



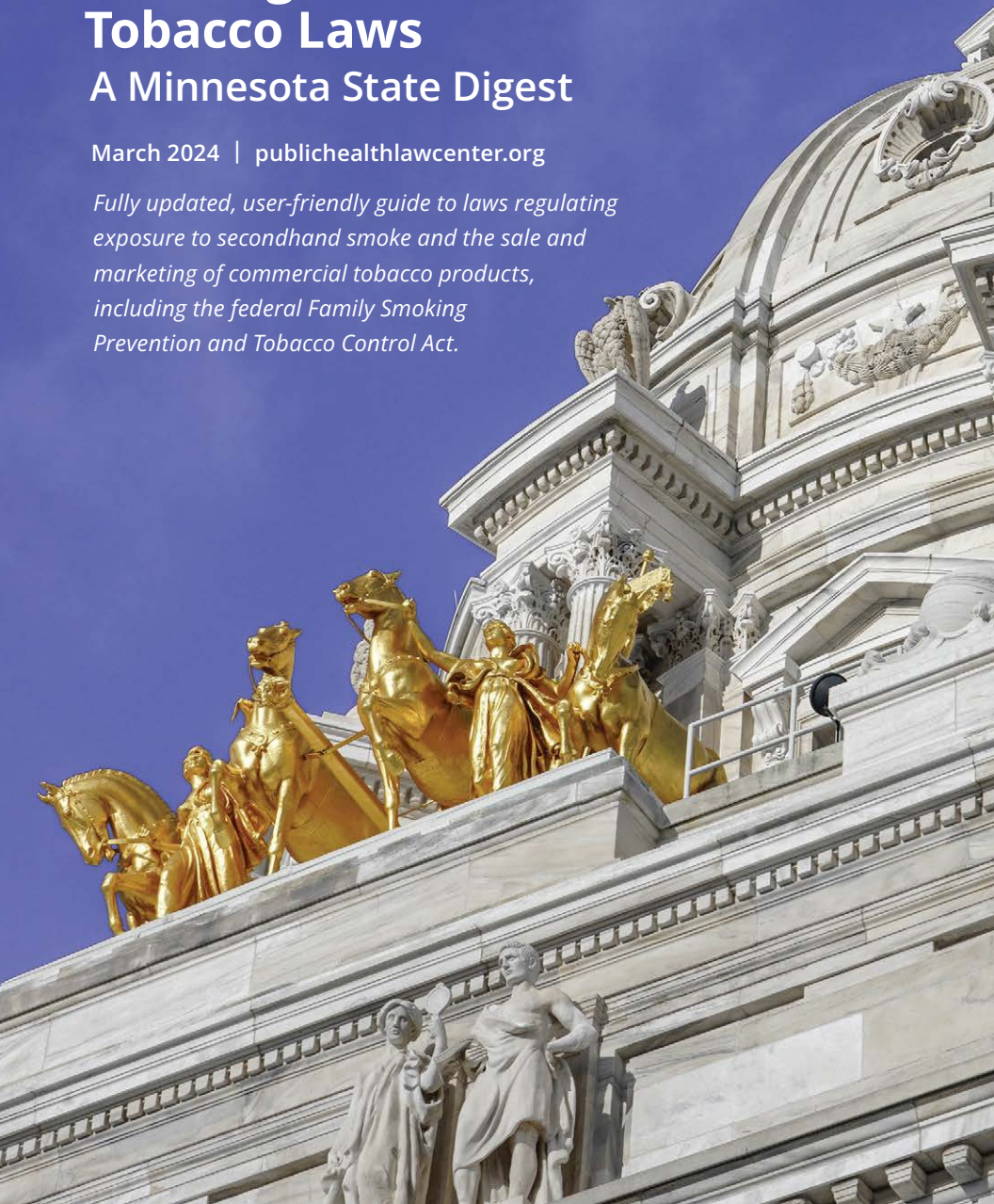
**PUBLIC HEALTH
LAW CENTER**
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Tracking Commercial Tobacco Laws

A Minnesota State Digest

March 2024 | publichealthlawcenter.org

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



This resource was developed by the Public Health Law Center. It was funded by, and developed in partnership with, the Minnesota Department of Health. The Public Health Law Center is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. Readers with questions about the application of the law to specific facts are encouraged to consult a lawyer familiar with the laws of their jurisdictions.

Acknowledgements

This 2024 update of *Tracking Tobacco Laws: A Minnesota Digest* was prepared by the Public Health Law Center's Minnesota Commercial Tobacco Control Program, led by Rachel Callanan. Contributing editors were Willow Anderson, Rachel Callanan, Kerry Cork, Desmond Jensen, Marisa Katz, Joelle Lester, and Susan Weisman.

The Public Health Law Center gratefully acknowledges the financial support of the Minnesota Department of Health. We also wish to thank Molly Moilanen for her expert review of this publication and Annette Price for her expertise in designing it.

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INTRODUCTION

Since 2016, when the Public Health Law Center released the third edition of *Tracking Tobacco Laws: A Minnesota Digest*, the commercial tobacco market has undergone significant changes, as has the regulation of commercial tobacco products in Minnesota and throughout the United States.¹ This fourth edition of the digest incorporates these changes, and not only includes links to significant federal and state commercial tobacco-related laws and policies, but also helpful resources.

The digest is designed as a resource for commercial tobacco control advocates, government attorneys, local law enforcement agencies, and anyone working on commercial tobacco control issues in Minnesota. Use of commercial tobacco products, particularly smoking, is the world's number one cause of preventable disease and death. Each year cigarette smoking results in approximately 480,000 deaths in the United States¹ — 5,900 in Minnesota alone.² In addition to the immense toll this represents in human loss and suffering, the total public and private health care expenditures caused by tobacco use in the U.S. are

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and Tribes for centuries. In contrast, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepsacred.itcmi.org>. When the word “tobacco” is used throughout this digest, a commercial context is implied and intended.
- 2 Campaign for Tobacco-Free Kids, *The Toll of Tobacco in Minnesota* (last updated 2023; see Sources: State Toll of Tobacco), <https://www.tobaccofreekids.org/problem/toll-us/minnesota>.

approximately \$241.4 billion annually,³ with approximately \$185 billion in indirect costs resulting from lost productivity caused by tobacco-related illnesses.⁴ In Minnesota, commercial tobacco use results in more than \$3 billion annually in increased medical expenses, to say nothing of lost productivity and other economic losses.⁵

The adverse health effects of commercial tobacco use are not limited to the users themselves. In 2014, Acting U.S. Surgeon General Boris Lushniak published a report highlighting the progress the U.S. has made in reducing commercial tobacco use since the landmark report of the Surgeon General's Advisory Committee on smoking and health fifty years ago. The 2014 anniversary report also chronicled in meticulous detail the continuing burdens caused by smoking. Among its findings, this report concluded that secondhand smoke is responsible for the deaths of 41,280 adult nonsmokers from coronary heart disease and lung cancer in the U.S. each year.⁶

Minnesota's efforts to discourage use of commercial tobacco products are evident in its smoke-free and commercial tobacco-free laws and sales regulations. Minnesota pioneered the use of smoking restrictions to improve the public's health and was the first state in the nation to sue cigarette manufacturers for consumer fraud in connection with their harmful and deceptive marketing practices. The 1998 Minnesota Settlement Agreement contains important marketing restrictions and laid the groundwork for the subsequent Master Settlement Agreement (MSA) between 46 states and the tobacco industry.

Many of the legal requirements summarized in this digest are found in the Minnesota Clean Indoor Air Act (MCIAA), the Minnesota Settlement Agreement (Minnesota Settlement), the MSA, and the 2009 Family Smoking

3 *Id.*

4 Sundar Shrestha et al, *Cost of Cigarette Smoking — Attributable Productivity Losses, U.S. 2018*, 63 AM. J. PREVENTIVE MEDICINE 478-85 (2022), [https://www.ajpmonline.org/article/S0749-3797\(22\)00294-X/fulltext](https://www.ajpmonline.org/article/S0749-3797(22)00294-X/fulltext).

5 Blue Cross Blue Shield of Minnesota, *Health Care Costs and Smoking in Minnesota* (2017), <https://www.house.mn.gov/comm/docs/e23c6b92-2821-4b8d-bb9c-1288474f9368.pdf>.

6 U.S. DEPT OF HEALTH AND HUMAN SERVS., *THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL 665* (2014), <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/tobacco/sgr/50th-anniversary/index.htm>.

Prevention and Tobacco Control Act (Tobacco Control Act or TCA) — the historic federal legislation that gave the U.S. Food and Drug Administration (FDA) the authority to regulate the manufacture, distribution, and marketing of commercial tobacco products. The remainder of this introduction provides a brief overview of these important sources of law.

Minnesota’s Clean Indoor Air Act

Enacting smoke-free laws is one of the most effective ways to eliminate exposure to secondhand smoke and reduce smoking among youth and adults. With some exceptions, the federal government does not regulate smoking in public places. Instead, smoking restrictions are ordinarily the responsibility of state and local governments.

When enacted in 1975, the Minnesota Clean Indoor Air Act, the first such state law in the nation, required the designation of “Smoking Permitted” and “No Smoking” areas in certain public settings. In May 2007, the Minnesota Legislature adopted the landmark Freedom to Breathe Act, which modified the Minnesota Clean Indoor Air Act, prohibiting smoking in almost all public places and workplaces, in public transportation, and at public meetings. Amendments made to the Act in 2019 and 2020 have significantly extended its reach by prohibiting the use of electronic cigarettes in all indoor areas where smoking is prohibited. (See [Section One: Use Restrictions](#) for a detailed summary of the Minnesota Clean Indoor Air Act’s regulation of smoking, including recent amendments.)

The tobacco industry’s concerted efforts to challenge the authority of local governments that propose tobacco control ordinances and policies demonstrate the value and power of local action. **“Preemption”** occurs when a higher level of government (state or federal) limits the authority of lower levels of government (city or county) to regulate a specific area. Arguments against proposed tobacco control ordinances are often variations on the theme of preemption. When the state legislature considered the 2007 Freedom to Breathe Act, which expanded sale and use restrictions of commercial tobacco products, health advocates successfully fought to protect local authority. As a result, local governments retain the ability to enact and enforce tobacco control ordinances that are stricter than the Minnesota Clean Indoor Air Act (and other tobacco-related regulations), but they cannot weaken or

compromise the protections provided under state law. [☞ Minn. Stat. § 144.417, subd. 4\(a\)](#) [☞ Minn. Stat. § 461.19](#) [☞ Minn. Stat. § 609.685, subd. 4.](#)

Minnesota's Settlement Agreement and the Master Settlement Agreement

In 1994, Minnesota became the first state to sue America's largest cigarette manufacturers for deceptive and fraudulent marketing, targeting children, and conspiracy to conceal the health effects of smoking. [Minnesota's landmark settlement](#) with the leading tobacco manufacturers in May 1998 contains several restrictions on their marketing practices and other requirements designed to rectify the damage the manufacturers caused. The manufacturers agreed to these requirements, along with annual settlement payments that have resulted in the payment of billions of dollars to the state — payments that will continue as long as the cigarette manufacturers remain in business.⁷ For several years, a small portion of the money was used to address the problems of commercial tobacco use. To balance the 2004–2005 budget, the state legislature shifted the money to the state's general fund. In 2021, tobacco manufacturers paid the state approximately \$254.2 million under the settlement. However, comprehensive commercial tobacco control programs in Minnesota are currently funded at 25.1 percent of the Centers for Disease Control and Prevention's recommended level.⁸

Minnesota's settlement agreement also includes what is sometimes referred to as a “most favored state” provision, entitling Minnesota to claim the benefit of any non-economic provision in future similar settlement agreements with other states that, in the opinion of the Minnesota Attorney General, affords additional or greater protection to public health than provisions of the Minnesota settlement itself. This clause allows Minnesota to adjust its settlement to include favorable terms from subsequent agreements.

In November 1998, 46 other states, the District of Columbia, and five U.S. territories settled lawsuits against the five largest tobacco companies.

7 *The State of Minnesota v. Philip Morris, Inc.*, No. C1-94-8565 (Minn. Dist. Ct. May 8, 1998).

8 American Lung Association, *Minnesota State Grades* (2023), <https://www.lung.org/research/sotc/state-grades/minnesota>.

This settlement, known as the Master Settlement Agreement (MSA), requires the tobacco industry to pay these states approximately \$10 billion annually — in perpetuity — and provides restrictions on the sale and marketing of cigarettes by those companies. Although Minnesota is not a participant in the MSA, the “most favored state” provision in Minnesota’s settlement agreement enabled Minnesota’s Attorney General to invoke the MSA language in connection with the sale and marketing of tobacco products in the state.

Federal Regulation of Commercial Tobacco Products

This section provides a short overview of the federal government’s role in regulating commercial tobacco products and a list of key terms used in commercial tobacco regulation under federal law.

Family Smoking Prevention and Tobacco Control

On June 22, 2009, President Barack Obama signed into law the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act or TCA), giving the U.S. Food and Drug Administration (FDA) comprehensive authority to regulate the manufacturing, marketing, and sale of commercial tobacco products. Before the Tobacco Control Act was enacted, commercial tobacco products were largely exempt from regulation under federal health and safety laws. The Tobacco Control Act added new provisions to the Federal Food, Drug, and Cosmetic Act and created a new Center for Tobacco Products within the FDA to establish tobacco product standards. The Tobacco Control Act also provides the FDA with jurisdiction to regulate both existing and future commercial tobacco products. It strengthens cigarette and smokeless tobacco warning labels, reduces federal preemption of certain state cigarette advertising restrictions, increases nationwide efforts to block commercial tobacco product sales to youth, and enables the FDA to restrict tobacco product marketing and advertising.

The Tobacco Control Act preserves the authority of state, local, and Tribal governments to regulate commercial tobacco products in various respects. For example, states retain the authority to raise tobacco tax rates; enact and enforce smoke-free laws in workplaces and public places; increase funding for comprehensive state commercial tobacco

prevention programs; implement counter-marketing campaigns; enhance access to effective cessation treatments; restrict the sale, distribution, and possession of commercial tobacco products; and implement anti-smuggling and tax evasion measures. The Tobacco Control Act also clarifies the authority of Tribal, state, and local governments in certain areas — perhaps most notably in prohibiting or restricting certain tobacco product marketing. At the same time, the Tobacco Control Act prohibits, with certain exceptions, state and local requirements that are different from, or in addition to, some of the requirements found under the Food, Drug, and Cosmetic Act. In some instances, both federal and state laws cover the same tobacco-related issue and violators could be liable on both counts.

Deeming Rule

At the time of its passage, the Tobacco Control Act only delegated to the FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. However, the Act delegated authority to the FDA to “deem” other products to be subject to its authority through a rulemaking process. Through a ruling, the FDA extended its authority, effective August 8, 2016, to cover all tobacco products that the FDA had not already been regulating. [!\[\]\(d84e7ea36f695d92cb39ec32c307ac93_img.jpg\) *81 Federal Register 28973 \(May 10, 2015\)*](#).

Widely known as the deeming rule, the FDA’s final rule enabled the FDA to regulate cigars, pipe tobacco, waterpipe tobacco, gels, dissolvables, electronic nicotine delivery systems (such as e-cigarettes), and any product made or derived from tobacco or nicotine. Components or parts of covered tobacco products are included, but not their accessories. All these tobacco products are now covered by the Tobacco Control Act provisions that previously applied only to cigarettes, roll-your-own tobacco, and smokeless tobacco, including the following:

- (1) Adulteration and misbranding provisions
- (2) Required submission of ingredient listings and reporting of harmful and potentially harmful constituents
- (3) Required registration and product listing
- (4) Prohibition against the use of unauthorized modified risk descriptors and claims (e.g., “light,” “low,” and “mild” descriptors)

- (5) Prohibition on the distribution of free samples
- (6) Premarket review requirements

Also, Congress amended the Tobacco Control Act in 2022 to cover synthetic nicotine products. [🔗 21 U.S.C. § 321\(rr\)](#). In August of 2023, the U.S. district court in D.C. vacated the FDA's rule as applied to premium cigars in *Cigar Assoc. v. FDA*, effectively leaving premium cigars unregulated by the FDA. For more information about the federal regulation of commercial tobacco products, visit the Public Health Law Center's Federal Tobacco Action Center webpage.

Federal Commercial Tobacco Definitions

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

An **“accessory”** means products that do not contain tobacco but that are intended to be used with a tobacco product to affect the performance or characteristics of the tobacco product. “Accessory” excludes items that only control moisture/temperature or provide an external heat source to ignite but not maintain combustion. [🔗 21 C.F.R. § 1140.3](#).

A **“component or part”** means any software or assembly of materials intended or reasonably expected (1) to alter or affect the tobacco product's performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco product. Component or part excludes anything that is an accessory of a tobacco product. [🔗 21 C.F.R. § 1140.3](#).

A **“covered tobacco product”** means any tobacco product deemed to be subject to the Food, Drug, and Cosmetic Act under 21 C.F.R. § 1100.2. This term excludes any component or part that is not made or derived from tobacco. [🔗 21 C.F.R. § 1140.3](#). In addition to the requirements and limitations applicable to all newly deemed tobacco products, the FDA deeming rule applies two additional provisions to covered tobacco products:

- (1) Requiring health warnings for product packages and advertisements; and
- (2) Prohibiting vending machine sales, unless the vending machine is located in a facility where the retailer ensures that individuals under 18 are prohibited from entering at any time.

“Electronic smoking devices” are tobacco products under the FDA deeming rule, and include products such as e-cigarettes, e-cigars, e-hookahs, vape pens, personal vaporizers, and electronic pipes. These products are all subject to FDA regulation, regardless of what they are called or their heating source. Components or parts of electronic smoking devices may include, for example, e-liquids, tanks, cartridges, pods, wicks, or atomizers. [!\[\]\(c8d96c8885d3000a912c2582004aed63_img.jpg\) 81 Federal Register 28974, 29028 \(May 10, 2016\)](#).

A **“finished tobacco product”** means a tobacco product, including all components and parts, sealed in final packaging intended for consumer use. [!\[\]\(919a2cb85b99741a73c0c31a427236a8_img.jpg\) 81 Federal Register 28973, 28995 \(May 10, 2016\)](#).

A **“new tobacco product”** means any tobacco product (including a product in test markets) that was not commercially marketed in the United States as of February 15, 2007. A new tobacco product includes any modification (such as a change in the design of any component, part, or constituent including a smoke constituent, or in the content, delivery, or form of nicotine or any other additive or ingredient) of a tobacco product in which the modified product was commercially marketed in the United States after February 15, 2007. [!\[\]\(666e09182d4cd268646ea700ea60dcdf_img.jpg\) 21 U.S.C. § 387j\(a\)\(1\)](#).

A **“tobacco product”** means any product made or derived from tobacco or containing nicotine from any source that is intended for human consumption, including any component, part, or accessory of a tobacco product. “Tobacco product” does not include raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product, or any article regulated as a drug, device, or combination product under the Food, Drug, and Cosmetics Act. [!\[\]\(c3d993ca47bfe2a953c700506ce31fa0_img.jpg\) 21 CFR § 1140.3](#). The term “tobacco product” also excludes articles of food, if the article contains no nicotine or contains “no more than trace amounts of naturally occurring nicotine.” [!\[\]\(c468cde8f04e2e2a6ba3c2a373e05c45_img.jpg\) 21 U.S.C. § 321\(rr\)](#). In 2022, the Food, Drug,

and Cosmetics Act was amended to include synthetic nicotine products within the federal definition of “tobacco product.” *Id.*

Preemption

As described earlier, preemption is a legal concept by which a higher level of government displaces the authority of a lower level of government to regulate a certain area. Federal law preempts some state and local regulation of tobacco products subject to FDA authority. In addition, provisions in the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act preempt states from regulating the content of cigarette and smokeless tobacco product advertisements, respectively. For more information about preemption, see the Public Health Law Center’s [resources](#).

HOW TO USE THIS DIGEST

This publication is intended as a resource for public health and legal professionals, state and local government officials, and the general public. It summarizes the major commercial tobacco-related laws and regulations that affect the State of Minnesota. It includes an overview of federal laws, state statutes and regulations, and other legal restrictions on the tobacco industry — all of which are current as of December 2023. Although many cities and counties have also adopted important commercial tobacco control laws, most local laws are not addressed here. Readers should contact their local officials to learn whether their communities have adopted any commercial tobacco-related laws.

This digest describes commercial tobacco-related laws in these areas:

- (1) [**Use Restrictions**](#)
- (2) [**Sale, Distribution, & Display**](#)
- (3) [**Advertising**](#)
- (4) [**Branding, Promotion, & Sponsorship**](#)
- (5) [**Taxes & Pricing**](#)
- (6) [**Disclosure & Reporting**](#)

(7) **Warning Labels**

(8) **Related Laws**

Rules are presented in a simplified format. Relevant federal and state laws and related administrative rules are cited at the end of entries. Rules enacted as a result of the 2009 Family Smoking Prevention and Tobacco Control Act have “TCA” at the end of their headings.

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

Locating the Laws

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

Minnesota Laws

<https://www.revisor.mn.gov/statutes>

This website is the easiest place to find Minnesota laws.

Minnesota Rules

<https://www.revisor.mn.gov/rules/>

This website provides access to Minnesota rules, which are usually grouped under the agency or department that administers them. To find a specific rule or regulation, you can search by key word, by exact citation, or by browsing through the titles listed.

Federal Laws and Regulations⁹

- **United States Code (U.S.C.)**

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

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

- **Code of Federal Regulations (C.F.R.)**

<https://www.govinfo.gov/app/collection/cfr>

This website provides access to the Code of Federal Regulations.

⁹ For ease of access and legibility, our online version links to federal laws and regulations from the Legal Information Institute, Cornell University Law School, website.

- **U.S. Food and Drug Administration (FDA) Guidance, Compliance, and Regulatory Information**

<https://www.fda.gov/tobacco-products>

This website provides access to U.S. Food and Drug Administration guidance and compliance information on the 2009 federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

Master Settlement Agreement (MSA)

Smokeless Tobacco Master Settlement Agreement (STMSA)

<https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement>

This website contains the entire MSA between the attorneys general of 46 states and the major cigarette companies, as well as the entire STMSA between the attorneys general of 45 states and the U.S. Smokeless Tobacco Company.

Minnesota Settlement Agreement

<https://www.publichealthlawcenter.org/sites/default/files/resources/mn-settlement-agreement.pdf>

This is the text of the 1998 Minnesota settlement agreement between the attorney general of Minnesota and the major cigarette companies.

Disclaimer

This digest is provided for general information only and is not offered or intended as legal advice. The Public Health Law Center does not enter into attorney-client relationships. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform an independent evaluation of the issues raised in these materials. The laws and regulations are current as of the digest's publication date. If you notice any inaccuracies or misstatements, please inform the Public Health Law Center.

Additional Copies of this Resource

You can download a copy of this digest from the Public Health Law Center's Minnesota-specific [webpage](#).

SECTION ONE: USE RESTRICTIONS

In 1975, Minnesota was the first state to enact a clean indoor air act (the Minnesota Clean Indoor Air Act) in response to known health hazards associated with smoking commercial tobacco products. The Act has been amended several times to keep pace with knowledge of health harms and to regulate new hazardous products that the industry has introduced into the marketplace, including recent amendments to regulate the use of electronic delivery devices (e-cigarettes) in public places and places of employment.¹⁰ The Minnesota Clean Indoor Air Act preserves the power of local governments to impose more stringent restrictions on smoking and allows Minnesota businesses and property owners and operators to prohibit smoking entirely on their premises.

This introduction provides a brief description of the health impact of secondhand smoke and aerosol, and an overview of key provisions of Minnesota Clean Indoor Air Act. The rest of the section contains brief summaries of state and federal laws restricting smoking and the use of commercial tobacco products, including the use of electronic delivery devices, in Minnesota.

Overview of Health Hazards

Secondhand smoke is a mixture of the smoke given off by the burning end of a cigarette, pipe, or cigar and the smoke exhaled by the person smoking. Exposure to secondhand smoke is sometimes called involuntary or passive smoking. Secondhand smoke causes coronary heart disease, lung cancer, sudden infant death syndrome, and respiratory problems.¹¹ Moreover, harmful residues from commercial tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and is then emitted back into the air, making “thirdhand smoke” a health hazard as well.

10 Throughout the digest, the term “electronic delivery device” is used to refer to e-cigarettes, electronic cigarettes, vapes, and related items, as defined under Minnesota’s Clean Indoor Air Act. When other laws specifically refer to these products by different terms, those terms are used.

11 U.S. DEPT OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS IF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), <https://www.ncbi.nlm.nih.gov/books/NBK179276>.

- Secondhand smoke is a leading cause of preventable death in the United States.¹² No safe level of exposure to secondhand smoke has been identified. The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) has concluded that “the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.”¹³ The consensus of experts, reflected in guidelines adopted by 168 nations, is that the only effective protection from risks associated with indoor exposure to commercial tobacco smoke is a comprehensive smoke-free policy eliminating smoking in indoor workplaces and indoor public places.¹⁴ Despite this, more than 58 million Americans continue to be exposed to secondhand smoke in homes, vehicles, workplaces and other public places, and approximately 41,000 adults and 400 infants die each year from diseases caused by secondhand smoke exposure.¹⁵ Exposure to secondhand smoke among nonsmokers in the United States has declined, but progress has been uneven; exposure is more common among certain groups such as children ages 3 to 11 years, Black populations, those living below the poverty level, and those who rent housing.

Prohibition of smoking in the Minnesota Clean Indoor Air Act has been extended to include the use of “electronic delivery devices” (commonly referred to as “electronic cigarettes,” “e-cigarettes,” or “vapes”).

- Use of an electronic delivery device results in the emission of aerosol, which typically contains nicotine and ultrafine particles that can be inhaled deeply into the lungs. This emitted aerosol contains chemicals and several known carcinogens that may increase the risk

12 *Id.* at iii.

13 American Society of Heating, Refrigerating, and Air Conditioning Engineers, *Environmental Tobacco Smoke* (Position Document) (2013), <https://www.ashrae.org/about-ashrae/position-documents>.

14 WHO Framework Convention on Tobacco Control, Guidelines on Implementation of Article 8, “Protection from Exposure to Tobacco Smoke” (2013), <https://iris.who.int/handle/10665/206081>.

15 Centers for Disease Control & Prevention, *Vital Signs* (2015), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6404a7.htm>.

of certain cancers.¹⁶ Throughout this section, the term “smoking” refers both to the use of combustible tobacco products and to the act of “vaping,” or of using electronic delivery devices.

- Exposure to secondhand smoke or aerosol from any product may compromise lung health. Minnesota’s Medical Cannabis Program allows consumption of cannabis through use of an electronic delivery device and as a combustible smokable product. Research has shown that cannabis smoke, no matter its source, contains many toxic chemicals and high levels of fine particulate matter.¹⁷ Compared to breathing clean air, cannabis smoke and the combustion of hard physical matter, whether organic or synthetic, is a health hazard, particularly for those with serious lung conditions, infants, and children.¹⁸

Overview of Minnesota Clean Indoor Air Act

Key provisions and amendments of the Minnesota Clean Indoor Air Act are highlighted below.

