN. § 12-105(a) (2008).

The sales and use tax do not apply to a sale of nicotine patches, nicotine gum, or any other product intended for use as an aid in tobacco use cessation and approved by the United States Food and Drug Administration for that purpose.

MD. CODE ANN., TAX-GEN. § 11-211(b)(18) (2000).

A county, municipal corporation, special taxing district, or other political subdivision of the state may not impose a tax on cigarettes.

MD. CODE ANN., TAX-GEN. § 12-102 (2004).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$340,534,000

Taxes on Other Tobacco Products

All other tobacco products: 15% of the wholesale price

MD. CODE ANN., TAX-GEN. § 12-105(b) (2002).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in state law

Penalties for Sales to Minors

A person engaged in selling or otherwise distributing tobacco products for commercial purposes may not distribute tobacco products or tobacco paraphernalia to persons under 18 years of age. No other person may purchase for, deliver or sell tobacco products or tobacco paraphernalia to a minor. This does not apply to the distribution of a tobacco product or tobacco paraphernalia to a minor who is acting solely as the agent of the minor's employer if the employer distributes tobacco products or tobacco paraphernalia for commercial purposes. Persons who violate this law shall be subject to a fine of not more than \$300 for the first violation, \$1,000 for a second violation within two years, and \$3,000 for subsequent violations within a two-year period. It is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 18 years of age. The owner or person in control of a tobacco vending machine that has the required sign displayed is not subject to these penalties if a person under 18 has purchased tobacco from their machine.

MD. CODE ANN. CRIM. LAW §§ 10-107 (2007).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

No provisions

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No person engaged in the business of selling or distributing cigarettes may sell, ship, or cause to be sold or shipped cigarettes ordered or purchased by mail or through a computer network, telephonic network or other electronic network by a consumer or other unlicensed recipient, directly to a consumer or other unlicensed recipient. A licensed retailer may deliver no more than two

cartons of cigarettes directly to a consumer if the delivery is made by the licensed retailer or an employee of the licensed retailer. A licensee who violates this section is subject to specified discipline by the state Comptroller, and is guilty of a felony and subject to a fine not exceeding \$50 for each carton of cigarettes transported and/or imprisonment not exceeding two years. Unlicensed persons who violate this section are also guilty of a felony and subject to the same penalties listed above.

MD. CODE ANN., BUS. REGS. § 16-223 (2005).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person engaged in the business of selling or otherwise distributing tobacco products for commercial purposes may not give away, offer or dispense tobacco products, cigarette rolling papers or a coupon redeemable for any tobacco product to a minor. This does not apply to the distribution of a coupon that is redeemable for a tobacco product if the coupon is contained in a newspaper, magazine, or other type of publication in which the coupon is incidental to the primary purpose of the publication or the coupon is sent through the mail. This also does not apply to the distribution of a tobacco product to a minor who is acting solely as the agent of the minor's employer if the employer distributes tobacco products for commercial purposes. It is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 18 years of age. Persons who violate this law shall be subject to a fine of not more than \$300 for the first violation, \$1,000 for a second violation within two years, and \$3,000 for subsequent violations within a two-year period.

MD. CODE ANN. CRIM. LAW § 10-107 (2007).

Minimum Tobacco Product Sales Amounts

A retailer or vending machine operator may not purchase from a tobacco product manufacturer or sell, resell, distribute, dispense, or give away to any person a package of cigarettes containing less than 20 cigarettes; and a wholesaler may not sell, resell, distribute, dispense, or give away to any person in this state a package of cigarettes containing less than 20 cigarettes. Violation is subject to a license suspension or revocation.

MD. CODE ANN., COMM. LAW §§ 11-5A-01 et seq. (2000); & MD. CODE ANN., BUS. REGS. § 16-210 (2000).

A person who ships, imports, or sells cigarettes into or within this state shall comply with any federal and state requirements concerning the placement of warning labels or other information on the containers or individual packages of cigarettes. Violation is a felony and subject to a fine of \$50 for each carton of cigarettes transported and/or two years imprisonment. The license to sell tobacco products may also be suspended or revoked.

MD. CODE ANN., BUS. REGS. §§ 16-210 (2000) & 16-222 (1999); MD. CODE ANN., TAX-GEN. § 13-1015 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A person may not sell or dispense or offer to sell or dispense a tobacco product through a vending machine in the state unless the vending machine (1) is located in an establishment that minors are prohibited by law from entering or an establishment that is a bona fide fraternal or veterans organization; or (2) can only be operated with a token, card, or similar device that an individual can only obtain or purchase from the owner or an employee or agent.

MD. CODE ANN., BUS. REGS. § 16-3A-02 (2000).

Penalties

Violating the restrictions on placement of tobacco product vending machines is a misdemeanor punishable by a fine of \$100.

MD. CODE ANN., BUS. REGS. § 16-3A-03 (2000).

Sign Posting

A licensee who sells cigarettes through a vending

machine shall display on a conspicuous label the prohibition and penalties for sales or distribution of tobacco products to minors.

MD. CODE ANN., BUS. REGS. § 16-209(b)(2)(ii) (1992).

F Licensing Requirements

Requirements

Manufacturers, wholesalers, and vending machine operators must obtain an appropriate license to sell or distribute cigarettes from the state Comptroller. Retailers must obtain a county license (see below), but still must pay a license fee to the state. A retailer's license is required for each place of business. Licenses must be renewed annually. Selling or distributing cigarettes without the appropriate license is a misdemeanor subject to a fine of \$1,000, imprisonment for not more than 30 days, or both.

MD. CODE ANN., BUS. REG. §§ 16-201 et seq. (1997).

A county license is required for each place of business and each vending machine selling cigarettes. A county license is effective for one year. Selling cigarettes without a county license is a misdemeanor subject to a fine of \$100.

MD. CODE ANN., BUS. REGS. §§ 16-301 et seq. (1992).

Fees

Manufacturer's license: \$25 annually;

Retail licenses: State - \$30 annually, county -\$25 annually except for Cecil County where license fee is \$50 annually;

Wholesale license: \$750 annually;

Vending machine license: \$500 annually;

In addition, licensees must pay a non-refundable application fee of \$200 to the state Comptroller for initial issuance of a license, and a fee of \$30 for renewal of a license.

MD. CODE ANN., BUS. REGS. § 16-204 (1994).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Cigarette Restitution Fund was established where all revenues from Master Settlement Agreement (MSA) payments and any monies collected under the law prohibiting smoking in public places and workplaces are deposited. Expenditures from the fund are made by annual appropriation in the state budget. The Cigarette Restitution Fund shall be used to fund the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; and other specified purposes. The governor shall include in the annual budget bill appropriations from the fund equivalent to the lesser of \$100 million or 90 percent of the funds estimated to be available to the fund in the fiscal year for which the appropriations are made. In each fiscal year, at least 50 percent of the funds are to be appropriated for the purposes specified above, at least 30 percent of the funds are to be used for the Maryland Medical Assistance Program, and 0.15 percent of the funds are to be used to enforce MSA complementary enforcement legislation.

MD. CODE ANN., STATE FIN. & PROCUREMENT § 7-317 (2007).

Non-Monetary Provisions

A tobacco use prevention and cessation program was established in the Department of Health with funds from the Cigarette Restitution Fund. It is the purpose of the program to coordinate the state's use of the settlement moneys so as to create a lasting legacy of public health initiatives that result in a reduction of tobacco use in the state. Resources shall be allocated in a manner that is

consistent with CDC recommendations regarding best practices for tobacco control programs. Beginning in FY2007, and every second fiscal year thereafter, the program is required to conduct a Tobacco Study to collect data on smoking rates.

MD. CODE ANN., HEALTH-GEN. §§ 13-1001 et seq. (2005).

M Fire Safety Standards

To help prevent cigarette-caused fires, cigarettes may not be manufactured in Maryland or sold or offered for sale to any person in Maryland unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 16-602 Maryland Business Regulations Code; 2) the manufacturer has filed a written certification with the state Comptroller in accordance with section 16-603 Maryland Business Regulations Code; and 3) the cigarettes have also be marked in accordance with the requirements of section 16-604 Maryland Business Regulations Code. A manufacturer or other person that knowingly sells or offers for sale cigarettes other than by retail sale in violation of the above is subject to a civil penalty not to exceed \$100 for each package of cigarettes sold or offered for sale, provided that the total penalty assessed shall not exceed \$100,000 in any 30-day period. A retailer, sub-wholesaler, wholesaler, or other person that knowingly sells or offers to sell cigarettes in violation of the above is subject to a civil penalty not to exceed \$100 for each package of cigarettes sold or offered for sale, provided that the total penalty assessed against a retailer shall not exceed \$25,000 and against a sub-wholesaler, wholesaler or other person shall not exceed \$100,000 in any 30-day period. A manufacturer that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each offense.

MD CODE ANN., BUS. REGS. §§ 16-601 to 16-610 (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$5,500,000

FY2010 Federal Tobacco Control Program
Funding: \$1,205,315

FY2010 Total Tobacco Control Program

Funding: \$6,705,315

Funding Level Recommended by CDC:
\$63,300,000

Percentage of CDC-Recommended Level:
10.6%

State Funding Details:

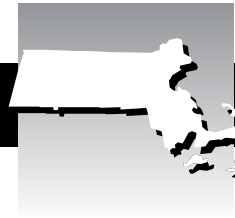
Maryland allocated \$5,500,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment and the state general fund. In FY2009, \$19,559,399 was allocated.

FY2010 Annual Budget (H.B. 100) enacted
4/13/09 and effective 7/1/09.

In FY2010 & FY2011, the Governor is required to include \$7 million in the annual budget for activities aimed at reducing tobacco use in Maryland as recommended by the Centers for Disease Control and Prevention (CDC). In previous years, the required level was set at \$21 million, and the requirement would return to that level after FY2011.

MD. CODE ANN., HEALTH-GEN. § 13-1015 (2009) & H.B. 101, sect. 44 enacted 5/19/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all public places and workplaces, including restaurants and bars. See the statute cited below for a more detailed list. Exceptions include: 1) private residences, except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the office of child care services or as a health care related office or facility; 2) membership associations as defined if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, is not located in a public building, and the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association; 3) hotel/motel rooms designated as smoking rooms; 4) retail tobacco stores as defined; 5) smoking bars as defined; 6) in the course of professional film production, if smoking is part of the theatrical production; 7) by a person, organization or other entity that conducts medical or scientific research on tobacco products; 8) religious ceremonies where smoking is part of the ritual; and 9) a tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Smoking in a public conveyance, or in a terminal or other facility of the Massachusetts Bay Transportation Authority is prohibited. Those who violate this law must appear in court or pay a fine of \$25. Failure to comply warrants a criminal complaint; individuals who do not appear in court in response to this complaint are subject to arrest and may be punished by a fine of no more than \$100, or not more than 10 days in prison, or both.

MASS. GEN. LAWS ch. 161A § 42 & ch. 272 § 43A (1993).

Government Buildings

Smoking is prohibited in the statehouse or in a public building or in a vehicle or vessel owned, leased, or otherwise operated by the commonwealth or a political subdivision thereof, or in a space occupied by a state agency or department of the commonwealth which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body, or in a courtroom or courthouse. This shall not apply to a resident or patient of a state hospital, the Soldiers' Home in Massachusetts located in the city of Chelsea or the Soldiers' Home in Holyoke. "Public building" is defined as a building owned by the commonwealth or any political subdivision thereof, or in an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Private Workplaces

It shall be the responsibility of the employer to provide a smokefree environment for all employees working in an enclosed workplace. To that end, smoking is prohibited in all indoor areas of workplaces. "Workplace" is defined as an indoor area, structure or facility, or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public, and where the employer has the right or authority to exercise control over the space.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Schools

Smoking is prohibited in any school, college, and university.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Students in primary or secondary public schools in the commonwealth are prohibited from using tobacco products of any type on school grounds during normal school hours.

MASS. GEN. LAWS ch. 71, § 2A (1987).

Child Care Facilities

Smoking is prohibited in group childcare centers, school-age day care centers, family day care centers and school age day or overnight camp buildings. Home-based child care facilities are specifically included.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Health Care Facilities

Smoking is prohibited in health care facilities. "Health care facility" is defined as any hospital, nursing home, extended care facility, state health or mental institution, clinic, physician's office or health maintenance organization licensed or otherwise operating legally within the commonwealth. However, a nursing home and any acute care substance abuse treatment center under the jurisdiction of the commonwealth may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees. The entire facility may not be designated as a residence. The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility. All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Restaurants

Smoking is prohibited in all restaurants.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Bars

Smoking is prohibited in bars. Smoking bars, which are defined as establishments that occupy exclusively an enclosed indoor space and that primarily are engaged in the retail sale of tobacco products for consumption by customers on the premises; derive revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products; prohibit entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibit any food or beverage not sold directly by the business to be consumed on the

premises; maintain a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located; and maintain a valid permit to operate a smoking bar issued by the Department of Revenue, are exempt.

MASS. GEN. LAWS ch. 270, § 22 (2004).

Penalties/Enforcement

An owner, manager or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100 for the first violation, \$200 for a second violation within two years of the first violation and \$300 for a third and subsequent violation within two years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of a building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health. An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation. Any person may register a complaint to initiate an investigation and enforcement with the local board of health, the Department of Public Health, or the local inspection department or the equivalent.

MASS. GEN. LAWS ch. 270, § 22 (2004).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.51

Date last changed: July 1, 2008 – from \$1.51 to \$2.51

Year first enacted: 1939

MASS. GEN. LAWS ch. 64C, §§ 6 (2008), 7A (2002) & 7C (2002).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$418,737,000

Use of Cigarette Tax Revenue

A portion of cigarette tax revenue as specified is dedicated to the Commonwealth Care Trust Fund to pay for the state's program to provide health insurance to all Massachusetts residents.

MASS. GEN. LAWS ch. 64C, § 6 (2008).

Twenty-five cents of the cigarette excise tax is dedicated to the Children's and Senior's Health Care Assistance Fund.

MASS GEN. LAWS ch. 64C, § 7A (1996); & ch. 29 § 2FF (2003).

The remainder of the revenue from the tax on cigarettes is combined with any remaining revenue from taxes on other tobacco products (see *Use of Revenue from Taxes on Other Tobacco Products* section below) and credited 40 percent of the amount exceeding \$169,800,000 to the Local Aid Fund and the remainder of the revenue to the General Fund.

MA GEN. LAWS. ch. 64C, § 28 (1992).

Taxes on Other Tobacco Products

Little cigars: \$2.51 per 20 cigars;

Chewing tobacco and snuff: 90% of the wholesale price;

Cigars and smoking tobacco: 30% of the whole-sale price

MASS. GEN. LAWS ch. 64C, §§ 6 (2008), 7A (2002), 7B (2008), & 7C (2002).

Use of Revenue from Taxes on Other Tobacco Products

Revenue from 25 percent of the tax on chewing tobacco and snuff, and 15 percent of the tax on cigars and smoking tobacco is credited to the Children's and Senior's Health Care Assistance Fund.

MA GEN. LAWS ch. 64C, §§ 7A & 7B (1996); & ch. 29 § 2FF (2003).

The rest of the revenue from taxes on other tobacco products is combined with any remaining revenue from cigarette taxes (see *Use of Cigarette Tax Revenue* section above) and credited 40 percent of the amount exceeding \$169,800,000 to the

Local Aid Fund and the remainder of the revenue to the General Fund.

MASS. GEN. LAWS ch. 64C, § 28 (1992).

Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in state law

Penalties for Sales to Minors

Whoever sells or gives tobacco in any form to a person under the age of 18 shall be punished by a fine of not less than \$100 for the first offense, not less than \$200 for a second offense, and not less than \$300 for subsequent offenses. This does not apply to tobacco given by the parents or guardian of the child.

MASS. GEN. LAWS ch. 270, § 6 (1985).

Whoever sells cigarette rolling papers to any person under the age of 18 shall be punished by a fine of not less than \$25 for the first offense, \$50 for the second offense and \$100 for subsequent offenses. No city, town, department, board or other political subdivision or agency of the commonwealth may impose any requirements, restrictions, or prohibitions pertaining to the sale of cigarette rolling papers, in addition to those in this section, notwithstanding any ordinance or regulation that was in effect before February 20, 1996.

MASS. GEN. LAWS ch. 270, § 6A (1995).

Photo ID

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes, smokeless tobacco products, cigars or little cigars through a retail outlet located within Massachusetts to fail to verify by means of a valid government-issued photographic identification that each person purchasing cigarettes or smokeless tobacco is 18 years of age or older. No such verification is required for any person who appears 27 years of age or older. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, §§ 21.04 & 22.06 (2000).

Sign Posting

The owner or person in charge of a place that sells cigarettes at retail shall conspicuously post a copy of the law concerning tobacco sales to minors. Whoever violates this provision shall be punished by a fine of not more than \$50. Any person who unlawfully removes the required sign shall be fined \$10.

MASS. GEN. LAWS ch. 270, § 7 (1995).

Penalties to Minors

No provisions

Placement of Tobacco Products

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes, smokeless tobacco products, cigars or little cigars through a retail outlet located within Massachusetts to engage in the use of self-service displays of cigarettes or smokeless tobacco products or fail to place cigarettes and smokeless tobacco products out of the reach of all consumers, in a location accessible only to outlet personnel. Self-service displays are allowed if located within adult-only retail facilities. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, §§ 21.04 & 22.06 (2000).

Internet Sales of Tobacco Products

No provisions

Other Provisions

It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in the distribution of cigarettes, smokeless tobacco products, cigars or little cigars through the mail, including redemption of coupons, credits and proofs-of-purchase. Mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail that are subject to age verification are exempted. Verification of age through the mail shall consist of, at a minimum, ensuring that the person to whom the product is being sent supplies a legible photocopy of a valid government-issued identification and is over the age of 18. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation including attorney's fees.

MASS. GEN. LAWS ch. 93A § 2 & 4 & CODE of MASS. REGS. tit. 940, §§ 21.04 & 22.06 (2000).

State Preemption of Local Laws

No broad provision concerning preemption in state law; local communities can generally pass stronger ordinances restricting youth access to tobacco products. However, local communities are prohibited from passing stronger local ordinances regulating cigarette rolling papers.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products**Samples**

It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in sampling, promotional give-aways, or any other free distribution of cigarettes, smokeless tobacco products, cigars or little cigars. Exceptions are made for an adult-only retail facility, with distribution of no more than one free sample per day to an individual adult. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, §§ 21.04 & 22.06 (2000).

Minimum Tobacco Product Sales Amounts

No person shall sell, offer for sale or have in possession with intent to sell single unpackaged cigarettes. Whoever violates the provision of this section shall be punished by a fine of not less than \$200 or more than \$500.

MASS. GEN. LAWS ch. 94, § 307A (1996).

It shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to break or otherwise open any cigarette, smokeless tobacco product, cigar or little cigar package to sell or distribute any number of unpackaged or repackaged cigarettes or any quantity of smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use. Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation, including attorney's fees.

MASS. GEN. LAWS ch. 93A §§ 2 & 4 & CODE of MASS. REGS. tit. 940, §§ 21.04 & 22.06 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes, smokeless tobacco products, cigars or little cigars through a retail outlet located within Massachusetts to engage in the selling of these products in any manner other than in a direct, face-to-face exchange without the assistance of any vending machines or any other electronic or mechanical device, except for vending machines that are located in facilities licensed to serve alcoholic beverages for consumption on the premises, if the vending machine is equipped with a lock-out device that locks out sales from the vending machine unless the locking mechanism is released by an outlet employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to outlet personnel; is located within the immediate vicinity and exclusive control of outlet personnel such that all purchases are observable by the outlet employee(s) controlling the lock-out device; and is posted with a sign stating that minors are not permitted to purchase tobacco and notifying customers of the lock-out device and identifying the outlet employee(s) to contact to purchase tobacco from the machine.

MASS. GEN. LAWS ch. 93A § 2 & CODE of MASS. REGS. tit. 940, §§ 21.04 & 22.06 (2000).

Penalties

Violation is subject to a civil penalty of not more than \$5,000 plus costs of investigation and litigation including attorney's fees.

MASS. GEN. LAWS ch. 93A § 4 (2000).

Sign Posting

Each vending machine shall have attached to the front of it a notice reading "PERSONS UNDER 18 ARE PROHIBITED FROM USING THIS MACHINE." Any person owning or operating a vending machine that fails to display such a notice shall be punished by a fine of up to \$50.

MASS. GEN. LAWS ch. 64C § 10 (1976).

F Licensing Requirements

Requirements

Manufacturers, retailers, wholesalers, and vending machine operators must obtain a license to sell tobacco products. Every machine operated or maintained for the purpose of vending cigarettes shall be deemed to constitute a place of retail business, and no person shall maintain or cause to be operated such a machine without procuring a retailer's license. Licenses for manufacturers, wholesalers and vending machine operators expire every year; retailers each even numbered year.

MASS. GEN. LAWS ch. 62C § 67 (1986) & ch. 64C § 2 (1976).

Fees

The fees for licenses and each renewal shall be determined annually by the Commissioner of Administration, except that for wholesalers, manufacturers or vending machine operators who maintain more than one place of business the fee for each additional place of business shall be one-half of the above determined fee.

MASS. GEN. LAWS ch. 62C § 67 (1986).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

Note: The U.S. Supreme Court held unanimously that outdoor tobacco advertising restrictions enacted by Massachusetts in 1999 violate First Amendment speech rights, and 5-4 that Massachusetts cannot impose broad regulations on cigarette advertisements without violating federal law. Struck down regulations can be found at Code of Massachusetts Regulations title 940, sections 21.04(5&6) & 22.06 (5&6).

Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001).

I Product Disclosure

Any manufacturer of cigarettes, snuff, or chewing tobacco sold in the commonwealth shall provide the Department of Public Health for each brand of such product sold, the identity of any added constituent other than tobacco,

water or reconstituted tobacco sheet made wholly from tobacco, to be listed in descending order according to weight, measure or numerical count; and the nicotine yield ratings, which shall accurately predict nicotine intake for average consumers, based on standards to be established by the department. The department shall determine the public availability of this information if there is a reasonable scientific basis for concluding that the availability of such information could reduce risks to public health. However, before any public disclosure of such information the department shall request the advice of the attorney general whether such disclosure would constitute an unconstitutional taking of property, and shall not disclose such information unless and until the attorney general advises that such disclosure would not constitute an unconstitutional taking. A regulation was promulgated providing more detail on the implementation of this law.

MASS. GEN. LAWS ch. 94 § 307B; & CODE of MASS REGS. tit. 105 § 660 (1996).

J Tobacco Divestment

New public pension funds in stocks, securities, or other obligations of any company which derives more than 15 percent of its revenues from the sale of tobacco products are prohibited. Divestment of existing investments is required within three years of enactment. Annual reporting of tobacco investments, until divestment is completed, is required.

MASS. GEN. LAWS ch. 32 § 23 (1997).

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits.

L Tobacco Settlement

Use of Tobacco Settlement Dollars

There is established on the books of the commonwealth a trust to be known as the Health Care Security Trust for the purpose of financing improved health status for all citizens of the commonwealth. All proceeds from the Master Settlement Agreement between the commonwealth of Massachusetts and certain cigarette companies are deposited in the trust fund as well

as other specified sources of revenue, including investment income from the trust fund. Thirty percent of the tobacco settlement proceeds are then transferred to the state general fund as well as 30 percent of investment income after a given fiscal year. The trust shall be managed by a board to be known as the Health Care Security Trust board of trustees, which shall have general supervision of the investment and reinvestment of said trust. An advisory committee on health care and tobacco control was also established which shall recommend to the governor and the legislature the most effective and prudent uses of the funds available in said trust for financing the present and future health related and tobacco control needs of the commonwealth.

MASS. GEN. LAWS ch. 29D § 1-5 (2003).

Note: In FY2010 (July 1, 2009 to June 30, 2010), all of the annual settlement payment was redirected from the Health Care Security Trust to the state general fund to be used for other specified purposes.

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes may be sold or offered for sale in Massachusetts or offered for sale or sold to persons located in Massachusetts unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 2B of chapter 64C Massachusetts General Laws; and 2) a written certification has been filed by the manufacturer with the Secretary of the Executive Office of Public Safety in accordance with section 2C of Chapter 64C Massachusetts General Laws. Cigarettes that are certified by a manufacturer shall be marked as specified in section 2D of Chapter 64C Massachusetts General Laws to indicate compliance with the requirements of section 2B. Any manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation is subject to a civil penalty not to exceed \$10,000 per sale for a first violation, and not to exceed \$25,000 per sale for a second or subsequent violation. A retail dealer that knowingly sells or offers to sell 1,000 or less cigarettes in violation is subject to a civil penalty not to exceed \$500 per sale for a first violation, and not to exceed \$2,000 per sale for

a second or subsequent violation. A retail dealer that knowingly sells or offers to sell more than 1,000 cigarettes in violation is subject to a civil penalty not to exceed \$1,000 per sale for a first violation, and not to exceed \$5,000 per sale for a second or subsequent violation. Knowingly making a false certification is subject to a civil penalty not to exceed \$10,000 for a first violation and \$25,000 for a subsequent violation for each such false certification in addition to any other penalty.

MASS. GEN. LAWS ch. 64C §§ 2A to 2F (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$4,501,770

FY2010 Federal Tobacco Control Program
Funding: \$1,558,517

FY2010 Total Tobacco Control Program
Funding: \$6,060,287

Funding Level Recommended by CDC:
\$90,000,000

Percentage of CDC-Recommended Level: 6.7%

State Funding Details:

Massachusetts allocated \$4,501,700 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund. In FY2009, \$12,225,000 was allocated.

FY2010 Annual Budget (H.B. 4129) enacted 6/29/09 and effective 7/1/09.

Note: A little over \$5 million was originally appropriated for FY2010, but this amount was reduced due to budget cuts.

■ ■ ■



A State Smoking Restrictions

Public Places

Note: Legislation was signed into law on December 18, 2009 prohibiting smoking in almost all public places and workplaces in Michigan, including restaurants and bars. The law will take effect on May 1, 2010.

H.B. 4377 enacted 12/18/09 and effective 5/1/2010.

Smoking is restricted to designated areas in public places or at meetings of public bodies. See the definition of public place for more details on what is covered. If a smoking area is designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in both smoking and adjacent nonsmoking areas. Single room public places meet this requirement if they designate one-half the room as nonsmoking. This does not apply to: 1) food service establishments; 2) licensed premises; 3) private enclosed rooms or offices occupied exclusively by smokers even if the room or office may be visited by non-smokers; 4) private functions when the seating arrangements are under the control of the sponsor of the function; and 5) private educational facilities after regular school hours.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

Smoking is prohibited in retail food establishments. Areas may be designated for employee and public smoking, but shall be isolated from the retail food area. No smoking signs must be posted at entrances. Violation of this act is a misdemeanor punishable by a fine not to exceed \$100.

MICH. COMP. LAWS § 289.707A (1976).

Smoking, or carrying lighted tobacco in any form, is forbidden in passenger elevators. Signs prohibiting smoking must be posted. Violators are subject to a fine of \$50 or 90 days imprisonment.

MICH. COMP. LAWS § 408.820 (1967).

Government Buildings

Smoking is restricted to designated areas in enclosed indoor areas owned or operated by a

state or local government agency and used by the general public or serving as workplaces for public employees or a meeting place for a public body. These areas include offices, educational facilities, auditoria, arenas, meeting rooms and public conveyances. Private, enclosed rooms or offices occupied exclusively by a smoker are not restricted by this law.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

By executive order, smoking is prohibited in areas in state government facilities, including, but not limited to, private enclosed offices, meeting rooms, cafeterias, restrooms, break-rooms, and all other general space. Exempt from this order are living units, and a strictly limited number of designated areas, in facilities housing prisoners or mental health patients. Department directors and agency heads are responsible for posting such provisions.

Exec. Order 1992-3 (1992).

Private Workplaces

No restrictions

Schools

Tobacco use is prohibited in any building, structure, or real estate owned, leased, or otherwise controlled by a school district. This law does not apply to that part of school property consisting of outdoor areas including, but not limited to, an open-air stadium, on weekends or other days on which there are no regularly scheduled classes, or after 6:00 p.m. on regular school days.

MICH. COMP. LAWS § 750.473 (1993).

Except as required above, smoking is restricted to designated areas in public places, which includes public and private educational facilities. It does not apply to private educational facilities after regular school hours.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

Child Care Facilities

A prohibition on smoking is a requirement for licensing through the Department of Social Services for childcare centers. Prohibition during the hours

of operation is required for licensing of group day care homes and family day care homes. Smoking is permitted on these premises during the time these facilities are not in operation, but the operator of the facility must inform parents or guardians that smoking on the premises may occur during these times. Violators are subject to the fines listed in the paragraph below.

MICH. COMP. LAWS §§ 722.111 et seq. (1993).

Individuals may not smoke in childcare institutions or childcare centers as defined, or on the real property under the control of such facilities, including other related buildings. This does not include home-based child care facilities. Violators are guilty of a misdemeanor, punishable by a fine between \$100 and \$1,000.

MICH. COMP. LAWS §§ 333.12601 et seq. & 722.125 (1993).

Health Care Facilities

Smoking is prohibited in the common and treatment areas of health facilities, including hospitals, health clinics, and doctors' offices. Patients may be permitted to smoke if the medical staff determines that this prohibition would be detrimental to treatment. Smoking areas provided in these cases must be separately ventilated to ensure that there is a smokefree environment in other patient care and common areas.

MICH. COMP. LAWS §§ 333.12601 et seq. (1993).

Notwithstanding the above, the use of tobacco products is prohibited in and on the grounds of state psychiatric facilities.

H.B. 4436 enacted and effective 10/29/09.

Licensed nursing homes and licensed homes for the aged must adopt a policy that regulates smoking to provide patients with the option of no-smoking rooms, and restrict patient smoking to private or semiprivate rooms or designated smoking areas. Visitors and staff are permitted to smoke in designated smoking areas only. Tobacco sales are prohibited in nursing homes, except as provided for by owners. Notices must be posted for smoking and non-smoking areas.

MICH. COMP. LAWS. §§ 333.21333 (1978) & 333.21733 (1979).

Restaurants

Food service establishments seating 50 or more

persons that are not owned or operated by a private club must reserve a minimum of 50 percent of all seating for a nonsmoking section. All food service establishments seating fewer than 50 people, including establishments owned and operated by a private club, must reserve a minimum of 25 percent of the seating for a non-smoking section. Public areas in restaurants must be smokefree. These areas include, but are not limited to, restrooms, coatrooms, and entrances. Public areas do not include lobbies, waiting rooms, hallways, or lounges. This law also applies to food service establishments or food court areas in enclosed shopping malls.

MICH. COMP. LAWS § 333.12905 (1993).

Bars

No restrictions

Penalties/Enforcement

A state or local governmental agency or the person who owns or operates a public place shall, at a minimum, do all of the following in order to prevent smoking: post signs which state that smoking in that public place is prohibited, except in designated smoking areas; arrange seating to provide, as nearly as practicable, a smokefree area. And implement and enforce the policy for the separation of smokers and nonsmokers developed under section 12605(3) Michigan Compiled Laws. Persons who smoke in nonsmoking areas of public places or health care facilities or a person or governmental agency that fails to follow the applicable guidelines or post the appropriate signs shall be subject to a civil fine of not more than \$100 for the first offense and not more than \$500 for subsequent offenses. The state Department of Public Health and/or local health departments shall enforce the restrictions on smoking in public places. In addition to the civil fine, the state Department of Public Health or local health departments may enforce these provisions through an action in the appropriate court of law.

MICH. COMP. LAWS §§ 333.12611 (1994) & 333.12613 (1989).

State Preemption of Local Laws

A county, city, village, or township shall not regulate those aspects of food service establishments or vending machines which are subject to regulation under sections 333.12901 et seq. of the Michigan Compiled Laws except to the extent necessary

to carry out the responsibility of a local health department.

MICH. COMP. LAWS § 333.12915 (1983).

A Michigan appeals court found in 2001 that Michigan law preempts local ordinances more restrictive than state law on smoking in restaurants and bars.

Michigan Restaurant Association et al. v. City of Marquette (2001).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.00

Date last changed: July 1, 2004 — from \$1.25 to \$2.00

Year first enacted: 1947

MICH. COMP. LAWS § 205.427 (2004).

An additional fund, entitled the Healthy Michigan Fund, was created in the state treasury for health programs addressing the needs of vulnerable populations, including smoking cessation and anti-tobacco activities. Six percent of \$1.25 of the cigarette tax goes into the Healthy Michigan Fund.

MICH. COMP. LAWS §§ 333.5951 et seq. (1995).

An equity assessment was imposed on nonparticipating tobacco product manufacturers, those that have not signed the Master Settlement Agreement, of 35 cents per pack of 20 cigarettes in addition to all other taxes.

MICH. COMP. LAWS § 205.426d(4) (2004).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (October 1, 2007 to September 30, 2008): \$1,040,129,000

Use of Cigarette Tax Revenue

Michigan's cigarette tax revenue is distributed as follows:

- 1) Seventy-five cents is distributed: 6 percent to the Healthy Michigan Fund, 6.5 percent to the Health and Safety Fund, 24.1 percent to the general fund and 63.4 percent to the State School Aid Fund;
- 2) Another 30 cents is distributed: 6 percent to the

Healthy Michigan Fund, 9 percent to the general fund, 56.3 percent to the State School Aid Fund, 3.7 percent to counties with a year 2000 population of more than two million, to be used only for indigent health care and 25 percent to the Medicaid Benefits Trust Fund;

3) Another 20 cents is distributed: 6 percent to the Healthy Michigan Fund and 94 percent to the State School Aid Fund;

4) The final 75 cents is distributed: 75 percent to the Medicaid Benefits Trust Fund and 25 percent to the general fund.

MICH. COMP. LAWS § 205.432 (2004).

Taxes on Other Tobacco Products

Cigars, noncigarette smoking tobacco, and smokeless tobacco: 32% of the wholesale price

MICH. COMP. LAWS § 205.427 (2004).

Use of Revenue from Taxes on Other Tobacco Products

Seventy-five percent of the revenue from the tax on other tobacco products goes to the Michigan Medicaid Benefits Trust Fund, and 25 percent goes to the state general fund.

MICH. COMP. LAWS § 205.432 (2004).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in state law

Penalties for Sales to Minors

A person shall not sell or furnish any tobacco product to a person less than 18 years of age. Violation is a misdemeanor, punishable by a fine of not more than \$50 for each offense. It is an affirmative defense that the defendant had, and continues to have in force, a written policy to prevent the sale of tobacco products to minors and enforces said policy. This does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment. This also does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within

the bounds of their private premises.

MICH. COMP. LAWS §§ 722.641 (2006) & 722.643 (1989).

Photo ID

No provisions

Sign Posting

A person who sells tobacco products at retail shall post, in a place close to the point of sale, conspicuous to both employees and customers, a sign produced by the Department of Community Health that states: "THE PURCHASE OF TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE AND PROVISION OF TOBACCO PRODUCTS TO A MINOR ARE PROHIBITED BY LAW. A MINOR UNLAWFULLY PURCHASING OR USING TOBACCO PRODUCTS IS SUBJECT TO CRIMINAL PENALTIES."

MICH. COMP. LAWS § 722.641 (2006).

Penalties to Minors

A minor shall not purchase or attempt to purchase a tobacco product; possess or attempt to possess a tobacco product; use a tobacco product in a public place; and/or present or offer to an individual a purported proof of age that is false, fraudulent or not actually their own for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product. Violation is a misdemeanor, punishable by a fine of not more than \$50 for each offense. Pursuant to a probation order, the court may also require an individual to participate in a health promotion and risk reduction assessment program, if available. In addition, an individual is subject to one of the following for a first violation: perform not more than 16 hours of community service in a hospice, nursing home or long-term care facility; or participate in a health promotion and risk reduction program. For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility. For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 48 hours of community service in a hospice, nursing home, or long-term care facility. This does not apply to minors used in

efforts to gauge compliance with the law. This also does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment or interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

MICH. COMP. LAWS §§ 722.642 (2006) & 722.643 (1989).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

All sales conducted through the Internet, by telephone, or in a mail-order transaction shall not be completed unless, before each delivery of cigarettes is made, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser. The deliverer of the cigarettes is required to obtain proof from a valid government-issued document that the person signing for the cigarettes is the purchaser. Violation is a misdemeanor punishable by a fine of \$1,000 or five times the retail value of the tobacco products involved, whichever is greater and/or imprisonment for not more than one year.

MICH. COMP. LAWS §§ 205.428 & 205.431 (2004).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

Other limitations are made on tobacco products

distributed through United States mail service, express mail service, parcel post service, or common carrier. Tobacco products are not to be distributed via these services unless the receiver has previously paid or agreed to pay for the products at fair market value, in response to a consumer complaint, or as part of marketing to specifically named individuals that involves the prior return by that same individual of a signed authorization card to be kept on file by the tobacco company for at least one year that indicates that the individual is at least 18 years of age. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than \$10,000, or both.

MICH. COMP. LAWS § 750.42b (1992).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No broad provision concerning preemption in state law; local communities can generally pass stronger ordinances restricting youth access to tobacco products. However, local communities can not impose any new requirement on the licensure or sale of tobacco products for distribution purposes after March 1994.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person shall furnish any tobacco product to a person less than 18 years of age. Violation is a misdemeanor, punishable by a fine of not more than \$50 for each offense. This does not interfere with the right of a parent or legal guardian in the rearing and management of their minor children within the bounds of their private premises.

MICH. COMP. LAWS §§ 722.641 & 722.643 (1989).

Minimum Tobacco Product Sales Amounts

A person who sells tobacco products at retail shall not sell a cigarette separately from its package. Any person who violates this law is guilty of a misdemeanor, punishable by a fine of not more than

\$500 for each offense. This law does not apply to tobacco specialty stores or other retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia.

MICH. COMP. LAWS § 722.642A (1992).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are restricted to establishments holding a Class C license. If this establishment has a bar that is in a separate room from the rest of the establishment, the vending machine must be located entirely within that room. If the bar area is not separate, the vending machine shall be located entirely within the bar area and not in a hallway, coat room, restroom or similar area, must be no more than 20 feet from the bar itself and must be under the direct visual supervision of an adult. Vending machines are also permitted in areas, offices, plants, factories and private membership clubs not open to the public, and must be located not less than 20 feet from all entrances and exits accessible to the general public.

MICH. COMP. LAWS § 750.470 (1998).

Penalties

A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than six months, service to the community for a period of not more than 45 days, or a fine of not more than \$1,000, or any combination thereof. Each day of violation constitutes a separate offense.

MICH. COMP. LAWS § 750.470 (1998).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Manufacturers, wholesalers, and vending machine operators must obtain a license to sell tobacco products. Each place of business shall be separately licensed. Licenses expire on the June 30th next succeeding the date of issuance and can be renewed annually. Beginning on March 15, 1994, any local unit of government or political subdivision of this state shall not impose any new

requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes.

MICH. COMP. LAWS §§ 205.423 (1997), 205.424 (1994) & 205.434 (1994).

Fees

\$100 annually for a wholesale license; \$25 annually for a vending machine operator's license; and \$100 annually for a manufacturer's license. For multiple places of business, the fee is one quarter of the above fee. Beginning on March 15, 1994, any local unit of government or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes.

MICH. COMP. LAWS § 205.423 (1997).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

A person who uses an outdoor sign to advertise a smokeless tobacco product shall display on the outdoor sign one of the following statements: "WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER. WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS. WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES." The warning statements shall be rotated every four months, and shall meet several size and format requirements. Outdoor sign is defined as a sign, display, device, figure, painting, drawing, message, placard, poster, or billboard that is placed outdoors, is stationary, has a surface area of more than 150 square feet, and is designed, intended, or used to advertise or promote. A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both. An ordinance, regulation or other law enacted by a local unit of government shall not require a statement, format or type style other than those required by this section.

MICH. COMP. LAWS § 750.42a (1989).

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The amount of a bond issued to stay execution on a judgment while an appeal is pending shall be determined according to the applicable Michigan court rules and statutory provisions. The bond shall not exceed \$25 million regardless of the amount of the judgment. If the appellee proves by a preponderance of the evidence that the party for whom the bond to stay execution has been limited is purposefully dissipating or diverting assets outside of the ordinary course of business for the purpose of avoiding ultimate payment of the judgment, the court shall rescind this limitation.

MICH. COMP. LAWS § 600.2607 (2002).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The 21st Century Jobs Trust Fund is established in the Department of Treasury. The trust fund shall consist of the net proceeds of the sale of a portion of tobacco settlement revenues to the Tobacco Settlement Finance Authority (TSFA), and in FY2008 through FY2015, \$75 million of tobacco settlement revenue not sold to the TSFA each year. In FY2016 only, \$30 million of tobacco settlement revenue not sold to the TSFA shall be distributed to the fund. The trust fund also receives money from the general fund as specified. Interest and investment earnings from money in the trust fund are deposited in the state general fund. In FY2010 only, \$9 million in tobacco settlement revenue not sold to the TSFA shall be used to develop state convention facilities as specified. Also, in FY2009, \$42 million in funds were transferred from the 21st Century Jobs Trust Fund to the state general fund, and in FY2010, \$37.5 million will be transferred.

MICH. COMP. LAWS §§ 12.257 & 12.258 (2009).

The Michigan Merit Award Trust Fund is also established in the Department of Treasury. The trust fund shall consist only of interest and earn-

ings from trust fund investments, and, in each fiscal year, any tobacco settlement money not sold to the Tobacco Settlement Finance Authority or allocated to the 21st Century Jobs Trust Fund. Upon appropriation, the money is spent on specified educational initiatives.

MICH. COMP. LAWS §§ 12.259 & 12.260 (2005).

Securitization

The Michigan Tobacco Settlement Finance Authority is created as a public body corporate and politic within the Department of Treasury. The authority shall have power and is hereby authorized from time to time to issue bonds in the principal amount or amounts and with the maturities as the authority shall determine to be necessary to provide sufficient funds for achieving its authorized purposes, consisting of the purchase of all or a portion of the state's tobacco receipts and the payment of or provision for financing costs. The state Budget Director with the approval of the state Administrative Board may sell to the authority, and the authority may purchase, for cash or other consideration and in one or more installments, all or a portion of the state's tobacco receipts pursuant to the terms of one or more sale agreements. In the alternative, the state Budget Director with the approval of the state Administrative Board may sell all or a portion of the state's tobacco receipts for cash or other consideration to a person or persons other than the authority, if the terms of the sale agreement to sell the state's tobacco receipts are in the best interests of this state and the net proceeds of the sale will not exceed \$400 million. The sale agreement or combined sale agreements shall provide for the sale of that portion of the state's tobacco receipts sufficient to provide net proceeds to the state in the amount of \$815 million, \$400 million of which shall be expended pursuant to the Michigan Trust Fund Act (Michigan Compiled Laws sections 12.251 to 12.260), \$207,800,000 shall be deposited in the state school aid fund, and the remainder shall be deposited in the general fund. A sale agreement or combined sale agreements may also provide for refunding, refinancing, and the sale by this state of residual interests sufficient to provide net proceeds to the state in the amount of \$60 million.

MICH. COMP. LAWS §§ 129.261 to 129.279 (2008).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection 12 of section 29.495 Michigan Compiled Laws, a person shall not sell cigarettes in Michigan or sell cigarettes to a person located in Michigan unless: 1) the cigarettes are tested in accordance with the test method described in subsection 2 of section 29.495 Michigan Compiled Laws; 2) the cigarettes meet the performance standard described in subsection 3 of section 29.495 Michigan Compiled Laws; 3) the manufacturer has filed a written certification with the Michigan Department of Energy, Labor and Economic Growth under section 29.497 Michigan Compiled Laws; and 4) the cigarettes are marked in compliance with section 29.501 Michigan Compiled Laws. A manufacturer, wholesale dealer, agent or any other person other than a retailer that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements shall be subject to a civil fine of not more than \$100 for each pack of cigarettes sold or offered for sale. The aggregate liability of a person for civil fines for multiple violations shall not exceed \$100,000 in any 30-day period. A retail dealer is subject to the same civil penalty for violation, but the aggregate liability of a person for civil fines for multiple violations shall not exceed \$25,000. In addition, a person engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil fine of at least \$75,000 and not to exceed \$250,000 for each such false certification.

MICH. COMP. LAWS §§ 29-491 to 29-513 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$2,598,400

FY2010 Federal Tobacco Control Program
Funding: \$1,668,029

FY2010 Total Tobacco Control Program
Funding: \$4,266,429

Funding Level Recommended by CDC:
\$121,000,000

Percentage of CDC-Recommended Level: 3.5%

State Funding Details:

Michigan appropriated \$2,598,400 for tobacco

prevention and cessation programs in FY2010 (October 1, 2009 to September 30, 2010) from a portion of state cigarette tax revenue. In FY2009, \$3,680,000 was appropriated.

FY2010 Department of Community Health Budget (S.B. 4436) enacted and effective 10/29/09.

■ ■ ■



A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all public places, public meetings, places of employment and public transportation. See the definitions of “public place,” “place of employment” and “public transportation” in the statute sections cited below for more information. Smoking is still allowed in: 1) places of employment with less than two employees; 2) by a patient or resident in a nursing home, boarding care facility, or licensed residential facility for adults under certain conditions; 3) by drivers of public transportation vehicles when the vehicle is being used for personal use as defined; 4) by subjects in scientific studies of the health effects of smoking under certain conditions; 5) by Native Americans as part of a traditional Native American spiritual or cultural ceremony; 6) in private homes, private residences and private automobiles when not in use as a place of employment as defined; 7) in hotel/motel sleeping rooms rented to one or more guests; 8) in tobacco products shops as defined under specified conditions; 9) in heavy commercial vehicles as defined; 10) in farm vehicles and construction equipment as specified; 11) in or on family farms as defined; 12) in the disabled veterans rest camp in Washington County; and 13) by actors/actresses as part of a theatrical performance.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Smoking is prohibited in a hotel sleeping room designated as non-smoking. A person who violates this law is guilty of a petty misdemeanor, and is liable to the innkeeper for the actual costs to restore the room to its pre-violation condition and a service charge of \$30. If the person does not reimburse the innkeeper within 30 days after the innkeeper mails the required notice, the innkeeper may seek a civil judgment for the cost of restoring the room to pre-violation condition, the service charge, and a civil penalty not to exceed \$100.

MINN. STAT. § 327.742 (2008).

Government Buildings

Smoking is prohibited in places of employment, the definition of which includes government agencies with two or more employees.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Private Workplaces

Smoking is prohibited in places of employment defined as any indoor area where two or more employees perform any type of a service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. A private residence is a place of employment if the homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or the homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Schools

No person shall at any time smoke or use other tobacco products in public schools. This prohibition extends to all facilities, whether owned, rented, or leased, and all vehicles that a school district owns, leases, rents, contracts for, or controls. This prohibition does not apply to the lighting of tobacco by an adult as part of a traditional Indian spiritual or cultural ceremony.

MINN. STAT. § 144.4165 (1999).

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

MINN. STAT. §§ 144.411 to 144.417 (2007).

Child Care Facilities

Smoking is prohibited in licensed day care centers and during the hours of operation in licensed

family day care homes or group family day care provider homes. The proprietor of a family home or group family day care provider must disclose to parents or guardians of children cared for on the premises if the proprietor permits smoking outside of its hours of operation. Disclosure must include posting on the premises a conspicuous written notice and orally informing parents or guardians.

MINN. STAT. § 144.414(2) (2007).

Health Care Facilities

Smoking is prohibited in any area of a hospital, health care clinic, doctor's office, licensed residential facility for children or other health care-related facility, except that a patient or resident in a nursing home, boarding care facility, or licensed residential facility for adults may smoke in a designated separate, enclosed room maintained in accordance with applicable state and federal laws. Smoking by patients in locked psychiatric units is also allowed under certain specified conditions.

MINN. STAT. § 144.414(3) (2007).

Restaurants

Smoking is prohibited in restaurants.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Bars

Smoking is prohibited in bars.

MINN. STAT. §§ 144.411 to 144.417 (2007).

Penalties/Enforcement

The proprietor or other person, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place, public transportation, place of employment, or public meeting shall make reasonable efforts to prevent smoking by posting the appropriate signs, and taking certain specified actions for persons who are smoking illegally. Any proprietor, person, or entity that owns, leases, manages, operates, or otherwise controls the use of an area, and that knowingly fails to comply with sections 144.414 to 144.417, is guilty of a petty misdemeanor. A person who smokes in an area where smoking is prohibited is also guilty of a petty misdemeanor. The state Commissioner of Health, a local board of health or any affected party may institute an action in any court with

jurisdiction to enjoin repeated violations of the law. The state Commissioner of Health shall adopt rules necessary and reasonable to implement the provisions of sections 144.411 to 144.417.

MINN. STAT. §§ 144.416 & 114.417 (2007).

State Preemption of Local Laws

Nothing in sections 144.414 to 144.417 prohibits a statutory or home rule charter city or county from enacting and enforcing more stringent measures to protect individuals from secondhand smoke. Except as specified by state law or restricted by local ordinance, smoking is permitted outside of restaurants, bars, and bingo halls.

MINN. STAT. § 144.417(4) (2007).

B Tobacco Excise Taxes

Tax on Cigarettes

Taxes and fees per pack of 20: \$1.56

Date last changed: August 1, 2009 – from \$1.504 to \$1.56

Year first enacted: 1947

MINN. STAT. §§ 297F.05 (1992) & 256.9658 (2005).

A special tax is imposed on distributors on the sale of cigarettes by a cigarette distributor to a retailer or cigarette sub-jobber for resale in Minnesota. This tax must be determined annually by May 1 and takes effect on August 1.

MINN. STAT. § 297F.25 (2008).

Note: The tax above was adjusted on August 1, 2009 as required, so the effective combined tax/fee on cigarettes increased from \$1.504 to \$1.56 per pack.

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$392,384,000

Use of Cigarette Tax Revenue

The revenue from the 48 cent cigarette tax is distributed as follows: Six and a half cents of the tax is credited to the Academic Health Center Special Revenue Fund and is annually appropriated to the Board of Regents at the University of Minnesota for Academic Health Center funding at the University of Minnesota; two and a half cents is credited to the Medical Education and

Research Costs Account and is annually appropriated to the Commissioner of Health for specified programs; and the remaining 39 cents goes to the state general fund.

MINN. STAT. § 297F.10 (2003).

The revenue from the 75 cent “Health Impact Fee” is deposited in the Health Impact Fund and is used to refund the state for medical costs associated with tobacco use.

MINN. STAT. §§ 256.9658 & 16A.725 (2005).

Taxes on Other Tobacco Products

All other tobacco products: 70% of the wholesale sales price.

MINN. STAT. §§ 297F.05 (1992) & 256.9658 (2005).

Use of Revenue from Taxes on Other Tobacco Products

The revenue from the 35 percent tax on other tobacco products goes to the state general fund.

MINN. STAT. § 297F.10 (2003).

The revenue from the 35 percent “Health Impact Fee” on other tobacco products is deposited in the Health Impact Fund and is used to refund the state for medical costs associated with tobacco use.

MINN. STAT. §§ 256.9658 & 16A.725 (2005).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

A county or municipal licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is sold. Compliance checks must involve minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, attempt to purchase tobacco under the direct supervision of a law enforcement officer or an employee of the licensing authority.

MINN. STAT. § 461.12 (2001).

Penalties for Sales to Minors

Anyone who sells tobacco to a person under

the age of 18 years is guilty of a misdemeanor for the first violation, and a gross misdemeanor for subsequent violations within five years. It is an affirmative defense to the charge of selling tobacco to a minor if the person relied in good faith upon specified proof of age. Whoever furnishes tobacco or tobacco-related devices to a minor is guilty of a misdemeanor for the first violation and a gross misdemeanor for any subsequent violation. However, an Indian may furnish tobacco to an Indian minor as part of a traditional Indian spiritual or cultural ceremony.

MINN. STAT. § 609.685 (2000).

If a municipal licensee or employee of a municipal licensee sells tobacco to a minor they shall be charged an administrative penalty of \$75. A second violation within 24 months after the initial violation is subject to an administrative penalty of \$200. A third violation within 24 months is subject to an administrative penalty of \$250 and the license to sell tobacco products must be suspended for not less than seven days. An individual who sells tobacco to a person under the age of 18 must be charged an administrative penalty of \$50. The penalty and license suspension can not take effect until the alleged violator has had the opportunity for a court hearing. It is an affirmative defense to the charge of selling tobacco to a minor if the person relied in good faith upon specified proof of age.

MINN. STAT. § 461.12 (2001).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

A person under the age of 18 years who purchases or attempts to purchase tobacco or tobacco-related devices and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age is guilty of a misdemeanor. Except as otherwise stated above, any minor that possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase tobacco or tobacco-related devices is guilty of a petty misdemeanor. The penalties in this section do not apply to a person under

the age of 18 years who purchases or attempts to purchase tobacco or tobacco-related devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

MINN. STAT. § 609.685 (2000).

A minor found guilty of using a driver's license or other form of identification to purchase or attempt to purchase tobacco products, or of lending to another minor their driver's license to purchase tobacco products shall have their driver's license suspended for 90 days.

MINN. STAT. § 171.171 (2000).

A county or municipal licensing authority shall consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for minors who purchase, possess, and consume tobacco. The licensing authority and the interested persons shall consider a variety of options, including, but not limited to, tobacco free education programs, notice to schools, parents, community service, and other court diversion programs.

MINN. STAT. § 461.12 (2001).

A retailer of tobacco products may seize a form of identification listed in subsection 6 of section 340A.503 Minnesota Statutes, if the retailer has reasonable grounds to believe that the form of identification has been altered or falsified or is being used to violate any law. A retailer that seizes a form of identification as authorized under this paragraph must deliver it to a law enforcement agency within 24 hours of seizing it.

MINN. STAT. §§ 609.685 & 340A.503 (2000).

Placement of Tobacco Products

No person shall sell cigarettes or smokeless tobacco in open displays which are accessible to the public without the intervention of a store employee. This does not apply to retail stores that derive 90 percent of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18. Violation is subject to an administrative penalty of \$75 for a first violation, \$200 for a second violation within 24 months and \$250 for a third violation within 24 months. Upon the third violation, the

license to sell tobacco products must also be suspended for not less than seven days.

MINN. STAT. § 461.18 (1997).

Internet Sales of Tobacco Products

Places restrictions on delivery sales of tobacco products, which are sales ordered by phone, fax or the Internet or delivered by mail. Specifically, when accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain a copy of a valid government-issued document that provides the person's name, current address, photograph, and date of birth; and a signed statement documenting certain information about the purchaser. If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping. Prior to shipping the tobacco products, the tobacco retailer shall verify the information provided against a commercially available database. The tobacco retailer shall also utilize a delivery service that requires an adult of legal purchase age to sign to accept delivery, and show a valid government-issued ID with a photograph of the person that proves the person is of legal purchase age and resides at the delivery address. Criminal penalties for violation are a cease and desist order for a first violation, a misdemeanor for a violation within two years of the cease and desist order, and a gross misdemeanor for subsequent violations. Civil penalties for violation are not more than \$1,000 for the first violation and not more than \$5,000 for a second and subsequent violation. Failure to pay taxes is an additional penalty of 50 percent of the tax due but unpaid.

MINN. STAT. § 325F.781 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person shall distribute promotional samples of tobacco products to the general public free of charge or at nominal cost. Single serving samples of tobacco may be distributed in tobacco stores. The court may impose a civil penalty in an amount not to exceed \$5,000 for each offense.

MINN. STAT. §§ 325F.77 (1987) & 325F.78 (1986).

Minimum Tobacco Product Sales Amounts

It is unlawful for any person to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including, but not limited to, the precise warning labels specified in the federal Cigarette Labeling and Advertising Act. Violation is a misdemeanor.

MINN. STAT. § 325D.421 (2000).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to facilities that cannot be entered at any time by persons younger than 18.

MINN. STAT. § 461.18 (1997).

Penalties

Violation is subject to an administrative penalty of \$75 for a first violation, \$200 for a second violation within 24 months and \$250 for a third violation within 24 months of the first violation. Upon the third violation, the license to sell tobacco products must also be suspended for not less than seven days.

MINN. STAT. § 461.12 (2001).

Sign Posting

A warning shall be posted and maintained in a conspicuous place on each vending machine stating

“ANY PERSON UNDER 18 YEARS OF AGE IS FORBIDDEN BY LAW TO PURCHASE CIGARETTES FROM THIS MACHINE.”

Violation is a misdemeanor.

MINN. STAT. § 325E.07 (1963).

F Licensing Requirements

Requirements

Distributors must obtain a license from the state Commissioner of Revenue to sell tobacco products. A separate license is required for each place of business. Licensing periods begin on January 1st of an even-numbered year and end on December 31st of the following year. Selling tobacco products without a license is a misdemeanor.

MINN. STAT. §§ 297F.03 (1997) & 297F.20 (2003).

A town board or governing board of a home rule charter or statutory city may license and regulate the retail sale of tobacco and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco in unorganized territories and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail tobacco sales. Retail establishments licensed by a town or city to sell tobacco are not required to obtain a second license for the same location under the licensing ordinance of the county.

MINN. STAT. § 461.12 (2001).

Fees

Distributors: \$300 every even numbered year for a wholesale cigarette license; \$75 every even-numbered year for a wholesale license to sell other tobacco products.

MINN. STAT. § 297F.03 (1997).

License Suspension for Sales to Minors

Violation by a county or municipal retail licensee is punishable by set fines and no less than a seven day suspension of the license to sell tobacco products for the third violation within a 24-month period.

MINN. STAT. § 461.12 (2001).

G Smoker Protection Laws

An employer may not refuse to hire a job ap-

plicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of lawful consumable products, including tobacco, off the premises of the employer during non-work hours. It is not a violation for an employer to restrict the use of lawful consumable products by employees during nonworking hours if the employer's restriction relates to a bona fide occupational requirement and is reasonably related to employment activities or responsibilities of a particular employee or group of employees; or is necessary to avoid a conflict of interest or the appearance of a conflict of interest with any responsibilities owed by the employee to the employer. It is also not a violation for an employer to refuse to hire an applicant or discipline or discharge an employee who refuses or fails to comply with the conditions established by a chemical dependency treatment or aftercare program; for an employer to offer, impose, or have in effect a health or life insurance plan that makes distinctions between employees for the type of coverage or the cost of coverage based upon the employee's use of lawful consumable products, provided that, to the extent that different premium rates are charged to the employees, those rates must reflect the actual differential cost to the employer; and for an employer to refuse to hire an applicant or discipline or discharge an employee on the basis of the applicant's or employee's past or present job performance. The remedy for a violation is a civil action for damages limited to wages and benefits lost by the individual because of the violation.

MINN. STAT. § 181.938 (1992).

H Advertising & Promotion

No provisions

I Product Disclosure

Each manufacturer of tobacco products sold in Minnesota shall provide the Commissioner of Health with an annual report, in a form and at a time specified by the commissioner, identifying, for each brand of such product, any of the following substances present in detectable levels in the product in its unburned state and in its burned state: ammonia or any compound of ammonia; arsenic; cadmium; formaldehyde; and lead. Reports

under this section are public data.

MINN. STAT. § 461.17 (1997).

J Tobacco Divestment

At its September 1998 meeting, the Minnesota State Board of Investment adopted a resolution that required each active and semi-passive equity manager to divest by September 2001 shares of any company which obtained more than 15 percent of its revenues from the manufacture of consumer tobacco products. At the close of fiscal year 2001 (June 30, 2001), the board had divested from its active portfolios all shares of companies covered by this resolution.

2004 Annual Report, Minnesota State Board of Investment.

K Tobacco Liability

Industry Protection

The amount of an appeal bond required to stay execution of a judgment must be in the amount of the judgment, or a lesser amount, but the total appeal bond required of all appellant(s) can not be more than \$150 million regardless of the value of the judgment. If an appellee provides evidence that a judgment debtor may be dissipating assets to avoid payment of a judgment, a court may enter orders that are necessary to protect the appellee, and require the appellant(s) to post a bond in an amount up to the total amount of the judgment.

MINN. STAT. § 550.36 (2004).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

In 1998, Lawrence D. Cohen, chief judge of the Ramsey County District Court, approved the state of Minnesota's plan to establish the Minnesota Partnership for Action Against Tobacco (MPAAT), a nonprofit foundation which will receive \$202 million dollars (about 3 percent of Minnesota's settlement money) over ten years to fund projects that seek to reduce tobacco use in the state. MPAAT, now called ClearWay Minnesota, serves Minnesota through its grant-making program, QUITPLAN individual stop-smoking services and community outreach, which includes an advertising campaign. The organization files an annual report with the Ramsey County

District Court and the state legislature each year.

State of Minnesota and Blue Cross/Blue Shield of Minnesota v. Philip Morris et al. (1998).

Blue Cross & Blue Shield of Minnesota, a co-plaintiff in Minnesota's settlement with the tobacco companies, is scheduled to receive \$469 million total from the settlement subject to certain adjustments. Due to these adjustments the actual amount received will be reduced. The organization will be spending \$252 million of this money over ten years to help reduce tobacco use, heart disease, and cancer in Minnesota.

State of Minnesota and Blue Cross/Blue Shield of Minnesota v. Philip Morris et al. (1998).

M Fire Safety Standards

To help prevent cigarette-caused fires, except as provided, no cigarettes may be sold or offered for sale in Minnesota or offered for sale or sold to persons located in Minnesota unless: 1) the cigarettes have been tested in accordance with the test method and have met the performance standard specified in section 299F.851 Minnesota Statutes, 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 299F.852 Minnesota Statutes; and 3) the cigarettes have been marked in accordance with section 299F.853 Minnesota Statutes. A manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of the above standard is subject to a civil penalty not to exceed \$10,000 per each sale for a first violation, and not to exceed \$25,000 per each sale for a second or subsequent violation. Penalties against any such person or entity must not exceed \$100,000 during any 30-day period. A retail dealer that knowingly sells or offers to sell less than 1,000 cigarettes in violation is subject to a civil penalty not to exceed \$500 per sale for a first violation, and not to exceed \$2,000 per sale for a subsequent violation. A retail dealer that knowingly sells or offers to sell 1,000 cigarettes or more in violation is subject to a civil penalty not to exceed \$1,000 per sale for a first offense, and not to exceed \$5,000 per sale for subsequent offenses. The penalty against any retail dealer can not exceed \$25,000 in any 30-day period. Knowingly making a false certification is subject to a civil penalty of at least \$75,000 for a first violation and

not to exceed \$250,000 for a subsequent violation in addition to any other penalty.

MINN. STAT. §§ 299F.850 to 299F.859 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$20,272,231

FY2010 Federal Tobacco Control Program
Funding: \$1,199,593

FY2010 Total Tobacco Control Program
Funding: \$21,471,824

Funding Level Recommended by CDC:
\$58,400,000

Percentage of CDC-Recommended Level:
36.8%

State Funding Details:

Minnesota allocated \$20,272,231 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's settlement payments and the state general fund. In FY2009, \$20,525,168 was allocated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Health and Human Services Budget (H.F. 1362) enacted 5/14/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011) and FY2010 ClearWay Minnesota Operating Budget.

Note: Clearway Minnesota (formerly the Minnesota Partnership for Action Against Tobacco) allocates money for a statewide tobacco prevention program, but is not controlled by the state legislature. It is overseen by the Ramsey County District Court, which heard the original tobacco settlement case brought by the state of Minnesota (see *Use of Settlement Dollars* category under the Tobacco Settlement section for more details).

Tobacco Control Program Related Laws

In 1999, the legislature set a goal to reduce tobacco use among youth by 25 percent by the year 2005, and to promote statewide and local tobacco use prevention activities to help achieve this goal. The Commissioner of Health, in consultation with other public, private, or nonprofit organizations involved in tobacco use prevention efforts, is required to establish measurable outcomes to determine the effectiveness of the grants receiving funds under this section in reducing the use

of tobacco among youth, and a statewide assessment of tobacco-related behaviors and attitudes among youth to establish a baseline to measure the statewide effect of tobacco use prevention activities. The commissioner must also set up a grant program through the state Department of Health for statewide and local tobacco prevention grants to reduce tobacco use among youth, as well as local public health promotion and protection to local community health boards. The legislature also required a biennial evaluation of these grant programs.

MINN. STAT. § 144.396 (2009).





A State Smoking Restrictions

Public Places

It shall be unlawful for any person to smoke a cigar or pipe in or upon any passenger bus or coach. Persons who continue to smoke after being asked to refrain from smoking can be ejected from public buses and charged with a misdemeanor, punishable by a fine of not more than \$500, imprisonment up to 30 days, or both.

MISS. CODE ANN. § 97-35-1 (1964).

Government Buildings

No person shall smoke in any government building, which is defined as any building owned, rented, leased, occupied or operated by the state, including the legislative, executive and judicial branches of state government; any county, municipality or any other political subdivision of the state; any public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government. If only part of a facility is leased by the state or locality, only the leased part of the facility will be considered to be a government building. A government building shall not include any building owned or leased by the state institutions of higher learning or the public community and junior colleges or any space in a government building used by law enforcement officers. The State Veterans Affairs Board may designate smoking areas in the state veterans' homes operated by the board. The person, agency or entity having jurisdiction or supervision over a government building shall not allow smoking in the building, and shall use reasonable efforts to prevent smoking in such building, including, but not limited to posting appropriate signs informing employees, invitees, guests and other persons that smoking is prohibited and securing the removal of persons who smoke in the building.

MISS. CODE ANN. § 29-5-161 (2007).

Private Workplaces

No restrictions

Schools

No person shall use any tobacco product on any educational property. "Educational property" means any public school building or bus, public school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, or directors for the administration of any public educational institution or during a school-related activity. Any adult who violates this section shall receive a warning for a first conviction; a \$75 fine for a second conviction; and a fine of up to \$150 for all subsequent convictions. It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this act are enforced.

MISS. CODE ANN. § 97-32-29 (2000).