Public Policy. The purpose of the Minnesota Clean Indoor Air Act is to protect employees and the general public from the hazards of secondhand smoke, as well as from involuntary exposure to aerosol or vapor from e-cigarettes in all regulated areas. [!\[\]\(9dfdaff1d86ba3c1f8353b4d1b61b8c5_img.jpg\) *Minn. Stat. § 144.412.*](#)

Electronic Delivery Device. The Minnesota Clean Indoor Air Act prohibits the use of an “electronic delivery device” — a term that defines what is commonly known as an “electronic cigarette,” “e-cigarette,” or

16 Centers for Disease Control and Prevention, *About Electronic Cigarettes* (2020) https://www.cdc.gov/tobacco/basic_information/e-cigarettes/index.htm.

17 David Moir et al., *A Comparison of Mainstream and Sidestream Marijuana and Tobacco Cigarette Smoke Produced Under Two Machine Smoking Conditions*, 21 CHEMICAL RESEARCH IN TOXICOLOGY 494-02 (2008), <https://pubmed.ncbi.nlm.nih.gov/18062674>; Wayne R. Ott et al., *Measuring Indoor Fine Particle Concentrations, Emission Rates, and Decay Rates from Cannabis Use in a Residence*, 10 ATMOSPHERIC ENVIRONMENT: X (2021), 100106, ISSN 2590-1621, <https://doi.org/10.1016/j.aeaoa.2021.100106>.

18 Xiaoyin Wang et al., *One Minute of Marijuana Secondhand Smoke Exposure Substantially Impairs Vascular Endothelial Function*, 5 J. AM. HEART ASSOC. e03858 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015303>.

“vape” — in all areas where smoking is prohibited under the Act. [☞ Minn. Stat. §§ 144.414, subds. 2, 3 and 5](#) [☞ Minn. Stat. § 609.685, subd. 1\(c\)](#).

“Smoking” Definition. The definition of “smoking” in the Minnesota Clean Indoor Air Act means inhaling, exhaling, burning, or carrying any lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation, and includes carrying or using an activated “electronic delivery device,” as defined in [Minn. Stat. § 609.685, subd. 1\(c\)](#). [☞ Minn. Stat. § 144.413, subd. 4](#).

Indoor Areas. The state’s smoking prohibitions generally apply to the “indoor areas” of public places and places of employment. To qualify as an “indoor area,” the space must have a ceiling and more than 50 percent of the perimeter space must be covered by walls, doorways, windows (whether open or closed) or other physical barriers. A standard screen (18 by 16 mesh count) is not considered a wall. [☞ Minn. Stat. § 144.413, subd. 1a](#).

Duties of Proprietors. The Minnesota Clean Indoor Air Act sets out specific duties for people or entities in charge of public places, places of employment, public meetings, or public transportation. Proprietors are required to make reasonable efforts to prevent smoking on their premises, such as posting signs and not providing ashtrays or matchbooks in areas where smoking is prohibited. Bars and restaurants are prohibited from serving anyone who is violating the Act. If a person smokes in an area where smoking is prohibited, the proprietor must ask the person to refrain from smoking, and if the person continues to smoke, must ask the person to leave. A person who refuses to leave will be treated as a trespasser or as a person acting in a disorderly manner. [☞ Minn. Stat. § 144.416](#). A proprietor or other person in charge who knowingly fails to comply with the provisions of the Act is subject to a petty misdemeanor (a fine of up to \$300). [☞ Minn. Stat. 144.417, subd. 2\(a\)](#).

Right to Prohibit Smoking Entirely. There is no constitutional right to smoke. Proprietors may adopt stricter policies than those contained in the Minnesota Clean Indoor Air Act — they are not preempted (barred) from doing so. For example, they may prohibit all smoking and all commercial tobacco use everywhere on the premises, including outdoor areas under

their control, such as outdoor dining or bar areas, building entryways, and parking lots. [*☞ Minn. Stat. § 144.416\(b\)*](#). Smoking in violation of a private policy where no-smoking signs have been prominently posted or where a common carrier (that is, a railroad company or related delivery service) prohibits smoking may be cited as a petty misdemeanor with a fine up to \$300. [*☞ Minn. Stat. § 609.681*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#).

Note: In unionized workplaces, an employer may have a duty to bargain in good faith with a union before implementing a smoke-free or broader commercial tobacco-free policy if the proposed policy represents a substantial change in the terms and conditions of workers' employment.

Whistleblower Protection. The Minnesota Clean Indoor Air Act protects employees, job applicants, and other members of the public by prohibiting retaliation or other adverse actions (such as termination or suspension) for reporting a violation in good faith or otherwise exercising their rights to a smoke-free environment as required under the law. [*☞ Minn. Stat. § 144.417, subd. 2 \(c\)\(d\)*](#).

Enforcement and Sanctions. The Minnesota Department of Health (MDH) is authorized to enforce the Minnesota Clean Indoor Air Act and to sanction violators. Upon receiving a complaint, an authorized Department employee or agent may: (1) investigate the violation; (2) issue a correction order; and (3) issue an administrative fine up to \$10,000 for noncompliance. [*☞ Minn. Stat. §§ 144.99, subs. 3, 4*](#) [*☞ Minn. Stat. § 144.991*](#). In certain circumstances, MDH may enjoin (stop) an activity if there is an immediate risk to public health. [*☞ Minn. Stat. § 144.99, subd. 5*](#). MDH may also issue an order to cease and desist activity, or deny, refuse to reissue, suspend, or revoke MDH-issued business permits, licenses, registrations or certificates for violations. [*☞ Minn. Stat. § 144.99, subs. 6, 8-10*](#).

The sanction for a proprietor, person, or entity "in charge" of an area in which smoking is prohibited or an individual who smokes in violation of the Minnesota Clean Indoor Air Act is a petty misdemeanor. [*☞ Minn. Stat. § 144.417, subd. 2\(a\) and \(b\)*](#). A petty misdemeanor is defined as a fine of up to \$300. A petty misdemeanor does not constitute a crime. [*☞ Minn.*](#)

Stat. § 609.02, subd. 4a. Local law enforcement may issue petty misdemeanor citations to proprietors or individuals who knowingly fail to comply with the Act.

Role of Local Governments. By adopting local ordinances and other policies that protect the public from exposure to secondhand smoke and reduce the use of commercial tobacco products, local governments play a key role in helping to combat the tobacco industry and change social norms at the grassroots level. Local laws that regulate the sale and use of commercial tobacco products help local governments exert more control over enforcement than if they were to rely on state laws alone. Violators can be cited under both state law and local ordinance.

The tobacco industry often attempts to limit the authority of local governments that propose ordinances and other policies to strengthen the regulation of sales and the use of commercial tobacco products. With consistent leadership from public health groups and advocates, Minnesota has a long history of successful local policymaking, which demonstrates the power of local action and has contributed significantly to improving the health of Minnesotans.

As described above, attempts to derail local ordinance proposals may include attempts to preempt local policymaking. Minnesota's record of success in local policymaking, including its passage of the 2007 Freedom to Breathe Act, which expanded commercial tobacco sale and use restrictions, demonstrates the value and power of local action. (See **Minnesota's Clean Indoor Air Act** in the introductory section.)

For additional information about the Minnesota Clean Indoor Air Act and other state laws, policies, and legislative reports related to tobacco prevention and control, visit the Minnesota Department of Health's webpage at health.state.mn.us/communities/tobacco/index.html.

To file a complaint regarding a violation of the Minnesota Clean Indoor Air Act, please contact:

Minnesota Department of Health Indoor Air Unit

Email address: health.indoorair@state.mn.us

651-201-4601 or 800-798-9050

AIRPLANES AND AIRPORTS

General Rule: The federal government prohibits smoking on all U.S. airline flights arriving in or departing from the country. [🔗 49 U.S.C. § 41706\(a\)](#) [🔗 14 C.F.R. § 252.3](#). The federal government added the use of electronic cigarettes to this prohibition in 2016. Federal regulations require lighted “no smoking” signs on all aircraft in which smoking is prohibited. [🔗 14 C.F.R. § 121.317\(c\)](#). Tampering with a smoke detector in an airplane lavatory is prohibited. [🔗 14 C.F.R. § 121.317\(j\)](#).

Airports in Minnesota are subject to the Minnesota Clean Indoor Air Act, which prohibits smoking, including the use of electronic delivery devices, in public transportation (including “ticketing, boarding, and waiting areas in public transportation terminals”), places of employment, and public places. [🔗 Minn. Stat. §§ 144.413-144.414, subd. 1](#). (See [Public Transportation](#).) Some Minnesota municipalities further restrict smoking at airports. The City of Duluth, for example, prohibits smoking outdoors on the apron in front of an airplane hangar. [🔗 Duluth Code, Art. II, sec. 4-19](#).

Notes

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

Enforcement: The Federal Aviation Administration enforces the smoking restriction on airline flights. The Minnesota Department of Health, the Metropolitan Airports Commission, and local law enforcement authorities enforce smoking restrictions at airports.

Penalties: Individuals who smoke on an airline flight are liable for a civil fine of \$1,100. [🔗 49 U.S.C. § 46301 \(a\)\(1\)](#). A person who tampers with a smoke detector installed in an airplane lavatory is subject to a \$2,000 fine. [🔗 49 U.S.C. § 46301 \(b\)](#) [🔗 14 C.F.R. § 121.317\(h\),\(i\)](#). Smoking, including the use of an electronic delivery device, in an indoor area in an airport is a petty misdemeanor (up to a \$300 fine) under state law. [🔗 Minn. Stat. § 144.417, subd. 2\(b\)](#) [🔗 Minn. Stat. § 609.02, subd. 4a](#). Local ordinances may provide additional sanctions.

APARTMENTS

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in common areas of rental apartment buildings. [🔗 Minn. Stat. § 144.413, subd. 2](#) [🔗 Minn. Stat. § 144.414, subd. 1](#) [🔗 Minn. Stat. § 144.4167, subd. 3\(1\)](#). The Minnesota Department of Health interprets the term “rental apartment buildings” to mean buildings with three or more rented living units. Common areas include rental offices, elevators, entrances, hallways, laundry rooms, party rooms, exercise rooms, public restrooms, indoor swimming pool areas, and other places open to all tenants.¹⁹ Smoking shelters outside apartment buildings that meet the definition of an “indoor area” are also considered common areas. Signs must be posted, or other means used, to indicate areas where smoking is prohibited by state law. [🔗 Minn. Stat. § 144.416\(a\)\(1\)](#). Landlords may restrict smoking, including the use of e-cigarettes, throughout an entire building or anywhere on the rental property. Additionally, under federal law, all Public Housing Authorities administering public housing must have a smoke-free policy that includes all indoor areas, such as dwelling units, and outdoors within 25 feet of indoor areas. (See [Housing and Urban Development Smoke-Free Rule](#) and [Common Interest Communities \(Condos, Townhouses, and Cooperatives\)](#).)

Enforcement: The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to local health departments. Building management personnel also enforce the policies. Local governments can also enforce the Minnesota Clean Indoor

¹⁹ See Minn. Dep't of Health, *Rental Apartment Buildings: Minnesota Clean Indoor Air Act* (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/rental.html>.

Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. §§ 144.417, subd. 2\(b\)*](#) [*☞ 609.02, subd. 4a*](#). The Minnesota Department of Health may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\)*](#).

ASHTRAYS AND MATCHES

General Rule: The proprietor in charge of a public place, public meeting, public transportation, or place of employment must not provide smoking equipment, including ashtrays or matches, in areas where smoking is prohibited. [*☞ Minn. Stat. § 144.416\(b\)*](#).

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2\(b\)*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#). MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\)*](#).

BUSES

See [Public Transportation](#).

CANNABIS (MEDICAL CANNABIS)

General Rule: Under Minnesota law, patients enrolled in an authorized state registry program may consume medical cannabis by smoking or vaping the product in certain areas, but not where smoking or vaping is prohibited under the Minnesota Clean Indoor Air Act. The Act defines “smoking” to include smoking marijuana or using an electronic

delivery device to consume any substance, which would include cannabis. [*☞ Minn. Stat. § 144.413 subd. 4.*](#)

The Minnesota Medical Cannabis law prohibits possessing or using medical cannabis on a school bus or van, on school grounds, in correctional facilities, or at a childcare facility or home day care. The law specifically prohibits “vaporizing” or combusting medical cannabis on public transportation, where the vapor could be inhaled by a nonpatient minor child or smoke would be inhaled by a minor child or in any public place. The law also prohibits anyone from operating motor vehicles under the influence of medical cannabis. [*☞ Minn. Stat. § 152.23.*](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency for the Minnesota Clean Indoor Air Act and may delegate enforcement activities to local health departments. The Office of Medical Cannabis enforces the laws and rules for the medical cannabis program until the Office of Cannabis Management is established, when all regulatory and enforcement responsibilities will be transferred to the the new Office effective March 1, 2025. [*☞ Minnesota Session Laws 2023, Regular Session Chapter 63 Art. 1 § 2.*](#)

Penalties: Violations of the Minnesota Clean Indoor Air Act are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2\(b\).*](#) MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\).*](#)

CANNABIS (ADULT-USE/RECREATIONAL)

General Rule: On May 30, 2023, Minnesota became the twenty-third state in the nation to legalize adult-use cannabis, including smoking and vaping, for those 21 years of age and older. The law, which took effect August 1, 2023, prohibits certain cannabis use “in a manner that involves the inhalation of smoke, aerosol, or vapor at any location where smoking is prohibited under section 144.414.” [*☞ Minn. Stat. § 342.*](#)

Notes

- Several rules for adult-use cannabis are being finalized. Check the [Minnesota Office of Cannabis Management](#) for updates.

- The cannabis laws referenced in this digest pertain only to smoke-free and clean air provisions. Minnesota law provides other cannabis use restrictions that are not described in the Digest. See the Minnesota Office of Cannabis Management [webpage](#) regarding adult-use cannabis for additional use restrictions.
- Cannabis events will be allowed, but event organizers cannot allow smoking where it would be prohibited under the Minnesota Clean Indoor Air Act. [↻ Minn. Stat. § 342.40, subd. 8\(e\).](#)
- Smoking or vaping adult-use cannabis in multifamily housing will be prohibited beginning March 1, 2025. The penalty for violations will be a \$250 civil fine. [↻ Minn. Stat. § 342.56, subd. 1 \(b\).](#) Please check the [Minnesota Office of Cannabis Management](#) for updated information.
- Local units of government are given explicit authority to adopt an ordinance prohibiting any method of using adult-use cannabis in a public place, *other than* a private residence (including the curtilage or yard), private property not generally accessible by the public (unless explicitly prohibited by the property owner), or the premises of an establishment or event licensed to permit on-site consumption. [↻ Minn. Stat. §. 152.0263, subd. 5.](#)
- **Nuisance Action:** As of July 1, 2023, use of adult-use cannabis flower “which is injurious to health, indecent or 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” is considered a nuisance under Minnesota law. Anyone injured or whose personal enjoyment is compromised due to the failure of a landlord or common interest community to enforce cannabis use restrictions may seek injunctive relief and damages. [↻ Minn. Stat § 342.82.](#)

Enforcement: The Office of Cannabis Management will enforce all aspects of adult-use cannabis, including no-smoking provisions. The Office of Cannabis Management has the ability to enter into interagency agreements with other state agencies “to promote the beneficial interests

of the state.” [*☞ Minn. Stat § 342.82*](#). Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

CASINOS

General Rule: Through Tribal State Gaming Compacts, Tribal nations have negotiated with the state to own and operate casinos in Minnesota. Establishments, including casinos, located on Tribal land are on the land of sovereign nations and are not covered by state regulations such as the Minnesota Clean Indoor Air Act. Establishments operated by Tribal governments not located on Tribal land are subject to state regulations. Individual Tribes may have their own regulations prohibiting or restricting smoking and local Tribal laws should be consulted.

COMMON INTEREST COMMUNITIES (CONDOS, TOWNHOUSES, AND COOPERATIVES)

General Rule: The Minnesota Department of Health has concluded that the Minnesota Clean Indoor Air Act does not apply to condominiums and cooperative housing.²⁰ Smoking, including the use of an electronic delivery device, is permitted in both residential units and common areas, unless the common interest community has adopted a use restriction that prohibits smoking in those places. See *Adopting a Smoke-Free Policy: A Guide for Minnesota Homeowners' Associations* (2021).

Enforcement: The Minnesota Department of Health and local officials enforce state smoking restrictions. Condominium associations, homeowners associations, and cooperative boards enforce private rules and regulations.

²⁰ See Minn. Dep't of Health, *MCIAA Frequently Asked Questions (FAQ's): Minnesota Clean Indoor Air Act* (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/faq.html>; Minn. Dep't of Health, *Freedom to Breathe in Rental Apartment Buildings* fact sheet (2022). The fact sheet answers the question, “Will smoking be prohibited in the common areas of condominium and cooperative housing buildings?”

DAY CARE FACILITIES

General Rule: Minnesota prohibits smoking, including the use of an electronic delivery device, at any time in any licensed day care center. Smoking is prohibited during hours of operation in any licensed family home or group family day care provider home licensed under Minnesota Rules. If proprietors of a family home or group family day care provider permit smoking in the day care center outside hours of operation, they must notify parents or guardians by posting on the premises a conspicuous written notice and orally informing parents or guardians.²¹ [☞ Minn. Stat. § 144.414, subd. 2](#) [☞ Minn. R. 9502.0425, subp. 19](#). Local governments may go further and prohibit smoking at all times in any licensed structure where day care is provided.

The federal government prohibits smoking in any facility for early childhood development services, such as Head Start, if the facility accepts certain federal funding or is in any way under the authority of the U.S. Department of Health and Human Services. This restriction does not apply to private residences. [☞ 20 U.S.C. § 6083](#).

Enforcement: The U.S. Department of Health and Human Services enforces the federal smoking restriction. The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations.

Penalties: Violators of the federal law are subject to fines of up to \$1,000, but fines may not exceed the amount the facility received in federal funding. [☞ 20 U.S.C. § 6083](#). Violations of the state law are petty misdemeanors (up to a \$300 fine), and MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn. Stat. § 144.417, subd. 2\(b\)](#) [☞ Minn. Stat. § 609.02, subd. 4a](#) [☞ Minn. Stat. § 144.99, subd. 4\(a\)](#). Local penalties vary.

21 See Minn. Dep't of Health, *Family Childcare: Minnesota Clean Indoor Air Act* fact sheet (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/daycare.html>.

DISABLED VETERANS REST CAMP

General Rule: Smoking, including the use of an electronic delivery device, is allowed at the Disabled Veterans Rest Camp in Marine on St. Croix, Minnesota. [*☞ Minn. Stat. § 144.4167, subd. 8.*](#)

ELECTRONIC DELIVERY DEVICES (E-CIGARETTES)

General Rule: An “electronic delivery device” is defined in state law as any product, or component part of a product, containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, that is intended for human consumption through inhalation of vapor from the product. An electronic delivery device includes devices manufactured, marketed, or sold as electronic cigarettes, no matter how named or described (e.g., electronic cigars, electronic pipes, vape pens, modes, tank systems). A component part of a product is included, whether or not marketed or sold separately. Products classified as drugs, devices, or combination products, as defined in the Federal Food, Drug, and Cosmetic Act and authorized for sale in the U.S., are excluded. [*☞ Minn. Stat. § 609.685, subd. 1\(c\).*](#)

The definition of “smoking” in the Minnesota Clean Indoor Air Act includes the use of electronic delivery devices (commonly referred to as “electronic cigarettes,” “e-cigarettes,” or “vapes”). Use of an electronic delivery device is prohibited in any indoor area where smoking is prohibited.²² [*☞ Minn. Stat. § 144.414, subd. 1.*](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Proprietors who observe violations are responsible for asking people to refrain from using e-cigarettes in indoor areas where smoking is prohibited. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

²² See Minn. Dep’t of Health, *Electronic Cigarettes: Minnesota Clean Indoor Air Act* fact sheet (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/ecig.html>.

Penalties: Violations of the Minnesota Clean Indoor Air Act are petty misdemeanors (up to a \$300 fine). [☞ Minn. Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn. Stat. § 144.99, subd. 4\(a\)](#). Consequences for ordinance violations vary among local jurisdictions.

FAMILY FARMS

General Rule: Smoking is permitted in the house, garage, barns, or other buildings on a “family farm” if the farm:

- Is engaged in farming, defined as the production of agricultural products, livestock or livestock products, milk or milk products, or fruit or other horticultural products. [☞ Minn. Stat. § 144.4167, subd. 7](#) [☞ Minn. Stat. § 500.24, subd. 2\(a\)](#). “Farming” does not include:
 - The processing, refining, or packaging of those products;
 - Spraying or harvesting services provided by a processor or distributor of farm products;
 - The production of timber or poultry products; or
 - Feeding and caring for livestock that are delivered for slaughter. [☞ Minn. Stat. § 500.24, subd. 2\(a\)](#).
- Is an “unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming,” or meets the definition of a “family farm corporation,” a “family farm partnership,” or a “family farm limited liability company.” [☞ Minn. Stat. § 500.24, subds. 2\(b\), 2\(c\), 2\(j\), 2\(l\)](#); and
- Employs no more than two people who are not family members. [☞ Minn. Stat. § 144.4167, subd. 7](#).

(See [Places of Employment](#).)

FARM VEHICLES

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in work vehicles occupied by two or more people, with the exception of “farm trucks” and “implements of husbandry” when they are used for their intended purposes. [☞ Minn. Stat. § 144.4167, subd. 6.](#) These terms are defined in state law and include most farm tractors and trailers for transporting livestock and other farm products. [☞ Minn. Stat. § 168.002, subd. 8](#) [☞ Minn. Stat. § 168A.01, subd. 8.](#)

(See [Vehicles](#).)

FIRE HAZARDS

General Rule: Smoking is prohibited in the presence of “explosives or inflammable materials,” such as gas pumps. [☞ Minn. Stat. § 609.576, subd. 2.](#)

Enforcement: State fire marshal, local fire and law enforcement authorities.

Penalties: Violators may be charged with a misdemeanor (up to 90 days and/or a \$1,000 fine). [☞ Minn. Stat. § 609.02, subd. 3.](#) Violators aware that their act created a risk of death, bodily harm, or serious property damage may be charged with a felony (up to five years and/or a \$10,000 fine). [☞ Minn. Stat. § 609.576, subd. 2.](#)

FOOD HANDLING, PROCESSING AND MANUFACTURING ESTABLISHMENTS

General Rule: Employees of licensed food handling establishments (including grocery stores, restaurants, delicatessens, and other retail and wholesale food handlers; wholesale food processors or manufacturers; and food brokers) are prohibited from using commercial tobacco in any form where exposed food, equipment, utensils, linens, unwrapped single-service or single-use articles or other items can be contaminated. [☞ Minn. Stat. § 31.101](#) [☞ Minn. R. 4626.0105, 2-401.11.](#)

Enforcement: Minnesota Department of Health, Department of Agriculture, or local authorities that conduct inspections of food establishments.

Penalties: Violations are misdemeanors (up to 90 days and/or a \$1,000 fine). [*☞ Minn. Stat. § 31.11*](#) [*☞ Minn. Stat. § 609.02, subd. 3*](#). Establishments that violate this provision may be fined or lose their licenses.

FOSTER CARE

General Rule: Children in foster care cannot be exposed to secondhand smoke in a licensed foster home or in any enclosed space connected to the home, including a garage, porch, deck, or similar space, or in a motor vehicle while being transported. Smoking outdoors on the premises of the foster home is prohibited when a foster child is present and exposed to secondhand smoke. [*☞ Minn. Stat. § 260C.215, subd. 9*](#).

Compliance: The home study must include a plan to maintain a smoke-free environment for foster children. If a foster parent fails to provide a smoke-free environment, the child-placing agency must ask the foster parent to comply with a plan that includes training on the health risks of exposure to secondhand smoke. If the agency determines that the foster parent is unable to provide a smoke-free environment and that the home environment constitutes a health risk to a foster child, the agency must reassess whether the placement is in the child's best interests. [*☞ Minn. Stat. § 260C.215, subd. 9*](#).

Exceptions: Nothing in this law will —

- Delay the emergency placement of a child with a relative unless the relative is unable to provide for the immediate health needs of the child;
- Interfere or conflict with or be a basis for denying placement pursuant to the federal Indian Child Welfare Act or Minnesota Indian Family Preservation Act; or
- Interfere with traditional or spiritual Native American or religious ceremonies involving the use of tobacco. [*☞ Minn. Stat. § 260C.215, subd. 9\(e-h\)*](#).

Enforcement: Local child-placing agencies and the Minnesota Department of Human Services.

Penalty: The Minnesota Department of Health may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\).*](#)

GOVERNMENT BUILDINGS

Federal Buildings

General Rule: Smoking is prohibited in all offices owned or used by the executive branch of the federal government, including office space for all executive branch departments and agencies. Smoking is also prohibited outside these buildings in front of air intake ducts. [*☞ Executive Order 13058*](#) [*☞ 41 C.F.R. § 102-74.315*](#). (See also [Prisons and Jails](#) and [Nursing Homes and Boarding Care](#).) More stringent state or local smoke-free laws only apply if the facility is privately owned but leased to federal tenants. Federal policy applies if the facility is federally owned. [*☞ 41 C.F.R. § 102-74.315*](#).

Exceptions

- Smoking is permitted in designated areas that are physically enclosed and ventilated to ensure that all tobacco smoke is immediately removed to the outside.
- Smoking is also permitted in federally owned buildings leased to private citizens or businesses.
- A third exception exists for federal residential facilities and privately owned offices that house “duty stations” for one or more federal employees.
- The head of an agency may allow narrow exceptions for smoking when needed to accomplish an agency’s mission. [*☞ 41 C.F.R. § 102-74.320*](#).

Enforcement: The U.S. General Services Administration and heads of the government agencies or departments on whose property a violation has occurred.

Penalties: Violators may be fined and/or subject to imprisonment for up to 30 days. [☞ 41 C.F.R. § 102-74.450.](#)

State Buildings

General Rule: Smoking, including the use of electronic delivery devices, is prohibited in all state buildings, including buildings managed or leased by the Department of Administration. [☞ Minn. Stat. § 16B.24, subd. 9 \(a\)](#) [☞ Minn. Stat. § 144.414.](#) (See also [Public Places](#) and [Places of Employment.](#))

Exception: Under Minnesota law, state veterans homes may permit smoking in designated indoor areas, provided that existing physical barriers and ventilation systems are used to reduce smoke in adjacent nonsmoking areas. [☞ Minn. Stat. § 16B.24, subd. 9\(b\).](#) (See also [Nursing Homes and Boarding Care.](#))

Enforcement: The Plant Management Division of the Minnesota Department of Administration handles enforcement in state-owned, managed, or leased buildings.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [☞ Minn. Stat. § 645.241](#) [☞ Minn. Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a.](#) The Minnesota Department of Health may issue fines up to \$10,000 by administrative penalty order. [☞ Minn. Stat. § 144.99, subd. 4\(a\).](#)

Protection: An employee who reports a violation cannot be subjected to disciplinary action as a result of making the complaint. [☞ Minn. Stat. § 16B.24, subd. 9](#) [☞ Minn. Stat. 144.417, subd. 2\(d\).](#)

Local Government Buildings

General Rule: Smoking, including the use of electronic delivery devices, is prohibited in indoor areas of local government buildings under Minnesota Clean Indoor Air Act provisions covering public places, places of employment, and locations where public meetings occur. [☞ Minn. Stat. § 144.414.](#) County government centers, city and town halls, libraries, community centers and other local government facilities are all subject to the statute. Numerous local policies prohibit smoking in certain outdoor areas, particularly parks and other youth recreation settings.