No person shall smoke in any university or college classroom building, which is defined as any building used by the state institutions of higher learning or the public community and junior colleges exclusively for student instructional purposes, including classrooms, auditoriums, theaters, laboratories, hallways and restrooms. Smoking policies applicable in the private offices of faculty and staff and other "smoking permitted" space may be determined by each academic and administrative department. The person, agency or entity having jurisdiction or supervision over a university/classroom building shall not allow smoking in the building, and shall use reasonable efforts to prevent smoking in such building, including, but not limited to posting appropriate signs informing employees, invitees, guests and other persons that smoking is prohibited and securing the removal of persons who smoke in the building.

MISS. CODE ANN. § 29-5-161 (2007).

Child Care Facilities

No restrictions

Health Care Facilities

No restrictions

Restaurants

No restrictions

Bars

No restrictions

State Preemption of Local Laws

The law prohibiting smoking in government buildings and university/college classroom buildings shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or to prohibit any municipality or county from adopting additional ordinances with regard to smoking in public places.

MISS. CODE ANN. § 29-5-161 (2007).

B Tobacco Excise Taxes**Tax on Cigarettes**

Tax rate per pack of 20: 68 cents

Date last changed: May 15, 2009 – from 18 cents to 68 cents

Year first enacted: 1930

MISS. CODE ANN. § 27-69-13(a) (2009).

A fee of 25 cents per pack of 20 is imposed on the sale, use, consumption or distribution in this state of nonsettling-manufacturer cigarettes, which are cigarettes sold by manufacturer's that have not signed on to the state's settlement agreement with the major tobacco companies. The fee will be increased each January 1 by the greater of three percent or the percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the U.S. Department of Labor. Revenue from the fee is deposited in the general fund. The fee is in addition to the state tax on cigarettes.

MISS. CODE ANN. § 27-70-1 to 27-70-21 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$45,801,000

Use of Cigarette Tax Revenue

All cigarette tax revenue is deposited into the state treasury to the credit of the state general fund.

MISS. CODE ANN. § 27-69-75 (1987).

Taxes on Other Tobacco Products

All other tobacco products: 15% of the manufacturer's list price

MISS. CODE ANN. § 27-69-13(b) (1985).

Use of Revenue from Taxes on Other Tobacco Products

All revenue from the tax on other tobacco products is deposited into the state treasury to the credit of the state general fund.

MISS. CODE ANN. § 27-69-75 (1987).

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

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Office of the Attorney General or local law enforcement agencies shall at least annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under 18 may be enlisted by the Office of the Attorney General or local law enforcement agencies, provided that the parent or legal guardian has given prior written consent. The Office of the Attorney General must prepare a report of the findings to the Department of Health and Department of Mental Health.

MISS. CODE ANN. § 97-32-21 (1998).

Penalties for Sales to Minors

It is unlawful for any person or retailer to sell, barter, deliver or give tobacco products or rolling papers to any minor unless the individual under age 18 holds a retailer's permit to sell tobacco products. Any person who violates this section is liable for a fine of \$50 for the first violation, \$75 for the second violation and \$150 for all subsequent violations. The person owning the applicable retailer permit shall be sent a warning letter for the first violation, and shall be required to enroll in and complete a "Retailer Tobacco Education Program" for the second violation. For the third and subsequent violations within a year of the first two violations, any retailer's permit may be revoked or suspended for a period of at least one year after notice and opportunity for hearing. It is an affirmative defense that the person selling, bartering, delivering or giving tobacco products to a minor, had requested and examined a government issued photographic identification. The failure of a person selling tobacco to request and examine photographic identification shall form a conclusive basis for the seller's violation

of this section.

MISS. CODE ANN. § 97-32-5 (1998).

Photo ID

No provisions

Sign Posting

Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of tobacco products to consumers, a sign no smaller than 8.5 by 11 inches or 93 square inches stating: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS. PROOF OF AGE REQUIRED." Violation is subject to a penalty of not more than \$100.

MISS. CODE ANN. § 97-32-11 (1998).

Penalties to Minors

No person under 18 shall purchase any tobacco product. High school, junior high school or elementary school students may not possess tobacco on any educational property.

MISS. CODE ANN. § 97-32-9 (1998).

A minor who falsely states they are 18 years of age or older or presents any document that indicates they are 18 years of age or older for the purpose of purchasing or possessing any tobacco or tobacco product shall be fined from \$25 to \$200 or required to complete at least 30 days of community service, or both.

MISS. CODE ANN. § 97-32-13 (1998).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

Other Provisions

Every person employed as a retail sales clerk by a person engaged in the business of selling tobacco products at retail shall sign an agreement with their employer, which states that they understand that state law prohibits the sale or distribution of tobacco products, including samples, to persons under the age of 18 and requires that proof of age be demanded if the purchaser appears to be under the age of 18, and such employee shall promise, "as a condition of their employment, to observe this law." Any person violating the provisions of this section

shall be guilty of a misdemeanor and fined \$50 to \$100 upon conviction. No retailer who instructs their employee as directed above shall be liable for any violations committed by such employees.

MISS. CODE ANN. §§ 97-32-7 (1998).

State Preemption of Local Laws

It is the intent of the Legislature that enforcement of certain specified laws be implemented in an equitable manner throughout the state. The provisions of Sections 97-32-5, 97-32-7, 97-32-11, 97-32-15, 97-32-17, 97-32-19 and 97-32-21 shall supersede any existing or subsequently enacted local law, ordinance or regulation which relates to the sale, promotion and distribution of tobacco and tobacco products.

MISS. CODE ANN. § 97-32-2 (1998).

Note: The above provision preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to many laws summarized in Sections C, D & E of Mississippi's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for any person to barter, deliver or give tobacco products to any minor. Any person who violates this section is subject to the same penalties and affirmative defenses as selling tobacco products to a minor.

MISS. CODE ANN. § 97-32-5 (1998).

Minimum Tobacco Product Sales Amounts

No retailer shall distribute tobacco products, excluding cigars and pipe tobacco, other than in a sealed package provided by the manufacturer with the required health warning. Violators will be fined \$100 for the first violation and/or enrolled in a Retailer Tobacco Education Prevention Program, \$200 for a second violation within a year of the first violation and \$300 for all subsequent violations. In addition, in the case of all subsequent violations within one year of two prior violations, the permit of the violator may be suspended or revoked.

MISS. CODE ANN. § 97-32-17 (1998).

It shall be unlawful for any person to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including, but not limited to, the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act. Knowingly violating this provision is subject to a fine of \$5,000 and/or imprisonment for not more than five years.

MISS. CODE ANN. §§ 75-23-33 & 75-23-35 (2000).

E Restrictions on the Sale of Tobacco Products In Vending Machines

Placement

Vending machines are restricted to establishments where individuals under the age of 18 years are denied access or are required to be accompanied by an adult.

MISS. CODE ANN. § 97-32-15 (1998).

Penalties

A person who violates this section shall be punished by a penalty of not more than \$250.

MISS. CODE ANN. § 97-32-15 (1998).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Every dealer (manufacturer), distributor, wholesaler and retailer must have an annual permit to engage in the sale or use of tobacco products from the chairman of the state Tax Commission. Permits must be obtained for each place of business. Permits expire on January 31st of each year. Any person who engages in any business for which a permit is required before procuring a permit, or after the permit is cancelled, shall be guilty of a misdemeanor, and punishable by a fine of \$50 to \$500.

MISS. CODE ANN. §§ 27-69-5 (1998) & 27-69-7 (1985).

Retailers and wholesalers must obtain a license to sell cigarettes. A separate license is required for

each place of business. The state Tax Commission shall make rules and regulations respecting applications therefore or issuance thereof.

MISS. CODE ANN. § 75-23-27 (1954).

Fees

Wholesalers, distributors and dealers are subject to a \$100 annual permit fee.

MISS. CODE ANN. § 27-69-7 (1985).

License Suspension for Sales to Minors

For the third and subsequent violations of the sale of tobacco products to minors' law within a year of two previous violations, the retailer's permit may be revoked or suspended for a period of at least one year after notice and opportunity for a hearing.

MISS. CODE ANN §§ 97-32-5 (1998).

G Smoker Protection Laws

It is unlawful for any public or private employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonwork hours, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

MISS. CODE ANN. § 71-7-33 (1994).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

A supersedeas bond or equivalent security required on any money judgment entered in whole or in part on account of punitive damages shall, as to the punitive damages portion of the judgment only, be the lower of: 125 percent of the punitive damages, 10 percent of the net worth of

the defendant seeking appeal as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31, of the year prior to the entry of the judgment for punitive damages. Absent unusual circumstances, the total amount of the required bond or equivalent security for any case as to punitive damages shall not exceed \$100 million. When the appellant is allowed the benefit of a reduction in bond or equivalent security the court may require submission of such reports or evidence to the court and to opposing parties as will allow them to be properly informed of the financial condition of the appellant during the period of supersedeas. If at any time after notice and hearing, the court finds that an appellant who has posted a bond or equivalent security for less than 125 percent of the full amount of the judgment has taken actions that affect the financial ability of the appellant to respond to the judgment, or has taken other actions with the intent to avoid the judgment, the court shall increase the bond or equivalent security to the full 125 percent of the judgment.

MS RULES OF APPELLATE PROCEDURE, Rule 8(b)(2-5) (2001).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Tobacco Control Program Fund was established in the state treasury. From the annual tobacco settlement payment, \$20 million is dedicated annually to the fund. The money is to be used to fund a comprehensive tobacco control program and for other specified purposes.

MISS. CODE ANN. §§ 41-113-1 to 41-113-11 (2007).

The Health Care Trust Fund was established in the state treasury, and received \$280 million in settlement money at the end of FY1999, and is supposed to receive all subsequent annual settlement payments. All income from the trust fund is supposed to go to the trust fund, and funds do not lapse to the general fund. Money is transferred to the Health Care Expendable Fund each fiscal year from the Health Care Trust Fund. The trust fund principal is supposed to remain forever inviolate except for specified circumstances, but has been used by the legislature for general budget purposes on several occasions, including a \$240 million transfer to the Health Care Expendable Fund in 2005, which is supposed to be paid back

from the general fund with interest in FY2011 through FY2018 (see below). Transfer of funds in the trust fund to the state Medicaid program under certain circumstances is also allowed under legislation passed in 2009.

MISS. CODE ANN. § 43-13-405 (2009).

The Health Care Expendable Fund was also established in the state treasury. All income from investment of the money in the fund shall be credited to the fund. The funds in the Health Care Expendable Fund are available for expenditure by specific appropriation each fiscal year beginning in FY2000 for health care purposes. Money is transferred to this fund each fiscal year from the Health Care Trust Fund. In 2005, \$240 million was transferred to this fund from the Health Care Trust Fund in addition to regular transfers each year. This transfer is scheduled to be paid back plus interest from the state general fund in specified amounts in FY2011 to FY2018. The entire settlement installment payment received in calendar year 2009 and 2010 is deposited in this fund under legislation passed in 2009.

MISS. CODE ANN. § 43-13-407 (2009).

M Fire Safety Standards

Mississippi has enacted legislation requiring cigarettes sold in Mississippi to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on July 1, 2010.

S.B. 2249 enacted 3/30/09 and effective 7/1/2010.

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$11,400,000

FY2010 Federal Tobacco Control Program
Funding: \$1,104,566

FY2010 Total Tobacco Control Program
Funding: \$12,504,566

Funding Level Recommended by CDC:
\$39,200,000

Percentage of CDC-Recommended Level:
31.9%

State Funding Details:

Mississippi appropriated \$11,400,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual settlement payment. In FY2009, \$11,700,000 was appropriated.

FY2010 Department of Health Appropriations (H.B. 55, 2nd special session 2009) enacted 6/30/09 and effective 7/1/09.

Tobacco Control Program Related Laws

The Office of Tobacco Control was created in the state Department of Health. The office, with the advice of the Mississippi Tobacco Control Advisory Board, shall develop and implement a comprehensive tobacco control program that is consistent with the recommendations for effective program components and funding recommendations in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention (CDC), as those Best Practices may be periodically amended by the CDC. The Mississippi Tobacco Control Advisory Board was also created, and will consist of 13 members who will make recommendations about implementation of the program.

MISS. CODE ANN. §§ 41-113-1 to 41-113-11 (2007).





A State Smoking Restrictions

Public Places

Smoking is restricted to designated areas in public places and public meetings, including: commercial or retail establishments; health care facilities as specified; any vehicle used for public transportation, including buses, taxicabs and limousines for hire; restrooms; elevators; libraries, educational facilities, day care facilities, museums, auditoria and art galleries; public areas and waiting rooms of public transportation facilities, including airport facilities; indoor places used for entertainment or recreation, including gymnasiums, theater lobbies, concert halls, arenas and swimming pools; and other enclosed areas used by the general public, including corridors and shopping malls. No more than 30 percent of the space of any public place may be designated as a smoking area. Areas not covered by this law are: 1) rooms or halls used for private social functions under control of the sponsor of the function; 2) limousines and taxicabs where the driver and passengers agree to allow smoking; 3) performers on stage, provided that smoking is part of the performance; 4) tobacco retail stores; 5) bars, taverns, restaurants that seat less than 50 people, bowling alleys and billiard parlors, which post signs saying "Nonsmoking Areas are Unavailable"; and 6) indoor sports arenas/facilities seating more than 15,000 persons.

MO. REV. STAT. §§ 191.765 to 191.777 (1992).

Government Buildings

Smoking is restricted to designated areas in all public buildings. A designated smoking area where state employees may smoke during the work day shall be provided by each state executive department and institution of higher education, provided an area can be adequately ventilated at minimum cost within the physical confines of each facility.

MO. REV. STAT. §§ 191.765 & 191.767 (1992).

Private Workplaces

No restrictions

Schools

Use of tobacco products is prohibited entirely in any indoor area of a public elementary or secondary school building or educational facility, excluding institutions of higher learning, and on buses used to transport students any place for educational purposes. School boards or school districts may set policies on the use of tobacco products on school grounds or in facilities not occupied by students.

MO. REV. STAT. § 191.775 (1993).

In educational facilities not covered above, smoking is restricted to designated areas.

MO. REV. STAT. §§ 191.765 & 191.767 (1992).

Child Care Facilities

Smoking, and the use of other tobacco products, is prohibited in licensed day care facilities during their hours of operation. "Child care facility", is defined as a house or other place conducted or maintained by any person who advertises or holds himself out as providing care for more than four children during the daytime, for compensation or otherwise with specified exceptions.

MO. REV. STAT. §§ 191.776 (1993) & 210.201 (2004).

Health Care Facilities

Smoking is restricted to designated areas in health care facilities, health clinics or ambulatory care facilities including, but not limited to, laboratories associated with health care treatment, hospitals, nursing homes, physicians' offices and dentists' offices.

MO. REV. STAT. §§ 191.765 & 191.767 (1992).

Restaurants

The person in charge of a restaurant seating 50 or more people shall designate an area of sufficient size to accommodate usual customer demand for non-smoking areas. Restaurants seating less than 50 people are exempt from any restrictions on smoking as long as they post signs saying "Nonsmoking Areas are Unavailable."

MO. REV. STAT. §§ 191.765 to 191.769 (1992).

Bars

Smoking is allowed in bars and taverns as long as they post signs saying “Nonsmoking Areas are Unavailable.” Bars and taverns are defined as establishments licensed to serve liquor that make no more than 10 percent of their sales from food.

MO. REV. STAT. §§ 191.765 to 191.769 (1992).

Penalties/Enforcement

The person having custody or control of a public place or public meeting shall: 1) post appropriate signs indicating non-smoking or smoking areas and arrange seating accordingly; 2) arrange seating and utilize available ventilation systems and physical barriers to isolate designated smoking areas; 3) make a reasonable request of persons smoking to move to a designated smoking area; and 4) allow smoking in designated areas of theater lobbies only. Persons who smoke in a nonsmoking area or proprietors who allow persons to smoke in those areas where smoking is prohibited are guilty of an infraction.

MO. REV. STAT. §§ 191.765 to 191.777 (1992).

State Preemption of Local Laws

Nothing in sections 191.775 and 191.776 shall prohibit local political subdivisions or local boards of education from enacting more stringent ordinances or rules.

MO. REV. STAT. § 191.777 (1993).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 17 cents

Date last changed: August 28, 1993 — from 13 cents to 17 cents

Year first enacted: 1955

MO REV. STAT. § 149.015 (1993).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$97,150,000

Use of Cigarette Tax Revenue

The revenue generated by four cents of the cigarette tax imposed effective October 1, 1993 shall be deposited in the Health Initiatives Fund. When and if the general assembly appropriates an amount equal to 25 percent of the net federal

reimbursement allowance to the Health Initiatives Fund, this portion of the cigarette tax sunsets.

MO. REV. STAT. § 149.015 (2002).

The revenue generated by four cents of the cigarette tax imposed effective August 13, 1982 shall be placed in a separate fund entitled “The Fair Share Fund”. Moneys in the fund shall be distributed to the schools in this state on an average daily attendance basis.

MO. REV. STAT. § 149.015(7) (2002).

Taxes on Other Tobacco Products

All other tobacco products: 10% of the manufacturer’s invoice price.

MO. REV. STAT. § 149.160 (1993).

Use of Revenue from Taxes on Other Tobacco Products

All revenue from the tax on tobacco products other than cigarettes is deposited in the Health Initiatives Fund. The tax on other tobacco products will sunset on July 1st following when and if the general assembly appropriates an amount equal to 25 percent of the net federal reimbursement allowance to the Health Initiatives Fund.

MO. REV. STAT. § 149.160 (1993).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Liquor Control shall have the authority to inspect stores and tobacco outlets for compliance with all laws related to access of tobacco products to minors. The division may employ a person 17 years of age, with parental consent, to attempt to purchase tobacco for the purpose of inspection or enforcement of tobacco laws. The Supervisor of the Division of Liquor Control shall establish mandatory guidelines for the use of minors in investigations by a state, county, municipal or other local law enforcement authority. See the specified statute for details about the mandatory guidelines. If the state, county, municipal or other local law enforcement authority uses minors in investigations or in enforcing or determining violations of this chapter

or any local ordinance and does not comply with the mandatory guidelines, the supervisor shall not take any disciplinary action against the establishment or seller based on an alleged violation discovered when using a minor and shall not cooperate in any way with the state, county, municipal or other local law enforcement authority in prosecuting any alleged violation discovered when using a minor.

MO. REV. STAT. §§ 407.924 & 407.934 (2001).

Penalties for Sales to Minors

It shall be unlawful for any person to sell, provide or distribute tobacco products or rolling papers to persons under 18 years of age. This shall not apply to the distribution by family members on property that is not open to the public. Violation by any person, including but not limited to a sales clerk, owner or operator shall be subject to a fine of \$25 for a first offense, \$100 for the second offense and \$250 for a third and subsequent offenses. Any owner of the establishment who violates this law, in addition to the penalties above, shall be issued a reprimand for the first violation within two years; shall be prohibited from selling tobacco products for 24 hours for a second violation within two years; shall be prohibited from selling tobacco products for 48 hours for a third violation within two years; and shall be prohibited from selling tobacco products for five days for a fourth and subsequent violation within two years. Owners shall be exempt from the above penalties if they have an employee compliance training program subject to specific guidelines. This exemption will not apply to owners who have four or more violations per location within a two year period or knowingly violate the law. It is an affirmative defense if the person accused reasonably relied on proof of age purporting to establish the person as 18 years of age or older.

MO. REV. STAT. § 407.931 (2001).

Photo ID

A person or entity selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of 18. "Proof of age" means a driver's license or other generally accepted means

of identification that contains a picture of the individual and appears on its face to be valid.

MO. REV. STAT. § 407.929 (2001).

Sign Posting

Signs shall be conspicuously displayed at every display from which tobacco products are sold stating "IT IS A VIOLATION OF STATE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD OR OTHERWISE PROVIDED TO ANY PERSON UNDER THE AGE OF 18 OR FOR SUCH PERSON TO PURCHASE, ATTEMPT TO PURCHASE OR POSSESS CIGARETTES OR OTHER TOBACCO PRODUCTS" and shall include a depiction of a pack of cigarettes defaced by a red diagonal diameter of a surrounding red circle, and the words "UNDER 18." Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses.

MO. REV. STAT. §§ 407.927 & 407.931 (2001).

Penalties to Minors

No person less than 18 years of age shall purchase, attempt to purchase or possess cigarettes or other tobacco products unless as part of an employment obligation or for enforcement purposes. Any person less than 18 years of age shall not misrepresent their age to purchase cigarettes or tobacco products. A person who violates this law is guilty of an infraction and shall have any cigarettes or tobacco products confiscated. For a second violation the person shall also complete a tobacco education or smoking cessation program, if available.

MO. REV. STAT. § 407.933 (2001).

Placement of Tobacco Products

No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless they are displayed behind the check-out counter or are within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter.

MO. REV. STAT. § 407.928 (2001).

Internet Sales of Tobacco Products

Any person or entity who sells or distributes tobacco products by mail or through the Internet to minors shall be assessed a fine of \$250 for the first violation and \$500 for each subsequent violation.

MO. REV. STAT. § 407.926 (2001).

State Preemption of Local Laws

No broad provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products in almost all cases. The Department of Liquor Control does set mandatory guidelines for use of minors in compliance investigations.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

Distribution of tobacco products and rolling papers to minors is prohibited. This subsection shall not apply to the distribution by family members on property that is not open to the public. Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses. In addition, the owner shall be prohibited from selling tobacco products for a specific number of days for multiple violations. If an employee of a company conducting the sampling distributes a sample, such employee shall be guilty of an offense and responsible for the fine.

MO. REV. STAT. § 407.931 (2001).

Minimum Tobacco Product Sales Amounts

No person or entity shall sell, provide or distribute any individual cigarettes to any person in this state. Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses. In addition, the owner shall be prohibited from selling tobacco products for a specific number of days for multiple violations.

MO REV. STAT. § 407.931 (2001).

It is unlawful for any person to sell or distribute in this state any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and implementing regulations, including but not limited to the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in Section Four of the Federal Cigarette Labeling and Advertising Act. Violation is a Class D felony.

MO. REV. STAT. § 149.200 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco product vending machines shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons under 18 from purchasing any tobacco product or shall be equipped with a lockout device to prevent the machine from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking devices shall be of a design that prevents them from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required in machines located in areas where persons under 18 years old are not permitted or prohibited by law. This law shall not apply to a vending machine if located in a factory, private club or other location not generally accessible to the public.

MO. REV. STAT. § 407.931 (2001).

Penalties

Any person whose vending machine is not in compliance with the placement provisions above is subject to a fine of \$25 for a first offense, \$100 for a second offense and \$250 for a third and subsequent offenses.

MO. REV. STAT. § 407.931 (2001).

Sign Posting

Signs shall be conspicuously posted on every vending machine where tobacco products are purchased stating "IT IS A VIOLATION OF STATE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD OR OTHERWISE PROVIDED TO ANY PERSON UNDER THE AGE OF 18 OR FOR SUCH PERSON TO PURCHASE, ATTEMPT TO PURCHASE OR POSSESS CIGARETTES OR OTHER TOBACCO PRODUCTS" and shall include a depiction of a pack of cigarettes defaced by a red diagonal diameter of a surrounding red circle, and the words "UNDER 18." Violators shall be fined \$25 for the first offense, \$100 for a second offense and \$250 for subsequent offenses.

MO. REV. STAT. §§ 407.927 & 407.931 (2001).

F Licensing Requirements

Requirements

Wholesalers must obtain a license from the Director of the Department of Revenue to sell cigarettes or tobacco products, on or before February 15th of every year.

MO. REV. STAT. § 149.035 (1993).

No person shall sell cigarettes or tobacco products unless the person has a retail sales tax license. The Department of Revenue shall permit persons to designate through the Internet or by including a place on all sales tax license applications for the applicant to designate themselves as a seller of tobacco products and to provide a list of all locations where the applicant sells such products.

MO. REV. STAT. § 407.934 (2001).

Fees

Wholesaler's License: \$100 each year;

Retail Sales Tax License: No fee

MO. REV. STAT. §§ 149.035 (1993) & 144.083 (2004).

License Suspension for Sales to Minors

The owner of an establishment who sells, provides or distributes a tobacco product to a minor shall be prohibited from selling tobacco products for 24 hours for a second violation, for 48 hours for a third violation and five days for a fourth and subsequent violations within two years.

MO. REV. STAT. § 407.931 (2001).

G Smoker Protection Laws

It shall be an improper employment practice for an employer to refuse to hire, to discharge, or to otherwise disadvantage any individual with respect to compensation, terms or conditions of employment because the individual uses lawful tobacco products off the premises of the employer during hours such individual is not working for the employer, unless such use interferes with the duties and performance of the employee, the employee's coworkers, or overall business operation; except that, nothing in this section shall prohibit an employer from providing or contracting for health insurance benefits at a reduced premium rate for employees who do not smoke or use tobacco products. Religious organizations and non-

profit health promotion organizations are exempt from this section. The provisions of this section shall not be deemed to create a cause of action for injunctive relief, damages or other relief.

MO. REV. STAT. § 290.145 (2005).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The total appeal bond or equivalent surety required to appeal a lawsuit judgment for a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement shall be set at \$50 million, regardless of the value of the judgment. If the appellee proves by a preponderance of the evidence that a party bringing an appeal or seeking a stay is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the limitation granted may be rescinded and the court may enter such orders as are necessary to prevent dissipation or diversion of the assets.

MO. REV. STAT. § 512.085 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

There is hereby established in the state treasury the "Life Sciences Research Trust Fund" to be held separate and apart from all other public moneys and funds of the state. Twenty-five percent of all monies received from the Master Settlement Agreement between Missouri and certain cigarette companies are deposited into the fund starting in FY2007 and each fiscal year thereafter. Moneys in the fund do not revert to the state general fund at the end of each biennium. All moneys that are appropriated from the trust fund shall be appropriated to the life sciences research board to increase

the capacity for quality of life sciences research at public and private not-for-profit institutions in the state of Missouri as specified.

MO. REV. STAT. § 196.1100 to 196.1130 (2005).

Note: The remaining 75 percent of the annual tobacco settlement revenue is directed to the Healthy Families Trust Fund through the annual appropriations process, and used to fund various health and social service programs/services.

M Fire Safety Standards

Missouri has enacted legislation requiring cigarettes sold in Missouri to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on January 1, 2011.

H.B. 205 enacted 7/10/09 and effective 1/1/2011.

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$1,200,000

FY2010 Federal Tobacco Control Program
Funding: \$1,156,691

FY2010 Total Tobacco Control Program
Funding: \$2,356,691

Funding Level Recommended by CDC:
\$73,200,000

Percentage of CDC-Recommended Level: 3.2%

State Funding Details:

Missouri appropriated \$1,200,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment. In FY2009, \$1,700,000 was appropriated.

FY2010 Department of Health and Senior Services Budget (H.B. 10) enacted 6/25/09 and effective 7/1/09.

Note: The Missouri Foundation for Health, a private, non-profit foundation provided an additional \$1 million during FY2010 for the state's tobacco use quitline/phone counseling service.





A State Smoking Restrictions

Public Places

Smoking is prohibited in enclosed public places, which are defined as an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work. For specific places covered, see the definition under Montana Code Annotated section 50-40-103. This does not apply to: 1) a private residence unless it is licensed and used as a family day-care home, group day-care home, adult foster care home or a health care facility; 2) a private motor vehicle; 3) not more than 35 percent of hotel/motel rooms rented to guests; and 4) a site that is being used in connection with the practice of cultural activities by American Indians.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Government Buildings

Smoking is prohibited in enclosed public places the definition of which includes all buildings or portions of buildings occupied by state and local government.

MONT. CODE ANN. §§ 50-40-104 & 50-40-201 (2005).

Private Workplaces

Smoking is prohibited in enclosed public places, the definition of which includes all places of work. Places of work are defined as an enclosed room where one or more people work.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Schools

An individual may not use a tobacco product in a public school building or on public school property. This does not apply to the use of a tobacco product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product.

MONT. CODE ANN. § 20-1-220 (2005).

Smoking is also prohibited in community college facilities and facilities of the Montana

university system.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Child Care Facilities

Smoking is prohibited in all enclosed public places, the definition of which includes child care facilities. Home-based group day-care and family day-care homes as well as adult foster care homes are specifically included.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Health Care Facilities

Smoking is prohibited in all enclosed public places, the definition of which includes health care facilities. Home-based health care facilities are specifically included.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Restaurants

Smoking is prohibited in enclosed public places, the definition of which includes restaurants.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Bars

Smoking is prohibited in enclosed public places, the definition of which includes bars.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

Penalties/Enforcement

The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to an establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited. The provisions of this part must be supervised and enforced by the Department of Public Health and Human Services and the department's designees, local boards of health, and the boards' designees under the direction of the department. A person who smokes in a place where smoking is prohibited is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the

above provisions is guilty of a misdemeanor after a third violation within a 3-year period and shall receive a warning for a first violation, receive a written reprimand for a second violation, be subject to a \$100 fine for a third violation, a \$200 fine for a fourth violation and \$500 for a fifth or subsequent violation.

MONT. CODE ANN. §§ 50-40-101 et seq. (2005).

State Preemption of Local Laws

The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation until October 1, 2009.

MONT. CODE ANN. § 50-40-120 (2005).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.70

Date last changed: January 1, 2005 — from 70 cents to \$1.70

Year first enacted: 1947

MONT. CODE ANN. § 16-11-111 (2005).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$84,249,000

Use of Cigarette Tax Revenue

Cigarette tax revenue is distributed as follows: 8.3 percent or \$2 million, whichever is greater, for the operation and maintenance of state veterans' nursing homes; for FY2010 and FY2011 only, 1.2 percent for the construction of a state veterans' home in southwestern Montana; 2.6 percent to the Long-Range Building Program Account; 44 percent to the state special revenue fund to the credit of the Health and Medicaid Initiatives Account; and the remainder to the general fund. The Health and Medicaid Initiatives Account is intended to provide revenue for an increase in enrollment in the state children's health insurance program; a new need-based prescription drug program; increased Medicaid services and Medicaid provider rates; and fund new tax credits or programs to assist small businesses in providing health insurance

for their employees.

MONT. CODE ANN. § 16-11-119 (2009).

Taxes on Other Tobacco Products

Moist snuff: 85 cents/oz.;

All other tobacco products: 50% of the wholesale price

MONT. CODE ANN. § 16-11-111 (2005).

Use of Revenue from Taxes on Other Tobacco Products

The revenue from the taxes on other tobacco products is distributed as follows: 50 percent to the general fund and 50 percent to the state special revenue fund to the credit of the Health and Medicaid Initiatives Account.

MONT. CODE ANN. § 16-11-119 (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Public Health and Human Services shall conduct inspections of persons selling or distributing tobacco products to determine compliance with sections 16-11-301 et seq. of the Montana Code. Inspections may be conducted directly by the department or may be provided for by contract let by the department. The Department of Public Health and Human Services shall provide documentation to the Department of Revenue regarding alleged violations of licensing, sales or distribution of tobacco to minors or minimum cigarette sales amounts provisions. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for possession of, or attempt to purchase, a tobacco product.

MONT. CODE ANN. §§ 16-11-309 (1995) & 16-11-310 (2001).

Penalties for Sales to Minors

A person may not sell or distribute a tobacco product to a person under 18 years of age. The first through third offenses at any one location within a three-year period is punishable by a verbal notification of violation. The fourth offense is punishable by a written notice of violation to be sent

by the Department of Public Health and Human Services to the owner of the establishment. The fifth offense is punishable by an assessment of a tobacco education fee of \$500 against the owner of the establishment who may request a hearing to dispute the assessment. The employee or other person, who sold the tobacco product, the establishment manager, and the owner, if the owner is a sole proprietor or partner, shall read and review the tobacco education material. The sixth offense is punishable by a three-month license suspension, and the seventh and subsequent violations are punishable by a one-year license suspension. Upon the sixth and subsequent violations of this section, the Department of Revenue shall review the record of violations and if they decline to initiate suspension proceedings, the violation may not be charged against the licensee. Two years after the first violation, if a person has not received notice of any further violation, a second violation is considered a first violation. In addition, the first and subsequent violations are punishable by a tobacco education fee of \$25 for the employee who sold the tobacco product if not the owner of the establishment.

MONT. CODE ANN. §§ 16-11-305(1) (1993) & 16-11-308 (2001).

Photo ID

If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

MONT. CODE ANN. § 16-11-305(2).

Sign Posting

Signs must be conspicuously posted at each place on the premises at which tobacco products are displayed and sold stating: "MONTANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE." Failure to do so is punishable by a civil penalty of \$100.

MONT. CODE ANN. §§ 16-11-304 (1995) & 16-11-308 (2001).

Penalties to Minors

A person under 18 years of age who knowingly possesses or consumes any tobacco product commits the offense of possession or consumption of a tobacco product. Violators shall be fined \$50 for the first offense, between \$75 and \$100 for

the second offense and between \$100 and \$250 for subsequent offenses, or may be adjudicated on a petition alleging the person to be a youth in need of supervision under the provisions of the Montana Youth Court Act. In addition, the violator may be required to perform community service or to attend a tobacco cessation program.

MONT. CODE ANN. § 45-5-637 (2001).

A person under 18 years of age who knowingly attempts to purchase a tobacco product commits the offense of attempting to purchase a tobacco product. Violation is subject to a fine of \$50 and possible community service for the first offense and a fine of not more than \$100 and possible community service for the second and subsequent offenses.

MONT. CODE ANN. § 45-5-637 (2001).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the Department of Revenue detailing specific information about themselves. By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department setting out specified information about the sale. Common carriers are also required to report certain information to the department on all shipments made in the state.

MONT. CODE ANN. §§ 16-11-104 & 16-11-128 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

A local government may by ordinance adopt regulations on the subjects of Montana Code sections 16-11-301 through 16-11-308 that are no more stringent than state law.

MONT. CODE ANN., § 16-11-311 (1993).

Note: The above provision preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to most laws summarized in Sections C, D, E & F of Montana's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person may not distribute a tobacco product to a person under 18 years of age. Violations are punishable by the same penalties for over-the-counter sales to minors, including the tobacco education fee assessed against the person who made the sale.

MONT. CODE ANN. §§ 16-11-305(1)(1993) & 16-11-308 (2001).

Minimum Tobacco Product Sales Amounts

A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold. Penalties are the same as for selling or distributing tobacco products to minors.

MONT. CODE ANN. §§ 16-11-307(1) & 16-11-308 (2001).

The sale of cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight of tobacco is prohibited. Violations are punishable by a civil penalty of \$100. The third violation is also subject to a license suspension for 3 months; and the fourth and subsequent violations are subject to a license suspension of 1 year.

MONT. CODE ANN. §§ 16-11-307(2) & 16-11-308 (2001).

A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards that must be on the container or individual package. Violation is subject to a fine of up to \$10,000.

MONT. CODE ANN. § 16-10-306 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. Vending machines may be located in a restaurant if the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the above requirements. Tobacco products must be in a vending machine that contains only tobacco products.

MONT. CODE ANN. § 16-11-306 (1997).

Penalties

No specific penalty given for violating restrictions on placement of tobacco product vending machines.

Sign Posting

No provisions

F Licensing Requirements

Requirements

Any person who sells cigarettes at retail, including from vending machines must obtain a license from the Department of Revenue to sell tobacco products. Failure to obtain a license is subject to a civil penalty of \$100.

MONT. CODE ANN. §§ 16-11-303 (1993) & 16-11-308 (2001).

Wholesalers and retailers must obtain a license to sell tobacco products from the Department of Revenue. A person who operates 10 or more cigarette vending machines on premises or locations not his own is treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines on premises or locations not his own is considered a retailer. A license is required for each place of business. Licenses must be renewed annually.

MONT. CODE ANN. §§ 16-11-120 & 16-11-122 (1997).

Fees

Wholesaler license: \$50 annually;

Retail license: \$5 annually.

MONT. CODE ANN. § 16-11-122 (1997).

License Suspension for Sales to Minors

Selling or distributing tobacco products to minors upon the sixth offense within three years is punishable by a three-month license suspension, and the seventh and subsequent violations within three years are punishable by a one-year license suspension. The Department of Revenue shall review the record of violations and if they decline to initiate suspension proceedings, the violation may not be charged against the licensee.

MONT. CODE ANN. § 16-11-308 (2001).

G Smoker Protection Laws

An employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during non-work hours. This does not apply to use of a lawful product that affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees, or conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment; an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public. However, an employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product with stipulations. The person against whom a violation is committed may file a civil action against an employer within one year of the alleged violation. Prior to filing a civil action, an employee shall within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

MONT. CODE ANN. §§ 39-2-313 & 39-2-314 (1993).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

Statutory Initiative 146, approved by the voters on November 5, 2002, re-designated how Master Settlement Agreement payments would be spent: 32 percent is deposited in a state special revenue account and may only be used to fund state tobacco control programs; 17 percent is deposited in a state special revenue fund and is used to help fund the state Children's Health Insurance Program and programs of the Montana Comprehensive Health Association; 40 percent is dedicated to the Tobacco Trust Fund per the constitutional referendum in 2000 (see below); and the remaining 11 percent is deposited in the state general fund. These allocations will apply to MSA payments received after June 30, 2003. The legislature retained the authority to override these allocations.

MONT. CODE ANN. § 17-6-602 & 17-6-606 (2007).

Referendum C-35 was passed by the voters of Montana on Nov. 7, 2000 to amend Article XII of the state constitution by adding a new section 4. It directs the legislature to dedicate not less than 40 percent of settlement proceeds received on or after January 1, 2001, to a trust fund, 90 percent of the interest and income of which may be appropriated. Ten percent of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and 10 percent of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention

programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes. Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

MONT. CODE ANN. §§ 17-6-601 to 17-6-603 & MT CONSTITUTION Art. XII § 4 (2000).

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes shall be sold or offered for sale in Montana or offered for sale or sold to persons located in Montana unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standards specified in section 50-65-102 Montana Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal as specified in section 50-65-103 Montana Code; and the cigarettes have been marked as specified in section 50-65-104 Montana Code. A manufacturer, wholesale dealer, agent or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above is subject to a civil penalty not to exceed \$10,000 for each sale for the first offense, and not to exceed \$25,000 for each such sale for subsequent offenses. However, the penalty shall not exceed \$100,000 in any 30-day period. A retailer that knowingly sells cigarettes in violation of the above is subject to a civil penalty not to exceed \$100 for the first offense and not to exceed \$400 for subsequent offenses for each sale and offer for sale of less than 1,000 cigarettes; and a civil penalty not to exceed \$1,000 for the first offense and not to exceed \$5,000 for subsequent offenses for each sale and offer for sale of more than 1,000 cigarettes. The penalty against any one retailer may not exceed \$25,000 in a 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty not to exceed \$75,000 for a first offense and not to exceed \$250,000 for each subsequent offense in addition to any other penalty. This law shall not apply if a preemptive federal reduced

cigarette ignition propensity standard is adopted and becomes effective.

MONT. CODE ANN. §§ 50-65-101 to 50-65-121 (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$8,393,183

FY2010 Federal Tobacco Control Program
Funding: \$963,235

FY2010 Total Tobacco Control Program
Funding: \$9,356,418

Funding Level Recommended by CDC:
\$13,900,000

Percentage of CDC-Recommended Level:
67.3%

State Funding Details:

Montana appropriated \$8,393,183 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment. In FY2009, \$8,476,567 was appropriated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Budget (H.B. 2) enacted 5/14/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

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A State Smoking Restrictions

Public Places

It is unlawful for any person to smoke in a public place or place of employment, including restaurants, bars and gaming facilities. Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place. The following indoor areas are exempted from this law: 1) up to 20 percent of hotel/motel rooms subject to certain conditions; 2) indoor areas used in connection with a research study on the health effects of smoking as specified; 3) tobacco retail outlets as defined; and 4) cigar bars as specified and defined. Local communities are prohibited from passing stronger local ordinances concerning cigar bars.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Government Buildings

Smoking is prohibited in public places and places of employment, the definitions of which cover state and local government buildings.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Private Workplaces

Smoking is prohibited in places of employment, the definition of which includes all private workplaces. Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of their employment without regard to whether the employee is present or work is occurring at any given time. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Schools

Smoking is prohibited in public places and places of employment, the definitions of which cover public and private educational facilities.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Child Care Facilities

Smoking is prohibited in public places and places of employment, the definitions of which cover child care facilities. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Health Care Facilities

Smoking is prohibited in public places and places of employment, the definitions of which cover health care facilities.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Restaurants

Smoking is prohibited in public places and places of employment, the definitions of which cover restaurants.

NEB. REV. STAT. §§ 71-5716 to 71-5734 (2009).

Bars

Smoking is prohibited in public places and places of employment, the definitions of which cover bars. Cigar bars are exempt. Cigar bar means an establishment operated by a holder of a Class C liquor license which: 1) does not sell food; 2) in addition to selling alcohol, annually receives 10 percent or more of its gross revenue from the sale of cigars and other tobacco products and tobacco-related products, except from the sale of cigarettes; 3) has a walk-in humidor on the premises; and 4) does not permit the smoking of cigarettes. Local communities are prohibited from passing stronger ordinances concerning cigar bars.

NEB. REV. STAT. §§ 71-5716 to 71-5734, 53-103(42), 53-124(5)(c), & 53-131 (2009).

Penalties/Enforcement

A proprietor of a place of employment or public place where smoking is prohibited under the Nebraska Clean Indoor Air Act shall take necessary and appropriate steps to ensure compliance. A person who smokes in a place of employment or a public place is guilty of Class

V misdemeanor for a first offense and a Class IV misdemeanor for the second or subsequent offenses. A person charged with this offense may voluntarily participate in a smoking cessation program approved by the Department of Health and Human Services at their expense, and the penalty shall be waived upon successful completion of the program. A proprietor who fails, neglects, or refuses to perform a duty under this law is guilty of Class V misdemeanor for a first offense and a Class IV misdemeanor for the second or subsequent offenses. Each day of violation is a separate offense. The Department of Health and Human Services or a local public health department may institute an action in any court with jurisdiction to enjoin any violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

NEB. REV. STAT. §§ 71-5731 to 71-5733 (2008).

State Preemption of Local Laws

In general, local communities are allowed to pass stronger ordinances restricting smoking than state law. However, local communities can not eliminate the exemption for cigar bars in state law.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 64 cents

Date last changed: October 1, 2002 — from 34 cents to 64 cents

Year first enacted: 1947

NEB REV. STAT. § 77-2602 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$70,445,000

Use of Cigarette Tax Revenue

Beginning October 1, 2004, the revenue from 49 cents of the cigarette tax is deposited into the state general fund. The remainder of the revenue is distributed as follows:

- 1) Beginning July 1, 1980, one cent is placed in the Nebraska Outdoor Recreation Development Cash Fund;
- 2) Beginning July 1, 1993, three cents of such tax is placed in the Department of Health and Human

Services Finance and Support Cash Fund to carry out sections 81-637 to 81-640 of the Nebraska statutes;

3) Beginning October 1, 2002, seven cents is placed in the Building Renewal Allocation Fund until the purposes of the Deferred Building Renewal Act have been fulfilled;

4) Beginning July 1, 2001, and continuing until June 30, 2016, \$1 million dollars each fiscal year is placed in the City of the Primary Class Development Fund;

5) Beginning July 1, 2001, and continuing until June 30, 2016, \$1.5 million dollars each fiscal year is placed in the City of the Metropolitan Class Development Fund;

6) Beginning July 1, 2009, and continuing until June 30, 2016, \$2.57 million dollars is placed in the Nebraska Public Safety Communication System Cash Fund;

7) Any remaining money is placed in the Nebraska Capital Construction Fund.

NEB. REV. STAT. § 77-2602(2-5) (2007).

Taxes on Other Tobacco Products

Snuff: 44 cents/oz. and a proportionate rate on all fractional parts of an ounce;

All other tobacco products: 20% of the purchase price of such tobacco products paid by the first owner or the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others.

NEB. REV. STAT. § 77-4008 (2009).

Use of Revenue from Taxes on Other Tobacco Products

All revenue from the tax on other tobacco products is deposited in the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund.

NEB. REV. STAT. § 77-4025 (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in state law

Penalties for Sales to Minors

Whoever sells or furnishes tobacco products to a minor is guilty of a Class III misdemeanor for each offense.

NEB. REV. STAT. § 28-1419 (1977).

Any licensee who shall sell, give, or furnish in any way tobacco products to a minor or allow to be taken from their place of business any tobacco products shall be guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates this provision, if they have knowledge of the same, shall also be subject to these penalties. In addition, such licensee shall be subject to a revocation and forfeiture of their license at the discretion of the court who hears the complaint.

NEB. REV. STAT. § 28-1425 (1977).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

A minor who uses tobacco in any form shall be guilty of a Class V misdemeanor. Any minor so charged may be free from prosecution when they furnish evidence for the conviction of the person who sold or gave them tobacco products.

NEB. REV. STAT. § 28-1418 (1977).

Any minor who misrepresents their age while purchasing tobacco products shall be guilty of a Class V misdemeanor.

NEB. REV. STAT. § 28-1427 (1977).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products. Local communities are speci-

cally allowed to pass stronger ordinances concerning placement of vending machines.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products**Samples**

Any person or licensee who shall give or furnish tobacco products to a minor is guilty of a Class III misdemeanor. In addition, a licensee shall be subject to the additional penalty of revocation and forfeiture of their license.

NEB. REV. STAT. §§ 28-1419 & 28-1425 (1977).

Smokeless tobacco products, or coupons or rebate offers for such products, shall not be distributed for promotional purposes by manufacturers, wholesalers, retailers, or representatives of these people. Smokeless tobacco product is defined as: 1) loose tobacco or a flat compressed cake of tobacco that may be chewed or held in the mouth; or 2) a small amount of shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth. Violators of this law may be fined a civil penalty of \$500 for the first offense, and between \$600 and \$3,000 for subsequent offenses. Each violation is considered a separate offense.

NEB. REV. STAT. §§ 69-1901 to 69-1904 (1989).

Minimum Tobacco Product Sales Amounts

It is unlawful for any person to sell or distribute in this state, or import or cause to be imported into this state any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in section Four of the Federal Cigarette Labeling and Advertising Act. Any person who knowingly violates this section is guilty of a Class IV felony.

NEB. REV. STAT. §§ 59-1520 & 59-1522 (2001).

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

Vending machines are prohibited except when

located in offices, businesses, plants or factories not open to the public, or in a room where alcohol is dispensed in establishments holding licenses under the Nebraska Liquor Control Act.

NEB. REV. STAT. §§ 28-1429.01 & 28-1429.02 (1992).

Penalties

Violation of the restrictions on placement of vending machines is a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the license to sell tobacco, and upon conviction for a third or subsequent offense, the license to sell tobacco products shall be permanently revoked.

NEB. REV. STAT. § 28-1429.02 (1992).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Every person, partnership, limited liability company, or corporation must obtain a license from the clerk or finance director of the city, town or village where their place of business is located to sell, keep for sale, or give away in course of trade, any cigars, tobacco, cigarettes, or cigarette material to anyone. A separate license is required for each place of business. Licenses are valid for one year unless suspended or revoked. Dealing in tobacco products without a license is a Class III misdemeanor for each offense.

NEB. REV. STAT. §§ 28-1420 to 28-1423 (1993).

Fees

Retailers: \$10 to \$25 annually depending on the class/size of the city;

Wholesalers: \$100 annually if their combined annual sales are over 150,000 packages of tobacco, and \$15 annually if their annual sales are below that amount.

NEB. REV. STAT. § 28-1423 (1993).

License Suspension for Sales to Minors

A licensee who sells, gives or furnishes tobacco products to a minor may have their license revoked at the discretion of the court hearing the complaint.

NEB. REV. STAT. § 28-1425 (1977).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

When the judgment, decree, or final order appealed from directs the payment of money, the bond, deposit of United States Government bonds, or cash deposit shall be the lesser of the amount of the judgment plus interest and applicable court costs, 50 percent of the appellant's net worth, or \$50 million. If an appellee proves by a preponderance of the evidence that an appellant is dissipating or diverting assets outside the ordinary course of business to avoid the payment of a judgment, the court may enter any orders necessary to protect the appellee and require the appellant to provide a bond, deposit of United States Government bonds, or cash deposit up to and including the full amount of the judgment.

NEB. REV. STAT. § 25-1916 (2004).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation. Money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as specified in section 71-7611.

NEB. REV. STAT. § 71-7608 (2009).

The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer \$56.1 million, no later than July 15, 2009 from the Nebraska Medicaid Intergovernmental Trust Fund and the

Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time of the transfer. One million dollars in the Nebraska Health Care Cash Fund is designated each year for the Autism Treatment Program Act for five fiscal years beginning in FY2008. The State Treasurer shall also transfer from the Health Care Cash Fund: 1) \$250,000 to the University of Nebraska Medical Center Cash Fund for the Nebraska Regional Poison Center; 2) starting July 1, 2010, \$3 million to the Tobacco Prevention and Control Cash Fund; and 3) \$500,000 to the Stem Cell Research Cash Fund.

NEB. REV. STAT. § 71-7611 (2009).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection 7 of section 69-503 Nebraska Revised Statutes, no cigarettes may be sold or offered for sale in Nebraska or offered for sale or sold to persons located in Nebraska unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 69-503 Nebraska Revised Statutes; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 69-504 Nebraska Revised Statutes; and 3) the cigarettes have been marked in accordance with section 69-505 Nebraska Revised Statutes. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements shall be liable for a civil penalty for each sale of such cigarettes of not to exceed \$10,000 for a first offense and not to exceed \$25,000 for any subsequent offenses. Penalties shall not exceed \$100,000 in any 30-day period. A retail dealer that knowingly sells or offers to sell fewer than 1,000 cigarettes in violation of the above requirements is subject to a civil penalty of not to exceed \$500 for a first offense and not to exceed \$2,000 for subsequent offenses. A retail dealer that knowingly sells or offers to sell 1,000 or more cigarettes in violation of the above requirements is subject to a civil penalty of not to exceed \$1,000 for a first offense and not to exceed \$5,000

for subsequent offenses. Penalties may not exceed \$25,000 in any 30-day period. In addition, any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of \$75,000 for the first false certification and not to exceed \$150,000 for each subsequent false certification.

NEB. REV. STAT. §§ 69-501 to 69-511 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$3,524,850

FY2010 Federal Tobacco Control Program
Funding: \$1,240,942

FY2010 Total Tobacco Control Program
Funding: \$4,765,792

Funding Level Recommended by CDC:
\$21,500,000

Percentage of CDC-Recommended Level:
22.2%

State Funding Details:

Nebraska allocated \$3,524,850 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment and the state general fund. In FY2009, \$3,506,000 was appropriated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Budget (L.D. 315) enacted 5/19/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Note: The amount of funding above for FY2010 is different from what was originally appropriated due to mid-year budget adjustments.

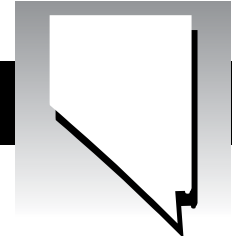
Tobacco Control Program Related Laws

The Tobacco Prevention and Control Cash Fund was created. The fund shall be used for a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services which includes, but is not limited to: 1) community programs to reduce tobacco use, 2) chronic disease programs, 3) school programs, 4) statewide programs, 5) enforcement, 6) counter-marketing, 7) cessation

programs, 8) surveillance and evaluation, and 9) administration.

NEB. REV. STAT. § 71-5714 (2003).

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A State Smoking Restrictions

Public Places

Smoking tobacco is prohibited in indoor places of employment, including, but not limited to: child care facilities; movie theatres; video arcades; government buildings and public places; malls and retail establishments; all areas of grocery stores; all indoor areas within restaurants; and within all public and private school buildings and on all public and private school property. Smoking is still allowed in: 1) areas within casinos where loitering by minors is prohibited by state law; 2) stand-alone bars, taverns and saloons as defined; 3) strip clubs or brothels; 4) retail tobacco stores as defined; 5) private residences, including those which may serve as an office workplace, except if used as a child care, adult day care or health care facility; and 6) the area of a convention facility in which a meeting or trade show is being held, if the meeting or trade show: is not open to the public, is being produced or organized by a business relating to tobacco or a professional association for convenience stores and involves the display of tobacco products.

NEV. REV. STAT. § 202.2483 (2009).

Government Buildings

Smoking tobacco is prohibited in indoor places of employment, including government buildings, which are defined as any building or office space owned or occupied by: any component of the University and Community College System of Nevada and used for any purpose related to the system; the state of Nevada and used for any public purpose; or any county, city, school district or other political subdivision of the state and used for any public purpose.

NEV. REV. STAT. § 202.2483 (2006).

Private Workplaces

Smoking tobacco is prohibited in indoor places of employment. Place of employment is defined as an enclosed area under the control of a public or private employer, which employees normally frequent during the course of employment including, but not limited to, work areas, restrooms,

hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas.

NEV. REV. STAT. § 202.2483 (2006).

Schools

Smoking tobacco is prohibited within school buildings and on school property/grounds of any public or private school. Smoking is also prohibited in any building or office space owned or occupied by any component of the University and Community College System of Nevada and used for any purpose related to the system.

NEV. REV. STAT. § 202.2483 (2006).

Child Care Facilities

Smoking is prohibited in child care facilities, including private residences used as child care facilities. "Child care facility" is defined as an establishment operated and maintained to furnish care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children, an on-site child care facility or an outdoor youth program.

NEV. REV. STAT. § 202.2483 (2006).

Health Care Facilities

Smoking is prohibited in indoor places of employment, which includes health care facilities. Health care facilities in a private residence are specifically included.

NEV. REV. STAT. § 202.2483 (2006).

Restaurants

Smoking is prohibited in indoor places of employment, including all indoor areas within restaurants. Restaurant is defined as a place that gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

NEV. REV. STAT. § 202.2483 (2006).

Bars

Smoking is allowed in stand-alone bars, taverns and saloons as well as strip clubs and brothels.

A stand-alone bar is defined as an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under this law. In addition, a stand-alone bar, tavern or saloon must be housed in either: a physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited; or a completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

NEV. REV. STAT. § 202.2483 (2006).

Penalties/Enforcement

All public places and places of employment where smoking is prohibited shall be designated by the specified signs. A person who violates this law shall be guilty of a misdemeanor, and, in addition, liable for a civil penalty of \$100 for each violation. Health authorities or local police officers shall, within their respective jurisdictions, enforce the provisions of this law.

NEV. REV. STAT. §§ 202.2483 (2006), 202.2492 (1999) & 202.24925 (1999).

Note: A court decision issued by a Nevada district court judge in January 2007 upheld Nevada's smokefree air law, but declared the criminal penalty provisions of the law unconstitutional. That means violation of the law can be punished by the civil penalty of \$100 only.

State Preemption of Local Laws

Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards in the above law.

NEV. REV. STAT. § 202.2483(4) (2006).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 80 cents

Date last changed: July 22, 2003 — from 35 cents to 80 cents

Year first enacted: 1947

NEV. REV. STAT. § 370.165 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$126,539,000

Taxes on Other Tobacco Products

All other tobacco products: 30% of the wholesale price.

NEV. REV. STAT. § 370.450 (1997).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The state Attorney General shall conduct random, unannounced inspections at locations where tobacco and products made from tobacco are sold, distributed or offered for sale, to inspect for and enforce compliance with laws regarding sales to minors and restrictions on tobacco vending machines. The Attorney General may contract with local law enforcement officials or any other person who will perform the inspection in a fair and impartial manner. The inspector may enlist a child under 18 to assist with the inspection if written consent is obtained from the child's parent, the child states their true age if questioned during the inspection, the child's appearance is not altered to make them appear older and a picture is taken of the child immediately before the inspection and retained. The Attorney General shall compile the results of the inspections performed and submit the report as required by federal law.

NEV. REV. STAT. §§ 202.2496 & 202.2497 (1995).

Penalties for Sales to Minors

It is unlawful for any person to sell, distribute or offer to sell tobacco in any form or cigarette papers to a child under the age of 18 years. Violators shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. A person shall be deemed to be in compliance with this provision if, before they sell or distribute any tobacco product, they demand valid proof of age, are presented with the required identification and reasonably relies upon the information presented

to them. The employer of a child who is under 18 years of age may, for the purpose of allowing the child to handle or transport tobacco or products made from tobacco in the course of the child's lawful employment, provide tobacco or products made from tobacco to the child. With respect to any sale made by their employee, the owner of a retail establishment shall be deemed to be in compliance with the provisions for sales or distribution to minors if they had no actual knowledge of the sale and establishes and carries out a continuing program of training for their employees which is reasonably designed to prevent violations.

NEV. REV. STAT. § 202.2493 (2007).

Photo ID

No provisions

Sign Posting

The owner of a retail establishment shall, whenever any product made from tobacco is being sold or offered for sale at the establishment, display prominently at the point of sale a notice indicating that the sale of cigarettes and other tobacco products to minors is prohibited by law; and the retailer may ask for proof of age to comply with this prohibition. A person who violates this shall be punished by a fine of not more than \$100.

NEV. REV. STAT. § 202.2493(6) (2007).

Penalties to Minors

No provisions

Placement of Tobacco Products

It is unlawful for any retailer to sell cigarettes through the use of any type of display, which contains cigarettes and is located in any area to which customers are allowed access; and from which cigarettes are readily accessible to a customer without the assistance of the retailer, except a vending machine used in compliance with Nevada Revised Statute section 202.2494. A person who violates this subsection shall be punished by a fine of not more than \$500.

NEV. REV. STAT. § 202.2493(7) (2007).

Internet Sales of Tobacco Products

A person must obtain a retail license to sell tobacco products before accepting an order for a delivery sale defined as sales of tobacco products by mail, phone, fax or over the Internet. A

person shall not cause the mailing or shipment of cigarettes in connection with an order for a delivery sale unless the person first obtains from the prospective purchaser a certification, which includes reliable confirmation the person, is 18 or older and a statement attesting to this fact. The person must then make a good faith effort to verify the information using a federal or commercially available database. The person must also receive payment from the prospective purchaser by credit or debit card issued in that purchaser's name. Records of each delivery sale are required to be created and retained for three years. Violating the above provisions or knowingly submitting a false certification is a Class C felony punishable by up to a \$10,000 fine and/or one to five years in state prison. The Department of Revenue may also impose a civil penalty of up to \$1,000 for a first violation and \$1,000 to \$5,000 for subsequent violations as well as suspend or revoke the applicable license to sell tobacco products.

NEV. REV. STAT. §§ 370.250 (2005), 370.321 to 370.327 (2009), 370.395 (2009) & 370.425(b) (2009).

It is unlawful for a person to knowingly sell or distribute cigarettes, cigarette paper, tobacco of any description or products made from tobacco to a child under the age of 18 years through the use of the Internet. Violators shall be punished by a fine of not more than \$500, and a civil penalty of not more than \$500. Every person who sells or distributes cigarettes, cigarette paper, tobacco of any description or products made from tobacco through the use of the Internet shall adopt a policy to prevent a child under the age of 18 years from obtaining these products from the person through the use of the Internet. The policy must include a method for ensuring that the person who delivers such items obtains the signature of a person who is over the age of 18 years when delivering the items, that the packaging or wrapping of the items when they are shipped is clearly marked with the word "cigarettes" or "tobacco products," and that the person complies with the provisions of 15 U.S.C. § 376 (the Jenkins Act). A person who fails to adopt a policy is guilty of a misdemeanor and shall be punished by a fine of not more than \$500.

NEV. REV. STAT. § 202.24935 (2001).

Note: Some parts of the 2nd law referenced above may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

An agency, board, commission or political subdivision of this state, including any agency, board, commission or governing body of a local government, shall not impose more stringent restrictions on the smoking, use, sale, distribution, marketing, display or promotion of tobacco or products made from tobacco than are provided by Nevada Revised Statutes sections 202.2492, 202.2493 and 202.2494. NEV. REV. STAT. § 202.249 (2007).

Note: The above provision preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to most laws summarized in Sections C, D & E of Nevada's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for any person to distribute tobacco in any form or cigarette papers to a child under the age of 18 years. Violators shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. A person shall be deemed to be in compliance with this provision if before they distribute any tobacco product to another person, they demand valid proof of age, are presented with the required identification and reasonably rely upon the information presented to them.

NEV. REV. STAT. § 202.2493 (2007).

Minimum Tobacco Product Sales Amounts

A person shall not sell, distribute or offer to sell tobacco products in any form other than in an unopened package that originated with the manufacturer and bears any health warning required by federal law. A person who violates this section shall be punished by a fine of \$100 and a civil penalty of \$100.

NEV. REV. STAT. § 202.2493(1) (1995).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A cigarette vending machine may be placed in a public area only if persons who are under 21 years of age are prohibited from loitering in that area. This applies to stand-alone bars and gaming facilities. A coin-operated vending machine containing cigarettes must not be used to dispense any product not made from tobacco.

NEV. REV. STAT. § 202.2494 (2003).

Penalties

Violation is subject to a fine of not more than \$500.

NEV. REV. STAT. § 202.2493(7) (2007).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Manufacturers, retailers and wholesalers must obtain a license to sell cigarettes from the Department of Revenue. A separate license is required for each place of business. Licenses are valid for the calendar year in which they were issued, and must be renewed annually. Violation is subject to Class C felony and is punishable by imprisonment for one to five years and/or up to a \$10,000 fine. Counties, cities or towns may require a wholesale or retail license for cigarettes as well.

NEV. REV. STAT. §§ 370.080 to 370.160 & 370.382 (2005).

Wholesale and retail dealers must obtain a license to sell tobacco products other than cigarettes from the Department of Revenue, except a retail dealer that has a retail dealer license to sell cigarettes need not obtain a license under this section. Dealing in tobacco products other than cigarettes without a license is a misdemeanor.

NEV. REV. STAT. § 370.445 (1997).

Fees

Wholesale cigarette dealer's license: \$150 annually;

Retail cigarette dealer license: No fee;

Cigarette Manufacturer's license: No fee;

No fee specified for retail and wholesale licenses for other tobacco products.

NEV. REV. STAT. §§ 370.150 (2005) & 370.445 (1997).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee or discharge or otherwise discriminate against any employee concerning their compensation, terms, conditions or privileges of employment, because they engage in the lawful use in this state of any product outside the premises of the employer during non-working hours, if that use does not adversely affect their ability to perform their job or the safety of other employees. Any wages and benefits lost as a result of a violation may be recovered by civil action.

NEV. REV. STAT. § 613.333 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

If an appeal is taken of a judgment in a civil action involving a signatory, or a successor in interest or affiliate of a signatory, of the Master Settlement Agreement is required to give a bond in order to secure a stay of execution of the judgment during the pendency of any or all such appeals, the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed \$50 million. If the plaintiff proves by a preponderance of evidence that an appellant who posted a bond is purposefully dissipating or diverting assets outside of the ordinary course of its business to evade the ultimate payment of the judgment, the court may, if it determines that

such an order is necessary to prevent such dissipation or diversion, require the appellant to post a bond in an amount that does not exceed the full amount of the judgment. The provisions of this section do not limit the discretion of a court, for good cause shown, to set the bond on appeal in an amount less than the amount otherwise required by law.

NEV. REV. STAT. § 20.035 (2005).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Fund for a Healthy Nevada was created in the state Treasury to receive 50 percent of the annual Master Settlement Agreement payments. The Department of Health and Human Services then can allocate the money in a given fiscal year based on the following percentages: 1) not more than 15 percent of available money in the fund to programs that help prevent, reduce or treat tobacco use; 2) allocate not more than 30 percent of available revenues to pay for prescription drugs, pharmaceutical services and other benefits for senior citizens; 3) allocate not more than 30 percent of available revenues to the Aging Services Division of the department for programs that help seniors with independent living; 4) allocate \$200,000 for funding assisted living facilities; 5) allocate not more than 10 percent of revenues for programs that improve health services for children; 6) allocate not more than 10 percent of available revenues for programs that help improve the health and well-being of persons with disabilities; and 7) not more than 5 percent to subsidize a portion of the cost of providing prescription drugs, pharmaceutical services or other benefits to persons with disabilities.

NEV. REV. STAT. §§ 439.600 to 439.665 (2007).

The Trust Fund for Public Health was created in the state treasury, and 10 percent of proceeds from the MSA are deposited into the trust fund. The interest and income earned on the money in the trust fund is hereby appropriated to the Board of Trustees of the Trust Fund for Public Health and must, after deducting any applicable charges, be credited to the Fund and accounted for separately. Only the interest and income can be spent, and the money must be spent on: 1) Grants made pursuant to Nevada Revised Statutes section 439.615

for: (a) The promotion of public health and programs for the prevention of disease or illness, (b) Research on issues related to public health, and (c) The provision of direct health care services to children and senior citizens; 2) Expenses related to the operation of the Board of Trustees of the Trust Fund; and 3) Actual costs incurred by the Health Division for providing administrative assistance to the Board. Money in the trust fund does not revert to the state general fund in any fiscal year.

NEV. REV. STAT. §§ 439.605 to 439.615 (2001).

the state general fund to deal with a state budget deficit.

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M Fire Safety Standards

Nevada has enacted legislation requiring cigarettes sold in Nevada to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on June 3, 2010.

A.B. 229 enacted 6/3/09 and effective 6/3/2010.

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program

Funding: \$2,872,025

FY2010 Federal Tobacco Control Program

Funding: \$857,913

FY2010 Total Tobacco Control Program

Funding: \$3,729,792

Funding Level Recommended by CDC:

\$32,500,000

Percentage of CDC-Recommended Level:

11.5%

State Funding Details:

Nevada allocated \$2,872,025 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement (MSA) payment. In FY2009, \$3,456,544 was allocated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Budget (S.B. 431) enacted by veto override 5/29/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011); allocation is based on a law distributing MSA payments last amended in 2007 and state Department of Health recommendations.