More recent policies prohibit smoking and all other commercial tobacco use on all, or nearly all, property owned, leased, rented, contracted, or otherwise used or controlled by the municipal government. See [*Ramsey County Smoking and Commercial Tobacco Use Ordinance \(2022\)*](#).

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency for regulating indoor areas and may delegate enforcement activities to local health departments. Local governments may also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#). MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\)*](#). Penalties for violation of local ordinances and other regulations vary.

HEALTH CARE FACILITIES

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in any indoor area of a hospital, health care clinic, doctor's office, or other health care-related facility, including licensed residential facilities for children. [*☞ Minn. Stat. § 144.413, subd. 2*](#) [*☞ Minn. Stat. § 144.414, subd. 3\(a\)*](#). No patient, staff, guest, or visitor on the grounds of or in a state regional treatment center, the Minnesota security hospital, the Minnesota sex offender program, or the Minnesota extended treatment options program may possess or use tobacco or a tobacco-related device. [*☞ Minn. Stat. § 246.0141*](#). Some health care-related facilities also prohibit the use of any commercial tobacco products, including e-cigarettes, on their grounds and campuses.

Exceptions: Unless a facility has adopted a facility-wide smoke-free or commercial tobacco-free policy, or is subject to more stringent local regulations:

- Patients or residents of nursing homes, boarding care facilities, and licensed adult residential facilities may smoke in a designated

separate, enclosed room maintained in accordance with applicable state and federal laws. 📄 [Minn. Stat. § 144.414, subd. 3\(a\)](#).²³

- Participants in peer-reviewed scientific studies on the health effects of smoking may smoke in a separated room ventilated to minimize exposure of nonsmokers to smoke. 📄 [Minn. Stat. § 144.4167, subd. 1](#).
- Patients in locked psychiatric units may smoke, including the use of electronic delivery devices, in a separated well-ventilated area if smoking is approved by the treating physician in accordance with a policy established by the program administrator. 📄 [Minn. Stat. § 144.414, subd. 3\(b\)](#). This exception does not apply to state regional treatment centers, the Minnesota security hospital, or the Minnesota sex offender program.
- Adult Native Americans (members of federally recognized Tribes) in state treatment centers and security hospitals may possess or use tobacco or tobacco-related devices as part of a traditional Indian spiritual or cultural ceremony. 📄 [Minn. Stat. § 246.0141](#).

Enforcement: Minnesota Department of Health, Department of Human Services, local law enforcement, or other designated authorities.

Penalties: Violations are a petty misdemeanor (up to a \$300 fine). 📄 [Minn. Stat. § 645.241](#) 📄 [Minn. Stat. § 144.417, subd. 2](#) 📄 [Minn. Stat. § 609.02, subd. 4a](#). The Minnesota Department of Health may issue fines up to \$10,000 by administrative penalty order. 📄 [Minn. Stat. § 144.99, subd. 4\(a\)](#). Penalties for local violations vary.

HOMES AND OTHER PRIVATE RESIDENCES

General Rule: Smoking, including the use of an electronic delivery device, is permitted in private homes and private residences not in use

23 For more information on this exception, see Minn. Dep't of Health, *Licensed Residential Healthcare Facilities: Minnesota Clean Indoor Air Act* fact sheet (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/residentialhealth.html#:~:text=Residential%20Healthcare%20Facilities-,Minnesota%20Clean%20Indoor%20Air%20Act,effect%20on%20October%201%2C%202007>.

as places of employment. [*☞ Minn. Stat. § 144.4167, subd. 3\(1\)*](#). (See [Places of Employment](#) and [Home-Based Businesses](#).)

HOME-BASED BUSINESSES

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in a portion of a home that meets the definition of a “place of employment.” To qualify as a home office, the homeowner must use the area exclusively and regularly during hours of operation:

- As a principal place of business with one or more on-site employees; or
- 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. § 144.413, subd. 1b*](#).

These criteria are similar to Internal Revenue Service criteria that allow homeowners to deduct a portion of their home as a business expense for federal income tax purposes.²⁴ If a homeowner takes this deduction, the work area will likely need to be smoke-free.

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#). MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\)*](#).

²⁴ See *Business Use of Your Home*, IRS Publication 587 (2021) <https://www.irs.gov/pub/irs-pdf/p587.pdf>.

HOTELS AND MOTELS

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in hotel lobbies, meeting rooms, banquet rooms, registration desks, indoor swimming pool areas, and other “common areas.” [*☞ Minn. Stat. § 144.414, subd. 1.*](#) (See also **Public Places** and **Places of Employment**.) Smoking is permitted under state law in hotel or motel sleeping rooms rented to one or more guests. [*☞ Minn. Stat. § 144.4167, subd. 3\(2\).*](#)

Exceptions: Smoking is permitted in hotel sleeping rooms; however, smoking is prohibited in any hotel sleeping room that has been designated by a proprietor or a local law as smoke-free.²⁵ Innkeepers must post signs conspicuously in all designated smoke-free sleeping rooms stating that smoking is not permitted. [*☞ Minn. Stat. § 327.742, subs. 1, 3.*](#)

Some local governments have prohibited smoking in all sleeping rooms of hotels, motels, and resorts. Beltrami County, for example, prohibits smoking in all guest rooms in hotels and motels, and in rented or leased resort cabins and dormitories. [*☞ Beltrami County Smoke Free Ordinance No. 38A, sec. 3, subd. 6 \(2013\).*](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Proprietors who observe violations are responsible for asking people to refrain from smoking in designated nonsmoking areas. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a.*](#) MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\).*](#) A person convicted of smoking

25 For more information, see Minn. Dep't of Health, *Lodging Establishments: Minnesota Clean Indoor Air Act* fact sheet (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/index.html>.

in a designated, nonsmoking hotel sleeping room may be court-ordered to reimburse the innkeeper for actual costs incurred to restore the room to its pre-violation condition, including a service charge of \$30, and may be subject to additional penalties, including a civil penalty up to \$100 and payment of the innkeeper's reasonable attorney fees. [☞ Minn. Stat. § 327.742, subs. 2, 2a.](#)

LIBRARIES

General Rule: State law prohibits smoking, including the use of an electronic delivery device, in indoor areas of public places and places of employment, including libraries. [☞ Minn. Stat. § 144.413](#) [☞ Minn. Stat. § 144.414, subd. 1.](#) (See [Public Places](#) and [Places of Employment.](#))

Federal law prohibits smoking in a library that receives certain federal funds, has a children's book section, or provides child-care services. [☞ 20 U.S.C. § 6083\(a\)\(c\).](#) (See also [Government Buildings](#) and [Schools.](#))

Enforcement: The Minnesota Department of Health (MDH) or other local authorities designated by MDH enforce the state law and the U.S. Department of Health and Human Services enforces the federal law.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [☞ Minn. Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a.](#) MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn. Stat. § 144.99, subd. 4\(a\).](#) For federal violations, fines of up to \$1,000 may be assessed, but may not exceed the amount the facility received in federal funding. [☞ 20 U.S.C. § 6083\(f\)\(1\).](#)

LITTERING

General Rule: Discarding cigarette butts on public roads (as well as adjacent lands — public or private) is prohibited. [☞ Minn. Stat. § 169.42](#) [☞ Minn. Stat. § 169.421.](#)

Enforcement: Law enforcement authorities and Minnesota Department of Transportation.

Penalties: A violation is a misdemeanor (up to 90 days in jail and/or a \$1,000 fine). A second or subsequent offense will result in a minimum fine of \$400. A judge may order the offender to pick up litter along any public highway or road for four to eight hours, under direction of the Department of Transportation, with the option of a jail sentence being imposed. A conviction or guilty plea of an individual operating a motor vehicle is immediately forwarded to the Department of Public Safety and included on the offender's driving record. [☞ Minn. Stat. § 169.42, subd. 5](#) [☞ Minn. Stat. § 169.421](#) [☞ Minn. Stat. § 609.02, subd. 3.](#)

LIGHTERS (EDUCATIONAL FACILITIES)

General Rule: Any student inside an educational building is prohibited from using an "ignition device," including a butane or disposable lighter or matches, under circumstances where there is an obvious risk of fire. [☞ Minn. Stat. § 609.5633.](#)

Exception: This restriction does not apply if the manner of the student's use of the device is authorized by the school.

Enforcement: State law is enforced by the school and local law enforcement agencies.

Penalties: Violations are petty misdemeanors (up to a \$300 fine), unless arson in the first, second, third, or fourth degree was committed, in which case criminal penalties would apply. [☞ Minn. Stat. § 609.5633](#) [☞ Minn. Stat. § 609.02, subd. 4a.](#)

NATIVE AMERICAN CEREMONIES

General Rule: Members of federally recognized Tribes may smoke in an indoor area as part of a traditional Native American spiritual or cultural ceremony. [☞ Minn. Stat. § 144.4167, subd. 2.](#) Adult members of a federally recognized Tribe may light sacred tobacco as part of a traditional Native American spiritual or cultural ceremony in an indoor area in a public school. [☞ Minn. Stat. § 144.4165](#) [☞ Minn. Stat. § 260.755, subd. 12.](#)

NO SMOKING SIGNS

General Rule: Smoking is prohibited in a building, area, or common carrier in which “no smoking” notices are prominently posted, or when an operator of a common carrier requests that a person not smoke. [*☞ Minn. Stat. § 609.681.*](#)

Enforcement: Law enforcement.

Penalty: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 609.681*](#) [*☞ Minn. Stat. § 609.02, subd. 4a.*](#)

NURSING HOMES AND BOARDING CARE

General Rule: Smoking, including the use of an electronic delivery device, is generally prohibited in nursing homes, boarding care facilities, and licensed residential health care facilities.²⁶ An adult resident or patient in such a facility may smoke in a designated separate, enclosed room that is maintained in accordance with applicable state and federal laws and meeting ventilation requirements. [*☞ Minn. Stat. § 144.414, subd. 3\(a\)*](#) [*☞ Minn. R. 4658.4520*](#) [*☞ Minn. R. 4660.9940, subp. 2.*](#) Medical centers, nursing homes, or domiciliary care facilities operated by the U.S. Department of Veterans Affairs eliminated smoking on the grounds of health care facilities by patients, visitors, volunteers, contractors, vendors and employees as of October 1, 2019. [*☞ VHA Directives 1085 and 1085.01.*](#) See also [*Smoke-Free Policy for Patients, Visitors, Contractors, Volunteers, and Vendors at VA Health Care Facilities, VHA Directive 1085*](#) (2019) (PDF).

Enforcement: For nursing homes, the enforcement agencies are the Facility and Provider Compliance Division of the Minnesota Department of Health (MDH), the Minnesota Department of Human Services, and designated government agencies. For boarding care and other licensed residential facilities, the enforcement agency is the Minnesota Department of Health’s Indoor Air Unit.

²⁶ For more information, see *Freedom to Breathe Smoking in Licensed Residential Healthcare Facilities* (Fact Sheet), Minnesota Department of Health (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/residentialhealth.html>.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [☞ Minn. Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a.](#) MDH may issue fines up to \$10,000 by administrative penalty order and has discretion to suspend or revoke nursing home and boarding care licenses for violations. [☞ Minn. Stat. § 144.99, subd. 4\(a\)](#) [☞ Minn. Stat. § 144A.11](#) [☞ Minn. Stat. § 144.55.](#)

PARKS AND RECREATION FACILITIES

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in all indoor areas of park buildings and recreation facilities, including all indoor sports arenas, ice skating rinks, bowling alleys, swimming pools, and other indoor recreational facilities. [☞ Minn. Stat. § 144.413, subs. 1b and 2](#) [☞ Minn. Stat. § 144.414, subd. 1.](#) Local ordinances or other regulations may prohibit smoking in outdoor recreational areas not addressed by state or federal law, such as parks, playgrounds, public pools, golf courses, fairgrounds, or zoos. Many Minnesota cities and counties have adopted smoke-free or commercial tobacco-free ordinances or policies that prohibit smoking or the use of commercial tobacco in certain outdoor areas, including park and recreation systems.²⁷

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may designate enforcement activities to local health agencies. Local governments have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [☞ Minn Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a.](#) MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn Stat. § 144.99, subd. 4\(a\).](#) Penalties for local ordinance violations vary.

²⁷ A list of tobacco-free park policies in Minnesota is available at <http://www.tobaccofreeparks.org/directory.html>.

PLACES OF EMPLOYMENT

General Rule: Smoking is prohibited in any indoor area where two or more individuals perform:

- Any type of service for consideration of payment under any type of contractual relationship; or
- Any type of services for which individuals are ordinarily paid.

“Place of employment” includes but is not limited to work vehicles (see **Vehicles**), home offices (see **Homes and Other Private Residences**), public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. [*☞ Minn. Stat. § 144.413, subd. 1b*](#) [*☞ Minn. Stat. § 144.414, subd. 1*](#). Local governments and private businesses have the authority to adopt more stringent regulations. [*☞ Minn. Stat § 144.417.4*](#).

Proprietors of places of employment have specific duties under the Minnesota Clean Indoor Air Act. (See **Duties of Proprietors** in the introduction to this section.)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#). MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn Stat. § 144.99, subd. 4\(a\)*](#). Penalties for violating local ordinances vary.

PRISONS AND JAILS

Federal Facilities

General Rule: Smoking is prohibited in and on the grounds of all federal correctional facilities with the following exceptions. [§ 28 C.F.R. §§ 551.160-162.](#)

Exceptions

- Smoking is permitted as part of an authorized inmate religious activity.
- In addition, for Bureau of Prisons staff and official visitors, smoking is permitted only in smoking areas designated by the warden. [§ 28 C.F.R. § 551.162.](#)
- The warden may designate outdoor smoking areas inside the prison facility that are reasonably accessible to employees and protected from the elements.

Enforcement: U.S. Bureau of Prisons.

Penalties: Staff and inmates who violate this provision are subject to disciplinary action.

State Facilities

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in any indoor area of a state correctional facility. [§ Minn Stat. § 144.414.](#) Inmates may not use or possess tobacco products, tobacco-related devices such as pipes or rolling papers, or electronic delivery devices. [§ Minn Stat. § 243.555](#) [§ Minn. Stat. § 609.685, subd. 1.](#) These products, including lighters, are considered contraband, and employees, contractors, visitors, and volunteers may not possess these products inside a correctional facility. [§ Minnesota Department of Corrections, Division Directive 301.030, Contraband \(2023\).](#)

Exception: Members of federally recognized Tribes may smoke as part of a traditional Native American spiritual or cultural ceremony. [§ Minn Stat. § 144.4167, subd. 2.](#)

Enforcement: Minnesota Department of Corrections.

Penalties: Violators are subject to disciplinary action. Contraband is confiscated. [*☞ Minnesota Department of Corrections, Division Directive 301.030, Contraband \(2023\).*](#)

Local Facilities

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in any indoor area of a local detention center or correctional facility. [*☞ Minn Stat. §144.414.*](#) Outdoor use by individuals in custody, visitors, or staff may be restricted by local ordinance or other regulation.

Exception: Members of federally recognized Tribes may smoke as part of a traditional Native American spiritual or cultural ceremony. [*☞ Minn Stat. § 144.4167, subd. 2.*](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*☞ Minn Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a.*](#) MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn Stat. § 144.99, subd. 4\(a\).*](#) Consequences for violations of local ordinances and other local regulations vary.

PUBLIC HOUSING

General Rule: Federal law prohibits the use of certain prohibited tobacco products in all public housing living units and interior areas. (See **Housing and Urban Development Smoke-Free Rule**.) This prohibition also applies to any outdoor area within 25 feet of public housing and administrative office buildings. Public Housing Authorities (PHAs) were required to amend their PHA plans and resident lease agreements by July 30, 2018. PHAs may make the entire property smoke-free. The HUD law defines prohibited tobacco products as items that involve the ignition and burning of tobacco leaves (e.g., cigarettes, cigars, and pipes) and

water pipes (hookahs). The law does not apply to electronic delivery devices. [☞ C.F.R. § 965.651–965.655.](#)

Exceptions

- The HUD rule excludes dwelling units in mixed-finance projects and does not apply to housing assisted under Section 8, public housing authority properties that have converted to project-based rental assistance contracts under the Rental Assistance Demonstration Program, or Tribal housing.
- Electronic delivery devices, such as e-cigarettes, are not included in the HUD rule.

Note: Local public housing authorities can and often do prohibit the use of e-cigarettes in their policies.

Enforcement: Public housing authorities are required to implement the HUD rule by amending all applicable public housing authority plans and tenant leases. The HUD rule and accompanying documents, such as [Notice PIH-2017-03N](#), include suggestions for compliance and enforcement. HUD may use certifications to verify that public housing authorities have implemented smoke-free policies and use periodic inspections and audits to help monitor whether policies are being enforced. Local public housing authorities may enforce the HUD rule by issuing verbal warnings, written warnings, a final notice and, as a last resort, by initiating lease termination and eviction proceedings. (See [HUD's Smoke-free Public Housing Rule: An Overview](#) (2017) and HUD's webpage at <https://www.hud.gov/smokefreepublichousing>.)

PUBLIC MEETINGS

General Rule: Smoking, including the use of an electronic delivery device, is prohibited at public meetings. [☞ Minn Stat. § 144.414, subd. 1.](#) A “public meeting” is defined as a meeting of a public body that is subject to the Minnesota Open Meeting Law and is required to be open to the public. [☞ Minn Stat. 144.413, sub. 3](#) [☞ Minn. Stat. § 13D.01](#) [☞ Minn. Stat. § 144.414, subd. 1.](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [☞ Minn Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn Stat. § 144.99, subd. 4\(a\)](#).

PUBLIC PLACES

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in public places — enclosed, indoor areas that are used by the general public. Examples of “public places” include but are not limited to restaurants, bars and other food or liquor establishments, retail stores and other commercial establishments, educational facilities (other than public schools), hospitals, nursing homes, auditoriums, arenas, meeting rooms, and common areas of rental apartment buildings. [☞ Minn Stat. § 144.413, subd. 2](#) [☞ Minn. Stat. § 144.414, subd. 1](#). Proprietors of public places have specific duties under the Minnesota Clean Indoor Air Act. (See [Duties of Proprietors](#) in the introduction to this section.)

Local governments and private businesses can adopt more stringent regulations.

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [☞ Minn Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn Stat. § 144.99, subd. 4\(a\)](#). Penalties for violating local restrictions vary.

PUBLIC TRANSPORTATION

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in public transportation vehicles, which include light and commuter rail transit; buses; enclosed bus and transit stops; taxis, vans, limousines, and other for-hire vehicles other than those operated by the lessee. Smoking is also prohibited in ticketing, boarding, and waiting areas in public transportation terminals. [*☞ Minn. Stat. § 144.413, subd. 5*](#) [*☞ Minn. Stat. § 144.414, subd. 1*](#) [*☞ Minn. Stat. § 609.855, subd. 3\(a\)\(2\)*](#). Proprietors of public transportation have specific duties under the Minnesota Clean Indoor Air Act. (See **[Duties of Proprietors](#)** in the introduction to this section.) An individual who continues to smoke in a public transit vehicle after having been warned to stop by an authorized transit representative has violated the law. [*☞ Minn. Stat. § 609.855, subd. 3\(b\)*](#).

Exception: The driver of a public transportation vehicle may smoke in the vehicle only when it is being used for private purposes and no for-hire passengers are present. Drivers who smoke or use an electronic delivery device in the vehicle must post a conspicuous sign inside the vehicle to inform passengers. [*☞ Minn. Stat. § 144.414, subd. 4*](#).

Enforcement: The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations.

Penalties: Violations of the Minnesota Clean Indoor Air Act are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#). The Minnesota Department of Health may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\)*](#). Smoking in a public transportation vehicle is a misdemeanor (up to 90 days and/or a \$1,000 fine). [*☞ Minn. Stat. § 609.855, subd. 3\(a\)\(2\)*](#). When sentencing an individual for a violation, a district court has discretion to include an order restraining the person from using public transportation vehicles and facilities for a fixed period of time, up to two years, or any term of probation, whichever is longer. A violation of such an order is a gross misdemeanor (up to one year in

jail and a fine up to \$3,000). [🔗 Minn Stat. § 609.855, subd. 6](#) [🔗 Minn. Stat. § 609.02, subd. 4.](#)

Interstate Buses

General Rule: Smoking is prohibited on all buses that transport passengers via interstate service. [🔗 49 C.F.R. § 374.201.](#)

Exception: This prohibition does not apply to charter carriers.

Enforcement: U.S. Department of Transportation.

Penalties: Violators may be subject to civil or criminal penalties. [🔗 49 C.F.R. § 390.37.](#)

RESTAURANTS AND BARS

General Rule: Smoking, including the use of an electronic delivery device, is prohibited in any indoor area of restaurants and bars. [🔗 Minn Stat. § 144.413](#) [🔗 Minn. Stat § 144.414, subd. 1.](#) As the Minnesota Clean Indoor Air Act does not apply to outdoor areas such as patios and entryways, smoking is permitted outside these establishments unless a local unit of government or the proprietor prohibits smoking in those areas. [🔗 Minn Stat. § 144.417, subd. 4.](#)

Local governments can adopt more stringent regulations such as extending the prohibition to outdoor dining and bar areas. The City of Bloomington, for example, prohibits smoking, including the use of an electronic delivery device, within 25 feet of entrances and exits and requires that at least 50 percent of an outdoor seating area be smoke-free. [🔗 Bloomington City Code Sec. 12.81.](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency for the Minnesota Clean Indoor Air Act and may delegate enforcement activities to local health departments. Local governments can also enforce the Act and have the responsibility to enforce any local outdoor restrictions.

Penalties: Violations of the Minnesota Clean Indoor Air Act are petty misdemeanors (up to a \$300 fine). [🔗 Minn Stat. § 144.417, subd. 2](#) [🔗 Minn.](#)

Stat. § 609.02, subd. 4a. MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn Stat. § 144.99, subd. 4\(a\).*](#) Penalties for ordinance violations range from petty misdemeanors to misdemeanors (90 days and/or a \$1,000 fine). Penalties for violating local restrictions vary.

SCHOOLS

Public and Charter Schools

General Rule: Smoking is prohibited in any K-12 school or library serving children under the age of 18 years if federal funds are used in the facility. [*☞ 20 U.S.C. § 6083\(a\).*](#)

Minnesota prohibits the use of commercial tobacco products in any form, including electronic delivery devices, in public elementary, middle, or secondary schools. The prohibition extends to all school facilities, whether owned, rented, or leased, and to all vehicles that a school district owns, leases, rents, contracts for, or controls. [*☞ Minn Stat. § 144.4165*](#) [*☞ Minn. Stat. § 120A.05, subds. 9, 11, 13.*](#)

Charter Schools: Minnesota charter schools are tuition-free, independent public schools that are formed and operate as non-profit corporations. [*☞ Minn Stat. § 124E.*](#) While exempt from many of the laws and rules that apply to public schools, a charter school must meet all federal, state, and local health and safety requirements applicable to school districts. [*☞ Minn Stat. § 124E.03, subd. 2.*](#) The prohibition stated above applies to public schools as well as charter schools governed by Chapter 124E. [*☞ Minn Stat. § 144.4165.*](#)

Exceptions

- An adult member of a federally recognized Tribe may light tobacco as part of a traditional Native American spiritual or cultural ceremony.
- An American Indian student may carry a medicine pouch containing loose tobacco intended as observance of traditional spiritual or cultural practices. [*☞ Minn. Stat. § 144.4165*](#) [*☞ Minn. Stat. § 144.4167, subd. 2.*](#)

- Neither state nor federal law covers outdoor areas on school property. However, most school districts have policies that extend their commercial tobacco restrictions outdoors.

Enforcement: State law is enforced by schools, the Minnesota Department of Health (MDH), local health departments, and local law enforcement agencies. Local regulations are enforced by schools and local governments. Federal law is enforced by the U.S. Department of Health and Human Services.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [☞ Minn Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn Stat. § 144.99, subd. 4\(a\)](#). Violators of the federal law are subject to fines of up to \$1,000, which may not exceed the amount the facility received in federal funding. [☞ 20 U.S.C. § 6083\(f\)\(1\)](#).

Private Schools

General Rule: Smoking is prohibited in any K-12 school or library serving children under the age of 18 years, if federal funds are used in the facility. [☞ 20 U.S.C. § 6083\(a\)\(c\)](#). All other educational facilities are considered “public places” or “places of employment” in which smoking, including the use of an electronic delivery device, is prohibited by the Minnesota Clean Indoor Air Act. [☞ Minn Stat. § 144.413](#) [☞ Minn. Stat. § 144.414, subd. 1](#).

Enforcement: State law is enforced by schools, the Minnesota Department of Health (MDH), local health departments, and local law enforcement agencies. Local regulations are enforced by local governments. Federal law is enforced by the U.S. Department of Health and Human Services.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [☞ Minn Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 144.414, subd. 1](#) [☞ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn Stat. § 144.99, subd. 4\(a\)](#). Violators of the federal law are subject to fines of up to \$1,000, which may not exceed the amount the facility received in federal funding. [☞ 20 U.S.C. § 6083\(f\)\(1\)](#).

School Extracurricular Activities

The Minnesota State High School League, which administers and sets rules for certain extracurricular activities for its member schools, prohibits student athletes, musicians, and participants in certain fine arts activities, such as theater, speech, and debate, from using or possessing tobacco in any form and at any time. [☞ Minnesota High School League, Student Eligibility Bylaw 205.00](#).

Enforcement: Member schools are required to enforce the specified penalties for certain extracurricular activities with interscholastic competitions and develop and enforce penalties for other fine arts activities without interscholastic competitions. [☞ Minnesota High School League, Student Eligibility Bylaw 205.00](#).

Universities, Colleges, and Other Postsecondary Schools

All educational facilities are considered “public places” or “places of employment” in which smoking, including the use of an electronic delivery device, is prohibited by the Minnesota Clean Indoor Air Act. [☞ Minn Stat. § 144.413](#) [☞ Minn. Stat. § 144.414, subd. 1](#). In addition, many postsecondary institutions have adopted their own restrictions on smoking and use of commercial tobacco products.

Enforcement: State law is enforced by schools, the Minnesota Department of Health (MDH), and local health departments. Local ordinances are enforced by local governments. Schools enforce their own policies.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [☞ Minn Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 144.414, subd. 1](#) [☞ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn Stat. § 144.99, subd. 4\(a\)](#).

STADIUMS AND ARENAS

General Rule: Indoor stadiums and arenas are public places as well as places of employment in which smoking, including the use of an electronic delivery device, is prohibited. [☞ Minn Stat. § 144.413, subd. 2](#) [☞ Minn. Stat. § 144.414, subd. 1](#).