Note: In FY2010, some money dedicated to the state tobacco control program was transferred to



A State Smoking Restrictions

Public Places

Smoking is prohibited in certain specified public places, including restaurants and bars, see New Hampshire Revised Statute section 155:66 for a list of places covered. Smoking may be permitted in enclosed places of public access and publicly-owned buildings and offices, including workplaces, other than those listed, in effectively segregated smoking-permitted areas designated by the person in charge. Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated. Exempt from this law are: 1) guest rooms of hotels, motels and resorts; 2) public conveyances rented out for private purposes; 3) buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or when they are rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function; 4) halls, ballrooms, dining rooms and conference rooms of hotels, motels, restaurants, resorts, and publicly accessible buildings or portions thereof, excluding those that are publicly owned, when rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function; 5) resident rooms in dormitories, public housing facilities and in facilities such as nursing homes, sheltered care facilities, and residential treatment and rehabilitation facilities, and prisons and detention facilities; 6) other health care facilities as specified; 7) patients with extraordinary medical conditions, psychiatric disorders, or patients in an alcohol and drug withdrawal program, provided that the patient's physician has written a prescription or an order allowing the patient to smoke and 8) cigar bars as specified and defined.

N.H. REV. STAT. ANN. §§ 155:64 to 155:78 (2009) & 178:20-a (2010).

Government Buildings

Smoking is restricted to effectively segregated areas in all buildings, offices, and facilities owned, leased, or rented by state, county, or municipal

governments, or agencies supported by funds from the collection of federal, state, county, or municipal taxes. This definition includes legislative offices and other areas used by legislative bodies, courtrooms, jury rooms, recreation facilities, penal and detention institutions, public housing, subsidized housing, polling places and public meeting and hearing rooms. If smoking can not be effectively segregated, it shall be prohibited entirely.

N.H. REV. STAT. ANN. §§ 155:64 to 155:78 (2009).

Private Workplaces

Smoking is restricted to effectively segregated areas in all private enclosed workplaces that employ more than four people or volunteers. If smoking can not be effectively segregated, it shall be prohibited entirely.

N.H. REV. STAT. ANN. §§ 155:64 to 155:78 (2009).

Schools

No person shall use any tobacco product in any public educational facility or on the grounds of any public educational facility.

N.H. REV. STAT. ANN. § 126-K:7 (1997).

To the extent not covered above, smoking is prohibited in public educational facilities serving grades kindergarten through 12th grade at any time. Smoking is restricted to effectively segregated areas in private educational facilities and postsecondary educational institutions receiving funds appropriated by the state legislature. Resident rooms in dormitories operated by postsecondary institutions are specifically exempted.

N.H. REV. STAT. ANN. §§ 155.66 & 155.67 (2007).

Child Care Facilities

Smoking is prohibited in licensed child care agencies during the hours of operation. Smoking is allowed in foster family homes or foster family group homes.

N.H. REV. STAT. ANN. §§ 155:64 to 155:78 (2009).

Health Care Facilities

Smoking is prohibited in hospitals and other acute care facilities. Other health care facilities

and resident rooms in facilities such as nursing homes, sheltered care facilities, and residential treatment and rehabilitation facilities are specifically exempted, but shall follow any procedures established by rule. Patients with extraordinary medical conditions, psychiatric disorders, or patients in an alcohol and drug withdrawal program, provided that the patient's physician has written a prescription or an order allowing the patient to smoke are also exempted.

N.H. REV. STAT. ANN. §§ 155:64 to 155:78 (2009).

Restaurants

Smoking is prohibited in restaurants. Restaurant is defined as any room or enclosed place used and kept open on a regular basis and in a bona fide manner for the serving of meals to guests for compensation. The definition includes any such room or place in resorts, hotels, and motels.

N.H. REV. STAT. ANN. §§ 155:65 & 155:66 (2007).

Bars

Smoking is prohibited in cocktail lounges defined as that portion or specified area of a restaurant, hotel, motel, convention center or resort which is used primarily to serve liquor or other alcoholic beverages, irrespective of whether or not food is also served there. Smoking of cigars is allowed in cigar bars, see below.

N.H. REV. STAT. ANN. §§ 155:65 & 155:66 (2007).

The smoking of cigars only is allowed in cigar bars. Cigar bar is defined as a business that: 1) Generates 60 percent or more of its quarterly gross revenue from the sale of cigar-related products, which is limited to cigars, humidors, cigar cutters, cigar cases, lighters, and ashtrays; 2) has a humidor on the premises; 3) does not allow minors to enter the premises; and 4) does not allow cigarette smoking or service of food on the premises. The business must also have tobacco retailer's license.

N.H. REV. STAT. ANN. § 178:20-a (2010).

Penalties/Enforcement

The person in charge of an enclosed place shall develop, or oversee the development of written policies to comply with the regulations of this law that shall specify the area or areas where smoking is permitted in the building or facility. The appropriate signs shall be posted for notification

of smoking restrictions in all facilities regulated under this law. Any person who smokes where smoking is prohibited shall be guilty of a violation and shall be subject to a fine of not less than \$100. Any person in charge who fails to comply with any of the provisions of this law or rules adopted pursuant to it is subject to an administrative fine of not more than \$100 per day for a first offense and not more than \$200 per day for subsequent offenses. The person in charge or his designee may call law enforcement authorities if any person refuses to refrain from smoking in an area where smoking is prohibited. The Commissioner of the Department of Health and Human Services or their designee shall investigate any complaint regarding noncompliance.

N.H. REV. STAT. ANN. §§ 155:64 to 155:78 (2009).

Other State Smoking Restrictions and Provisions

Waiver from Restrictions on Smoking

The Commissioner of the Department of Health and Human Services may grant a waiver to the above law under specified circumstances.

N.H. REV. STAT. ANN. § 155:75 (1995).

State Preemption of Local Laws

No specific provision concerning preemption in state law. However, stronger local ordinances are not allowed due to a New Hampshire Supreme Court decision (see below).

The New Hampshire Supreme Court ruled unanimously that the New Hampshire state Clean Indoor Air Act constitutes a comprehensive and detailed statutory scheme, and because there was no provision permitting additional municipal regulation, the state law preempts local ordinances regarding indoor smoking more stringent than state law.

J.T.R. Colebrook, Inc. v. Town of Colebrook (2003).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.78

Date last changed: July 1, 2009 – from \$1.33 to \$1.78

Year first enacted: 1939

N.H. REV. STAT. ANN. § 78:7 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$161,215,000

Use of Cigarette Tax Revenue

Revenue from \$1.00 of the cigarette tax is deposited in the state general fund. Revenue from the remainder of the cigarette tax is deposited in the Education Trust Fund.

N.H. REV. STAT. ANN. § 78:32 (2009).

Taxes on Other Tobacco Products

Little Cigars (under 3 lbs./thousand): \$1.78 per 20 cigars;

Loose tobacco, smokeless tobacco, snuff and cigars (not including premium cigars as defined): 48.59% of the wholesale sales price

N.H. REV. STAT. ANN. §§ 78:1, 78:7 & 78:7-c (2009).

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

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The New Hampshire state Liquor Commission shall have the primary responsibility for enforcing this chapter. Local, county, and state law enforcement officers shall also have jurisdiction to enforce this chapter. Such authority may be delegated to agents working under their authority.

N.H. REV. STAT. ANN. § 126-K:9 (1998).

Penalties for Sales to Minors

No person shall sell, give, or furnish, or cause or allow or procure to be sold, given, or furnished, tobacco products to a minor. Penalties for violation are not more than \$250 for the first offense; not more than \$500 for the second offense; and between \$500 and \$1,500 for the third offense, and the license to sell tobacco products shall be suspended for a period of 10 consecutive days but not exceeding 30 consecutive days. For the fourth offense, the commission shall issue an administrative fine between \$750 and \$3,000 and a suspension of a minimum of 10 consecutive days not to exceed 40 consecutive days; or a suspension without a fine of 40 consecutive days. For any violation beyond the fourth, the

commission shall revoke any license for the business or business entity at the location where the infraction occurred or any principle thereof for a period of one year. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within three years of the date of the violation being considered. In addition to the civil penalty above, a person who violates this section shall be guilty of a violation for a first offense and a misdemeanor for each subsequent offense.

N.H. REV. STAT. ANN. § 126-K:4 (2002).

No person shall sell, give, or furnish rolling papers to a minor. The fines for violations shall not exceed \$250 for the first offense, \$500 for the second offense, and \$750 for the third and subsequent offenses.

N.H. REV. STAT. ANN. § 126-K:4-a (2002).

No person shall sell, give, or furnish tobacco products to a minor who has a note from an adult requesting such sale, gift, or delivery. Penalties for violation are the same as selling tobacco products to minors (see above).

N.H. REV. STAT. ANN. § 126-K:8 (2002).

Photo ID

Any person responsible for monitoring sales from a tobacco vending machine or any person making the sale of tobacco products, which vending machine or other sale is to be made to any person who does not appear to be at least 18 years of age, shall require the purchaser to furnish specified photographic identification. Photographic identification shall be consistent with the appearance of the person, and shall be correct and free of alteration, erasure, blemish, or other impairment. It is a defense to prosecution if the person falsely represented in writing and supported by some official documents that the person was 18 years of age or older, the appearance of the person was such that an ordinary and prudent person would believe such person to be at least 18 years of age or older and the sale was made in good faith relying on such written representation and appearance in the reasonable belief that the person was actually 18 years of age or over.

N.H. REV. STAT. ANN. § 126-K:3 (1998).

Sign Posting

When issuing or renewing a retailer's license, the retailer will be furnished with a sign which reads as follows: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 AND THE PURCHASE, POSSESSION, OR USE OF TOBACCO PRODUCTS BY PERSONS UNDER AGE 18. WARNING: VIOLATORS OF THESE PROVISIONS MAY BE SUBJECT TO A FINE." Signs shall be posted at any location where tobacco products are sold or distributed. The Commissioner of Revenue Administration shall adopt rules relative to placement of these warning signs in areas where tobacco products are sold or distributed.

N.H. REV. STAT. ANN. § 78:2 (I-b) (1998).

Penalties to Minors

No person under 18 years of age shall purchase, attempt to purchase, use or possess any tobacco product. A person under 18 years of age shall not misrepresent their age for the purpose of purchasing tobacco products. Violators shall be guilty of a violation and punished by a fine of up to \$100 for each offense or shall be required to complete up to 20 hours of community service for each offense, or both. Where available, punishment may also include participation in an educational program. The prohibition on possession of tobacco products shall not prohibit minors from performing the necessary handling of tobacco products during the duration of their employment.

N.H. REV. STAT. ANN. § 126-K:6 (1998).

No person under 18 years of age shall purchase, attempt to purchase, possess, or use any rolling paper. Any minor who violates this section shall be guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense.

N.H. REV. STAT. ANN. § 126-K:4-A (2002).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

Nothing in this chapter shall be construed to restrict the power of any county, city, town, village,

or other subdivision of the state to adopt local laws, ordinances, and regulations that are more stringent than state youth access laws.

N.H. REV. STAT. ANN. § 126-K:14 (1998).

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person may distribute or offer to distribute samples of tobacco products in a public place. This prohibition does not apply to areas where minors are denied access; stores where a retailer's license has been issued; and factory sites, construction sites, conventions, trade shows, fairs or motorsport facilities in areas to which minors are denied access. Penalties for violation are the same as those provided for selling, giving or furnishing tobacco products to minors.

N.H. REV. STAT. ANN. § 126-K:5 (2002).

Minimum Tobacco Product Sales Amounts

All tobacco products shall be sold in their original packaging bearing the Surgeon General's warning. The sale of single cigarettes is also prohibited. Penalties are the same as those provided for selling, giving, or furnishing tobacco products to minors.

N.H. REV. STAT. ANN. § 126-K:8 (2002).

No person shall knowingly sell or offer to sell a package of tobacco products or affix the required stamp or imprint on a package of tobacco products unless that package of tobacco products complies with all federal laws regarding the placement of labels, warnings, or any other information upon a package of tobacco products. Violation is subject to a 90 day license suspension for the first violation, loss of license for a year for subsequent violations, and a fine not to exceed \$10,000.

N.H. REV. STAT. ANN. § 78:34 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

No provisions

F Licensing Requirements

Requirements

Wholesalers, manufacturers and sub-jobbers must obtain a license to sell or distribute tobacco products from the Commissioner of Revenue Administration. A separate license is required for each wholesale and sub-job outlet. Licenses expire on June 30 of each even numbered year. Any person who shall sell, offer for sale or possess with intent to sell any tobacco products without such license shall be subject to the penalty provisions under New Hampshire Revised Statutes section 21-J:39.

N.H. REV. STAT. ANN. §§ 78:2 & 78:4 (2009).

No person shall sell tobacco products to individuals or the public in any method or manner, directly or indirectly, or keep for sale any tobacco products without first registering to do business with the Secretary of State and obtaining a license for such activity from the New Hampshire Liquor Commission. Each retail outlet must obtain a license, a person who engages in the business of operating vending machines for retail sales and distribution of tobacco products must obtain a license and a separate permit for each machine, and each individual engaged in public sampling must obtain a license. Any person who shall sell, offer for sale or possess with intent to sell any tobacco products without such license shall be subject to the penalty provisions under New Hampshire Revised Statutes section 21-J:39.

N.H. REV. STAT. ANN. §§ 178:1; 178:19-a, b & c; & 78:2 (2009).

Fees

Retailer's license: \$6;

Wholesaler's license: \$250;

Manufacturer's license: \$100;

Sub-jobber's license: \$150;

Sampler's license: \$6;

Vending machine operator's license: \$35 plus \$6 for each vending machine.

N.H. REV. STAT. ANN. §§ 78:2 & 178:29 (2009).

License Suspension for Sales to Minors

License specific penalties for selling, giving or furnishing tobacco products to minors starts

with a suspension of the license to sell tobacco products for 10 consecutive days not to exceed 30 consecutive days for the third violation. For the fourth violation the license to sell tobacco products shall be suspended for at least 10 days not to exceed 40 days with an administrative fine or 40 consecutive days without an administrative fine. For any subsequent violations the license to sell tobacco products shall be revoked for the business or business entity at the location where the infraction occurred or any principle thereof for a period of one year from the date of revocation. The New Hampshire Liquor Commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within three years of the date of the violation being considered.

N.H. REV. STAT. ANN. § 126-K:4 (2002).

G Smoker Protection Laws

No employer shall require as a condition of employment that any employee or applicant for employment abstain from using tobacco products outside the course of employment, as long as the employee complies with any workplace policy.

N.H. REV. STAT. ANN. § 275:37-A (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

The Commissioner of the Department of Health and Human Services shall obtain annually from the Commonwealth of Massachusetts Department of Health, or other sources if they become available, a public report containing the list of additives for each brand of tobacco products sold.

N.H. REV. STAT. ANN. § 126-K:15 (1999).

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary judgments in lawsuits in New Hampshire.

L Tobacco Settlement

Use of Tobacco Settlement Dollars

An education trust fund was established in the state treasury for specified purposes. Forty million in Master Settlement Agreement money is transferred annually to the fund.

N.H. REV. STAT. ANN. § 198.39(l)(i) (2006).

M Fire Safety Standards

To help prevent cigarette-caused fires, on and after October 1, 2007, no cigarettes shall be sold or offered for sale in New Hampshire unless: 1) the cigarettes have been tested in accordance with the test method prescribed in New Hampshire Revised Statute section 339-F:3; 2) the cigarettes meet the performance standard specified in New Hampshire Revised Statute section 339-F:4; 3) a written certification has been filed by the manufacturer with the Commissioner of Safety and the New Hampshire Department of Justice in accordance with New Hampshire Revised Statute section 339-F:6; and 4) the cigarettes are marked in accordance with New Hampshire Revised Statute section 339-F:8. Any wholesaler, agent, or other person or entity who knowingly sells cigarettes at wholesale in violation of the above shall be subject to a civil penalty not to exceed \$10,000 for each sale. Any retailer who knowingly sells cigarettes in violation is subject to a civil penalty not to exceed \$500 if the sale involves 1,000 or less cigarettes and not to exceed \$1,000 if more than 1,000 cigarettes. In addition, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification shall be subject to a civil penalty not to exceed \$10,000 for each such false certification.

N.H. REV. STAT. ANN. §§ 339-F:1 to 339-F:11(2007).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$0

FY2010 Federal Tobacco Control Program
Funding: \$1,041,719

FY2010 Total Tobacco Control Program
Funding: \$1,041,719

Funding Level Recommended by CDC:
\$19,200,000

Percentage of CDC-Recommended Level: 5.4%

State Funding Details:

New Hampshire allocated no state dollars for tobacco prevention and cessation programs in FY2010. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Budget (H.B. 1) enacted 6/30/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

There is hereby established in the office of the state Treasurer the Comprehensive Cancer Plan Fund, to be administered by the Department of Health and Human Services. Money in the fund is dedicated for specific programs, potentially including state tobacco control initiatives. Allocation of funds is decided by the Comprehensive Cancer Plan Oversight Board.

N.H. REV. STAT. ANN. § 126-A:64 (2008).

Tobacco Control Program Related Laws

A tobacco use prevention and cessation program was established in the Department of Health and Human Services, which shall be administered with funds appropriated to the department for such purpose. It shall include, but is not limited to: tobacco use prevention community programs and grants; tobacco use prevention school programs and grants; tobacco use prevention state-wide programs and grants; tobacco use cessation programs; tobacco use prevention and cessation counter marketing; evaluation of tobacco control initiatives; and administration and enforcement.

N.H. REV. STAT. ANN. §§ 126-K:15 to 126-K:18 (2007).





A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all indoor public places and workplaces, including restaurants and bars. "Indoor public place" is defined as a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public (see statute citation for list of specific places covered). This prohibition does not apply to: 1) cigar bars and cigar lounges as defined; 2) tobacco retail establishments that make 51 percent or more of their sales from tobacco products; 3) tobacco businesses as specified; 4) private homes, private residences, and private automobiles; 5) the floors of casinos and casino simulcasting facilities; and 6) up to 20 percent of rooms in hotels/motels.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Government Buildings

Smoking is prohibited in "indoor public places," the definition of which includes an office or building owned, leased or rented by the state or by a county or municipal government.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Private Workplaces

Smoking is prohibited in "workplaces," which are defined as structurally enclosed locations or portions thereof at which a person performs any type of service or labor. Smoking is also prohibited in "indoor public places," the definition of which includes all private workplaces that are open to the public. Tobacco businesses when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco are exempt.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Schools

Smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of

whether the area is an indoor public place or is outdoors.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Child Care Facilities

Smoking is prohibited in "indoor public places," the definition of which includes licensed child care centers. Smoking is also prohibited in "workplaces," that are defined as structurally enclosed locations or portions thereof at which a person performs any type of service or labor.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

A resource (a.k.a. foster) family parent shall maintain a smokefree environment in all indoor areas of the home, and in all vehicles used to transport a child in placement. Smoking may be permitted outdoors when no child in placement is present. The resource family parent shall also prohibit smoking and the use of smokeless tobacco by children in placement.

N.J. ADMIN. CODE § 10:122C-7.2(a)3 (2007).

Health Care Facilities

Smoking is prohibited in "indoor public places" the definition of which includes health care facilities and the patient waiting rooms of health care providers. Smoking is also prohibited in "workplaces," that are defined as structurally enclosed locations or portions thereof at which a person performs any type of service or labor. Smoking may be prohibited on the grounds of a state psychiatric hospital, if the hospital offers a smoking cessation program for employees, patients and residents. The cessation program must be in place for one year before the policy prohibiting smoking on the grounds takes effect, and the cessation program must continue to be provided unless the policy prohibiting smoking on the grounds is rescinded.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Restaurants

Smoking is prohibited in "indoor public places," the definition of which includes restaurants or other establishments where the principal business is the sale of food for consumption on the prem-

ises, including the bar area of the establishment.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Bars

Smoking is prohibited in “indoor public places,” the definition of which includes bars. Cigar bars and cigar lounges are exempt if in the calendar year ending December 31, 2004, the cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. The registration shall remain in effect for one year and shall be renewable only if in the preceding calendar year, the cigar bar or lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and the cigar bar or cigar lounge has not expanded its size or changed its location since December 31, 2004.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

Penalties/Enforcement

The person having control of an indoor public place or workplace shall place in every public entrance a sign, which shall be located so as to be clearly visible to the public indicating that smoking is prohibited or permitted in establishments allowed to do so. The person having control of an indoor public place or workplace shall order any person smoking in violation of this law to comply. A person, after being so ordered, who continues to smoke is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. The Department of Health and Senior Services or the local board of health or the board, body or officers exercising the functions of the local board of health, upon written complaint or having reason to suspect that an indoor public place or workplace may be in violation, shall, by written notification, advise the person having control of the place accordingly and order appropriate action to be taken. A person receiving that notice that fails or refuses to comply is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.

N.J. STAT. ANN. §§ 26:3D-55 to 26:3D-64 (2008).

State Preemption of Local Laws

The provisions of this act shall supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under this act.

N.J. STAT. ANN. § 26:3D-63 (2006).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.70

Date last changed: July 1, 2009 – from \$2.575 to \$2.70

Year first enacted: 1948

N.J. STAT. ANN. § 54:40A-8 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$763,411,000

Use of Cigarette Tax Revenue

The first \$1 million in cigarette tax revenue is deposited annually in the Cancer Research Fund, to be appropriated toward funding of the New Jersey State Commission on Cancer Research or to projects authorized and approved by the commission. After the above deposit, beginning July 1, 2009 and each fiscal year thereafter, the next \$150 million of cigarette tax revenue collected is dedicated to the Health Care Subsidy Fund. After that, the remaining revenue is deposited to the Dedicated Cigarette Tax Revenue Fund and the Health Care Subsidy Fund as specified in section 34:1B-21.20 New Jersey Statutes.

N.J. STAT. ANN. §§ 26:2H-18.58g (2009), 54:40A-37.1 (1990) & 34:1B-21.20 (2009).

In 2004, the New Jersey Economic Development Authority (NJEDA) was authorized to issue “bonds” primarily for the purpose of providing revenue for the state in any fiscal year starting with FY2005. NJEDA then will establish and maintain

a Cigarette Tax Securitization Proceeds Fund where proceeds from these sales minus required costs will be deposited. These bonds are payable solely by revenue from the cigarette tax starting in FY2007. The required revenue from the cigarette tax will be set aside in a Dedicated Cigarette Tax Revenue Fund in the Department of Treasury.

N.J. STAT. ANN. §§ 34:1B-21.16 to 34:1B-21.22 (2009).

Taxes on Other Tobacco Products

Moist snuff: 75 cents/oz.;

All other tobacco products: 30% of the wholesale price

N.J. STAT. ANN. §§ 54:40B-3 & 54:40B-3.1 (2006).

Use of Revenue from Taxes on Other Tobacco Products

Beginning July 1, 2006 and each fiscal year thereafter, the first \$5 million of other tobacco products tax revenue collected in a fiscal year is dedicated to the Health Care Subsidy Fund.

N.J. STAT. ANN. § 26:2H-18.58g (2009).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

The Commissioner of Health and Senior Services is authorized to enforce the prohibition on the sale and commercial distribution of tobacco products to persons less than 19 years of age. The commissioner may delegate the enforcement authority to local health agencies, subject to the availability of sufficient funding. Grants from the Special Projects and Development Fund shall be made on an annual basis to local health agencies for local enforcement efforts in an amount based on the number of cigarette retail dealer and vending machine licenses issued within their jurisdiction in order to ensure statewide coverage and statewide consistency. Each grant recipient shall report quarterly to the commissioner on the number of compliance check inspections it has completed and the results of those compliance checks. The commissioner reports to the legislature on a quarterly basis on enforcement efforts.

N.J. STAT. ANN. §§ 26:2F-7 (1995) & 26:3A2-20.1(2000).

Penalties for Sales to Minors

Any person who directly or indirectly, acting as an agent or otherwise, sells, gives or furnishes any cigarettes made of tobacco, or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, to a minor less than 19 years of age, including from tobacco product vending machines, is liable for a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1,000 for each subsequent violation. In addition, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation in the Department of Treasury may suspend or, after a second or subsequent violation, revoke the license of a retail dealer. The licensee shall be subject to administrative charges based on a schedule issued by the director of the division, which may provide for a fine in lieu of the suspension. The establishment of all of the following shall constitute a defense to any prosecution: 1) that the purchaser of the tobacco product or person receiving a promotional sample falsely represented that they were of legal age by producing photo identification; 2) that the appearance of the purchaser or recipient of the tobacco product was such that an ordinary prudent person would believe them to be of legal age; and 3) that the sale or distribution was made in good faith, relying upon the identification, the minor's appearance, and in the reasonable belief that the purchaser or recipient was actually of legal age to make the purchase or receive the sample.

N.J. STAT. ANN. § 2A:170-51.4 (2003).

A person who sells or gives to a person under 19 years of age any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, shall be punished by a fine as provided for a petty disorderly persons offense. Subsequent offenses are subject to twice the amount of the fine provided for a petty disorderly persons' offense. The same defense to prosecution is available for an offense, see paragraph above.

N.J. STAT. ANN. § 2C: 33-13.1 (2000).

Photo ID

No provisions

Sign Posting

A person to whom a license is issued shall, as a condition of the license, conspicuously post a legible sign at the point of display and at the point of sale stating "A PERSON WHO SELLS OR OFFERS TO SELL A TOBACCO PRODUCT TO A PERSON UNDER 19 YEARS OF AGE SHALL PAY A PENALTY OF UP TO \$1,000 AND MAY BE SUBJECT TO A LICENSE SUSPENSION OR REVOCATION. PROOF OF AGE MAY BE REQUIRED FOR PURCHASE."

N.J. STAT. ANN. § 54:40A-4.1 (1995).

Bidis

The laws prohibiting the sale, giving or furnishing of tobacco products to minors includes bidi cigarettes as well. Violation is subject to the same penalties as selling or furnishing tobacco products to minors.

N.J. STAT. ANN. §§ 2A:170-51.4 (2003) & 2C:33-13.1 (2000).

Penalties to Minors

No provisions

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

A person may only engage in a non-face-to-face sale of cigarettes to a person in this state if: 1) the seller has complied with all requirements of the federal Jenkins Act; 2) the seller has verified payment of, paid, or collected all applicable state taxes; and 3) the seller has, before mailing or shipping the cigarettes, obtained from the purchaser reliable confirmation that the purchaser is at least 19 years old and a statement by the purchaser certifying the purchaser's date of birth and address, made a good faith effort to verify the information in the certification against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser; 4) received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check, and verified that a credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped matches the credit or debit card company's address for

the cardholder. In addition to any other remedies provided by law, the Director of the Division of Taxation in the Department of the Treasury shall assess a penalty of not less than \$1,000 and not more than \$2,000 for the first violation, a penalty of not less than \$2,500 and not more than \$3,500 for the second violation within a five-year period, penalty of not less than \$4,000 and not more than \$5,000 for the third violation within a five-year period, a penalty of not less than \$5,500 and not more than \$6,500 for a fourth violation within a five-year period, and a penalty of \$10,000 for a fifth or subsequent violation within a five-year period.

N.J. STAT. ANN. §§ 54:40A-46 to 54:40A-53 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Flavored Cigarettes/Tobacco Products

No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person a cigarette, or any component part thereof, which contains a natural or artificial constituent or additive that causes the cigarette or any smoke emanating from that product to have a characterizing flavor other than tobacco, clove or menthol. "Characterizing flavor other than tobacco, clove or menthol" means that: the cigarette, or any smoke emanating from that product, imparts a distinguishable flavor, taste or aroma other than tobacco, clove or menthol prior to or during consumption, including, but not limited to, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice flavoring; or the cigarette or any component part thereof is advertised or marketed as having or producing any such flavor, taste or aroma. Violation is subject to a civil penalty of not less than \$250 for a first violation, not less than \$500 for a second violation and \$1,000 for subsequent violations. A retailer's license to sell tobacco products may also be suspended after the first violation or revoked after the second or subsequent violations.

N.J. STAT. ANN. § 2A:170-51.5 (2008).

Note: Recent federal legislation enacted giving the U.S. Food and Drug Administration the authority to regulate tobacco products preempts the ability of states to regulate flavored cigarettes. So, the law above is null and void. However, a federal regulation prohibits the sale of almost all flavored cigarettes anyway.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

Any person who directly or indirectly, acting as an agent or otherwise, distributes any tobacco product for commercial purposes at no cost or at minimal cost or with coupons or rebate offers to a minor under the age of 19 years is liable for a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1,000 for each subsequent violation. A defense to such action may be established if the conditions listed under the "Penalties for Sales to Minors" section are met.

N.J. STAT. ANN. § 2A:170-51.4 (2003).

Minimum Tobacco Product Sales Amounts

A person shall not sell, offer for sale, give away or deliver single cigarettes, or cigarettes in packs of less than 20 cigarettes from a vending machine or in a retail establishment. A person owning a vending machine that is in violation of this section shall be fined not less than \$100 but no more than \$500 for each day the violation continues. A person who violates this law in a retail establishment shall be fined \$250 for a first offense and \$500 for the second and subsequent offenses.

N.J. STAT. ANN. § 54:40A-4.2 (2004).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No provisions

Penalties

No provisions

Sign Posting

A legible sign shall be posted conspicuously on any licensed cigarette vending machine stating "A PERSON WHO SELLS OR OFFERS TO SELL A TOBACCO PRODUCT TO A PERSON UNDER 19 YEARS OF AGE SHALL PAY A PENALTY OF UP TO \$1,000 AND MAY BE SUBJECT TO A LICENSE SUSPENSION OR REVOCATION. PROOF OF AGE MAY BE REQUIRED FOR PURCHASE."

N.J. STAT. ANN. § 54:40A-4.1 (1995).

F Licensing Requirements

Requirements

Wholesalers, distributors, manufacturers, manufacturer's representatives and retailers must obtain the appropriate license from the Commissioner of Taxation. Each vending machine must also be licensed. Wholesalers, distributors and retailers must obtain a license for each place of business. Licenses expire on March 31st of each year and must be renewed annually.

N.J. STAT. ANN. §§ 54:40A-3 (1952) & 54-40A-4 (1997).

Fees

Retail dealer or vending machine license: \$50 annually;

Wholesale dealer license: \$250 annually;

Distributor license: \$350 annually;

Manufacturers license: \$10 and \$5 annually for each manufacturer's representative license.

N.J. STAT. ANN. § 54:40A-4 (1997).

License Suspension for Sales to Minors

Upon the recommendation of a municipality, following a hearing by a municipality, the Division of Taxation may suspend, or, after a second or subsequent violation, revoke the license of a retail dealer that sells or distributes tobacco products to minors. The licensee shall be subject to administrative charges based on a schedule issued by the Director of the Division, which may provide for a fine in lieu of the suspension.

N.J. STAT. ANN. § 2A:170-51.4 (2003).

G Smoker Protection Laws

No employer shall refuse to hire or employ any person or shall discharge from employment or take any adverse action against any employee with respect to compensation, terms, conditions or other privileges of employment because that person does or does not smoke or use other tobacco products, unless the employer has a rational basis for doing so which is reasonably related to employment, including the responsibilities of the employee or prospective employee. An aggrieved person may institute a civil action within one year from the date of the alleged violation. The Commissioner of Labor may collect a civil penalty imposed against the employer of an amount up to \$2,000 for the first violation and \$5,000 for each subsequent violation.

N.J. STAT. ANN. §§ 34:6B-1 et seq. (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability**Industry Protection**

The appeal bond required to appeal a lawsuit judgment for a signatory, a successor of a signatory, or any affiliate of a signatory to the Master Settlement Agreement is limited to \$50 million regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter orders that: are necessary to protect the appellee; and require the appellant to post a bond in an amount up to the total amount of the judgment.

N.J. STAT. ANN. § 52:4D-13 (2003).

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

Note: The rights to virtually all of New Jersey's Master Settlement Agreement payments have been sold as bonds through the Tobacco Settlement

Financing Corporation to obtain a much smaller lump sum payment up front. See Securitization section below for additional details.

Securitization

The Tobacco Settlement Financing Corporation was established in, but not of, the state Department of Treasury. The state acting through the department may sell to the corporation, and the corporation may purchase, for cash or other consideration and in one or more installments, all or a portion of the state's Master Settlement Agreement payments pursuant to the terms of one or more sale agreements. The net proceeds, any earnings thereon and any residual interests shall be applied, transferred, or paid to, and upon the order of the state, shall be used for any bona fide governmental purposes, including without limitation for capital expenditures, debt service on outstanding bonds, working capital expenditures or operating deficit needs of the state, endowments, or grants or aid to political subdivisions, including without limitation school districts, of the state.

N.J. STAT. ANN. §§ 52:18B-1 to 52:18B-14 (2002).

M Fire Safety Standards

To help prevent cigarette-caused fires, except as provided in subsection g of section 54:40A-57 New Jersey Statutes, no cigarettes may be sold or offered for sale in New Jersey or offered for sale or sold to persons located in New Jersey unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 54:40A-57 New Jersey Statutes; 2) a written certification has been filed by the manufacturer with the Director of the Division of Fire Safety in the Department of Consumer Affairs in accordance with section 54:40A-58 New Jersey statutes; and 3) the cigarettes have been marked in accordance with section 54:40A-59 New Jersey Statutes. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale in violation of the above shall be subject to a civil penalty not to exceed \$10,000 for each sale for a first offense and not to exceed \$25,000 for subsequent offenses. In no case shall the penalty against any such person or entity exceed \$100,000 during a 30-day period. Any retailer who knowingly sells cigarettes in violation is subject to a civil penalty not to exceed \$500 for a first offense and not to exceed \$2,000

for subsequent offenses if the sale involves less than 1,000 cigarettes and not to exceed \$1,000 for a first offense and not to exceed \$5,000 for subsequent offenses if the sale involves 1,000 cigarettes or more. In addition, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification shall be subject to a civil penalty of at least \$75,000 for a first offense and not to exceed \$250,000 for subsequent offenses for each such false certification.

N.J. STAT. ANN. §§ 54:40A-54 to 54:40A-66 (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$7,560,000

FY2010 Federal Tobacco Control Program
Funding: \$1,274,834

FY2010 Total Tobacco Control Program
Funding: \$8,834,834

Funding Level Recommended by CDC:
\$119,800,000

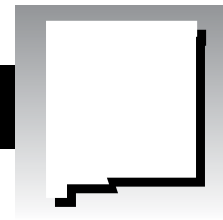
Percentage of CDC-Recommended Level: 7.4%

State Funding Details:

New Jersey appropriated \$7,560,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from state cigarette tax revenue and the state general fund. In FY2009, \$9,100,000 was appropriated.

FY2010 Annual Budget (A.B. 4100) enacted 6/29/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted. "Indoor public place" is defined as the enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time. Exceptions include: 1) a private residence, except during the hours of operation while it is being used to provide child care, adult care or health care or any combination of those activities; 2) a retail tobacco store as defined; 3) a cigar bar as defined; 4) the facilities of a tobacco manufacturing company, provided that smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited; 5) a state-licensed gaming facility, casino or bingo parlor; 6) an indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace as specified; 7) designated outdoor smoking areas; 8) private clubs as defined; 9) a limousine under private hire; 10) up to 25 percent of hotel/motel rooms; 11) enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions, provided that none of these areas are open to the general public while the private functions are occurring and that smoke does not infiltrate other indoor work or public places where smoking is prohibited; 12) a site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans; 13) a business of a sole proprietor or a business with fewer than two employees that is not commonly accessible to the public under certain conditions; and 14) a theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production. Smoking is also prohibited near entrances, windows and ventilation systems of

public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Government Buildings

It is unlawful for a person to smoke in any indoor workplace, which includes the state or a political subdivision of the state that employs the services of one or more individuals. No part of the state capitol or capitol north shall be designated as a smoking-permitted area. Employers shall adopt, implement, post and maintain a written smoking policy that conforms to the above requirements. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Private Workplaces

It is unlawful for a person to smoke in any indoor workplace. "Indoor workplace" is defined as any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time. A business of a sole proprietor or a business with fewer than two employees that is not commonly accessible to the public is exempt; provided that the business is not a restaurant or bar, the employer or manager of such business shall provide a smokefree work environment for each employee requesting it; and cigarette smoke does not infiltrate other smoke-free work environments. Also exempt is an indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smok-

ing is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Schools

The State Board of Education adopted a regulation that prohibits the use of tobacco products in school buildings, on school property and for students at school functions away from school property. Each school district shall develop provisions for enforcement of this policy and communicating the policy to all affected parties.

N.M. ADMIN. CODE 6.12.4 et seq. (1994).

To the extent not covered above, it is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover public and private schools. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Child Care Facilities

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover child care facilities. Smoking is specifically prohibited in private residences during the hours when it is being used commercially to provide child care or adult care. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Health Care Facilities

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover health care facilities. Smoking is specifically prohibited in private residences during the hours when it is being used commercially to provide health care. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Restaurants

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover restaurants. “Restaurant” means a coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other

eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Bars

It is unlawful for a person to smoke in any indoor workplace or indoor public place, the definitions of which cover bars. “Bar” is defined as an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets. Cigars bars are exempt if they generate ten percent or more of their total annual gross revenue or at least \$10,000 in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least 10 percent of its total annual sales from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending machines, shall not be defined as a cigar bar and shall not thereafter be known as such regardless of sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the state’s satisfaction compliance with this definition. Smoking is also prohibited near entrances, windows and ventilation systems of public places where smoking is prohibited.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

Penalties/Enforcement

For each indoor workplace or indoor public place where smoking is prohibited or permitted, the appropriate sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. The local fire, police or sheriff’s department with appropriate jurisdiction over the location where a violation occurs shall enforce that act by issuance of a citation, and may inspect an establishment for compliance. A person may register a complaint regarding an alleged violation to initiate enforcement with the state Department of Health or the local fire, police or sheriff’s department. Violation by a person 18 years of age and older, is subject

a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for a second violation in a 12-month period, and a fine not to exceed \$500 for a third or subsequent violation within a 12-month period of the previous violation. The owner, manager or operator of premises subject to regulation shall not be subject to a penalty if a person on the premises is in violation as long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the person that the person is in violation.

N.M. STAT. ANN. §§ 24-16-1 et seq. (2007).

State Preemption of Local Laws

Nothing in the above act shall be construed to preempt or in any manner preclude specific provisions of a county or municipal smoking ordinance; provided that the smokefree provisions of such a county or municipal ordinance are inclusive of all minimum standards and provisions for smokefree areas within the above act.

N.M. STAT. ANN. §§ 24-16-12 (2007).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 91 cents

Date last changed: July 1, 2003 — from 21 cents to 91 cents

Year first enacted: 1943

N.M. STAT. ANN. § 7-12-3 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$60,691,000

Use of Cigarette Tax Revenue

A portion of cigarette tax revenue is distributed as follows: 1.35 percent to the County and Municipality Recreational Fund; 2.69 percent to the County and Municipal Cigarette Tax Fund; 1.35 percent to the Cancer Research and Treatment Center at the University of New Mexico Health Sciences Center; 2.02 percent to the New Mexico Finance Authority; 14.37 percent to the New Mexico Finance Authority, on behalf of and for the benefit of the University of New Mexico Health Sciences Center; 6.05 percent to the New Mexico Finance Authority for land acquisition and the planning, designing, construc-

tion and equipping of Department of Health facilities or improvements to such facilities; 15.979 percent to the New Mexico Finance Authority for deposit in the credit enhancement account created in the authority; and 1 percent to the New Mexico Finance Authority on behalf of and for the benefit of the Rural County Cancer Treatment Fund.

N.M. STAT. ANN. § 7-1-6.11 (2006).

Taxes on Other Tobacco Products

Cigars that look like, are packaged and labeled like or are marketed and advertised like cigarettes: 91 cents per 20 cigars

Roll-your-own tobacco: 91 cents per 1.8 ounces of tobacco;

Bidis/Kreteks: 91 cents per 20;

All other tobacco products: 25% of the product value of the tobacco products

N.M. STAT. ANN. §§ 7-12-2 (2009), 7-12-3 (2003) & 7-12A-3 (1993).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Alcohol and Gaming Division of the Regulation and Licensing Department and the appropriate law enforcement authorities in each county and municipality shall conduct random, unannounced inspections of facilities where tobacco products are sold to ensure compliance.

N.M. STAT. ANN. § 30-49-10 (1993).

Penalties for Sales to Minors

No person shall knowingly sell or offer to sell tobacco products to persons under 18. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. §§ 30-49-3(A) & 30-49-12 (1993).

Photo ID

Any person selling goods at retail or wholesale may refuse to sell tobacco products to any person who is unable to produce an identity card as evidence that he is 18 years of age or over. Evidence of the age and identity of the person may be shown by any document that contains a picture

of the person issued by a federal, state, county or municipal government, including a motor vehicle driver's license or an identification card issued to a member of the armed forces. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. §§ 30-49-4, 30-49-5 & 30-49-12 (1993).

Sign Posting

Any entity engaged in the retail sale of tobacco products shall prominently display a warning sign in the place where tobacco products are sold. The sign shall read as follows: "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT IS SUBJECT TO A FINE OF UP TO \$1,000. A PERSON WHO SELLS A TOBACCO PRODUCT TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO \$1,000." Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. §§ 30-49-9 & 30-49-12 (1993).

Penalties to Minors

A minor who procures or attempts to procure tobacco products for their own use or for the use of any other minor shall be punished by a fine not to exceed \$100 or 48 hours of community service. Any minor who presents false evidence of their age or identity to procure tobacco products for such use shall be subject to the same penalty.

N.M. STAT. ANN. §§ 30-49-3(B), 30-49-6 & 30-49-12 (1993).

Placement of Tobacco Products

A person shall not sell tobacco products at a retail location in New Mexico by any means other than a direct, face-to-face exchange between the customer and the seller or the seller's employee; and a person selling goods at a retail location in New Mexico shall not use a self-service display for tobacco products. "Self-service display" means a display to which the public has access without the assistance of the seller or the seller's employee. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. §§ 30-49-7(A) (2003) & 30-49-12 (1993).

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

When a municipality or county adopts an ordinance or a regulation pertaining to sales of tobacco products, the ordinance or regulation shall be consistent with the provisions of the Tobacco Products Act (30-49-1 to 30-49-12 New Mexico Statutes).

N.M. STAT. ANN. § 30-49-11 (1993).

Note: The above provision preventing local communities from passing stronger ordinances restricting youth access to tobacco products applies to all laws summarized in Sections C, D & E of New Mexico's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person, who sells, distributes, promotes or advertises tobacco products shall not provide free samples of tobacco products to a minor. This law shall not apply to an individual who provides free samples to a family member or to an acquaintance on private property not held open to the public. Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. §§ 30-49-8 & 30-49-12 (1993).

Minimum Tobacco Product Sales Amounts

No person shall sell, offer to sell or deliver a tobacco product in a form other than an original factory-sealed package. Specific penalty for a violation is not specified.

N.M. STAT. ANN. §§ 30-49-3(C) (1993).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco products may be sold through vending machines only in locations not open to the public, including factories, businesses and offices; in locations in which the vending machine is equipped with a remote-controlled lock-out device; or in

areas where minors are not permitted unless accompanied by an adult.

N.M. STAT. ANN. § 30-49-7(B) (2003).

Penalties

Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. § 30-49-12 (1993).

Sign Posting

Warning signs shall be prominently displayed where a tobacco product vending machine is located. The sign shall read as follows: "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT IS SUBJECT TO A FINE OF UP TO \$1,000. A PERSON WHO SELLS A TOBACCO PRODUCT TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO \$1,000." Violation is a misdemeanor subject to imprisonment for less than a year and/or not more than a \$1,000 fine.

N.M. STAT. ANN. §§ 30-49-9 & 30-49-12 (1993).

F Licensing Requirements

Requirements

A person shall not engage in the manufacture or distribution of cigarettes in New Mexico without a license issued by the state Department of Taxation and Revenue. A license shall be issued for a term not to exceed one year. Violators are subject to a civil penalty of up to \$1,000 for a first offense, \$1,500 to \$2,500 for a second offense and not less than \$5,000 for a third or subsequent offense.

N.M. STAT. ANN. §§ 7-12-9.1 & 7-12-13.1 (2006).

Fees

Up to \$100 each year for both distributors and manufacturers.

N.M. STAT. ANN. § 7-12-9.1 (2006).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is unlawful for an employer to refuse to hire or discharge any individual, or otherwise disadvantage any individual, with respect to compensation,

terms, conditions or privileges of employment because the individual is a smoker or non-smoker, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours. It is also unlawful for an employer to require as a condition of employment that any employee or applicant for employment abstain from using tobacco products during non-working hours. This does not apply to any activity that materially threatens an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets, proprietary information or other proprietary interests; or relates to a bona fide occupational requirement and is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer. Any employee claiming to be aggrieved by any unlawful action of any employer may bring a civil suit for damages.

N.M. STAT. ANN. §§ 50-11-1 et seq. (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In any civil action involving a signatory, a successor of a signatory or any affiliate of a signatory to the Master Settlement Agreement (MSA), the supersedeas bond required of all appellants collectively in order to stay the execution of a judgment during the entire course of appellate review shall not exceed \$100 million, regardless of the amount of the judgment.

N.M. STAT. ANN. § 39-3-22(C) (2007).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Tobacco Settlement Permanent Fund was

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established in the state treasury where all MSA payments are distributed to. In FY2007 and each fiscal year thereafter, 50 percent of the money in each fiscal year is transferred to the Tobacco Settlement Program Fund until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In addition, in FY2009 and FY2010, the remaining 50 percent will also be transferred to the Tobacco Settlement Program Fund. The Tobacco Settlement Permanent Fund is considered a reserve fund of the state, and the legislature may authorize a transfer to the general fund under certain circumstances.

N.M. STAT. ANN. § 6-4-9 (2009).

The Tobacco Settlement Program Fund is also created in the state treasury and monies in the fund shall consist of distributions made to the fund from the Tobacco Settlement Permanent Fund. Money may be appropriated from the program fund for health and educational purposes, including support of additional public school programs, including extracurricular and after-school programs designed to involve students in athletic, academic, musical, cultural, civic, mentoring and similar types of activities; any health or health care program or service for prevention or treatment of disease or illness; basic and applied research conducted by higher educational institutions or state agencies addressing the impact of smoking or other behavior on health and disease; public health programs and needs; and tobacco use cessation and prevention programs, including statewide public information, education and media campaigns beginning in FY2002.

N.M. STAT. ANN. § 6-4-10 (2000).

M **Fire Safety Standards**

To help prevent cigarette caused fires, except as provided in subsection K of section 57-2B-3 New Mexico Statutes, cigarettes shall not be sold or offered for sale in New Mexico unless: (1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 57-2B-3 New Mexico Statutes; (2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with 57-2B-4 New Mexico Statutes; and

(3) the cigarettes have been marked in accordance with section 57-2B-5 New Mexico Statutes. A manufacturer, wholesale dealer, agent or any other person who knowingly sells or offers to sell cigarettes, other than through retail sales, in violation of the above requirements may be assessed a civil penalty not to exceed \$100 for each pack of cigarettes sold. Penalties shall not exceed \$100,000 in any 30-day period. A retail dealer may be subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

N.M. STAT. ANN. §§ 57-2B-1 to 57-2B-12 (2010).

N **Tobacco Control Program Funding**

FY2010 State Tobacco Control Program
Funding: \$9,515,000

FY2010 Federal Tobacco Control Program
Funding: \$1,141,221

FY2010 Total Tobacco Control Program
Funding: \$10,656,221

Funding Level Recommended by CDC:
\$23,400,000

Percentage of CDC-Recommended Level:
45.5%

State Funding Details:

New Mexico appropriated \$9,515,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual MSA payment. In FY2009, \$9,615,000 was appropriated.

FY2010 Annual Budget (H.B. 2) enacted 4/7/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

Smoking is prohibited in virtually all public places and places of employment, including restaurants and bars, see New York Public Health Law section 1399-o for a detailed list of places covered. Exceptions include: 1) private homes, private residences and private automobiles; 2) hotel and motel rooms; 3) retail tobacco businesses as defined; 4) separate, enclosed rooms of residential health and mental health care facilities; 5) membership organizations as defined that have no compensated work staff; 6) cigar bars as defined under certain conditions; 7) outdoor dining areas under certain conditions; and 8) specified enclosed places where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Government Buildings

Smoking is prohibited in places of employment. The definition of “employer” includes the legislative, executive and judicial branches of state government and any political subdivision of the state.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Private Workplaces

Smoking is prohibited in all places of employment. “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, and shall include, but not be limited to, offices, school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment or other office equipment used in common, and company vehicles.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Schools

Tobacco use, including smoking, shall not be permitted on school grounds. “School grounds” means any building, structure and surrounding outdoor grounds contained within a public or private preschool, nursery school, elementary or secondary school’s legally defined property boundaries as registered in a county clerk’s office, and any vehicles used to transport children or school personnel.

N.Y. [EDUC.] LAW §§ 409(2) & N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Smoking is prohibited in all public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls and other group residential facilities that are owned or operated by such colleges, universities and other educational/vocational institutions. These restrictions do not apply to off-campus housing occupied by a person who is not enrolled as an undergraduate student in such college, university or other educational/vocational institution.

N.Y. [PUB. HEALTH] LAW § 1399-o(13) (2008).

Child Care Facilities

Smoking is prohibited in all facilities that provide child care services, except for private homes when no children are present.

N.Y. [PUB. HEALTH] LAW § 1399-o (2003).

Health Care Facilities

Smoking is prohibited in all health care facilities except in separate enclosed rooms in specified residential health and mental health care facilities.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Restaurants

Smoking is prohibited in all indoor food service establishments. Smoking is permitted in outdoor areas of food service establishments with no roof or ceiling enclosure as long as the smoking area constitutes no more than 25 percent of the total outdoor seating area, is at least three feet away from the non-smoking outdoor area, and is clearly

designated by written signage.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Bars

Smoking is prohibited in bars. A cigar bar that makes 10 percent of its gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including vending machines sales are exempt. The cigar bar must also be registered with the appropriate enforcement officer, which will remain in effect for one year. The registration will only be renewable if in the preceding calendar year the cigar bar continued to make 10 percent of its gross income from the on-site sale of tobacco products and the rental of on-site humidors and has not expanded its size or changed its location from its size or location since December 31, 2002.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003).

Other State Smoking Restrictions and Provisions

Economic Hardship Waiver from Smoking Restrictions:

The designated enforcement officer may grant a waiver from the above law, provided that prior to the granting of any such waiver the applicant for a waiver shall establish that compliance would cause undue financial hardship; or other factors exist which would render compliance unreasonable. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to involuntary exposure to secondhand smoke and to ensure that the waiver is consistent with the general purpose of this article.

N.Y. [PUB. HEALTH] LAW § 1399-u (2003).

Penalties/Enforcement

Signs shall be prominently posted and maintained indicating smoking and nonsmoking areas. Failure to comply with any of the provisions of this article, including persons who smoke in areas where smoking is prohibited, is punishable by a civil penalty up to \$1,000 if imposed by the state and up to \$500 if imposed by a local enforcement officer. Each county's board of health or a designated enforcement officer in counties with no local board of health shall enforce these provisions.

If no such designation is made, the county will be deemed to have designated the state Department of Health and Mental Hygiene as its enforcement officer. In cities of over one million people, the city's board of health shall enforce these provisions within the city.

N.Y. [PUB. HEALTH] LAW §§ 1399-n et seq. (2003)..

State Preemption of Local Laws

Smoking may not be permitted where prohibited by any other law rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in the above law.

N.Y. [PUB. HEALTH] LAW § 1399-r(3) (2003).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.75

Date last changed: June 3, 2008 – from \$1.50 to \$2.75

Year first enacted: 1939

N.Y. [TAX] LAW § 471 (2008).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (April 1, 2007 to March 31, 2008): \$958,466,000

Use of Cigarette Tax Revenue

Cigarette tax revenue is distributed in accordance with section 171-a of New York Tax law, except 70.63 percent is distributed to the tobacco control and insurance initiatives pool, which is spent in accordance with section 2807-v of New York Public Health law.

N.Y. [TAX] LAW § 482 (2008).

Taxes on Other Tobacco Products

Snuff: 96 cents/oz. (and a proportionate rate on fractional parts of an ounce);

All other tobacco products: 46% of the wholesale price

N.Y. [TAX] LAW § 471 & 471-b (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The commissioner of the state Department of Health shall develop, plan and implement a comprehensive program to reduce the prevalence of tobacco use, particularly among persons less than 18 years of age. This program shall include, but not be limited to, support for enforcement of article thirteen-F of this chapter (youth access laws.) An enforcement officer, as defined, may annually, on specific dates fixed by the commissioner, submit an application for such monies as are made available for such purpose. Such application shall include, but not be limited to, plans regarding random spot checks, including the number and types of compliance checks that will be conducted, and other activities to determine compliance.

N.Y. [PUB. HEALTH] LAW § 1399-hh (1997).

A contract between the state Department of Health and municipalities specifies that local enforcement officers perform at least one compliance check annually for all places where tobacco products are sold in that municipality using youth ages 15 to 17. Additional compliance checks are required when a place that sells tobacco products has past violations. Enforcement officers also check for violations of other youth access laws pursuant to Article 13-F of the New York Public Health Law.

New York State Dept. of Health, Youth Tobacco Enforcement and Prevention Annual Application and Agreement (2009).

Penalties for Sales to Minors

The sale of tobacco products, herbal cigarettes, rolling papers or pipes to minors by any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale is prohibited. Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale may perform a transaction scan as a precondition for such purchases. In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the

transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied. It shall be an affirmative defense to prosecution that a person had produced a driver's license or non-driver ID apparently issued by a governmental entity, successfully completed a transaction scan and that the tobacco product or herbal cigarette had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration any written policy adopted and implemented by the seller. Use of a transaction scan shall not excuse any person from using reasonable diligence.

N.Y. [PUB. HEALTH] LAW § 1399-cc (2001).

If an enforcement officer determines, after a hearing, that a violation of the above provision occurred, a civil penalty of \$300, but not to exceed \$1,000, shall be imposed for a first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation. The enforcement officer shall also assign two points to a retailer's record for violation if the individual committing the violation has not completed a state certified tobacco sales training program and one point if the individual has. Points remain on the retailer's record for 36 months. If the state Department of Health determines that a retailer has accumulated three points or more, the department shall direct the Commissioner of Taxation and Finance to suspend such dealer's registration for six months. The three points serving as the basis for a suspension shall be erased upon the completion of the six month penalty. If the enforcement officer determines the retailer has violated the above provisions four or more times in a three year period, they shall direct the Commissioner of Taxation and Finance to revoke the retailer's registration for one year. If a retail dealer was selling tobacco products or herbal cigarettes while their registration was either suspended or permanently revoked, a civil penalty of \$2,500 shall be imposed. The Commissioner of Taxation and Finance shall also permanently revoke the dealer's registration and not permit the dealer to obtain a new registration in the case of selling with a suspended license. A \$50 surcharge shall also be imposed for each violation to be used for enforcement purposes.

N.Y. [PUB. HEALTH] LAW § 1399-ee (2001).

In addition, the enforcement officer shall promptly notify the Director of the Division of the Lottery of any determination that a violation of the article regulating the sale of tobacco products/sales to minors has occurred. The lottery license shall be suspended for a period of six months upon notification to the division by the Commissioner of Health of a lottery sales agent's accumulating three points or more. A license shall be revoked for one year upon notification of a lottery sales agent's fourth violation within a three year period.

N.Y. [TAX] LAW § 1607-h (2000).

Photo ID

The sale of tobacco products or herbal cigarettes other than by a vending machine, shall be made only to an individual who demonstrates, through a driver's license or other photographic identification issued by a government entity or educational institution indicating that the individual is at least 18 years of age. Such identification need not be required of any individual who reasonably appears to be at least 25 years of age, provided that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco products or herbal cigarettes to an individual less than 18 years of age.

N.Y. [PUB. HEALTH] LAW § 1399-cc(3) (2001).

Sign Posting

Any person operating a business wherein tobacco products or herbal cigarettes are sold shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-cc (2001).

Bidis

No person shall knowingly sell or provide bidis to any other person. "Bidis" means a product containing tobacco that is wrapped in temburni leaf or tendra leaf or any other product offered to consumers as "beedies" or "bidis." Any person who violates the provisions of this subdivision shall be subject to a

civil fine of not more than \$500. This does not apply to a tobacco business. This law further prohibits tobacco businesses from selling bidis to minors, and directs posting of a sign in a conspicuous place upon which there shall be imprinted the following statement: "SALE OF BIDIS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." The sign is to be printed on a white card in red letters at least one half inch in height.

N.Y. [PUB. HEALTH] LAW § 1399-LL (2000).

Penalties to Minors

No provisions

Placement of Tobacco Products

No person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product or herbal cigarettes in any manner, unless such products and cigarettes are stored for sale behind a counter in an area accessible only to the personnel of such business, or in a locked container; however, such restriction shall not apply to tobacco businesses and to places to which admission is restricted to persons 18 years of age or older. Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-cc (2001).

Internet Sales of Tobacco Products

It is unlawful for any person to knowingly transport cigarettes to any person in this state, other than (a) a person licensed as a cigarette tax agent or wholesale dealer or registered retail dealer; (b) an export warehouse proprietor or an operator of a customs bonded warehouse; or (c) a person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state, when such person is acting in accordance with their official duties. Any person who violates these provisions shall be guilty of a Class A misdemeanor and for a second or subsequent violation shall be guilty of a Class E felony. In addition to the criminal penalty, the Commissioner of Taxation and Finance may impose a civil fine not to exceed \$5,000 for each violation.

N.Y. [PUB. HEALTH] LAW § 1399-II (2000).

Other Provisions

The sale of “gutka” (a tobacco product containing lime paste, spices, areca, and tobacco) is prohibited except at a “tobacco business.” At a tobacco business it is unlawful to sell “gutka” to a person under 18 years of age. Violation is a civil penalty of not more than \$500.

N.Y. [PUB. HEALTH] LAW § 1399-mm (2003).

Nicotine water, bottled water that is laced with nicotine, was added to the definition of tobacco product, thus prohibiting its sale to minors.

N.Y. [PUB. HEALTH] LAW § 1399-aa (2005).

State Preemption of Local Laws

Local communities are preempted from passing stronger ordinances concerning the sampling of tobacco products pursuant to section 1399-bb of the New York Public Health code.

N.Y. [PUB. HEALTH] LAW § 1399-bb (1992).

Note: Local communities are allowed to pass stronger ordinances restricting youth access to tobacco products summarized in sections C, D & E of New York’s SLATI state page except as specified above.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person engaged in the business of selling or otherwise distributing tobacco products or herbal cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly distribute without charge any tobacco products or herbal cigarettes to any individual; or distribute coupons which are redeemable for tobacco products or herbal cigarettes to any individual, provided that this shall not apply to: a) coupons contained in newspapers, magazines or other types of publications; b) coupons obtained through the purchase of tobacco products or herbal cigarettes or obtained at locations which sell tobacco products or herbal cigarettes provided that such distribution is confined to a designated area; or c) to coupons sent through the mail. Sampling restrictions shall not apply at all to: 1) private social functions when seating arrangements are under the control of the

sponsor of the function; 2) conventions and trade shows, provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18; 3) events sponsored by tobacco or herbal cigarette manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18; 4) bars; 5) tobacco businesses; and 6) factories, provided that the distribution is confined to designated areas generally accessible only to persons over the age of 18. No person shall distribute tobacco products or herbal cigarettes at trade shows, events sponsored by tobacco or herbal cigarette manufacturers or factories unless such person gives five days written notice to an enforcement officer. Before distribution a photographic ID is required for any person who appears to be under the age of 25. Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-bb (1992).

Minimum Tobacco Product Sales Amounts

All cigarettes must be sold or offered for sale in the package or container provided by the manufacturer, which bears all health warnings required by applicable law. No person shall sell or distribute any package or other container of cigarettes containing fewer than 20 cigarettes; any package of roll-your-own tobacco containing less than six-tenths of an ounce of tobacco; or any package or other container of cigarette wrapping papers, wrapping leaves or tubes containing fewer than 20 sheets, leaves, or tubes. Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation.

N.Y. [PUB. HEALTH] LAW § 1399-gg (2004).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines that sell tobacco or herbal cigarettes are restricted to locations such as bars or bar areas of food service establishments with valid, on-premises full liquor licenses, private clubs, tobacco businesses, and workplaces that have an insignificant portion of its regular work-

force comprised of minors and only in such locations that are not accessible to the general public. However, vending machines located in such places of employment must be in plain view and under the direct supervision and control of the person in charge of the location or their designated employee.

N.Y. [PUB. HEALTH] LAW § 1399-dd (1992).

Penalties

Violation is subject to a civil penalty of \$300, but not to exceed \$1,000 for the first violation; and a minimum of \$500, but not to exceed \$1,500 for each subsequent violation. In addition, if it is determined that a vending machine operator has violated this article three times within a two-year period, or four times cumulatively, the Commissioner of Taxation and Finance shall suspend the vendor's registration for one year.

N.Y. [PUB. HEALTH] LAW § 1399-ee (1992).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesale dealers are required to obtain a license from the Department of Taxation and Finance. The license must be displayed in the wholesaler's place of business. Licenses are valid indefinitely unless suspended or revoked.

N.Y. [TAX] LAW § 480 (2000).

Retail dealers are required to obtain and display a certificate of registration from the Department of Taxation and Finance. Retail dealers are defined as all other people dealing in cigarettes and tobacco products besides wholesalers. All vending machines must also be registered with the department and have a registration certificate affixed to it. Registrations for retail dealers and vending machines are valid for a calendar year unless suspended or revoked and must be renewed each year. Violation of any of these requirements by retail dealers is subject to a civil fine of \$5,000 to \$25,000 for a first violation and \$10,000 to \$35,000 for the second or subsequent violations within three years of the first violation. Violation by owners or operators of vending machines is

subject to a civil fine of \$750 to \$2,000 for a first violation and \$2,000 to \$6,000 for the second or subsequent violations within three years of the first violation.

N.Y. [TAX] LAW § 480-a (2009).

Fees

Wholesale license: \$1,500;

Retail Dealer Certificate of Registration: \$1,000 to \$5,000 annually depending on the gross sales of the retail establishment;

Vending Machine Certificate of Registration: \$250 to \$1,250 annually depending on the gross sales of the vending machine.

N.Y. [TAX] LAW §§ 480 (2000) & 480-a (2009).

License Suspension for Sales to Minors

Retailers are subject to a suspension or revocation of their certificate of registration based on a point system for violation. Retailers receive two points for violation if the individual seller has not completed a state certified tobacco sales training program, and one point if the seller has. Three points or more is subject to a six-month registration certificate suspension. Four violations in a three year period is subject to a license revocation for one year. A vending machine operator that violates the sales to minors law three times within a two year period, or four or more times cumulatively shall have the registration certificate for the vending machine(s) suspended for a year.

N.Y. [PUB. HEALTH] LAW, § 1399-ee (1992).

G Smoker Protection Laws

It shall be unlawful for any employer or employment agency to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual in compensation, promotion, or terms, conditions or privileges of employment because of an individual's legal use of consumable products prior to the beginning or after the conclusion of the employee's work hours and off of the employer's premises and without use of the employer's equipment or property. This does not apply to activities that create a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest;

state employees when the activity could conflict with performance of their official duties under specified circumstances; and when the activity is in violation of a collective bargaining agreement. This shall not prohibit an organization or employer from offering, imposing or having in effect a health, disability or life insurance policy that makes distinctions between employees for the type of coverage or the price of coverage based upon the employees' recreational activities or use of consumable products, provided that differential premium rates charged employees reflect a differential cost to the employer and that employers provide employees with a statement delineating the differential rates used by the carriers providing insurance for the employer, and provided further that such distinctions in type or price of coverage shall not be utilized to expand, limit or curtail the rights or liabilities of any party with regard to a civil cause of action. The attorney general may apply for an order enjoining or restraining the commission or continuance of the alleged unlawful acts. The court may impose a civil penalty in the amount of \$300 for the first violation and \$500 for subsequent violations. An aggrieved individual may commence an action for equitable relief and damages as well.

N.Y. [LABOR] LAW § 201-d (1992).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The rights to virtually all of New York's Master Settlement Agreement payments have been sold as bonds to obtain a much smaller lump sum payment up front.

M Fire Safety Standards

By rule of the Office of Fire Prevention and Control, after June 28, 2004, cigarettes sold in New York state are required to self-extinguish if left unattended to help prevent cigarette caused fires. Cigarettes are required to be tested in accordance with the American Society of Testing and Materials standard E2187-02b "Standard Test Method for Measuring the Ignition Strength of Cigarettes," subject to the modifications stated in Appendix A. When tested no more than 25 percent of the cigarettes shall exhibit full length burns. A certification is required from each manufacturer stating that each cigarette has been tested and has met the performance standard.

NYCRR Title 19, Part 429 (2004).

By 2002, the Office of Fire Prevention and Safety shall promulgate fire safety standards for cigarettes sold or offered for sale in this state. The standards shall insure that such cigarettes will stop burning within a time period specified by the standards if the cigarettes are not smoked during that period or will meet performance standards which limit the risk that such cigarettes will ignite upholstered furniture, mattresses or household furnishings. On or after the date such standards are promulgated by the Office of Fire Prevention and Control, it will be unlawful to sell in the state cigarettes that do not meet the required standards.

N.Y. [EXEC.] LAW § 156-c (2000).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$55,175,000

FY2010 Federal Tobacco Control Program
Funding: \$1,873,958

FY2010 Total Tobacco Control Program
Funding: \$57,048,958

Funding Level Recommended by CDC:
\$254,300,000

Percentage of CDC-Recommended Level:
22.4%

State Funding Details:

New York allocated \$55,175,000 for tobacco prevention and cessation programs in FY2010 (April 1, 2009 to March 31, 2010) from the state general

fund. In FY2009, \$80,400,000 was allocated.

FY2010 Department of Health and Mental Hygiene Annual Budget (A.B. 154) enacted and effective 4/7/09.

Note: New York originally appropriated a little over \$68 million for tobacco prevention and cessation programs in FY2010, but this figure was reduced to \$55.2 million because of budget cuts.