Outdoor stadiums are not subject to the Minnesota Clean Indoor Air Act, but may be subject to another state law, local ordinance, and/or facility policy. For example, smoking, including the use of e-cigarettes, is prohibited at the Minnesota Twins stadium in Minneapolis. [☞ Minn Stat. § 473.756, subd. 4.](#)

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations. Facility administrators enforce facility policies.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [☞ Minn. Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a.](#) MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn. Stat. § 144.99, subd. 4\(a\).](#) Consequences for local policies vary.

THEATRICAL PRODUCTIONS

General Rule: The Minnesota Clean Indoor Air Act allows smoking by actors and actresses as part of a theatrical performance conducted in compliance with any applicable local regulations. [☞ Minn. Stat. § 366.01, subd. 2.](#) If smoking is part of the performance, notice must be given in advance to theater patrons and included in performance programs. [☞ Minn. Stat. § 144.4167, subd. 9.](#)²⁸ Smoking by theater patrons (or other “non-acting” staff) remains prohibited.²⁹ Several local ordinances that prohibit smoking in workplaces and public places prohibit smoking in theatrical productions by not including an exemption for that purpose. See, e.g., [Mankato Code Sec. 9.17.](#)

28 Minnesota courts have ruled that attempts by bar owners to circumvent the Minnesota Clean Indoor Air Act by hosting sham “theatre nights” do not fall within this exception and violate the Act. See, for example, [State of Minnesota v. Marinaro](#), 768 N.W.3d 393 (Minn. Ct. App. 2009).

29 For more information, see Minn. Dep’t of Health, *Theatrical Productions: Minnesota Clean Indoor Air Act* fact sheet (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/theater.html>.

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [☞ Minn. Stat. § 144.417, subd. 2](#) [☞ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [☞ Minn. Stat. § 144.99, subd. 4\(a\)](#). Local penalties vary.

TOBACCO PRODUCTS SHOPS

General Rule: The Minnesota Clean Indoor Air Act provides a very limited exception that allows customers or potential customers to smoke, including the use of an electronic delivery device, for the specific purpose of sampling tobacco products in a licensed tobacco products shop.³⁰ A “tobacco products shop” is a retail establishment:

- With an entrance door opening directly to the outside that cannot be entered at any time by persons younger than 21 years of age;
- That derives more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in [Minn. Stat. § 609.685](#);
- Where the sale of other products is merely incidental; and
- That is not a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license. [☞ Minn. Stat. § 144.4167, subd. 4](#).

Many cities and counties prohibit smoking for the purposes of sampling in their clean air ordinances or in their retail licensing ordinances. See, e.g., [St. Louis County Ordinance 63 Section VI](#), [Renville County Tobacco Licensing Ordinance](#).

³⁰ For more information, see Minn. Dep't of Health, *Tobacco and Vape Shops: Minnesota Clean Indoor Air Act* fact sheet (2022), <https://www.health.state.mn.us/communities/environment/air/mciaa/tobacco.html>.

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations.

Penalties: Violations of the state law are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 144.417, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 4a*](#). MDH may issue fines up to \$10,000 by administrative penalty order. [*☞ Minn. Stat. § 144.99, subd. 4\(a\)*](#). Local penalties vary.

TRIBAL LANDS

General Rule: Because Tribal governments are sovereign, the Minnesota Clean Indoor Air Act does not apply to Tribal businesses or governments located on Tribal lands. For example, smoking may be permitted at Tribal casinos located on the reservation of a federally recognized Tribe unless the Tribal government or the casino adopts a policy to the contrary.

VARIANCES

General Rule: The Minnesota Department of Health (MDH) may grant variances from state tobacco rules. Variances cannot be granted to prohibitions on smoking, but they may be granted for less critical provisions, such as signage. A variance will be granted if:

- The variance was requested in the proper manner;
- The variance will not adversely affect public health, safety, or the environment;
- Alternative measures are equal, or superior, to those required by the rule;
- Strict compliance with the rule will impose an undue burden; and
- The variance would not depart from statutory requirements.

In granting a variance, MDH may attach any conditions necessary to protect public health, safety, or the environment. [§ Minn. R. 4620.1450](#) [§ Minn. R. 4717.700-7050](#). Variances are rarely requested or granted.

Enforcement: Minnesota Department of Health.

VEHICLES

General Rule: Smoking is prohibited in vehicles used in whole or in part for work purposes during “working hours” when more than one person is present. [§ Minn. Stat. § 144.413, subd. 1b](#) [§ Minn. Stat. § 144.414, subd. 1](#). The use of commercial tobacco products in any form, including electronic delivery devices, is prohibited in school buses and other school vehicles. [§ Minn. Stat. § 144.4165](#). (See [Schools](#).)

Exceptions: Certain specific vehicles are exempted from the Minnesota Clean Indoor Air Act:

- **Heavy Commercial Vehicles:** Smoking, including the use of an electronic delivery device, is permitted in the cabs of registered heavy commercial vehicles such as trucks, truck-tractors, and semitrailer combinations weighing more than thirteen tons. [§ Minn. Stat. § 144.4167, subd. 5](#).
- **Construction Equipment:** Smoking, including the use of an electronic delivery device, is permitted in construction vehicles not used for transporting people or property and that are moved only incidentally over a highway. Smoking is permitted only when these vehicles are being used for their intended purposes. This category includes a large number of construction vehicles, such as ditch-digging apparatuses, well-drilling equipment, scarifiers, self-propelled cranes, and earth-moving equipment. It does not include vehicles designed for the transportation of persons or property to which machinery has been attached, such as travel trailers. [§ Minn. Stat. § 144.4167, subd. 6](#) [§ Minn. Stat. § 168.002, subd. 31](#).
- **Farm Vehicles:** Smoking, including the use of an electronic delivery device, is permitted in farm trucks, tractors, and other implements of husbandry only when these vehicles are being used for their intended

purposes. [§ Minn. Stat. § 144.4167, subd. 6](#) [§ Minn. Stat. § 168.002, subd. 8](#) [§ Minn. Stat. § 168A.01, subd. 8](#). (See [Farm Vehicles](#).)

- **Public Transportation Vehicles in Private Use:** The driver of a public transportation vehicle may smoke in the vehicle only when the vehicle is being used for private purposes and no for-hire passengers are present. [§ Minn. Stat. § 144.414, subd. 4](#). (See [Public Transportation](#).)
- **Private Automobiles:** Smoking, including the use of an electronic cigarette, is permitted in a private automobile when it is not in use as a place of employment. [§ Minn. Stat. § 144.4167, subd. 3\(1\)](#).

Enforcement: The Minnesota Department of Health (MDH) is the lead enforcement agency and may delegate enforcement activities to local health departments. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce local ordinances and other regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [§ Minn. Stat. § 144.417, subd. 2](#) [§ Minn. Stat. § 609.02, subd. 4a](#). MDH may issue fines up to \$10,000 by administrative penalty order. [§ Minn. Stat. § 144.99, subd. 4\(a\)](#).

WILDFIRE AREAS

General Rule: The Minnesota Department of Natural Resources may prohibit smoking in any wildfire area of the state. Wildfire areas are defined as any tract or area of 1,000 or more contiguous acres of trees, brush, grassland, or other vegetative material where the potential for wildfire exists. [§ Minn. Stat. § 88.01, subd. 6](#) [§ Minn. Stat. § 88.22, subd. 1\(b\)](#).

Exception: This prohibition does not apply to places of habitation, automobiles, or other enclosed vehicles properly equipped with efficient ashtrays. [§ Minn. Stat. § 88.22, subd. 1\(b\)](#).

Enforcement Agency: Minnesota Department of Natural Resources.

Penalties: Violations are misdemeanors (up to 90 days and/or a \$1,000 fine). [§ Minn. Stat. § 88.22, subd. 3](#) [§ Minn. Stat. § 609.02, subd. 3](#).

SECTION TWO: SALE, DISTRIBUTION, & DISPLAY

Even though federal law, Minnesota law, and laws adopted in most states, prohibit the sale of cigarettes and other commercial tobacco products to people under age 21, approximately 16.5 percent of high school students are current users of commercial tobacco products in the United States.³¹ Easy access to commercial tobacco products online and in stores, as well as prominent displays of products in retail stores all encourage tobacco use. The regulation of tobacco retailers and distributors helps reduce prohibited sales to underage people, transform norms, and denormalize use. This section outlines licensing requirements for commercial tobacco retailers and distributors and summarizes state and federal laws pertaining to the retail sale, distribution, and display of commercial tobacco and related devices and products, in general, and to youth, in particular.

Minnesota law establishes minimum requirements for the retail sale, distribution, and display of commercial tobacco products, including electronic delivery devices (e-cigarettes), tobacco-related devices, and nicotine or lobelia delivery products.³² State law authorizes Minnesota counties, cities, and townships to regulate commercial tobacco sales by requiring that local ordinances, at a minimum, incorporate state law requisites. Minnesota state law permits local jurisdictions to enact sales and display restrictions more stringent than state law, which many communities have done. For example, a city may prohibit all sales of flavored tobacco products, including electronic delivery devices, while state law, as of the date of this edition, still allows such sales. Local governments cannot enact ordinances with requirements or retailer penalties weaker than the state's minimum requirements.

Local ordinances are generally enforced by local public health or law enforcement officials, such as local police departments or county sheriff's departments. For instance, in the state's two largest cities,

31 Eunice Park-Lee et al., *Tobacco Product Use Among Middle and High School Students* — U.S. 2022, 71 MORBIDITY AND MORTALITY WKLY. REP. 45 (2022), https://www.cdc.gov/mmwr/vol-umes/71/wr/mm7145a1.htm?s_cid=mm7145a1_w.

32 34 Minn. Stat. ch. 461.

Minneapolis and St. Paul, public health inspectors and law enforcement authorities monitor retail establishments to ensure compliance with state and local laws.

Minnesota has also entered into formal legal agreements with large national retailers doing business in the state. These agreements, known as “Assurances of Voluntary Compliance” (or AVCs), typically restrict the sale of tobacco products, and some restrict tobacco product advertising as well. Minnesota has entered into agreements with retailers BP Amoco/ BP North America, Conoco Phillips, Exxon-Mobil, Shell, Walgreens, and Walmart. (See *Using Retailer AVCs as a Tool in Tobacco Control* (2022)).

Licensing Requirements

DISTRIBUTORS AND SUBJOBBER

General Rule: Cigarette and tobacco product distributors³³ and subjobbers³⁴ must obtain a state license to sell cigarettes and other tobacco products, including electronic delivery devices and nicotine

33 “Distributors” include persons within Minnesota who sell or manufacture cigarettes or other tobacco products for sale in the state or cause them to be brought into Minnesota for sale in Minnesota, or persons outside the state who ship or transport tobacco products to retailers in the state to be sold by those retailers. Cigarette distributors include persons who, on a direct purchase from a cigarette manufacturer, apply cigarette stamps on at least half the cigarettes they sell. Minn. Stat. §§ 297F.01, subsds. 4, 20.

34 “Subjobbers” may be cigarette subjobbers or tobacco products subjobbers. A cigarette subjobber is either: a person who obtains cigarettes that have already been stamped and resells them to retailers; a licensed distributor who delivers, sells, or distributes stamped cigarettes from a place of business other than the one licensed in the distributor’s license; or, a vending machine operator (a person whose primary business is operating or owning and leasing vending machines to operators. A tobacco products subjobber is: a person other than a manufacturer or distributor who buys from a distributor cigarettes or other tobacco products upon which the tax has already been paid and sells them to persons other than the ultimate consumers; or any licensed distributor delivering, selling, or distributing cigarettes or tobacco products upon which the imposed tax has been paid from a location other than the one licensed in the distributor’s license. Minn. Stat. §§ 297F.01, subsds. 5, 21.

and lobelia delivery products that contain nicotine, whether or not derived from tobacco.³⁵ The fee for a cigarette distributor's license is \$300, and the application fee for a cigarette subjobber's license is \$24. If applying for a license in the second year of the Minnesota Department of Revenue's two-year licensing period, a cigarette distributor or subjobber must pay one half of the applicable license fee.

The fee for a two-year tobacco products distributor's license is \$75, and the application fee for a two-year tobacco products subjobber's license is \$20. If applying for a license in the second year of the Department of Revenue's two-year licensing period, a tobacco products distributor or subjobber must pay one half of the applicable license fee. [*☞ Minn. Stat. § 297F.03.*](#)

Enforcement: Minnesota Department of Revenue and local law enforcement.

Penalties: Licensing-related violations are generally misdemeanors (up to 90 days in jail and/or a \$1,000 fine). [*Min. Stat. § 297F.20, subd. 12*](#) [*☞ Minn. Stat. § 609.02.*](#) The Minnesota Department of Revenue may impose administrative penalties and revoke or suspend licenses for violations. [*☞ Minn. Stat. § 297F.04, subd. 1.*](#) Under any of the following circumstances, the Department of Revenue cannot issue or renew a license and may revoke a license: owing \$500 or more in delinquent taxes; failure to file required tax returns; revocation of a cigarette or tobacco license or a sales and use tax permit; or conviction of a crime related to cigarettes or tobacco products. [*☞ Minn. Stat. § 297F.04, subd. 2.*](#) A sale after a license has been revoked is a felony (up to five years imprisonment and/or a \$10,000 fine). [*☞ Minn. Stat. § 297F.20, subd. 8*](#) [*☞ Minn. Stat. § 609.03.*](#)

35 For the regulation of distributors and subjobbers, the term "tobacco products" is defined to include: "any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product," and includes "nicotine solution products," which covers electronic delivery devices and nicotine products when nicotine is derived from any source. Tobacco products excludes any product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose. [*Min. Stat. § 297F.01, subd. 19.*](#)

RETAILERS

General Rule: State law delegates licensing authority to local governments, requiring counties to license and regulate retailers in unorganized territories and in any city or township that has not adopted its own licensing law. Cities and townships are authorized, but not required, to enact licensing laws, and many have done so. [*☞ Minn. Stat. § 461.12*](#). Sales made without a valid tobacco retailer's license are in violation of state law. A retailer within Minnesota must obtain a tobacco retailer license from the applicable local government in order to sell:

- **Tobacco.** Cigarettes and any other product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. [*☞ Minn. Stat. § 461.12, subd. 1*](#) [*☞ Minn. Stat. § 609.685, subd. 1\(a\)*](#).
- **Tobacco-related devices.** Cigarette papers or pipes for smoking, or other devices intentionally designed or intended to be used in a manner that enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. This includes components of tobacco-related devices that may be marketed or sold separately. [*☞ Minn. Stat. § 461.12, subd. 1*](#) [*☞ Minn. Stat. § 609.685, subd. 1\(b\)*](#).
- **Electronic delivery devices.** Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor. Electronic delivery devices include but are not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipes, vape pens, modes, tank systems, or other product names or descriptors. They include any component part of a product, whether or not marketed or sold separately. [*☞ Minn. Stat. § 461.12, subd. 1*](#) [*☞ Minn. Stat. § 609.685, subd. 1\(c\)*](#).

- **Nicotine and lobelia delivery products.** Any product containing nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not “tobacco” (cigarettes or other tobacco products) or an “electronic delivery device” as defined by state law. [☞ Minn. Stat. § 461.12, subd. 1](#) [☞ Minn. Stat. § 609.6855.](#)

Exceptions: Drugs, devices, or combination products (as defined in the Food, Drug, and Cosmetic Act) that are authorized for sale by the U.S. Food and Drug Administration as tobacco cessation products, tobacco-dependence products, or for other medical purposes, and that are being marketed and sold solely for such an approved purpose are not defined as “tobacco,” an “electronic delivery device,” or a “nicotine or lobelia delivery product” and, therefore, are not subject to tobacco retailer licensing requirements. [☞ Minn. Stat. § 609.685, subd. 1](#) [☞ Minn. Stat. § 608.6855.](#) Blind persons are not required to pay a fee for cigarette licenses. [☞ Minn. Stat. § 461.15.](#)

Enforcement: Local licensing authorities and officials. The State Agricultural Society licenses and regulates sales made on the State Fairgrounds. [☞ Minn. Stat. § 461.12, subd. 1.](#) The Department of Revenue also has the authority to regulate retailers for violations of tobacco tax law provisions. [☞ Minn. Stat. ch. 297F.](#) In addition, the Minnesota Attorney General has the authority to investigate and prosecute unlawful business practices. [☞ Minn. Stat. § 8.31.](#)

Penalties: A retailer who violates state laws requiring municipal licensure will be charged an administrative penalty of \$300 for the first violation, \$600 for a second violation at the same location within 36 months of the first violation, and \$1,000 for a third or subsequent violation at the same location within 36 months of the first violation. Upon the third or subsequent violation at the same location within 36 months of the first violation, state law requires a suspension of at least seven days and allows for license revocation. Local licensing ordinances may provide more stringent penalties for violations. [☞ Minn. Stat. § 461.12, subs. 2-3](#) [☞ Minn. Stat. § 375.53](#) [☞ Minn. Stat. § 412.231](#) [☞ Minn. Stat. § 366.01, subd. 10](#) [☞ Minn. Stat. § 609.02, subd. 3.](#) An unlicensed retailer is subject to penalties ranging from a misdemeanor to a felony for violations of tobacco tax law provisions. See **Taxes & Pricing**. The

Minnesota Attorney General also has the authority to investigate and prosecute unlawful business practices. [↻ Minn. Stat. § 8.31](#).

Sale, Distribution and Display Requirements

ELECTRONIC DELIVERY DEVICES AND LIQUID PACKAGING (CHILD-RESISTANT)

General Rule: Any liquid (whether or not it contains nicotine) that is intended for human consumption and used in an electronic delivery device must be sold in packaging that was designed to meet federal child-resistant standards and testing procedures. U.S. Consumer Product Safety Commission packaging standards, required under the Child Nicotine Poisoning Prevention Act, are designed to prevent children from opening the containers. [↻ Minn. Stat. § 461.20\(b\)](#) [↻ 16 C.F.R. 1700.15\(b\)\(1\)](#).

Notes

- “Liquid nicotine container” includes any package from which a consumer can access nicotine in a solution or other form through normal and foreseeable use and that is used to hold soluble nicotine in any concentration. [↻ 15 U.S.C. § 1472a \(d\)\(2\)\(A\)](#).
- The Child Nicotine Poisoning Prevention Act is not intended to limit or otherwise affect the authority of the U.S. Food and Drug Administration (FDA) to regulate, issue guidance on, or take action regarding the manufacture, marketing, sale, distribution, importation, or packaging, including child-resistant packaging, of nicotine, liquid nicotine, electronic cigarettes, or other similar products. The Act is not intended to limit or affect the FDA’s advance notice of proposed rulemaking concerning packaging requirements for liquid nicotine, nicotine-containing e-liquid(s), and other tobacco products. The Act also specifically states that the FDA’s deeming rule is not affected by the Act (see [Deeming Rule](#) in the Introduction).

Enforcement: Local officials, local public health departments, local licensing authorities, and federal agencies. The Minnesota Attorney General has the authority to investigate and prosecute unlawful business practices. [☞ *Minn. Stat. § 8.31*](#). The U.S. Consumer Product Safety Commission has the authority to enforce the requirements of the Child Nicotine Poisoning Prevention Act. [☞ *16 C.F.R. § 1700.20*](#).

Penalties: A retailer that violates a requirement of the state retail licensing laws will be charged an administrative penalty of \$300 for the first violation, \$600 for a second violation at the same location within 36 months of the first violation, and \$1,000 for a third or subsequent violation at the same location within 36 months of the first violation. Upon the third or subsequent violation at the same location within 36 months of the first violation, state law requires a suspension of at least seven days and allows for license revocation. [☞ *Minn. Stat. § 461.12, subd. 2*](#). Local ordinances may provide for higher administrative fines and penalties for violations.

FIRE-SAFE CIGARETTES

General Rule: All cigarettes sold or offered for sale in Minnesota must be tested in accordance with the American Society of Testing and Materials Standard E2187-04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes” or an alternate method approved by the state fire marshal, and fewer than 25 percent of the cigarettes in a test trial must exhibit full-length burns.³⁶ Manufacturers must file written certifications with the state fire marshal and mark cigarettes to indicate compliance with ignition strength performance standards. [☞ *Minn. Stat. § 299F.851*](#).

Enforcement: Minnesota Fire Marshal, Minnesota Attorney General, and Minnesota Department of Revenue. [☞ *Minn. Stat. § 299F. 854, subd. 6*](#) [☞ *Minn. Stat. § 299F.855*](#).

Penalties: A manufacturer, wholesale dealer, or any other person or entity who sells cigarettes that do not meet this standard is liable for a civil penalty of up to \$10,000 for a first offense. Subsequent offenses can

³⁶ The Minnesota State Fire Marshal maintains an inventory of Fire Standard Compliant Cigarettes, <https://dps.mn.gov/divisions/sfm/programs-services/Pages/fire-standards-compliant-cigarette.aspx>.

lead to a penalty of up to \$25,000, not to exceed \$100,000 during a 30-day period. Retailers who knowingly sell cigarettes that are not “fire-safe” are liable for civil penalties of up to \$500 for a first offense and \$2,000 for subsequent offenses if fewer than 1,000 cigarettes are sold. If more than 1,000 cigarettes are sold, the penalties are \$1,000 for a first offense and \$5,000 for subsequent offenses. The penalty against any retail dealer cannot exceed \$25,000 in any 30-day period. Violators who knowingly make a false certification are subject to a civil penalty of at least \$75,000 for a first violation, not to exceed \$250,000 for a subsequent violation in addition to any other penalty. [☞ Minn. Stat. § 299F.854.](#)

FLAVORED CIGARETTES (OR CIGARETTE COMPONENTS), CIGARS, AND ELECTRONIC CIGARETTES (TCA)

General Rule: Cigarettes and their component parts (including the tobacco, filter or paper) must not contain any artificial or natural flavor (other than tobacco or menthol) or any herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco or tobacco smoke. [☞ 21 U.S.C. §§ 387g\(a\)\(1\)\(A\)](#) [☞ 333](#) [☞ 372](#) [☞ 387g.](#)

Notes

- The U.S. Food and Drug Administration (FDA) has the authority to regulate (and ban) menthol in cigarettes or cigarette components, as well as any artificial or natural flavor, herb, or spice not specified in this list. [☞ 21 U.S.C. § 372.](#) On April 28, 2022, the FDA announced two new proposed product standards prohibiting menthol as a characterizing flavor in cigarettes and prohibiting all characterizing flavors (other than tobacco) in cigars. At the time of publication, the FDA is reviewing public comments on these rules. The FDA’s action comes years after it collected voluminous information about menthol’s unique negative health impacts. On June 17, 2020, two public health groups filed a lawsuit against the FDA to obtain a court order requiring the agency to act. See African American Tobacco Control Leadership Council et al. v. FDA, No. 3:20-cv-04012 (2020).

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

Exception: Currently, tobacco and menthol flavors are allowed in cigarettes under federal law. At the time of publication, this provision does not apply to tobacco products other than cigarettes; see note above on the FDA's proposed standards for cigarettes and cigars.

Enforcement: FDA, with the help of other designated federal agencies and state governments. [🔗 21 U.S.C. § 372.](#)

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\).](#)

Flavored Electronic Smoking Devices

General Rule: Since February 2020, the sale of flavored, cartridge-based e-cigarettes (other than tobacco- or menthol-flavored) has been prohibited by the U.S. Food and Drug Administration (FDA). Cartridge-based e-cigarettes consist of, include, or involve a cartridge or pod that holds liquid that is to be aerosolized through product use. The FDA policy specifies that a cartridge or pod is any small, enclosed unit (sealed or unsealed) designed to fit within or operate as part of an e-cigarette (referred to as an electronic nicotine delivery system or ENDS).³⁷

Note: The Tobacco Control Act preserves the authority of local governments to enact sales restrictions such as those prohibiting the sale of flavored tobacco products, including e-cigarettes. [🔗 21 U.S.C. § 387p.](#)

37 The FDA's finalized enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint: <https://www.fda.gov/media/133880/download> (April 2020)

Exception: The prohibition does not apply to tobacco- or menthol-flavored, cartridge-based e-cigarettes, or to any flavor of disposable or open-tank e-cigarettes.

Enforcement: FDA, with the help of other designated federal agencies and state governments. [🔗 21 U.S.C. § 372.](#)

Penalty: The FDA has various penalties for the violation of the Food, Drug, and Cosmetic Act ([21 U.S.C. § 331](#)), including seizures, criminal prosecution, and fines up to \$500,000.00 in some circumstances. Although it is not part of the Food, Drug, and Cosmetic Act, the Criminal Fine Enforcement Act of 1994 applies to all fines levied under the Food, Drug, and Cosmetic Act, as well as other statutes that contain provisions enforced by FDA. The following fines are applicable for each offense:

- Up to \$100,000 for a misdemeanor by an individual that does not result in death
- Up to \$200,000 for a misdemeanor by a corporation that does not result in death
- Up to \$250,000 for a misdemeanor by an individual that results in death, or a felony
- Up to \$500,000 for a misdemeanor by a corporation that results in death, or a felony

The maximum imprisonment for a misdemeanor under the Food, Drug, and Cosmetic Act remains a year for each offense.

GIFT EXCHANGES BASED ON PROOF OF PURCHASE

General Rule: Manufacturers subject to Minnesota's 1998 settlement agreement and the Master Settlement Agreement cannot provide gifts in exchange for the purchase of a tobacco product (including coupons or credits for a purchase), unless the recipient provides proof that he or she is an adult (e.g., a photocopy of a driver's license or government-issued ID card). [🔗 Master Settlement Agreement § III\(h\)](#) [🔗 Minn. Settlement Agreement.](#)

Enforcement: Minnesota Attorney General (AG)

Penalties: The AG may seek injunctive relief to stop violations of the provision, as well as monetary penalties and the costs of enforcement.

INTERNET, MAIL ORDER, AND DELIVERY SALES

General Rule: Minnesota regulates mail or delivery sales of virtually all cigarettes and other commercial tobacco products defined in Minn. Stat. 297F.01, subd. 19, including but not limited to non-premium and premium cigars, e-cigarettes, e-liquids, smokeless tobacco, roll-your-own tobacco, and pipe tobacco, that are:

- Ordered by phone, fax, mail, or the Internet; or
- Delivered by mail or other delivery service.

All out-of-state sellers must register with the Minnesota Department of Revenue before making any delivery sales to a consumer in this state. When accepting the first delivery order from a consumer, a retailer must 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 and their understanding of the law. If an order is made as a result of an advertisement on the Internet, the retailer must request the e-mail address of the purchaser and receive payment by credit card or check prior to shipping. Before shipping, the retailer must verify the information provided against a commercially available database. The retailer must also use a delivery service that requires an adult to sign to accept delivery and show a valid government-issued photo ID that proves the person is of legal purchase age and resides at the delivery address.³⁸ [*🔗 Minn. Stat. §§ 325F.781, subds. 1-8.*](#)

Enforcement: The Minnesota Attorney General and other state and local authorities. [*🔗 Minn. Stat. § 325F.781, subd. 10.*](#) All state laws that apply to

38 See *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008) (striking down provisions of a 2003 Maine law that attempted to control the online sale of cigarettes to minors by regulating the delivery of tobacco products and ruling that some state laws in this area are preempted by federal interstate trucking laws). Future state efforts to restrict online sales of tobacco products are likely.

in-state tobacco product retailers apply to Internet and mail-order sellers that sell in Minnesota. [*☞ Minn. Stat. § 325F.781, subd. 7.*](#)

Penalties: A covered product sold or attempted to be sold in violation of the delivery sale requirements is deemed to be contraband and is subject to forfeiture. A cease and desist order may be issued for violations. A second violation within two years of the cease and desist order is a misdemeanor offense (up to 90 days in jail and/or a \$1,000 fine). A subsequent violation within two years of a cease and desist order is a gross misdemeanor (up to one year in jail and/or a \$3,000 fine). Civil penalties for a violation are no more than \$1,000 for the first violation and no more than \$5,000 for a second and any subsequent violation. Failure to pay taxes will result in an additional penalty of 50 percent of the tax due but unpaid. Violators may also be subject to civil penalties and injunctive actions under Minnesota's consumer protection laws. The Minnesota Attorney General may bring an action seeking injunctive relief, including a preliminary or final injunction, fines, penalties, and equitable relief, and may seek to prevent or restrain actions constituting violations. [*☞ Minn. Stat. § 325F.781*](#) [*☞ Minn. Stat. §§ 325D.09-.16*](#) [*☞ Minn. Stat. § 609.02*](#) [*☞ Minn. Stat. § 297F.21*](#)

Notes

- A licensed tobacco retailer within Minnesota is subject to administrative penalties for selling any product for which licensure is required to a person under the age of 21, including a fine of \$300 for a first violation, a fine of \$600 for a second violation at the same location within 36 months of the first violation, and a mandatory fine of \$1,000 for a third or subsequent violation at the same location within 36 months of the first violation, plus a mandatory suspension of no less than seven days and possible revocation of the retailer's license. [*☞ Minn. Stat. § 461.12, subd. 2.*](#)
- The sale by any person 21 years of age or older of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years is a petty misdemeanor. Any subsequent sale to an underage person within five years of a previous conviction is a misdemeanor. [*☞ Minn. Stat. § 609.685*](#) [*☞ Minn. Stat. § 609.6855.*](#)

Internet and Mail Order Tobacco Sales (PACT Act)

General Rule: The federal Prevent All Cigarette Trafficking Act (PACT Act) prohibits the delivery sales of cigarettes (defined to include roll-your-own and all e-cigarettes), as well as smokeless tobacco via the U.S. Postal Service (with a few limited exceptions). Products regulated as “cigarettes” include all e-cigarette products, regardless of whether or not they contain nicotine. E-cigarette products regulated as “cigarettes” include e-hookahs, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes, as well as e-liquids and components, parts, and accessories of e-cigarettes. Zero-nicotine e-liquids, synthetic nicotine e-cigarettes, aromatherapy, vitamin, and CBD/THC/hemp e-cigarettes are also regulated under this prohibition. In light of this federal law, major common carriers, including UPS, FedEx, and DHL, have voluntarily stopped shipping e-cigarettes, including e-liquids, directly to consumers. [🔗 15 U.S.C §§ 375](#) [🔗 376](#) [🔗 376a](#) [🔗 377](#) [🔗 18 U.S.C. § 1716E](#).

Exceptions

- The U.S. Postal Service restrictions do not apply to other types of tobacco products, such as cigars and pipe tobacco.
- Also, the definition of “cigarette” excludes any product that is approved by the U.S. Food and Drug Administration (FDA) for sale as a tobacco cessation product or any other therapeutic purpose and is marketed and sold solely for such approved purpose. (To date, no e-cigarette products have received this type of FDA approval.)
- The restrictions also do not apply to sales and shipments that begin and end entirely within Alaska or Hawaii and to certain APO/FPO military addresses. Infrequent, lightweight shipments can still be sent via U.S. Postal Service by age-verified adults as long as certain restrictions are met.
- Additional exceptions apply for authorized business and regulatory purposes, as well as for consumer testing and public health purposes.

Enforcement: U.S. Postmaster General in cooperation with another federal agency or an agency of any state, local or Tribal government, when appropriate. The common carrier provisions are enforced by the

Attorney General of the United States, state attorneys general, and state tobacco tax administrators. [🔗 15 U.S.C. §§ 376-378](#) [🔗 18 U.S.C. § 1716e](#).

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

Any person found delivering cigarettes (including roll-your-own and e-cigarettes) or smokeless tobacco through the U.S. Postal Service is subject to an additional civil penalty in the amount equal to ten times the retail value of the nonmailable covered products, including all federal, state and local taxes. Any covered products that are deposited in the mail shall be subject to seizure and forfeiture. Any covered products seized and forfeited under this subsection shall be destroyed or retained for the detection or prosecution of crimes or related investigations and then destroyed. [🔗 15 U.S.C. §§ 376-378](#) [🔗 18 U.S.C. § 1716e](#).

INTERNET, MAIL ORDER, AND DELIVERY SALES (STATE LAW)

General Rule: Delivery sales of commercial tobacco products to Minnesota consumers are also regulated under state law. [🔗 *Minn. Stat. § 325F.781*](#). This statute applies to delivery sales made to a Minnesota consumer by an in-state or out-of-state retailer when the consumer places the order for products by phone, mail, internet, or other delivery or online service and the products are delivered to the consumer by mail or any other type of delivery service. In 2021, the scope of products covered was expanded to include all cigarettes, cigars, smokeless tobacco, e-cigarettes (defined as “nicotine solution products”) and all other commercial tobacco, including pipe tobacco, that come within the meaning of “tobacco products.” [🔗 *Minn. Stat. § 297F.01, subd. 19*](#). Minnesota law requires out-of-state retailers to register with the state

Department of Revenue prior to making delivery sales to a Minnesota consumer. [*☞ Minn. Stat. § 325F.781*](#). A violation of this law is also a violation of Minnesota's [Unlawful Trade Practices Act](#).

In addition, all retailers making delivery sales, whether in-state or out-of-state, must comply with Minnesota tobacco tax filing, reporting, collection, payment, and record retention requirements. [*☞ Minn. Stat. § 297F*](#).

Age Verification Requirements: Age verification processes are required for delivery sales of commercial tobacco products under both federal and state law. The **PACT Act** requires online retailers who make sales and shipments to consumers in Minnesota to comply with all the federal law's registration, shipping, and other requirements.

Minnesota law requires that retailers making delivery sales of tobacco products verify that each person who places an order for a delivery sale is at least 21 years of age. [*☞ Minn. Stat. § 325F.781*](#). Retailers must follow several specific age verification procedures and shipping requirements. For example, before processing a person's first order, the retailer must obtain a valid copy of the person's government-issued photo identification, including the person's name, current address, and date of birth; check the information provided against a commercially available database; and obtain a signed, written statement acknowledging that the person is of legal age to make a purchase and understands that penalties apply for using false identification or selling or giving products to persons under 21.

If the tobacco products ordered have been advertised online, the retailer must process the consumer's payment by credit card or check only. The retailer must mark the outside of packages, as required by the statute, and use a delivery service that follows all the statutory delivery requirements (i.e., obtaining the signature and checking the government-issued photo identification of a person 21 or over who resides at the delivery address).

Enforcement: Minnesota Department of Commerce, Minnesota Attorney General (AG), and Minnesota Department of Revenue.

Penalties: Products sold or attempted to be sold in violation of this statute are subject to forfeiture. For a violation that is not within two (2) years of any previous violation, the Department of Commerce may issue a cease-and-desist order, providing the retailer with the right to request

a hearing. A violation that is within two (2) years of a previous violation constitutes a misdemeanor. A first violation includes a civil fine of no more than \$1,000. A second or subsequent violation includes a civil fine of no more than \$5,000. The AG may request an injunction, fines, penalties, and further actions to stop wrongful conduct by retailers or others acting on their behalf. Any retailer making delivery sales who fails to pay taxes when due is subject to an additional penalty of 50 percent of tax due.

KIOSK SALES (MOVABLE PLACES OF BUSINESS)

General Rule: The sale of cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products from a movable place of business is prohibited. A “movable place of business” is any retail business whose physical location is not permanent and includes but is not limited to any business operated from a kiosk, other transportable structure, or a motorized or non-motorized vehicle. [*☞ Minn. Stat. § 461.21.*](#)

Enforcement: Local officials, local public health departments, and local licensing authorities. The Minnesota Attorney General also has the authority to investigate and prosecute unlawful business practices. [*☞ Minn. Stat. § 8.31.*](#)

Penalties: A retailer who violates the state retail laws will be charged an administrative penalty of \$300 for the first violation and \$600 for a second violation at the same location within 36 months of the initial violation. For a third or subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the license will be suspended for at least seven days and may be revoked. [*☞ Minn. Stat. § 461.12, subd. 2.*](#) Violations of state tobacco control laws are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 645.241*](#) [*☞ Minn. Stat. § 609.02, subd. 4a.*](#) Local ordinances may set more stringent penalties for violations.

“LIGHT,” “LOW,” “MILD” TOBACCO PRODUCT DESCRIPTORS (TCA)

General Rule: The use of “light,” “low,” “mild” or similar descriptors in the advertising, labeling, and marketing of cigarettes and smokeless tobacco products is prohibited. [🔗 21 U.S.C. § 387k](#).³⁹

Enforcement: U.S. Food and Drug Administration, with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372](#).

Penalty: Violators are subject to a civil penalty of up to \$250,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after written notice is provided, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)](#).

MINIMUM PACKAGE SIZE (TCA)

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

Enforcement: U.S. Food and Drug Administration (FDA), with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372](#).

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)](#). Retailers are subject to progressively steeper, yet capped, civil monetary

39 See also *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (per curiam), *cert. denied*, 130 S. Ct. 3501 (2010) (prohibiting the defendant tobacco companies from using “low tar,” “light,” “ultra light,” “mild,” “natural” and similar terms to describe their products).

penalties, dependent upon the number of violations incurred within specific time periods and other factors, which may include whether an approved training program is in place. The fine amounts are adjusted annually for inflation. See the FDA's *Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (*Revised)* (2023) for the maximum amounts in effect at the time of this publication.

PUBLIC ASSISTANCE (EBT CARDS)

General Rule: Purchasing tobacco products with an electronic benefit transfer (EBT) card is prohibited. Tobacco stores, liquor stores, gambling establishments, and tattoo parlors are required to negotiate with their third-party processors to block EBT card cash transactions at their places of business and withdrawals of cash at automatic teller machines located in their places of business. [🔗 Minn. Stat. § 256.987](#) [🔗 Minn. Stat. § 256.9871.](#)

Enforcement Agency: Minnesota Department of Human Services. The Minnesota Attorney General also has the authority to investigate and prosecute unlawful business practices with regard to the requirements imposed on business owners. [🔗 Minn. Stat. § 8.31.](#)

Penalties: Individuals who violate these provisions can be disqualified from assistance. [🔗 Minn. Stat. § 256.987, subd. 4.](#) Business owners who violate these provisions are subject to a petty misdemeanor (fine of up to \$300). [🔗 Minn. Stat. § 645.241.](#) They may be subject to additional sanctions under the enforcement authority of the Department of Human Services and the Attorney General for non-compliance with the EBT vendor requirements.

SELF-SERVICE SALES (OPEN DISPLAYS)

General Rule: The sale of cigarettes, other tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in open displays that are accessible to the public without the assistance of a store employee is prohibited. [🔗 Minn. Stat. § 461.18, subd. 1\(a\).](#)

Exception: Open product displays are allowed in retail stores that derive at least 90 percent of their gross revenue from the sale of tobacco (cigarettes and other tobacco products), electronic delivery devices, and tobacco-related devices, and where the retailer ensures that no person younger than 21 is present or permitted to enter at any time. [🔗 Minn. Stat. § 461.18\(d\)](#). **Note:** A large number of cities and counties prohibit self-service sales in all retail locations.

Enforcement: Local officials, local public health departments, and local licensing authorities. The Minnesota Attorney General's office also has the authority to investigate and prosecute unlawful business practices. [🔗 Minn. Stat. § 8.31](#).

Penalties: A retailer who violates state retail laws will be charged an administrative penalty of \$300 for the first violation and \$600 for a second violation at the same location within 36 months of the initial violation. For a third or subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 will be imposed, and the license will be suspended for at least seven days and may be revoked. [🔗 Minn. Stat. § 461.12, subd. 2](#). Violations of state tobacco control laws are petty misdemeanors (up to a \$300 fine). [🔗 Minn. Stat. § 645.241](#) [🔗 Minn. Stat. § 609.02, subd. 4a](#). Local ordinances may provide for more stringent penalties for violations.

SELF-SERVICE SALES (TCA)

General Rule: Federal and state law require that tobacco products, including electronic delivery devices, may be sold only via a direct, face-to-face exchange. The use of vending machines and self-service displays is not permitted. [🔗 21 C.F.R. §§ 1140.14\(c\)](#) [🔗 1140.16\(c\)\(1\)](#) [🔗 21 U.S.C. §§ 333](#) [🔗 387a-1](#) [🔗 387\(d\)](#).

Exceptions: Vending machines and self-service displays are permitted in facilities where the retailer ensures that no person under the age of 21 is present or allowed to enter at any time. [🔗 21 C.F.R. § 1140.16\(c\)\(1\)](#) [🔗 21 U.S.C. § 387f\(d\)](#) [🔗 Minn. Stat. § 461.18](#).

Enforcement: U.S. Food and Drug Administration (FDA), with the help of other federal agencies and state and local governments. [🔗 21 U.S.C. § 372](#).

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [§ 21 U.S.C. § 333\(f\)\(9\)](#). Retailers are subject to progressively steeper, yet capped, civil monetary penalties, dependent upon the number of violations incurred within specific time periods and other factors, which may include whether an approved training program is in place. The fine amounts are adjusted annually for inflation. See the FDA's *Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (*Revised)* (2023) for the maximum amounts in effect at the time of this publication.

SELLING CIGARETTES BELOW COST

General Rule: Wholesalers and retailers may not sell or offer to sell cigarettes below their cost of acquiring the cigarettes, plus any sales or excise taxes. The Minnesota Department of Commerce publishes the legal prices in the State Register and on its website.⁴⁰ Wholesalers and retailers may not sell cigarettes with a trade name, trade dress, or trademark confusingly similar to other products at a lower price than the “original” product. [§ Minn. Stat. § 325D.04](#) [§ Minn. Stat. §§ 325D.30-42](#) [§ Minn. Stat. § 325D.421](#).

Exception: This law does not prohibit sales made in an isolated transaction, to clearance sales where the trade in cigarettes is being discontinued, or to discount sales where cigarettes are sold as imperfect or damaged. [§ Minn. Stat. § 325D.36](#). In these instances, the offer to sell or sale must state the reason for the sale and the quantity of cigarettes offered for sale or to be sold. Finally, the legal price does not include any “buy down” promotions offered by the cigarette manufacturer to the retailer, which typically allow the retailer to receive a rebate from the manufacturer for products sold at discounted prices to customers.

Enforcement: Minnesota Department of Commerce and authorized agents, Minnesota Attorney General, and private persons.

40 Minnesota Department of Commerce, Cigarettes (minimum cigarette prices), <https://mn.gov/commerce/business/retailers/cigarettes>.

Penalties: Violations are misdemeanors (up to 90 days in jail and/or a \$1,000 fine). [*☞ Minn. Stat. § 325D.33, subd. 1*](#) [*☞ Minn. Stat. § 325D.421, subd. 4*](#) [*☞ Minn. Stat. § 609.02, subd. 3*](#). The Department of Commerce may assess a penalty of up to three times the difference between the actual selling price and the legal minimum price. [*☞ Minn. Stat. § 325D.33, subd. 8*](#). Additionally, any person who would suffer injury from a violation may sue for damages, an injunction, and reasonable attorney fees. [*☞ Minn. Stat. § 325D.40, subd. 1*](#).

SMUGGLING (CONTRABAND)

General Rule: No person may sell, distribute, acquire, hold, own, possess or transport any package of cigarettes labeled “For Export Only,” “U.S. Tax-Exempt,” “For Use Outside U.S.,” or similar wording indicating that the manufacturer did not intend that the product be sold in the United States. [*☞ Minn. Stat. § 325D.421*](#).

Licensed distributors who ship cigarettes into Minnesota must affix the appropriate state tax stamps to the cigarette packages before they enter the state. No person may transport or cause to be transported from Minnesota cigarettes for sale in another state without first affixing to the cigarette packages the required state tax stamps or paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold. [*☞ Minn. Stat. §§ 297F.08, subs. 1, 2, 12*](#).

Exception: The “smuggling” restrictions do not generally apply to cigarettes imported or reimported into the U.S. for personal use or sold or intended to be sold as “duty-free” merchandise as provided by federal law.

Enforcement: Minnesota Department of Revenue.

Penalties: Violations of the state law also include civil and criminal penalties and forfeiture of the contraband products. [*☞ Minn. Stat. §§ 297F.19-297F.21*](#).

VENDING MACHINES

General Rule: The use of vending machines to sell tobacco (cigarettes and other tobacco products), tobacco-related devices, electronic delivery

devices, or nicotine or lobelia delivery products is restricted to facilities that cannot be entered at any time by persons younger than 21. [☞ Minn. Stat. § 461.18, subd. 2.](#) A number of Minnesota communities prohibit the use of all vending machines in all retail establishments, with no exceptions. [☞ Minn. Stat. § 461.19.](#)

Design: A cigarette vending machine must be designed to allow at least partial visibility of contents. When any package exposed to view does not carry the required tax stamp, it is presumed that all packages contained in the vending machine are unstamped and contraband. [☞ Minn. Stat. § 297F. 21, subd. 1\(b\).](#)

Signage: Cigarette vending machines must display the following warning: “Any Person Under 18 Years of Age Is Forbidden By Law To Purchase Cigarettes From This Machine.” This warning must be posted in a conspicuous place in bold-type letters at least one-half inch tall. [☞ Minn. Stat. § 325E.07.](#)

Note: State law prohibits the sale of cigarettes to persons under 21 years of age. State and local enforcement officials can ask the owner or other person in charge of a facility having a cigarette vending machine to update the warning on any such machine in their establishment to indicate that purchases by persons under 21 are prohibited.

Enforcement: Local officials, local public health departments, and local licensing authorities. The Minnesota Department of Commerce has the authority to enforce the required posting regarding the age limit for making purchases from a vending machine. [☞ Minn. Stat. § 325E.07, subd. 2.](#) The Minnesota Attorney General has the authority to investigate and prosecute unlawful business practices. [☞ Minn. Stat. § 8.31.](#) Representatives of the Minnesota Department of Revenue may enter a seller’s place of business during normal business hours to inspect vending devices on the premises to ensure compliance with the law.

Penalties: A retailer who violates state retail laws will be charged an administrative penalty of \$300 for the first violation and \$600 for a second violation at the same location within 36 months of the initial violation. For a third or subsequent violation at the same location within

36 months after the initial violation, an administrative penalty of \$1,000 will be imposed, and the license will be suspended for at least seven days and may be revoked. [*☞ Minn. Stat. § 461.12, subd. 2.*](#) Violations of state tobacco control laws are petty misdemeanors (up to a \$300 fine). [*☞ Minn. Stat. § 645.241*](#) [*☞ Minn. Stat. § 609.02, subd. 4a.*](#) Local ordinances may provide for more stringent penalties for violations.

Any owner, lessee or person having control of a cigarette vending machine that does not bear the required warning is guilty of a misdemeanor (up to 90 days in jail and/or a \$1,000 fine). [*☞ Minn. Stat. § 325E.07, subd. 2*](#) [*☞ Minn. Stat. § 609.02, subd. 3.*](#)

Sale and Distribution to Underage Persons

COMPLIANCE CHECKS

General Rule: The local licensing authority (county, city, or township) is required to conduct at least one unannounced compliance check each calendar year at each location where tobacco cigarettes, other tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, to verify each retailer's compliance with the state law prohibiting the sale of tobacco to underage persons. Compliance checks must involve individuals between the age of 17 and 20 who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase these products under the direct supervision of a law enforcement officer or an employee of the licensing authority. These age requirements do not affect the age requirements in federal law for persons participating in federally required compliance checks at these locations. [*☞ Minn. Stat. § 461.12, subd. 5.*](#)

Enforcement: Local licensing authority.

ID CHECKS (TCA)

General Rule: State and federal law require tobacco retailers to verify that a purchaser of any tobacco products, including e-cigarettes, is 21 years of age or older through a photo identification card containing the

individual's date of birth. [21 U.S.C. §§ 333](#) [372](#) [387a-1](#) [387\(d\)](#) [21 C.F.R. 1100.3](#) [21 C.F.R. §1140.14\(b\)](#) [Minn. Stat. § 461.22, subd. 2.](#)

Exception: Verification is not required for any person over the age of 30. Although the U.S. Food and Drug Administration (FDA) has not issued its final rules for the Tobacco 21 law passed by Congress in 2019, the FDA is raising its ID check requirements to require checking any person under the age of 30. However, Minnesota's age verification requirement has already been set at age 30. [Minn. Stat. § 461.22, subd. 2.](#)

Note: Minnesota law allows an affirmative defense by any person over 21 who is charged with selling, giving, or otherwise furnishing cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21, to prove by a preponderance of the evidence that they relied "reasonably and in good faith" on proof of age, as demonstrated through one of the following forms of identification:

- A valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, including the photograph and date of birth of the licensed person
- A valid military identification card issued by the U.S. Department of Defense
- A valid passport issued by the United States
- A valid instructional permit that includes a photograph and the date of birth of the person issued the permit
- In the case of a foreign national, a valid passport. [Minn. Stat. § 461.12, subd. 6](#) [Minn. Stat. § 609.685, subd. 1a](#) [Minn. Stat. § 609.685, subd. 1\(b\)](#) [Minn. Stat. § 340A.503, subd. 6](#) [Minn. Stat. § 171.05.](#)

Enforcement: FDA, with the help of other federal agencies and state governments. [21 U.S.C. § 372.](#) In Minnesota, the FDA has partnered with the Department of Human Services to enforce this provision. Local officials, local public health departments, and local licensing authorities.

Penalties

- Any person who violates this federal provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)](#).
- Retailers are subject to progressively steeper, yet capped, civil monetary penalties, dependent upon the number of violations incurred within specific time periods and other factors, which may include whether an approved training program is in place. The fine amounts are adjusted annually for inflation. See the FDA's *Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (*Revised)* (2023) for the maximum amounts in effect at the time of this publication.
- When a retailer or an employee of a retailer violates the state tobacco retailer licensing laws, the licensed retailer is subject to an administrative penalty of \$300 for the first violation and \$600 for a second violation at the same location within 36 months of the initial violation. For a third or subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 will be imposed, and the retailer's license to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products will be suspended for at least seven days and may be revoked. [🔗 Minn. Stat. § 461.12, subd. 2](#). Violations of state tobacco control laws are petty misdemeanors (up to a \$300 fine). [🔗 Minn. Stat. § 645.241](#) [🔗 Minn. Stat. § 609.02, subd. 4a](#). Local ordinances may provide for more stringent penalties for violations.

FALSE IDENTIFICATION

General Rule: It is a violation of state law for a person under the age of 21 to purchase or attempt to purchase cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age. [🔗 Minn. Stat. § 461.12, subd. 4](#) [🔗 Minn. Stat. § 609.685, subds. 2, 2a](#) [🔗 Minn. Stat. § 609.6855, subds. 2, 3](#).

It is a violation of state law for a person 21 or older to lend or knowingly permit a person under the age of 21 to use the person's driver's license, Minnesota identification card, or other type of identification to purchase or attempt to purchase tobacco, a tobacco-related device, an electronic delivery device, or a nicotine or lobelia delivery product. [*☞ Minn. Stat. § 171.171.*](#)

Note: Generally, there is no minimum state age requirement for store employees who sell cigarettes, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. However, if a tobacco product shop allows open display and/or sampling or smoking, then no person under age 21 may be admitted to the store, including employees. Local ordinances may set minimum clerk age requirements.

Seizure of Identification: A retailer may seize a form of identification if reasonable grounds exist to believe that the identification has been altered, falsified, or is being used to violate any law. A retailer who seizes a driver's license or other form of identification must deliver it to a law enforcement agency within 24 hours of seizing it. [*☞ Minn. Stat. § 609.685, subd. 6 ☞ Minn. Stat. § 340A.503, subd. 6.*](#)

Enforcement: Local officials, local public health departments, local licensing authorities, and Minnesota Department of Transportation.

Penalties: A person under the age of 21 who uses a false ID to purchase or attempt to purchase cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is subject to an alternative civil, non-monetary penalty. There are no monetary fines or criminal penalties for this offense under state law. [*☞ Minn. Stat. § 461.12, subd. 4 ☞ Minn. Stat. § 609.685, subd. 2 ☞ Minn. Stat. §§ 609.6855, subds. 2-3.*](#)

The local licensing authority must consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for underage persons who use false ID to purchase or attempt to purchase these products. The licensing authority and

interested persons must consider a variety of alternatives, including, but not limited to, tobacco-free education programs, notice to schools, parents, community service, and other diversion programs. [☞ Minn. Stat. § 461.12, subd. 4](#) [☞ Minn. Stat. § 609.685, subd. 2](#) [☞ Minn. Stat. §§ 609.6855, subds. 2-3.](#)

A person 21 or older who lends or knowingly permits someone under the age of 21 to use the person's driver's license, Minnesota identification card, or other type of identification to purchase or attempt to purchase cigarettes, tobacco, a tobacco-related device, an electronic delivery device, or a nicotine or lobelia delivery product will have their driver's license suspended by the Department of Transportation for up to 90 days. [☞ Minn. Stat. § 171.171.](#)

SALES (OR FURNISHING) TO PERSONS UNDER 21

General Rule: Under state law, it is unlawful to sell, give, or otherwise furnish cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to any person under the age of 21. [☞ Minn. Stat. §§ 461.12, subds. 2-3](#) [☞ Minn. Stat. § 609.685](#) [☞ Minn. Stat. § 609.6855.](#)

Exceptions: A product containing or delivering nicotine or lobelia that has been approved by the U.S. Food and Drug Administration (FDA) for tobacco use cessation or other medical purposes and is being marketed and sold solely for that purpose, may be sold to persons under the age of 21. [☞ Minn. Stat. § 609.6855, subd. 1\(c\).](#) However, the FDA has not approved over-the-counter nicotine replacement therapy for sale to persons under the age of 18, so these products cannot be sold to persons under age 18.

A Native American may furnish tobacco to a Native American under the age of 21 years as part of a traditional spiritual or cultural ceremony. [☞ Minn. Stat. § 609.685, subd. 5\(a\)](#) [☞ Minn. Stat. § 260.755, subd. 12.](#)

Note: Minnesota requires that anyone who sells cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products must verify the age of anyone under age 30 (see [ID Checks \(TCA\)](#)). Licensed retailers are required to display a sign in plain view to provide public notice that selling licensed products to any person under the age of 21 is “illegal and subject to penalties.” [Minn. Stat. § 461.22](#).