A State Smoking Restrictions

Public Places

Smoking is prohibited in several specific types of public places in North Carolina, including public schools, state government buildings and vehicles, long-term care facilities and all restaurants and bars. Smoking is specifically still allowed in: 1) up to 20 percent of rooms in lodging establishments; 2) cigar bars as specified and defined; and 3) private clubs as defined. The use of tobacco products is also prohibited completely in and on the grounds of public schools and in state correctional facilities.

N.C. GEN. STAT. §§ 130A-491 to 130A-498 (2010), 115C-407 (2007), 131D-4.4 (2007) & 131E-114.3 (2007).

Government Buildings

Smoking is prohibited inside state government buildings and state vehicles as provided in this section. State government building is defined as a building owned, leased as lessor, or the area leased as lessee and occupied by state government. This includes all agencies of the executive, legislative and judicial branches of government. As to smoking rooms in residence halls that were permitted by North Carolina General Statutes section 143-597(a)(6), this law becomes effective beginning with the 2008-2009 academic year. Smoking is permitted inside state government buildings that are used for medical or scientific research to the extent that smoking is an integral part of the research, and is confined to the area where the research is being conducted. The individual in charge of the state government building or assigning the vehicle or the individual's designee shall post signs in conspicuous areas of the building or vehicles. This does not apply to vehicles used in undercover operations.

N.C. GEN. STAT. §§ 130A-491 to 130A-495 (2009).

No person may use tobacco products inside of a state correctional facility, except for authorized religious purposes. Inmates in violation of this section are subject to disciplinary measures to be determined by the department, including the

potential loss of sentence credits earned prior to that violation. Employees in violation are subject to disciplinary action by the department. Visitors in violation are subject to removal from the facility and loss of visitation privileges.

N.C. GEN. STAT. § 148-23.1 (2006).

Private Workplaces

No restrictions

Schools

No later than August 1, 2008, local boards of education shall adopt, implement and enforce a written policy prohibiting the use of all tobacco products by any person, in school buildings, in school facilities, on school campuses, and on any property owned by the local school administrative unit. Tobacco use shall also be prohibited by persons attending a school-sponsored event at a location not listed above when in the presence of students or school personnel or in an area where smoking is otherwise prohibited by law. The policy may permit tobacco products to be included in instructional or research activities in public school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product. Nothing in this section or any other section prohibits a local board of education from adopting and enforcing a more restrictive policy on the use of tobacco in school buildings, in school facilities, on school campuses, or at school-related or school-sponsored events, and in or on other school property.

N.C. GEN. STAT. § 115C-407 (2007).

Smoking is prohibited in state government buildings, including any facilities of state-supported colleges/universities. This specifically includes residence halls starting in the 2008-2009 academic year.

N.C. GEN. STAT. §§ 130A-491 to 130A-495 (2009).

Local community college boards of trustees may adopt, implement, and enforce a written policy

prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community college. The policy may also prohibit the use of all tobacco products by persons attending a community college-sponsored event.

N.C. GEN. STAT. § 115D-20.1 (2008).

Child Care Facilities

Smoking is not permitted in child care programs, including home-based child care programs, in space used by children when children are present. All smoking materials shall be kept in locked storage or out of the reach of children.

10A NC ADMIN CODE § 09.0604(g) (2007).

Health Care Facilities

Smoking is prohibited in long-term care facilities, which include adult care homes, nursing homes, skilled nursing facilities, facilities licensed under Chapter 122C of the North Carolina General Statutes, and other licensed facilities that provide long-term care services. The person who owns, manages, operates, or otherwise controls a long-term care facility shall conspicuously post the appropriate signs indicating smoking is prohibited, ask anyone smoking inside to stop and provide written notice to people upon admittance that smoking is prohibited. The Department may impose an administrative penalty not to exceed \$200 for violation.

N.C. GEN. STAT. §§ 131D-4.4 & 131E-114.3 (2007).

Restaurants

Smoking is prohibited in all enclosed areas of restaurants.

N.C. GEN. STAT. § 130A-496 (2010).

Bars

Smoking is prohibited in all enclosed areas of bars. Cigar bars as defined are exempt if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited. Cigar bars that open after July 1, 2009 must be in a freestanding structure occupied solely by the cigar bar.

N.C. GEN. STAT. § 130A-496 (2010).

Penalties/Enforcement

A person, who manages, operates, or controls a restaurant or bar in which smoking is prohibited shall: 1) conspicuously post signs clearly stating that smoking is prohibited; 2) remove all indoor ashtrays and other smoking receptacles; and 3) direct a person who is smoking to extinguish the lighted tobacco product. Continuing to smoke in a nonsmoking area is an infraction subject to a fine of not more than \$50. Local health directors may impose administrative penalties on persons who manage, operate, or control a public place or place of employment and fail to comply with state or local laws on smoking as follows: for the first and second violations written notices of violation and for third and subsequent violations an administrative penalty of not more than \$200. Each day on which a violation occurs is a separate offense.

N.C. GEN. STAT. §§ 130A-22(h1) & 130A-497 (2010).

State Preemption of Local Laws

Except as specified, a local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than state law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places. However, the definitions in North Carolina General Statutes section 130A-492 apply to local laws. Local laws or policies can not restrict or prohibit smoking in: 1) a private residence; 2) a private vehicle; 3) a tobacco shop as specified; 4) all of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer; 5) smoking guest rooms in lodging establishments; 6) a cigar bar as specified and defined in state law; 7) a private club as defined in state law; 8) the actors or performers portraying the use of tobacco products on a motion picture, television, theater, or other live production set. Penalties and enforcement must be the same as state law as well.

N.C. GEN. STAT. § 130A-498 (2010).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 45 cents

Date last changed: September 1, 2009 – from 35 cents to 45 cents

Year first enacted: 1969

N.C. GEN. STAT. § 105-113.5 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$228,848,000

Taxes on Other Tobacco Products

All other tobacco products: 12.8% of the cost price of the products

N.C. GEN. STAT. § 105-113.35(a) (2009).

This tax does not apply to free samples of tobacco products.

N.C. GEN. STAT. § 105-113.35 (2005).

Use of Revenue from Taxes on Other Tobacco Products

Revenue from three percent of the tax on the cost price of tobacco products is deposited in the state general fund, and the revenue from the remaining 9.8 percent of the tax on the cost price of tobacco products is deposited in the University Cancer Research Fund established pursuant to North Carolina General Statute section 116-29.1.

N.C. GEN. STAT. § 105-113.40A (2009).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety is designated as the state agency, in coordination with local police and sheriffs' departments, and the Department of Health and Human Services to implement model education and enforcement of North Carolina General Statute section 14-313. The standard model of education and enforcement shall include: merchant education; age-testing of youth volunteers involved in enforcement; providing public notice of upcoming enforcement operations; conducting vending machine and retail enforcement; issuing warning notices or citations; public recognition for good behavior; and advising communities of the results of enforcement.

N.C. Exec. Order 123 (1997).

If any person shall knowingly send or assist a person less than 18 years old in purchasing, acquiring, or receiving tobacco products or cigarette wrapping papers, the person shall be guilty of a Class Two misdemeanor. However, persons under 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided. The Department of Health and Human Services shall also have the authority, pursuant to a written plan prepared by the secretary, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the state has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by federal law.

N.C. GEN. STAT. § 14-313 (2002).

Penalties for Sales to Minors

If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products on behalf of a person less than 18 years, the person shall have committed a Class Two misdemeanor; provided, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age or the defendant relied on the electronic system established by the Division of Motor Vehicles shall be a defense to any action brought under this subsection.

N.C. GEN. STAT. § 14-313 (2002).

Photo ID

A person engaged in the sale of tobacco products at retail or through a vending machine shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is less than 18 years of age. Failure to demand proof of age as required is

a Class Two misdemeanor if in fact the prospective purchaser is under 18 years of age. "Proof of age" is defined as a driver's license or other photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

N.C. GEN. STAT. § 14-313 (2002).

Sign Posting

Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following: "N.C. LAW STRICTLY PROHIBITS THE PURCHASE OF TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 18. PROOF OF AGE REQUIRED." Failure to post the sign will result in a fine of \$25 for the first violation and \$75 for each succeeding violation.

N.C. GEN. STAT. § 14-313 (2002).

Penalties to Minors

If a person under the age of 18 purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually their own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class Two misdemeanor.

N.C. GEN. STAT. § 14-313 (2002).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

To ensure uniformity, no political subdivisions, boards, or agencies of the state nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules or regulations concerning the sale, distribution, display or promotion of tobacco products or cigarette wrapping papers on or after September 1, 1995. This does not apply to the regulation of vending machines.

N.C. GEN. STAT. § 14-313(e) (1995).

Note: The above laws prohibiting local communities from passing stronger ordinances restricting

youth access to tobacco products applies to almost all laws summarized in sections C & D of North Carolina's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

If any person shall furnish, give, or provide tobacco products or cigarette wrapping papers, including tobacco product samples, at no cost for the purpose of promoting the product, to any person under the age of 18 years, the person shall be guilty of a Class Two misdemeanor.

N.C. GEN. STAT. § 14-313 (2002).

Minimum Tobacco Product Sales Amounts

A person who sells or holds for sale a package of cigarettes that differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by North Carolina General Statute section 75-1.1.

N.C. GEN. STAT. § 14-401.18 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to any establishment which is open only to persons 18 years or older; or any establishment where the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof, can be operated only upon activation by the owner, licensee or employee prior to each purchase, and is not accessible to the public when the establishment is closed.

N.C. GEN. STAT. § 14-313 (2002).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is a Class Two misdemeanor.

N.C. GEN. STAT. § 14-313 (2002).

Sign Posting

No provisions

F Licensing Requirements**Requirements**

No person shall engage in business as a distributor of cigarettes without obtaining a license from the Secretary of Revenue for each place of business. Distributing cigarettes without the appropriate license is a Class One misdemeanor.

N.C. GEN. STAT. § 105-113.11 (1973).

Retail dealers and wholesale dealers of tobacco products other than cigarettes must obtain a license for each place of business.

N.C. GEN. STAT. § 105-113.36 (1992).

Fees

Cigarette distributors and wholesale dealers of other tobacco products: \$25;

Retail dealers of other tobacco products: \$10

N.C. GEN. STAT. § 105-113.12 (1991).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employer during non-working hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of the other employees. It is not unlawful if the restriction relates to a bona fide occupational requirement and is reasonably related to the employment activities; if the restriction relates to the fundamental objectives of the organization; or if the employee fails to comply with the requirements of the employer's substance abuse prevention program. This section shall not prohibit an employer from offering, imposing, or having in

effect a health, disability, or life insurance policy distinguishing between employees for the type or price of coverage based on the use or nonuse of lawful products if differential rates assessed employees reflect actuarially justified differences in the provision of employee benefits; the employer provides written notice to employees setting forth the differential rates imposed by insurance carriers; and the employer contributes an equal amount to the insurance carrier on behalf of each employee of the employer. The employee against whom the violation occurs may bring a civil action within one year from the date of the alleged violation against the employer to obtain lost wages or benefits, an order of reinstatement without loss or position, seniority, or benefits or an order directing the employer to offer employment to the prospective employee.

N.C. GEN. STAT. § 95-28.2 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability**Industry Protection**

If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of \$25 million or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be \$25 million. If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States

other than in the ordinary course of business, then the limitation shall not apply and the appellant shall be required to make an undertaking in the full amount.

N.C. GEN. STAT. § 1-289 (2000).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The "Settlement Reserve Fund" is established as a restricted reserve in the state General Fund. All Master Settlement Agreement payments not allocated to the Golden LEAF Foundation (see below) are initially deposited into this fund, and then transferred as specified to Health Trust and Tobacco Trust accounts created within the Settlement Reserve Fund. Money in the two accounts is then transferred to the Health and Wellness Trust Fund and Tobacco Trust Fund respectively (also see below).

N.C. GEN. STAT. § 143C-9-3 (2006).

The Health and Wellness Trust Fund was established in the office of the state Treasurer and by law receives 25 percent of state MSA payments. Investment earnings credited to the assets of the fund shall become part of the fund, and any balance in the fund remains in the fund at the end of a fiscal year. Money in the fund is first used each year to assist in paying off special indebtedness authorized by the State Capital Facilities Act of 2004. Remaining funds are used to address the health needs of underserved populations, to fund programs and initiatives that include research, education, prevention, and treatment of health problems in the state, and to develop a comprehensive, community-based plan with an emphasis on reducing youth tobacco use.

N.C. GEN. STAT. §§ 147-86.30 to 86.36 (2008).

The Tobacco Trust Fund was established in the office of the state Treasurer and by law receives 25 percent of state MSA payments. Investment earnings credited to the assets of the fund shall become part of the fund, and any balance in the fund remains in the fund at the end of a fiscal year. Money in the fund is first used each year to assist in paying off special indebtedness authorized by the State Capital Facilities Act of 2004. Remaining funds are used to compensate persons in tobacco-related businesses from the economic impact of

the MSA, and specified agricultural programs.

N.C. GEN. STAT. §§ 143-715 to 143-724 (2008).

As part of the lawsuit settlement between the state of North Carolina and certain cigarette companies, 50 percent of the settlement payments received by North Carolina each year were required to be directed to a non-profit foundation for the purposes of providing economic impact assistance to economically-affected or tobacco dependent regions of North Carolina. The non-profit foundation that was eventually created is called the Golden LEAF Foundation.

N.C. Session Law 1999-2 (S.B. 6) enacted and effective 3/17/1999.

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection g of section 58-92-15 North Carolina General Statutes, no cigarettes may be sold or offered for sale in North Carolina or offered for sale or sold to persons located in North Carolina unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 58-92-15 North Carolina General Statutes; 2) a written certification has been filed by the manufacturer with the North Carolina Commissioner of Insurance in accordance with section 58-92-20 North Carolina General Statutes; and 3) the cigarettes have been marked in accordance with section 58-92-25 North Carolina General Statutes. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above requirements shall be subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties shall not exceed \$100,000 in any 30-day period. A retail dealer shall be subject to the same civil penalty for violation, but penalties may not exceed \$25,000 in any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

N.C. GEN. STAT. §§ 58-92-1 to 58-92-55 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program

Funding: \$18,341,837

FY2010 Federal Tobacco Control Program

Funding: \$1,672,280

FY2010 Total Tobacco Control Program

Funding: \$20,014,117

Funding Level Recommended by CDC:

\$106,800,000

Percentage of CDC-Recommended Level:

18.7%

State Funding Details:

North Carolina allocated \$18,341,837 from the Health and Wellness Trust Fund (funded by Master Settlement Agreement dollars) and the state general fund for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010). In FY2009, \$17,100,000 was allocated.

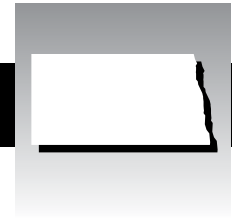
FY2010-FY2011 Biennial Budget (S.B. 202) enacted and effective 8/7/09 (FY2010) and 7/1/10 (FY2011; and Allocation by decision of the Health and Wellness Trust Fund Commission, effective 7/1/09.

Tobacco Control Program Related Laws

The Health and Wellness Trust Fund is to be administered by a commission of 18 (speaker of the house, president pro tem of the senate, and the governor appoint six members each) with the help of an advisory committee (includes secretary of Health and Human Services, State Health Director, dean of UNC School of Public Health, as well as others considered necessary). The Commission will develop criteria for awarding grants, programs, and initiatives to be funded, as well as criteria to measure the outcomes of funded programs, including tobacco prevention and cessation initiatives.

N.C. GEN. STAT. §§ 147-86.30 to 86.36 (2008).

■ ■ ■



A State Smoking Restrictions

Public Places

Smoking is prohibited in almost all public places, which are defined as an enclosed area to which the public has access or in which the public is permitted, including a publicly owned building or office, and enclosed areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public (see statute citation for a detailed list). Exemptions include: 1) private residences except when being used as home-based child care facilities; 2) designated smoking rooms in hotels/motels; 3) retail tobacco stores as defined, provided that smoke does not infiltrate into places where smoking is prohibited; 4) outdoor areas of places of employment, except a sports arena; 5) areas in owner-operated businesses that have no employees and are not generally accessible to the public; 6) bars as defined, including separately enclosed bar areas in restaurants, hotels and bowling centers; 7) places of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the sponsor; and 8) separately enclosed areas in truck-stops accessible only to adults. Smoking as part of a traditional Native American ceremony is also allowed.

N.D. CENT. CODE §§ 23-12-9 to 23-12-11 (2007).

Government Buildings

Smoking is prohibited in public places, the definition of which includes places owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes. The state office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Private Workplaces

Smoking is prohibited in places of employment

which are defined as areas under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs. Outdoor areas of places of employment and areas in owner-operated businesses that have no employees and are not generally accessible to the public are exempt.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Schools

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

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Child Care Facilities

Smoking is prohibited in public places, the definition of which includes all child care facilities subject to licensure by the State Department of Human Services, including those operated in private homes when any child cared for under that license is present.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Smoking is not permitted in an early childhood facility at any time during which a child who receives services from that facility is present and receiving such services.

N.D. CENT. CODE § 50-11.1-02.2 (1993).

Health Care Facilities

Smoking is prohibited in public places, the definition of which includes any office or institution providing health care services, including a hospital, clinic, ambulatory surgery center, outpatient care facility, nursing, basic, or assisted living facility, and laboratory. Smoking is allowed by a patient in or on the grounds of a licensed hospital if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff and by a resident

in or on the grounds of a licensed basic care facility or a licensed nursing facility if approved by the board of the facility.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Restaurants

Smoking is prohibited in public places the definition of which includes restaurants. Separately enclosed bar areas of restaurants are exempt.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Bars

Smoking is allowed in bars, which are defined as places devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages.

N.D. CENT. CODE §§ 23-12-9 (2005) & 23-12-10 (2007).

Penalties/Enforcement

An individual who smokes in an area in which smoking is prohibited is guilty of an infraction. An owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply is guilty of an infraction, subject to a fine not to exceed \$100 for the first violation, not to exceed \$200 for a second violation within one year, and not to exceed \$500 for each additional violation within one year of the preceding violation. State agencies with statutory jurisdiction over a state-owned building or office shall enforce these provisions. These agencies include the Fire Marshal Department, state Department of Health, Department of Human Services, Legislative Council, and Office of Management and Budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may adopt administrative rules to ensure compliance, including referral of violations to an appropriate law enforcement agency for enforcement.

N.D. CENT. CODE §§ 23-12-10.2 & 23-12-11 (2005).

State Preemption of Local Laws

A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions on smoking than those provided

by state law. Nothing in this act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of environmental tobacco smoke.

N.D. CENT. CODE § 23-12-10.2 (2005).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 44 cents

Date last changed: July 1, 1993 — from 29 cents to 44 cents

Year first enacted: 1925

N.D. CENT. CODE §§ 57-36-06 & 57-36-32 (1993).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$20,851,000

Use of Cigarette Tax Revenue

All revenue from the cigarette tax is credited to the state General Fund, except three cents of the tax is distributed to incorporated cities in North Dakota, based on population.

N.D. CENT. CODE §§ 57-36-31 & 57-36-32 (1993).

Taxes on Other Tobacco Products

Cigars and Pipe Tobacco: 28% of the wholesale purchase price;

Chewing Tobacco: 16 cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce;

Snuff: 60 cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

N.D. CENT. CODE § 57-36-25 (2001).

Use of Revenue from Taxes on Other Tobacco Products

All revenue from the taxes on other tobacco products is credited to the state General Fund.

N.D. CENT. CODE § 57-36-25 (2001).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may conduct compliance surveys, after coordination with the appropriate local law enforcement authority. An individual under 18 years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian, and while acting under the supervision of any law enforcement authority.

N.D. CENT. CODE § 12.1-31-03 (2001).

Penalties for Sales to Minors

It is an infraction for any person to sell or furnish tobacco products to a minor or procure tobacco products to or for a minor. "Sell" includes dispensing from a vending machine under the control of the actor.

N.D. CENT. CODE § 12.1-31-03(1) (2001).

Photo ID

No provisions

Sign Posting

No provisions

Bidis

The sale of the tobacco product commonly referred to as "bidis" or "beedies" is prohibited. "Bidis" or "beedies" means a product containing tobacco which is wrapped in temburni leaf or tendu leaf.

N.D. CENT. CODE § 12.1-31-10 (2003).

Penalties to Minors

It is a non-criminal offense for a minor to purchase, possess, smoke or use tobacco in any form. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. This does not prohibit minors from taking part in compliance surveys.

N.D. CENT. CODE § 12.1-31-03(2-3) (2007).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the Internet, unless: 1) before mailing or shipping the product, the person receives from the individual a copy of a valid government-issued identification and a signed statement from the individual providing a certification of certain specified information; 2) the person verifies the date of birth or age of the individual against a commercially available data base or obtains a photocopy of the government-issued identification; 3) sends a notice with specified information to the prospective consumer; 4) in the case of an order by the Internet, receives payment via debit card, credit card or check; 5) and employs a method of shipping that the purchaser be the addressee, have an adult of legal minimum purchase age sign for the package and present a photo ID if they appear to be under 27 years of age. The person must also provide specified information to the state Tax Commissioner. A person that generally violates this chapter is subject to a fine of \$1,000 for the first offense and a fine of \$1,000 to \$5,000 for the second and subsequent offenses. Knowingly violating these provisions is a Class C felony. Knowingly and falsely submitting a certification in another person's name is a non-criminal violation subject to the fines listed above. Failure to pay the tax is subject to a penalty of 50 percent of the tax due but unpaid.

N.D. CENT. CODE § 51-30-01 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and purchase and use of tobacco by minors which includes prohibitions in addition to those in state law. Any ordinance or resolution adopted concerning purchase and use of tobacco by minors must include provisions deeming a violation a noncriminal violation and must provide for a fee of not less than \$25 for a minor 14 years of age or

older who has been charged with an offense.

N.D. CENT. CODE § 12.1-31-03(4) (2007).

Note: Local communities can pass stronger laws restricting youth access to tobacco products than state law in all other areas summarized in sections C, D & E of North Dakota's SLATI state page as well.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is an infraction for any person to furnish or procure tobacco products to or for a minor.

N.D. CENT. CODE § 12.1-31-03 (2001).

Minimum Tobacco Product Sales Amounts

All cigarettes sold or distributed must be in packages containing 20 or more cigarettes each. All packages of roll-your-own smoking tobacco sold or distributed in this state must be in packages containing at least 0.6 ounces of tobacco. Violation is a Class A misdemeanor and the cigarettes in violation will be confiscated and forfeited to the state.

N.D. CENT. CODE §§ 57-36-07 & 57-36-33 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except a vending machine that is located in an area in which minors are not permitted access; or a vending machine that dispenses cigarettes through the operation of a device that requires a salesperson to control the dispensation of such product. Tobacco product vending machines can not contain nontobacco products other than matches.

N.D. CENT. CODE § 12.1-31-03.1 (2007).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is an infraction.

N.D. CENT. CODE § 12.1-31-03.1 (2007).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Dealers (retailers) and distributors must obtain a license for each place of business from the Attorney General to sell tobacco products at wholesale or retail. Licenses are valid for one year from July 1st to June 30th and must be renewed annually. Selling or distributing tobacco products without a license is a Class A misdemeanor.

N.D. CENT. CODE § 57-36-02 & 57-36-33 (1991).

Fees

Dealer license: \$15 annually;

Distributor license: \$25 annually

N.D. CENT. CODE § 57-36-02 (1991).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of participation in lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related interests of the employer. It is also a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

N.D. CENT. CODE §§ 14-02.4-01 et seq. (1993).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

On November 4, 2008, North Dakota voters approved, 54 to 46 percent, a ballot initiative (Measure 3) dedicating additional money from the Master Settlement Agreement (MSA) the state began receiving in 2008 to a comprehensive tobacco control program to be funded at or above the \$9.3 million level recommended by CDC through a Tobacco Prevention and Control Advisory Committee.

North Dakota Ballot Measure 3, approved by voters 11/4/08 and effective 12/08.

There is created in the state treasury a tobacco settlement trust fund where all MSA dollars, except MSA strategic contribution payments received from 2008 to 2017, are deposited. Interest earned from money in the trust fund is deposited in the trust fund. The principal and interest from the fund must be allocated as follows: 1) 10 percent of annual transfers to a community health trust fund administered by the state health department, a minimum of 80 percent of which must be used for tobacco prevention and control programs; 2) 45 percent of annual transfers to the common schools trust fund to become part of the principal of that fund; and 3) 45 percent of annual transfers to the water development trust fund to address the long-term water development needs of the state.

N.D. CENT. CODE § 54-27-25(1) (2008).

There is created in the state treasury the Tobacco Prevention and Control Trust Fund where MSA strategic contribution payments received from 2008 to 2017 are deposited. Interest earned from money in the trust fund is deposited in the trust fund. Moneys in the fund are administered by the executive committee of the Tobacco Prevention

and Control Advisory Committee for the purpose of creating and implementing a comprehensive plan to reduce tobacco use in North Dakota based on CDC Best Practices for Comprehensive Tobacco Control Programs. The comprehensive plan can not duplicate the work of the community health grant program established under North Dakota Century Code section 23.38 et. seq. If in any biennium, the tobacco prevention and control trust fund does not have adequate dollars to fund a comprehensive plan, the treasurer shall transfer money from the water development trust fund to the tobacco prevention and control trust fund in an amount equal to the amount determined necessary by the executive committee.

N.D. CENT. CODE § 54-27-25(2) (2008).

M Fire Safety Standards

North Dakota has enacted legislation requiring cigarettes sold in North Dakota to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on August 1, 2010.

H.B. 1368 enacted 5/1/09 and effective 8/1/2010.

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$8,196,248

FY2010 Federal Tobacco Control Program
Funding: \$1,155,818

FY2010 Total Tobacco Control Program
Funding: \$9,352,066

Funding Level Recommended by CDC:
\$9,300,000

Percentage of CDC-Recommended Level: 101%

State Funding Details:

North Dakota appropriated \$8,196,248 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement (MSA) payment. In FY2009, \$3,134,198 was appropriated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Biennial Department of Health Budget (S.B. 2004) enacted 5/7/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011); and

FY2010-FY2011 Biennial Budget for the Office of Management and Budget (H.B. 1015) enacted 5/11/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

Note: When dollars received by the state from the U.S. Centers for Disease Control and Prevention (CDC) are added in, North Dakota is the only state that funds its tobacco control program at or above the level recommended by CDC.

Tobacco Control Program Related Laws

Established a community health grant program, the purpose of which is to prevent or reduce tobacco usage in the state by strengthening community-based public health programs and by providing assistance to public health units and communities. The program must, to the extent funding is available, follow guidelines concerning tobacco prevention programs recommended by CDC.

N.D. CENT. CODE §§ 23-38-01 et seq. (2001).

To develop and implement the comprehensive tobacco prevention plan required by North Dakota Century Code section 54-27-25(2), a Tobacco Prevention and Control Advisory Committee of nine members with specified backgrounds and qualifications is appointed by the governor for three-year terms. An executive committee of three members is selected from the advisory committee also for three-year terms, and is responsible for implementation and administration of the comprehensive plan. The comprehensive plan must be developed within 180 days of the initial meeting of the advisory committee.

North Dakota Ballot Measure 3, approved by voters 11/4/08 and effective 12/08.





A State Smoking Restrictions

Public Places

Smoking is prohibited and no proprietor shall permit smoking in a public place or place of employment as defined. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment. Smoking is still allowed in: 1) private residences, except during the hours of operation as a child care or adult care facility for compensation, or a home-based business when specified; 2) up to 20 percent of sleeping rooms in hotels, motels and other lodging facilities; 3) family-owned and operated places of employment in which all employees are related to the owner as specified; 4) nursing homes subject to certain conditions; 5) retail tobacco stores that make more than 80 percent of their gross revenue from the sales of tobacco products; 6) outdoor patios as defined; and 7) private clubs with no employees.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Government Buildings

Smoking is prohibited and no proprietor shall permit smoking in places of employment. "Place of employment" is defined as an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees. The definition of "employer" then includes the state and any political subdivisions of the state. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Private Workplaces

Smoking is prohibited and no proprietor shall

permit smoking in places of employment. "Place of employment" is defined as an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees. Smoking is still allowed in home-based businesses except: 1) during the hours of operation as a business by a person other than a person residing in the private residence; or 2) during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present. Smoking is also allowed in family-owned and operated places of employment in which all employees are related to the owner, but only if the enclosed areas of the place of employment are: 1) not open to the public; 2) are in a free standing structure occupied solely by the place of employment; and 3) smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Schools

Smoking is prohibited in public places and places of employment, the definitions of which include the indoor areas of schools. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Child Care Facilities

Smoking is prohibited in public places and places of employment, the definitions of which include indoor areas of child care facilities. Home-based child care and adult care facilities are specifically

included during their hours of operation. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Health Care Facilities

Smoking is prohibited in public places and places of employment, the definitions of which include indoor areas of health care facilities. Smoking is allowed in nursing homes only to the extent necessary to comply with section 3721.13(A)(18) of the Ohio Revised Code. If an indoor smoking area is provided by a nursing home for residents of the nursing home, the designated indoor smoking area shall be separately enclosed and separately ventilated so that tobacco smoke does not enter, through entrances, windows, ventilation systems, or other means, any areas where smoking is otherwise prohibited under this chapter. Only residents of the nursing home may utilize the designated indoor smoking area for smoking. A nursing home may designate specific times when the indoor smoking area may be used for such purpose. No employee of a nursing home shall be required to accompany a resident into a designated indoor smoking area or perform services in such area when being used for smoking. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Restaurants

Smoking is prohibited in public places and places of employment, the definitions of which cover restaurants, including restaurants with attached bars. Smoking is allowed on outdoor patios of restaurants if they are physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Bars

Smoking is prohibited in public places and places of employment, the definitions of which cover bars. Smoking is allowed on outdoor patios of bars if they are physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area. Smoking is also prohibited in areas immediately adjacent to entrances and exits of public places and places of employment.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

Penalties/Enforcement

“No-smoking” signs or the international “No Smoking” symbol shall be conspicuously posted in and ashtrays shall be removed from every public place and place of employment where smoking is prohibited by this chapter, including at each entrance. The law will be enforced by the Ohio Department of Health and its designees. The department will promulgate rules to implement and enforce the law, including the schedule of fines for violation. Smoking in a public place or place of employment after being requested not to is subject to a maximum fine of \$100. Violation by a proprietor of a public place or place of employment is subject to minimum fine of \$100 and a maximum fine of \$2,500 after a warning letter for a first violation. Each day of violation will be a separate offense and fines for the proprietor will be progressive based on prior violations. Fines will double for intentional violations.

OHIO REV. CODE ANN §§ 3794.01 to 3794.09 (2006).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.25

Date last changed: July 1, 2005 — from 55 cents

to \$1.25

Year first enacted: 1931

OHIO REV. CODE ANN. § 5743.02 (2005).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$911,199,000

Use of Cigarette Tax Revenue

After all refunds of tax, as certified by the state Tax Commissioner, are paid, all remaining revenue from the tax on cigarettes is distributed to the state General Revenue Fund.

OHIO REV. CODE ANN. § 5743.02 (2005).

Taxes on Other Tobacco Products

All other tobacco products: 17% of the wholesale price

OHIO REV. CODE ANN. § 5743.51 (1995).

Use of Revenue from Taxes on Other Tobacco Products

After all refunds of tax, as certified by the state Tax Commissioner, are paid, all remaining revenue from the tax on other tobacco products is distributed to the state General Revenue Fund.

OHIO REV. CODE ANN. § 5743.51 (1995).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

No provisions in state law

Penalties for Sales to Minors

No manufacturer, distributor, wholesaler or retailer of tobacco products, or employee thereof, shall sell or otherwise distribute tobacco products to any person under 18. First violation constitutes a fourth degree misdemeanor and subsequent violations constitute a misdemeanor of the third degree. It is an affirmative defense if the minor was accompanied by a parent, spouse older than 18, or legal guardian, or the person selling or distributing the tobacco product was a parent, spouse older than 18, or legal guardian.

OHIO REV. CODE ANN. § 2927.02 (2002).

A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products. If the information deciphered by the transaction scan fails to match the identification presented by the card holder, or if it indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes or other tobacco products to the card holder. It will be an affirmative defense to a charge of selling or distributing tobacco products to minors if: 1) a card holder attempting to purchase or receive cigarettes or other tobacco products presented a specified identification card; 2) a transaction scan of the identification card that the card holder presented indicated that the license or card was valid; and 3) the cigarettes or other tobacco products were sold, given away, or otherwise distributed in reasonable reliance upon the identification presented and the completed transaction scan. This does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine if the person is in fact 18 years or older and the picture on the identification is the card holder.

OHIO REV. CODE ANN. §§ 2927.021 & 2927.022 (2000).

Photo ID

No provisions

Sign Posting

No person shall give away, sell or distribute tobacco products in any place that does not have posted a sign stating that giving, selling, or otherwise distributing tobacco products to a minor is prohibited by law. Violation constitutes a fourth degree misdemeanor for the first offense and a third degree misdemeanor for each subsequent violation.

OHIO REV. CODE ANN. § 2927.02 (2002).

Penalties to Minors

No child shall do any of the following unless accompanied by a parent, spouse who is 18 years of age or older or legal guardian of the child: use, consume, possess, purchase or attempt to

purchase cigarettes; or order, pay for, or share the cost of or accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes. No child shall knowingly furnish false information concerning that child's name, age, or other identification for the purpose of obtaining cigarettes, other tobacco products, or papers used to roll cigarettes. If a juvenile court finds that a minor violated this division it may do either or both of the following: require the minor to attend a youth smoking education program or other smoking treatment program approved by the court, if one is available; or impose a fine of not more than \$100. If the minor disobeys a juvenile court order the court may increase the fine imposed upon the minor; and/or require the minor to perform not more than 20 hours of community service; and/or suspend for a period of 30 days the temporary instruction permit, probationary driver's license, or driver's license issued to the minor. It is not a violation for a minor to accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes if the minor is required to do so in the performance of their duties as an employee; or while participating in an inspection or compliance check conducted by a federal, state, local, or corporate entity at a location at which tobacco products are sold or distributed.

OHIO REV. CODE ANN. § 2151.87 (2000).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No person shall cause to be shipped any cigarettes to any person in this state other than an authorized recipient of tobacco products. No common carrier, contract carrier, or other person shall knowingly transport cigarettes to any person in this state that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the common carrier, contract carrier, or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products. An authorized recipient of tobacco products is: 1) a licensed cigarette wholesaler; 2) a licensed distributor of tobacco products; 3) an export warehouse proprietor; 4) an operator of a customs bonded warehouse; 5) an officer, employee, or agent of the state or federal government

acting in the person's official capacity; 6) a department, agency, instrumentality, or political subdivision of this state or the federal government; and 7) a person having a consent for consumer shipment issued by the state Tax Commissioner. No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this state in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes." Violation is subject to a fine of up to \$1,000 for each violation.

OHIO REV. CODE ANN. § 2927.023 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No manufacturer, distributor, wholesaler or retailer of tobacco products, or agent or employee thereof, shall give or otherwise distribute tobacco products to any person under 18. The first violation is a fourth degree misdemeanor and subsequent violations are a third degree misdemeanor.

OHIO REV. CODE ANN. § 2927.02 (2002).

Minimum Tobacco Product Sales Amounts

No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes; or agent or employee thereof, shall manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco.

Selling cigarettes in a smaller quantity than that placed in the pack or other container by the manufacturer is also unlawful. Violation is a fourth degree misdemeanor for the first offense and third degree misdemeanor for subsequent offenses.

OHIO REV. CODE ANN. § 2927.02 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sales from vending machines are prohibited unless the machine is in an office, factory, business or other place not open to the general public, or in a place where persons under 18 are not permitted. Vending machines are also allowed in locations where they are in the immediate vicinity, plain view, and control of the owner or operator of the establishment. In such locations, vending machines shall not be located in an unmonitored coatroom, restroom, hallway or outer waiting room, and must be inaccessible to the public when the place is closed.

OHIO REV. CODE ANN. § 2927.02 (2002).

Penalties

Violations are a misdemeanor of the fourth degree for the first offense and a misdemeanor of the third degree for subsequent offenses.

OHIO REV. CODE ANN. § 2927.02 (2002).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Retailers must obtain a license from the County Auditor of the county in which they wish to do business to sell cigarettes. A separate license shall be issued for each place of business specified on the required license application. Wholesalers, manufacturers and importers of cigarettes are required to obtain a license from the state Tax Commissioner. All licenses are valid for one year starting on the fourth Monday of May.

OHIO REV. CODE ANN. § 5743.15 (2010).

Distributors of tobacco products are required to obtain a license from the Department of Taxation. Separate licenses are issued for each place of busi-

ness on the required license application and are valid for one year commencing on the 1st day of February.

OHIO REV. CODE ANN. § 5743.61 (2010).

Fees

Retail cigarette license: \$125 annually for the first five places of business;

Wholesale cigarette license: \$1,000 annually;

Tobacco product distributor license: \$1,000 annually.

OHIO REV. CODE ANN. §§ 5743.15 & 5743.61 (2010).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

An appeal does not operate as a stay of execution of a judgment until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved, except that the bond shall not exceed \$50 million, excluding interest and costs, as directed by the court that rendered the final order, judgment, or decree that is sought to be superseded or by the court to which the appeal is taken.

OHIO REV. CODE ANN. § 2505.09 (2002).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

On May 6, 2008, legislation was passed that abolished the Tobacco Use Prevention and Control Foundation and Tobacco Use Prevention and Control Endowment Fund and transferred \$40 million of the endowment to a Tobacco Use Prevention Fund controlled by the Department of Health to be used for funding tobacco control program initiatives for the remainder of FY2008 and FY2009. The other \$230 million was supposed to be transferred to a Jobs Fund in the state treasury. Money in the Tobacco Use Prevention and Control Endowment Fund was from earlier Master Settlement Agreement (MSA) payments.

H.B. 544 enacted and effective 5/6/08.

Note: However, almost all of the \$270 million has not been transferred to date because of a lawsuit filed by the American Legacy Foundation claiming a contract was signed giving a majority of the money to them before the legislation above took effect. A state appeals court ruled against the Legacy Foundation in December 2009 reversing a lower court decision. Legacy has appealed the decision to the Ohio Supreme Court who must agree to hear the case. About \$10 million dollars has been released previously to pay for/fund tobacco control programs in FY2008 and FY2009.

The Tobacco Use Prevention Fund was created in the state treasury and shall consist of money liquidated from the former tobacco use prevention and control endowment fund and any gifts, grants or donations received. Investment earnings of the fund shall be credited to the fund. Moneys in the fund shall be used to pay outstanding expenses of the former Tobacco Use Prevention and Control Foundation (TUPCF) at the discretion of the director of the state Department of Health, and for initiatives to reduce tobacco use in Ohio pursuant to a state plan as specified. TUPCF was abolished and relevant sections of the Ohio Revised Statutes were repealed see above.

OHIO REV. CODE ANN. §§ 3701.84 & 3701.841 (2008).

In 2007, Ohio securitized all of its future annual MSA payments, and repealed the statute requiring deposit of the payments to the Tobacco Master Settlement Agreement Fund. Many of the various trust funds created to receive portions of the MSA

payment still exist, but will receive no more money from future MSA payments.

OHIO REV. CODE ANN. §§ 183.01 to 183.35 (2007).

Securitization

The sale and assignment of all of the state's future payments expected to be received under the Master Settlement Agreement to the Buckeye Tobacco Settlement Financing Authority is authorized. The authority can then issue and sell bonds and other obligations although the aggregate principal amount of these bonds can not exceed \$6 billion dollars. At least 75 percent of the net proceeds of the sale of obligations by the authority shall be deposited into the school building program assistance fund.

OHIO REV. CODE ANN. §§ 183.51 & 183.52 (2007).

M Fire Safety Standards

Ohio has enacted legislation requiring cigarettes sold in Ohio to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on February 1, 2010.

H.B. 500 enacted 1/6/09 and effective 2/1/2010.

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$6,000,000

FY2010 Federal Tobacco Control Program
Funding: \$1,367,009

FY2010 Total Tobacco Control Program
Funding: \$7,367,009

Funding Level Recommended by CDC:
\$145,000,000

Percentage of CDC-Recommended Level: 5.1%

State Funding Details:

Ohio allocated \$6,000,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund. In FY2009, \$6,507,250 was allocated.

FY2010-FY2011 Biennial Budget (H.B. 1) enacted and effective 7/17/09 (FY2010) & 7/1/10 (FY2011).

Note: Although \$6 million is allocated to tobacco prevention and cessation programs for FY2010

in the officially passed state budget, the governor has indicated he will not spend the money for that purpose if it becomes available. The \$6 million is not available currently due to an ongoing lawsuit, see paragraphs below.

Tobacco Control Program Related Laws

The state Department of Health may prepare a plan to reduce tobacco use by Ohioans, with emphasis on reducing the use of tobacco by youth, minority and regional populations, pregnant women, and others who may be disproportionately affected by the use of tobacco. The plan may provide for periodic surveys to measure tobacco use and behavior toward tobacco use by Ohioans. The plan may also describe youth tobacco consumption prevention programs to be eligible for consideration for grants from the department and may set forth the criteria by which applications for grants will be considered. Programs eligible for consideration may include: youth-focused media campaigns, school and community based youth educational programs, retailer education and compliance efforts and mentoring programs designed to prevent or reduce tobacco use by students. Pursuant to the plan, the department may carry out, or provide funding for private or public agencies to carry out, research and programs related to tobacco use prevention and cessation subject to specified conditions.

OHIO REV. CODE ANN. § 3701.84 (2008).



A State Smoking Restrictions

Public Places

Smoking is prohibited in many indoor places used by or open to the public, all parts of a zoo to which the public may be admitted, whether indoors or outdoors and on public transportation. Exceptions are made for: 1) licensed charitable bingo games during their hours of operation; 2) up to 25 percent of hotel/motel rooms, 3) retail tobacco stores as defined; and 4) veterans' organizations. If smoking is to be permitted in any space exempted, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and be under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within 15 feet of any entrance, exit or air intake. Smoking is also allowed in separately enclosed and separately ventilated areas/rooms in government and private workplaces and restaurants.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

The gaming areas and the areas where simulcast wagering is conducted by an Oklahoma Horse Racing Commission licensee shall not be subject to the state restrictions on smoking in public places if the following conditions are met: each gaming or simulcast area in which smoking is permitted shall be fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape to nonsmoking areas when a door is opened, and no air from a smoking area is re-circulated to nonsmoking areas of the building and no exhaust from such gaming or simulcast area shall be located within 25 feet of any entrance, exit, or air intake.

OKLA. STAT. ANN. tit. 3A, § 208.12 (2004).

Government Buildings

Smoking is not permitted in any building owned or operated by the state of Oklahoma or political

subdivisions or within 25 feet of the entrance or exit, except one designated smoking room is allowed. The designated smoking room shall not be used for the conduct of public business; and shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is re-circulated to nonsmoking areas of the building. No smoking exhaust shall be located within 25 feet of any entrance, exit or air intake.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

Private Workplaces

Smoking is not permitted in any indoor workplace except private offices, workplaces in which the only employees are the owner and immediate family, or workplaces occupied only by one or more smokers. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted directly to the outside in such a manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within 15 feet of any entrance, exit or air intake.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

Schools

Smoking is prohibited in all primary and secondary schools. Nothing in this section shall be construed to prohibit educational facilities from having more restrictive policies regarding smoking and the use of other tobacco products in the buildings or on the grounds of the facility.

OKLA. STAT. ANN. tit. 63, § 1-1523 (2003).

Child Care Facilities

No person shall smoke in a licensed child care facility or in a private residence used as a child care facility during its hours of operation. The definition of "child care facility" includes a foster family home. In addition to any other penalties, the Department of Human Services shall impose

administrative fines of \$50 for the first offense, \$100 for the second offense in a one year period and \$250 for a third or subsequent offense in a one year period against childcare facilities for violations.

OKLA. STAT. ANN. tit. 63, §§ 1-1521 et seq. (2007).

Health Care Facilities

Smoking is prohibited except in medical research or treatment centers, if smoking is integral to the research or treatment. Nursing homes may designate smoking rooms.

OKLA. STAT. ANN. tit. 63, §§ 1-1521 et seq. (2007).

Restaurants

As of March 1, 2006, smoking areas in restaurants are required to be enclosed and separately ventilated. Outdoor seating areas of the restaurant are exempt except smoking shall not be allowed within 15 feet of any exterior public doorway or any air intake of a restaurant.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2003).

Bars

Bars, taverns, and cigar bars are exempted from the prohibition on smoking in public places. If smoking is to be permitted in any space exempted, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within 15 feet of any entrance, exit, or air intake. Any employer may choose a more restrictive smoking policy, including being totally smokefree.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2003).

Other State Smoking Restrictions and Provisions

Smoking and Custody/Visitation of Children:

Custody of, guardianship of or any visitation with a child shall not be granted to any person if it is established that the custody, guardianship or

visitation will likely expose the child to a foreseeable risk of material harm. This could apply to secondhand smoke if a person can establish that secondhand smoke can cause a foreseeable risk of material harm.

OKLA. STAT. ANN. tit. 10, § 21.1(D)(3) (2004).

Tobacco Products in Correctional Facilities:

Any person, including a resident, that knowingly or willfully brings or has possession of cigarettes or tobacco products in a certified secure facility or certified juvenile detention facility is guilty of a misdemeanor and subject to imprisonment in county jail for up to a year and/or a fine not to exceed \$500.

OKLA. STAT. ANN. tit. 10, § 7302-6.11(C) (2009).

Penalties/Enforcement

The person who owns or operates a place where smoking or tobacco use is prohibited by law shall be responsible for posting a sign or decal at each entrance to the building indicating that the place is smokefree. Any person who knowingly violates this act is guilty of a misdemeanor and shall be punished by a fine of \$10 to \$100. The Oklahoma State Board of Health is the designated enforcement agency.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

State Preemption of Local Laws

The state legislature by adopting the above provisions intends to preempt any other regulation promulgated to control smoking in public places and to standardize laws that governmental subdivisions may adopt to control smoking. Cities and towns may enact and enforce laws prohibiting and penalizing conduct under provisions of this act, but the provisions of such laws shall be the same as provided in this act and the enforcement provisions under such laws shall not be more stringent than those of this act.

OKLA. STAT. ANN. tit. 21, § 1247 & tit. 63, §§ 1-1521 et seq. (2007).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.03

Date last changed: January 1, 2005 — from 23 cents to \$1.03

Year first enacted: 1933

OKLA. STAT. tit. 68, §§ 302, 302-1, 302-2, 302-4 & 302-5 (2005).

State sales taxes are no longer collected on cigarettes and tobacco products pursuant to the legislative referendum passed on November 2, 2004.

OKLA. STAT. tit. 68, § 1355(11) (2005).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$221,180,000

Use of Cigarette Tax Revenue

Cigarette tax revenue is distributed as follows:

Revenue from 18 cents of the tax to the Oklahoma Building Bonds of 1992 Sinking Fund and revenue from five cents of the tax to the General Revenue Fund;

The revenue from the remaining 80 cents of the tax is distributed based on the following percentages: 1) 22.06 percent to the Health Employee and Economy Improvement Act Revolving Fund; 2) 3.09 percent to the Comprehensive Cancer Center Debt Service Revolving Fund; 3) 7.50 percent to the Trauma Care Assistance Revolving Fund; 4) 3.09 percent to the Oklahoma State University College of Osteopathic Medicine Revolving Fund; 5) 26.38 percent to the Oklahoma Health Care Authority Medicaid Program Fund; 6) 2.65 percent to the Department of Mental Health and Substance Abuse Services Revolving Fund; 7) 0.44 percent to the Belle Maxine Hilliard Breast and Cervical Cancer Treatment Revolving Fund; one percent to the Teachers' Retirement System Revolving Fund; 8) 2.07 percent to the Education Reform Revolving Fund; 9) 0.66 percent to the Tobacco Prevention and Cessation Revolving Fund, which in part funds the state tobacco prevention program; 10) 16.83 percent to the General Revenue Fund; and 11) 14.23 percent to municipalities and counties that levy a sales tax, in the proportions which total municipal and county sales tax revenue was apportioned by the Oklahoma Tax Commission in the preceding month.

OKLA. STAT. tit. 68, §§ 302, 302-1, 302-2, 302-4 & 302-5 (2005).

Taxes on Other Tobacco Products

Chewing tobacco, smokeless tobacco and snuff: 60% of the factory list price;

Smoking Tobacco: 80% of the factory list price;

Little Cigars (not weighing more than three lbs. per thousand): 3.6 cents per cigar;

Cigars (weighing more than three lbs. per thousand): 10 cents to 12 cents per cigar depending on recommended retail selling price

OKLA STAT. tit. 68, §§ 402, 402-1, 402-2 & 402-3 (2005).

Use of Revenue from Taxes on Other Tobacco Products

Revenue from 50 percent of the tax on chewing tobacco, smokeless tobacco and snuff; 50 percent of the tax on smoking tobacco; 0.9 cents of the tax on little cigars; and 1 to 3 cents of the tax on other cigars goes to the General Revenue Fund. The remaining revenue (50 percent of the tax on chewing tobacco, smokeless tobacco and snuff; 50 percent of the tax on smoking tobacco; 2.7 cents of the tax on little cigars; and 9 cents of the tax on regular cigars) is distributed based on the same percentages specified for 80 cents of the cigarette tax. See above for details.

OKLA STAT. tit. 68, §§ 402-2, 402-3 & 404 (2005).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Alcoholic Beverage Laws Enforcement (ABLE) Commission is authorized and empowered to enforce most youth access laws. Persons under 18 years of age may be enlisted by the ABLE Commission, a municipality or town, or a county to assist in compliance checks and enforcement if written parental consent has been provided and the testing is conducted under the direct supervision of the ABLE Commission or another authorized law enforcement agency. This shall not apply to the use of persons under 18 to test compliance if the test is being conducted by or on behalf of a retailer of cigarettes at any location where the retailer is authorized to sell cigarettes. Any other use of minors to test compliance shall be unlawful and punishable by a fine of \$100. The ABLE commission shall notify storeowners when one of their employees has been determined to be

in violation by the ABLE commission or convicted of a violation by a municipality.

OKLA. STAT. ANN. tit. 37, § 600.11 (2004).

Penalties for Sales to Minors

It is unlawful for any person to sell, give or furnish in any manner any tobacco product to another person who is under 18 years of age. This does not apply to an employee under 18 handling tobacco products as part of their employment. Persons who violate this law shall be fined not more than \$100 for the first offense, not more than \$200 for the second offense within a two-year period, not more than \$300 for the third offense within a two-year period and the license to sell tobacco products may be suspended for no more than 30 days, not more than \$300 for a fourth and subsequent offense in a two-year period and the license to sell tobacco products may be suspended for no more than 60 days. If the sale is made by the employee of the owner of the store, the employee shall be guilty of the violation and shall be subject to the fine. Each violation by any employee shall be a violation against the owner for purposes of a license suspension. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age, shall be a defense to any action brought pursuant to this section. This can be proved if the individual who purchased or received the tobacco product presented a driver's license or other form of government-issued photo identification purporting to establish that the individual was 18 years of age or older and the person cited for the violation confirmed the validity of the identification by performing a transaction scan by means of a transaction scan device. This does not relieve any person cited for a violation from exercising reasonable diligence to determine whether the physical description and picture appearing on the driver's license was that of the person who presented it. County sheriffs may enforce this law.

OKLA. STAT. ANN. tit. 37, § 600.3 (2004).

It is unlawful to sell, give or furnish in any manner to another person who is under 18 any material or device used in the smoking, chewing, or other method of consumption of tobacco, including cigarette papers, pipes, holders of smoking materials of all types, and other items designed primarily for the smoking or ingestion of tobacco products.

Violation is an administrative fine not to exceed \$100 for each offense.

OKLA. STAT. ANN. tit. 37, § 600.13 (2004).

Photo ID

A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be less than 18 years of age. "Proof of age" means a driver's license, license for identification only, or other generally accepted means of identification that describes the individual as 18 years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid. If an individual engaged in the sale or distribution of tobacco products has demanded proof of age from a prospective purchaser or recipient who is not less than 18 years of age, the failure to subsequently require proof of age shall not constitute a violation. Penalties for violation are the same as those for selling or distributing tobacco products to minors.

OKLA. STAT. ANN. tit. 37, § 600.3 (2004).

Sign Posting

Every person who sells tobacco at retail shall post at the place of business a sign that states "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE." The sign shall also provide the number for the ABLE Commission for reporting violations of youth access laws. Violators shall be fined \$50 for each day such offense occurs.

OKLA. STAT. ANN. tit. 37 § 600.5 (2004).

Bidis

Any person who shall furnish to any minor by gift, sale or otherwise any bidis shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine in the amount of not less than \$25 or more than \$200 and by imprisonment in the county jail for a term of not less than 10 days or more than 90 days for each offense.

OKLA. STAT. ANN. tit. 21, § 1241 (2002).

Penalties to Minors

It is unlawful for a person who is under 18 years of age to purchase, receive, or have in their possession a tobacco product; or to present or offer to any

person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under 18 years of age to handle tobacco products when required in the performance of the employee's duties. Minors found guilty shall be fined \$100 for a first offense and \$200 for subsequent offenses within a one-year period. If they fail to pay within 90 days, their driver's license may be suspended, or not be issued or renewed.

OKLA. STAT. ANN. tit. 37, § 600.4 (1997).

Any minor in possession of tobacco products who is asked where and from whom such products were obtained by any police officer, constable, juvenile court officer, truant officer, or teacher, and who refuses to furnish such information shall be guilty of a misdemeanor. If the minor is 16 years of age or older, they shall be sentenced to a fine of \$5 or imprisonment in the county jail for up to five days. If younger than 16, the minor shall be certified to the juvenile court for such action that court deems proper.

OKLA. STAT. tit. 21, § 1242 (1985).

Placement of Tobacco Products

It is unlawful for any person or retail store to display or offer for sale tobacco products in any manner that allows public access to the tobacco product without assistance from the person displaying the tobacco product or an employee or the owner of the store. These provisions shall not apply to retail stores which do not admit into the store persons under 18 years of age. Violation is subject to an administrative fine of not more than \$200 for each violation.

OKLA. STAT. ANN. tit. 37, § 600.10A (2004).

Internet Sales of Tobacco Products

No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless first the person obtains a certification from the prospective customer that includes reliable confirmation the purchaser is over 18, and a statement verifying the consumer's age and address, and indicates that the purchaser understands that signing another person's name to the certification and/or sales to people under the age of 18 is illegal. The person must make a good faith effort to verify the information against a commercially available database or obtain a photocopy of the government

issued ID of the purchaser. The person must also use a delivery service that requires the purchaser placing the delivery sale, or another adult of legal minimum purchase age residing at the purchaser's address, to sign to accept delivery of the shipping container and supply proof of age, in the form of a valid, government-issued identification bearing a photograph of the individual, unless the individual appears to be over 27 years of age. A first violation of the above provisions is a fine of up to \$1,000. A second and subsequent violation is a penalty of at least \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. Knowingly violating the above provisions is a fine of \$10,000, or five times the retail value of the cigarettes involved, whichever is greater and/or up to five years in prison. Failing to collect or remit taxes is a penalty of five times the retail value of the cigarettes involved in addition to any other penalty.

OKLA. STAT. ANN. tit. 68, §§ 317.1 to 317.8 (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

Each individual employed as a retail clerk shall be informed of state law regarding sales of tobacco products to minors and shall sign a form attesting to their understanding of this law and promising as a condition of their employment to obey the law.

OKLA. STAT. ANN. tit. 37, § 600.6 (1997).

State Preemption of Local Laws

No agency or other political subdivision of the state, including, but not limited to, municipalities, counties or any agency thereof, may adopt any order, ordinance, rule or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products, except as provided in Section 1511 of Title 68 of the Oklahoma Statutes, Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and Section 1247 of Title 21 of the Oklahoma Statutes. Provided, however, nothing in this section shall preclude or preempt any agency or political subdivision from exercising its lawful authority to regulate zoning or land use or to enforce a fire code regulation regulating smoking or tobacco products to the extent that such regulation is substantially similar to nation-

ally recognized standard fire codes.

OKLA. STAT. ANN. tit. 37, § 600.10 (1994).

Notwithstanding the above, cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under sections 600.3, 600.4, 600.8, 600.9 and 600.10A of Title 37 of the Oklahoma statutes, but the provisions of municipal ordinances shall be the same as provided for in those sections, and the penalty provisions under such ordinances shall not be more stringent than specified in those sections.

OKLA. STAT. ANN. tit. 37, §§ 600.3(G) (2004), 600.4(D) (1997), 600.8(E) (2004), 600.9(C) (1997) & 600.10A(C) (2004).

Note: The above laws prohibiting local communities from passing stronger ordinances restricting youth access to tobacco products applies to almost all laws summarized in sections C, D, E & F of Oklahoma's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It shall be unlawful for any person to distribute tobacco products or product samples to anyone under 18, and in or on any public street, sidewalk, or park that is within 300 feet of any playground, school, or other facility when the facility is being used primarily by persons under 18. Violators shall be fined not more than \$100 for the first offense, not more than \$200 for the second offense, and not more than \$300 for any subsequent offense. If they fail to pay within 90 days, their driver's license may be suspended, or not be issued or renewed.

OKLA. STAT. ANN. tit. 37, § 600.8 (2004).

Minimum Tobacco Product Sales Amounts

It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer. Violators will be fined \$200 for each offense.

OKLA. STAT. ANN. tit. 37, § 600.9 (1997).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines containing tobacco products shall be located in the following areas: areas of factories, businesses, offices or other places that are not open to the public; and places that are open to the public, but to which persons less than 18 are not admitted.

OKLA. STAT. tit. 37, § 600.7 (2004).

Penalties

No penalty specified for violation.

Sign Posting

No provisions

F Licensing Requirements

Requirements

Retailers, distributors, wholesalers and manufacturers must obtain a license from the state Tax Commission to sell cigarettes. Distributors, wholesalers and manufacturers' licenses shall be valid for one year and a retailer's license is valid for three years unless suspended or revoked. A separate license is required for each place of business and must at all times be conspicuously displayed in the place of business.

OKLA. STAT. tit. 68, § 304 (2003).

Fees

Retail cigarette license: \$30 every three years;

Manufacturers, wholesalers or distributors of cigarettes: \$25 annually for each place of business

OKLA. STAT. tit. 68 § 304 (2003).

License Suspension for Sales to Minors

For a third violation of the law prohibiting the sale of tobacco products to minors, the license to sell tobacco products may be suspended for not more than 30 days in addition to any other penalties. For a fourth and subsequent violations the license to sell tobacco products may be suspended for not more than 60 days in addition to any other penalties. Failure to pay an administrative fine as a result of a violation of the sales to minors' law within 90 days will also result in a license suspension.

OKLA. STAT. ANN. tit. 37, § 600.3 (2004).

G Smoker Protection Laws

It is unlawful for an employer to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions, or privileges of employment because the individual is a nonsmoker or smokes or uses tobacco products during non-working hours or require as a condition of employment that any employee or applicant abstain from tobacco use during non-working hours. This shall not apply when the restriction on smoking relates to a bona fide occupational requirement or an applicable collective bargaining agreement which prohibits or allows off-duty use of tobacco products. The sole remedy for any individual claiming to be aggrieved by a violation of this law shall be a civil action for damages, including all wages and benefits deprived the individual by reason of the violation.

OKLA. STAT. ANN. tit. 40, § 500 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability**Industry Protection**

The appeal bond required in any action or litigation involving a tobacco product manufacturer that is a party to the Master Settlement Agreement (MSA) or a party to the Smokeless Tobacco MSA shall be in an amount not to exceed 100 percent of the judgment, exclusive of interest and costs, 10 percent of the net worth of the judgment debtor or \$25 million, whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted

equal to the full amount of security required.

OKLA. STAT. ANN. tit. 12, § 990.4(B)(5) (2009).

More generally, the bond to appeal a lawsuit judgment for money shall be for the amount of the judgment, decree or order, including costs and interest on appeal, except the bond can not exceed \$25 million dollars. The bond may also be limited if it poses substantial economic harm to a defendant. If it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to the full amount of security required. After November 1, 2009, appeal bonds are not required for appeals of punitive damages only.

OKLA. STAT. ANN. tit. 12, § 990.4 (2009).

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

On November 7, 2000 the voters of Oklahoma approved State Question 692, a legislative constitutional amendment which added Section 40 to Article 10 of the state Constitution. The measure created the Tobacco Settlement Endowment Trust Fund. A percentage of the payments received by the state from tobacco companies are to be deposited in the fund. The percentage goes from 50 percent for the fiscal year ending June 30, 2002, to 75 percent for any fiscal year ending June 30, 2007, and after. Monies not deposited in the trust fund shall be subject to legislative appropriation. The trust fund is managed by a Board of Directors. The earnings from the trust fund may be expended by the Board of Directors for certain purposes, including tobacco prevention and cessation programs, health care, education, other children's services, programs for senior adults and capital expenditures and operating expenses incurred by the University of Oklahoma Health Sciences Center and the Oklahoma State University College of Osteopathic Medicine as specified.

OK CONSTITUTION § 10-40 (2000) & OKLA. STAT. ANN. tit. 62, §§ 2301 to 2310 (2009).

M Fire Safety Standards

To help prevent cigarette-caused fires, except as provided in subsection (H) of section 326.3 Oklahoma Statutes, no cigarettes may be sold or offered for sale in Oklahoma or offered for sale or sold to persons located in Oklahoma unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 326.3 Oklahoma Statutes; 2) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 326.4 Oklahoma Statutes; and 3) the cigarettes have been marked in accordance with section 326.5 Oklahoma Statutes. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale in violation of the above shall be subject to a civil penalty not to exceed \$500 for each pack of cigarettes sold; provided that in no case shall the penalty against any such person or entity exceed \$100,000 during a 30-day period. Any retail dealer who knowingly sells cigarettes in violation is subject to a civil penalty not to exceed \$500 for each pack of cigarettes sold or offered for sale; provided that in no case shall be the penalty be more than \$25,000 in any 30-day period. In addition, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

OKLA. STAT. ANN. tit. 74, §§ 326.1 to 326.11 (2009).

Oklahoma allocated \$19,798,734 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund, state tobacco tax revenue, and interest generated from the state's Tobacco Settlement Endowment Trust Fund funded by annual MSA payments. In FY2009, \$18,000,000 was allocated.

FY2010 Annual Department of Health Budget (S.B. 216) enacted 6/1/09 and effective 7/1/09 & interest generated by the Tobacco Settlement Endowment Trust Fund and certified for use in FY2010.

■ ■ ■

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$19,798,734

FY2010 Federal Tobacco Control Program
Funding: \$1,326,840

FY2010 Total Tobacco Control Program
Funding: \$21,125,574

Funding Level Recommended by CDC:
\$45,000,000

Percentage of CDC-Recommended Level:
46.9%

State Funding Details:



A State Smoking Restrictions

Public Places

No person shall smoke in a public place or place of employment, including restaurants and bars. "Public place" means any enclosed indoor area open to the public. Smoking is also prohibited within 10 feet of entrances, exits, windows that open and ventilation intakes to public places and places of employment. The following areas are not subject to these restrictions: 1) up to 25 percent of hotel/motel rooms, 2) smoking of noncommercial tobacco products for ceremonial purposes in spaces designated for traditional ceremonies, 3) smoke shops as defined and 4) cigar bars as specified and defined.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

The use of lighted tobacco in any form in vehicles engaged in transporting passengers in regularly scheduled service is prohibited.

OR. ADMIN. RULE. CHAP. 860, DIV. 65, PUBLIC UTILITY COMMISSION. (2001).

Government Buildings

Smoking is prohibited in all places of employment, including all places of public employment. "Place of employment" means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, vehicles that are operated in the course of an employer's business that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, and hallways, meeting rooms, elevators and stairways.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Private Workplaces

Smoking is prohibited in all places of employment. "Place of employment" means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, vehicles that are operated in the course of an employer's business that are not operated exclusively by one employee, rest rooms,

conference rooms, classrooms, cafeterias, and hallways, meeting rooms, elevators and stairways.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Schools

No student, staff member, or school visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-school hours, in any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or on school grounds, athletic grounds or parking lots.

OR ADMIN. RULES 581-021-0110 (2006).

To the extent not covered by the restrictions above, smoking is prohibited in all public places, including educational facilities.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Oregon Head Start Pre-Kindergarten (OHS Pre-K) program participants, family members, staff members, visitors and all others are not permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-school hours, when they are in the following environments: (a) In any building, facility, or vehicle owned, leased, rented, or chartered by an OHS Pre-K program; or (b) on any outdoor grounds, or portions thereof, that are wholly owned and/or operated by the OHS Pre-K program, including but not limited to playgrounds and parking lots. Staff and volunteers of any Head Start program must also avoid bringing or wearing clothing that smells of smoke into the center, on the playground, or in other areas where children are present. The new policy took effect January 1, 2009, and all OHS Pre-K programs were required to establish policies and procedures to implement and enforce this rule for Head Start participants, family members, staff, visitors, and all others.

Oregon Department of Education Policy Letter, "Tobacco Free Environments," issued 10/30/08 and effective 1/1/09.

Child Care Facilities

Smoking is prohibited in all public places and places of employment, including child care facilities. Home-based child care and adult day care

facilities are specifically included in the definition of place of employment.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Children in the custody of the State Office for Services to Children and Families (SOSCF) shall not be exposed to secondhand smoke in the foster parent/relative caregiver's home or vehicle.

OR ADMIN. RULES § 413-200-0346(3)(b) (2001).

Health Care Facilities

The administrator or person in charge of a hospital may not permit a person to smoke tobacco in the hospital; or within 10 feet of a doorway, open window or ventilation intake of the hospital. The Director of Human Services may impose a civil penalty of not more than \$500 per day on a person for violation of this section. Civil penalties imposed against a person under this subsection may not exceed \$2,000 in any 30-day period.

OR. REV. STAT. § 441.815 (2009).

To the extent not covered by the restrictions above, smoking is prohibited in all public places and places of employment, including all other health care facilities.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Restaurants

Smoking is prohibited in all public places and places of employment, including restaurants.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Bars

Smoking is prohibited in all public places and places of employment, including bars/taverns. Smoking is allowed in cigar bars as defined, and as long as they generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Penalties/Enforcement

An employer shall post signs notifying people of the above provisions. The Department of Human Services is responsible for adopting and implementing rules; and enforcing compliance with these rules. Violation of the above provisions and sign-posting requirements is a Class A violation punishable by a fine totaling no more than \$500 per day, not to exceed \$2,000 within a

30-day period.

OR. REV. STAT. §§ 433.835 to 433.990 (2009).

Other State Smoking Restrictions and Provisions

Disclosure of Smoking Policy in Multi-Unit Housing:

The rental agreement for a dwelling unit regulated under Oregon Revised Statute chapter 90 must include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed. This does not apply to certain specified rental agreements as well as manufactured dwellings and floating homes as defined.

OR. REV. STAT. § 90.220 (5) (2010).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.18

Date last changed: January 1, 2004 — from \$1.28 to \$1.18

Year first enacted: 1966

OR. REV. STAT. §§ 323.030 & 323.031 (2004).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$222,203,000

Use of Cigarette Tax Revenue

The revenue from 58 cents of the cigarette tax is first deposited into a suspense account in the state Treasury, and used to reimburse the state Department of Revenue, state Police, and state Department of Justice for administration and enforcement of the tax. After the payment of administrative and enforcement expenses, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this

state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly and disabled individuals. Of the money going to the General Fund, 51.92 percent is dedicated to medical assistance under Oregon Revised statutes, chapter 414 and 5.77 percent is credited to the Tobacco Use Reduction Account.

OR. REV. STAT. § 323.455 (2010).

The revenue from the other 60 cents of the cigarette tax is first deposited into a suspense account in the state Treasury, and used to reimburse the state Department of Revenue, state Police, and state Department of Justice for administration and enforcement of the tax. After the payment of administrative and enforcement expenses, 97.9 percent is distributed to the Oregon Health Plan Fund, 0.467 percent is appropriated to the Department of Administrative Services for the cities of this state, 0.467 percent is appropriated to the Department of Administrative Services for the counties of this state, 0.467 is appropriated to the Department of Transportation to be transferred to the Elderly and Disabled Special Transportation Fund, and 0.7 percent is credited to the Tobacco Use Reduction Fund.

OR. REV. STAT. § 323.457 (2003).

Taxes on Other Tobacco Products

Cigars: 65% of the wholesale sales price of cigars, but not to exceed 50 cents per cigar;

Moist snuff: \$1.78/oz. except the minimum tax is \$2.14 per retail container;

All other tobacco products: 65% of the wholesale sales price

OR. REV. STAT. § 323.505 (2010).

Use of Revenue from Taxes on Other Tobacco Products

The revenue from the taxes on other tobacco products is first deposited into a suspense account in the state Treasury, and used to reimburse the state Department of Revenue, state Police, and state Department of Justice for administration and enforcement of the tax. Remaining revenue is then credited to the General Fund where 41.54 percent is used for medical assistance under the

Oregon Revised statutes, chapter 414 and 4.62 percent is credited to the Tobacco Use Reduction Account.

OR. REV. STAT. § 323.625 (2010).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Oregon Health Authority shall coordinate with law enforcement agencies to conduct random, unannounced inspections of tobacco retailers and wholesalers to ensure compliance with laws designed to discourage the use of tobacco by minors. The department shall adopt rules concerning these inspections providing that inspection may only take place in areas open to the public and during the hours that tobacco products are sold or distributed, and shall not be more frequent than once a month in any single establishment unless a compliance problem exists or is suspected. A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors.

OR. REV. STAT. ANN. §§ 167.401 (1999) & 431.853 (2009).

Penalties for Sales to Minors

A person commits the crime of endangering the welfare of a minor if the person knowingly distributes, sells, or causes to be sold any tobacco product or device for the use of tobacco to a person less than 18 years of age. A violation is a Class A violation punishable by a fine of not less than \$100.

OR. REV. STAT. ANN. § 163.575 (1991).

Photo ID

No provisions

Sign Posting

Notice shall be posted in a location clearly visible to the seller and purchaser that the sale of tobacco products to persons under 18 years of age is prohibited. Violation constitutes a civil penalty of

between \$100 and \$500.

OR. REV. STAT. ANN. §§ 431.840 (2001) & 431.845 (1991).

Bidis

The definition of “tobacco products” includes bidis making it unlawful to knowingly distribute, sell or cause to be sold bidis to a person less than 18 years of age. Violation is a Class A violation punishable by a fine of \$100.

OR. REV. STAT. ANN. § 431.840 (2001).

Penalties to Minors

It is unlawful for any person under the age of 18 to possess tobacco products. Any person who violates this law is guilty of a Class D violation.

OR. REV. STAT. ANN. § 167.400 (1999).

No person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products. Any person who violates this is guilty of a violation. For the first offense, in lieu of any other penalty, the person may be ordered to participate in a tobacco education program or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products. A person may be ordered to participate in such a program only once. For a second violation, in addition to any other penalty, a person who is convicted through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person’s driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. This does not apply to minors involved in efforts to test compliance.

OR. REV. STAT. ANN. § 167.401 (1999).

Placement of Tobacco Products

A person having authority over the location of cigarettes and other tobacco products in a retail store may not locate cigarettes or other tobacco products in a location in the store where the cigarettes or

other tobacco products are accessible by store customers without assistance by a store employee. This does not apply if the location at which the cigarettes or tobacco products are sold is a store or other establishment at which persons under 18 years of age are prohibited. Violation is a Class B violation. Each day of violation constitutes a separate offense.

OR. REV. STAT. ANN. § 167.407 (2005).

Internet Sales of Tobacco Products

Prior to the first delivery of tobacco to a consumer relating to a delivery sale purchase order the person shall comply with specific age-verification requirements, including obtaining a certification from the prospective consumer and verifying the information against a commercially available database of government collected information and a photocopy of a government-issued identification; the requirement to get a cigarette or tobacco products distributor’s license; specific disclosure requirements; specific shipping requirements, including use of a delivery service that requires a signature from the consumer or another adult of legal purchasing age upon delivery and proof, in the form of a government-issued identification; and specific reporting requirements. A first violation is subject to a fine of \$1,000 or five times the retail value of the tobacco involved, whichever is greater. A second violation is a \$5,000 fine or five times the retail value of the tobacco involved, whichever is greater. Knowingly violating this law or knowingly submitting a false certification under the name of another person is subject to a \$10,000 fine or five times the retail value of the tobacco involved, whichever is greater, or may be imprisoned for up to five years.

OR. REV. STAT. §§ 323.700 to 323.730 (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

Cities and counties by ordinance or resolution shall not regulate vending machines that dispense tobacco products, as defined in Oregon Revised Statute section 431.840, in any form and that are in any manner accessible to minors.

OR. REV. STAT. § 167.404 (1991).

Note: The above provision only prevents local communities from passing stronger laws concerning the placement of tobacco product vending machines. All other laws in sections C & D of Oregon's SLATI state page are not preempted and local communities can pass stronger ordinances.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person may not distribute free samples of smokeless tobacco products to persons under 21 years of age or in any area unless access to persons under 21 years of age is prohibited. Violation is a Class A misdemeanor.

OR. REV. STAT. § 180.486(d) (2010).

Except as specified above, it is unlawful to distribute free tobacco products to persons under 18 years of age as part of a marketing strategy to encourage the use of tobacco products. Violation constitutes a civil penalty of between \$100 and \$500.

OR. REV. STAT. §§ 431.840 (2001) & 431.845 (1991).

Minimum Tobacco Product Sales Amounts

It is unlawful to sell cigarettes in any form other than a sealed package. Violation constitutes a civil penalty of between \$100 and \$500.

OR. REV. STAT. §§ 431.840 (2001) & 431.845 (1991).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A person may not sell or dispense tobacco products from a vending machine, except in an establishment that is permanently off-limits to minors under rules adopted by the Oregon Liquor Control Commission.

OR. REV. STAT. § 167.402 (2010).

Penalties

Violation is a Class B violation punishable by a fine of up to \$250 for each day the violation exists.

OR. REV. STAT. § 167.402 (2010).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesalers and distributors must obtain a license to sell cigarettes from the Department of Revenue. A separate license is required for each place of business.

OR. REV. STAT. §§ 323.105 & 323.107 (2003).

Fees

No fee for distributors; no fee specified for wholesalers.

OR. REV. STAT. §§ 323.105 & 323.107 (2003).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during non-working hours, except when the restriction relates to a bona fide occupational requirement. This section does not apply if an applicable collective bargaining agreement prohibits off-duty use of tobacco products. A civil action may be filed in circuit court for a violation.

OR. REV. STAT. §§ 659A.315 & 659A.885 (2005).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In any civil action, against a tobacco product manufacturer, or against an affiliate or successor of a tobacco product manufacturer subject to the requirements of the Master Settlement

Agreement, the supersedeas undertaking required as a condition of a stay of judgment throughout all appeals or discretionary appellate review shall be established in the manner provided by the laws and court rules of this state applicable to supersedeas undertakings, but the amount of the supersedeas undertaking may not exceed \$150 million. If at any time after the posting of the supersedeas undertaking the court determines that a tobacco product manufacturer, affiliate or successor, outside of the ordinary course of its business, is purposely dissipating or diverting assets for the purpose of avoiding payment on final judgment in the action, the court may condition continuance of the stay on an order requiring that the tobacco product manufacturer, affiliate or successor post a supersedeas undertaking in an amount up to the full amount of the judgment.

OR. REV. STAT. § 19.312 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Tobacco Settlement Funds Account is established as an account in the General Fund. Except as specified otherwise, the account shall consist of all moneys received from the Master Settlement Agreement (MSA) between the state of Oregon and certain cigarette companies. On July 1 of each odd-numbered year, an amount requested by the state Department of Justice to enforce certain laws is transferred to a Tobacco Enforcement Fund. All other moneys in the account are appropriated as directed by the legislature.

OR. REV. STAT. § 293.537 (2003).

The Health Care Trust Fund was established in the state Treasury. The trust fund shall consist of moneys from the MSA as directed by the legislature. Earnings on the trust fund are appropriated to the Department of Administrative Services to be used only for the purpose of financing health programs.

OR. REV. STAT. § 293.540 (2001).

M Fire Safety Standards

To help prevent cigarette-caused fires, a person may not distribute or offer to sell a cigarette within Oregon unless the cigarette is of a variety the state Fire Marshal has determined to have reduced igni-

tion propensity. For a cigarette to be determined to have reduced ignition propensity, it must meet the ignition propensity testing requirements in Oregon Revised Statute section 476.770. A cigarette manufacturer must also submit a written certification with specific requirements outlined in Oregon Revised Statute section 476.780. The cigarette packages deemed to meet the standard must also be marked pursuant to Oregon Revised Statute section 476.785. The state Fire Marshal may impose a civil penalty for violation. For a person that distributes or offers to sell cigarettes to a wholesale or retail dealer, \$10,000 or five times the wholesale invoice cost of the cigarettes involved in the violation, whichever is greater. For a person that distributes or offers to sell not more than 1,000 cigarettes to consumers, \$500, and for a distribution or offer of more than 1,000 cigarettes, \$1,000 or five times the retail value of the cigarettes involved in the violation, whichever is greater. For a continuing violation, each day that a person distributes or offers to sell cigarettes after being notified by the state Fire Marshal is a separate violation subject to civil penalty.

OR. REV. STAT. §§ 476.755 to 476.806 (2008).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$6,612,500

FY2010 Federal Tobacco Control Program
Funding: \$1,094,341

FY2010 Total Tobacco Control Program
Funding: \$7,706,841

Funding Level Recommended by CDC:
\$43,000,000

Percentage of CDC-Recommended Level:
17.9%

State Funding Details:

Oregon appropriated \$6,612,500 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from a portion of the state tobacco tax revenue. In FY2009, \$7,900,000 was appropriated. This is the first year of the FY2010-FY2011 biennium.

FY2010-FY2011 Department of Human Services Biennial Budget (S.B. 5529) enacted and effective 7/16/09 (FY2010) & 7/1/10 (FY2011).

Tobacco Control Program Related Laws

The Tobacco Use Reduction Account was established in the General Fund. Amounts credited to the account are continuously appropriated to the Oregon Health Authority for the funding of prevention and education programs designed to reduce cigarette and tobacco use. The authority shall develop and adopt rules for awarding grants to programs for educating the public on the risks of tobacco use, including, but not limited to, educating children on the health hazards and consequences of tobacco use, and promoting enrollment in smoking cessation programs and programs that prevent smoking-related diseases including cancer and other diseases of the heart, lungs and mouth.

OR. REV. STAT. §§ 431.832 & 431.834 (1997).

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A State Smoking Restrictions

Public Places

Smoking is prohibited in public places, defined by the law as an enclosed area which serves as a workplace, commercial establishment or an area where the public is invited or permitted. See the definition of “public place” in Title 35 Pennsylvania statutes section 637.2 below for a more detailed list of the places covered. Exceptions to the law include: 1) a private home, private residence or private vehicle except when used for specified purposes, including child care services; 2) designated quarters within a) a lodging establishment accounting for no more than 25 percent of the total number of lodging units in a single place or b) within a full-service truck stop as defined; 3) a tobacco shop as defined, as long as the process for obtaining an exemption is followed; 4) a workplace of a manufacturer, importer or wholesaler of tobacco products, a manufacturer of tobacco-related products, including lighters, a tobacco leaf dealer or processor, or a tobacco storage facility; 5) residential long-term care facilities as specified; 6) a separate enclosed room or designated smoking room in a residential adult care facility, community mental health care facility, drug and alcohol facility or other residential health care facility; 7) a designated smoking room in a facility which provides day treatment programs; 8) a private club except when it is open to the public by general advertisement for a club-sponsored event or the club is leased or used for an event that is not club-sponsored, to qualify for this exemption a private club must take and record a vote of its officers under the bylaws to address smoking in the private club’s facilities; 9) a place where a fundraiser is conducted by a nonprofit and charitable organization one time per year under certain conditions; 10) an exhibition hall, conference room, catering hall or similar facility used exclusively for an event to which the public is invited for the primary purpose of promoting or sampling tobacco products under certain conditions; 11) a cigar bar as defined, as long as the process for obtaining an exemption is followed; 12) a drinking establishment as defined, as long as the process

for obtaining an exemption is followed; 13) 25 percent of the gaming floor at a licensed gambling facility, which can be increased to up to 50 percent of the gaming floor if certain conditions are met; and 14) a designated outdoor smoking area within the confines of a sports or recreational facility, theater or performance establishment.

35 PA. STAT §§ 637.1 to 637.11 (2008).

Smoking is prohibited on any public conveyance owned or operated by the Port Authority, including buses, street railway cars, light rail vehicles, a commuter rail train or incline.

55 PA. CONS. STAT. ANN. § 560.1 (1992).

Government Buildings

Smoking is prohibited in public places, which as defined in the law includes workplaces. Workplace is defined as an indoor area serving as a place of employment, occupation, business, trade, craft, professional or volunteer activity. Although not specifically mentioned in the law, this definition includes state and local government workplaces.

35 PA. STAT §§ 637.1 to 637.11 (2008).

Private Workplaces

Smoking is prohibited in public places, which as defined in the law includes workplaces. Workplace is defined as an indoor area serving as a place of employment, occupation, business, trade, craft, professional or volunteer activity. A workplace of a manufacturer, importer or wholesaler of tobacco products, a manufacturer of tobacco-related products, including lighters, a tobacco leaf dealer or processor, or a tobacco storage facility are exempt.

35 PA. STAT §§ 637.1 to 637.11 (2008).

Schools

Tobacco use or possession by pupils is prohibited in school buildings; and school buses or buses, vans or other vehicles owned by, leased by or under the control of a school district; and on school property owned by, leased by or under the control of a school district. Tobacco use by any person other than a pupil is prohibited in school buildings; and on buses, vans or other vehicles owned by, leased

by or under the control of a school district; and on property owned by, leased by or under the control of a school district. The board of school directors may designate certain areas on property owned by, leased by or under the control of the school district where tobacco use by persons other than pupils is permitted. Such areas shall be no less than 50 feet from school buildings, stadiums or bleachers. The board of school directors may designate smoking areas for employees and shall establish policy to enforce the prohibition of tobacco use under this section and may further establish a policy relating to tobacco use at school-sponsored events which are held off school premises. This section supercedes any municipal ordinance or school board regulation to the contrary.

35 PA. STAT. § 1223.5 (2000).

To the extent not covered by the above restrictions, smoking is prohibited in public places, which as defined in the law includes all facilities that provide education-related services.

35 PA. STAT. §§ 637.1 to 637.11 (2008).

Child Care Facilities

Smoking is prohibited in public places, which as defined in the law, includes child care facilities. Private homes, private residences and private vehicles when used for the provision of child care services, adult day care services or services related to the care of children and youth in state or county custody are specifically covered.

35 PA. STAT. §§ 637.1 to 637.11 (2008).

Health Care Facilities

Smoking is prohibited in public places, which as defined in the law includes all facilities that provide healthcare-related services. Exceptions include: 1) a long-term care facility regulated under federal law Title 42 Code of Federal Regulations 483.15; 2) a separate enclosed room or designated smoking room in a residential adult care facility, community mental health care facility, drug and alcohol facility or other residential health care facility that does not fall under the first exemption; and 3) a designated smoking room in a facility which provides day treatment programs.

35 PA. STAT. §§ 637.1 to 637.11 (2008).

Restaurants

Smoking is prohibited in public places, which as

defined in the law includes facilities that provide food-related services (restaurants) as well as places where the public is invited or permitted. This does not apply to an enclosed area within an establishment that: a) operates pursuant to an eating place license, restaurant license or retail dispenser license under the Liquor Code; b) is a physically connected or directly adjacent enclosed area which is separate from the eating area, has a separate air system and has a separate outside entrance; c) has total annual sales of food sold for on-premises consumption of less than or equal to 20 percent of the combined gross sales within the permitted smoking area of the establishment; and d) does not permit individuals under 18 years of age to enter. To claim this exemption, an establishment must submit a letter, accompanied by verifiable supporting documentation, to the department claiming an exception. Exception shall be based upon the establishment's books, accounts, revenues or receipts, including those reported to the Department of Revenue for sales tax purposes, from the previous year or stated projected annual revenues, which shall be verified within six months.

35 PA. STAT. §§ 637.1 to 637.11 (2008).

Bars

Smoking is allowed in drinking establishments, which as defined in the law is an establishment, which: 1) operates pursuant to an eating place license, restaurant license or retail dispenser license under the Liquor Code; has total annual sales of food sold for on-premises consumption of less than or equal to 20 percent of the combined gross sales of the establishment; and does not permit individuals under 18 years of age to enter. 2) Or an enclosed area in an establishment that: a) operates pursuant to an eating place license, restaurant license or retail dispenser license under the Liquor Code; b) is a physically connected or directly adjacent enclosed area which is separate from the eating area, has a separate air system and has a separate outside entrance; c) has total annual sales of food sold for on-premises consumption of less than or equal to 20 percent of the combined gross sales within the permitted smoking area of the establishment; and d) does not permit individuals under 18 years of age to enter. Smoking is also allowed in cigar bars, which as defined in the law are either: 1) an establishment which, operates pursu-

ant to an eating place retail dispenser's or restaurant liquor license under the Liquor Code, and is physically connected by a door, passageway or other opening and directly adjacent to a tobacco shop; or (2) an establishment which, at any time, operates pursuant to an eating place retail dispenser's license, malt or brewed beverage distributor's license or restaurant liquor license under the Liquor Code, and has total annual sales of tobacco products, including tobacco, accessories or cigar storage lockers or humidors of at least 15 percent of the combined gross sales of the establishment. To claim an exemption as a drinking establishment or cigar bar, an establishment must submit a letter, accompanied by verifiable supporting documentation, to the department claiming an exception. Exception shall be based upon the establishment's books, accounts, revenues or receipts, including those reported to the Department of Revenue for sales tax purposes, from the previous year or stated projected annual revenues, which shall be verified within six months.

35 PA. STAT §§ 637.1 to 637.11 (2008).

Penalties/Enforcement

"Smoking" or "No Smoking" signs or the international "No Smoking" symbol shall be prominently posted and properly maintained where smoking is prohibited by the owner, operator, manager or other person having control of the area. A "Smoking Permitted" sign shall be prominently posted and maintained at every entrance to a public place where smoking is permitted. The law can be enforced by the state Department of Health or state licensing agency, county board of health or law enforcement agency as specified. Violation is subject to a fine or penalty of not to exceed \$250 for a first violation, not to exceed \$500 for a second violation within one year of receiving a first violation and not to exceed \$1,000 for a third violation within one year of a second violation. An affirmative defense is available if when the violation occurred, the actual control of the public place was not exercised by the owner, operator or manager but by a lessee or the owner, operator or manager made a good faith effort to prohibit smoking. Complaints can be made to the Department of Health or local law enforcement agency as specified.

35 PA. STAT §§ 637.1 to 637.11 (2008).

State Preemption of Local Laws

The law above shall supersede any ordinance, resolution or regulation adopted by a political subdivision concerning smoking in a public place. No political subdivision shall have the authority to adopt or enforce any ordinance, regulation or resolution which is in conflict with the above law. This shall not apply to a city of the first class; however, a city of the first class may not change or amend its ordinance to conflict with any provision of the law.

35 PA. STAT § 637.11 (2008).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.60

Date last changed: November 1, 2009 – from \$1.35 to \$1.60

Year first enacted: 1935

72 PA. STAT. § 8206 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$1,014,823,000

Taxes on Other Tobacco Products

Little cigars (weighing under 4 lbs/thousand): 8 cents per cigar;

All other tobacco products: No tax levied

72 PA. STAT. § 8206 (2009).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

Compliance checks conducted by the state Department of Health, a single county authority created pursuant to the Pennsylvania Drug and Alcohol Abuse Control Act, a county or municipal health department or a primary contractor pursuant to Chapter seven of the Tobacco Settlement Act to assess compliance with federal and state law shall be conducted only in consultation with the Department of Health and local law enforcement agency for the municipality where the compliance check is being conducted and shall

only be conducted once every 30 days. A minor participating in a compliance check must be at least 14 years of age, complete a course of training approved by the Department of Health and furnish the Department of Health with a signed, written parental consent agreement allowing the minor to participate in the compliance check.

18 PA. CONS. STAT. § 6305 (2002).

Penalties for Sales to Minors

A person is guilty of a summary offense if they sell or furnish tobacco products to a minor. Violators will be fined between \$100 and \$250 for a first offense, \$250 to \$500 for a second offense, and \$500 to \$1,000 for subsequent offenses. Retailers will be fined between \$100 and \$500 for a first offense, \$500 to \$1,000 for a second offense, \$1,000 to \$3,000 for a third offense, and \$3,000 to \$5,000 for subsequent offenses. In addition, upon the third conviction of a retailer in a 24-month period, the Department of Health may, after the opportunity for a hearing, suspend the retailer's cigarette license for up to 30 days. Upon a fourth conviction in any 24 month period, the department may, after the opportunity for a hearing, suspend the license for up to 60 days. An affirmative defense is available for retailers if prior to the date of the alleged violation the retailer has adopted and implemented a written policy, which includes specific requirements relating to the sale of tobacco products by employees, see statute cited for more detailed information. This affirmative defense may be used by a retailer no more than three times at each retail location in a 24-month period.

18 PA. CONS. STAT. § 6305 (2002).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

A minor is guilty of a summary offense if the minor purchases or attempts to purchase a tobacco product; or knowingly falsely represents himself to be at least 18 years of age to a person for the purpose of purchasing or receiving a tobacco product. A minor who violates this section shall be sentenced to any or all of the following: to not more than 75 hours of community service; to

complete a tobacco use prevention and cessation program approved by the Department of Health; a fine not to exceed \$200; or a 30-day suspension of motor vehicle operating privileges. This does not apply to minors used to test compliance as long as they don't use or consume the tobacco product.

18 PA. CONS. STAT. § 6305 (2002).

Placement of Tobacco Products

A person may not display or offer for sale tobacco products in any manner which enables an individual other than the retailer or an employee of the retailer to physically handle tobacco products prior to purchase unless the tobacco products are located within the line of sight, or under the control, of a cashier or other employee during business hours, except that this paragraph shall not apply to retail stores which derive 75 percent or more of sales revenues from tobacco products. Violation is subject to the same penalties as for selling or furnishing tobacco products to a minor.

18 PA. CONS. STAT. § 6305 (2002).

Internet Sales of Tobacco Products

It shall be unlawful for any person in the business of selling cigarettes to take an order for cigarettes through the mail or through any telecommunications means, including by telephone, facsimile or the Internet, if in providing for the sale or delivery of the cigarettes pursuant to the order the person mails the cigarettes, or ships the cigarettes sold by him to the purchaser by carrier in or affecting interstate commerce, and the person fails to comply with each of the following procedures. Before mailing or shipping the cigarettes, the person receives from the purchaser a copy of a valid government-issued document that provides the name, address and date of birth of the purchaser; and a signed statement from the purchaser stating that they are of legal minimum age. The person shall also verify the age of the purchaser against a commercially available database, or obtain a photocopy of their government-issued identification. In the case of an order for cigarettes that occurs pursuant to an advertisement on the Internet or in any newspaper or print or other media, the person receives payment by credit card or check for the order before mailing or shipping the cigarettes. Payment must be made by credit card issued to, or check issued by, the person purchasing

the cigarettes. The person employs a method of mailing or shipping the cigarettes requiring that the purchaser be the addressee and be the person who signs for the delivery of the cigarettes. A first violation is subject to a fine of not more than \$1,000. The second or subsequent violations are subject to a fine of \$1,000 to \$5,000. Any person who knowingly violates this section or submits a certification in another person's name shall be fined \$10,000 and/or imprisoned for not more than five years. Failure to pay the required tax is 50 percent of the tax due but unpaid, in addition to any other penalty.

72 PA. STAT. § 231-A (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

The provisions of Title 18 Pennsylvania Consolidated Statute section 6305 (relating to sale of tobacco) shall preempt and supersede any local ordinance or rule concerning the subject matter contained therein and of section 206-A of Title 72 Pennsylvania Statutes. This does not prohibit local regulation enacted prior to January 1, 2002.

53 PA. CONS. STAT. § 301 (2002).

Note: The above law prohibiting local communities from passing stronger ordinances restricting youth access to tobacco products applies to almost all laws summarized in sections C, D, E & F of Pennsylvania's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person is guilty of a summary offense if they furnish tobacco products to a minor. Violation is subject to the same penalties as for selling tobacco products to a minor.

18 PA. CONS. STAT. § 6305 (2002).

Minimum Tobacco Product Sales Amounts

A person may not display or offer for sale a cigarette out of a pack of cigarettes. Violation is

subject to the same penalties as for selling or furnishing tobacco products to a minor.

18 PA. CONS. STAT. § 6305 (2002).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A vending machine containing a tobacco product may not be located or placed in a location accessible to minors.

18 PA. CONS. STAT. § 6305 (2002).

Penalties

Violation is a summary offense and is subject to the same penalties as for selling or furnishing tobacco products to a minor.

18 PA. CONS. STAT. § 6305 (2002).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Retailers and wholesalers must obtain and must conspicuously display at their place of business a license from the Department of Revenue to sell cigarettes. A license is also required for each vending machine. Licenses are valid for one year and must be renewed annually. Any person selling or distributing cigarettes without a license is subject to a fine of \$250 to \$1,000, costs of prosecution and/or imprisonment for not more than 30 days.

18 PA. CONS. STAT. § 6305 (2002).

Fees

Retail cigarette license: \$25 annually;

Wholesale cigarette license: \$500 annually;

Vending machine license: \$25 annually.

72 PA. CONS. STAT. § 208-A (1993).

License Suspension for Sales to Minors

Upon the third conviction of a retailer for violating the law prohibiting the sale or distribution of tobacco products to minors in a 24 month period, the Department of Health may, after the opportunity for a hearing, suspend the retailer's cigarette license for up to 30 days. Upon a fourth conviction in any 24 month period, the department may, after

the opportunity for a hearing, suspend the license for up to 60 days.

18 PA. CONS. STAT. § 6305 (2002).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The appeal bond required to appeal a lawsuit judgment for a signatory, a successor of a signatory or an affiliate of a signatory to the Master Settlement Agreement (MSA) is limited to \$100 million, regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, the court may enter an order that is necessary to protect the appellee and that requires the appellant to post an appeals bond in an amount up to the total amount of the judgment.

PA STAT. § 5701.309 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

A special fund known as the Tobacco Settlement Fund was established to receive all payments received from the MSA. Also, within the Tobacco Settlement Fund, the Health Endowment Account for Long-Term Hope, and Health Venture Investment Fund were established. This law divided the money received based on percentages of actual money received each year. Twelve percent went to the Department of Health for tobacco use prevention and cessation programs, 8 percent for deposit into the Health Account, 13 percent to the Department of Public Welfare for home and community-based care services, 19 percent total

for health and related research efforts, 10 percent to the uncompensated care payment program, 30 percent for health investment insurance and the purchase of Medicaid benefits for workers with disabilities and 8 percent for expansion of the Pacenet program.

35 PA STAT. §§ 5701.301 to 5701.308 (2001).

House Bill 1614 passed in 2009 amends the state fiscal code for FY2010 only. It created a Community Health Reinvestment Restricted Account in the Tobacco Settlement Fund as specified. The legislation directed \$25 million in investment earnings from the Health Endowment Account for Long-Term Hope and re-directed 25 percent of money dedicated to tobacco prevention and cessation programs and 33 percent of the money dedicated to health investment insurance and the purchase of Medicaid benefits for workers with disabilities to the Tobacco Settlement Fund to be used for other health-related purposes. Also, for FY2010 and FY2011, 37.5 of the remaining money dedicated to tobacco prevention and cessation programs is transferred from the Tobacco Settlement Fund to the state general fund; \$150 million (FY2010) and \$250 million (FY2011) in money from the Tobacco Endowment Account for Long-Term Hope is transferred to the state general fund; and 100 percent of the money appropriated to the Tobacco Endowment Account for Long-Term Hope in FY2009 will be transferred to the Tobacco Settlement Fund. It also specified that MSA strategic contribution payments received in FY2009 should be deposited in the Tobacco Settlement Fund.

72 PA STAT. §§ 1715-K & 1716-K (2009).

M Fire Safety Standards

To help prevent cigarette-caused fires, except as provided under subsection (g) of section 1254.4 Pennsylvania Statutes, no cigarettes may be sold or offered for sale in Pennsylvania or offered for sale or sold to persons located in Pennsylvania unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 1254.4 Pennsylvania Statutes; 2) a written certification has been filed by the manufacturer with the Department of Revenue in accordance with section 1254.5 Pennsylvania Statutes; and 3) the cigarettes have been marked in accordance with section 1254.6 Pennsylvania

Statutes. Any manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above shall be subject to a civil penalty not to exceed \$10,000 for a first offense and not to exceed \$25,000 for a subsequent offense for each sale of cigarettes. A penalty against any such person or entity may not exceed \$100,000 during any 30-day period. Any retail dealer who knowingly sells cigarettes in violation is subject to a civil penalty not to exceed \$500 for a first offense and not to exceed \$5,000 for a subsequent offense for each sale of cigarettes. A penalty against a retail dealer shall not exceed \$25,000 in any 30-day period. In addition, an entity engaged in the manufacture of cigarettes that knowingly makes a false certification shall be subject to a civil penalty of not less than \$75,000 and not more than \$250,000 for each such false certification.

35 PA. STAT. §§ 1254.1 to 1254.11 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$17,674,000

FY2010 Federal Tobacco Control Program
Funding: \$1,289,693

FY2010 Total Tobacco Control Program
Funding: \$18,963,693

Funding Level Recommended by CDC:
\$155,500,000

Percentage of CDC-Recommended Level:
12.2%

State Funding Details:

Pennsylvania allocated \$17,674,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from a portion of the state's annual MSA payment. In FY2009, \$32,054,000 was allocated.

FY2010 Allocation based on 35 PA STAT § 5701.306, effective 7/1/09 and H.B. 1614 enacted and effective 10/9/09.

Note: Title 35 Pennsylvania Statutes section 5701.306 calls for 12 percent of the annual MSA payment to be spent on tobacco control programs, but H.B. 1614 shifted 25 percent of this amount to other health-related purposes and 37.5 percent

to the state general fund for FY2010.

Tobacco Control Program Related Laws

A comprehensive Tobacco Use Prevention and Cessation Program was created within the Department of Health. Components of the program include: statewide, community, and school programs to reduce tobacco use, chronic disease programs to reduce the burden of tobacco-related diseases, enforcement of youth access laws, efforts designed to counter tobacco influences and increase health-related messages, tobacco cessation programs with a priority for serving the uninsured and low income population, program evaluation, and effective administration to coordinate state and local programs. The Tobacco Use Prevention and Cessation Advisory Committee was also established within the Department of Health, whose powers and duties are to collect and review information relating to tobacco use prevention and cessation, and make annual recommendations to the Department regarding program priorities. Consideration shall be given to: prevention and cessation programs operating in minority communities and those demographic groups which suffer from disproportionately high rates of lung cancer or other tobacco-related diseases; efforts which would lower tobacco use among school-age children; and the delivery of cessation services by approved health care practitioners.

PA STAT. §§ 5701.701 to 5701.710 (2001).





A State Smoking Restrictions

Public Places

Smoking shall be prohibited in almost all enclosed public places and places of employment, including all restaurants and bars. For a detailed list of public places covered, see Rhode Island General Laws section 23-20.10-3. Exempt from this prohibition are: 1) private residences, except when used as a licensed child care, adult day care or health care facility; 2) up to 50 percent of designated hotel and motel rooms; 3) retail tobacco stores as defined, as long as smoke doesn't drift into other areas designated as non-smoking; 4) private and semi-private rooms or designated areas in assisted living residences and nursing facilities; 5) outdoor places of employment; and 6) smoking bars as defined. This also does not apply to a stage performance provided that smoking is part of the theatrical production. Pari-mutual facilities (casinos) shall provide designated smoking and nonsmoking gaming areas in their facilities. The designated nonsmoking gaming area shall be physically separated from any smoking area and shall be required to have a separate and distinct ventilation system. Any bar or restaurant located in a pari-mutual facility shall be nonsmoking and be physically separate from any smoking area and shall have a separate ventilation system, except for bars which are presently in existence, located in, and not physically separated from a designated smoking area.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Bingo games held in nonsmoking facilities are permitted to award a higher amount of total prizes in any one night than games held in smoking facilities. Prizes may total a maximum of \$6,050 in cash and merchandise in nonsmoking facilities and \$4,250 in smoking facilities.

R.I. GEN. LAWS § 11-19-32 (1995).

Government Buildings

Smoking shall be prohibited in all enclosed facilities within places of employment, including all public places of employment and vehicles being used by more than one employee. This includes common work areas, auditoriums, classrooms,

conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. An employer may provide an outdoor smoking area, but the area must be physically separated from the enclosed workplace so as to prevent the migration of smoke into the workplace. This prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application for employment.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Private Workplaces

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. The definition of "place of employment" includes vehicles being used by more than one employee. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility. An employer may provide an outdoor smoking area, but the area must be physically separated from the enclosed workplace so as to prevent the migration of smoke into the workplace. This prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application for employment.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Schools

Smoking is prohibited in all primary and secondary schools, indoor athletic facilities, school administration buildings, playgrounds, school buses and outdoor areas within 25 feet of any school building. The governing body of each school in Rhode Island shall be responsible for the development of enforcement procedures to prohibit tobacco product usage by any person utilizing school facilities. All facilities used by a school, whether owned, leased or rented, shall be subject

to the provisions of this chapter. Governing bodies of schools are liable for a civil penalty of not less than \$50 but not to exceed \$500. Nothing contained in this chapter shall be construed to restrict the power or authority of any Rhode Island city, town or other legal subdivision to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimal applicable standards to establish smokefree schools.

R.I. GEN. LAWS § 23-20.9-1 et seq. (1993).

To the extent not covered by the restrictions above, smoking is prohibited in all enclosed public places, including primary, secondary and post-secondary education facilities.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Child Care Facilities

No person shall smoke, chew, or otherwise use tobacco products in the buildings or outdoor play areas of a licensed child day care center or during the hours of operation in a family day care home or group family day care home, in any vehicle used for transporting children or in outside areas on the grounds or premises within 25 feet of buildings or outdoor play areas; provided, further, that smoking shall not occur on grounds or premises within the children's view. The administrator of a child day care center shall post in a conspicuous place in the center a notice stating that smoking is prohibited in the facility and its vehicles and on its grounds. Smoking may be permitted in family day care homes and group family day care homes during hours in which individuals receiving day care are not present; provided, however, that the day care provider shall notify the parent, custodian, or guardian of each individual receiving day care services that smoking routinely occurs in the home during hours when the home is not in operation. Nothing in this section shall be construed to prohibit a city or town from enacting or enforcing an ordinance relating to tobacco use in a facility providing day care services if the ordinance is more stringent than this section.

R.I. GEN. LAWS § 23-28.15-23 (2000).

To the extent not covered by the restrictions above, smoking shall be prohibited in all enclosed public places, including licensed child care and adult day care facilities.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Health Care Facilities

Smoking shall be prohibited in all enclosed public places, including health care facilities and the lobbies, hallways and other common areas of nursing homes. "Health care facility" is defined as an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. Private and semi-private rooms or designated areas in assisted living residences and nursing facilities are exempt.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Restaurants

Smoking shall be prohibited in all enclosed public places, including restaurants. "Restaurant" is defined as an eating establishment, including, but not limited to, coffee shops, cafeterias, and private and public school cafeterias, which gives or offers for sale food to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Bars

Smoking shall be prohibited in all enclosed public places, including bars. Smoking bars are exempt. "Smoking bar" means an establishment whose business is primarily devoted to the serving of tobacco products for consumption on the premises, in which the annual revenues generated by tobacco sales are greater than 50 percent of the total revenue for the establishment and the serving of food or alcohol is only incidental to the consumption of such tobacco products. Smoking bars are required to provide a proper ventilation system which will prevent the migration of smoke into the street.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

Penalties/Enforcement

No-smoking signs must be clearly and conspicuously posted in every public place and place of

employment where smoking is prohibited by this chapter, by the owner, operator, manager or other person in control of that place. An employer who violates the prohibition on smoking in public places or places of employment is liable for a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1,000 for the third violation. Each day the violation is committed or permitted to continue shall constitute a separate offense. Any citizen who desires to register a complaint under this chapter may initiate such a complaint with the Department of Health. The Department of Health, local fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

R.I. GEN. LAWS §§ 23-20.10-1 et seq. (2005).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$3.46

Date last changed: April 10, 2009 – from \$2.46 to \$3.46

Year first enacted: 1939

R.I. GEN. LAWS § 44-20-12 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$112,086,000

Taxes on Other Tobacco Products

Cigars, pipe tobacco products and smokeless tobacco other than snuff: 80% of the wholesale cost, except the tax on cigars shall not exceed 50 cents per cigar;

Snuff: \$1.00/oz. or proportionate rate on all fractional parts of an ounce.

R.I. GEN. LAWS § 44-20-13.2 (2009).

Note: Although the language in state law is unclear on this issue, taxes on little cigars (not weighing more than 3 lbs. per thousand) are being collected at the same rate as the cigarette tax \$2.46 per 20 cigars.

Use of Revenue from Taxes on Other Tobacco Products

All proceeds collected from the taxes on other tobacco products are paid into the state general fund.

R.I. GEN. LAWS § 44-20-13.2 (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Mental Health, Retardation and Hospitals shall coordinate and promote the enforcement of the provisions of this chapter and serve as the primary liaison from this department to other state or local agencies, departments, or divisions on issues pertaining to stopping children's access to tobacco. It shall investigate concurrently with other state and local officials' violations of this chapter. It shall utilize unannounced statewide compliance checks of retail tobacco over-the-counter sales, mail order sales initiated via mail, facsimile, telephone or the Internet, and tobacco vending machine sales as part of investigating compliance. Underage individuals, acting as agents for the department and with the written permission of a parent or guardian, may purchase, with impunity from prosecution, tobacco products for the purposes of law enforcement or government research involving monitoring compliance with this chapter, provided that the underage individuals are supervised by an adult law enforcement official.

R.I. GEN. LAWS § 11-9-13.6 (2001).

Penalties for Sales to Minors

No person shall sell, give or deliver any tobacco in the form of cigarettes, bidi cigarettes, cigars, pipe tobacco, chewing tobacco, or snuff to a person less than 18 years of age. No specific penalties are mentioned.

R.I. GEN. LAWS § 11-9-13 (2001).

A person that holds a license issued under chapter 20 of title 44 of the Rhode Island General Laws, or an employee or agent of that person, is prohibited from selling, distributing or delivering a tobacco product to any individual that is less than 18 years

of age. Violation is punishable by a fine of \$250 for a first violation, \$500 for a second violation within any 36 month period, \$1,000 and a 14 day suspension of the license to sell tobacco products for a third violation within any 36 month period, and a fine of \$1,500 and a 90 day suspension of the license to sell tobacco products for each violation in excess of three. The license holder is responsible for all violations that occur at the location for which the license is issued. The court shall suspend the imposition of a license suspension if the court finds that the license holder has taken measures to prevent the sale of tobacco to minors and the license holder can demonstrate to the court that those measures have been taken and that employees have received training. No person shall sell tobacco products, at retail, without first being trained in the legal sale of tobacco products. Dealers shall maintain records indicating that the provisions of this section were reviewed with all employees who conduct or will conduct tobacco sales. Each employee who sells or will sell tobacco products shall sign an acknowledgement form attesting that the provisions of this section were reviewed with them.

R.I. GEN. LAWS §§ 11-9-13.8 (2001) & 11-9-13.13 (2005).

Photo ID

No provisions

Sign Posting

Signs provided by the Department of Mental Health, Retardation and Hospitals shall be posted at each cash register, vending machine or any other place where tobacco products are sold and shall contain in bold lettering a minimum of 3/8 inch high on a white background the following wording: "THE SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST RHODE ISLAND LAW (SECTION 11-9-13.8 (A) (1), RHODE ISLAND GENERAL LAWS). PHOTO ID FOR PROOF OF AGE IS REQUIRED FOR PURCHASE." The signs shall also provide a phone number at the Department of Mental Health, Retardation and Hospitals where violations can be reported. Violation is punishable by a fine of \$35 to \$500 per civil violation.

R.I. GEN. LAWS §§ 11-9-13.6(2), 11-9-13.7 & 11-9-13.13 (2001).

Bidis

Any person is prohibited from selling tobacco products to minors. The definition of "tobacco product" includes bidi cigarettes. License holders face the same penalties as for selling or distributing tobacco products to minors.

R.I. GEN. LAWS §§ 11-9-13, 11-9-13.8, & 11-9-13.13 (2001).

Penalties to Minors

No person under 18 years of age shall purchase any tobacco in the form of cigarettes, bidi cigarettes, cigars, pipe tobacco, chewing tobacco or snuff. Specific penalty is not given.

R.I. GEN. LAWS § 11-9-13 (2001).

No person under 18 shall smoke, chew or possess, when such possession is clearly visible, tobacco in any form in or on any public street, place or resort. Violators shall be fined not more than \$75 or required to perform up to 20 hours of community service, or attend an approved tobacco treatment program at the discretion of the minor charged.

R.I. GEN. LAWS § 11-9-14 (2007).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the state. Each person accepting a purchase order for a delivery sale shall comply with: 1) specific age verification requirements, including before the first sale obtaining a certification from the prospective consumer that includes reliable confirmation and a signed statement that the person is of the legal minimum purchase age, and making a good faith effort to verify the information against a commercially available database or receiving a photocopy of the individual's government-issued identification; 2) specific disclosure requirements; 3) specific shipping requirements, including use of a method of mailing, shipping or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container and proof, in the form of a valid, government-issued identification bearing a

photograph of the individual who signs to accept delivery of the shipping container, demonstrating that they are either the addressee or another adult of legal minimum purchase age residing at the consumer's address; 4) specific registration and reporting requirements; and 5) specific tax collection requirements. A first violation of any provision of this chapter shall be punishable by a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation shall be punishable by a fine of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater. Any person who knowingly violates any provision of this chapter, or who knowingly and falsely submits a required certification in another person's name, shall, for each such offense, be fined \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, and/or imprisoned for not more than five years. Any person failing to collect or remit to the administrator any tax required in connection with a delivery sale, shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

R.I. GEN. LAWS §§ 44-20.1-1 et seq. (2005).

Any person selling or distributing tobacco products in the form of cigarettes, cigars, pipe tobacco, chewing tobacco, or snuff directly to a consumer via the United States Postal Service, or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile, or the Internet, shall, before distributing or selling the tobacco product through any of these means, receive both a copy of a valid form of government identification showing date of birth to verify the purchaser is age 18 years or over and an attestation from the purchaser certifying that the information on the government identification truly and correctly identifies the purchaser and the purchaser's current address, and deliver the tobacco product to the address of the purchaser given on the valid form of government identification and by a postal or package delivery service method that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package. The distribution, or sale or conveyance of tobacco products to persons under the age of 18 via the United States Postal Service or by any other pub-

lic or private postal or package delivery service is prohibited. A minimum fine of \$1,000 shall be assessed against any distributor or seller for each delivery of a tobacco product to a person less than 18 years of age.

R.I. GEN. LAWS § 11-9-13.11 (2005).

Note: Some parts of the above laws may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

The distribution of free tobacco products or coupons or vouchers redeemable for free tobacco products to any person less than 18 years of age shall be prohibited. Further, the distribution of free tobacco products or coupons or vouchers redeemable for free tobacco products shall be prohibited, regardless of the age of the person to whom the products, coupons, or vouchers are distributed, within 500 feet of any school. Violators are subject to a \$500 fine for each violation.

R.I. GEN LAWS § 11-9-13.10 (2001).

Minimum Tobacco Product Sales Amounts

A person that holds a license issued under chapter 20 of title 44 of the Rhode Island General Laws, or an employee or agent of that person, is prohibited from selling, distributing or delivering a tobacco product in any other form than an original factory-wrapped package or as a single cigarette. Violators are subject to a \$500 fine for each violation.

R.I. GEN. LAWS §§ 11-9-13.8 & 11-9-13.13 (1996).

No cigarettes shall be sold in packs which contain less than 20 cigarettes. Violation is subject to a fine of \$75 for the first offense, \$150 for the second offense, and \$500 for subsequent offenses. In the event that there are no offenses in three

successive years from the date of the last offense, the next offense shall be treated as a first offense.

R.I. GEN. LAWS § 11-9-13.1 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No cigarettes or any other tobacco product shall be sold from any device or vending machine which is in an area not continuously supervised and in direct line of sight of an authorized person employed by the person, firm, or corporation that owns the business occupying the premises in which the vending machine is located. The vending machine shall also be equipped with an electronic locking device which will not allow the machine to dispense the product unless it is unlocked from a secured position inaccessible to the public and under the supervision of an authorized person employed by the business owner. Direct line of sight shall mean that the vending machine and the purchaser of cigarettes must be visible to the authorized person pressing the unlock button while the unlock button is being activated. Locking devices are not required on machines located in an establishment licensed to sell alcoholic beverages, which limits access to persons over the age of 21 years. Tobacco products shall not be sold from vending machines containing non-tobacco products.

R.I. GEN. LAWS § 11-9-13.1 (2001).

Penalties

The owner of a business where a tobacco vending machine in violation of these provisions is located shall be subject to a fine of \$75 for the first offense, \$150 for the second offense, and \$500 for subsequent offenses. In the event that there are no offenses in three successive years from the date of the last offense, the next offense shall be treated as the first offense.

R.I. GEN. LAWS § 11-9-13.1 (2001).

Sign Posting

Signs provided by the Department of Mental Health, Retardation and Hospitals shall be posted on each tobacco product vending machine and shall contain in bold lettering a minimum of 3/8 inch high on a white background the follow-

ing wording: "THE SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST RHODE ISLAND LAW (SECTION 11-9-13.8 (A) (1), RHODE ISLAND GENERAL LAWS). PHOTO ID FOR PROOF OF AGE IS REQUIRED FOR PURCHASE." The signs shall also provide a phone number at the Department of Mental Health, Retardation and Hospitals where violations can be reported. Violation is punishable by a fine of \$35 to \$500 per civil violation.

R.I. GEN. LAWS §§ 11-9-13.6(2), 11-9-13.7 & 11-9-13.13 (2001).

F Licensing Requirements

Requirements

Dealers (retailers), importers and distributors must obtain a license from the state Tax Administrator to sell cigarettes. A dealer's license is also required for each cigarette vending machine. A separate application and license is required for each place of business operated by a distributor or dealer; provided, that an operator of vending machines for cigarette products is not required to obtain a distributor's license for each machine. A dealer's and importer's license is valid through June 30th of the succeeding year unless suspended or revoked. A dealer must renew the license by February 1st of that same year. A distributor's license is valid until May 31st of the succeeding year unless suspended or revoked, and may be renewed anytime before this date. Any distributor or dealer who sells, offers for sale, or possesses with intent to sell, any tobacco products without a license shall be subject to penalties specified in Rhode Island General Laws section 11-9-13.15.

R.I. GEN. LAWS §§ 44-20-2 to 44-20-6 (2009).

Fees

Dealers/Vending Machines: \$25 for each place of business/vending machine annually;

Distributors: \$100 or \$1,000 annually, depending on if the distributor affixes tax stamps;

Importers: \$1,000 annually

R.I. GEN. LAWS § 44-20-4 (2007).

License Suspension for Sales to Minors

License holders are subject to a 14-day suspension of their license for a third violation of the sales

to minors' law within three years, and a 90-day suspension of the license for any violations in excess of three. These suspensions can be waived if the licensee has a documented employee training program in place and meets other specified conditions.

R.I. GEN. LAWS §§ 11-9-13.8 & 11-9-13.13 (2001).

G Smoker Protection Laws

No employer or agent of any employer shall require, as a condition of employment, that any employee refrain from smoking or using tobacco products outside the course of their employment, or otherwise discriminate against an individual with respect to their compensation, terms, conditions or privileges of employment for such use. The court may award up to three times the actual damages to a prevailing employee or prospective employee. Nonprofit organizations which as one of their primary purposes or objectives discourage the use of tobacco products by the general public are exempt from this law.

R.I. GEN. LAWS § 23-20.10-14 (2005).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement (MSA), the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total supersedeas bond in any one case that is required of all appellants collectively shall not exceed \$50 million regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of

business to avoid payment of a judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment.

R.I. GEN. LAWS § 42-133-11.1 (2008).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The rights to virtually all of Rhode Island's Master Settlement Agreement payments have been sold as bonds through the Rhode Island Tobacco Settlement Financing Corporation to obtain a much smaller lump sum payment up front. See *Securitization* section below for additional details.

Securitization

The Rhode Island Tobacco Settlement Financing Corporation was created as a public corporation of the state having a legal existence separate from the state. On or before June 30, 2002, the state shall sell and assign to and the corporation shall acquire all or a portion of the state's tobacco receipts. The corporation is authorized to issue bonds backed by the state's tobacco receipts, and revenue is deposited into trust funds.

R.I. GEN. LAWS §§ 42-133-1 et seq. (2002).

Additionally, the Tobacco Settlement Financing Authority was authorized in June 2007 to sell bonds by August 1, 2007 backed by residual interest from the previously sold MSA payments to raise additional money not to exceed \$195 million dollars. The net proceeds from this sale are deposited in the Tobacco Settlement Financing Trust, and then used as specified.

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

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes may be sold or offered for sale in Rhode Island or offered for sale or sold to persons located in Rhode Island unless: 1) such cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 23-20.11-4 Rhode Island General Laws; 2) a written certification has been filed by the manufacturer with the Director of the Department of Health in accordance with section

23-20.11-5 Rhode Island General Laws; and 3) the cigarettes have been marked in accordance with section 23-20.11-6 Rhode Island General Laws. Any manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above shall, for the first offense be subject to a civil penalty not to exceed \$10,000 and for a subsequent offense not to exceed \$25,000 per each such sale of cigarettes, provided that in no case shall the penalty against any such person or entity exceed \$100,000 during a 30-day period. Any retail dealer who knowingly sells or offers to sell cigarettes in violation of the above shall be subject to the following: for a first offense be subject to a civil penalty not to exceed \$500, and for a subsequent offense not to exceed \$2,000, per each such sale or offer for sale of cigarettes if the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes; and for a first offense be subject to a civil penalty not to exceed \$1,000, and for a subsequent offense not to exceed \$5,000 per each such sale or offer for sale of such cigarettes if the total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes, provided that this penalty against any retail dealer shall not exceed \$25,000 during a 30 day period. In addition to any other penalty, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification shall, for a first offense be subject to a civil penalty not to exceed \$10,000 and for a subsequent offense not to exceed \$25,000, for each such false certification.

R.I. GEN. LAWS §§ 23-20.11-1 to 23.20.11-10 (2008).

State Funding Details:

Rhode Island allocated \$703,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund. In FY2009, \$925,736 was allocated.

FY2010 Annual Budget (H.B. 5983) enacted 6/30/09 and effective 7/1/09.



N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$703,000

FY2010 Federal Tobacco Control Program
Funding: \$1,152,248

FY2010 Total Tobacco Control Program
Funding: \$1,855,248

Funding Level Recommended by CDC:
\$15,200,000

Percentage of CDC-Recommended Level:
12.2%



A State Smoking Restrictions

Public Places

Smoking is prohibited in: 1) elevators; 2) public transportation vehicles, except taxis; 3) public schools and preschools, including libraries, except for certain private offices and teacher's lounges; 4) all other indoor facilities providing children's services to the extent that smoking is prohibited in the facility by federal law and other childcare facilities, as defined; 5) almost all state and local government buildings except private enclosed offices and designated areas of employee break rooms; 6) arenas and auditoria of public theaters or public performing arts centers, except smoking areas may be designated in foyers, lobbies or other common areas. Smoking is also specifically allowed as part of a legitimate theatrical performance.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Government Buildings

Smoking is prohibited in most areas of buildings leased or operated by the state or any of its political subdivisions, but is permitted in private enclosed offices and designated areas of employee break areas. Smoking policies in the state Capitol and legislative office buildings shall be determined by the office of government having control over such buildings. "Government buildings" means buildings or portions of buildings which are leased or operated under the control of the state or any of its political subdivisions, except those buildings or portions of buildings which are leased to other organizations or corporations.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Private Workplaces

No restrictions

Schools

Smoking is restricted in public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries. Private offices and teacher lounges which are not adjacent to classrooms or libraries are excluded unless the offices and lounges are included specifically in a directive

by the local school board. This section does not prohibit school district boards of trustees from providing for a smokefree campus.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Smoking on school buses is prohibited while the bus is in operation.

S.C. CODE ANN. § 59-67-150 (1962).

Child Care Facilities

Smoking is prohibited in licensed child care facilities, and all other indoor facilities providing children's services to the extent that smoking is prohibited in the facility by federal law. "Childcare facilities" means a facility which provides care, supervision, or guidance for a minor child who is not related by blood, marriage, or adoption to the owner or operator of the facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. This definition includes, but is not limited to, day nurseries, nursery schools, childcare centers, group childcare homes, and family childcare homes.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Health Care Facilities

Smoking in health care facilities is restricted to designated employee break areas. "Health care facility" means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, methadone treatment facilities, tuberculosis hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, habilitation centers for mentally retarded persons or persons with related conditions, and any other facility for which Certificate of Need review is required by federal law. Nothing in this chapter prohibits or precludes a health care facility from being smokefree.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

Restaurants

No restrictions

Bars

No restrictions

Penalties/Enforcement

The owner, manager or agent in charge of the premises shall make reasonable efforts to prevent designated smoking areas from impinging upon designated smokefree areas by the use of existing physical barriers and ventilation systems and by conspicuously posting the appropriate signs. A person who smokes in a smokefree area or a person in charge, who fails to meet these requirements, is guilty of a misdemeanor and, upon conviction, must be fined between \$10 and \$25.

S.C. CODE ANN. §§ 44-95-10 et seq. (1996).

State Preemption of Local Laws

No specific provision concerning preemption in state law. However, a 2008 South Carolina Supreme Court decision affirmed the rights of local communities to pass stronger laws/ordinances restricting smoking, see note below.

Note: In March 2008, the South Carolina Supreme Court ruled unanimously (5-0) that South Carolina law does not prevent local communities from passing stronger ordinances restricting smoking. This allows the city of Greenville, South Carolina's law to go back into effect and provides legal justification for other stronger local smoking ordinances in South Carolina.

Foothills Brewing Concern v. City of Greenville (2008).

B Tobacco Excise Taxes**Tax on Cigarettes**

Tax rate per pack of 20: 7 cents

Date last changed: July 1, 1977 — from 6 cents to 7 cents

Year first enacted: 1923

S.C. CODE ANN. § 12-21-620 (1977).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$26,540,000

Taxes on Other Tobacco Products

All other tobacco products: 5% of the manufacturer's price.

S.C. CODE ANN. § 12-21-620 (1977).

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

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Director of the Department of Revenue shall provide for the enforcement of section 16-17-502 South Carolina code in a manner that reasonably may be expected to reduce the extent to which tobacco products are sold or distributed to persons under the age of 18 and annually shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the section. The department shall designate an enforcement officer to conduct the annual inspections.

S.C. CODE ANN. § 16-17-503 (1996).

Penalties for Sales to Minors

It shall be unlawful for any person to sell, furnish, give, or provide a tobacco product to any minor under the age of 18 years. It is also unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual's age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated pursuant to this subsection. An individual who knowingly violates these provisions is guilty of a misdemeanor punishable by a fine of \$100 to \$200 for a first offense, \$200 to \$300 for a second offense within three years of the first offense and \$300 to \$400 for a third or subsequent offense within three years of the first offense. In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program. A retail establishment that distributes tobacco products must train all retail sales employees regarding the unlawful distribution of tobacco products to minors.

S.C. CODE ANN. § 16-17-500 (2006).

Photo ID

It is unlawful to sell a tobacco product to an individual who does not present upon demand proper

proof of age. Proof of age is defined as a driver's license or identification card issued by this state or a United States Armed Services identification card.

S.C. CODE ANN. §§ 16-17-500 & 16-17-501 (2006).

Sign Posting

No provisions

Penalties to Minors

A minor under the age of 18 years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing a tobacco product. A minor who knowingly violates this provision in person, by agent, or in any other way commits a non-criminal offense and is subject to a civil fine of \$25. In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution. If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of 90 days beginning from the date provided by the court, or delay the issuance of the minor's driver's license or permit for a period of 90 days beginning from the date the minor applies for a driver's license or permit. This section does not apply to the possession of a tobacco product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

S.C. CODE ANN. § 16-17-500 (2006).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

Sections 16-17-500, 16-17-502, and 16-17-503 of the South Carolina code must be implemented

in an equitable and uniform manner throughout the state. Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation. Smoking ordinances in effect before June 18, 1996 are exempt from the above requirements.

S.C. CODE ANN. § 16-17-504 (1996).

Note: The above law prohibiting local communities from passing stronger ordinances restricting youth access to tobacco products applies to almost all laws summarized in sections C, D & E of South Carolina's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for a person to distribute a tobacco product sample to a person under the age of 18. A person engaged in sampling shall demand proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be under the age of 18. Violation of this law is subject to a civil penalty of not more than \$25 for a first offense, not more than \$50 for a second offense and not less than \$100 for a third or subsequent offense. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought pursuant to this section.

S.C. CODE ANN. § 16-17-502 (1996).

Minimum Tobacco Product Sales Amounts

It is unlawful to sell, hold for sale, or distribute a package of cigarettes if the package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, for the placement of labels, warnings, or any other information upon a package of cigarettes. A person who knowingly sells, holds for sale, or distributes cigarette packages in violation of this is guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than three years and/or be subject to a \$1,000 fine.

S.C. CODE ANN. § 16-17-505 (1996).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

It is unlawful to sell a tobacco product through a vending machine unless the vending machine is located in an establishment, which is open only to individuals who are 18 years of age or older; or where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

S.C. CODE ANN. § 16-17-500 (2006).

Penalties

Violation is subject to the same penalties as selling or giving tobacco products to minors.

S.C. CODE ANN. § 16-17-500 (2006).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Every person engaged in the business of purchasing, selling or distributing tobacco products at wholesale or through vending machines shall file with the Department of Revenue for a license to do so. When such business is conducted at two or more separate places, a separate license for each place of business shall be required. However, a person whose business is conducted through vending machines needs to obtain only one license but shall maintain an up-to-date list of the location of each vending machine operated under this license. No penalty is specified for selling tobacco products without a license.

S.C. CODE ANN. §§ 12-21-660 & 12-21-670 (1993).

Fees

No fee specified

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

The use of tobacco products outside the work-

place must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee. No specific penalties specified for violation.

S.C. CODE ANN. § 41-1-85 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The appeal of a judgment awarding relief in a civil action, under any legal theory, involving a signatory of the Master Settlement Agreement, or a successor to or affiliate of a signatory to the agreement, automatically stays the execution of that judgment. The stay is effective upon the filing of the notice of appeal and during the entire course of appellate review of the judgment.

S.C. CODE ANN. § 11-47-40 (2004).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The rights to almost all of South Carolina's Master Settlement Agreement payments have been sold as bonds through the Tobacco Settlement Revenue Management Authority to obtain a much smaller lump sum payment up front. See *Securitization* section below for additional details.

South Carolina established the Healthcare Tobacco Settlement Trust Fund in the state treasury. Earnings on this fund must be credited to the fund. The principal must remain in the fund and only the interest earnings may be appropriated and used for a variety of public health policy purposes, which can include youth smoking cessation and prevention programs coordinated by the Department of Health and Environmental Control and the Department of Alcohol and Other Drug Abuse Services. Proceeds from the

MSA have been deposited in the fund in the past.
S.C. CODE ANN. § 11-11-170 (2000).

Securitization

South Carolina created the Tobacco Settlement Revenue Management Authority. The purpose of the authority is to receive all of the state's tobacco receipts and to issue bonds payable solely from and secured solely by the state's tobacco receipts. The state's tobacco receipts due to the state after June 30, 2001, and the right to receive them as they are distributed from the escrow are assigned to the authority. All bonds must be secured solely by and payable solely from the state's tobacco receipts, or the portion of the state's tobacco receipts the board determines to pledge for payment. The authority may not issue any bond with a scheduled maturity later than 30 years after the date of issuance.

S.C. CODE ANN. §§ 11-49-10 et seq. (2000).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (O) of section 23-51-30 South Carolina Code, cigarettes may not be sold or offered for sale in South Carolina or offered for sale or sold to persons located in South Carolina unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 23-51-30 South Carolina Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with Section 23-51-40 South Carolina Code, and 3) the cigarettes have been marked in accordance with section 23-51-50 South Carolina Code. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 23-51-30 above shall be subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties for any person or entity shall not exceed \$100,000 during a 30-day period. A retail dealer shall be subject to the same civil penalty for violation, but penalties may not exceed \$25,000 for any one person or entity during a 30-day period. A corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification as required by section

23-51-40 above is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

S.C. CODE ANN. §§ 23-51-10 to 23-51-110 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$2,000,000

FY2010 Federal Tobacco Control Program
Funding: \$1,217,810

FY2010 Total Tobacco Control Program
Funding: \$3,217,810

Funding Level Recommended by CDC:
\$62,200,000

Percentage of CDC-Recommended Level: 5.2%

State Funding Details:

South Carolina appropriated \$2,000,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund. No state money was appropriated in FY2009.

FY2010 Annual Budget (H.B. 3560) enacted
5/19/09 and effective 7/1/09.

Tobacco Control Program Related Laws

The legislature directed the Department of Health and Environmental Control to develop and implement a youth smoking prevention plan for the purpose of preventing and reducing cigarette smoking by minors. The youth smoking prevention plan must address prevention, cessation, and control of smoking by minors and may include but is not limited to media campaigns; school based youth programs; community based youth programs; business, community, and school partnerships; programs focusing on the enforcement and administration of state minor-related tobacco laws, including retailer education; surveillance and evaluation; chronic disease and health-related programs. To assist in carrying out the purposes of the plan, the department may award youth smoking prevention grants to local agencies, organizations, and entities based on criteria developed by the department. The state plan further shall provide for a grant for an annual statewide school-based survey to measure cigarette use and behavior towards cigarette use by individuals in grades six through 12. The South Carolina Youth

Smoking Prevention Advisory Commission was also established to advise the department in the development, implementation, and evaluation of the state youth smoking plan.

S.C. CODE ANN. § 44-128-30 et seq. (2000).



A State Smoking Restrictions**Public Places**

Note: Legislation was approved in March 2009 that would prohibit smoking in almost all restaurants, bars and gaming facilities. It was scheduled to take effect July 1, 2009, but opponents were successful in referring the law to the November 2010 ballot to be voted on by the people of South Dakota.

S.B. 1240 enacted 3/19/09 and supposed to take effect 7/1/09 (implementation delayed at least until November 2010).

Smoking is prohibited in most public places and places of employment except: 1) most restaurants licensed to sell alcohol; 2) bars; 3) sleeping rooms in hotels/motels; 4) video lottery establishments; and 5) tobacco and liquor stores.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Government Buildings

Smoking is prohibited in all places of employment, which includes all public workplaces.

S.D. CODIFIED LAWS § 22-36-2 (2002).

By executive order, smoking is prohibited in all buildings owned, leased, or occupied by the executive branch and in all vehicles owned by the state. Outdoor smoking areas may be established.

EXEC. ORDER 92-10 (1992).