Defense: Reasonable reliance on proof of age is an affirmative defense to the charge of an illegal sale to an underage person. [Minn. Stat. § 340A.503, subd. 6](#). (See [ID Checks \(TCA\)](#).)

Enforcement: Local officials, local public health departments, and local licensing agencies. The Minnesota Attorney General also has the authority to investigate and prosecute unlawful business practices. [Minn. Stat. § 8.31](#).

Penalties

- When a retailer or an employee of a retailer violates the state tobacco retailer licensing laws, the licensed retailer is subject to an administrative penalty of \$300 for the first violation and \$600 for a second violation at the same location within 36 months of the initial violation. For a third or subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 will be imposed, and the retailer’s license to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products will be suspended for at least seven days and may be revoked. [Minn. Stat. § 461.12, subd. 2](#). Violations of state tobacco control laws are petty misdemeanors (up to a \$300 fine). [Minn. Stat. § 645.241](#) [Minn. Stat. § 609.02, subd. 4a](#).
- A clerk or other individual who sells, gives, or otherwise furnishes cigarettes, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years may be charged an administrative penalty of \$50. [Minn. Stat. § 461.12, subd. 3](#).

- Local ordinances may provide for more stringent penalties for violations.
- The sale of cigarettes, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years is a petty misdemeanor (fine up to \$300) for a first offense and a misdemeanor (up to 90 days and/or a \$1,000 fine) for a subsequent violation within five years of a previous conviction. [§ Minn. Stat. § 609.685](#) [§ Minn. Stat. § 609.6855](#) [§ Minn. Stat. § 609.02](#).

SALES TO PERSONS UNDER 21 (TCA)

General Rule: It is illegal for any tobacco retailer to sell any nicotine or tobacco products, including e-cigarettes, to any person under the age of 21 years. [§ 21 U.S.C. §§ 333](#) [§ 372](#) [§ 387a-1](#) [§ 387\(d\)](#) [§ 21 C.F.R. §§ 1100.3](#) [§ 1140.14 \(a\),\(b\)](#). (See [Sales to Persons Under 21 \(Synar Amendment\)](#) for other federal law to enforce the minimum legal sales age requirement.)

Enforcement: U.S. Food and Drug Administration (FDA), with the help of other federal agencies and state governments. [§ 21 U.S.C. § 372](#). In Minnesota, the FDA has contracted with the Minnesota Department of Human Services to enforce this provision. For more information on the FDA's enforcement of this federal law, see the FDA's [Tobacco 21 resources](#).

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [§ 21 U.S.C. § 333\(f\)\(9\)](#). Retailers are subject to progressively steeper, yet capped, civil monetary penalties, dependent upon the number of violations incurred within specific time periods and other factors, which may include whether an approved training program is in place. The fine amounts are adjusted annually for inflation. See the FDA's [Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers \(*Revised\)](#) (2023) for the maximum amounts in effect at the time of this publication.

SALES TO PERSONS UNDER 21 (SYNAR AMENDMENT)

General Rule: To receive annual federal funding under the Substance Abuse Prevention and Treatment Block Grant (SABG), a state must have (and must enforce) a law prohibiting the sale of tobacco products to individuals under the age of 21. The state must conduct annual youth purchase surveys (**Compliance Checks**) to monitor compliance with the law and report the results to the FDA. [§ 42 U.S.C. § 300x-26](#) [§ 45 C.F.R. § 96.130](#). (See **Sales to Persons Under 21 (TCA)** for other federal law to enforce the minimum legal sales age requirement.)

Enforcement: The U.S. Food and Drug Administration (FDA) is authorized to monitor each state's compliance and to reduce SABG funding upon demonstration of noncompliance. [§ 45 C.F.R. § 96.130](#). In Minnesota, the FDA contracts with the Minnesota Department of Human Services to conduct compliance checks.

Penalties: A state that reports more than a 20 percent rate of illegal sales to underage persons will have its annual SABG funding reduced by up to 10 percent of the amount originally allocated to the state if the FDA determines that the state is not in substantial compliance with the law. [§ 45 C.F.R. § 96.130](#).

SECTION THREE: ADVERTISING

To prevent and reduce the use of commercial tobacco products, particularly among youth and young adults, federal, state, and local governments have long recognized the importance of regulating tobacco product advertising. The tobacco industry spends billions of dollars annually on advertising and promotion.⁴¹ Tobacco products now include e-cigarettes and related synthetic nicotine products. Many studies have shown the powerful effect of the industry's advertising, especially on the purchasing habits of youth and young adults and their decisions to begin using tobacco and other products containing nicotine.⁴² This section provides an overview of Minnesota and federal advertising restrictions and regulations affecting tobacco products, including those contained in the **1998 Minnesota Settlement**, **1998 Master Settlement Agreement**, and the **2009 Family Smoking Prevention and Tobacco Control Act**.

Federal law limits the ability of states and local governments to regulate cigarette advertising. Under the doctrine of federal preemption, federal law controls, or supersedes, certain state or local laws on topics covered under federal law.⁴³ State and local government regulation of cigarette advertising or promotion based on concerns about smoking or health is generally preempted (barred).⁴⁴

In 2009, the Tobacco Control Act amended federal law, allowing state and local governments to impose "specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of

41 Centers for Disease Control and Prevention, *Economic Trends in Tobacco* (2022), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm.

42 CENTERS FOR DISEASE CONTROL AND PREVENTION, PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2012), <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>.

43 *Federal Cigarette Labeling and Advertising Act of 1966*, 15 U.S.C. § 1331, 15 U.S.C. § 1334.

44 See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001). See also *Chiglo v. City of Preston*, 909 F. Supp. 675 (D. Minn. 1995), where the district court struck down a local ordinance that prohibited all "point of sale" cigarette advertising and promotional materials except for small, generic signs announcing tobacco products for sale.

any cigarettes.”⁴⁵ The ability of state and local governments to regulate the advertising of cigars, smokeless tobacco, and related devices and products is also limited by the First Amendment to the U.S. Constitution.

Despite these federal limitations on state and local control over the advertising of tobacco and related products, the [Minnesota Settlement](#) and [Master Settlement Agreements](#) reached with leading cigarette manufacturers place important restrictions on the ways in which the tobacco industry can advertise its products. While both settlement agreements prohibit manufacturers from targeting children, they differ in certain respects. In areas where the MSA created advertising restrictions not included in the Minnesota Settlement, the Minnesota Attorney General has the ability to incorporate these MSA provisions into Minnesota’s Settlement and enforce them against the settling manufacturers. The settlement provisions apply only to the parties to the settlements, not all tobacco companies. Also, as a result of subsequent amendments, both the Minnesota Settlement and the MSA are now enforceable against the largest U.S. manufacturer of smokeless tobacco through a [Smokeless Tobacco Master Settlement Agreement](#).

Minnesota has entered into other formal legal agreements, called “Assurances of Voluntary Compliance (AVC),” with large national retailers operating in the state. Some of these AVCs restrict tobacco product advertising, as well as the sale of tobacco products. (See [Section Two: Sale, Distribution, & Display](#) and the Public Health Law Center’s publication [Using Retailer AVCs as a Tool in Tobacco Control](#) (2022).)

Also, in 2006, the attorneys general of forty state and other jurisdictions

45 15 U.S.C. § 1334(c). See 23-24 9th St. Grocery Corp. v. N.Y.C. Bd. of Health, 685 F.3d 174 (2d Cir. 2012) (holding that the Federal Cigarette Labeling and Advertising Act preempted a New York City law requiring tobacco retailers to display signs bearing graphic images showing the adverse health effects of smoking). But see Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence, 731 F.3d 71 (1st Cir. 2013) (holding that the Federal Cigarette Labeling and Advertising Act did not preempt a Providence, Rhode Island ordinance that prohibits tobacco retailers from accepting or redeeming coupons and multi-pack discounts for any tobacco products or cigarettes) and Nat’l Ass’n of Tobacco Outlets, Inc. v. City of New York, No. 14-CV-577 (S.D.N.Y. June 18, 2014) (holding that New York City’s ordinance prohibiting tobacco manufacturers and retailers from selling or offering to sell cigarettes and tobacco products below the listed or advertised price does not violate the First Amendment, and is not preempted by either the Federal Cigarette Labeling and Advertising Act or New York State Public Health Law).

reached a settlement with R. J. Reynolds Tobacco Company to stop the marketing of candy, fruit, and alcohol-flavored cigarettes in the United States.⁴⁶ The attorneys general contended that these flavored cigarettes violated the MSA, which prohibits tobacco marketing targeted at children. The outcome of the federal government's racketeering lawsuit against the tobacco industry (*U.S. v. Philip Morris*),⁴⁷ the impact of the flavored cigarette settlement, and federal requirements enacted as a result of the Tobacco Control Act have all impacted the way in which tobacco products are marketed and advertised in Minnesota. For more information on advertising and marketing restrictions, see the Public Health Law Center's publications [Restricting Tobacco Advertising](#) (2022), [Content-Neutral Advertising Laws](#) (2022), and [Commercial Speech Flowchart for Public Health Regulation](#) (2018).

CARTOON CHARACTERS

General Rule: Under the Master Settlement Agreement (MSA) and the Smokeless Tobacco Master Settlement Agreement (STMSA), the settling tobacco companies are prohibited from using cartoons or cartoon-like depictions of people, creatures, animals, or objects (like Joe Camel) in tobacco advertising, promoting, labeling, and packaging. The MSA defines a cartoon as a drawing or other depiction that uses comically exaggerated features or attributes human characteristics or unnatural or extra-human abilities to animals, plants, or other objects. 🔗 [Master Settlement Agreement §§ III\(l\)](#) 🔗 [III\(b\)](#) 🔗 [III\(c\)](#) 🔗 [Smokeless Tobacco Settlement Agreement §§ III\(j\)](#) 🔗 [III\(b\)](#) 🔗 [III\(c\)](#).

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons with questions about whether and how to file a report or

⁴⁶ See R.J. Reynolds Agreement, https://www.azag.gov/sites/default/files/2018-10/RJR_FlavoredCigarettesSettlement.pdf.

⁴⁷ *U.S. v. Philip Morris*, 449 F. Supp. 2d 1 (D. D.C. 2006).

complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

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

General Rule: The Federal Cigarette Labeling and Advertising Act (FCLAA) establishes a comprehensive federal program governing cigarette labeling and advertising (for a summary of the FCLAA’s warning label requirements and its ban on television advertising, see [Cigarette Label and Advertising Warnings \(TCA\)](#) and [Smokeless Tobacco Label and Advertising Warnings \(TCA\)](#)). In sections 1334(b) and (c), the FCLAA also contains a preemption clause that prohibits most state and local laws and regulations from imposing any requirements or prohibitions based on smoking and health with respect to the advertising or promotion of cigarettes. Permissible state and local laws and regulations must constitute “specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.” Similarly, the [Comprehensive Smokeless Tobacco Health Education Act \(CSTHEA\)](#) establishes a federal program governing smokeless tobacco labeling and advertising. In section 4406, the CSTHEA also contains a preemption clause that prohibits state and local laws and regulations from requiring any statements relating to the use of smokeless tobacco products and health on any package or advertisement of a smokeless tobacco product (unless the advertisement is an outdoor billboard advertisement). [§ 15 U.S.C. §§ 1331–1341](#) [§§ 4401-4408](#).

Notes

- The FCLAA applies only to cigarettes. It does not preempt state and local governments from passing laws on the basis of

smoking and health that regulate the advertising or promotion of other tobacco products (such as cigars, e-cigarettes). However, the First Amendment of the U.S. Constitution remains an important consideration regarding the legality of any such law.

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

Therefore, there is no preemption on regulations relating to the advertising or promotion of these products. However, the First Amendment of the U.S. Constitution remains an important consideration regarding the legality of any such law.

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

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

MISLEADING CONSUMERS ABOUT FDA ENDORSEMENTS (TCA)

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

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

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

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

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

OUTDOOR ADVERTISING

General Rule: Under the Minnesota Settlement, the Master Settlement Agreement (MSA) and the Smokeless Tobacco Master Settlement Agreement (STMSA), the settling tobacco companies may not advertise out-of-doors, in enclosed arenas, stadiums, shopping malls, or video game arcades, or in individual ads larger than 14 square feet in size facing outwards on the inside surface of a window. Individual ads placed in such proximity so as to create a “mosaic”-type advertisement, or individual ads that function solely as a segment of a larger advertising unit or series, are also prohibited if the mosaic or series is larger than 14 square feet. The settling tobacco companies may not advertise on or within private or public vehicles or place advertisements at, on, or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar location. [↪ Master Settlement Agreement §§ II\(ii\)](#) [↪ II\(xx\)](#) [↪ III\(c\)](#) [↪ III\(d\)](#) [↪ VII\(c\)](#) [↪ Smokeless Tobacco Settlement Agreement §§ II\(dd\)](#) [↪ II\(rr\)](#) [↪ III\(c\)](#) [↪ III\(d\)](#). Participating tobacco manufacturers may not advertise on billboards, including signs and placards in open-air or enclosed arenas and stadiums. [↪ Minn. Settlement Agreement §§ I\(C\)\(11\)](#) [↪ IV\(C\)](#).

Note: Tobacco settlement provisions apply to the participating tobacco manufacturers who have agreed to the settlement, but not to retailers or the world at large. Thus, unless a manufacturer is in some way involved (e.g., by acquiescing in the use of its trademarks, logos, or brands or by contributing to the costs of an advertisement), these provisions do not generally bar retailers from using outdoor advertisements for tobacco products.

Some local government sign codes restrict the size, number, placement, and type of outdoor signs. These restrictions generally apply to all outdoor signs and are not specific to tobacco advertising. See the Public Health Law Center’s publication [Content-Neutral Advertising Laws](#) (2022).

Exceptions for the Settling Tobacco Manufacturers

- Ads outside an “adult-only facility,” advertising an event with a brand name for the duration of the event, and no more than 14 days before the event. [MSA § 11\(ii\)](#).
- Ads that are less than 14 square feet in size and are either outside a retail store that sells tobacco products or on a window facing outward in such a store. [MSA § 11\(ii\)](#).
- Ads inside a retail store that sells tobacco that are not placed on a window facing outward. [MSA § 11\(ii\)](#).
- Ads inside an “adult-only facility,” meaning those where the operator ensures that no underage person (under the age of 21) is present. [MSA § 11\(c\)](#).
- Billboards advertising a tobacco brand-sponsored event at the site of the event for 90 days before the initial sponsored event and 10 days after the last sponsored event, provided that the advertising does not pertain to any tobacco product. [MSA § 11\(c\)\(3\)\(E\)\(ii\)](#).
- Ads outside a tobacco manufacturing facility. [MSA § 11\(ii\)](#).

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons with questions about whether and how to file a report or complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

PERMISSIBLE FORMS OF LABELING AND ADVERTISING (TCA)

General Rule: A manufacturer, distributor or retailer may advertise cigarettes or smokeless tobacco:

- In periodicals or other publications;
- On billboards, posters, and placards; or
- In promotional material such as direct mail or point-of-sale material, including audio or video presented at the point of sale.

Persons seeking to advertise in an alternative medium must notify the U.S. Food and Drug Administration (FDA) 30 days in advance. The notice must discuss the extent to which the advertising or labeling may be seen by people under the age of 18. [🔗 21 U.S.C. § 387a-1](#) [🔗 21 U.S.C. § 387f\(d\)](#) [🔗 21 C.F.R. § 1140.30\(a\)](#).

Enforcement: FDA, with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372](#).

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333 \(f\)\(9\)](#). Retailers are subject to progressively steeper, yet capped, civil monetary penalties, dependent upon the number of violations incurred within specific time periods and other factors, which may include whether an approved training program is in place. The fine amounts are adjusted annually for inflation. See the FDA's *Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (*Revised)* (2023) for the maximum amounts in effect at the time of this publication.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁴⁸ [🔗 21 C.F.R. § 17.2](#).

⁴⁸ For more information, see *U.S. Food & Drug Admin., Retailer Regulations and Guidance* (2021).

SCHOOL BUSES

General Rule: The Minnesota Department of Education may contract for the sale of advertising space on school buses. Advertising and advertising images that solicit the sale of or promote the use of tobacco products on school buses are prohibited. [↻ Minn. Stat. § 123B.93.](#)

Enforcement: Minnesota Department of Education.

TELEVISION, RADIO, AND OTHER BROADCAST ADVERTISING

General Rule: Cigarettes, smokeless tobacco products, and so-called “little cigars” defined by weight (approximately the size and appearance of a typical cigarette) may not be advertised on television, radio, or any other electronic communication medium under the jurisdiction of the Federal Communications Commission (FCC). [↻ 15 U.S.C. § 1335](#) [↻ 15 U.S.C. § 4402\(c\).](#)

Exception: This prohibition does not apply to cigars that do not meet the specifications as “little cigars,” such as cigarillos, other small cigars, or large cigars, whether low-priced or premium. Cigars may be advertised on television, radio, or other electronic media under the jurisdiction of the FCC. In 2000, the seven largest cigar makers in the U.S. reached settlement agreements with the FCC in which they agreed to include Surgeon General warnings on their cigar labels and advertisements, including television, radio, and Internet ads.⁴⁹

Enforcement: U.S. Department of Justice and, in some situations, the FCC. Information on filing complaints is located on the FCC’s website: <https://consumercomplaints.fcc.gov/hc/en-us>.

Penalties: Violation of this prohibition is a misdemeanor and is punishable by a fine of up to \$10,000. [↻ 15 U.S.C. §§ 1338](#) [↻ 4404.](#)

⁴⁹ See, for example, *In the Matter of Swisher International, Inc., et al., Federal Trade Commission Docket Nos. C-3964 — 70 (Agreement Containing Consent Orders 2000)* and other decisions and orders related to cigar advertising at <http://www.ftc.gov/opa/2001/02/cigarlabel.htm>.

TRANSIT ADVERTISING

General Rule: Cigarette and smokeless tobacco transit ads are prohibited under the Minnesota Settlement, the Master Settlement Agreement, and the Smokeless Tobacco Master Settlement Agreement. Such transit ads are defined as ads on or within private or public vehicles and placed at, on, or within a bus stop, taxi stand, transportation waiting area, train station, airport, or similar location. [↻ Master Settlement Agreement §§ II\(xx\)](#) [↻ III\(d\)](#) [↻ Minn. Settlement Agreement §§ I\(C\)\(14\)](#) [↻ IV\(C\)](#).

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

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons having questions about whether and how to file a report or complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

YOUTH TARGETING

General Rule: Under the Minnesota Settlement, the Master Settlement Agreement, and the Smokeless Tobacco Settlement Agreement, the settling tobacco companies are prohibited from targeting youth directly or indirectly in the advertising, promotion, or marketing of tobacco

products, or taking any action, the primary purpose of which is to initiate, maintain, or increase youth smoking or tobacco use. [☞ *Master Settlement Agreement § III\(a\)*](#) [☞ *Smokeless Tobacco Master Settlement Agreement § III\(a\)*](#) [☞ *Minn. Settlement Agreement \(Consent Judgment V\(D\)\)*](#).

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons having questions about whether and how to file a report or wanting help completing the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

SECTION FOUR: BRANDING, PROMOTION, & SPONSORSHIP

One of the most effective ways tobacco manufacturers market their products is by creating a strong brand image and identity through branding, promotion, and sponsorship. The way in which commercial tobacco products are promoted and used in brand name sponsorships in Minnesota is regulated by both federal and state law. In addition, the **Minnesota Settlement**, **Master Settlement Agreement**, and **Smokeless Tobacco Master Settlement Agreement** contain several provisions that prohibit or restrict specific marketing tactics.⁵⁰ As mentioned in the **Introduction**, the Minnesota Attorney General has the ability to incorporate provisions from the MSA into the Minnesota Settlement and enforce them against the settling manufacturers. This section describes the major federal and state requirements, as well as the settlement provisions, that apply to tobacco industry sponsorships, branding, and promotions, including free or nominal cost samples.

Branding

BRAND NAME LIMITATIONS (TCA)

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

Exception: This provision does not apply to a commercial tobacco product whose trade or brand name was both a tobacco product and a non-tobacco product sold in the U.S. on January 1, 1995.

Enforcement: U.S. Food and Drug Administration (FDA), with the help of other federal agencies and state governments.

50 All proscriptions in settlement provisions apply only to tobacco manufacturers that participated in the settlements, and not to retailers or others who were not parties to the settlements.

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

Notes

- In May 2010, after the FDA became aware of concerns regarding the constitutionality of this provision, the FDA announced how it would exercise its enforcement discretion with respect to 21 Code of Federal Regulations §1140.16(a).⁵¹ The FDA voluntarily suspended enforcement of this provision while the rule is under consideration as long as (1) the trade or brand name of the cigarette or smokeless tobacco product was registered, or the product was marketed, in the United States on or before June 22, 2009; or (2) the first marketing or registration in the United States of the tobacco product occurs before the first marketing or registration in the United States of the non-tobacco product bearing the same name, as long as the tobacco and non-tobacco product are not owned, manufactured, or distributed by the same, related, or affiliated entities.
- On November 17, 2011, the FDA published a proposed rule to amend Section 1140.16(a). 76 Fed. Reg. 71281 (Nov. 17, 2011). The FDA noted that it was aware of concerns raised by the current rule, including its constitutionality, and that, after considering those concerns, it was proposing to narrow the scope of the rule. At the time of publication, the FDA has not issued a final rule and the FDA's enforcement discretion policy in its 2010 guidance is still in effect. In 2013, the FDA issued guidance for industry regarding compliance with the regulations.⁵²

51 See *Guidance for Industry and FDA Staff: Enforcement Policy Concerning Certain Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco* (May 2010).

52 See *Guidance for Industry: Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents* (August 2013).

BRAND NAME MERCHANDISE (MSA/STMSA)

General Rule: Under the Master Settlement Agreement and the Smokeless Tobacco Master Settlement Agreement, the settling tobacco companies are prohibited from selling or distributing apparel (e.g., hats, t-shirts) or other merchandise that bears a tobacco product brand name. (See parallel **Sale and Distribution of Non-Tobacco Items (TCA)**.) [↻ Master Settlement Agreement §§ III\(f\)](#) [↻ III\(c\)\(3\)\(C\)](#) [↻ VII\(c\)](#) [↻ Minn. Settlement \(IV\)\(E\)](#) [↻ Smokeless Tobacco Master Settlement Agreement §§ III\(f\)](#) [↻ III\(c\)\(3\)\(D\)](#) [↻ VII\(c\)](#). This covers giveaway items and anything with a utilitarian function beyond advertising, such as watches, clocks, napkins, or coasters.

Exceptions

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

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons with questions about whether and how to file a report or complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

Promotion

JOINT MARKETING (TCA)

General Rule: A commercial tobacco product (any commercial product made or derived from tobacco that is intended for human consumption) may not be marketed with any other product regulated by the U.S. Food and Drug Administration (FDA), including a drug, food, cosmetic, medical device, or dietary supplement. [↪ 21 U.S.C. §§ 321\(rr\)](#) [↪ 333\(f\)\(9\)](#) [↪ 372.](#)

Enforcement: FDA, with the help of other federal agencies and state governments.

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

LOTTERY

General Rule: Nothing which is or represents a ticket, chance, share, or an interest in a lottery may be placed in or on any package of tobacco products or cigarette papers. [↪ 26 U.S.C. § 5723\(c\).](#)

Enforcement: Federal law enforcement authorities, including the U.S. Department of Justice and the Internal Revenue Service.

Penalties: Violators are subject to a fine of up to \$1,000, up to one year imprisonment, or both. [↪ 26 U.S.C. § 5762\(b\).](#)

MISLEADING ENDORSEMENTS (TCA)

General Rule: It is illegal to make any express or implied statement directed to consumers in tobacco product labeling or through the media or advertising that either conveys, misleads, or would mislead consumers into believing, that a tobacco product is:

- Approved by the U.S. Food and Drug Administration (FDA);

- Endorsed by the FDA;
- Deemed safe by the FDA; or
- Less harmful due to FDA regulation. [🔗 21 U.S.C. § 331\(tt\)](#).

Enforcement: FDA, with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372](#).

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)](#).

PRODUCT PLACEMENT IN MOVIES, TELEVISION, AND OTHER ENTERTAINMENT MEDIA (MSA/MN SETTLEMENT)

General Rule: The settling tobacco companies cannot pay for product placement in movies, television, theater, video games, music videos, concerts, or other performances, nor can they pay for the use, display, reference to, or use as a prop in U.S.-produced movies any item that bears a domestic tobacco product brand name, logo, or other identifying feature. [🔗 Master Settlement Agreement § III\(e\)](#) [🔗 Minn. Settlement § \(IV\)\(D\)](#).

Exception: These provisions do not apply to media not intended for public distribution, media within an adult-only facility (where the operator ensures that no underage persons are present), or instructional media concerning non-conventional cigarettes if viewed only by adult smokers. [🔗 Master Settlement Agreement § III\(e\)](#).

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons having questions about whether and how to file a report or complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

SALE AND DISTRIBUTION OF NON-TOBACCO ITEMS (TCA)

General Rule: Manufacturers and distributors of imported cigarettes or smokeless tobacco may not directly or indirectly market, license, distribute, or sell any item (other than cigarettes or smokeless tobacco or roll-your-own paper) or service bearing anything identifiable with any brand of cigarettes or smokeless tobacco, such as the brand name, logo, symbol, motto, or recognizable color or pattern of colors. [☞ 21 C.F.R. §§ 1140.34\(a\)](#) [☞ 1100.3](#) [☞ 21 U.S.C. § 387a-1](#).

Exception: This provision does not apply to manufacturers of domestic cigarettes or smokeless tobacco.

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

Enforcement: U.S. Food and Drug Administration, with the help of other federal agencies and state governments. [☞ 21 U.S.C. § 372](#).

Penalties: Any person who violates this provision will be subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [☞ 21 U.S.C. § 333\(f\)\(9\)](#).

SAMPLES

General Rule: It is illegal to distribute smokeless tobacco products, cigarettes, cigars, pipe tobacco, or other tobacco products free of charge or at nominal cost for promotional purposes. [🔗 Minn. Stat. § 325F.77.](#)

Exception: Single serving samples of tobacco products may be distributed in certain tobacco stores. (For further limitations, see [federal prohibition below](#) on distribution of free samples.)

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons having questions about whether and how to file a report or complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

Penalties: Civil penalties can include fines of up to \$5,000 for each violation and the AG may seek an injunction (court order) prohibiting the defendant from distributing additional samples. [🔗 Minn. Stat. § 325F.78.](#)

SAMPLES, COUPONS AND PROMOTIONAL OFFERS (TCA)

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

Notes

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

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

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

Exception: This prohibition does not apply to the distribution of free samples of smokeless tobacco in a qualified adult-only facility (QAF), but an adult consumer may only leave with one package containing no more than 15 grams of smokeless tobacco. The distributor of the free samples must take reasonable steps to ensure that free samples are limited to one package per consumer per day. A QAF must:

- Have a law enforcement officer present to check photo IDs and ensure that access is limited only to those who can show they are of at least the minimum age to purchase tobacco;
- Be a temporary structure created for the purpose of distributing free samples of smokeless tobacco;
- Be enclosed by a barrier that is constructed of an opaque material that extends to at least eight feet in height and prevents people from outside the facility from seeing inside the facility unless they make an unreasonable effort to do so;
- Not sell, serve, or distribute alcohol;
- Not be located adjacent to or immediately across from an area used primarily for youth-oriented marketing, promotional, or other activities; and
- Not display any tobacco product advertising on its exterior other than brand names in conjunction with words identifying the QAF.