Private Workplaces

No person may smoke tobacco or carry any lighted tobacco product in any place of employment. A place of employment is any enclosed indoor area under the control of a public or private employer, including work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, and hallways.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Schools

Smoking is prohibited in any elementary or secondary school buildings.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Child Care Facilities

Smoking is prohibited in any registered or unregistered day care program, day care center, day care cooperative, or family day care home during the time in which children who are not family members of the day care provider are receiving care. A private residence is not a public place unless it is used for day care.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Health Care Facilities

Smoking is prohibited in medical and dental clinics, nursing homes, and hospitals.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Restaurants

Smoking is prohibited in some restaurants, but except for restaurants that have a full-service restaurant on-sale license; restaurants licensed to sell alcohol can continue to allow smoking.

S.D. CODIFIED LAWS §§ 22-36-2 (2002) & 35-4-115 (2008).

Bars

Bars are specifically excluded from the law prohibiting smoking in public places and workplaces.

S.D. CODIFIED LAWS § 22-36-2 (2002).

Penalties/Enforcement

Violation of the restrictions on smoking is a petty offense. Nothing prohibits a person or a public entity from voluntarily regulating the use of tobacco products on the person's or entity's property.

S.D. CODIFIED LAWS § 22-36-2 (2002).

State Preemption of Local Laws

The state legislature is the exclusive regulator of all matters relating to the use of tobacco products.

S.D. CODIFIED LAWS § 10-50-64 (1995).

B Tobacco Excise Taxes**Tax on Cigarettes**

Tax rate per pack of 20: \$1.53

Date last changed: January 1, 2007 – from 53 cents

to \$1.53

Year first enacted: 1923

S.D. CODIFIED LAWS § 10-50-3 (2007).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$57,160,000

Use of Cigarette Tax Revenue

The first \$30 million in cigarette tax revenue collected annually shall be deposited in the general fund. All revenue in excess of \$30 million collected annually shall be deposited in the Tobacco Prevention and Reduction Trust Fund. Five million of the revenue deposited annually in the trust fund pursuant to this section shall be used to implement the tobacco prevention and reduction program. Thirty-three percent of any revenue deposited in the tobacco prevention and reduction trust fund in excess of five million shall be transferred to the property tax reduction fund. Another 33 percent of any revenue deposited in the tobacco prevention and reduction trust fund in excess of five million shall be transferred to the Education Enhancement Tobacco Tax Fund. The remaining 34 percent of any revenue deposited in the tobacco prevention and reduction trust fund in excess of five million shall be transferred to the Health Care Tobacco Tax Fund.

S.D. CODIFIED LAWS § 10-50-52 (2007).

Taxes on Other Tobacco Products

All other tobacco products: 35% of the wholesale purchase price

S.D. CODIFIED LAWS § 10-50-61 (2007).

Use of Revenue from Taxes on Other Tobacco Products

Revenue from the tax on other tobacco products is distributed the same way as cigarette tax revenue; see *Use of Cigarette Tax Revenue* section above.

S.D. CODIFIED LAWS § 10-50-52 (2007).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

Each county's states attorney or the local law

enforcement officer they designate shall annually conduct unannounced, random inspections at various locations where tobacco products are sold or distributed to ensure compliance with the law prohibiting sales of tobacco products to persons under age 18. Persons under age 18 may be enlisted to test compliance if the testing is conducted under the supervision of the designated authority and written parental consent has been provided. Any other use of persons under 18 to test compliance is unlawful and the responsible party shall be guilty of a Class Two misdemeanor. No person may be charged with more than one violation in any 24 hour period which results from sales to persons purchasing during unannounced random inspections.

S.D. CODIFIED LAWS §§ 34-46-3 (1994) & 34-46-5.1 (1999).

Penalties for Sales to Minors

It is unlawful for a person to knowingly distribute a tobacco product to a person under the age of 18. It is also unlawful to purchase a tobacco product on behalf of, or to give a tobacco product to, any person under the age of 18. Violation is a Class Two misdemeanor. Reliance on proof of age of the purchaser or recipient is a complete defense.

S.D. CODIFIED LAWS §§ 34-46-2 (2009) & 34-46-5 (1999).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

It is unlawful for a minor to purchase or attempt to purchase or receive or attempt to receive, possess or consume tobacco products. Violation is a Class Two misdemeanor.

S.D. CODIFIED LAWS §§ 34-46-2 (2009) & 34-46-5 (1999).

Any merchant who has reasonable grounds to believe that a minor has illegally purchased, attempted to purchase, possess, or consume a tobacco product, may detain the minor, on the premises of the merchant's establishment, in a reasonable manner and for a reasonable length of time to: 1) request identification; 2) to verify the identification; 3) to make reasonable inquiry

as to whether the minor has violated section 34-46-2 of the South Dakota Codified Laws in any manner; 4) to inform a law enforcement officer of the detention of the person and surrender that person to the officer's custody; or 5) to inform a law enforcement officer or the parents, guardian, or other private person interested in the welfare of that minor of this detention and to surrender custody of the minor to that person. If a merchant chooses to implement these provisions, then the merchant shall conspicuously post a notice on the merchant's premises, stating that any person who the merchant reasonably believes is under the age of 18 and has attempted to purchase tobacco products will be detained and surrendered to a law enforcement officer.

S.D. CODIFIED LAWS §§ 34-46-2.1 & 34-46-2.2 (2000).

Placement of Tobacco Products

It is unlawful to sell cigarettes or smokeless tobacco, or both, through a self-service display other than a display that is a vending machine as permitted by law or located in a tobacco specialty store, which is defined as a store that derives 75 percent or more of its revenue from the sale of tobacco products. Violation is a Class Two misdemeanor.

S.D. CODIFIED LAWS §§ 34-46-2(6) (2009) & 34-46-5 (1999).

Internet Sales of Tobacco Products

No person who is engaged in the business of selling or distributing cigarettes or tobacco products may ship or transport, or cause to be shipped or transported, cigarettes or tobacco products to any consumer, defined as any individual who is not a retailer or a licensed distributor or wholesaler, in South Dakota. The attorney general may seek an injunction to restrain a threatened or actual violation. The attorney general may also bring a civil action in circuit court for any violation, which is subject to a civil penalty from the court of \$1,000 or five times the retail value of the cigarettes or tobacco products involved, whichever is greater. A subsequent violation is subject to a civil penalty of \$5,000 or five times the retail value of the cigarettes or tobacco products involved, whichever is greater. Each shipment is considered a separate violation.

S.D. CODIFIED LAWS §§ 10-50-99 to 10-50-104 (2009).

State Preemption of Local Laws

For the purposes of equitable and uniform regulation and implementation, the state legislature through this chapter is the exclusive regulator of all matters relating to the distribution, marketing, promotion, and sale of tobacco products.

S.D. CODIFIED LAWS § 34-46-6 (1995).

Note: The above law prohibiting local communities from passing stronger ordinances restricting youth access to tobacco products applies to all laws summarized in sections C, D & E of South Dakota's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful to distribute tobacco product samples in or on a public street, sidewalk, or park that is within 500 feet of a playground, school or other facility when it is being used primarily by persons under the age of 18. Violation is a Class Two misdemeanor.

S.D. CODIFIED LAWS §§ 34-46-2 (2009) & 34-46-5 (1999).

Minimum Tobacco Product Sales Amounts

It is unlawful to sell cigarettes other than in an unopened package originating with the manufacturer and depicting the warning labels required by federal law. Violation is a Class Two misdemeanor.

S.D. CODIFIED LAWS §§ 34-46-2 (2009) & 34-46-5 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines containing tobacco products may be located only in the following areas: 1) a factory, business, office, or other place not open to the general public; 2) a place that is open to the public but to which persons under the age of 18 are denied access; or 3) a licensed establishment that sells alcoholic beverages for on-site consumption. The legislature is the exclusive regulator of all matters relating to the distribution, marketing,

promotion, and sale of tobacco products.

S.D. CODIFIED LAWS §§ 34-46-2 (2009) & 34-46-6 (1994).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is a Class Two misdemeanor. A person can not be liable for more than one violation on a single day.

S.D. CODIFIED LAWS § 34-46-5 (1999).

Sign Posting

Each cigarette vending machine shall have posted in a conspicuous place on the machine a warning to persons under 18 stating that they are prohibited by law from purchasing cigarettes from the machine. Violation constitutes a petty offense.

S.D. CODIFIED LAWS §§ 26-10-24 (1992).

F Licensing Requirements

Requirements

Each person, except a retailer, engaging in the business of selling cigarettes or tobacco products, including any distributor or wholesaler, shall secure a license from the Secretary of Revenue and Regulation. A separate application and license is required for each wholesale outlet when a person owns or controls more than one place of business. A license is valid for one year beginning July 1st unless suspended or revoked, and may be renewed annually. Each person selling cigarettes or tobacco products at retail shall register with the Department of Revenue and Regulation. A separate registration is required for each retail outlet operated within the state. Except for retailers, selling cigarettes or tobacco products without a license or registration is a petty offense.

S.D. COD. LAWS §§ 10-50-9 (2007) & 10-50-12 (2003).

Fees

Wholesaler or distributor license: \$150 annually;
Retailer registration: no fee

S.D. CODIFIED LAWS §§ 10-50-9 (2007) & 10-50-11 (1995).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It is a discriminatory or unfair employment practice for an employer to terminate the employment of an employee due to that employee's engaging in any use of tobacco products off the premises of the employer during non-working hours unless such a restriction relates to a bona fide occupational requirement or it is necessary to avoid a conflict of interest with the responsibilities of the employer. The sole remedy for a person claiming to be aggrieved by a violation of this law shall be a civil suit for damages including all wages and benefits lost. Health or life insurance policies may make a distinction between employees for the type or cost of coverage based upon the employees' use of tobacco products.

S.D. CODIFIED LAWS § 60-4-11 (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The South Dakota Supreme Court promulgated rules capping the total appeal bond for all appellants in a case to \$25 million, regardless of the judgment amount. If the appellee proves by a preponderance of the evidence that an appellant whose bond has been so limited has been dissipating assets outside the ordinary course of business to avoid payment of a judgment, the court may require the appellant to execute a bond in an amount up to the full amount of the judgment.

S.D. CODIFIED LAWS § 15-26A-26 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The rights to virtually all of South Dakota's Master Settlement Agreement payments have been sold as bonds through the South Dakota

Building Authority to obtain a much smaller lump sum payment up front. See *Securitization* section below for additional details.

Securitization

At any one time or from time to time, all or any portion of the right, title, and interest of the state of South Dakota in, to, and under the Master Settlement Agreement, including the right to receive and collect tobacco settlement revenues, may be sold, conveyed, or otherwise transferred by the state to the South Dakota Building Authority or to a corporation established by the authority in exchange for the net proceeds of bonds and a right to the residual interest in tobacco settlement revenues. The net proceeds of bonds shall be deposited to the Permanent Tobacco Settlement Development Trust Fund, and the residual interest in tobacco settlement revenues shall be deposited to the Tobacco Settlement Residual Fund.

S.D. CODIFIED LAWS § 5-12-49 (2001).

tobacco tax revenue. The same amount was appropriated in FY2009.

FY2010 Annual Budget (H.B. 1300) enacted 3/18/09 and effective 7/1/09.

Tobacco Control Program Related Laws

The Tobacco Prevention and Reduction Program was created in the Department of Health. The department was charged with the development of a strategic statewide plan to prevent and reduce tobacco use. An annual report will detail the progress toward meeting program goals and objectives, including changes in tobacco consumption, use rates, and attitudes towards tobacco especially among children and other high risk populations. The annual report will be made available to the public on the Department of Health's website.

S.D. CODIFIED LAWS §§ 34-46-7 to 34-46-11 (2004).



M Fire Safety Standards

South Dakota has enacted legislation requiring cigarettes sold in South Dakota to self-extinguish when not being smoked based on the performance standard specified in the bill to help prevent cigarette-caused fires. The law will go into effect on January 1, 2011.

S.B. 1280 enacted 3/13/09 and effective 1/1/2011.

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$5,000,000

FY2010 Federal Tobacco Control Program
Funding: \$963,055

FY2010 Total Tobacco Control Program
Funding: \$5,963,055

Funding Level Recommended by CDC:
\$11,300,000

Percentage of CDC-Recommended Level:
52.8%

State Funding Details:

South Dakota appropriated \$5,000,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from state



A State Smoking Restrictions

Public Places

Smoking is prohibited in most enclosed public places and workplaces in Tennessee, including most restaurants. See Tennessee Code section 39-17-1804 for a detailed list. Exempted from this law are: 1) age-restricted venues that do not allow persons under 21 to enter at any time; 2) 25 percent of hotel/motel rooms, provided that all smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited; 3) all premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities; 4) non-enclosed areas of public places as specified; 5) residents in licensed nursing homes and long-term care facilities, provided that smoke does not infiltrate into areas where smoking is prohibited; 6) workplaces with three or fewer employees in a private room not accessible to the general public; 7) private clubs as long as they aren't established to avoid compliance with the law; 8) private homes, private residences and private motor vehicles except under specified circumstances; 9) retail tobacco stores that prohibit minors on their premises; and 10) commercial vehicles when such vehicle is occupied solely by the operator.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Government Buildings

Smoking is prohibited in most enclosed public places, the definition of which includes all places of public employment.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Smoking shall be prohibited in all buildings that are owned or operated by the state of Tennessee, including state correctional facilities, except for those sleeping rooms in state park inns and cabins that are designated as smoking rooms or cabins. Smoking is also prohibited in all motor vehicles that are owned, leased, or operated by the state of

Tennessee. Cities, counties, and counties having a metropolitan form of government are specifically allowed to regulate the use of tobacco products in buildings owned or leased by such political subdivisions.

TENN. CODE ANN. § 4-4-121 (2007).

Private Workplaces

Smoking is prohibited in most enclosed public places, the definition of which includes most places of private employment. Exempted are private businesses with three or fewer employees where, in the discretion of the business owner, smoking may be allowed in an enclosed room not accessible to the general public. Smoke from such room shall not infiltrate into areas where smoking is prohibited. All premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities are also exempt.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Schools

Smoking is prohibited in most enclosed public places, the definition of which includes both public and private educational facilities.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

The University of Tennessee and the board of regents may adopt uniform policies prohibiting smoking in all student dormitories. With respect to public institutions of higher education, upon the adoption of smoking policies by the administrative head of such institution, the administrative head is not required to provide an indoor smoking area in each student dormitory or other facility. The administrative head of each institution is encouraged to provide for reasonable smoke-free zones at all building entrances and exits.

TENN. CODE ANN. § 49-7-135 (2005).

Child Care Facilities

Smoking is prohibited in most enclosed public places, the definition of which includes child care and adult day care facilities. Home-based child

care and adult day care facilities are specifically included.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Health Care Facilities

Smoking is prohibited in most enclosed public places, the definition of which includes health care facilities. Health care facilities are defined as an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. Licensed nursing homes and long-term care facilities are exempt, provided that such exemption shall only apply to residents of such facilities and that resident smoking practices shall be governed by the policies and procedures established by such facilities.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Restaurants

Smoking is prohibited in restaurants unless they do not allow people under 21 to enter at all times. A person must submit an acceptable form of identification to gain entry.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Bars

In Tennessee, what are commonly referred to as bars do not exist because they are considered restaurants under existing state law. So, the restrictions on smoking in restaurants apply (see above).

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

Penalties/Enforcement

“No Smoking” signs shall be conspicuously posted where smoking is prohibited except in places of worship. The law shall be enforced by the state Department of Health or the state Department of Labor and Workforce Development in those enclosed public places where each department has jurisdiction. If neither department otherwise regulates an enclosed public place, the Department of Labor and Workforce Development shall enforce. Any person who desires to register a complaint under this part may initiate such com-

plaint with either or both departments. A person who knowingly smokes in an area where smoking is prohibited is subject to a civil penalty of \$50. A person who owns, manages, operates or otherwise controls any public place and knowingly fails to comply is subject to a written warning for the first violation, a \$100 civil penalty for a second violation in one year, and a \$500 civil penalty for a third or subsequent violation in one year. Each day on which a violation is committed is considered a separate offense.

TENN. CODE ANN. §§ 39-17-1801 to 39-17-1810 (2008).

State Preemption of Local Laws

This and other provisions of the Tennessee Code preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation enacted or promulgated after March 15, 1994 by any agency or political subdivision of the state is void.

TENN. CODE ANN. § 39-17-1551 (1994).

Note: Preemption does not apply to cities, counties and counties having a metropolitan form of government in buildings owned or leased by such political subdivisions; and special school districts in buildings owned or leased by such entities.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 62 cents

Date last changed: July 1, 2007 – from 20 cents to 62 cents

Year first enacted: 1925

TENN. CODE ANN. § 67-4-1004 (2007).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$260,047,000

The revenue from 20 cents of the cigarette tax is distributed as follows: four percent for administrative expenses; \$82,500 annually to the special sinking fund to pay the principal and interest on the Tennessee rural public school building and repair bonds; \$225,000 to the special sinking fund to pay the principal and interest of the University of Tennessee building bonds; and the

remainder is applied to the general state school fund to be used for public education, grades one through twelve;

The revenue from another 40 cents of the cigarette tax is distributed as follows: All revenue goes to an education trust fund, provided that \$21 million is allocated to the Department of Agriculture's Tennessee Agriculture Enhancement Program (except in FY2010 the amount will be \$16.3 million up to \$21 million as specified);

The remaining two cents is distributed to the Trauma System Fund to fund state trauma centers.

TENN. CODE ANN. § 67-4-1025 (2009).

Taxes on Other Tobacco Products

All other tobacco products: 6.6% of the wholesale cost price

TENN. CODE ANN. § 67-4-1005 (2002).

Use of Revenue from Taxes on Other Tobacco Products

The revenue from the tax on tobacco products other than cigarettes is distributed the same way as the first 20 cents of the cigarette tax; see *Use of Cigarette Tax Revenue* section above.

TENN. CODE ANN. § 67-4-1025(a) (2009).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Agriculture shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this law. Law enforcement efforts may involve the use of individuals under the age of 18 if a parent has consented to this action.

TENN. CODE ANN. §§ 39-17-1504 & 39-17-1509 (1999).

Penalties for Sales to Minors

It is unlawful for any person to sell or distribute any tobacco product to another person who is less than 18 or to purchase a tobacco product on behalf of such person. It is unlawful for any person to persuade, entice, send or assist a person who is less than 18 years of age to purchase, acquire,

receive or attempt to purchase, acquire or receive a tobacco product. This shall not be deemed to preclude law enforcement efforts involving the use of individuals less than 18 years of age. A person who violates these provisions shall receive a warning letter for the first violation, a civil penalty of not more than \$500 for a second violation, not more than \$1,000 for a third violation and not more than \$1,500 for a fourth or subsequent violation within a five-year period. A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty for a violation. When assessing a civil penalty, the Commissioner of Agriculture is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the violation to occur, including, but not limited to, the owner, manager or employee of a store at which tobacco products are sold at retail. Before selling tobacco products, all employees are required to undergo training regarding state law restricting youth access to tobacco products and sign a statement to this effect. That statement can be used by the owner or manager as an affirmative defense against the civil penalty for a second violation, and may be used as a mitigating factor for subsequent violations.

TENN. CODE ANN. §§ 39-17-1504 & 39-17-1509 (1999).

Photo ID

A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be less than 27 years of age. "Proof of age" means a driver's license or other generally accepted means of identification that describes the individual as 18 years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Penalties for violation are the same as those for selling or distributing tobacco products to minors.

TENN. CODE ANN. §§ 39-17-1504 & 39-17-1509 (1999).

Sign Posting

Every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half square inches,

to ensure that it is likely to be read at each point of sale, stating the following: “STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO PRODUCTS OR SMOKING PARAPHERNALIA TO PERSONS UNDER THE AGE OF 18. PROOF OF AGE MAY BE REQUIRED. Penalties are the same as those for selling or distributing tobacco products to minors.

TENN. CODE ANN. §§ 39-17-1506 & 39-17-1509 (1999).

Bidis

Bidis were added to the definition of tobacco product in state law thus prohibiting their sale to minors. Violation is subject to the same penalties as selling or distributing tobacco products to minors.

TENN. CODE ANN. § 39-17-1503 (2002).

Penalties to Minors

It is unlawful for a person under 18 to possess a tobacco product, to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age that is false, fraudulent, or not actually that person’s own for the purpose of purchasing or receiving any tobacco product. A violation is a civil offense with a penalty of not less than \$10 and not more than \$50. The juvenile court may also impose community service work not to exceed 50 hours or successful completion of a prescribed teen court program for a second or subsequent violation within a one-year period. A minor assisting a law enforcement officer in a compliance check is not subject to these penalties. It is not unlawful for a person under 18 years of age to handle or transport tobacco or tobacco products as a part of and in the course of such person’s employment, provided that the person is under the supervision of another employee who is at least 21 years of age.

TENN. CODE ANN. § 39-17-1505 (2001).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

Each seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall: provide a prominent and clearly legible statement to each prospective consumer with specified information;

include a clear and conspicuous statement upon the package, as specified; and use a method of mailing, shipping, or delivery that obligates the delivery service to require the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age, to sign to accept delivery of the shipping container; and restrict delivery to an adult of legal minimum purchase age. A first violation of the above provisions is subject to a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation is subject to a fine of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater. Violation by a delivery service is subject to a fine of \$500.

TENN. CODE ANN. § 67-4-1029 (2005).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

In the case of distribution by mail, the distributor of tobacco products shall obtain from the addressee an affirmative statement that such person is 18 years of age or older, and shall inform the recipient that such person is strictly prohibited from distributing any tobacco product to any person under 18 years of age. Violation is subject to the same penalties as selling or distributing tobacco products to minors. The required statement can be used as an affirmative defense in case of violation.

TENN. CODE ANN. §§ 39-17-1504 (1999) & 39-17-1509 (1999).

State Preemption of Local Laws

The general assembly intends by this part and other provisions of Tennessee Code Annotated to occupy and preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation of tobacco products enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state or any agency thereof is void.

TENN. CODE ANN. § 39-17-1551 (1999).

Note: The above law prohibiting local communities from passing stronger ordinances restricting youth access to tobacco products applies to al-

most all laws summarized in sections C, D & E of Tennessee's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person shall distribute tobacco product samples in or on any public street, sidewalk, or park. Violation is subject to the same penalties as selling or distributing tobacco products to minors. A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty.

TENN. CODE ANN. §§ 39-17-1504 & 39-17-1509 (1999).

Minimum Tobacco Product Sales Amounts

No tobacco product manufacturer or cigarette retailer may directly or indirectly manufacture, sell or distribute any pack or other container of cigarettes containing fewer than 20 cigarettes, or any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco.

TENN CODE ANN. §§ 47-18-2003 et seq. (1999).

It is unlawful for any person to sell cigarettes or smokeless tobacco products except in the original, sealed package in which they were placed by the manufacturer that bears the health warning required by federal law. Violation is subject to the same penalties as selling or distributing tobacco products to minors.

TENN. CODE ANN. §§ 39-17-1508 (1999) & 39-17-1509 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines may only be located in the following areas: 1) in areas of factories, businesses, offices, or other places that are not open to the public; 2) in places that are open to the public but to which persons less than the age of 18 are denied access; 3) in places where alcoholic beverages are sold for consumption on the premises, only if the machine is under the constant supervision of the owner or their employee and is inaccessible

when the establishment is closed; and 4) in other places, if the machine is under the continuous supervision of an employee, or the machine can only be operated by the use of a token purchased from the proprietor prior to each purchase, and is inaccessible to the public when the establishment is closed. In any place where supervision of a vending machine is required, the person responsible for that supervision or sale of token shall demand proof of age from a prospective purchaser if an ordinary person would conclude on the basis of appearance that the prospective purchaser might be less than 27 years of age. A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty.

TENN. CODE ANN. §§ 39-17-1507 & 39-17-1509 (1999).

Penalties

A person who violates the restrictions on placement of tobacco product vending machines is subject to the same penalties as those for selling or distributing tobacco products to minors.

TENN. CODE ANN. § 39-17-1509 (1999).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Every person engaged in the business of selling, distributing, or handling tobacco products must obtain a license from the Commissioner of Revenue. Licenses expire on May 31st of each year. Retailers are not specifically mentioned. Engaging in any business or activity without a license is subject to a penalty in the amount of the license fee for each month or part of a month during which the activity or failure occurs or continues. The commissioner may also impose a penalty of no more than \$250 a day.

TENN. CODE ANN. § 67-4-1015 (2008).

Fees

Manufacturing distributor: \$200;

Tobacco Manufacturer's Warehouse: \$200 per warehouse;

Wholesale dealer and jobber: \$200 for each sepa-

rate sale warehouse;

Tobacco distributor: \$100 for each secondary wholesale location.

TENN. CODE ANN. § 67-4-1015 (2008).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No employee, including employees of state and local government, shall be discharged or terminated solely for participating or engaging in the use of an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law, if such employee participates or engages in such use in a manner which complies with all applicable employer policies regarding such use during times at which such employee is working; and/or if such employee participates or engages in such activity during times when such employee is not working. This section shall not be used for frivolous lawsuits, and anyone trying to do so is subject to sanction.

TENN. CODE ANN. § 50-1-304 (1990).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

If a plaintiff in a civil action obtains a judgment under any legal theory, the amount of the appeal bond necessary to stay execution during the course of all appeals or discretionary reviews of that judgment by any appellate court shall be set in accordance with applicable laws or court rules, except that the total appeal bond that is required of all appellants shall not exceed \$75 million regardless of the value of the judgment. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the

ordinary course of business to avoid payment of a judgment, a court may enter orders that are necessary to protect the appellee and require the appellant to post a bond in an amount up to the total value of the judgment.

TENN. CODE ANN. § 27-1-124 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: Proceeds received from the Master Settlement Agreement between the state of Tennessee and certain cigarette companies are deposited in the state general fund, and appropriated by the legislature as part of the annual appropriations process.

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (g) of section 68-102-503 Tennessee Code, no cigarettes may be sold or offered for sale in Tennessee or offered for sale or sold to persons located in Tennessee unless: 1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 68-102-503 Tennessee Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 68-102-504 Tennessee Code; and 3) the cigarettes have been marked in accordance with section 68-102-505 Tennessee Code. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 68-102-503 above shall be liable for a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties against a person or entity shall not exceed \$100,000 during any 30-day period. A retail dealer shall be liable for the same civil penalty for violation, but penalties shall not exceed \$25,000 for any retail dealer during any 30-day period. Any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification as required by section 68-102-504 above shall be liable for a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

TENN. CODE ANN. §§ 68-102-501 to 68-102-512 (2010).

T **N** Tobacco Control Program Funding

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FY2010 State Tobacco Control Program
Funding: \$209,000

FY2010 Federal Tobacco Control Program
Funding: \$1,281,398

FY2010 Total Tobacco Control Program
Funding: \$1,490,398

Funding Level Recommended by CDC:
\$71,700,000

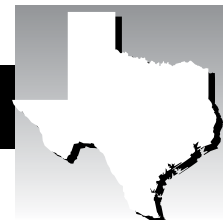
Percentage of CDC-Recommended Level: 2.1%

State Funding Details:

Tennessee appropriated \$209,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund. In FY2009, \$5,000,000 was appropriated.

FY2010 Annual Budget (S.B. 2392) enacted 6/25/09 and effective 7/1/09.





A State Smoking Restrictions

Public Places

Smoking is restricted to designated areas in elevators, enclosed theaters or movie houses, libraries, museums, transit systems or intrastate buses, planes, and trains. An exception is made for a participant in an authorized theatrical performance.

TEX. PENAL CODE ANN. § 48.01 (1997).

Government Buildings

Smoking is restricted to designated areas in certain places owned by state or local government, including libraries, museums and certain forms of public transit. See Public Places section above for additional details.

TEX. PENAL CODE ANN. § 48.01 (1997).

Private Workplaces

No restrictions

Schools

Students are prohibited from smoking or using tobacco products on school property or at any off-campus school-sanctioned activity.

TEX. EDUC. CODE ANN. § 21.927 (1987).

Smoking or possession of a burning tobacco product is restricted to designated areas in public primary and secondary schools.

TEX. PENAL CODE ANN. § 48.01 (1997).

Child Care Facilities

Smoking is prohibited in licensed child care centers, and on the premises, on the playground, in transportation vehicles, or during field trips of, or sponsored by, these facilities.

TX ADMIN. CODE tit. 40, Part 19, Subchapter S, Div. 1 § 746.3703(d) (1995).

Smoking is prohibited during operating hours in any child care home, and in the garage, on the playground, in transportation vehicles, or during field trips of, or sponsored by, these facilities.

TX ADMIN. CODE tit. 40, Part 19, Subchapter S, Div. 1 § 747.3503(d) (1990).

Smoking is prohibited in foster homes by caregivers and other adults, and in motor vehicles while transporting foster children. Foster children may not use or possess tobacco products.

TX ADMIN. CODE tit. 40, Part 19, Subchapter O, Div. 2 § 749.2931 (2007).

Health Care Facilities

Smoking is restricted to designated areas in hospitals.

TEX. PENAL CODE ANN. § 48.01 (1997).

Restaurants

No restrictions

Bars

No restrictions

Penalties/Enforcement

Signs must be posted stating that smoking is prohibited. Failure to post such signs is punishable by a fine not to exceed \$500. Facilities to extinguish smoking materials shall be provided in all conveyances and public places where smoking is restricted. A person who smokes in a nonsmoking area is punishable as a Class C misdemeanor. It is a defense to prosecution that the conveyance or public place in which the offense takes place does not have prominently displayed notice that smoking is prohibited by state law and that an offense is punishable by a fine not to exceed \$500, or that the conveyance or public place does not provide facilities for the extinguishment of smoking materials.

TEX. PENAL CODE ANN. § 48.01 (1997).

State Preemption of Local Laws

No specific provision concerning preemption in state law; cities are allowed to pass stronger laws/ordinances restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.41

Date last changed: January 1, 2007 – from 41 cents to \$1.41

Year first enacted: 1931

TEX. TAX CODE ANN. § 154.021 (2007).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (September 1, 2007 to August 31, 2008): \$1,462,012,000

Use of Cigarette Tax Revenue

The legislature can appropriate cigarette tax revenue to the state Comptroller deposited to the credit of the Treasury Fiscal Agency Fund for the printing of tax stamps and for the administration and enforcement of cigarette tax laws. After that transfer, remaining revenue from 4 cents of the cigarette tax is distributed 18.75 percent to the Foundation School Fund and 81.25 percent to the state general revenue fund. Revenue from an additional 37 cents of the cigarette tax is distributed to the state general revenue fund. Revenue from the remaining \$1.00 of the cigarette tax shall be deposited to the credit of the Property Tax Relief Fund.

TEX. TAX CODE ANN. §§ 154.601 to 154.6035 (2006).

Taxes on Other Tobacco Products

Cigars: 1) one cent per 10 or fraction of 10 on cigars weighing less than three pounds per thousand; 2) \$7.50 to \$15 per 1,000 on cigars that weigh more than three pounds per thousand depending on their factory list price and whether they contain a substantial amount of non-tobacco ingredients;

All other tobacco products: \$1.10/oz. and a proportionate rate on all fractional parts of an ounce; the tax on a can or package that weighs less than 1.2 ounces is equal to the tax on a can or package that weighs 1.2 ounces (rate changes annually on September 1 the next 4 years)

TEX. TAX CODE ANN. §§ 155.021(1991) & 155.0211 (2009).

Use of Revenue from Taxes on Other Tobacco Products

The proceeds from taxes on cigars and tobacco products other than cigars is distributed: 1) the revenue attributable to 35.213 percent of the manufacturers list price if the tax was imposed in that manner to the state general revenue fund; 2) the revenue attributable to 4.787 percent of the

manufacturers list price if the tax was imposed in that matter to the credit of the Property Tax Relief Fund; and 3) all remaining revenue to the physician education loan repayment account.

TEX. TAX CODE ANN. §§ 155.241(1982) & 155.2415 (2009).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The state Comptroller shall enforce state youth access and sales to minors' laws in partnership with local law enforcement agencies. At least annually, random, unannounced inspections of various locations where cigarettes or tobacco are sold or delivered are required. Minors may be used in compliance checks if they have written parental consent, are younger than 17, and have an appearance that would cause a reasonably prudent retailer to request identification.

TEX. HEALTH & SAFETY CODE ANN. § 161.088 (1999).

Penalties for Sales to Minors

A person commits an offense if the person, with criminal negligence, sells, gives, or causes to be sold or given a cigarette or tobacco product to someone who is younger than 18 years of age; or to another person who intends to deliver it to someone who is younger than 18 years of age. Violation is a Class C misdemeanor. It is a defense to prosecution that the person to whom the cigarette or tobacco product was sold or given presented to the defendant proof of identification. If the offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

TEX. HEALTH & SAFETY CODE ANN. § 161.082 (1998).

Photo ID

A person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid

proof of identification. A proof of identification satisfies this requirement if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government. A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation.

TEX. HEALTH & SAFETY CODE ANN. § 161.083 (1998).

Sign Posting

Each person who sells cigarettes or tobacco at retail shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which cigarettes or tobacco products may be purchased. The sign must state: "PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING A TOLL-FREE TELEPHONE NUMBER. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT." Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.084 (2007).

Penalties to Minors

An individual who is younger than 18 years of age commits an offense if the individual possesses, purchases, consumes, or accepts a cigarette or tobacco product; or falsely represents themselves to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product. Exceptions are if the minor is with an adult parent, guardian, or spouse of the individual; if it is a requirement

of the minor's employment; or if the minor is participating in a compliance check. A violation is punishable by a fine not to exceed \$250. Upon conviction, a court shall require the youth to attend a tobacco awareness program provided by the commissioner or if the program is not available, eight to 12 hours of tobacco-related community service. The court may require the parent or guardian of the defendant to attend the tobacco awareness program with the youth. The court may also suspend or deny issuance of a driver's license or permit for up to 180 days, if the youth does not demonstrate they have completed the tobacco awareness program or community service requirement.

TEX. HEALTH & SAFETY CODE ANN. §§ 161.252 (1998), 161.253 (1998) & 161.254 (1999).

Placement of Tobacco Products

A retailer or other person may not offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to cigarettes or tobacco products. This does not apply to a facility or business that is not open to persons younger than 18 years of age at any time, that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment or a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code. Violation is a Class C misdemeanor.

TX HEALTH & SAFETY CODE ANN. § 161.086 (1999).

Internet Sales of Tobacco Products

A person may not mail or ship cigarettes in connection with a delivery sale unless before mailing or shipping the cigarettes the person accepting the delivery sale order complies with: 1) specific age verification requirements, including a certification from the consumer and verification by the seller before delivery; 2) specific disclosure requirements; 3) specific shipping requirements, including use of a delivery service that requires a signature on delivery and a photo identification; 4) specific registration and reporting requirements; and 5) specific tax collection requirements. General violation of these provisions is a Class C misdemeanor for the first violation, and a Class B misdemeanor for subsequent violations. A knowing violation or someone who knowingly submits a certification in another person's name is a third

degree felony. Failure to collect taxes is a civil penalty of five times the value of the cigarettes involved in addition to any other penalty.

TEX. HEALTH & SAFETY CODE §§ 161.451 et seq. (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

Employees engaged in the retail sale of tobacco products must sign a form stating the law has been fully explained to them and that they agree to comply with the law. Violation of this requirement is a Class C misdemeanor. It is a defense to prosecution to show proof that the employee did complete, sign and date the forms required.

TEX. HEALTH & SAFETY CODE ANN. § 161.085 (2001).

State Preemption of Local Laws

Subchapter H of section 161 (161.081 to 161.0901) of the Texas Health & Safety Code does not preempt local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement is compatible with and equal to or more stringent than a requirement prescribed by the subchapter or relates to an issue that is not specifically addressed by the subchapter.

TEX. HEALTH & SAFETY CODE ANN. § 161.089 (1997).

Note: The above provision allowing local communities to pass stronger ordinances restricting youth access to tobacco products applies to many laws in sections C, D & E of Texas's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

A person or permit holder is prohibited from distributing a free sample of a cigarette or tobacco product, or a coupon that may be redeemed for a

free or discounted cigarette or tobacco product, to persons younger than 18 years of age. A coupon, sample cigarette or tobacco product may not be redeemable through the mail or courier delivery. Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.087 (1997).

Minimum Tobacco Product Sales Amounts

It is an offense to sell cigarettes in quantities less than an individual package containing at least 20 cigarettes. Violation is subject to a fine of \$100.

TEX. TAX CODE ANN. § 154.504 (1997).

A person may not affix a cigarette tax stamp to a package of cigarettes if the package does not comply with the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information for a package of cigarettes to be sold within the United States. Each violation is subject to a penalty of up to \$2,000, and each day on which a violation occurs is a separate offense.

TEX. TAX CODE ANN. §§ 154.0415 & 154.501 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Tobacco vending machines are restricted to facilities that are not open to persons younger than 18 years of age at any time and premises for which a person holds a package store permit issued under the Alcoholic Beverage Code.

TEX. HEALTH & SAFETY CODE ANN. § 161.086 (1999).

Penalties

Violation of the restrictions on placement of tobacco product vending machines is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.086 (1999).

Sign Posting

Each person who sells cigarettes by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which cigarettes or tobacco products may be purchased. The sign must state: "PURCHASING OR

ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING A TOLL-FREE TELEPHONE NUMBER. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT." Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 161.084 (2007).

F Licensing Requirements

Requirements

A person may not engage in business as a distributor, wholesaler, manufacturer or retailer of cigarettes or other tobacco products unless they have received the proper permit from the state Comptroller. The definition of "retailer" includes selling cigarettes through a vending machine. A separate permit is required for each place of business. Permits expire on the last day of February of each year, except a retailer's permit which expires on the last day of May of each even-numbered year. Combination permits for cigarettes and other tobacco products are available.

TEX. TAX CODE ANN. §§ 154.101 to 154.111 (2001) & 155.041 to 155.049 (2001).

Fees

Retail cigarette or other tobacco product permit: \$180 every two years;

Distributor's cigarette or other tobacco product permit: \$300 annually;

Wholesaler's cigarette or other tobacco product permit: \$300 annually

TEX. TAX CODE ANN. §§ 154.111& 155.049 (2001).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No provisions

H Advertising & Promotion

A sign containing an advertisement for cigarettes or tobacco products may not be closer than 1,000 feet to a church or public or private school. A sign is defined as an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard that is used to advertise or inform and visible from the main-traveled way of a street or highway. This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise; a sign in a facility where professional sports events are held at least 10 times during a 12 month period; a sign that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school. A purchaser of advertising must pay a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state. Violation is a Class C misdemeanor.

TEX. HEALTH & SAFETY CODE §§ 161.121 to 161.125 (1997).

Note: Enforcement of the above provisions may be affected by the U.S. Supreme Court decision in *Lorillard Tobacco Company v. Reilly*, decided in 2001.

I Product Disclosure

Each manufacturer shall file with the Department of Health an annual report for each cigarette or tobacco product distributed in this state, stating the identity of each ingredient in the cigarette or tobacco product listed in descending order according to weight, measure, or numerical count, other than: tobacco; water; or reconstituted tobacco sheet made wholly from tobacco. They shall also report the nicotine yield rating for the cigarette or tobacco product. This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity. Each manufacturer shall also assign a nicotine yield rating to each cigarette or tobacco product distributed in the state. The department standards must be developed so that the nicotine yield rating reflects, as accurately as possible, nicotine intake for an average consumer of the

cigarette or tobacco product. The information included in these reports is public information and is not confidential, unless it is determined by the Attorney General that it's disclosure would constitute an unconstitutional taking of property; if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health; or the information is determined a trade secret under state or federal law. Failing to file the required report can result in a prohibition on the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer by court order.

TEX. HEALTH & SAFETY CODE §§ 161.352 to 161.355 (1999).

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

When a judgment is for money, the amount of security to suspend execution of the judgment during appeal of the judgment must equal the sum of costs and compensatory damages awarded in the judgment and interest from the expected duration of appeal except the security required to be posted can not exceed 50 percent of the judgment debtor's net worth or \$25 million, whichever is less. On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in the required amount the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm. Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

TEX. CIVIL PRACTICE & REMEDIES CODE § 52.006 (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

A tobacco settlement endowment was created

with the tobacco settlement monies. The interest from the endowment, about \$10 million a year, is supposed to be spent on a tobacco prevention program.

TEX. GOV'T CODE ANN. §§ 403.1041 et seq. & TEX. HEALTH & SAFETY CODE § 12.131 (1999).

M Fire Safety Standards

To help prevent cigarette-caused fires, a cigarette may not be sold or offered for sale in Texas unless: 1) the cigarette has been tested and meets the performance standard in accordance with section 796.003 Texas Health & Safety Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 796.005 Texas Health & Safety Code; and 3) the cigarette has been marked in accordance with section 796.006 Texas Health & Safety Code. A person who knowingly violates this chapter or a rule adopted under this chapter is subject to a civil penalty in the following amounts: if the person is a manufacturer, wholesale dealer, or agent knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale, but not more than \$100,000 for all violations occurring within a 30-day period; if the person is a retailer knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale, but not more than \$25,000 for all violations occurring within a 30-day period; and if the person knowingly makes a false certification under Section 796.005, a civil penalty not to exceed \$75,000 for a first violation or \$250,000 for a second or subsequent violation.

TEX. HEALTH & SAFETY CODE ANN. §§ 796.001 to 796.017 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$13,400,000

FY2010 Federal Tobacco Control Program
Funding: \$1,873,958

FY2010 Total Tobacco Control Program
Funding: \$15,273,958

Funding Level Recommended by CDC:
\$266,300,000

Percentage of CDC-Recommended Level: 5.7%

State Funding Details:

Texas appropriated \$13,400,000 for tobacco prevention and cessation programs in FY2010 (September 1, 2009 to August 31, 2010) from the state's annual MSA payment and the state general fund. In FY2009, \$13,050,003 was appropriated. This is the first year of the FY2010-FY2011 biennium.

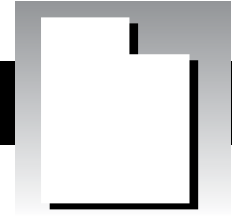
FY2010-FY2011 Biennial Budget (S.B. 1) enacted 6/19/09 and effective 9/1/09 (FY2010) & 9/1/10 (FY2011).

Tobacco Control Program Related Laws

The Commissioner of Public Health shall develop and implement a public awareness campaign designed to reduce tobacco use by minors. The campaign may use advertisements or similar media to provide educational information about tobacco use. The commissioner shall develop and implement a grant program to support youth groups that include as a part of the group's program components the reduction of tobacco use by the group's members.

TEX. HEALTH & SAFETY CODE ANN. §§ 161.301 & 161.302. (1997).





A State Smoking Restrictions

Public Places

Smoking is prohibited in virtually all enclosed indoor places of public access, including all restaurants, taverns and private clubs. See the statute cited below for a more detailed list of places covered. This prohibition does not apply to: 1) areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator; 2) separately ventilated smoking areas in Salt Lake City International Airport; and 3) guest rooms in hotels, motels, and other similar lodging facilities, except for the common areas where smoking is prohibited, including lobbies and dining areas. In addition, smoking tobacco as part of a traditional religious ceremony of an American Indian Tribe is exempt from the prohibition.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Government Buildings

Smoking is prohibited in all publicly owned buildings and offices. These buildings include any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or any agency supported by appropriation of, or by contracts or grants from funds derived from, the collection of federal, state, county or municipal taxes.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Private Workplaces

Smoking is prohibited in enclosed indoor places of public access, the definition of which includes any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business. Areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator are exempt.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Schools

Smoking is prohibited in public or private elementary and secondary school buildings and

educational facilities and the property on which those facilities are located.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Child Care Facilities

Smoking is prohibited in any licensed or certified child care facilities or programs, including those in private homes, when children being cared for are present. Smoking is also prohibited in any child care not subject to licensure or certification when any child cared for by the provider, other than the child of the provider, is present.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Health Care Facilities

Smoking is prohibited in enclosed indoor places of public access, which includes offices/buildings of facilities providing health care services, and all common areas of nursing homes and hospitals including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas and restrooms.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Restaurants

Smoking is prohibited in restaurants, cafes, and cafeterias.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Bars

Smoking is prohibited in all bars/taverns and private clubs.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

Other State Smoking Restrictions and Provisions

Smoking and Rental Agreements/Leases:

Allows for a prohibition on smoking in a rental agreement or lease.

UTAH CODE ANN. § 57-22-5 (1)(h) (1997).

Smoking and Condominium Associations:

Gives condominium associations the authority to restrict smoking in units, common areas and facilities. Common areas include yard space.

UTAH CODE ANN. § 57-8-16 (7) (1997).

Secondhand Smoke Considered a Nuisance Legally:

Secondhand smoke is defined as a nuisance when it drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit more than once in each of two or more consecutive seven-day periods, and which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action. This does not apply to residential rental units available for temporary rental or hotel or motel rooms. The cause of action is waived if the rental agreement explicitly says tobacco smoke may drift into the apartment.

UTAH CODE ANN. § 78-38-1 (1997).

Note: The above laws were passed by the Utah legislature in 1997. They specifically apply to tobacco smoke that drifts into any residential unit a person rents, leases or owns from another residential or commercial unit. They are not part of the Utah Clean Indoor Air Act, which governs smoking in public places and workplaces.

Penalties/Enforcement

A first violation of the Utah Indoor Clean Air Act is a civil penalty of not more than \$100. A second and subsequent violation is a civil penalty of \$100 to \$500. The state Department of Health and local health departments are responsible for enforcement.

UTAH CODE ANN. §§ 26-38-1 et seq. (2009).

State Preemption of Local Laws

This law supersedes any ordinance enacted by a governing body of a political subdivision that restricts smoking in a place of public access and that is not essentially identical to the provisions of this chapter. Outdoor places of public access owned and operated by a political subdivision, a state institution of higher education, or a state institution of public education are exempt from preemption.

UTAH CODE ANN. § 26-38-6 (2007).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 69.5 cents

Date last changed: May 6, 2002— from 51.5 cents to 69.5 cents

Year first enacted: 1923

UTAH CODE ANN. § 59-14-204 (2002).

The tax rates specified in this section shall be increased by the state tax commission by the same amount as any future reduction in the federal excise tax on cigarettes.

UTAH CODE ANN. § 59-14-204 (2002).

There is imposed an equity assessment of 35 cents/pack of 20 cigarettes on tobacco product manufacturers not participating in the Master Settlement Agreement. This equity assessment is in addition to other taxes on cigarettes. The purposes of this equity assessment are to recover health care costs to the state imposed by non-participating manufacturers; to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers; to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement; to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and to fund enforcement and administration of Master Settlement Agreement provisions.

UTAH CODE ANN. § 59-14-214 (2004).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$55,327,000

Use of Cigarette Tax Revenue

There is created within the General Fund a restricted account known as the "Cigarette Tax Restricted Account." \$250,000 of the revenues generated by the increase in the cigarette tax enacted during the 1997 general session shall be annually deposited into the account. The Department of Health shall expend these funds for a tobacco prevention and control media campaign targeted towards children. Twenty-two percent of the revenue generated from the cigarette tax increase during the 2002 general session shall also be deposited in the Cigarette Tax

Restricted Account and annually appropriated to the Department of Health for tobacco prevention, reduction, cessation, and control programs. Also, 15 percent and 21 percent of the revenue from the cigarette tax increase in the 2002 general session is deposited in the account where it is appropriated to the University of Utah Health Sciences Center for the Huntsman Cancer Institute for cancer research and University of Utah Health Sciences Center for medical education at the University of Utah School of Medicine respectively.

UTAH CODE ANN. § 59-14-204 (2002).

Taxes on Other Tobacco Products

Moist snuff: 75 cents/ounce or a proportionate rate on a fractional part of an ounce;

All other tobacco products: 35% of the manufacturer's selling price.

UTAH CODE ANN. § 59-14-302 (2008).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 19

Compliance/Enforcement

A peace officer may investigate possible violations of retail establishments that sell tobacco products to minors by requesting a person under the legal age to attempt to purchase tobacco products from the establishment. Written parental consent must be obtained prior to any attempt and the minor must be under the supervision and direction of the peace officer. A purchase attempted under this section shall be conducted on a random basis, but not more often than four times within a 12-month period at any one retail establishment unless there is reasonable suspicion to believe the retail establishment has sold tobacco to a person less than 19 years of age.

UTAH CODE ANN. § 77-39-101 (1998).

Penalties for Sales to Minors

Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, or tobacco in any form to any person under 19 years of age is guilty of a Class C misdemeanor on the first offense, a Class B misdemeanor on the second offense, and a Class A misdemeanor on subsequent offenses.

UTAH CODE ANN. § 76-10-104 (2000).

If, following an investigation or issuance of a citation or information, an enforcing agency (the State Department of Health and/or local health departments) determines that a licensee or any employee has sold tobacco to a person younger than 19 years of age, the enforcing agency may impose upon the licensee the following administrative penalties not more than \$300 for a first violation; not more than \$750 for a second violation within 12 months; and \$1,000 for a third and subsequent violations within a 12-month period. A licensee is also subject to a license suspension for not more than 30 days for a third violation and license revocation for one year for a fourth and subsequent violation. In determining the amount of the monetary penalty to be imposed for an employee's violation the hearing officer shall reduce the penalty by at least 50 percent if he determines the licensee has implemented a documented employee training program, and the employee has completed that training program within 30 days of commencing duties of selling tobacco products. If the hearing officer determines regarding a first offense at a location, that the licensee has not implemented a documented training program with a written curriculum for employees at that location regarding compliance with this chapter, the hearing officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's initiating a training program for employees at that location within 30 days after the hearing date. If the training program is not implemented, the penalty shall be promptly imposed.

UTAH CODE ANN. §§ 26-42-103 & 26-42-106 (1998).

It is unlawful for any person to knowingly sell, offer for sale, give or furnish any clove cigarette in this state. For purposes of this section "clove cigarette" means any cigarette which contains more than 10 percent, by weight, of raw eugenia caryophyllata or caryophyllus, commonly known as clove. Any person who violates this section is guilty of a Class B misdemeanor.

UTAH CODE ANN. § 76-10-105.3 (2002).

Photo ID

No provisions

Sign Posting

No provisions

Penalties to Minors

Any 18 year old who buys or attempts to buy, accepts or possesses any tobacco product shall be guilty of a Class C misdemeanor and is subject to a minimum fine of \$60; and participation in a court-approved tobacco education program, which may include a participation fee. Any person under the age of 18 who buys or attempts to buy, accepts or possesses any tobacco product is subject to the jurisdiction of the juvenile court and a minimum fine of \$60 and participation in a court-approved tobacco education program, which may include a participation fee.

UTAH CODE ANN. § 76-10-105 (2002).

Placement of Tobacco Products

A retailer must sell cigarettes, cigars, cigarette tobacco, pipe tobacco and smokeless tobacco only in a direct, face-to-face exchange between the employee of the retailer and the purchaser, including through self-service displays, except those located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian. Use or display of locked cabinets containing cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco in a store are allowed if the locked cabinets are only accessible to the retailer or their employees. Sales by a retailer from a retail store which derives at least 80 percent of its revenue from tobacco and tobacco-related products and where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian are also allowed. A first offense is a Class C misdemeanor; a second offense is a Class B misdemeanor; and a third and all subsequent offenses are a Class A misdemeanor. Any ordinance, regulation or rule adopted by the governing body of a political subdivision or state agency that affects the advertising, sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. § 76-10-105.1 (2009).

Internet Sales of Tobacco Products

Mail-order sales of cigarettes and tobacco products are exempt from the face-to-face sale requirement in section 76-10-105.1 of the Utah Code. However, a person, distributor, manufacturer, or retailer shall not: 1) cause tobacco products or cigarettes as defined to be ordered or purchased by anyone other than a person who is licensed by the state Tax Commission to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale; or 2) knowingly provide substantial assistance to a person who violates this requirement. Violation is subject to a civil penalty of \$5,000 for each violation, an injunction to restrain a threatened or actual violation and recovery by the state of the costs to prosecute the case as specified. A person who knowingly violates this section has engaged in an unfair and deceptive trade practice under existing Utah law and the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged. Any ordinance, regulation or rule adopted by the governing body of a political subdivision or state agency that affects the advertising, sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. §§ 59-14-509 & 76-10-105.1 (2009).

Other Provisions

It is a Class C misdemeanor for the proprietor of any place of business to knowingly permit persons under 19 to frequent their place of business while they are using tobacco.

UTAH CODE ANN. § 76-10-103 (1973).

State Preemption of Local Laws

Any ordinance, regulation, or rule adopted by the governing body of a political subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. § 76-10-105.1 (2004).

Note: Local communities are only prohibited from passing stronger ordinances concerning face-to-face sales of tobacco products, including the placement of tobacco product vending machines pursuant to section 76-10-105.1 of the Utah Code.

Stronger local ordinances are allowed for all other laws summarized in sections C, D & E of Utah's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for a manufacturer, wholesaler, or retailer to give or distribute tobacco products without charge, except to adults at professional conventions where the general public is excluded and to persons of legal age upon their purchase of tobacco products. Violation is a Class C misdemeanor for the first offense and a Class B misdemeanor for subsequent offenses.

UTAH CODE ANN. § 76-10-112 (1989).

Minimum Tobacco Product Sales Amounts

A licensee may not barter, sell, exchange, or offer for sale cigarettes in an individual package or container that contains less than 20 cigarettes or roll-your-own tobacco in an individual package or container that contains less than 0.6 ounces of tobacco. No penalty is specified for violation.

UTAH CODE ANN. § 59-14-202 (1999).

A licensee may not barter, sell, exchange, or offer for sale cigarettes in a package which does not comply with federal law, including the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information. Violation is a Class B misdemeanor and also subject to a civil penalty not to exceed 500 percent of the retail value of the cigarettes involved or \$5,000. Any license shall be suspended or revoked as well.

UTAH CODE ANN. §§ 59-14-210 (2002) & 59-14-211 (2004).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

A retailer must sell cigarettes, cigars, cigarette tobacco, pipe tobacco and smokeless tobacco only in a direct, face-to-face exchange between the employee of the retailer and the purchaser, including through vending machines. Sales from

vending machines, including those selling packaged single cigarettes or cigars, are allowed if they are located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian.

UTAH CODE ANN. § 76-10-105.1 (2009).

Penalties

Violation is a class C misdemeanor for the first offense, a class B misdemeanor for the second offense, and a class A misdemeanor for subsequent offenses.

UTAH CODE ANN. § 76-10-105.1 (2004).

Sign Posting

No provisions

F Licensing Requirements

Requirements

It is unlawful for any person in this state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale without first having obtained a license from the state Tax Commission. A separate license is required for each place of business. Licenses are valid for three years from the date of issuance unless suspended or revoked. Any person engaging in the business of manufacturing, importing, distributing, or selling or offering to sell cigarettes without holding a valid license that is currently not suspended or revoked is guilty of a class B misdemeanor for each offense.

UTAH CODE ANN. §§ 59-14-201 to 59-14-203 (2004).

Fees

\$30 for a cigarette license and \$20 for renewal every three years.

UTAH CODE ANN. § 59-14-201 (2004).

License Suspension for Sales to Minors

The state Tax Commission shall suspend or revoke the licenses to sell tobacco of any business upon receipt of notice from the enforcing agency (the state Department of Health and/or local health departments) that there has been a third or fourth violation of Section 26-40-103 (UT youth access law). A third violation within a 12-month period is subject to a license suspension for not more than

30 days and a fourth or subsequent violation is subject to license revocation for one year.

UTAH CODE ANN. §§ 59-14-203.5 & 26-42-103 (1998).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

It is a class B misdemeanor for any person to display on any billboard, streetcar sign, streetcar, bus, placard or on any other object or place of display any advertisement of any tobacco product, except that a dealer in tobacco products may have a sign on the front of his place of business stating that he deals in the articles. This law does not prohibit advertisements of tobacco products in any newspaper, magazine, or other periodical in the state. Any ordinance, regulation or rule adopted by the governing body of a political subdivision or state agency that affects the advertising, sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section is superseded.

UTAH CODE ANN. §§ 76-10-102 (1986) & 76-10-105.1 (1998).

Note #1: Enforcement of the above provisions may be affected by the U.S. Supreme Court decision in *Lorillard Tobacco Company v. Reilly*, decided in 2001.

Note #2: Section 76-10-102 of the Utah Code also required warnings on newspaper, magazine or periodical advertisements for smokeless tobacco products. However, the language of this provision defers to any subsequently enacted federal law for the specific warning language required to be placed in smokeless tobacco advertisements. Shortly thereafter, the federal Comprehensive Smokeless Tobacco Health Education Act of 1986 was enacted and said that no other statement relating to the use of smokeless tobacco products and health shall be required by any state or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

UTAH CODE ANN. §§ 76-10-102 (1986) & 15 U.S.C. § 4406(b) (1986).

I Product Disclosure

The Department of Health shall annually obtain publicly available information regarding cigarettes and tobacco products from other states and sources concerning: (1) the presence of the following substances in detectable levels in a burned state and, if the cigarette or tobacco product is typically burned when consumed, in a burned state: (a) ammonia or ammonia compounds; (b) arsenic; (c) cadmium; (d) formaldehyde; and (e) lead; and (2) a nicotine yield rating for the cigarette or tobacco product for which a rating has been developed. Information obtained by the department is a public record and may be disclosed and disseminated generally by the department.

UTAH CODE ANN. §§ 26-40-101 et seq. (1998).

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Utah created the "Tobacco Settlement Restricted Account," a restricted account in the general fund. The account shall consist of 60 percent of all funds received from the Master Settlement Agreement on and after July 1, 2007. Funds will be appropriated from this account in the following order: \$10,452,900 for the children's health insurance program, \$3,487,100 for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs; \$1,665,400 for statewide expansion of the drug court program; \$334,600 to several state agencies for a drug board pilot program; \$4 million to the University of Utah Health Sciences Center; and any remaining funds as directed by the legislature.

UTAH CODE ANN. § 51-9-201 (2009).

Utah created a Permanent State Trust Fund under Utah Constitution Article XXII, Section Four to receive a portion of the annual payments from the Master Settlement Agreement. The principal of the trust fund is invested in perpetuity, and can be transferred to the General Fund only by a vote of three-quarters of both houses of the

legislature and concurrence by the governor. The interest income from the trust fund is transferred to the general fund where by statute 50 percent is returned to the permanent trust fund. The trust fund shall consist of 40 percent of all funds received from the Master Settlement Agreement on and after July 1, 2007.

UTAH CONSTITUTION Art. XXII, Section 4 (2009) & UTAH CODE ANN. § 51-9-202 (2008).

M Fire Safety Standards

To help prevent cigarette-caused fires, except as provided in section 53-7-403(8) Utah Code, no cigarettes may be sold or offered for sale in Utah or offered for sale or sold to persons located in Utah unless: 1) the cigarettes have been tested in accordance with the test method required by and meet the performance standard specified in section 53-7-403 Utah Code; 2) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section 53-7-404 Utah Code; and 3) the cigarettes have been marked in accordance with Section 53-7-405 Utah Code. A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of the above for a first offense shall be liable for a civil penalty not to exceed \$10,000, and for a subsequent offense a civil penalty not to exceed \$25,000 per each sale of such cigarettes. A penalty against any one entity may not exceed \$100,000 during any 30-day period. A retail dealer who knowingly sells cigarettes in violation of the above shall: if the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$500 for a first offense and not to exceed \$2,000 for a subsequent offense; and if the sale does exceed 1,000 cigarettes, be liable for a civil penalty not to exceed \$1,000 for a first offense and not to exceed \$5,000 for a subsequent offense. A penalty imposed against any retail dealer shall not exceed \$25,000 during a 30-day period. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification, shall for a first offense, be liable for a civil penalty of at least \$75,000; and for a subsequent offense, be liable for a civil penalty not to exceed

\$250,000.

UTAH CODE ANN. §§ 53-7-401 to 53-7-411 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$4,000,000

FY2010 Federal Tobacco Control Program
Funding: \$3,131,700

FY2010 Total Tobacco Control Program
Funding: \$7,131,700

Funding Level Recommended by CDC:
\$23,600,000

Percentage of CDC-Recommended Level:
35.4%

State Funding Details:

Utah allocated \$7,131,700 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement payment and state cigarette tax revenue. In FY2009, \$7,155,600 was allocated.

FY2010 Annual Budget (S.B. 2) enacted 3/31/09 and effective 7/1/09.

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A State Smoking Restrictions

Public Places

The possession of lighted tobacco products in any form is prohibited in the common areas of all enclosed indoor places of public access and publicly owned buildings and offices, including restaurants and bars. See the definition of “public places” in title 18, section 37-1741 of the Vermont Statutes for a complete list. Smoking is also prohibited in all workplaces as defined, see *Private Workplaces* section below. Areas not commonly open to the public of owner-operated businesses with no employees are exempt.

VT STAT. ANN. tit. 18, §§ 37-1741 et seq. (2009).

Government Buildings

Smoking is prohibited entirely in the common areas of buildings and offices owned, leased, or rented by state, county, or municipal governments, or by agencies supported by appropriation of, or by contracts or grants from, funds derived from federal, state, county, or municipal taxes. Smoking is also prohibited in workplaces.

VT STAT. ANN. tit. 18, §§ 28-1421 & 37-1741 et seq. (2009).

Private Workplaces

The use of lighted tobacco products is prohibited in virtually all workplaces. “Workplace” means an enclosed structure where employees perform services for an employer. Except for schools, workplace does not include areas commonly open to the public or any portion of a structure that also serves as the employee’s or employer’s personal residence. This does not restrict the ability of residents of the Vermont veterans’ home to use lighted tobacco products in the indoor area of the facility in which smoking is permitted. Areas not commonly open to the public of owner-operated businesses with no employees are exempt.

VT STAT. ANN. tit. 18, §§ 28-1421 to 28-1428 & 37-1743 (2009).

Schools

No person shall be permitted to use tobacco

on public school grounds and no student shall be permitted to use tobacco at public school-sponsored functions. Each public school board shall adopt policies prohibiting the possession and use of tobacco products by students at all times while under the supervision of school staff. These policies shall include confiscation and appropriate referrals to law enforcement authorities.

VT STAT. ANN. tit. 16, § 1-140 (1997).

To the extent not covered by the restrictions above, smoking is prohibited in the common areas of all indoor places of public access and publicly-owned buildings and offices and in workplaces, which includes educational facilities.

VT STAT. ANN. tit. 18, §§ 28-1421 (2009), 37-1741 (2005) & 37-1742 (1993).

Child Care Facilities

Smoking is prohibited in the common areas of all indoor places of public access and all publicly-owned buildings and offices and in workplaces, which includes most child care facilities.

VT STAT. ANN. tit. 18, §§ 28-1421 (2009), 37-1741 (2005) & 37-1742 (1993).

Foster parents shall ensure that children in the custody of the Department of Children and Families shall not be exposed to secondhand smoke in the foster parent’s home or vehicle.

VT Dept. of Children & Families, Licensing Regs for Foster Care, sect. 403 (2005).

Health Care Facilities

Smoking is prohibited in the common areas of all indoor places of public access, the definition of which includes offices/buildings of facilities that provide health care services, hospitals and the common areas of nursing homes. Smoking is also prohibited in all workplaces.

VT STAT. ANN. tit. 18, §§ 28-1421 (2009), 37-1741 (2005) & 37-1742 (1993).

Restaurants

Smoking is prohibited in the common areas of all enclosed indoor places of public access, the defini-

tion of which includes restaurants. Smoking is also prohibited in all workplaces.

VT STAT. ANN. tit. 18, §§ 28-1421 (2009), 37-1741 (2005) & 37-1742 (1993).

Bars

Smoking is prohibited in the common areas of all enclosed indoor places of public access, the definition of which includes bars and cabarets. Smoking is also prohibited in all workplaces.

VT STAT. ANN. tit. 18, §§ 28-1421 (2009), 37-1741 (2005) & 37-1742 (1993).

Penalties/Enforcement

A proprietor, or the agent or employee of the proprietor, who observes a person violating this law, must ask that person to extinguish all lighted tobacco products. If the person refuses, they will be asked to leave the premises.

VT STAT. ANN. tit. 18, § 37-1745 (1993).

An employee may file a complaint with the Department of Health for an employer's failure to comply with workplace smoking restrictions. Failure to come into compliance is subject to an administrative penalty of \$100.

VT STAT. ANN. tit. 18, § 28-1426 (2009).

In addition, the Commissioner of Health, or a local board of health, may bring an action in the superior court of the county in which a violation has occurred or is occurring, to enforce the provisions of this title. The court may grant temporary and permanent injunctive relief, and levy civil penalties of up to \$10,000 for each violation. Any person who violates a provision of this title shall be fined not more than \$5,000. Each violation shall be a separate offense and, in the case of a continuing violation, each day's continuance shall be deemed a separate violation. When appropriate, all efforts shall be made to secure voluntary compliance.

VT STAT. ANN. tit. 18, §§ 3-124, 3-130 & 3-131 (1985).

State Preemption of Local Laws

Nothing in this chapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as state law.

VT STAT. ANN. tit. 18, §§ 1746 (1993) & 1428 (1988).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.24

Date last changed: July 1, 2009 – from \$1.99 to \$2.24

Year first enacted: 1937

VT. STAT. ANN. tit. 32, § 7771 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$56,041,000

Use of Cigarette Tax Revenue

Revenue from the cigarette tax is distributed as follows: 84.5 percent to the State Health Care Resources Fund, which finances health care coverage for beneficiaries of the state health care assistance programs under the global commitment to health care waiver approved by the Centers for Medicare and Medicaid Services, and 15.5 percent to the Catamount Fund to be used to help fund the Catamount Health assistance program.

VT STAT. ANN. tit. 33, §§ 1901d & 1986 (2007).

Taxes on Other Tobacco Products

Little Cigars (weighing under 3 lbs./thousand): \$2.24 per 20 cigars;

Roll-Your-Own Tobacco: \$2.24 per 0.09 of an ounce;

Snuff: \$1.66/oz. or fractional part thereof;

New Smokeless Tobacco: \$1.66/oz. or if sold in a package weighing less than 1.2 ounces, \$1.99 per package;

All other tobacco products: 92% of the wholesale price.

VT. STAT. ANN. tit. 32, §§ 7771 & 7811 (2009).

Use of Revenue from Taxes on Other Tobacco Products

All the revenue generated by taxes on other tobacco products, except little cigars and roll-your-own tobacco, shall be credited to the State Health Care Resources Fund. This fund finances health care coverage for beneficiaries of the state health care assistance programs under the global commitment to health care waiver approved by

the Centers for Medicare and Medicaid Services. Revenue from taxes on little cigars and roll-your-own tobacco are distributed the same way as the cigarette tax (see above).

VT STAT. ANN. tit. 33 §§ 1901d & 1986 (2007).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance Enforcement

The Departments of Health and Liquor Control shall inspect for violations of chapter 40 of Title 7 of the Vermont statutes whenever either department conducts any other inspection. Violations shall be reported to the Department of Liquor Control for enforcement, and notices of violation shall be mailed to the alleged violator within 24 hours after the report. The Department of Liquor Control shall conduct or contract for compliance checks of tobacco licensees as frequently and as comprehensively as necessary to assure consistent statewide compliance with the prohibition on sales to minors of at least 90 percent for 17-year old buyers. An individual under the age of 18 in a compliance test shall not be in violation of Title 7, section 1005 of the Vermont Statutes.

Sec. 12 & 13, VT ACT 58 (1997).

Penalties for Sales to Minors

It is unlawful for a person to sell or provide tobacco products to a person less than 18 years of age. Violators shall be subject to a civil penalty of not more than \$100 for the first offense and not more than \$500 for subsequent offenses.

VT STAT. ANN. tit. 7, §§ 1003(a) (2002) & 1007 (1997).

Any violation by a tobacco licensee of the youth access law after a first sale violation or during a compliance check conducted within six months of a previous violation shall be considered a multiple violation and shall result in the minimum license suspension, in addition to other penalties. Minimum license suspensions for multiple violations shall be assessed as follows: for a second violation, suspension for one weekday; three violations, suspension for two weekdays; four violations, suspension for three weekdays; and five violations,

three weekend days, Friday through Sunday.

Sec. 13, VT ACT 58 (1997).

Photo ID

A person shall exhibit proper proof of their age upon demand of a person licensed under this chapter, an employee of a licensee or a law enforcement officer. If the person fails to provide such proof of age, the licensee shall be entitled to refuse to sell tobacco products to the person. As used in this section, “proper proof” means a photographic motor vehicle operator’s license, a valid passport, a United States Military identification card or a photographic non-driver motor vehicle identification card obtained from the Department of Motor Vehicles.

VT STAT. ANN. tit. 7, § 1004 (1997).

Sign Posting

A person licensed under this chapter shall post in a conspicuous place on the premises a printed copy of the provisions of sections requiring proof of age and penalties to minors for purchasing tobacco products or misrepresenting their age to do so. Persons failing to post such signs shall be guilty of a misdemeanor and fined not more than \$100.

VT. STAT. ANN. tit. 7, § 1006 (1992).

Bidis

The sale and the purchase of bidis is prohibited. A person who holds a tobacco license who sells bidis as prohibited by this subsection shall be fined not more than \$500. A person who purchases bidis from any source shall be fined not more than \$250.

VT. STAT. ANN. tit. 7, § 1003(e) (2000).

Penalties to Minors

A person less than 18 years of age shall not possess or purchase tobacco products or misrepresent their age to do so. A minor who possesses tobacco is subject to a civil penalty of \$25. Failure to pay this penalty within 60 days will result in suspension or delay of the minor’s driver’s license. A minor that misrepresents their age shall be fined not more than \$50 or provide up to 10 hours of community service, or both.

VT STAT. ANN. tit. 7, § 1005 (1997).

Placement of Tobacco Products

Except contracts in existence prior to March 31,

1997, no person holding a tobacco license shall display or store tobacco products where those products are accessible to consumers without direct assistance by the sales personnel. This does not apply to displays of tobacco products in stores where minors are not permitted; unopened cigarette cartons and smokeless tobacco in unopened multi-pack containers of 10 or more packages as long as the removal of cartons or multi-packs from the display can be observed by a store employee; and cigars or pipe tobacco stored in a humidor as long as the removal of these products from the humidor can be observed by a store employee. A person, partnership, association or corporation, who willfully violates this requirement, is subject to a fine of \$50 to \$200 and/or imprisonment for one to three months.

VT STAT. ANN. tit. 7, §§ 667(b) (1992) & 1003(d) (2002).

Internet Sales of Tobacco Products

No person shall cause cigarettes, roll-your-own tobacco, little cigars, or snuff, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer, distributor, or retail dealer in this state. A knowing or intentional violation of this section shall be punishable by imprisonment for not more than five years and/or a fine of not more than \$5,000. In addition to or in lieu of any other civil or criminal remedy provided by law, the attorney general may impose a civil penalty in an amount not to exceed \$5,000 for each shipment or transport.

VT STAT. ANN. tit. 7, § 1010 (2008).

Other Provisions

An applicant for a tobacco license that does not hold a liquor license shall be granted a tobacco license only after the applicant has met with a liquor control investigator for the purpose of being informed about the Vermont tobacco laws pertaining to the purchase, storage and sale of tobacco products. This training must be completed at least once every three years. The holder of the license must ensure that every employee involved in the sale of tobacco products completes a training program approved by the Department of Liquor Control before the employee begins selling or providing tobacco products, and at least once

every 24 months thereafter. A licensee may comply with this requirement by conducting its own training program on its premises using information and materials furnished by the Department of Liquor Control. A licensee who fails to comply with the requirements of this subsection shall be subject to suspension of the tobacco license for no less than one day.

VT STAT. ANN. tit. 7, § 1002a (2002).

No individual under the age of 16 may sell tobacco products.

VT STAT. ANN. tit. 7, § 1002(g) (2006).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

It is unlawful for any person to furnish tobacco products to a person less than 18 years of age. A person who furnishes tobacco products to a person less than 18 years of age shall be fined not more than \$100 for a first offense and not more than \$500 for subsequent offenses.

VT STAT. ANN. tit. 7, §§ 1003(a) (2002) & 1007 (1997).

Minimum Tobacco Product Sales Amounts

No person holding a tobacco license shall sell cigarettes individually or in packs that contain fewer than 20 cigarettes. A person, partnership, association or corporation, who willfully violates this requirement, is subject to a fine of \$50 to \$200 and/or imprisonment for one to three months.

VT STAT. ANN. tit. 7, §§ 667(b) (1992) & 1003(f) (2002).

No person shall affix a cigarette stamp to or sell or offer for sale in this state any package or container of cigarettes if the container or package does not comply with all the requirements of the federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other

information upon a package of cigarettes that is to be sold within the United States. Violation is a misdemeanor subject to a fine of not more than \$250 and/or not to exceed 60 days imprisonment for a first offense, and a fine of \$250 to \$500 and/or imprisonment for not more than six months for a second and subsequent violation.

VT STAT. ANN. Tit. 32, §§ 7786 (1999) & 7821 (1959).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

All vending machines selling tobacco products are prohibited.

VT STAT. ANN. tit. 7, § 1003(c) (2002).

Penalties

A person, partnership, association or corporation, who willfully violates the above requirement, is subject to a fine of \$50 to \$200 and/or imprisonment for one to three months.

VT STAT. ANN. tit. 7, §§ 667(b) (1992).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesale dealers and distributors must obtain a license from the Commissioner of Taxes to sell cigarettes or tobacco products. A separate application and license is required for each wholesale outlet. Licenses are valid indefinitely unless suspended or revoked. Any wholesale dealer or distributor who shall sell, offer for sale or possess with intent to sell, any cigarettes or tobacco products, or both, without having first obtained a license shall be fined not more than \$25 for the first offense and \$25 to \$200 for subsequent offenses.

VT STAT. ANN. tit. 32, §§ 7731, 7732, 7734 & 7735 (1981).

Cigarette and other tobacco product retailers, including those who provide a vending machine for their sale, must obtain a license from the state Department of Liquor Control. Licenses expire on April 30th of each year. Each tobacco license shall be prominently displayed on the premises identified in the license. Selling

tobacco products without obtaining a tobacco license is guilty of a misdemeanor and shall be fined not more than \$200 for the first offense and not more than \$500 for each subsequent offense.

VT STAT. ANN. tit. 7, § 1002 (2008).

Fees

Retail tobacco license: \$10 annually (those applying for an alcohol and tobacco license need only pay the fee for the alcohol license);

Wholesalers and distributors: no charge.

VT. STAT. ANN. tit. 7, § 1002 (2008) & tit. 32 § 7732 (1981).

License Suspension for Sales to Minors

Any violation by a tobacco licensee of the youth access law after a first sale violation or during a compliance check conducted within six months of a previous violation shall be considered a multiple violation and shall result in the minimum license suspension, in addition to other penalties. Minimum license suspensions for multiple violations shall be assessed as follows: for a second violation, suspension for one weekday; three violations, suspension for two weekdays; four violations, suspension for three weekdays; and five violations, three weekend days, Friday through Sunday.

SEC. 13, VT ACT 58 (1997).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

Note: No appeal bond is required to appeal monetary lawsuit judgments.

L Tobacco Settlement

Use of Tobacco Settlement Dollars

A Tobacco Litigation Settlement Fund was established in the state treasury, separate from the state general fund. All monies received by the state from the Master Settlement Agreement and any interest that accrues on such monies are deposited in the fund. Appropriations from the fund can be made by the general assembly.

VT STAT. ANN. tit. 32 § 435a (1999).

The Tobacco Trust Fund was established in the office of the state treasurer. The trust fund shall be comprised of appropriations made by the general assembly, transfers from the Tobacco Litigation Settlement Fund as specified and contributions from any other source. Trust fund monies can not be spent except by appropriation of the general assembly and such appropriation shall not exceed seven percent of the fair market value of the fund at the end of the prior fiscal year. Unless specified otherwise by the general assembly, any unencumbered balance in the Tobacco Litigation Settlement Fund at the end of a fiscal year shall be transferred to the trust fund.

VT STAT. ANN. tit. 18, § 9502 (2000).

Note: The actual balance remaining in the Tobacco Litigation Settlement Fund at the end of FY2009 shall remain in that fund for appropriation in FY2010, and not be transferred to the Tobacco Trust Fund as specified above. Actual investment earnings from the Tobacco Trust Fund at the end of FY2010 shall also be transferred to the Tobacco Litigation Settlement Fund.

H.B. 441 enacted 6/2/09 and effective 7/1/09.

M Fire Safety Standards

To help prevent cigarette-caused fires, no cigarettes may be manufactured in Vermont or sold or offered for sale to any person in Vermont unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in subsection (b) of section 2757 of title 18 of the Vermont Statutes. The manufacturer must also file a written certification with the Commissioner of Public Safety in accordance with subsection (c) of section 2757 of title 18 of the Vermont Statutes. Cigarettes that have been certified must also follow specific

marking requirements specified in subsection (d) of section 2757 of title 18 of the Vermont Statutes. Each cigarette must be recertified every three years. A manufacturer, wholesale dealer, unlicensed retailer, or any other person that knowingly sells cigarettes, except by licensed retail sales, in violation of the above requirements is subject to a civil penalty not to exceed \$10,000 for each sale. A manufacturer that knowingly makes a false certification is subject to a civil penalty not to exceed \$10,000 for each false certification. A licensed retail dealer that knowingly sells or offers for sale cigarettes in violation of the above is subject to a civil penalty not to exceed \$500 for each sale or offer of sale of 1,000 cigarettes or fewer, or a civil penalty not to exceed \$1,000 for each sale or offer of sale of more than 1,000 cigarettes. Any other person that violates any provision of this section is subject to a civil penalty not to exceed \$1,000 for each violation. The Attorney General may file an action in superior court for a violation.

VT STAT. ANN. tit. 20, § 2757 (2006).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$4,805,039

FY2010 Federal Tobacco Control Program
Funding: \$1,140,226

FY2010 Total Tobacco Control Program
Funding: \$5,945,265

Funding Level Recommended by CDC:
\$10,400,000

Percentage of CDC-Recommended Level:
57.2%

State Funding Details:

Vermont appropriated \$4,805,039 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's Master Settlement Agreement payments. In FY2009, \$5,224,947 was appropriated.

FY2010 Annual Budget (H.B. 441) enacted 6/2/09 and effective 7/1/09; and H.B. 442 enacted 6/9/09 and effective 7/1/09.

Tobacco Control Program Related Laws

The Vermont Tobacco Evaluation and Review Board, an independent state board, was created

to work in partnership with the Department of Health in administering and coordinating the state tobacco prevention and treatment program. By June 1, 2001, the department and the board shall jointly establish a plan for reducing adult and youth smoking rates by 50 percent in the following 10 years. By June 1st of each year, the department and the board shall jointly establish goals for reducing adult and youth smoking rates in the following two years. The program shall be comprehensive and research-based, and shall include the following components: (1) community-based programs; (2) school-based programs; (3) tobacco cessation programs; (4) counter marketing activities; (5) enforcement activities; (6) surveillance and evaluation activities; (7) policy initiatives. The Department of Liquor Control shall administer the component of the program that relates to enforcement activities and the Department of Education shall administer school-based programs.

VT STAT. ANN. tit. 18, §§ 9503 to 9507 (2007).

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A State Smoking Restrictions

Public Places

Smoking shall be prohibited in: 1) elevators (except in any open material hoist elevator not intended for use by the public); 2) public school buses; 3) the interior of any public elementary, intermediate, and secondary school; 4) hospital emergency rooms; 5) local or district health departments; 6) polling rooms; 7) indoor service lines and cashier lines; 8) public restrooms in any building owned or leased by the Commonwealth or any agency thereof; 9) the interior of a licensed child day center that is not also used for residential purposes; and 10) public restrooms of health care facilities. The proprietor or other person in charge of an educational facility (except any public elementary, intermediate, or secondary school), health care facility or a retail establishment of 15,000 square feet or more serving the general public, shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building. Smoking is also restricted to separately enclosed, separately ventilated rooms/areas of restaurants. Smoking is specifically not regulated in: retail tobacco stores, tobacco warehouses or tobacco manufacturing facilities and private clubs.

VA. CODE ANN. §§ 15.2-2820 to 15.2-2828 (2009).

Any person who smokes or uses an open flame within 20 feet of a pump used to fuel motor vehicles or a fueling tanker being used to deliver gasoline to a gasoline station is guilty of a Class 3 misdemeanor if smoking or the use of an open flame is prohibited by a sign at the pump. Any person who causes a fire or explosion as a result of a violation of this section is guilty of a Class 1 misdemeanor.

VA. CODE ANN. § 46.2-819.4 (2007).

Government Buildings

By executive order, smoking is prohibited in offices and buildings occupied by executive branch agencies and institutions, including institutions of higher education. Smoking in correctional facilities shall be in accordance with guidelines set by the Director of the Department of Corrections;

and smoking in state mental health and mental retardation facilities and in mental health units at state teaching hospitals shall be in accordance with guidelines set by the Commissioner of Mental Health, Mental Retardation, and Substance Abuse Services. Smoking is also prohibited in state-owned vehicles except smoking in state police vehicles shall be in accordance with policy set by the Superintendent of State Police.

2006 Exec. Order 41, effective 1/1/07.

Unless prohibited by executive order above, the commonwealth or any agency thereof and every locality shall provide reasonable no-smoking areas, considering the nature of the use and the size of the building, in any building owned or leased by the Commonwealth or any agency thereof or a locality. The provisions of this chapter shall not apply to office, work or other areas of the Department of Corrections which are not entered by the general public in the normal course of business or use of the premises. Smoking is prohibited in public restrooms in any building owned or leased by the Commonwealth or any agency thereof. Smoking is also prohibited in local/district health departments.

VA. CODE ANN. §§ 15.2-2823 & 15.2-2824 (2009).

Private Workplaces

No restrictions

Schools

Smoking is prohibited in the interior of any public elementary, intermediate, and secondary school and in public school buses. The person(s) in charge of other educational facilities shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.

VA. CODE ANN. §§ 15.2-2824 & 15.2-2826 (2009).

Child Care Facilities

Smoking is prohibited in any child day care center that is not also used for residential purposes. This does not apply to any portion of a building not used by a child day care center.

VA. CODE ANN. § 15.2-2824 (2009).

Health Care Facilities

Smoking is prohibited in hospital emergency rooms and public restrooms of health care facilities. Reasonable no-smoking areas must be designated in health care facilities, including hospitals and nursing homes.

VA. CODE ANN. §§ 15.2-2824 & 15.2-2826 (2009).

Any person who smokes or uses an open flame within 25 feet of a medical oxygen source in a health care facility when the area is posted as an area where smoking and open flame are prohibited is guilty of a Class 2 misdemeanor.

VA. CODE ANN. § 18.2-511.1 (2009).

Restaurants

As of December 1, 2009, smoking is restricted to structurally separated and separately ventilated portions of restaurants. At least one public entrance of a restaurant must be into an area of the restaurant where smoking is prohibited. Smoking is still allowed in: 1) places that prepare or store food for distribution to persons of the same business operation or of a related business operation for service to the public such as catering services and mobile points of service; 2) outdoor areas of restaurants when not enclosed by temporary enclosures; 3) restaurants located on the premises of any manufacturer of tobacco products; 4) any portion of the restaurant that is used for private functions; and 5) any private club.

VA. CODE ANN. § 15.2-2825 (2009).

Bars

There is no legal distinction between restaurants and bars in Virginia, so establishments that are commonly known as bars are subject to the restrictions on smoking listed above under "Restaurants."

VA. CODE ANN. §§ 15.2-2825 & 15.2-2828 (2009).

Penalties/Enforcement

The proprietor or other person in charge of a space subject to the restrictions on smoking in the Virginia Clean Indoor Air Act shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking." Restaurants are required to post "No Smoking" signs and remove ashtrays from areas of the restaurants where smoking is prohibited. Failure to post the required signs, continuing to smoke in a non-smoking

area after being asked not to, or if a restaurant proprietor fail to comply with specified requirements is punishable by a civil penalty not to exceed \$25. Restaurant proprietors can assert an affirmative defense to violation if they follow specified requirements. Any law-enforcement officer may issue a summons regarding a violation of the restrictions on smoking in public places or restaurants.

VA. CODE ANN. §§ 15.2-2820 to 15.2-2828 (2009).

State Preemption of Local Laws

No ordinances enacted by a locality prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter. Unless specifically permitted in this chapter, ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established by state law.

VA. CODE ANN. § 15.2-2803 (2002).

If a local smoking ordinance is enacted by a locality, the ordinance shall prohibit smoking in: 1) common areas in an educational facility, including but not limited to, classrooms, hallways, auditoriums, and public meeting rooms; 2) school buses and public conveyances; and 3) any of the places governed by sections 15.2-2824 or 15.2-2825 of the Virginia Code Annotated. Local ordinances may provide that management shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building, in: 1) retail and service establishments of 15,000 square feet or more serving the general public, including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe stores; 2) educational facilities, except as provided in section 15.2-2824 Virginia Code Annotated; 3) health care facilities; 4) rooms in which a public meeting or hearing is being held; 5) places of entertainment and cultural facilities, including but not limited to theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums; 6) indoor facilities used for recreational purposes; or 7) other public places. They shall not prohibit smoking in: 1) conference or meeting rooms and public or private assembly rooms while such rooms are being used for private functions; 2) private work places; 3) areas of enclosed shopping centers or malls that are external to the retail

stores therein, are used by customers as a route of travel from one store to another, and consist primarily of walkways and seating arrangements; or 4) lobby areas of hotels, motels, and other establishments open to the general public for overnight accommodation. Penalty and enforcement provisions must be the same as state law as well.

VA. CODE ANN. §§ 15.2-2829 to 15.2-2833 (2009).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 30 cents

Date last changed: July 1, 2005 — from 20 cents to 30 cents

Year first enacted: 1960

VA. CODE ANN. § 58.1-1001 (2007).

Roll-your-own tobacco is now included in the definition of cigarette and 0.09 ounces of roll-your-own tobacco is the same as one cigarette. However, the excise tax on roll-your-own tobacco is still 10 percent of the manufacturers' sales price.

VA. CODE ANN. § 58.1-1001 (2007).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$166,230,000

Use of Cigarette Tax Revenue

All revenue generated by the cigarette tax is deposited into the Virginia Health Care Fund. Monies in the fund are used for the provision of health care services.

VA. CODE ANN. §§ 58.1-1018 & 32.1-367 (2004).

Taxes on Other Tobacco Products

All other tobacco products: 10% of the manufacturers' sales price

VA. CODE ANN. § 58.1-1021.02 (2005).

Use of Revenue from Taxes on Other Tobacco Products

All revenue generated by the other tobacco products tax is deposited into the Virginia Health Care Fund. Monies in the fund are used for the provision of health care services.

VA. CODE ANN. §§ 58.1-1021.05 (2005) & 32.1-367 (2004).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration (Synar Amendment) the Department of Agriculture and Consumer Services may promulgate regulations which allow the department to undertake the activities necessary to comply with such regulations.

VA. CODE ANN. § 18.2-371.2 (2003).

Penalties for Sales to Minors

No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including, but not limited to, cigarettes, cigars, bidis and wrappings. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 18 years of age as required by law shall be a defense to any action brought under this subsection. Violation by an individual or a separate retail establishment, except for the sale of bidis, shall be punishable by a civil penalty not to exceed \$100 for the first violation, up to \$200 for a second violation and up to \$500 for subsequent violations. If the retail establishment has a youth access training program, the court shall suspend all penalties. If the court finds that there is no training program then it may impose a penalty not to exceed \$1,000.

VA. CODE ANN. § 18.2-371.2 (2003).

Photo ID

No person shall sell a tobacco product, including, but not limited to, cigarettes, cigars, bidis, and wrappings, to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age.

VA. CODE ANN. § 18.2-371.2 (2003).

Sign Posting

Retail establishments that sell tobacco products shall post signs indicating that the sale of tobacco products to any person under the age of 18 is prohibited by law. Proprietors in violation of this requirement may be charged with a civil penalty not to exceed \$50.

VA CODE ANN. § 18.2-371.2 (2003).

Bidis

No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including bidis. A violation by an individual or by a separate retail establishment that involves the sale, distribution or purchase of a bidi shall be punishable by a civil penalty in the amount of \$500 for a first violation, \$1,000 for a second violation, and \$2,500 for a third or subsequent violation.

VA. CODE ANN. § 18.2-371.2 (2003).

Penalties to Minors

No person less than 18 years of age shall purchase, attempt to purchase or possess any tobacco product, including but not limited to cigarettes, cigars, bidis and rolling papers. This shall not apply to the possession of tobacco products by a person less than 18 years of age making a delivery of tobacco products in pursuance of his employment. Violators shall be punishable by a civil penalty not to exceed \$100 for the first violation, and \$250 for subsequent violations. In lieu of the civil penalty, a judge may prescribe up to 20 hours of community service for a first violation and up to 40 hours of community service for a second violation.

VA. CODE ANN. § 18.2-371.2 (2003).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer such person complies with: 1) specific age verification requirements, including obtaining a certification from the prospective consumer and verifying the information in the certification; 2) disclosure requirements; 3) shipping requirements,

including use of a delivery service that requires a signature to accept delivery and a photographic identification of the person accepting delivery; 4) registration and reporting requirements; and 5) tax collection requirements. A first violation of these provisions is a civil penalty of up to \$1,000. A second and subsequent violation is a civil penalty of up to \$10,000. Knowingly submitting a false certification is a civil penalty of \$5,000 for each offense. Failure to collect or remit taxes is a civil penalty of up to five times the retail value of the cigarettes involved, in addition to any other penalty. The law also makes selling or possessing counterfeit cigarettes illegal, and prescribes penalties.

VA. CODE ANN. §§ 18.2-246.6 et seq. (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person shall distribute to any person less than 18 years of age any tobacco product, including, but not limited to, cigarettes, cigars, bidis and wrappings. Violation is subject to the same penalties as selling tobacco products to minors. The affirmative defenses listed under "Penalties for Sales to Minors" are also available.

VA. CODE ANN. § 18.2-371.2 (2003).

Minimum Tobacco Product Sales Amounts

Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. Violators are subject to a civil penalty not to exceed \$50.

VA. CODE ANN. § 18.2-371.2 (2003).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines must be located in a place that is not open to the general public and is not generally accessible to minors. An establishment that prohibits the presence of minors unless accompanied by an adult is not open to the general public.

VA. CODE ANN. § 18.2-371.2 (2003).

Penalties

A violation of the restrictions on placement of tobacco product vending machines is subject to the same penalties as selling or distributing tobacco products to minors.

VA. CODE ANN. § 18.2-371.2 (2003).

Sign Posting

Where any tobacco product is sold from a vending machine notice shall also be posted on the machine in a conspicuous manner and place indicating that the purchase or possession of tobacco products by minors is unlawful. Violation by an individual or a separate retail establishment shall be subject to the same penalties provided for sale or distribution of tobacco products to minors.

VA. CODE ANN. § 18.2-371.2 (2003).

F Licensing Requirements

Requirements

No person shall engage in the business of selling or dealing in tobacco products as a distributor without first having received a separate license from the Department of Taxation for each location or place of business. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor's licenses are valid for a period of three years from the date of issue unless sooner revoked by the department.

VA. CODE ANN. §§ 58.1-1021.04:1 & 58.1-1021.04:2 (2006).

Fees

Each distributor's license must be accompanied by a fee prescribed by the Department of Taxation.

VA. CODE ANN. § 58.1-1021.04:1 (2006).

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

No employee of or applicant for employment with the Commonwealth or any of its political subdivisions shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of their employment, provided that this section shall not apply to specified classes of employees.

VA. CODE ANN. § 2.2-2902 (1989).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In any civil litigation under any legal theory, the amount of the appeal bond or irrevocable letter of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of appellate review by any courts shall be set in accordance with applicable laws or court rules, except that the total appeal bond or irrevocable letter of credit that is required of an appellant and all of its affiliates shall not exceed \$25 million, regardless of the value of the judgment. If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the appeal bond or irrevocable letter of credit requirement has been limited or waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts for the purpose of evading the judgment, the limitation or waiver granted shall be rescinded and a court may require the appellant to post a bond or irrevocable letter of credit in an amount up to the

full amount of the judgment.

VA. CODE ANN. § 8.01-676.1 (2000).

Tobacco Settlement

Use of Tobacco Settlement Dollars

The Virginia Tobacco Settlement Fund was created. Ten percent of the MSA monies are allocated to the fund, unless this 10 percent allocation is sold to the Virginia Foundation for Healthy Youth Endowment for a lump sum payment up front. The monies are used for the purposes of discouraging, eliminating or preventing the use of tobacco products by minors, including, but not limited to, educational and awareness programs on the health effects of tobacco use on minors and laws restricting the distribution of tobacco products to minors. Moneys may also be used for the purpose of reducing childhood obesity, including but not limited to educational and awareness programs, implementing evidence-based practices, and assisting schools and communities with related policies and programs.

VA. CODE ANN. § 32.1-360 (2009).

Note: For FY2010, H.B. 1600 transferred \$7,306,000 from the Tobacco Settlement Fund to the state general fund, and replaced all this money with federal stimulus dollars.

The Virginia Health Care Fund was created into which shall be deposited 40 percent of the annual MSA payment. Monies deposited to the Fund shall be used solely for the provision of health care services. Health care services include, but are not limited to, Medicaid payments, disease diagnosis, prevention and control, and community health services.

VA. CODE ANN. §§ 32.1-366 & 32.1-367 (2004).

The Tobacco Indemnification and Community Revitalization Fund was also created. Fifty percent of the monies received from the MSA shall be deposited into the fund subject to the sale of this money to the Tobacco Settlement Financing Corporation. If the sale occurs, all the investment income from the Tobacco Indemnification and Community Revitalization Endowment from the lump sum payment from the sale of this money shall be deposited in the Tobacco Indemnification and Community Revitalization Fund.

VA. CODE ANN. §§ 3.1-1109.1 & 3.1-1111 (2002).

Fifty percent of the MSA strategic contribution payments were allocated to the Virginia Health Care Fund in 2008, 2009 and 2010.

H.B. 29 enacted and effective 4/11/08 and H.B. 30 enacted 5/9/08 and effective 7/1/08.

Securitization

Authorizes the governor to securitize 50 percent of revenues from the annual MSA payments and creates the Tobacco Indemnification and Community Revitalization Endowment to receive the lump sum payment to the state. Also creates the Tobacco Settlement Financing Corporation and authorizes it to issue bonds all at once or from time to time backed by the 50 percent of MSA payments.

H.B. 698 enacted 4/4/02 and effective 7/1/02 & VA. CODE ANN. §§ 3.1-1111 (2004) & 3.1-1111.1 (2001).

Authorizes the governor to securitize the 10 percent of MSA payments that currently go to the Virginia Tobacco Settlement Foundation, and creates the Virginia Foundation for Healthy Youth Endowment to receive the lump sum payment that would be received by the state. Also authorizes the Tobacco Settlement Financing Corporation to issue bonds backed by the 10 percent of MSA payments. To date, no bonds backed by these MSA payments have been issued.

H.B. 3111 enacted 3/13/07 and effective 7/1/07 & VA. CODE ANN. §§ 32.1-360 & 32.1-361.1 (2009).

Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (N) of section 59.1-293.2 Virginia Code, no cigarettes may be sold or offered for sale in Virginia or offered for sale or sold to persons located in Virginia unless: 1) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 59.1-293.2 Virginia Code; 2) The manufacturer has filed a written certification in accordance with section 59.1-293.3 Virginia Code; and 3) The cigarettes have been marked in accordance with Section 59.1-293.4 Virginia Code. A manufacturer or other person who knowingly sells or offers to sell cigarettes, other than by retail sale, in violation of section 59.1-293.2 above shall be subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold

or offered for sale. Penalties against any such person shall not exceed \$100,000 during any 30-day period. A retailer shall be liable for the same civil penalty for violation, but penalties shall not exceed \$25,000 for any retailer during any 30-day period. A manufacturer who knowingly makes a false certification as required by section 59.1-293.3 above shall be liable for a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

VA. CODE ANN. §§ 59-293.1 to 59-293.9 (2010).

governors consisting of 23 members, including five designated representatives from public health organizations, which can include the American Lung Association in Virginia.

VA. CODE ANN. §§ 32.1-354 to 32.1-359 (2009).

■ ■ ■

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$12,300,000

FY2010 Federal Tobacco Control Program
Funding: \$1,067,227

FY2010 Total Tobacco Control Program
Funding: \$13,367,227

Funding Level Recommended by CDC:
\$103,200,000

Percentage of CDC-Recommended Level: 13 %

State Funding Details:

Virginia allocated \$12,300,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement (MSA) payment and federal stimulus fund dollars. In FY2009, \$12,700,000 was allocated. This is the second year of the FY2009-FY2010 biennium.

FY2009-FY2010 Biennial Budget (H.B. 30) enacted 5/9/08 and effective 7/1/08 (FY2009) & 7/1/09 (FY2010); and H.B. 1600 enacted and effective 4/8/09 (FY2009) and 7/1/09 (FY2010).

Tobacco Control Program Related Laws

The Virginia Foundation for Healthy Youth is created to assist in determining the appropriate recipients of monies in the Virginia Tobacco Settlement Fund, and causing distribution of such moneys for the purposes provided. The Foundation shall have two divisions, the Virginia Tobacco Settlement Foundation to assist in financing efforts to restrict the use of tobacco products by minors, and a division known as Virginia Youth Obesity Prevention may use moneys from the Fund to assist in financing efforts to reduce childhood obesity. The foundation shall be administered by a board of



A State Smoking Restrictions

Public Places

Smoking is prohibited in virtually all public places, including restaurants, bars and non-tribal casinos. “Public place” is defined as that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public. See statute citation for a specific list of what are classified as “public places.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Government Buildings

Smoking is prohibited in “public places,” which includes buildings and vehicles owned in whole or in part by the state of Washington or other public entity that are open to the public. Smoking is also prohibited in “places of employment,” which include any area under the control of a public employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve “public places” and “places of employment.” The definition of “public place” also includes state legislative chambers and immediately adjacent hallways.

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Private Workplaces

Smoking is prohibited in “public places,” which includes buildings and vehicles owned in whole or in part by private persons or entities that are open to the public, and regardless of whether a fee is charged for admission. Smoking is also prohibited in “places of employment,” which include any area under the control of a private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve “public places” and “places of employment.” See statute for a specific list of what are classified as “public places.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Schools

Each school district board of directors must adopt a written policy prohibiting the use of all tobacco products on public school property. The policy shall include, but not be limited to, a requirement that students and school personnel be notified of the prohibition, the posting of signs prohibiting the use of tobacco products, sanctions for students and school personnel who violate the policy, and a requirement that school district personnel enforce the prohibition.

WASH. REV. CODE § 28A.21.310 (1997).

To the extent not covered by the restrictions above, smoking is prohibited in “public places,” the definition of which includes schools and educational facilities, and includes a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited.

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Child Care Facilities

Smoking is prohibited in “public places,” which means any building or vehicle used by and open to the public, regardless of whether the building

or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, including child care facilities. A “public place” includes a private residence when used to provide licensed child care, foster care, adult care, or other similar social service care on the premises. Smoking is also prohibited in “places of employment,” which include any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Smoking is prohibited in the living space of any home or facility caring for foster children and in motor vehicles while transporting foster children. Adults are permitted to smoke outside away from children. This does not apply to traditional or spiritual Native American or religious ceremonies involving the use of tobacco.

WA ADMIN. CODE § 388-148-0185 (2004).

Health Care Facilities

Smoking is prohibited in “public places,” the definition of which includes all hospitals, nursing homes, and health care facilities or clinics. Smoking is also prohibited in “places of employment,” which include any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Restaurants

Smoking is prohibited in “public places,” the definition of which includes restaurants. Smoking is also prohibited in “places of employment,” which are defined as any area under the control of a public or private employer which employees

are required to pass through during the course of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Bars

Smoking is prohibited in “public places,” the definition of which includes bars and taverns. Smoking is also prohibited in “places of employment,” which are defined as any area under the control of a public or private employer which employees are required to pass through during the course of employment. Smoking is also prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes of “public places” and “places of employment.”

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

Penalties/Enforcement

Owners or the person in charge must post signs in a conspicuous place at the entrance to a public place prohibiting smoking. Intentionally smoking in a “public place” or “place of employment” or removal or defacement of signs are punishable by a civil fine of up to \$100. Any person passing by or through a public place while on a public sidewalk or public right of way has not intentionally violated this chapter. After an initial warning, violation by an owner or person in charge of a “public place” or “place of employment” is subject to up to a \$100 civil fine each day the violation continues. Local law enforcement agencies enforce the law against individual smokers and local health departments enforce the law against owners or persons in charge of “public places” or “places of employment.” Owners, operators, managers, employers, or other persons who own or control a “public place” or “place of employment” may seek to rebut the presumption that 25 feet is a reasonable minimum distance by making application to the director of the local health department or district in which the “public place” or “place of employment” is located.

WASH. REV. CODE §§ 70.160.010 et seq. (2005).

State Preemption of Local Laws

The Washington Supreme Court ruled unani-

mously that the prohibition on smoking in almost all public places and workplaces in Pierce County, WA can not go into effect because the ordinance prohibits what state statute specifically allows in this case prohibiting smoking where state law allows businesses to decide whether to allow smoking or not. This means that localities in Washington are preempted from enacting clean indoor air ordinances stronger than state law.

Entertainment Industry Coalition v. Tacoma-Pierce County Health Department et al., decided 2/10/05 (2005).

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.025

Date last changed: July 1, 2005 — from \$1.425 to \$2.025

Year first enacted: 1935

WASH. REV. CODE §§ 82.24.020 (1994), 82.24.026 (2005), 82.24.027 (1999), & 82.24.028 (2002).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$419,899,000

Use of Cigarette Tax Revenue

Revenue from 60 cents of the cigarette tax is distributed as follows: 28.5 percent to the state general fund, and the remaining revenue to the Education Legacy Trust Account.

WASH. REV. CODE § 82.24.026 (2009).

Revenue from an additional 60 cents of the cigarette tax is deposited in the state general fund. This increase was the result of Initiative 773, which was approved by voters in November 2001.

WASH. REV. CODE § 82.24.028 (2009).

Revenue from an additional 81.5 cents of the cigarette tax is also deposited in the state general fund.

WASH. REV. CODE § 82.24.020 & 82.24.027 (2009).

Taxes on Other Tobacco Products

Cigars: 75% of the taxable sales price not exceeding 50 cents per cigar;

All other tobacco products: 75% of the taxable sales price

WASH. REV. CODE § 82.26.020 (2005).

Use of Revenue from Taxes on Other Tobacco Products

All revenue from other tobacco product taxes is deposited in the state general fund.

WASH. REV. CODE § 82.26.020(3) (2009).

G Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Liquor Control Board and the board's authorized agents or employees shall have the full power to conduct random, unannounced inspections with local county health departments or districts and local law enforcement agents to assure compliance with these laws. Persons under 18 may be used with parental authorization for participation in controlled purchases for enforcement purposes.

WASH. REV. CODE §§ 70.155.110 (1993) & 70.155.080 (2002).

Penalties for Sales to Minors

Every person who sells or gives, or permits to be sold or given to any person under the age of 18 any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor. The Liquor Control Board may fine a licensed person who violates this provision \$100 for the first violation within any two year period; \$300 for the second violation within any two year period; \$1,000 and suspension of license for a period of six months for the third violation within any two year period; \$1,500 and suspension of license for one year for the fourth violation within any two year period, and revocation of a license with no chance of reinstatement for five years for the fifth or subsequent violation within any two year period. Any person other than a licensee who commits an offense may be fined \$50 for the first violation and \$100 for any subsequent violation. It is a defense to a prosecution under this section that the person making a sale reasonably relied on any of the officially issued identification specified in Revised Code of Washington section 70.155.090, subsection (1).

WASH. REV. CODE §§ 26.28.080 (1994) & 70.155.005 et seq. (1993).

Photo ID

Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer or agent thereof, shall require the purchaser to present any one of a list of officially issued identification that shows the purchaser's age and bears their signature and photograph.

WASH. REV. CODE § 70.155.090 (1993).

Sign Posting

A licensee shall display a sign concerning the prohibition of tobacco sales to minors, which shall be posted so that it is clearly visible to any person purchasing tobacco products from the licensee. The sign shall read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED." Penalties for licensees and all other persons are the same as selling or giving tobacco products to a minor. Penalties are assessed by the Liquor Control Board.

WASH. REV. CODE §§ 70.155.020 (1993), & 70.155.100 (1998).

Penalties to Minors

Individuals under 18 who purchase, possess, attempt to purchase or obtain any tobacco product are guilty of a Class Three civil infraction, punishable by a fine not to exceed \$50, participation in up to four hours of community service, or both. The court may also require participation in a smoking cessation program.

WASH. REV. CODE § 70.155.080 (2002).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

A person may not ship or transport, or cause to be shipped or transported, any tobacco product ordered or purchased by mail or through the Internet to anyone in this state other than a licensed wholesaler or retailer; or with knowledge or reason to know of the violation, provide substantial assistance to a person who is in violation of these requirements. Violation is a Class C felony subject to a maximum fine of \$5,000, a civil pen-

alty of up to \$5,000 may be imposed in lieu of or in addition to the criminal penalty. The attorney general may seek an injunction in superior court to restrain a threatened or actual violation and compel compliance. Any violation is also considered an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce under Washington law.

WASH. REV. CODE § 70.155.140 (2009).

State Preemption of Local Laws

This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores, except that political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances. No political subdivision may: (1) Impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or (2) regulate or prohibit activities covered by RCW 70.155.020 through 70.155.080.

WASH. REV. CODE § 70.155.130 (1993).

Note: The above provision prohibiting communities from passing stronger ordinances restricting youth access to tobacco products applies to many laws summarized in sections C, D, E & F of Washington's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products**Samples**

No person may distribute or offer to distribute samples in a public place. However, sampling is permitted in areas where minors are not permitted, in stores that have a retailer's license, and at or adjacent to outdoor construction sites. Sampling is also prohibited in or on a public street, sidewalk, park that is within 500 feet of a playground, school, or other facility being used primarily by persons under the age of 18. No person shall engage in the business of sampling without receiving a license from the state Liquor Control Board. Violation by licensees and by all others is a fine of

\$300 for each violation.

WASH. REV. CODE §§ 70.155.050 (1993),
70.155.060 (1993), & 70.155.100 (1998).

No person shall give or distribute coupons for tobacco products if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store. The penalty for licensees and all others is a fine of \$1,000 for each violation.

WASH. REV. CODE §§ 70.155.070 (1993), &
70.155.100 (1998).

Minimum Tobacco Product Sales Amounts

No person shall sell or permit to be sold cigarettes not in the original unopened package to which the required stamp has been affixed. This does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of 60 percent of annual gross sales from the sale of tobacco products. Penalties assessed against the licensee by the Liquor Control Board for violation are the same as selling or giving tobacco products to minors. Any person other than a licensee who commits a violation may be fined \$100 for each offense.

WASH. REV. CODE §§ 70.155.040 (1993), &
70.155.100 (1998).

No stamp may be affixed to, or made upon, any container or package of cigarettes if the container or package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

WASH. REV. CODE § 82.24.035 (1999).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Sales of tobacco products from vending machines are prohibited unless the machines are located at industrial work sites where minors are not employed or fully within premises where minors are not permitted. Vending machines must not be less than ten feet from all entrances or exits on the premises except if architecturally impractical.

WASH. REV. CODE § 70.155.030 (1994).

Penalties

Violations of this provision by licensees and all others are punishable by a fine of \$100 for each day the violation occurs.

WASH. REV. CODE § 70.155.100 (1998).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Wholesalers and retailers of cigarettes must obtain a license from the state Liquor Control Board. Licenses shall expire on the master license expiration date, and shall be continued annually if the licensee has paid the required fee and complied with all specified requirements. A separate license is required for each place of business. Purchasing, selling, consigning, or distributing cigarettes in this state without a license is a Class C felony.

WASH. REV. CODE §§ 82.24.500 to 82.24.540
(2009).

Licenses must be obtained to distribute tobacco product samples at no or nominal cost from the Liquor Control Board. A sampler's license expires on the thirtieth day of June of each year and must be renewed annually. A copy of the license must be carried by the person at all times. Sampling without a license is subject to a \$300 fine for each violation.

WASH. REV. CODE §§ 70.155.050 (1993), &
70.155.100 (1998).

Distributors and retailers of tobacco products other than cigarettes must be licensed by the state Liquor Control Board. Each license expires on the master license expiration date and shall be continued upon payment of the required fee and meeting of certain requirements. Selling other tobacco products without a license is a Class C felony.

WASH. REV. CODE §§ 82.26.150 to 82.26.190
(2009).

Fees

Cigarette wholesalers: \$650 for the first place of business, \$115 for any additional places of business;

Cigarette retailers: \$93 annually, and an additional \$30 for each vending machine.

Other Tobacco Product Distributors: \$650 for the first place of business, \$115 for any additional places of business (unless they hold a cigarette wholesaler license for the same place of business);

Other Tobacco Product Retailers: \$93 annually (unless they hold a cigarette retailer license for the same place of business);

Manufacturers whose employees distribute samples: \$500 annually;

All other samplers: not less than \$50 annually;

WASH. REV. CODE §§ 70.155.050 (1993), 82.24.520 (1986), 82.24.530 (1992), 82.26.160 (2005) & 82.26.170 (2005).

License Suspension for Sales to Minors

Starting with the third violation, the state Liquor Control Board may suspend or revoke a license if the licensee violates state laws concerning sale of tobacco products to minors, sign posting at the point of sale, or distribution of cigarettes outside of their original packages.

WASH. REV. CODE §§ 70.155.005 et seq. (1993).

G Smoker Protection Laws

No provisions

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

In civil litigation under any legal theory involving a signatory, a successor of a signatory or any affiliate of a signatory to the Master Settlement Agreement (MSA), the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed \$100 million, regardless of the value of the judgment.

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

WASH. REV. CODE § 43.340 (2006).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Moneys received by the state of Washington in accordance with the settlement of the state's legal action against tobacco product manufacturers, exclusive of costs and attorneys' fees, shall be deposited in the tobacco settlement account except as these moneys are sold or assigned (see *Securitization* section below). Moneys in the tobacco settlement account may only be transferred to the state general fund, and to the Tobacco Prevention and Control Account to help fund the tobacco prevention and cessation program. Master Settlement Agreement (MSA) strategic contribution payments received in 2008 through 2017 will be distributed to the Life Sciences Discovery Fund. During the FY2010-FY2011 biennium, the excess fund balance from the Tobacco Prevention and Control Account may be transferred to the state general fund, and less than the full MSA strategic contribution payment may be transferred to the Life Sciences Discovery Fund.

WASH. REV. CODE § 43.79.480 (2009).

Securitization

The securitization of part of the annual MSA payments was authorized to acquire a lump sum payment of \$450 million up front. The Tobacco Settlement Authority was created as an independent entity of the state to complete the transaction.

WASH. REV. CODE § 43.340.005 et seq. (2002).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (7) of section 19.305.020 Revised Code of Washington, cigarettes may not be sold or offered for sale in Washington or offered for sale or sold to persons located in Washington unless: 1) the cigarettes have been tested in accordance with the test method and

meet the performance standard specified in section 19.305.020 Revised Code of Washington; 2) a written certification has been filed by the manufacturer with the State Director of Fire Protection in accordance with section 19.305.030 Revised Code of Washington, and the cigarettes have been marked in accordance with section 19.305.040 Revised Code of Washington. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 19.305.020 above is subject to a civil penalty for each sale of such cigarettes of not to exceed \$10,000 for a first offense and not to exceed \$25,000 for any subsequent offenses. Penalties shall not exceed \$100,000 in any 30-day period. A retail dealer that knowingly sells fewer than 1,000 cigarettes in violation of the section 19.305.020 above is subject to a civil penalty of not to exceed \$500 for a first offense and not to exceed \$2,000 for subsequent offenses. A retail dealer that knowingly sells 1,000 or more cigarettes in violation of section 19.305.020 above is subject to a civil penalty of not to exceed \$1,000 for a first offense and not to exceed \$5,000 for subsequent offenses. Penalties may not exceed \$25,000 in any 30-day period. In addition, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification is subject to a civil penalty of at least \$75,000 for the first false certification and not to exceed \$250,000 for each subsequent false certification.

WASH. REV. CODE §§ 19.305.010 to 19.305.110 (2009).

Washington appropriated \$17,656,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund and revenue generated from retailer licensing fees. This is the first year of the FY2010-FY2011 biennium. In FY2009, \$27,191,000 was appropriated.

FY2010-FY2011 Biennial Budget (H.B. 1244) enacted 5/19/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

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N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$17,656,000

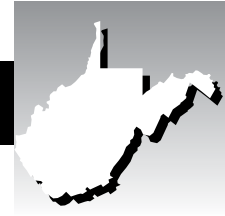
FY2010 Federal Tobacco Control Program
Funding: \$1,411,385

FY2010 Total Tobacco Control Program
Funding: \$19,067,385

Funding Level Recommended by CDC:
\$67,300,000

Percentage of CDC-Recommended Level:
28.3%

State Funding Details:



A State Smoking Restrictions

Public Places

Note: No broad restrictions in state law; there are formal policies that restrict and/or prohibit smoking in state government buildings, schools and child care facilities. See below for more details.

Government Buildings

It is the responsibility of the appointing authority to ensure that all state places of employment maintain a smokefree environment and to make both state employees and the public aware of their responsibility to ensure this smokefree environment. Therefore, smoking by employees of the state is prohibited in their places of employment and in adjacent nonsmoking spaces. Appointing authorities are not required to make accommodations for individual outdoor smoking areas. Public waiting rooms and receiving areas shall be smokefree, and smoking restrictions shall be actively enforced by the individuals responsible for those areas. State residential facilities, including, but not limited to, hospitals, group homes, and prisons shall comply with this policy to the maximum extent possible.

WV Div. of Personnel Policy, Smoking Restrictions in the Workplace (2004).

The West Virginia Regional Jail and Correctional Facility Authority shall prohibit the use or possession of tobacco products by inmates held in facilities operated solely by the authority. The authority may establish smoking cessation programs to facilitate the prohibition.

W. VA. CODE § 31-20-5b (1997).

Private Workplaces

No restrictions

Schools

No person shall distribute or use any tobacco product at all times in any building, property or vehicle leased, owned or operated by a county board of education, a Regional Education Service Agency (RESA), the State Department of Education or the State Board of Education. This policy shall apply to any private building, or other property, including automobiles or other vehicles

used for school activities when students or staff are present. Individuals supervising students off school grounds are prohibited from distributing or using any tobacco product while in the presence of students or any time while engaged in any activities directly involving students.

WV CSR §§ 126-66-1 et seq. (1998).

The use of tobacco products while the school is occupied for school purposes is restricted to faculty or staff lounges or offices that students do not have access to. Violation is punishable by a fine of \$1 to \$5 for each offense.

W. VA. CODE § 16-9A-4 (1987).

Child Care Facilities

Staff members of child care centers shall not use tobacco in any form while engaged in any food service activities, feeding children or administering to the children's needs. Smoking is also prohibited in all children's areas. "Child care center" is defined as any child care facility providing nonresidential child care for seven or more children for all or part of a day. The term "child care center" includes: day care centers, family day care facilities, nursery schools, and preschools. Violators are guilty of a misdemeanor punishable by a fine of not more than \$200, imprisonment for not more than 30 days or both the fine and imprisonment.

WV CSR §§ 64-21-10 & 64-21-20 (1997).

Health Care Facilities

No restrictions

Restaurants

No restrictions

Bars

No restrictions

State Preemption of Local Laws

No specific language concerning preemption in state law. In West Virginia, almost all counties have regulations restricting smoking of varying strength promulgated by county boards of health as of January 1, 2010.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: 55 cents

Date last changed: May 1, 2003 — from 17 cents to 55 cents

Year first enacted: 1947

W. VA. CODE § 11-17-3 (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$107,913,000

Taxes on Other Tobacco Products

All other tobacco products: 7% of the wholesale price

W. VA. CODE § 11-17-3 (2001).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The commissioner of the West Virginia Alcohol Beverage Control Administration, the superintendent of the West Virginia state police, the sheriffs of the counties of this state and the chiefs of police of municipalities of the state shall periodically conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under 18 years of age may be enlisted to test compliance with these sections if the tests are conducted under the direct supervision of the acting authority and written parental consent is first obtained. Any other use of a minor is a misdemeanor, punishable by the same fine listed below.

W. VA. CODE § 16-9A-7 (1998).

Penalties for Sales to Minors

No person, firm or corporation may sell, give or furnish, or cause to be sold or furnished any tobacco product or cigarette paper to a minor. Firms or corporations that violate these provisions are guilty of a misdemeanor and shall be fined \$25 for the first offense; \$100 to \$200 for the second offense within two years of the first conviction; \$250 to \$500 for the third offense

within two years of the first conviction; \$250 to \$500 for the fourth offense within five years of the first conviction; and \$1,000 to \$5,000 for the fifth and any subsequent offenses within five years of the first conviction. Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of 18 years any tobacco product, in any form, is guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100; and for a second or subsequent offense, shall be fined \$100 to \$500. It is an affirmative defense to prosecution if the buyer or recipient falsely evidenced that he was 18 years of age or older; the appearance of the buyer or recipient was such that a prudent person would believe them to be 18 years of age or older; and such person carefully checked specified identification presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that they were 18 years of age or older.

W. VA. CODE §§ 16-9A-2 (2000) & 16-9A-7 (1998).

Photo ID

No provisions

Sign Posting

No provisions

Bidis

The possession, importation, distribution and sale of bidis is prohibited. Violation is a misdemeanor and is subject to a fine of up to \$500. Second and subsequent violations are subject to a fine of not less than \$1,000 and not more than \$5,000 for each offense and/or a possible jail term for up to six months.

W. VA. CODE § 16-9A-9 (2001).

Penalties to Minors

No person under the age of 18 years shall have on or about their person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product. This does not apply to minors participating in compliance inspections. Any person violating the provisions of this section shall for the first violation be fined \$25 and be

required to serve eight hours of community service; for a second violation, the person shall be fined \$50 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$100 and be required to serve 24 hours of community service.

W. VA. CODE § 16-9A-3 (2000).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer, the person complies with specific age verification requirements, including, obtaining a certification from the prospective consumer, including date of birth and verification of this information; disclosure requirements; shipping requirements including use of a delivery service that requires the person to sign to accept delivery and to display a photographic identification; registration and reporting requirements; and tax collection requirements. A first violation of any provision of this article shall be a misdemeanor punishable by a fine of \$500 or five times the retail value of the cigarettes involved, whichever is greater. Any person who knowingly violates any provision of this article or who knowingly and falsely submits a certification in another person's name shall be guilty of a misdemeanor and be fined \$1,000 or ten times the retail value of the cigarettes involved, whichever is greater, or confined not more than six months, or both. Failure to collect or remit taxes is a civil penalty of five times the retail value of the cigarettes involved, in addition to any other penalty.

W. VA. CODE §§ 16-9E-1 to 16-9E-8 (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger ordinances restricting youth access to tobacco products.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person, firm or corporation may give or furnish, or cause to be given or furnished any tobacco product or cigarette paper to a minor. Violators are guilty of a misdemeanor and subject to the same fines as selling tobacco products to minors.

W. VA. CODE § 16-9A-2 (2000).

Minimum Tobacco Product Sales Amounts

A person or business entity may not sell or offer for sale cigarettes: 1) in any form other than an original factory-wrapped package; 2) in a package that contains fewer than 20 cigarettes; 3) as a single cigarette; or 4) in any form that does not display the warnings required by the Federal Cigarette Labeling and Advertising Act, as amended. Any person or business entity that violates these provisions is guilty of a misdemeanor and subject to a fine of \$250.

W. VA. CODE § 16-9A-10 (2009).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No person or business entity may offer for sale any cigarette or other tobacco product in a vending machine. An establishment is exempt from this prohibition if individuals under the age of 18 years are not permitted to be in the establishment or if the establishment is licensed by the Alcohol Beverage Control Commission as a Class A licensee.

W. VA. CODE § 16-9A-8 (2000).

Penalties

Any person or business entity, which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$250.

W. VA. CODE § 16-9A-8 (2000).

Sign Posting

No provisions

F Licensing Requirements

Requirements

Each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail shall apply for and receive a license. The cigarette license application shall be a part of the business registration certificate application or the renewal application for a business registration certificate. Any person or company who sells any cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail without obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 or more than \$250.

W. VA. CODE § 11-12-4a (2000).

Fees

No fees specified

License Suspension for Sales to Minors

No provisions

G Smoker Protection Laws

It shall be unlawful for any public or private employer to refuse to hire any individual or to discharge any employee or otherwise disadvantage or penalize any employee with respect to compensation, terms, conditions or privileges of employment solely because such individual uses tobacco products off the premises of the employer during non-working hours. This section does not apply to a nonprofit organization, which, as one of its primary purposes or objectives, discourages the use of one or more tobacco products by the general public. An employer may offer a health, disability or life insurance policy that makes distinctions between employees for type or price of coverage based on the employee's use of tobacco products provided, that any differential premium rates charged to employees must reflect differential costs to the employee and provided, that the employer must provide employees with a statement delineating the differential rates used by its insurance carriers.

W. VA. CODE § 21-3-19 (1992).

H Advertising & Promotion

Any outdoor billboard advertisement for smokeless tobacco products must conspicuously display

one of the following statements: "WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER; WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS; WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES." The warnings shall be rotated every four months by the manufacturer, packager, or importer of such products in an alternating sequence. Any outdoor billboard advertisement that does not conform to the provisions of this section shall be deemed a nuisance affecting public health. No other warning, format or type style in any billboard advertisement shall be required by any state or local statute or regulation.

W. VA. CODE § 16-9A-5 (1987).

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

The bond that any appellant who is a signatory or a successor to a signatory of the Master Settlement Agreement (MSA) or who controls or is under common control with a signatory of the MSA may be required to post to stay execution on a judgment during an appeal in any cause of action shall be set in accordance with existing law except that an appeal bond may not exceed \$100 million for compensatory damages and all other portions of a judgment other than punitive damages and \$100 million for punitive damages unless the appellee proves by a preponderance of the evidence that the appellant or appellants are purposefully dissipating or diverting assets outside of the ordinary course of its business to the effect that the ability to pay the ultimate judgment is impaired.

W. VA. CODE § 4-11A-4 (2001).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

The Tobacco Settlement Fund is created as a special revenue account in the state treasury. Any monies in the Tobacco Settlement Fund

are available for appropriation by the legislature for: 1) reserve funds for continued support of the programs offered by the public employees insurance agency; 2) funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government; 3) funding for public health programs, services and agencies, and 4) funding for any state owned or operated health facilities. No new tobacco settlement money has been transferred to the fund since future annual Master Settlement Agreements payments were sold as bonds through the Tobacco Settlement Finance Authority for a smaller lump sum payment up front in 2007, see Securitization section below.

W. VA. CODE § 4-11A-3 (2007).

In 2006, there was created in the state treasury a fund known as the Revenue Shortfall Reserve Fund_Part B. All the money from what was previously the West Virginia Tobacco Settlement Medical Trust Fund was transferred into this fund. The legislature can make an appropriation from this fund for revenue shortfalls, emergency revenue needs caused by acts of God/natural disasters or for other fiscal needs as determined solely by the legislature, except the money can not be appropriated unless the money in the main Revenue Shortfall Reserve Fund has been expended. The interest earned on moneys in this fund can be appropriated by the legislature after June 30, 2025 for: reserve funds for continued support of the programs offered by the public employees insurance agency, funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government, funding for public health programs, services and agencies, and funding for any state owned or operated health facilities.

W. VA. CODE § 11B-2-220(f) & (g) (2006).

Securitization

The Tobacco Settlement Finance Authority is created to sell, pledge or assign the state's share of the MSA sold to the authority pursuant to one or more sales agreements. The sale of the state's share of the MSA shall be executed by executive order of the governor, but the lump sum payment received by the state shall not be less than \$800 million.

W. VA. CODE §§ 4-11A-3 to 4-11A-17 (2007).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in subsection (g) of section 47-25-3 and 47-25-10 West Virginia Code, no cigarettes may be sold or offered for sale in West Virginia or offered for sale or sold to persons located in West Virginia, unless: (i) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in section 47-25-3 West Virginia Code; (ii) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 47-25-4 West Virginia Code; and (iii) the cigarettes have been marked in accordance with section 47-25-5 West Virginia Code. A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 47-25-3 above is subject to a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale. Penalties against any such person shall not exceed \$100,000 during any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties shall not exceed \$25,000 for any retail dealer during any 30-day period. In addition, any manufacturer of cigarettes who knowingly makes a false certification as required by section 47-25-4 above is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

W. VA. CODE § 47-25-1 to 47-25-12 (2010).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$5,687,358

FY2010 Federal Tobacco Control Program
Funding: \$1,170,999

FY2010 Total Tobacco Control Program
Funding: \$6,858,357

Funding Level Recommended by CDC:
\$27,800,000

Percentage of CDC-Recommended Level:
24.7%

State Funding Details:

West Virginia appropriated \$5,687,358 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the

state general fund. In FY2009, \$5,678,687 was appropriated.

FY2010 Annual Budget (H.B. 2010) enacted 6/5/09 and effective 7/1/09.

■ ■ ■



A State Smoking Restrictions

Public Places

Note: Legislation was signed into law on May 18, 2009 prohibiting smoking in almost all public places and workplaces in Wisconsin, including restaurants and bars. The law will take effect on July 5, 2010.

S.B. 181 enacted 5/18/09 and effective 7/5/2010.

Smoking is prohibited in or on the grounds of public schools when used for educational purposes, day care centers when children receiving day care services are present and a Type One secured correctional facility. Smoking is also prohibited on motor buses. Smoking is restricted to designated areas in many other public places and workplaces, including restaurants. Exceptions to this law include: 1) rooms used for private functions under the sponsor's control; 2) most types of correctional facilities; and 3) rooms occupied exclusively by smokers. The person in charge of the places where smoking is restricted may not designate an entire building as a smoking area.

WIS. STAT. § 101.123 (2004).

Government Buildings

By executive order, smoking is prohibited in all state office buildings under the control of cabinet secretaries.

Exec. Order #89 (2005).

The use of all tobacco products is prohibited at any Division of Disability and Elder Service (DDES) facility. This prohibition extends to all buildings and grounds of each DDES facility. The prohibition includes staff, patients/residents, visitors, renters, vendors, and any other individuals on the grounds of any facility. The only exception is for ceremonial use of tobacco by Native American patients/residents.

WI Admin. Code 60-05.00 (2005).

The possession and use of tobacco products is prohibited in and on all Department of Corrections owned and leased property. Exceptions can be made for specific circumstances such as for pos-

session or use in inmate religious activities. The policy became effective September 1, 2006.

WI Dept. of Corrections Policy (2006).

No person may smoke in the state capitol building or in the immediate vicinity of the state capitol. Violation is subject to a fine of \$50.

WI STAT. ANN. § 101.123 (2)(ar) (2000).

In state and local government buildings not covered by the above, smoking is restricted to designated areas in any enclosed indoor area.

WIS. STAT. § 101.123 (2004).

Private Workplaces

Smoking is restricted to designated areas in any space that serves as an office. An office is defined as any area that serves as a place of work at which the principal activities consist of professional, clerical or administrative services. Exceptions include any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale, and offices occupied exclusively by smokers.

WIS. STAT. § 101.123 (2004).

Schools

The use of all tobacco products is prohibited on premises controlled by a school board, except that the school board may allow the use of tobacco products on premises owned by the school district and rented to another person for noneducational purposes.

WIS. STAT. § 120.12(20) (2001).

No person may smoke in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory.

WIS. STAT. § 101.123(2)(bv) (2004).

Smoking is restricted to designated areas in any other educational facility, which is any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been

approved or licensed by a state agency or board.
WIS. STAT. § 101.123 (2004).

Child Care Facilities

Smoking is prohibited on the premises, indoors or outdoors, of a day care center, when children who are receiving day care services are present.
WIS. STAT. § 101.123 (2004).

Health Care Facilities

Smoking is restricted to designated areas in inpatient health care facilities. Smoking is prohibited in hospitals or physician's offices except in hospitals that have as a primary purpose the care and treatment of mental illness, alcoholism, or drug abuse.
WIS. STAT. § 101.123 (2004).

Restaurants

Smoking is restricted to designated areas in restaurants, unless the restaurant's liquor sales account for more than 50 percent of the receipts, or the seating capacity is less than 50 persons.
WIS. STAT. § 101.123 (2004).

Bars

No restrictions

Penalties/Enforcement

The person in charge or their agent shall post notice of the designation of a smoking area in or near the area designated. If an entire room is designated a smoking area, they shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. Individuals who willfully violate the restrictions on smoking will be fined not more than \$10. State or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations.
WIS. STAT. § 101.123 (2004).

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances restricting smoking.

B Tobacco Excise Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$2.52
Date last changed: September 1, 2009 – from \$1.77 to \$2.52

Year first enacted: 1939
WIS. STAT. § 139.31 (2009).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$455,722,000

Taxes on Other Tobacco Products

Moist snuff: 100% of the manufacturer's list price;
Cigars: 71% of the manufacturer's list price, not exceeding 50 cents per cigar;
All other tobacco products: 71% of the manufacturer's list price
WIS. STAT. § 139.76(1) (2009).

C Youth Access

Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

A governmental regulatory authority may conduct unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with the state sales to minors' law or a local ordinance. The Department of Health and Family Services may contract with a local health department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person to conduct these investigations. No retailer may be subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated the law or a local ordinance in the most recent investigation. With the permission of their parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette or tobacco product if the person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority and other specified requirements for the use of minors in such investigations are followed.

WIS. STAT. § 254.916 (2001).

Penalties for Sales to Minors

No retailer, manufacturer or distributor, or agent, employee or independent contractor thereof, may sell or provide for nominal or no consideration cigarettes or tobacco products to any person under the age of 18. Vending machine operators are not liable for this provision if they were unaware of the purchase. Violation is punishable by a fine of up to \$500 for the first offense; and between \$200 and \$500 for the second and subsequent violations within 12 months. Upon the second violation within 12 months, the license to sell tobacco products shall also be suspended for not more than three days; for a third violation within 12 months, the license shall be suspended for three to 10 days; and for a fourth violation within 12 months, the license shall be suspended for 15 to 30 days. It is a defense to prosecution that the purchaser falsely represented that they had attained the age of 18 and presented an identification card; that the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18; and that the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser.

WIS. STAT. § 134.66 (2007).

Photo ID

No provisions

Sign Posting

Retailers shall post signs in areas within their premises where tobacco products are sold to consumers stating that the sale of tobacco products to minors is unlawful. Failure to post such notice is punishable by a fine of \$25.

WIS. STAT. § 134.66 (2007).

Penalties to Minors

No person under 18 years of age may possess, purchase or falsely represent their age in an attempt to purchase tobacco products. This does not apply to a minor during employment or a minor who is participating in a compliance check. Violation is subject to seizure of the tobacco product by a law enforcement officer.

WIS. STAT. § 254.92 (2005).

Placement of Tobacco Products

No provisions

Internet Sales of Tobacco Products

Requires direct marketers of cigarettes, which are sales of cigarettes to consumers where the consumer is not physically present, to register and provide certain information to the Department of Revenue. Direct marketers are also required to pay all applicable taxes on their products; verify the consumer's name and address and that they are at least 18 years of age using a database with information based on public records or receive from the consumer at the time of purchase a photocopy of a government-issued ID; for sales over the Internet, obtain the purchaser's E-mail address and receive payment by debit card, credit card or check prior to shipping; and the person making the delivery is required to check a government-issued ID to verify the person receiving the cigarettes is at least 18 years of age, if the person is not the addressee, the person must sign a statement saying the addressee is 18 years of age. Violation is subject to a penalty of \$100 to \$1,000 and/or 10 days to 90 days in jail.