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

Enforcement: FDA, with the help of other federal agencies and state governments.

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

Note: The FDA is required to adjust these amounts annually to reflect inflation. In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions. [!\[\]\(666e09182d4cd268646ea700ea60dcdf_img.jpg\) 21 C.F.R. § 17.2](#). See the FDA's [*No-Tobacco-Sale Orders to Retailers*](#).

Sponsorship

SPONSORSHIP (MSA/STMSA)

General Rule: Under the Master Settlement Agreement (MSA) and the Smokeless Tobacco Master Settlement Agreement (STMSA), each settling tobacco company may engage in only one “brand name” sponsorship in any 12-month period. The MSA defines a brand name sponsorship as an athletic, musical, artistic, or other social or cultural event for which payment is made (or other consideration is provided) in exchange for use of a brand name or names (1) as part of the name of the event or (2) to identify, advertise, or promote such an event or an entrant, participant, or team in such an event in any other way. A national or multistate series or tour (e.g., Skoal Racing) will count as one brand name sponsorship. The MSA and STMSA prohibit brand name sponsorship of events for which the intended audience consists of a significant percentage of youth (“significant percentage” is not defined); events in which paid contestants are under the age of 18; concerts; and football, basketball, soccer, baseball, or hockey games.

The MSA and STMSA prohibit naming a stadium or arena with a tobacco brand name and prohibit the settling tobacco companies from paying football, basketball, baseball, soccer, or hockey leagues in exchange for use of a brand name. See [Sponsorship \(TCA\)](#). [☞ Master Settlement Agreement §§ II\(j\)](#) [☞ III\(c\)](#) [☞ VII\(c\)](#) [☞ Smokeless Tobacco Master Settlement Agreement §§ II\(h\)](#) [☞ III\(c\)](#) [☞ VII\(c\)](#).

Exceptions: The MSA and STMSA exempt the following sponsorship activities:

- Events at adult-only facilities where no underage person is present during the event or time in question. [☞ MSA II \(c\), \(j\)](#).
- Vehicles bearing a brand name used in a brand name sponsorship. [☞ MSA III\(c\)\(3\)\(E\)](#).
- Outdoor advertising of a brand name sponsorship (of one or more events), placed at the site of the sponsorship no more than 90 days before the start of the initial sponsored event and removed within 10 days after the end of the last sponsored event. [☞ MSA III\(c\)\(3\)\(E\)](#).
- Corporate name sponsorship of any athletic, musical, artistic, or other social or cultural event, or any entrant, participant, or team in such event or series, in the name of the manufacturer of tobacco products (e.g. Altria), provided that the corporate name does not include any brand name of a domestic tobacco product (e.g., Marlboro). [☞ MSA III\(c\)\(4\)](#).

Note: The Tobacco Control Act covers similar topics but includes other prohibitions as well. (See [Sponsorship \(TCA\)](#) below.)

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the Minnesota Attorney General by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons having questions about whether and how to file a report or wanting help completing the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

SPONSORSHIP (TCA)

General Rule: Manufacturers, distributors or retailers may not directly or indirectly sponsor any athletic, social, or cultural event, or any entry or team in any event, through the use of the brand name, logo, symbol, motto, selling message, recognizable color or pattern of colors, or anything identifiable with any brand of cigarettes or smokeless tobacco. [↪ 21 C.F.R. § 1140.34\(c\)](#) [↪ 21 U.S.C. §§ 387f\(d\)](#) [↪ 387a-1](#).

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

Exception: Manufacturers, distributors, or retailers may sponsor events in the name of the corporation that manufactures the tobacco product if: 1) both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995; and 2) the corporate name does not include anything identifiable with any brand of cigarettes or smokeless tobacco. [↪ C.F.R. § 1140.34\(c\)](#).

Enforcement: U.S. Food and Drug Administration (FDA), with the help of other federal agencies and state governments. [↪ 21 U.S.C. § 372](#).

Penalties: Any person who violates this provision is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [↪ 21 U.S.C. § 333\(f\)\(9\)](#). The FDA is required to adjust these amounts annually to reflect inflation. Retailers are subject to progressively steeper, yet capped, civil monetary penalties, dependent upon the number of violations incurred within

specific time periods and other factors, which may include whether an approved training program is in place. The fine amounts are adjusted annually for inflation. See the FDA's *Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (*Revised)* (2023) for the maximum amounts in effect at the time of this publication.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions. [☞ 21 C.F.R. § 17.2.](#)

TOBACCO BRAND NAMES COMBINED WITH NON-TOBACCO PRODUCTS (MSA/STMSA)

General Rule: Commercial tobacco brands may not use the names of a non-tobacco product or any nationally recognized sports team, entertainment group, or celebrity. [☞ *Master Settlement Agreement* §§ III\(j\) ☞ VII\(c\) ☞ *Smokeless Tobacco Master Settlement Agreement* §§ III\(j\) ☞ VII\(c\).](#)

Exception: The rule does not apply to tobacco product brand names in existence as of July 1, 1998.

Enforcement: Minnesota Attorney General (AG). Individuals can report suspected violations to the AG by submitting an online [Consumer Assistance Request Form](#) (available in five languages). Alternatively, individuals can mail the completed form to the: Office of Minnesota Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101. Persons having questions about whether and how to file a report or complete the form can request assistance by calling (651) 296-3353 (Twin Cities calling area) or (800) 657-3787 (outside the Twin Cities).

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

SECTION FIVE: TAXES & PRICING

Federal and state governments tax commercial tobacco products, including cigarettes, chewing tobacco and e-cigarettes, to raise revenue and discourage consumer use. However, the taxes collected do not begin to recoup the costs that these products impose on society. Tobacco-related illnesses cost the United States billions of dollars in health care costs and lost productivity each year. In addition to the significant health and economic impact on Minnesota described in the [Introduction](#), the federal and state tax burden from smoking-caused government expenses in 2018 was \$879 per Minnesota resident.⁵³

Minnesota imposes an excise tax on the sale or possession of cigarettes of \$3.04 per pack of 20, with the tax rate adjusted annually for the change in the average retail price of cigarettes in the state.⁵⁴ An excise tax of 95 percent of the wholesale price applies to most other commercial tobacco products (with exceptions in place for premium cigars and moist snuff).

Increasing the price of commercial tobacco products through taxes is one of the most effective ways to prevent and reduce smoking, especially among youth. Research suggests, for example, that for every 10 percent price increase in the real price of cigarettes, overall cigarette consumption would decrease by approximately 3 to 5 percent and smoking by youth would decline by as much as 7 percent.⁵⁵ By increasing the prices of

53 Campaign for Tobacco-Free Kids, *The Toll of Tobacco in Minnesota* (last updated 2023; see Sources: State Toll of Tobacco), <https://www.tobaccofreekids.org/problem/toll-us/minnesota>.

54 Minnesota Department of Revenue, *Cigarette Tax Requirements 2023*, <https://www.revenue.state.mn.us/cigarette-tax-requirements>.

55 See U.S. Dep't of Health and Human Servs, *The Health Consequences of Smoking*, *supra* note 1, at 788-92; see also Frank Chaloupka et al., *Effectiveness of Tax and Price Policies in Tobacco Control*, 20 TOBACCO CONTROL 235-8 (2011); *Raising Cigarette Taxes Reduces Smoking, Especially Among Kids (and the Cigarette Companies Know It)*, Campaign for Tobacco-Free Kids fact sheet (2023), <https://www.tobaccofreekids.org/assets/factsheets/0146.pdf>.

commercial tobacco products, states can both reduce the number of commercial tobacco users in the state and curb future medical costs.⁵⁶

This section covers taxes imposed on commercial tobacco products sold in Minnesota, as well as tax-sharing agreements covering sales of commercial tobacco products on American Indian reservations in the state. Updates to this section include amendments made to commercial tobacco tax provisions in 2017, 2019, and 2021; the amendments address taxation of tobacco products generally, as well as specific product categories (moist snuff, premium cigars, and electronic cigarettes). These changes have strengthened existing commercial tobacco tax provisions, expanded coverage, and improved administration of the law.

FEDERAL TAXES

General Rule: The manufacturer or importer of commercial tobacco products pays taxes in the amount specified for each type of tobacco product, including cigars, cigarettes, smokeless tobacco, pipe tobacco, e-cigarettes, and roll-your-own tobacco. The federal tax on conventional cigarettes is currently \$1.01 per pack of 20. Small cigars are taxed by unit at the same rate as cigarettes. All other cigars are taxed based on manufacturer prices with a cap on the maximum. The federal taxes on smokeless tobacco, pipe tobacco, and roll-your-own tobacco are calculated according to weight. [🔗 26 U.S.C. §§ 5701-04](#) [🔗 5761-63](#).

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

Enforcement: U.S. Internal Revenue Service and the Bureau of Alcohol, Tobacco, and Firearms.

56 Michael Parks, *Behavioral Change in Response to a Statewide Tobacco Tax Increase and Differences Across Socioeconomic Status*, 73 ADDICTIVE BEHAVIORS 209-25 (2017) (finding that increasing tobacco taxes has a powerful impact on the behaviors of people who smoke), <https://www.sciencedirect.com/science/article/abs/pii/S030646031730196X>.

Penalties: Violators of federal taxation laws are subject to substantial civil and criminal penalties, which can range from \$1,000 to \$10,000 in fines. In some cases, violators must pay five times the tax liability on contraband tobacco products; in other cases, the penalty can include up to five years of jail time. Contraband tobacco must also be forfeited. [🔗 26 U.S.C. §§ 5761-5763.](#)

MINNESOTA TAXES

Cigarettes

Definition: A “cigarette” is defined as “any roll for smoking made wholly or in part of tobacco that weighs 4.5 pounds or less per thousand:

- With a wrapper or cover made of paper or another substance or material except tobacco; or
- Wrapped in any substance containing tobacco, however labeled or named, which, because of its appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to or purchased by consumers as a cigarette, as defined [above], unless it is wrapped in whole tobacco leaf and does not have a cellulose acetate or other cigarette-like filter.”

The cigarette definition includes so-called “little cigars” that weigh 4.5 pounds per thousand or less and meet the other characteristics specified in the definition, even if they are labeled as cigars, little cigars, small cigars, cigarillos, mini-cigarillos, or otherwise. [🔗 Minn. Stat. § 297F.01, subd. 3.](#)

General Rule: Minnesota imposes an excise tax on all cigarettes, which is collected from the distributor, who must purchase proof-of-tax payment stamps to be affixed to product packaging. [🔗 Minn. Stat. § 297F.25.](#) The excise tax on cigarettes weighing three pounds or less per thousand — nearly all cigarettes — is \$3.04 per pack of 20. The excise tax is imposed on a “per unit” basis — that is, on the number of cigarettes sold, not as a percentage of the sale price. [🔗 Minn. Stat. § 297F.05, subd. 1.](#) In addition to the excise tax, a tax in lieu of the state sales tax is imposed on each pack of cigarettes. The Department of Revenue sets the tax annually based on a survey of Minnesota retail cigarette prices. As of January 1, 2023, the

in-lieu rate is 69.2 cents per pack. Combined, the excise tax and the in-lieu of sales tax result in a total cigarette tax rate of \$3.73 per pack in 2023.⁵⁷

Fee in Lieu of Settlement: The state collects an additional fee of 50 cents per pack from anyone who sells, distributes, or possesses cigarettes in the state that are made by manufacturers *not* covered by the 1998 [Minnesota Settlement Agreement](#). (See [Minnesota's Settlement Agreement](#) and the [Master Settlement Agreement](#) in the [Introduction](#).) [☞ Minn. Stat. § 297F.24.](#)

Use Tax: A use tax applies to consumers who purchase untaxed cigarettes (for example, over the Internet or in-person in another state) for use in Minnesota. The use tax is the same as the rate of the excise tax. The use tax does not apply to the use or storage of cigarettes in quantities of 200 or fewer (i.e., a carton) in the possession of any one consumer if the consumer carried the cigarettes into Minnesota. For larger quantities brought into the state and for any quantity shipped to the consumer in Minnesota, the use tax applies. [☞ Minn. Stat. § 297F.06.](#)

Vending Machines: A cigarette vending machine must be designed to allow at least partial visibility of contents. When any package exposed to view does not carry the required tax stamp, it is presumed that all packages contained in the device are unstamped and contraband. [☞ Minn. Stat. § 297F. 21, subd. 1\(b\).](#)

Other Tobacco Products

Definition: For tax purposes, “tobacco products” (other than cigarettes) includes any commercial product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product. The term includes “nicotine solution products” (commonly known as electronic cigarettes or e-cigarette products). [☞ Minn. Stat. § 297F.01, subd. 19.](#)

⁵⁷ Minnesota Department of Revenue, *Cigarette Tax Requirements 2023*, <https://www.revenue.state.mn.us/cigarette-tax-requirements>.

General Rule: Minnesota imposes an excise tax on all commercial tobacco products, which is collected from the distributor. The excise tax on most commercial tobacco products (other than cigarettes, moist snuff, and premium cigars), is currently 95 percent of the wholesale sales price, which is the price at which a distributor purchases a tobacco product. 🔄 *Minn. Stat. § 297F.05, subd. 3.* The wholesale sales price includes any applicable federal taxes, shipping costs, and packaging costs. Since this tax is a percentage of price, it fluctuates as the prices of the products change. Unlike cigarettes, which are exempted from local sales tax, a local sales tax is applied to other tobacco products at the point of retail sale. 🔄 *Minn. Stat. § 297F.25.*

Exceptions

- **Moist Snuff:** A minimum tax applies to each container of moist snuff weighing no more than 1.2 ounces, which is equal to the greater of the tax on tobacco products (95 percent of wholesale price) or the rate on a regular pack of 20 cigarettes. When multiple containers are packaged together, each container is subject to the minimum tax. When a container weighs more than 1.2 ounces, the minimum tax is equal to the greater of the tax on tobacco products (95 percent of wholesale price) or the tax on a regular pack of 20 cigarettes, multiplied by the number of ounces in the container, divided by 1.2. 🔄 *Minn. Stat. § 297F.05, subd. 3 (b)-(d).*
- **Premium Cigars** (hand-constructed, with a wrapper made entirely from whole tobacco leaf, filler and binder made entirely of tobacco except for adhesives, etc., and a wholesale price of \$2 or more): The tax on a premium cigar is equal to the lesser of 95 percent of the wholesale sales price of the premium cigar or \$0.50 per premium cigar. 🔄 *Minn. Stat. § 297F.05, subd. 3a.*

Exemptions

- FDA-approved tobacco cessation, tobacco dependence, or other products for medical purposes: Any tobacco product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely

for such an approved purpose is exempt from this tax. [*☞ Minn. Stat. § 297F.01, subd. 19.*](#)

Use Tax: A use tax applies to consumers for the use or storage of untaxed tobacco products in the state. [*☞ Minn. Stat. § 297F.05, subd. 4.*](#) The use tax is set at the same rate as the tax on other tobacco products. The use tax does not apply if the tobacco products:

- Have an aggregate cost in any calendar month to the consumer of \$50 or less; and
- Were carried into this state by that consumer. [*☞ Minn. Stat. § 297F.06, subd. 4.*](#)

Nicotine Solution Products

General Rule: An amendment enacted in 2019 defined electronic cigarette products as “nicotine solution products,” taxing them as “tobacco products.” An additional amendment, in 2021, updated the definition of “nicotine solution products.” Taxed products include any cartridge, bottle, or other package that contains nicotine, whether made or derived from tobacco or sources other than tobacco, that is in a solution consumed, or meant to be consumed, through the use of a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means that produces vapor or aerosol. [*☞ Minn. Stat. § 297F.01, subd. 22b\(b\).*](#) Any nicotine solution product, regardless of whether the nicotine it contains is made or derived from tobacco or is a form of synthetic nicotine, comes within the meaning of, and is taxed as, a tobacco product, at 95 percent of the wholesale price. Taxed products include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic nicotine delivery system, electronic vaping device, electronic vape pen, electronic oral device, electronic delivery device, or similar product or device, and any batteries, heating elements, or other components, parts, or accessories sold with and meant to be used in consuming a solution containing nicotine. [*☞ Minn. Stat. § 297F.01, subd. 22b\(c\).*](#)

Wholesale Sales Price: “Wholesale sales price” was amended in 2019 to mean the price at which a distributor purchases a kit that contains a nicotine solution product and a device, component, part, or accessory. The wholesale sales price includes any applicable federal excise taxes,

freight charges, or packaging costs, regardless of whether included in the purchase price. [☞ Minn. Stat. § 297F.01, subd. 23.](#)

Exception: If a distributor also sells separately the same nicotine solution as contained in the kit *and* can isolate the cost of that item, then the wholesale price of the kit is only the price at which the distributor separately purchases the nicotine solution, plus any applicable federal excise taxes, freight charges, or packaging costs, regardless of whether they are included in the purchase price.

Enforcement: Minnesota Department of Revenue.

Penalties: Distributors who violate these provisions are subject to penalties ranging from a misdemeanor for failing to file a tax return or remit taxes, to a gross misdemeanor for knowingly failing to file a document or remit taxes, to a felony for filing false or fraudulent returns. Distributors may have their licenses revoked and cannot be issued a new license or have a license renewed if they: owe \$500 or more in delinquent taxes; after demand, fail to file tax returns; have had a license or permit revoked within the past two years; or have been convicted of a crime involving covered products. [☞ Minn. Stat. §§ 297F.01, subd. 23](#) [☞ 297F.04](#) [☞ 297F.20.](#)

CONTRABAND

General Rule: Cigarettes, tobacco products, or other contraband property may be seized by the Department of Revenue, authorized agents, or any sheriff or police officer, with or without process, and are subject to forfeiture. Contraband includes but is not limited to: cigarette packages without cigarette stamps affixed; a vending device when the Department of Revenue or authorized agents are denied access for inspection purposes; a device such as a motor vehicle, trailer, snowmobile, airplane, or boat that is used with the knowledge or consent of the owner to store or transport more than 5,000 contraband cigarettes or untaxed products intended for sale in Minnesota; cigarettes or other tobacco products obtained from an unlicensed seller; tobacco products on which the distributor has not paid the taxes; cigarette packages or tobacco products held in inventory or offered for sale for which there is no invoice from a licensed seller; cigarette

packages imported illegally under federal law; and cigarette packages, including the cigarettes within, that do not meet packaging and marking requirements of *Minn. Stat. § 299F.853*. For more examples of contraband items, see *Minn. Stat. § 297.21, subd. 2*.

Enforcement: Minnesota Department of Revenue. If a claimant unsuccessfully challenges the forfeiture in civil court and the court enters a judgment of forfeiture, the Department of Revenue may authorize using the forfeited property to enforce criminal provisions of state or federal law, arrange for the forfeited cigarettes or other tobacco products to be destroyed and/or arrange for any other type of forfeited property to be sold at public auction. [*Minn. Stat. § 297F.21, subd. 3*](#).

Penalties: Possible penalties include: seizure; forfeiture; civil penalties (e.g., for tax evasion, false or fraudulent filings of tax returns, intentional disregard of tax laws or rules, failure to make or file a tax return, or failure to pay tax); and criminal penalties (e.g., for failing or knowingly failing to file or pay taxes, filing false or fraudulent returns, possessing, receiving, or transporting contraband, counterfeiting, making off-reservation sales of cigarettes packages bearing a cigarette stamp from an Indian reservation, making sales after revocation of license, or making purchases from unlicensed sellers). Criminal penalties range from misdemeanor to gross misdemeanor or felony, depending on the scope of wrongdoing, and are in addition to any civil penalties imposed.

DELIVERY SALES

General Rule: Out-of-state retailers must register with the Department of Revenue before making any “delivery sales” (as defined in *Minn. Stat. § 325F.781*) of cigarettes and other commercial tobacco products to consumers in Minnesota. In addition, out-of-state retailers and other retailers must collect and pay any required use tax to the Minnesota Department of Revenue. They must give the purchaser of products a receipt for the tax paid, and they must file a monthly return with the Department of Revenue, showing the quantities of the commercial tobacco products delivered and paying any taxes due.

Enforcement: Minnesota Department of Revenue.

Penalties: In addition to any penalties under chapter 297F, a retailer making delivery sales who fails to pay any tax due under chapter 297F must pay a penalty of 50 percent of the unpaid tax due. [↗ Minn. Stat. §§ 297F.19-20](#) [↗ Minn. Stat. § 325F.781, subd. 6.](#)

DEPOSIT OF TAX PROCEEDS

General Rule: Revenue received from cigarette taxes, including penalties, interest, license fees, and other sources of revenue are deposited by the Department of Revenue in the state treasury. The revenue must be credited as follows: \$22,250,000 per year to the University of Minnesota Academic Health Center special revenue fund, appropriated to the University's Board of Regents for Academic Health Center funding; \$3,937,000 per year to the medical education and research costs account in the special revenue fund, annually appropriated to the Minnesota Department of Health for distribution pertaining to medical education under [Minn. Stat. § 62J.692, subd. 4](#); the balance of revenues from taxes, penalties, interest, license fees, and other miscellaneous sources is credited to the state's general fund.

Enforcement: N/A

Penalties: N/A

INFORMATIONAL REPORTING

General Rule: Manufacturers of commercial tobacco products sold in the state must file a monthly report with the Minnesota Department of Revenue of all sales of tobacco products to Minnesota licensed distributors, subjobbers (resellers or vending machine operators), retailers, or any locations within the state. [↗ Minn. Stat. § 297F.12, subd. 3](#). Licensed cigarette distributors, manufacturers, and all others who import cigarettes into Minnesota or possess, receive, store, or warehouse cigarettes in Minnesota, who have not yet paid taxes as described in this section, must file monthly informational reports to the Minnesota Department of Revenue in the form and manner prescribed by the Department. [↗ Minn. Stat. § 297F.11](#). Cigarette consumers who transport more than 200 cigarettes into the state and common carriers

transporting cigarettes or other tobacco products into the state that are delivered somewhere other than public warehouses of first destination also must file informational reports. [☞ Minn. Stat. § 297F.11.](#)

Enforcement: Minnesota Department of Revenue.

Penalties: Penalties can range from fines to license suspension or revocation.

REQUIRED RECORDS AND INVOICES

General Rule: Cigarette and commercial tobacco products distributors must keep complete and accurate records at each licensed place of business for at least 3.5 years. Required records include itemized invoices of all cigarettes and other tobacco products held, purchased, manufactured, or from out of state, and all sales made, other than sales to the ultimate consumer. Subjobbers and retailers also must preserve itemized invoices of all cigarettes and tobacco products purchased at each retail location or a central location for at least one year or as long as the invoiced items remain available for sale and in their possession, whichever period is longer. Representatives and authorized agents of the Minnesota Department of Revenue may enter these places of business at any time during usual business hours, without a search warrant, to inspect the premises, including required records and invoices, as well as cigarette packages, tobacco products, and vending machines on the premises. Similar records of cigarette and tobacco products deliveries and shipments must be kept for one year by public warehouses of first destination in Minnesota and made available to the Department of Revenue for inspection. [☞ Minn. Stat. § 297F.13.](#)

Enforcement: Minnesota Department of Revenue.

Penalties: Violation of these provisions can range from civil or criminal misdemeanor penalties to license revocation. [☞ Minn. Stat. §§ 297F.13, subd. 1 ☞ Minn. Stat. §§ 297F.19-20, subd. 12](#) (a violation of Ch. 297F not otherwise specified is subject to a misdemeanor).

SALES ON INDIAN RESERVATIONS

General Rule: The Minnesota Department of Revenue has entered into tax agreements with the governing bodies of the eleven federally recognized Native American Tribes in the state. [*Minn. Stat. § 270C.19*](#). See Minnesota Department of Revenue, [Tribal Government Agreements \(2023\)](#). Sales tax on cigarettes and other commercial tobacco products sold on these reservations is collected and remitted to the Department of Revenue, with a portion of that tax returned to the Tribal governments based on each Tribe's agreement. Under terms of the agreements, retailers on the reservation are required to purchase their cigarettes and other commercial tobacco products from state-licensed distributors, who collect applicable excise taxes as part of their sale price. Since 2005, the distributors also collect the applicable sales tax on cigarettes. On-reservation retailers are required to collect and remit to the state the applicable sales tax on all sales of cigars, snuff, and other commercial tobacco products other than cigarettes. The agreements also require the state to make payments to the Tribes based on the amount of cigarettes and other commercial tobacco products sold on the reservation and the Tribal reservation population. All cigarettes sold on the reservation of a participating Tribe must contain an Indian reservation cigarette stamp. [*Minn. Stat. § 297F.08, subd. 4*](#). Such cigarettes may be sold only on the reservation.

Commercial tobacco product wholesalers may set aside a portion of their stock for non-taxed sales to the governing body of any federally recognized Tribe. This portion must be kept separate from stamped stock and may be sold only to meet the personal consumption needs of enrolled members of the Tribe offering the unstamped cigarettes for sale. A retailer who disposes of unstamped or untaxed stock other than to an enrolled Tribal member must collect tax on the transaction and remit the tax to the Department of Revenue. [*Minn. Stat. § 297F.07*](#). This law, however, does not apply to any reservation with which the Department has a tax agreement.

Enforcement: Minnesota Department of Revenue. Also, each Tribal government has agreed to enforce any Tribal laws needed to implement the agreement and to assist the Minnesota Department of Revenue, when requested.

Penalties: See general tax penalty information elsewhere in this [Taxes & Pricing](#) section.

UNLICENSED SELLERS

General Rule: It is illegal to function as a distributor or subjobber of cigarettes or other commercial tobacco products, including nicotine solution products, at any place of business in Minnesota, without a license. [☞ Minn. Stat. § 297F.03, subd. 1.](#) It is also illegal to sell products after one's license is revoked or for a retailer or subjobber to purchase cigarettes or tobacco products from an unlicensed seller. [☞ Minn. Stat. § 297F.20.](#)

Enforcement: Minnesota Department of Revenue.

Penalties: Civil and criminal penalties vary, ranging from a misdemeanor to a felony, for a range of potential violations, including intentional disregard of law or rules; tax evasion; failure to file returns or pay taxes, knowing failure to file or pay taxes; false or fraudulent returns; counterfeiting (making or possessing an altered, forged, or counterfeited stamp); possessing, receiving, or transporting unstamped cigarettes or untaxed tobacco products; selling cigarettes or tobacco products after revocation of one's license; purchasing cigarettes or tobacco products from an unlicensed seller. [☞ Minn. Stat. § 297F.19-20.](#)

UNSTAMPED CIGARETTES AND UNTAXED TOBACCO PRODUCTS

General Rule: Cigarette packages must be stamped to show proof of tax payment. The cost of a tax stamp varies from year to year and is equal to the cost of production of the stamp and the tax value of the stamp. It is illegal to possess, receive, or transport unstamped cigarette packages. It is also illegal for consumers outside an Indian reservation to sell or offer to sell cigarette packages with a cigarette stamp from an Indian reservation. [☞ Minn. Stat. §§ 297F.08](#) [☞ 297F.20 subd. 7.](#)

Enforcement: Minnesota Department of Revenue.