WIS. STAT. §§ 139.345 (2005) & 139.44(5) (2001).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

Other Provisions

At the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with applicable youth access laws and the penalties for violation. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the Department of Health and Family Services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor. Upon violation, a citation will be given to the retailer and their employee if the employee has undergone this training. A citation will be issued only to the retailer if the employee has not undergone this training.

WIS. STAT. § 134.66 (2003).

State Preemption of Local Laws

A county, town, village or city may adopt an ordinance regulating the conduct regulated by section 134.66 and 254.92 Wisconsin statutes only if it strictly conforms to that section. A county ordinance adopted under this subsection does not apply within any town, village or city that has adopted or adopts an ordinance under this subsection. If a county, town, village, or city conducts unannounced investigations of retail outlets to determine compliance with a local ordinance the investigations shall meet the requirements of sections 254.916(3)(a-f) of the Wisconsin statutes and any standards established by the state Department of Health Services.

WIS. STAT. § 134.66 (2007).

Note: The above provision prohibiting communities from passing stronger ordinances restricting youth access to tobacco products applies to many laws summarized in sections C, D & E of Wisconsin's SLATI state page.

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No manufacturer, distributor, jobber, sub-jobber or retailer, or their employees or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by a parent or guardian or spouse who has attained the age of 18 years. Providing cigarettes or tobacco products at no or nominal cost to persons under age 18 is also prohibited. Violation is subject to the same penalties as selling tobacco products to minors, including license suspensions for multiple violations.

WIS. STAT. § 134.66 (2007).

Minimum Tobacco Product Sales Amounts

No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed. Violation is subject to the same penalties as selling tobacco products to minors, including

license suspensions for multiple violations.

WIS. STAT. § 134.66 (2007).

No person may sell or distribute in this state, acquire, store, possess, or transport for sale or distribution in this state, import or cause to be imported into this state for sale or distribution in this state, or affix stamps to a cigarette package that does not comply with Title 15 United States code section 1333 and 1335 or other federal law.

WIS. STAT. § 139.31 (2001).

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

No retailer may place a vending machine within 500 feet of a school. Vending machines are restricted to places where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless accompanied by a parent, guardian or spouse who is 18 or older.

WIS. STAT. § 134.66 (2007).

Penalties

Violation is subject to the same penalties as selling tobacco products to minors, including license suspensions for multiple violations.

WIS. STAT. § 134.66 (2007).

Sign Posting

A vending machine operator shall attach a notice in a conspicuous place on the front of their machine stating that the purchase of tobacco products by persons under 18 years of age is unlawful and violators may be fined up to \$50. Failure to post such notice is punishable by a fine of \$25.

WIS. STAT. § 134.66 (2007).

F Licensing Requirements

Requirements

Multiple retailers (a person who operates 10 or more retail outlets), distributors, manufacturers and vending machine operators must obtain a state permit from the Department of Revenue to sell cigarettes. A separate license is required for each place of business. Distributors are also required to obtain a permit to distribute tobacco

products from the Department of Revenue.

WIS. STAT. §§ 139.34 (2001) & 139.79 (1997).

No person shall in any manner sell, distribute or give away cigarettes or tobacco products to any person not holding a license or permit without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised. A city, village, or town clerk may not issue a license unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over the counter or in a vending machine, or both. Licenses expire on June 30th of every year unless suspended or revoked. A separate license is required for each place of business.

WIS. STAT. § 134.65 (2001).

Fees

Not less than \$5 or more than \$100 annually for a retail license from a city, village or town; no fees specified for Department of Revenue permits.

WIS. STAT. § 134.65 (2001).

License Suspension for Sales to Minors

Punishments for violations of the sales to minors' law include a three day suspension of the applicable license for the second violation within 12 months and progressive suspensions for subsequent offenses within that period. The maximum suspension provided is 15 to 30 days for four or more violations within 12 months.

WIS. STAT. § 134.66 (2003).

G Smoker Protection Laws

No employer, labor organization, employment agency, licensing agency or other person may engage in any act of employment discrimination against any individual on the basis of use or non-use of lawful products off the employer's premises during non-working hours. This section does not apply to nonprofit corporations that have as one of their primary purposes or objectives the encouragement or discouragement of the general public from using this lawful product. It is acceptable for employers to offer a life, health or disability insurance policy under which the type or price of coverage varies for employees based on their usage of this lawful product when the policy meets

certain conditions.

WIS. STAT. §§ 111.31 et seq. (1991).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

Industry Protection

During the pendency of an appeal of a judgment in any civil action, the court shall set the amount of the undertaking to be furnished by all appellants collectively in order to stay the execution of the judgment during appellate review, but the undertaking shall not exceed \$100 million. If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter any order necessary to protect the appellee and may require the appellant to post a bond in an amount not to exceed the amount of the judgment.

WIS. STAT. § 808.07 (2m) (2003).

L Tobacco Settlement

Use of Tobacco Settlement Dollars

Note: The rights to virtually all of Wisconsin's Master Settlement Agreement payments have been sold as bonds through non-stock corporations or limited liability companies organized by the state Secretary of Administration to obtain a much smaller lump sum payment up front. See Securitization section below for additional details.

Securitization

The Secretary of Administration is authorized to sell for cash or other consideration the state's right to receive any of the payments under the tobacco settlement agreement. The secretary may organize one or more non-stock corporations or limited liability companies for any purpose related to the sale of the state's right to receive any of the payments under the tobacco settlement agreement

and may take any action necessary to facilitate and complete the sale.

WIS. STAT. § 16.63 (2001).

M Fire Safety Standards

To help prevent cigarette caused fires, except as provided in paragraphs (b) and (c) of subsection (5) of section 167.35 Wisconsin Statutes, no person may sell or offer to sell cigarettes to a person located in Wisconsin unless all of the following apply: 1) The cigarettes are of a type that has been tested in accordance with subsection (5) of section 167.35 Wisconsin Statutes; 2) The cigarettes meet the applicable fire safety performance standard required under subsection (5) of section 167.35 Wisconsin Statutes; 3) The cigarettes are of a type that are covered by a certification filed under paragraph (a) of subsection (2) of section 167.35 Wisconsin Statutes; and 4) The cigarettes are marked in compliance with subsection (4) of section 167.35 Wisconsin Statutes. A person who knowingly sells or offers to sell cigarettes at wholesale in violation of section 167.35(5)(a) shall forfeit not more than \$10,000 for each sale. Penalties against a single person selling cigarettes at wholesale shall not exceed \$100,000 in any 30-day period. Any person that knowingly sells cigarettes at retail in violation of section 167.35(5)(a) shall forfeit \$500 for each sale involving fewer than 1,000 cigarettes; and \$1,000 for each sale involving 1,000 or more cigarettes. Penalties against a single person selling cigarettes at retail may not exceed \$25,000 in any 30-day period. Any manufacturer that knowingly files a false certification under section 167.35(2) (a) shall forfeit not more than \$10,000 for each false certification.

WIS. STAT. § 167.35 (2009).

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$6,850,000

FY2010 Federal Tobacco Control Program
Funding: \$1,191,137

FY2010 Total Tobacco Control Program
Funding: \$8,041,137

Funding Level Recommended by CDC:
\$64,300,000

Percentage of CDC-Recommended Level:
12.5%

State Funding Details:

Wisconsin allocated \$6,850,000 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state general fund. This is the first year of the FY2010-FY2011 biennium. In FY2009, \$15,250,000 was allocated.

FY2010-FY2011 Biennial Budget (A.B. 75) enacted 6/29/09 and effective 7/1/09 (FY2010) & 7/1/10 (FY2011).

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A State Smoking Restrictions**Public Places**

No restrictions

Government Buildings

Smoking is not permitted in any building under control of the Capitol Building Commission, except in specially ventilated designated smoking areas.

Wyoming State Govt Non Smoking Policy, (1989).

Private Workplaces

No restrictions

Schools

No restrictions

Child Care Facilities

No restrictions

Health Care Facilities

No restrictions

Restaurants

No restrictions

Bars

No restrictions

Penalties/Enforcement

No provisions

State Preemption of Local Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances restricting smoking.

B Tobacco Excise Taxes**Tax on Cigarettes**

Tax rate per pack of 20: 60 cents

Date last changed: July 1, 2003 — from 12 cents to 60 cents

Year first enacted: 1951

WYO. STAT. ANN. § 39-18-104(a) (2003).

The state preempts the field of imposing taxes on cigarettes and no city, town or county shall impose, levy or collect taxes upon the sale, occupation or privilege of selling cigarettes.

WYO. STAT. ANN. § 39-18-103(b) (2003).

Revenue Collected from Cigarette Taxes

Revenue collected from the cigarette tax in FY2008 (July 1, 2007 to June 30, 2008): \$23,299,000

Use of Cigarette Tax Revenue

Revenue from 33 1/3 percent of 12 cents of the cigarette tax is distributed to incorporated cities and towns and to boards of county commissioners in the proportion the cigarette taxes derived from sales within each incorporated city or town or county bears to total cigarette taxes collected. The remaining revenue is then distributed 61.75 percent to cities and counties as specified above and 38.25 percent to the state general fund. The other 48 cents of the cigarette tax is distributed to the state general fund.

WYO. STAT. ANN. § 39-18-111 (2005).

Taxes on Other Tobacco Products

Moist snuff: 60 cents for up to ounce and a proportionate rate on any fractional parts of more than one ounce;

All other cigars, snuff and other tobacco products: 20% of the wholesale purchase price.

WYO. STAT. ANN. § 39-18-104(c) (1989) & 39-18-104(e) (2009).

Use of Revenue from Taxes on Other Tobacco Products

All revenue from the taxes on other tobacco products is distributed to the state general fund.

WYO. STAT. ANN. § 39-18-111 (2005).

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

Minimum age for sales of tobacco products: 18

Compliance/Enforcement

The Department of Health, working with local law enforcement agencies and other local individuals and organizations at the discretion of the department, shall be the lead agency to ensure compliance with this article. To coordinate the enforcement of state statutes relating to the prohibition of the sale of tobacco products to minors and to comply with applicable law, the Department of Health shall have authority to contract with or provide grants to local law enforcement agencies or other local individuals or entities to conduct random, unannounced inspections at retail locations where tobacco products are sold. Minors may be used with written consent of the minor's parents or guardian, and if specific guidelines for use of minors in such investigations are followed.

WYO. STAT. ANN. § 14-3-307 (2000).

Penalties for Sales to Minors

No individual shall sell, offer for sale, give away or deliver tobacco products to any person under the age of 18. Any individual violating this section is guilty of a misdemeanor punishable by a fine of not more than \$50 for a first violation, \$250 for a second violation and \$750 for a third or subsequent violation committed within a 24-month period. The court may allow the defendant to perform community service and be granted credit against their fine and court costs at the rate of \$5 for each hour of work performed.

WYO. STAT. ANN. § 14-3-302 (2000).

No retailer shall sell, permit the sale, offer for sale, give away or deliver tobacco products to any person less than 18 years of age. Any person violating this section is guilty of a misdemeanor punishable by the same graduated fines listed for individuals above. In addition, any retailer violating this section for a third or subsequent time within a two-year period may be prohibited from selling tobacco products for not more than 180 days by court injunction. It is an affirmative defense to a prosecution under this section that, in the case of a sale, the person who sold the tobacco product was presented with, and reasonably relied upon, an identification card, which identified the person buying or receiving the tobacco product as being over 18 years of age. No penalty will be enforced for a first violation if the retailer can show it had

adopted and enforced a written policy against selling tobacco products to persons under the age of 18 years; informed its employees of the applicable laws regarding the sale of tobacco products to persons under the age of 18 years; required employees to verify the age of tobacco product customers by way of photographic identification or by means of an electronic transaction scan device; and established and imposed disciplinary sanctions for noncompliance.

WYO. STAT. ANN. § 14-3-302 (2000).

Photo ID

No provisions

Sign Posting

Any person who sells tobacco products shall post signs informing the public of the age restrictions for sales of tobacco products at or near every display of tobacco products. Each sign shall be plainly visible and shall contain a statement communicating that the sale of tobacco products to persons under 18 years of age is prohibited by law. Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. § 14-3-303 (2000).

Penalties to Minors

No person under the age of 18 shall possess, use, purchase or attempt to purchase tobacco products; or misrepresent their identity or age, or use any false or altered identification for the purpose of purchasing or attempting to purchase tobacco products. Any person violating this section is guilty of a misdemeanor punishable by a fine of not more than \$50 for a first violation, not more than \$250 for a second violation, and not more than \$750 for a third or subsequent violation committed within a 24-month period. In lieu of the fine, the court may allow the defendant to perform community service or attend a tobacco cessation program and be granted credit against their fine and court costs at the rate of \$5 for each hour of work performed or each hour of tobacco cessation program attended. This does not apply to minors participating in compliance inspections.

WYO. STAT. ANN. §§ 14-3-304 & 14-3-305 (2000).

Placement of Tobacco Products

No person shall sell or offer tobacco products through a self-service display except in a business where entry by persons under 18 is prohibited. “Self service display” means any display of tobacco products that is located in an area where customers are permitted and where the tobacco products are readily accessible to a customer without the assistance of a salesperson. Violation is a misdemeanor, subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. §§ 14-3-301 & 14-3-303 (2007).

Internet Sales of Tobacco Products

No provisions

State Preemption of Local Laws

This article shall not be construed to prohibit the imposition by local law or ordinance of further regulation or prohibition upon the sale, use and possession of tobacco products to any person under 18 years of age, but the governmental entity shall not permit or authorize the sale, use or possession of tobacco products to any person under 18 years of age. However, no governmental entity shall enact any law or ordinance which changes the standards provided by Wyoming Statutes sections 14-3-302(a) and (c), 14-3-303(a), 14-3-304(a) and 14-3-305(a). The governmental entity may require that sellers of tobacco products obtain a license to sell tobacco products and may deny or revoke the license in the case of reported violations of Wyoming Statutes section 14-3-302 or similar local ordinance.

WYO. STAT. ANN. § 14-3-308 (2000).

D Restrictions on Distribution of Tobacco Product Samples and Minimum Sales Amounts for Tobacco Products

Samples

No person shall give away or deliver tobacco products to any person under the age of 18. Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension.

WYO. STAT. ANN. § 14-3-302 (2000).

Minimum Tobacco Product Sales Amounts

No provisions

E Restrictions on the Sale of Tobacco Products in Vending Machines

Placement

Vending machines are restricted to locations in a business, factory, office, or other place not generally open to the public, and in places where persons under 18 are not permitted, including areas where alcoholic beverages are sold or dispensed.

WYO. STAT. ANN. § 14-3-303 (2000).

Penalties

Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. § 14-3-303 (2000).

Sign Posting

Signs must be posted on or upon every vending machine selling tobacco products. The signs shall be plainly visible and inform the public that the sale of tobacco products to persons under 18 is prohibited by law. Violation is a misdemeanor subject to the same penalties as selling or distributing tobacco products to minors, including possible license suspension. Each day of continued violation is a separate offense.

WYO. STAT. ANN. § 14-3-303 (2000).

F Licensing Requirements

Requirements

Wholesalers, manufacturers and importers must obtain a license to sell tobacco products from the Department of Revenue. The term wholesaler includes any person who sells or distributes for sale or resale cigarettes over the Internet or through any other means of direct or indirect mail solicitation or delivery. The license is valid through June 30th of each year and a separate license is required for each place of business for wholesalers. Selling or distributing tobacco products without a license is a misdemeanor subject to not more than a \$100 fine and/or six months in county jail.

WYO. STAT. ANN. §§ 39-18-101, 39-18-106 & 39-18-108 (2005).

Fees

\$10 annually for all licenses.

WYO. STAT. ANN. § 39-18-106 (2001).

License Suspension for Sales to Minors

For a third or subsequent violation of the sales to minors' law within a two-year period, the court may grant an injunction against a retailer prohibiting the sale of tobacco products for a period of up to 180 days.

WYO. STAT ANN § 14-3-302 (2000).

G Smoker Protection Laws

It is a discriminatory or unfair employment practice for an employer to require as a condition of employment that any employee or prospective employee use or refrain from using tobacco products outside the course of their employment, or otherwise discriminate in matters of compensation or the terms, conditions or privileges of employment, unless it is a bona fide occupational qualification that a person not use tobacco products outside the workplace. This shall not prohibit an employer from offering, imposing or having in effect a health, disability or life insurance policy distinguishing between employees for type or price of coverage based upon the use or nonuse of tobacco products, with certain conditions. Any person claiming to be aggrieved by a discriminatory or unfair employment practice may file a complaint with the Department of Employment within 90 days of the alleged violation. The department may order the respondent to hire, reinstate or upgrade the employee, with or without back pay.

WYO. STAT. ANN. §§ 27-9-101 et seq. (1992).

H Advertising & Promotion

No provisions

I Product Disclosure

No provisions

J Tobacco Divestment

No provisions

K Tobacco Liability

No provisions

L Tobacco Settlement**Use of Tobacco Settlement Dollars**

Wyoming created the Wyoming tobacco settlement trust fund to receive annual payments from the Master Settlement Agreement (MSA) through March 15, 2002. The principal is to remain forever inviolate, and the interest, and all payments received after March 15, 2002, go to a trust fund income account. The money in this account can be spent on efforts in prevention and cessation of tobacco use through school and community-based programs and efforts to establish and implement programs to prevent, intervene in, and otherwise limit alcohol and substance abuse. This money must be appropriated by the legislature.

WYO. STAT. ANN. § 9-4-1203 (2000).

M Fire Safety Standards

No provisions

N Tobacco Control Program Funding

FY2010 State Tobacco Control Program
Funding: \$4,755,599

FY2010 Federal Tobacco Control Program
Funding: \$1,037,398

FY2010 Total Tobacco Control Program
Funding: \$8,041,137

Funding Level Recommended by CDC:
\$9,000,000

Percentage of CDC-Recommended Level:
64.4%

State Funding Details:

Wyoming allocated \$4,755,599 for tobacco prevention and cessation programs in FY2010 (July 1, 2009 to June 30, 2010) from the state's annual Master Settlement Agreement (MSA) payment and the state general fund. In FY2009, \$6,020,599 was allocated.

FY2009-FY2010 Biennial Budget (S.B. 1) enacted 3/5/08 and effective 7/1/08 (FY2009) & 7/1/09 (FY2010); and H.B. 1 (Biennial Budget revisions) enacted and effective 3/5/09 (FY2009) & 7/1/09 (FY2010).

Tobacco Control Program Related Laws

Wyoming directed the Department of Health to develop and implement comprehensive tobacco

prevention, cessation and treatment programs for Wyoming, and also instructed the Department of Health to develop and implement a competitive grant program to support efforts to reduce the use of tobacco products by minors. The department shall give priority to the following programs in regard to tobacco use in the state: comprehensive community based programs; public education, including use of media campaigns; youth involvement programs; school and early childhood programs; enforcement of laws related to access to tobacco products by minors; programs to promote the cessation of tobacco use; and programs for the treatment of tobacco-related diseases.

WYO. STAT. ANN. § 9-4-1204 (2000).



**State Laws Prohibiting Smoking in State and/or Local Government Buildings
(33 + DC)**

Arizona	Hawaii	Nebraska	Pennsylvania
Arkansas	Idaho	Nevada	Rhode Island
California	Illinois	New Jersey	South Dakota
Colorado	Iowa	New Mexico	Tennessee
Connecticut	Louisiana	New York	Utah
Delaware	Maine	North Carolina (state only)	Vermont
District of Columbia	Maryland	North Dakota	Washington
Florida	Massachusetts	Ohio	
Georgia	Montana	Oregon	

APPENDIX

**State Laws Prohibiting Smoking in Private Workplaces, not Including Restaurants
or Bars (24 + DC)**

Arizona	Louisiana	New Jersey	South Dakota
Delaware	Maine	New York	Utah
District of Columbia	Maryland	North Dakota	Vermont
Florida	Massachusetts	Ohio	Washington
Hawaii	Montana	Oregon	
Illinois	Nebraska	Pennsylvania	
Iowa	Nevada	Rhode Island	

State Laws Prohibiting Smoking in Restaurants (28 + DC)

Arizona	Illinois	Nebraska	Oregon
Colorado	Iowa	Nevada	Rhode Island
Connecticut	Louisiana	New Hampshire	Utah
Delaware	Maine	New Jersey	Vermont
District of Columbia	Maryland	New Mexico	Washington
Florida	Massachusetts	New York	
Hawaii	Minnesota	North Carolina	
Idaho	Montana	Ohio	

State Laws Prohibiting Smoking in Stand-Alone Bars (24 + DC)

Arizona	Iowa	New Hampshire	Rhode Island
Colorado	Maine	New Jersey	Utah
Connecticut	Maryland	New Mexico	Vermont
Delaware	Massachusetts	New York	Washington
District of Columbia	Minnesota	North Carolina	
Hawaii	Montana	Ohio	
Illinois	Nebraska	Oregon	

State Smoking Restrictions by Selected Locations as of January 2, 2010

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State	Government Buildings	Private Workplaces	Schools	Child Care Facilities	Health Care Facilities	Restaurants	Bars/ Taverns	Gaming Facilities/ Casinos*	Recreational/ Cultural Facilities	Retail/ Grocery Stores
Alabama	R	R	R	R	R	N	N	N	R	R
Alaska	R	R	P	P	R	R	N	N/A	R	R
Arizona	P	P	P	P	P	P	P	P	P	P
Arkansas	P	M	P	P	P	M	R	R	P	P
California	P	V	M	P	V	V	V	V	V	V
Colorado	P	M	P	P	P	P	P	P	P	P
Connecticut	P	R	P	R	P	P	P	P	P	P
Delaware	P	P	P	P	P	P	P	P	P	P
District of Columbia	P	P	P	P	P	P	P	N/A	P	P
Florida	P	P	P	P	P	P	R	P	P	P
Georgia	P	R	P	P	P	R	R	N/A	P	V
Hawaii	P	P	P	P	P	P	P	N/A	P	P
Idaho	P	M	P	P	P	P	N	P	P	P
Illinois	P	P	P	P	P	P	P	P	P	P
Indiana	R	N	R	R	R	N	N	N	R	R
Iowa	P	P	P	P	P	P	P	R	P	P
Kansas	R	N	M	P	R	R	N	N	R	R
Kentucky	R	N	R	N	N	N	N	N	N	N
Louisiana	P	P	P	P	P	P	N	R	P	P
Maine	P	P	P	P	P	P	P	V	P	P
Maryland	P	P	P	P	P	P	P	P	P	P
Massachusetts	P	P	P	P	P	P	P	P	P	P
Michigan	R	N	M	P	R	R	N	N	R	R
Minnesota	M	M	P	P	P	P	P	P	P	P
Mississippi	R	N	M	N	N	N	N	N	R	N
Missouri	R	N	M	M	R	R	N	N	R	R

Key: P = Smoking prohibited completely; M = Smoking prohibited in most places, but certain types of places are exempt; V = Smoking allowed in separately enclosed, separately ventilated rooms/areas; R = Smoking restricted to designated areas, or allowed in most types of places; N = No provision; N/A = Not applicable to that type of place

* This category does not apply to tribal establishments.

Appendix B (cont.)

B

State	Government Buildings	Private Workplaces	Schools	Child Care Facilities	Health Care Facilities	Restaurants	Bars/Taverns	Gaming Facilities/Casinos*	Recreational/Cultural Facilities	Retail/Grocery Stores
Montana	P	P	P	P	P	P	P	P	P	P
Nebraska	P	P	P	P	P	P	P	P	P	P
Nevada	P	P	P	P	P	P	R	R	P	P
New Hampshire	R	R	M	P	R	P	P	R	R	R
New Jersey	P	P	P	P	P	P	P	R	P	P
New Mexico	P	M	P	P	P	P	P	N	P	P
New York	P	P	P	P	P	P	P	P	P	P
North Carolina	R	N	M	R	R	P	P	N/A	R	N
North Dakota	P	P	P	P	P	R	N	R	P	P
Ohio	P	P	P	P	P	P	P	P	P	P
Oklahoma	V	R	P	P	P	V	N	V	P	P
Oregon	P	P	P	P	P	P	P	P	P	P
Pennsylvania	P	P	P	P	P	V	R	R	P	P
Rhode Island	P	P	P	P	P	P	P	R	P	P
South Carolina	R	N	R	P	R	N	N	N/A	R	N
South Dakota	P	P	P	P	P	R	N	N	P	P
Tennessee	P	M	P	P	P	M	R	N/A	P	P
Texas	R	N	R	P	R	N	N	N	R	N
Utah	P	P	P	P	P	P	P	N/A	P	P
Vermont	P	P	P	P	P	P	P	N/A	P	P
Virginia	R	N	M	R	R	R	R	N	R	R
Washington	P	P	P	P	P	P	P	P	P	P
West Virginia	R	N	M	R	N	N	N	N	N	N
Wisconsin	R	R	M	P	R	R	N	N	R	R
Wyoming	R	N	N	N	N	N	N	N	N	N

Key: P = Smoking prohibited completely; M = Smoking prohibited in most places, but certain types of places are exempt; V = Smoking allowed in separately enclosed, separately ventilated rooms/areas; R = Smoking restricted to designated areas, or allowed in most types of places; N = No provision; N/A = Not applicable to that type of place

* This category does not apply to tribal establishments.

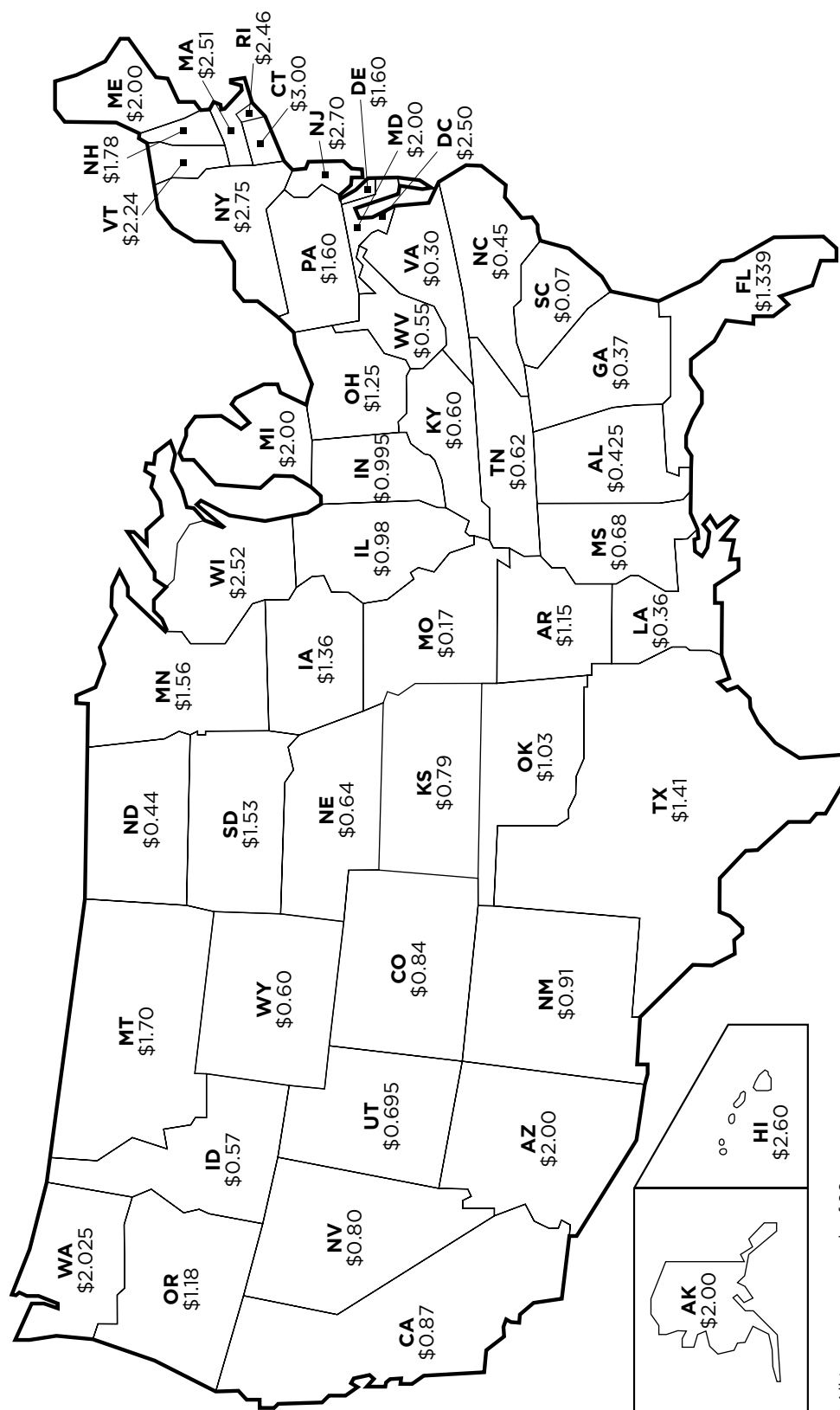
State Cigarette Tax Average as of January 1, 2010: \$1.34 per pack

Sorted by Tax Rate From Highest to Lowest

Sorted Alphabetically by State Name

State	Tax Rate (per pack of 20)
Rhode Island.....	\$3.46
Connecticut	\$3.00
New York.....	\$2.75
New Jersey	\$2.70
Hawaii	\$2.60
Wisconsin	\$2.52
Massachusetts	\$2.51
District of Columbia	\$2.50
Vermont.....	\$2.24
Washington.....	\$2.025
Alaska	\$2.00
Arizona	\$2.00
Maine	\$2.00
Maryland	\$2.00
Michigan	\$2.00
New Hampshire	\$1.78
Montana.....	\$1.70
Delaware.....	\$1.60
Pennsylvania.....	\$1.60
Minnesota	\$1.56
South Dakota	\$1.53
Texas	\$1.41
Iowa	\$1.36
Florida	\$1.339
Ohio	\$1.25
Oregon.....	\$1.18
Arkansas	\$1.15
Oklahoma	\$1.03
Indiana.....	\$0.995
Illinois.....	\$0.98
New Mexico	\$0.91
California.....	\$0.87
Colorado	\$0.84
Nevada.....	\$0.80
Kansas	\$0.79
Utah	\$0.695
Mississippi.....	\$0.68
Nebraska.....	\$0.64
Tennessee	\$0.62
Kentucky.....	\$0.60
Wyoming.....	\$0.60
Idaho	\$0.57
West Virginia	\$0.55
North Carolina	\$0.45
North Dakota	\$0.44
Alabama	\$0.425
Georgia	\$0.37
Louisiana.....	\$0.36
Virginia.....	\$0.30
Missouri.....	\$0.17
South Carolina	\$0.07

State	Tax Rate (per pack of 20)
Alabama.....	\$0.425
Alaska.....	\$2.00
Arizona.....	\$2.00
Arkansas	\$1.15
California	\$0.87
Colorado	\$0.84
Connecticut.....	\$3.00
Delaware	\$1.60
District of Columbia.....	\$2.50
Florida	\$1.339
Georgia.....	\$0.37
Hawaii.....	\$2.60
Idaho.....	\$0.57
Illinois	\$0.98
Indiana	\$0.995
Iowa	\$1.36
Kansas	\$0.79
Kentucky	\$0.60
Louisiana	\$0.36
Maine	\$2.00
Maryland	\$2.00
Massachusetts	\$2.51
Michigan.....	\$2.00
Minnesota	\$1.56
Mississippi	\$0.68
Missouri	\$0.17
Montana.....	\$1.70
Nebraska	\$0.64
Nevada.....	\$0.80
New Hampshire	\$1.78
New Jersey	\$2.70
New Mexico.....	\$0.91
New York.....	\$2.75
North Carolina	\$0.45
North Dakota	\$0.44
Ohio	\$1.25
Oklahoma	\$1.03
Oregon.....	\$1.18
Pennsylvania	\$1.60
Rhode Island.....	\$3.46
South Carolina	\$0.07
South Dakota	\$1.53
Tennessee	\$0.62
Texas.....	\$1.41
Utah	\$0.695
Vermont.....	\$2.24
Virginia.....	\$0.30
Washington.....	\$2.025
West Virginia.....	\$0.55
Wisconsin	\$2.52
Wyoming.....	\$0.60



* All taxes are per pack of 20.

Net Cigarette Excise Tax Revenue Collected in Fiscal Year 2008

(July 1, 2007 to June 30, 2008 for most states)

State	Revenue Collected in FY2008
Alabama	\$141,632,000
Alaska	\$63,819,000
Arizona	\$388,870,000
Arkansas	\$125,680,000
California	\$954,888,000
Colorado	\$195,867,000
Connecticut	\$329,500,000
Delaware	\$116,902,000
District of Columbia	\$22,417,000
Florida	\$405,061,000
Georgia	\$211,087,000
Hawaii	\$101,560,000
Idaho	\$46,192,000
Illinois	\$594,510,000
Indiana	\$505,611,000
Iowa	\$229,457,000
Kansas	\$112,559,000
Kentucky	\$177,809,000
Louisiana	\$127,960,000
Maine	\$143,758,000
Maryland	\$340,534,000
Massachusetts	\$418,737,000
Michigan	\$1,040,129,000
Minnesota	\$392,384,000
Mississippi	\$45,801,000
Missouri	\$97,150,000
Montana	\$84,249,000
Nebraska	\$70,445,000
Nevada	\$126,539,000
New Hampshire	\$161,215,000
New Jersey	\$763,411,000
New Mexico	\$60,691,000
New York	\$958,466,000
North Carolina	\$228,848,000
North Dakota	\$20,851,000
Ohio	\$911,199,000
Oklahoma	\$221,180,000
Oregon	\$222,203,000
Pennsylvania	\$1,014,823,000
Rhode Island	\$112,086,000
South Carolina	\$26,540,000
South Dakota	\$57,160,000
Tennessee	\$260,047,000
Texas	\$1,462,012,000
Utah	\$55,327,000
Vermont	\$56,041,000
Virginia	\$166,230,000
Washington	\$419,899,000
West Virginia	\$107,913,000
Wisconsin	\$455,722,000
Wyoming	\$23,299,000

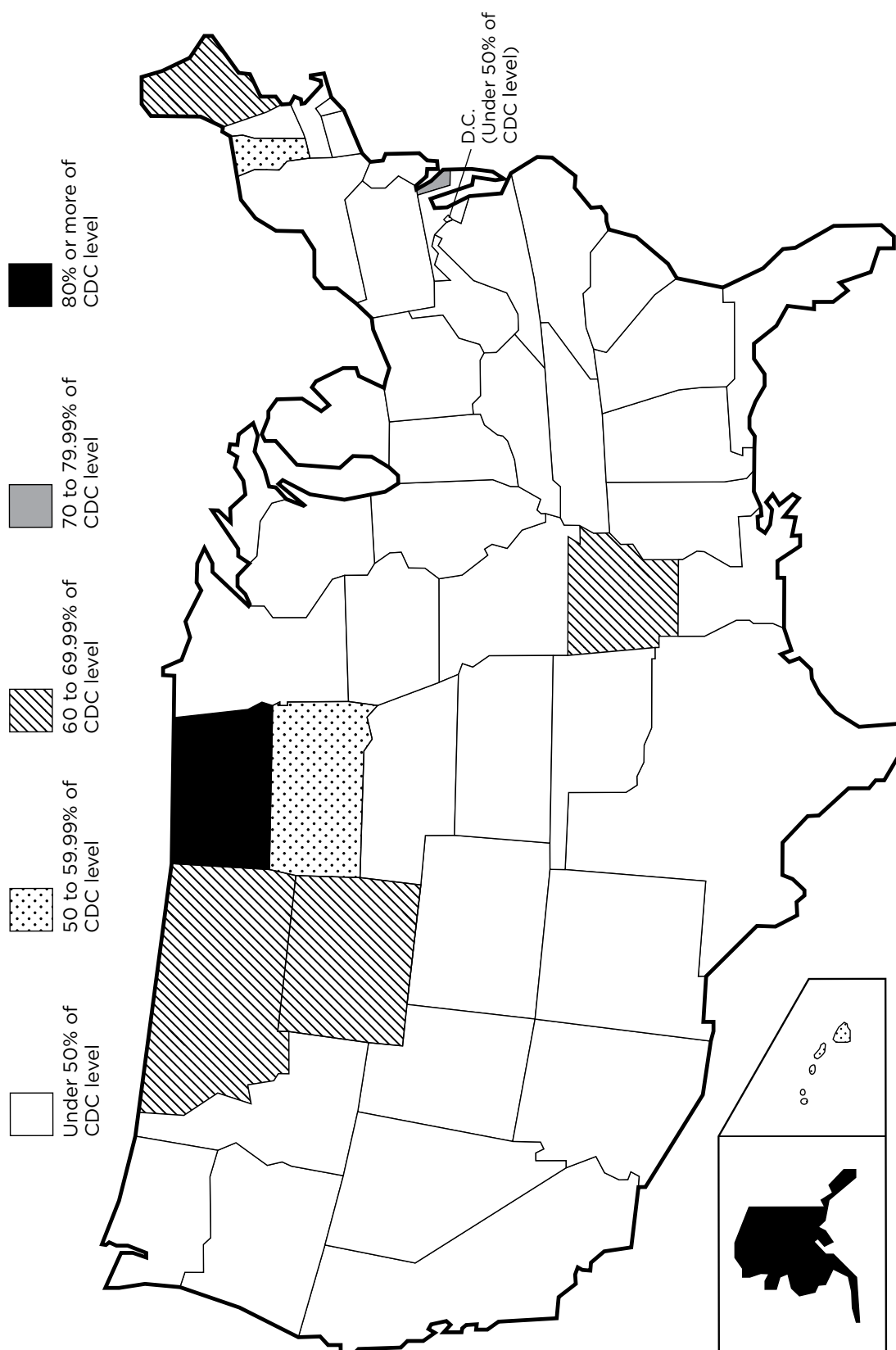
Forty-nine states and the District of Columbia have excise taxes on tobacco products other than cigarettes; Pennsylvania is the only state that does not.

Alabama	Chewing tobacco: 1.5 cents per ounce; Snuff: 1 cent to 8 cents, depending on the weight, for up to 6 ounces; 12 cents for each ounce or fractional part thereof over 6 ounces; Little Cigars (not weighing more than 3 pounds per thousand): 4 cents per each 10 cigars or fractional part thereof; All other Cheroots, Stogies & Cigars: \$3.00 to \$40.50 per thousand depending on the price they retail for; Smoking Tobacco: 4 cents to 21 cents, depending on the weight, for up to 4 ounces; 6 cents for each ounce or fractional part thereof over 4 ounces
Alaska	75% of the wholesale price
Arizona	Chewing tobacco, smoking tobacco, and snuff: 22.25 cents/oz.; Cavendish, plug, or twist tobacco: 5.45 cents/oz.; On each 20 small cigars or fractional part weighing not more than three pounds per thousand: 44.05 cents; All other cigars: 21.8 cents/three cigars or 21.8 cents/cigar depending on the manufacturer's retail price
Arkansas	68% of the manufacturer's list price
California	41.11% of the wholesale price (changes annually July 1)
Colorado	40% of the manufacturer's list price
Connecticut	Snuff: 55 cents/oz. and a proportionate rate on all fractional parts of an ounce; All other tobacco products: 27.5% of the wholesale sales price
Delaware	Moist snuff: 54 cents/oz. and a proportionate rate on all fractional parts of an ounce; All other tobacco products: 15% of the wholesale price
District of Columbia	Little Cigars (weighing less than 4 1/2 lbs/thousand): 12.5 cents per little cigar; Moist snuff: 30 cents/oz. and a proportionate rate on all fractional parts of an ounce; All Tobacco Products (except premium cigars and pipe tobacco): 12% of the gross receipts from the sale of or charges for the tobacco product
Florida	All tobacco products except cigars: 85% of the wholesale sales price Cigars: No tax levied
Georgia	Smokeless tobacco: 10% of the wholesale cost price Cigars: 23% of the wholesale cost price Little cigars (weighing not more than 3 lbs./thousand): 20 cents/cigars

Hawaii	Little cigars (ring gauge of less than 30): 13 cents/cigar; Larger cigars (ring gauge of 30 or more): 50% of the wholesale price; All other tobacco products: 70% of the wholesale price
Idaho	40% of the wholesale sales price
Illinois	18% of the wholesale purchase price
Indiana	24% of the wholesale price
Iowa	Little Cigars: \$1.36 per 20 cigars; Snuff: \$1.19/oz. and a proportionate rate on fractional parts of an ounce; All other tobacco products: 50% of the wholesale sales price
Kansas	10% of the wholesale sales price
Kentucky	Snuff: 19 cents per unit (unit = hard container capable of containing not more than 1.5 ounces); All other tobacco products: 15% of the wholesale price
Louisiana	Cigars: 8% to 20% depending on the manufacturer's invoice price; Smokeless tobacco: 20% of the invoice price; Smoking Tobacco: 33% of the invoice price
Maine	Smokeless tobacco, including chewing tobacco and snuff: minimum of \$2.02/oz., prorated for packages larger than one oz.; Cigars, pipe tobacco, and other tobacco intended for smoking: 20% of the wholesale sales price
Maryland	15% of the wholesale price
Massachusetts	Little cigars: \$2.51 per 20 cigars; Chewing tobacco and snuff: 90% of the wholesale price; Cigars and smoking tobacco: 30% of the wholesale price
Michigan	Cigars, non-cigarette smoking tobacco, and smokeless tobacco: 32% of the wholesale price
Minnesota	70% of the wholesale sales price
Mississippi	15% of the manufacturer's list price
Missouri	10% of the manufacturer's invoice price.
Montana	Moist snuff: 85 cents/oz. and a proportionate rate on all fractional parts of an ounce; All other tobacco products: 50% of the wholesale price

Nebraska	Snuff: 44 cents/oz. and a proportionate rate on all fractional parts of an ounce; All other tobacco products: 20% of the purchase price of such tobacco products paid by the first owner or the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others.
Nevada	30% of the wholesale price
New Hampshire	Little Cigars (under 3 lbs./thousand): \$1.78 per 20 cigars; Loose tobacco, smokeless tobacco, snuff and cigars (not including premium cigars as defined): 48.59% of the wholesale sales price
New Jersey	Moist snuff: 75 cents/oz. and a proportionate rate on all fractional parts of an ounce; All other tobacco products: 30% of the wholesale price
New Mexico	Cigars that look like, are packaged and labeled like or are marketed and advertised like cigarettes: 91 cents per 20 cigars Roll-your-own tobacco: 91 cents per 1.8 ounces of tobacco; Bidis/Kreteks: 91 cents per 20; All other tobacco products: 25% of the product value of the tobacco products
New York	Snuff: 96 cents/oz. and proportionate rate on fractional parts of an ounce; All other tobacco products: 46% of the wholesale price
North Carolina	12.8% of the cost price
North Dakota	Cigars and Pipe Tobacco: 28% of the wholesale purchase price; Chewing Tobacco: 16 cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce; Snuff: 60 cents per ounce and a proportionate rate on all fractional parts of an ounce.
Ohio	17% of the wholesale price
Oklahoma	Chewing tobacco, smokeless tobacco and snuff: 60% of the factory list price; Smoking Tobacco: 80% of the factory list price; Little Cigars (not weighing more than three lbs. per thousand): 3.6 cents per cigar; Cigars (weighing more than three lbs. per thousand): 10 cents to 12 cents per cigar depending on recommended retail selling price
Oregon	Cigars: 65% of the wholesale sales price of cigars, but not to exceed 50 cents per cigar; Moist snuff: \$1.78/oz. except the minimum tax is \$2.14 per retail container All other tobacco products: 65% of the wholesale sales price
Pennsylvania	Little cigars (weighing under 4 lbs/thousand): 8 cents per cigar; All other tobacco products: No tax levied

Rhode Island	<p>Cigars, pipe tobacco products and smokeless tobacco other than snuff: 80% of the wholesale price, except the tax on cigars shall not exceed 50 cents per cigar;</p> <p>Snuff: \$1.00/oz. or a proportionate rate on all fractional parts of an ounce</p> <p>Note: Although the language in state law is unclear on this issue, taxes on little cigars (not weighing more than 3 lbs. per thousand) are being collected at the same rate as the cigarette tax \$2.46 per 20 cigars.</p>
South Carolina	5% of the manufacturer's price
South Dakota	35% of the wholesale purchase price
Tennessee	6.6% of the wholesale cost price
Texas	<p>Cigars: 1) one cent per 10 or fraction of 10 on cigars weighing less than three pounds per thousand; 2) \$7.50 to \$15 per 1,000 on cigars that weigh more than three pounds per thousand depending on their factory list price and whether they contain a substantial amount of non-tobacco ingredients;</p> <p>All other tobacco products: \$1.10/oz. and a proportionate rate on all fractional parts of an ounce; the tax on a can or package that weighs less than 1.2 ounces is equal to the tax on a can or package that weighs 1.2 ounces (rate changes annually on September 1 the next 4 years)</p>
Utah	<p>Moist snuff: 75 cents/ounce or a proportionate rate on a fractional part of an ounce;</p> <p>All other tobacco products: 35% of the manufacturer's selling price.</p>
Vermont	<p>Little Cigars (weighing under 3 lbs./thousand): \$2.24 per 20 cigars;</p> <p>Roll-Your-Own Tobacco: \$2.24 per 0.09 of an ounce;</p> <p>Snuff: \$1.66/oz. or a proportionate rate on a fractional part of an ounce;</p> <p>New Smokeless Tobacco: \$1.66/oz. or if sold in a package weighing less than 1.2 ounces, \$1.99 per package;</p> <p>All other tobacco products: 92% of the wholesale price</p>
Virginia	10% of the manufacturers' sales price
Washington	<p>Cigars: 75% of the taxable sales price not exceeding 50 cents per cigar;</p> <p>All other tobacco products: 75% of the taxable sales price</p>
West Virginia	7% of the wholesale price
Wisconsin	<p>Moist snuff: 100% of the manufacturer's list price</p> <p>Cigars: 71% of the manufacturer's list price, not exceeding 50 cents per cigar;</p> <p>All other tobacco products: 71% of the manufacturer's list price</p>
Wyoming	<p>Moist snuff: 60 cents for up to an ounce and a proportionate rate on any fractional parts of more than one ounce;</p> <p>All other cigars, snuff and other tobacco products: 20% of the wholesale purchase price</p>



* Includes FY2010 funding from the U.S. Centers for Disease Control and Prevention.

Chart of State Funding for Tobacco Prevention and Cessation Programs in FY2010 (July 1, 2009 to June 30, 2010 for most states)
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State	Tobacco Settlement Expenditures	Tobacco Tax Expenditures	Other State Expenditures	Total State Expenditures	CDC-Funded Expenditures	Total Expenditures	CDC Best Practice Recommendation
Alabama	\$0	\$0	\$751,480	\$751,480	\$1,326,917	\$2,078,397	\$56,700,000
Alaska	\$0	\$0	\$8,115,000	\$8,115,000	\$1,155,593	\$9,270,593	\$10,700,000
Arizona	\$0	\$22,119,300	\$0	\$22,119,300	\$1,281,398	\$23,400,698	\$68,100,000
Arkansas	\$22,214,426	\$0	\$0	\$22,214,426	\$1,104,566	\$23,318,992	\$36,400,000
California	\$0	\$77,123,000	\$0	\$77,123,000	\$1,873,958	\$78,996,958	\$441,900,000
Colorado	\$0	\$11,100,000	\$0	\$11,100,000	\$1,326,312	\$12,426,312	\$54,400,000
Connecticut	\$6,050,000	\$0	\$0	\$6,050,000	\$1,079,069	\$7,129,069	\$43,900,000
Delaware	\$10,059,550	\$0	\$0	\$10,059,550	\$669,573	\$10,729,123	\$13,900,000
District of Columbia	\$850,000	\$0	\$0	\$850,000	\$531,753	\$1,381,753	\$10,500,000
Florida	\$65,841,232	\$0	\$0	\$65,841,232	\$1,873,958	\$67,715,190	\$210,900,000
Georgia	\$2,149,875	\$0	\$0	\$2,149,875	\$1,094,478	\$3,244,353	\$116,500,000
Hawaii	\$7,894,299	\$0	\$0	\$7,894,299	\$926,456	\$8,820,755	\$15,200,000
Idaho	\$1,545,700	\$230,000	\$0	\$1,775,700	\$1,141,438	\$2,917,138	\$16,900,000
Illinois	\$8,500,000	\$0	\$0	\$8,500,000	\$1,180,546	\$9,680,546	\$157,000,000
Indiana	\$10,859,308	\$0	\$0	\$10,859,308	\$1,037,550	\$11,896,858	\$78,800,000
Iowa	\$0	\$1,597,656	\$8,528,214	\$10,125,870	\$1,011,630	\$11,137,500	\$36,700,000
Kansas	\$1,000,000	\$0	\$0	\$1,000,000	\$1,245,400	\$2,245,400	\$32,100,000
Kentucky	\$2,840,300	\$0	\$0	\$2,840,300	\$1,139,397	\$3,979,697	\$57,200,000
Louisiana	\$500,000	\$7,339,931	\$0	\$7,839,931	\$1,101,612	\$8,941,543	\$53,500,000
Maine	\$10,800,513	\$0	\$0	\$10,800,513	\$964,561	\$11,765,074	\$18,500,000
Maryland	\$4,400,000	\$0	\$1,100,000	\$5,500,000	\$1,205,315	\$6,705,315	\$63,300,000
Massachusetts	\$0	\$0	\$4,501,770	\$4,501,770	\$1,558,517	\$6,060,287	\$90,000,000
Michigan	\$0	\$2,598,400	\$0	\$2,598,400	\$1,668,029	\$4,266,429	\$121,200,000
Minnesota	\$17,072,231	\$0	\$3,200,000	\$20,272,231	\$1,199,593	\$21,471,824	\$58,400,000
Mississippi	\$11,400,000	\$0	\$0	\$11,400,000	\$1,104,566	\$12,504,566	\$39,200,000
Missouri	\$0	\$0	\$1,200,000	\$1,200,000	\$1,156,691	\$2,356,691	\$73,200,000

Appendix H (cont.)

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State	Tobacco Settlement Expenditures	Tobacco Tax Expenditures	Other State Expenditures	Total State Expenditures	CDC-Funded Expenditures	Total Expenditures	CDC Best Practice Recommendation
Montana	\$8,393,183	\$0	\$0	\$8,393,183	\$963,235	\$9,356,418	\$13,900,000
Nebraska	\$2,930,850	\$0	\$594,000	\$3,524,850	\$1,240,942	\$4,765,792	\$21,500,000
Nevada	\$2,872,025	\$0	\$0	\$2,872,025	\$857,913	\$3,729,938	\$32,500,000
New Hampshire	\$0	\$0	\$1	\$1	\$1,041,719	\$1,041,720	\$19,200,000
New Jersey	\$0	\$0	\$7,560,000	\$7,560,000	\$1,274,834	\$8,834,834	\$119,800,000
New Mexico	\$9,515,000	\$0	\$0	\$9,515,000	\$1,141,221	\$10,656,221	\$23,400,000
New York	\$0	\$0	\$55,175,000	\$55,175,000	\$1,873,958	\$57,048,958	\$254,300,000
North Carolina	\$18,000,000	\$0	\$341,837	\$18,341,837	\$1,672,280	\$20,014,117	\$106,800,000
North Dakota	\$8,196,248	\$0	\$0	\$8,196,248	\$1,155,818	\$9,352,066	\$9,300,000
Ohio	\$0	\$0	\$6,000,000	\$6,000,000	\$1,367,009	\$7,367,009	\$145,000,000
Oklahoma	\$17,638,734	\$1,400,000	\$760,000	\$19,798,734	\$1,326,840	\$21,125,574	\$45,000,000
Oregon	\$0	\$6,612,500	\$0	\$6,612,500	\$1,094,341	\$7,706,841	\$43,000,000
Pennsylvania	\$17,674,000	\$0	\$0	\$17,674,000	\$1,289,693	\$18,963,693	\$155,500,000
Rhode Island	\$0	\$0	\$703,000	\$703,000	\$1,152,248	\$1,855,248	\$15,200,000
South Carolina	\$0	\$0	\$2,000,000	\$2,000,000	\$1,217,810	\$3,217,810	\$62,200,000
South Dakota	\$0	\$5,000,000	\$0	\$5,000,000	\$963,055	\$5,963,055	\$11,300,000
Tennessee	\$0	\$0	\$209,000	\$209,000	\$1,281,398	\$1,490,398	\$71,700,000
Texas	\$11,400,000	\$0	\$2,000,000	\$13,400,000	\$1,873,958	\$15,273,958	\$266,300,000
Utah	\$4,000,000	\$3,131,700	\$0	\$7,131,700	\$1,215,563	\$8,347,263	\$23,600,000
Vermont	\$4,805,039	\$0	\$0	\$4,805,039	\$1,140,226	\$5,945,265	\$10,400,000
Virginia	\$5,000,000	\$0	\$7,300,000	\$12,300,000	\$1,067,227	\$13,367,227	\$103,200,000
Washington	\$0	\$0	\$17,656,000	\$17,656,000	\$1,411,385	\$19,067,385	\$67,300,000
West Virginia	\$0	\$0	\$5,687,358	\$5,687,358	\$1,170,999	\$6,858,357	\$27,800,000
Wisconsin	\$0	\$0	\$6,850,000	\$6,850,000	\$1,191,137	\$8,041,137	\$64,300,000
Wyoming	\$3,255,575	\$0	\$1,500,024	\$4,755,599	\$1,037,398	\$5,792,997	\$9,000,000

APPENDIX

I Appendix I Preemptive State Tobacco Control Laws and Affected Provisions

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Preemption = language generally in state law that prevents local communities from passing ordinances stronger than state law in a particular area.

State	Issue Area Where Preemption Exists	Specific Provisions Preempted
California	<i>Youth Access</i>	Only preempts the amount of fines local communities may impose for violations of youth access laws.
Connecticut	<i>Smoking Restrictions</i>	Any stronger local ordinances restricting smoking after October 1, 1993.
Delaware	<i>Youth Access</i>	Almost all local ordinances restricting youth access to tobacco products after June 30, 1996.
Florida	<i>Smoking Restrictions</i>	State law supersedes any municipal or county ordinance on the subject of the regulation of smoking in public places and workplaces.
Idaho	<i>Youth Access</i>	Prevents local communities from issuing a permit or license for the sale or distribution of tobacco products.
Illinois	<i>Advertising</i>	Outdoor billboard advertising for smokeless tobacco products.
Indiana	<i>Youth Access</i>	Almost all local ordinances restricting youth access to tobacco products.
Iowa	<i>Youth Access</i>	Any stronger local law or regulation which is inconsistent with or conflicts with most state laws restricting youth access to tobacco products.
Kentucky	<i>Youth Access</i>	Preempts almost all local ordinances restricting youth access to tobacco products passed after 1996.
Louisiana	<i>Youth Access</i>	Preempts all stronger local ordinances on the youth access laws specified in section 14:91.8 Louisiana Revised Statutes.
Massachusetts	<i>Youth Access</i>	Prevents stronger local ordinances concerning the sale of cigarette rolling papers.
Michigan	<i>Smoking Restrictions; Youth Access; Advertising</i>	Prevents stronger local ordinances concerning the sale or licensing of tobacco products for distribution purposes; stronger local restrictions on smoking in restaurants and bars; and outdoor billboard advertisements for smokeless tobacco products.
Mississippi	<i>Youth Access</i>	Preempts most stronger local ordinances restricting youth access to tobacco products.
Missouri	<i>Youth Access</i>	Requires state, county, municipal and other local law enforcement authorities to adhere to the mandatory guidelines set out by the Supervisor of Liquor Control when using minors in tobacco retailer compliance inspections.

State	Issue Area Where Preemption Exists	Specific Provisions Preempted
Montana	<i>Youth Access</i>	Preempts stronger local ordinances related to almost all youth access laws.
Nebraska	<i>Smoking Restrictions</i>	Preempts stronger local ordinances concerning smoking in cigar bars.
Nevada	<i>Youth Access</i>	Preempts stronger local ordinances related to almost all youth access laws.
New Hampshire	<i>Smoking Restrictions</i>	By court decision, all local ordinances on smoking stronger than state law are preempted.
New Mexico	<i>Youth Access</i>	All stronger local ordinances restricting youth access to tobacco products shall be consistent with state law.
New York	<i>Youth Access</i>	Stronger local ordinances concerning restrictions on free samples of tobacco products are preempted by state law.
North Carolina	<i>Smoking Restrictions; Youth Access</i>	Stronger local ordinances on smoking in private workplaces and other more specific locations are preempted by state law; stronger local ordinances restricting youth access to tobacco products, except in relation to vending machines, are preempted by state law too.
Oklahoma	<i>Smoking Restrictions; Youth Access</i>	Prohibits local governing bodies from passing stronger ordinances restricting smoking; almost all stronger local ordinances restricting youth access to tobacco products are also preempted by state law.
Oregon	<i>Youth Access</i>	Stronger local ordinances concerning the placement of tobacco product vending machines are prohibited.
Pennsylvania	<i>Smoking Restrictions; Youth Access</i>	All stronger local ordinances concerning smoking, except most of Philadelphia's existing law, are preempted by state law; almost all stronger local ordinances restricting youth access to tobacco products passed after January 1, 2002 are also preempted.
South Carolina	<i>Youth Access</i>	All laws, ordinances or rules restricting youth access to tobacco products may not supersede state law or regulation.
South Dakota	<i>Smoking Restrictions; Youth Access</i>	Preempts all stronger local ordinances restricting smoking; all stronger local laws restricting youth access to tobacco products are also preempted by state law.
Tennessee	<i>Smoking Restrictions; Youth Access</i>	Preempts stronger local laws and regulations restricting smoking or youth access to tobacco passed or promulgated after March 15, 1995, except local governments and special school districts are allowed to regulate smoking in their buildings and on their property.

State	Issue Area Where Preemption Exists	Specific Provisions Preempted
Utah	Smoking Restrictions; Youth Access; Advertising	Preempts local laws restricting smoking that are not identical to state law except for certain places of outdoor public access; stronger local ordinances concerning the placement of tobacco products in retail stores, tobacco product vending machines restrictions; and advertising of tobacco products are also preempted by state law.
Virginia	Smoking Restrictions	Local laws restricting smoking adopted after January 1, 1990 shall not contain provisions that exceed state law.
Washington	Smoking Restrictions; Youth Access	By court decision, stronger local laws restricting smoking are preempted by state law; most stronger local ordinances restricting youth access to tobacco products are also preempted by state law.
West Virginia	Advertising	Outdoor billboard advertising for smokeless tobacco products.
Wisconsin	Youth Access	Local ordinances restricting youth access to tobacco products must strictly conform to state law.

Twenty-nine states and the District of Columbia have laws in effect elevating smokers to a protected class. The American Lung Association does not support these types of laws.

State	Year Last Amended	Code or Statute for Law
California	2005	CA LABOR CODE § 96(k) & 98.6
Colorado	1990	CO REV. STAT. ANN § 24-34-402.5
Connecticut	2003	CT GEN. STAT. ANN. § 31-40s
District of Columbia	1993	D.C. CODE ANN. § 7-1703.3
Illinois	1987	820 ILL. COMP. STAT. 55/5
Indiana	2006	IND. CODE §§ 22-5-4-1 et seq.
Kentucky	1994	KY REV. STAT. ANN. § 344.040
Louisiana	1991	LA REV. STAT. ANN. § 23:966
Maine	1991	ME REV. STAT. ANN. tit. 26, § 597
Minnesota	1992	MINN. STAT. § 181.938
Mississippi	1994	MISS. CODE ANN. § 71-7-33
Missouri	1992	MO. REV. STAT. § 290.145
Montana	1993	MONT. CODE ANN. §§ 39-2-313 & 39-2-314
Nevada	1991	NEV. REV. STAT. § 613.333
New Hampshire	1991	N.H. REV. STAT. ANN. § 275:37-a
New Jersey	1991	N.J. STAT. ANN. §§ 34:6B-1 et seq.
New Mexico	1991	N.M. STAT. ANN. §§ 50-11-1 et seq.
New York	1992	N.Y. [LABOR] LAW § 201-d
North Carolina	1991	N.C. GEN. STAT. § 95-28.2
North Dakota	1993	N.D. CENT. CODE §§ 14-02.4-01 et seq.
Oklahoma	1991	OKLA. STAT. ANN. tit. 40, § 500
Oregon	1989	OR. REV. STAT. §§ 659A.315 & 659A.885
Rhode Island	2005	R.I. GEN. LAWS § 23-20.10-14
South Carolina	1991	S.C. CODE ANN. § 41-1-85
South Dakota	1991	S.D. CODIFIED LAWS § 60-4-11
Tennessee	1990	TENN. CODE ANN. § 50-1-304
Virginia	1989	VA. CODE ANN. § 2.2-2902
West Virginia	1992	W. VA. CODE § 21-3-19
Wisconsin	1991	WIS. STAT. §§ 111.31 et seq.
Wyoming	1992	WYO. STAT. ANN. §§ 27-9-101 et seq.

Laws Setting Fire Safety Standards for Cigarettes (as of January 1, 2010)

Forty-three states and the District of Columbia have laws in effect mandating fire safety standards for cigarettes. Six states have passed legislation that has not yet taken effect. Every state's fire-safety standards are identical, and are based off the standard implemented in the first state, New York.

State	Year Took Effect (or Effective Date)	Code (or Bill Number)
Alabama	January 1, 2010	ALA. CODE §§ 8-17-270 to 8-17-281
Alaska	2008	ALASKA STAT. §§ 18.74.010 to 18.74.290
Arizona	2009	ARIZ. REV. STAT. §§ 41-2170 to 41.2170.08
Arkansas	January 1, 2010	ARK. CODE. ANN. §§ 20-27-2101 to 20-27-1112 & 19-6-811
California	2007	CA HEALTH & SAFETY CODE §§ 14950 to 14960
Colorado	2009	COLO. REV. STAT. ANN. §§ 24-33.5-1202 & 24-33.5-1214
Connecticut	2008	CONN. GEN. STAT. §§ 29-416 to 29-423
Delaware	2009	DEL. CODE ANN. tit. 16 §§ 7116 to 7125
District of Columbia	2008	D.C. CODE ANN. §§ 7-1751 to 7-1757
Florida	January 1, 2010	FLA. STAT. ch. 633.042
Georgia	January 1, 2010	GA. CODE ANN. §§ 25-14-1 to 25-14-11
Hawaii	2009	HAW. REV. STAT. §§ 132C-1 to 132C-8
Idaho	2009	IDAHO CODE §§ 39-8901 to 39-8911
Illinois	2008	425 ILL. COMP. STAT. 8/1 et seq.
Indiana	2009	IND. CODE §§ 22-14-7 et seq.
Iowa	2009	IOWA CODE §§ 101B.1 to 101B.10
Kansas	2009	KAN. STAT. ANN. §§ 31-601 to 31-613
Kentucky	2008	KY REV. STAT. ANN. §§ 227.770 to 227.784
Louisiana	2009	LA REV. STAT. ANN. §§ 40:1601.1 to 40:1601.11
Maine	2008	ME REV. STAT. ANN. tit 22 §§ 1555-E
Maryland	2008	MD CODE ANN., BUS. REGS. §§ 16-601 to 16-610
Massachusetts	2008	MASS. GEN. LAWS ch. 64C §§ 2A to 2F
Michigan	January 1, 2010	MICH. COMP. LAWS §§ 29-491 to 29-513
Minnesota	2009	MINN. STAT. §§ 299F.850 to 299F.859
Mississippi	July 1, 2010	S.B. 2249, passed in 2009
Missouri	January 1, 2011	H.B. 205, passed in 2009
Montana	2008	MONT. CODE ANN. §§ 50-65-101 to 50-65-121
Nebraska	January 1, 2010	NEB. REV. STAT. §§ 69-501 to 69-511

State	Year Took Effect (or Effective Date)	Code (or Bill Number)
Nevada	June 3, 2010	A.B. 229, passed in 2009
New Hampshire	2007	N.H. REV. STAT. ANN. §§ 339-F:1 to 339-F:11
New Jersey	2008	N.J. STAT. ANN. §§ 54:40A-54 to 54:40A-66
New Mexico	January 1, 2010	N.M. STAT. ANN. §§ 57-2B-1 to 57-2B-12
New York	2004	NYCRR Title 19, Part 429 and N.Y. [EXEC.] LAW § 156-c
North Carolina	January 1, 2010	N.C. GEN. STAT. §§ 58-92-1 to 58-92-55
North Dakota	August 1, 2010	H.B. 1368, passed in 2009
Ohio	February 1, 2010	H.B. 500, passed in 2009
Oklahoma	2009	OKLA. STAT. ANN. tit. 74, §§ 326.1 to 326.11
Oregon	2008	OR. REV. STAT. §§ 476.755 to 476.806
Pennsylvania	2009	35 PA. STAT. §§ 1254.1 to 1254.11
Rhode Island	2008	R.I. GEN. LAWS §§ 23-20.11-1 to 23.20.11-10
South Carolina	January 1, 2010	S.C. CODE ANN. §§ 23-51-10 to 23-51-110
South Dakota	January 1, 2011	S.B. 1280, passed in 2009
Tennessee	January 1, 2010	TENN. CODE ANN. §§ 68-102-501 to 68-102-512
Texas	2009	TEX. HEALTH & SAFETY CODE ANN. §§ 796.001 to 796.017
Utah	2009	UTAH CODE ANN. §§ 53-7-401 to 53-7-411
Vermont	2006	VT STAT. ANN. tit. 20, § 2757
Virginia	January 1, 2010	VA. CODE ANN. §§ 59-293.1 to 59-293.9
Washington	2009	WASH. REV. CODE §§ 19.305.010 to 19.305.110
West Virginia	January 1, 2010	W. VA. CODE § 47-25-1 to 47-25-12
Wisconsin	2009	WIS. STAT. § 167.35

We will breathe easier when the air over every
American city is clean and pure.

We will breathe easier when the air in our public spaces,
workplaces and children's homes is free of secondhand smoke.

We will breathe easier when Americans are free from the addictive grip
of tobacco and the debilitating effects of lung disease.

We will breathe easier when our nation's children no longer battle
airborne poisons or the fear of an asthma attack.

Until then, we are fighting for air.