Penalties: Penalties are determined by the number of unstamped cigarettes, or value of untaxed commercial tobacco products, and range from a misdemeanor to a felony. [!\[\]\(a3ea015cc5581cad732d1eb81613fe7b_img.jpg\) Minn. Stat. § 297F.20.](#)

SECTION SIX: DISCLOSURE & REPORTING

Over seventy compounds in commercial tobacco smoke are known human carcinogens.⁵⁸ Little is known about the relative lethality of particular brands of cigarettes and commercial tobacco products. Federal and state law requires commercial tobacco manufacturers to submit periodic reports on ingredients in their products — both in their unburned state and in the smoke they emit. Manufacturers, as well as distributors and retailers operating in Minnesota, also must disclose other information to the state. For example, state law requires manufacturers to submit certificates to the fire marshal attesting that cigarettes sold in Minnesota meet “fire-safety” standards. These reports are designed to serve public health and safety objectives, given the harmful effects of exposure to tobacco smoke and the serious fire hazard posed by unattended burning cigarettes.

Unfortunately, even reports that are public information fall far short of full public disclosure. This section presents an overview of federal and state reporting and disclosure requirements for manufacturers, distributors, and retailers of commercial tobacco products in Minnesota.

CONTENT DISCLOSURES TO THE PUBLIC (TCA)

General Rule: Each manufacturer or importer of commercial tobacco products is required to submit information on the content of its products. The U.S. Food and Drug Administration (FDA) will determine whether tar and nicotine yields of cigarettes and other commercial tobacco products must be disclosed on product packages and advertisements. The FDA can require that the levels of other product constituents be disclosed on product packaging or advertisement inserts if that would benefit public health. The FDA is required to maintain a list of harmful and potentially harmful tobacco product constituents and share it with the public. [🔗 21 U.S.C. § 387d](#) [🔗 15 U.S.C. § 1333](#). The current list, which contains 93

58 Centers for Disease Control & Prevention, *Health Effects of Secondhand Smoke* (2022), http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm.

harmful and potentially harmful constituents, was last updated by the FDA in 2019 and is published on the agency's website.⁵⁹

Exception: Mandatory disclosures of ingredients of cigarette and other commercial tobacco products, other than tar or nicotine, cannot appear directly on the face of any cigarette package or advertisement.

Enforcement: The U.S. Attorney General is authorized to enforce this provision, acting through several U.S. attorneys. A violation is also an unfair or deceptive act or practice and is subject to enforcement under the Federal Trade Commission Act. [🔗 21 U.S.C. § 387n](#) [🔗 15 U.S.C. §§ 1336](#) [🔗 1339](#).

Penalties: A violation is a misdemeanor, which subjects the violator to a fine of up to \$10,000. [🔗 15 U.S.C. § 1338](#).

DISCLOSURE OF PAYMENTS LIKELY TO AFFECT PUBLIC POLICY

General Rule: Manufacturers subject to Minnesota's 1998 settlement agreement must disclose to the Minnesota Attorney General's office and the Governor's office information about any payment made to a "lobbyist" or "lobbyist principal" used (directly or indirectly) to influence legislative or administrative action or the official action of state or local government in Minnesota in any way relating to commercial tobacco products or their use. These disclosures are public information. [🔗 Minn. Settlement Agreement \(IV\)\(B\)](#). A "lobbyist" means anyone engaged for pay or compensation of more than \$3,000 from all sources in any year, or who spends more than \$250 in any year, to attempt to influence action described above. [🔗 Minn. Stat. § 10A.01, subd. 21](#). A "principal" is any individual or association that spends more than \$500 in the aggregate in any calendar year to engage, compensate, or authorize the expenditure of money by a lobbyist or who spends at least \$50,000 in any calendar year on efforts to influence action described above. [🔗 Minn. Stat. § 10A.01, subd. 33](#).

59 U.S. Food & Drug Admin., *Harmful and Potentially Harmful Constituents (HPHCs)*, <http://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm20035927.htm>.

Commercial tobacco manufacturers must disclose any payment they make to a third party for attending, offering testimony at, or participating before a state or local government hearing in Minnesota in any way relating to commercial tobacco products or their use, and any payment they make directly or indirectly to or for the benefit of a state or a local official in Minnesota. These disclosures are public information. [☞ Minn. Settlement Agreement \(IV\)\(B\).](#)

Exception: Payments disclosed do not include “contributions” as defined under state and federal law. [☞ Minn. Stat. § 10A.01, subd. 11](#) [☞ 11 C.F.R. § 100.51.](#)

Enforcement: Minnesota Attorney General (AG).

Penalties: The AG may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

DISTRIBUTOR AND RETAILER RECORDKEEPING REQUIREMENTS

General Rule: Cigarette and commercial tobacco products distributors, retailers, and subjobbers, such as vending machine operators, must retain itemized invoices of all cigarettes and other commercial tobacco products purchased, and the names and addresses of those to whom they provided products, other than the ultimate consumer. Retailers and subjobbers must preserve a legible copy of each invoice for one year from the date of the invoice or as long as the product listed on the invoice is available for sale or in their possession, whichever period is longer. Distributors must keep these invoices at their licensed places of business; retailers and subjobbers must retain them at their retail locations or a central location close enough to allow the invoices to be made available to the Minnesota Department of Revenue within one hour of request. [☞ Minn. Stat. § 297F.13.](#)

Enforcement: Minnesota Department of Revenue. Department representatives are authorized to enter the place of business of a distributor or retailer during normal business hours to inspect required records, products, and vending devices on the premises to ensure compliance with the law.

Penalties: The Minnesota Department of Revenue may suspend or revoke the licenses of violators of this provision. Violations are also a misdemeanor (up to 90 days and/or a \$1,000 fine). [*☞ Minn. Stat. §§ 297F.04 ☞ 297F.20, subd. 12.*](#)

FIRE SAFETY CERTIFICATION

General Rule: Manufacturers of cigarettes sold in Minnesota must submit to the state fire marshal a written certification attesting that each type of cigarette listed has been properly tested to ensure compliance with reduced ignition propensity (“fire safety”) standards. Laboratories test samples of each cigarette type to determine whether they meet standards set by the American Society of Testing and Materials or an alternate method approved by the state fire marshal. Manufacturers must pay a \$250 fee for each type of cigarette listed in a certification. [*☞ Minn. Stat. § 299F.852.*](#)

Enforcement: The Minnesota Fire Marshal, Minnesota Attorney General, and Minnesota Department of Revenue enforce this law. [*☞ Minn. Stat. §§ 299F. 854, subd. 6 ☞ 299F.855.*](#)

Penalties: Knowingly making a false certification is punishable by a civil penalty of at least \$75,000 for a first offense and at most \$250,000 for a subsequent offense. Other violations are punishable by civil penalties of up to \$1,000 for a first offense and up to \$5,000 for subsequent offenses. [*☞ Minn. Stat. §§ 299F.854, subd. 3-4.*](#)

INGREDIENTS REPORT

General Rule: Manufacturers of commercial tobacco products sold in the state must provide the Minnesota Department of Health with an annual report identifying, for each brand of product, whether any of the following substances are present in detectable levels in its unburned state and, if the product is typically burned when consumed, burned state: ammonia or any compound of ammonia; arsenic; cadmium; formaldehyde; and lead. Manufacturers need not report on the other carcinogenic and toxic constituents. These reports are public information. [*☞ Minn. Stat. § 461.17.*](#)

Federal law requires manufacturers of smokeless tobacco products and manufacturers, packagers, and importers of cigarettes to provide an annual list of ingredients added to their products. These lists are not brand-specific, do not identify the relative amount of each ingredient, and are not made public. [🔗 15 U.S.C. §§ 1335a\(a\)](#) [🔗 4403\(a\)\(1\)](#).

Enforcement: The Minnesota Department of Health and the Minnesota Attorney General enforce the Minnesota law. [🔗 Minn. Stat. § 461.17, subd. 1](#). The U.S. Department of Health and Human Services enforces the federal law. [🔗 15 U.S.C. §§ 1332\(9\)](#) [🔗 4401\(a\)\(1\)](#).

Penalties: Violation of the state law is a petty misdemeanor (up to a \$300 fine). [🔗 Minn. Stat. § 645.241](#) [🔗 Minn. Stat. § 609.02, subd. 4a](#). The Minnesota Department of Health or the Minnesota Attorney General may seek injunctive action to stop violations of this provision. A violation of the federal law is a misdemeanor carrying a fine of up to \$10,000. [🔗 15 U.S.C. §§ 1338](#) [🔗 4404\(a\)\(2\)](#).

NICOTINE YIELD REPORT

General Rule: Federal law requires smokeless tobacco product manufacturers, packagers, or importers to report the quantity of nicotine in their products annually. [🔗 15 U.S.C. § 4403\(a\)\(1\)\(B\)](#).

Enforcement: U.S. Department of Health and Human Services, Federal Trade Commission, and U.S. Attorney General.

Penalties: Violation of the federal law is a misdemeanor carrying a fine of up to \$10,000. [🔗 15 U.S.C. § 4404\(a\)\(2\)](#).

PACT ACT REPORTING REQUIREMENTS

General Rule: The Prevent All Cigarette Trafficking Act (PACT Act) requires sellers of cigarettes, smokeless tobacco, roll-your-own tobacco products, and all forms of electronic nicotine delivery devices (including e-cigarettes, their component parts, and accessories) to register and file monthly reports with the Minnesota Department of Revenue no later than the 10th day of each calendar month. The U.S. Attorney General will compile

a list of delivery sellers that have not registered or complied with this law. Common carriers such as UPS and FedEx are prohibited from delivering packages for delivery sellers that are on the list. For more on the PACT Act, see **Internet, Mail Order, and Delivery Sales**. [§ 15 U.S.C. § 376](#) [§ 18 U.S.C. § 1716E](#) [MN Dept of Revenue PACT Act](#) (reporting requirements)

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

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

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

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

PUBLIC DISCLOSURE OF NICOTINE YIELD REPORTS

General Rule: Nicotine yield ratings for smokeless tobacco products and cigarettes are disclosed to the public. [§ 15 U.S.C. § 4403\(a\)\(1\)\(B\)](#) [§ 32 Fed. Reg. 11178 \(Aug. 1, 1967\)](#) [§ 62 Fed. Reg. 48158 \(Sept. 12, 1997\)](#) [§ 73 Fed. Reg. 40350 \(July 14, 2008\)](#).

Enforcement: Federal Trade Commission.

Penalties: Violation of the federal law is a misdemeanor carrying a fine of up to \$10,000. [§ 15 U.S.C. § 4404\(a\)\(2\)](#).

RECORD-KEEPING (TCA)

General Rule: The U.S. Food and Drug Administration (FDA) must issue regulations regarding how any person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports commercial tobacco products should establish and maintain records. Some records must be furnished for inspection upon request by the government to aid an investigation about illicit trade, smuggling, or counterfeit products. [☞ 21 U.S.C. § 387t\(b\)](#).

Exception: Retailers do not have to maintain records of individual purchasers who purchase tobacco products for personal consumption. The FDA must have the express written consent of an Indian Tribe before inspecting records located in a reservation.

Enforcement: The FDA is authorized to enforce this provision with the help of other federal agencies and state governments. [☞ 21 U.S.C. § 372](#).

Penalties: Violators are subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [☞ 21 U.S.C. § 333\(f\)\(9\)](#).

REGISTRATION OF TOBACCO MANUFACTURERS (TCA)

General Rule: Owners and operators engaged in the manufacture, preparation, compounding, or processing of a commercial tobacco product sold or distributed in any state must register their establishments, both foreign and domestic, with the U.S. Food and Drug Administration (FDA). Registration information will be made available to the public. [☞ 21 U.S.C. § 387e](#).

Enforcement: FDA, with the help of other federal agencies and state governments. [☞ 21 U.S.C. § 372](#).

Penalties: Violators are subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [☞ 21 U.S.C. § 333\(f\)\(9\)](#).

REQUIRED PRODUCT DISCLOSURES (TCA)

General Rule: Commercial tobacco product manufacturers and importers or their agents must provide the U.S. Food and Drug Administration (FDA) with information, including:

- A list of the ingredients used in each product;
- A description of the content, delivery, and form of nicotine in each product;
- A list of product constituents (including smoke constituents) that are harmful or potentially harmful to health, as well as reports of required testing; and
- All documents related to health, toxicological, behavioral, or physiological effects of products. [🔗 21 U.S.C. § 387d.](#)

Note: Upon request, commercial tobacco manufacturers and importers must furnish the FDA with any or all documents (including underlying scientific information) relating to tobacco product research activities.

Enforcement: The FDA is authorized to enforce this provision with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372.](#)

Penalties: Violators are subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. Any person who intentionally violates this provision is subject to a civil monetary penalty of up to \$250,000 per violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after the FDA provides written notice, the violator will be subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days after the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)\(B\).](#)

USER FEES (TCA)

General Rule: Commercial tobacco product manufacturers must pay the U.S. Food and Drug Administration (FDA) a quarterly fee that is earmarked for tobacco regulation activities. The annual fee varies by fiscal year, class of tobacco products, and the amount of each class for which a manufacturer is responsible. [🔗 21 U.S.C. § 387s](#).

Enforcement: The FDA is authorized to enforce this provision with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372](#).

Penalties: Violators are subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)](#). Unpaid user fees are subject to penalties and interest. [🔗 21 U.S.C. § 387s](#).

SECTION SEVEN: WARNING LABELS

A year after the release of the first U.S. Surgeon General's Report on smoking and health in 1964, the federal government required health warning labels on all cigarette packages, although the original labels were significantly weaker and narrower than those in effect today. Indeed, evidence now indicates that commercial tobacco manufacturers actually welcomed the introduction of these weak warnings. They knew their products were dangerous and that sick and dying customers would sue them. With the adoption of weak warnings, cigarette companies could argue in court that the users had been informed of the hazards of smoking and had made the choice to continue.⁶⁰ Since then a wealth of scientific evidence has revealed the significant health risks that commercial tobacco products pose to both users and non-users. As a result, the federal government now requires health warning labels on the packages and advertisements of all cigarettes, cigars, and smokeless tobacco products.

Under the 2009 Family Smoking Prevention and Tobacco Control Act,⁶¹ the U.S. Food and Drug Administration (FDA) has the authority to mandate large, prominent warning labels for commercial tobacco product packaging and advertisements. Many countries, including Canada, Brazil, Thailand, and all nations of the European Union, require graphic warnings or visual images for cigarette packages. In March 2020, the FDA issued its own graphic warning label rule that would require images depicting the negative health consequences of smoking to be prominently displayed on cigarette packages and advertisements in the U.S., although the implementation of the rule has been delayed due to litigation.⁶² Only the federal government can require health warnings for

60 See *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

61 *Family Smoking Prevention and Tobacco Control and Federal Retirement Reform Act* (TCA), Pub. L. No. 111-31 (2009). Section 101 amends the Federal Food, Drug, and Cosmetic Act (FD&C Act), creating a new Chapter IX with new §§ 900 to 919 (codified at 21 U.S.C. § 387 et seq.)

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

tobacco packaging and advertisements. Preemptive provisions of the federal tobacco labeling laws prohibit state and local authorities from requiring additional health warnings on cigarette or smokeless tobacco packaging and advertising.

This section covers federal and state laws that govern health warning labels for commercial tobacco product packaging and advertisements, as well as labels indicating cigarette fire-safety standards. **Note:** This section does not address secondhand smoke warnings that are posted in public places, which are sometimes required under local “use” laws.

CIGAR WARNING LABELS

General Rule: Under the terms of agreements between the U.S. Federal Trade Commission (FTC) and the seven largest cigar manufacturers in the U.S. (who, together, comprise about 95 percent of the entire U.S. cigar market), each of the participating companies must clearly and prominently display one of the five U.S. Surgeon General health warnings (listed in the agreements) on cigar packages and advertisements. [!\[\]\(dfbd6b3763a6d1d9afaa974f64e2e4b5_img.jpg\) FTC Agreements, File Numbers 0023199-0023205](#). For more information about these agreements, see the FTC’s website. These agreements occurred before the U.S. Food and Drug Administration’s **Deeming Rule** took effect, which extended the agency’s authority to regulate tobacco products to include regulation of cigars and prescribed a new regime of warnings for cigars and other tobacco products. In 2020, the cigar industry prevailed in a lawsuit that barred the FDA from implementing its warning requirements for cigars and pipe tobacco. See *Cigar Ass’n. of Am. v. U.S. Food & Drug Admin.*, 964 F.3d. 56 (D.C. Cir. 2020). As a result, the deeming rule’s cigar and pipe tobacco health warning requirements were vacated and the issue was sent back to the FDA for review and possible action in the future. The FTC’s warnings are still required for cigar manufacturers covered by those agreements, and warnings are voluntary for other cigar manufacturers.⁶³

63 See Olivia Wackowski et al., *Examination of Voluntary Compliance with New FDA Cigar Warning Label Requirements*, 6 TOBACCO REG. SCIENCE 379-83 (2021), <https://pubmed.ncbi.nlm.nih.gov/33912626>.

Enforcement: The FTC is responsible for enforcing these agreements with manufacturers.

Penalty: Once the agreements become orders, each violation of the order carries a penalty of \$11,000.

CIGARETTE LABEL AND ADVERTISING WARNINGS (TCA)

General Rule: All cigarette packages made, sold, or distributed within the United States must bear one of eleven specific warnings regarding associated health risks. In addition, all advertising and marketing materials must display warning labels regarding the dangers of smoking commercial tobacco products. The warning labels must adhere to placement and typography restrictions, including a requirement that the warnings must cover at least 20 percent of an advertisement in a newspaper, magazine, or poster, and must be in the predominant language of the publication. The U.S. Food and Drug Administration (FDA) can make changes to the warning label requirements upon a finding that such a change would promote greater public understanding of the risks associated with the use of commercial tobacco products. The warning labels cannot be altered or deleted. [🔗 15 U.S.C. §§ 1333](#) [🔗 1334](#).

Note: The FDA first issued graphic label regulations on June 22, 2011. However, the warning label requirements were struck down. See *R.J. Reynolds Tobacco Co. v. U.S. F.D.A.*, Case No. 1:11-cv-01482 (D.D.C. Aug 16, 2011). After a lawsuit from public health groups, the FDA issued a new graphic warning rule in March of 2020. That rule was immediately litigated by the industry, and on December 7, 2022, the court held that the rule violated the tobacco companies' First Amendment rights by compelling speech. *R.J. Reynolds Tobacco Co. et al. v. U.S. F.D.A.*, Case No. 6:20-cv-00176-JCB (E.D. Texas Apr. 03, 2020). The FDA can either appeal or create a different set of warning graphic labels that would not violate the court order. Unless the 2022 decision is reversed on appeal, this rule will change in the future. See also *U.S. Food & Drug Admin., Cigarette Labeling and Health Warning Requirements*.

Exception: This provision does not apply to tobacco products other than cigarettes or to cigarettes intended for foreign markets. Also, a cigarette retailer will not be in violation if the packaging contains a warning label, was supplied by a licensed manufacturer or distributor, and was not materially altered by the retailer.

Enforcement: FDA.

Penalties: A violation is a misdemeanor, subject to a fine of up to \$10,000.

FIRE SAFETY LABELS

General Rule: Packages of cigarettes sold in Minnesota must be marked to indicate they meet reduced ignition propensity (“fire safety”) requirements under state law. The markings must be in at least eight-point type and include a modified product UPC code and text indicating that the cigarettes are in compliance with the American Society of Testing and Materials Standard E2187-04, “Standard Test Method for Measuring the Ignition Strength of Cigarettes.” The text must be approved by the state fire marshal. [*☞ Minn. Stat. § 299F.853.*](#)

Enforcement: State Fire Marshal and the Minnesota Attorney General.

Penalties: Failure to include a mark is punishable by a civil penalty of up to \$1,000 for a first offense and up to \$5,000 for any subsequent offense, for each violation. [*☞ Minn. Stat. § 299F. 854, subd. 4.*](#)

OTHER TOBACCO PRODUCT PACKAGE AND ADVERTISING WARNINGS

General Rule: Packages and advertisements for tobacco products other than cigarettes, smokeless tobacco, and cigars must clearly and prominently display a warning statement about the addictiveness of nicotine. The term “tobacco products” includes hookah tobacco, pipe tobacco, dissolvable tobacco products, e-cigarettes, and any other products made or derived from tobacco intended for human consumption, including products containing nicotine from any source. [*☞ 21 C.F.R. §§ 1143.1*](#) [*☞ 1143.3.*](#)

Enforcement: U.S. Food and Drug Administration.

Penalties: Failure to display the warning statement or to display the warning properly may result in a civil penalty.

SMOKELESS TOBACCO LABEL AND ADVERTISING WARNINGS (TCA)

General Rule: The packaging of all smokeless tobacco products (any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the mouth or nose) made, sold, or distributed within the U.S. must display one of four, specified warnings regarding associated health risks:

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

The warning labels must adhere to placement and typography restrictions and labels in a newspaper, magazine, or poster advertisement must be in the predominant language of the publication. State and local governments can require additional statements on a billboard advertisement for smokeless tobacco, but they cannot require additional health warnings for smokeless tobacco product packages or advertisements. The U.S. Food and Drug Administration (FDA) can make changes to the warning label requirements upon a finding that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products. [21 U.S.C. § 387n](#) [15 U.S.C. §§ 4402](#) [4404-06](#) [21 C.F.R. § 1143.3\(a\), \(b\)](#).

Exception: This provision does not apply to commercial tobacco products other than smokeless tobacco or to the foreign distribution of smokeless tobacco products. A retailer of smokeless tobacco will not be in violation if the packaging contains a warning label, was supplied by a licensed manufacturer or distributor, and was not materially altered by the retailer. [15 U.S.C. § 4402](#).

Enforcement: FDA. A violation is also considered an unfair or deceptive act or practice and is subject to enforcement under the Federal Trade Commission Act. [🔗 21 U.S.C. § 387n](#).

Penalties: A violation is a misdemeanor, subject to a fine of up to \$10,000. [🔗 15 U.S.C. § 1338](#).

TOBACCO PRODUCT LABELS AND ADVERTISING WARNINGS (TCA)

General Rule: As of August 10, 2018, the U.S. Food and Drug Administration (FDA)'s deeming rule requires a nicotine addictiveness warning on all packages and advertisements for cigarette tobacco, roll-your-own tobacco, and covered tobacco products other than cigars, such as pipe tobacco, hookah tobacco, gels, dissolvable tobacco, and electronic nicotine delivery systems containing anything made or derived from tobacco (see [Deeming Rule](#) in the Introduction for more information). The warning must read “WARNING: This product contains nicotine. Nicotine is an addictive chemical.” For covered tobacco products that do not contain nicotine, manufacturers must submit a self-certification to the FDA and their products must bear a warning label that reads: “This product is made from tobacco.” These warnings must adhere to placement and typography restrictions. As of September 11, 2018, all distribution of products without such warnings must stop. Additionally, as of August 10, 2018, retailers may not sell noncompliant products. [🔗 21 U.S.C. § 387a\(b\)](#) [🔗 387c](#) [🔗 387n](#) [🔗 387f\(d\)](#) [🔗 21 C.F.R. § 1143.3\(a\), \(b\)](#).

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

Exceptions

- If a product package is too small or otherwise unable to accommodate a label, it is exempt from these requirements only if the required information or label appears on the carton or other

outer container or wrapper. If the carton, outer container, or wrapper does not have sufficient space to display the information, the required information may be located on a tag permanently affixed to the package.

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

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

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

UNLAWFUL CIGARETTE TRADE PRACTICES

General Rule: It is unlawful for any person to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure any health warning that is not specified in, or does not conform with, the requirements of the federal Cigarette Labeling and Advertising Act. [*☞ Minn. Stat. § 325D.421*](#) [*☞ 15 U.S.C. § 1333*](#).

Enforcement: Minnesota Attorney General.

Penalties: Violations are misdemeanors (up to 90 days in jail and/or a \$1,000 fine). [*☞ Minn. Stat. § 325D.421, subd. 4*](#) [*☞ Minn. Stat. § 609.02, subd. 3*](#).

SECTION EIGHT: RELATED LAWS

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

This section provides brief overviews of other relevant federal and state laws that frequently interact with or affect the tobacco industry and individuals. It also summarizes federal regulatory authority under the 2009 Family Smoking Prevention and Tobacco Control Act.

Related Minnesota Laws

ADULT-USE CANNABIS REGULATION

General Rule: Tobacco retail licensees who violate certain provisions of Minnesota's cannabis law, Minn. Stat. Chapter 342, are subject to suspension or revocation of their tobacco retail license. [*☞ Minn. Stat. § 461.12, subd. 2a.*](#)

EMPLOYEE RIGHT TO KNOW ACT

General Rule: Minnesota's "Employee Right to Know" Act requires employers to evaluate their workplaces for the presence of hazardous substances and harmful physical agents and to provide training to employees concerning those substances or agents to which employees may be exposed. Employers are required to provide a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to their employees. [*☞ Minn. Stat. § 182.653, subd. 2.*](#) Commercial tobacco products and other products

intended for personal consumption by employees in the workplace are exempted from these provisions. [*☞ Minn. Stat. § 182.651, subd. 18\(a\).*](#)

Enforcement: Minnesota Department of Labor and Industry.

Penalties: Penalties for violations can range up to \$70,000, depending on how likely the violation is to result in serious harm to employees (with a minimum fine of \$5,000 for a willful violation). [*☞ Minn. Stat. § 182.666, subd. 1.*](#)

HUMAN RIGHTS ACT

General Rule: The Minnesota Human Rights Act, like the Americans with Disabilities Act ([see later in this section](#)), prohibits unfair discrimination in business, credit, education, employment, housing, public accommodations, and other public services. The Minnesota Human Rights Act protects “qualified” disabled persons. A disabled person is defined as one who (1) has a physical, sensory, or mental impairment that materially limits one or more of the person’s major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. [*☞ Minn. Stat. § 363A.03, subd. 12.*](#) “Qualified disabled persons” are individuals who, with respect to employment, can, with reasonable accommodation, perform the essential functions required of all applicants for the job in question; and those who, with respect to public services, can — with or without reasonable modifications to rules, policies, or practices, with the removal of architectural, communications, or transportation barriers, or with the provision of auxiliary aids and services — meet the essential eligibility requirements for receipt of services and for participation in programs and activities provided by the public service. [*☞ Minn. Stat. § 363A.03, subd. 36\(1\)-\(2\).*](#) Disabled persons who wish to be protected from secondhand smoke in the workplace, housing, and other areas may file a verified charge with the Minnesota Department of Human Rights or may bring a civil action directly to district court seeking redress for an unfair discriminatory practice under the Act. [*☞ Minn. Stat. § 363A.28, subd. 1.*](#)

Enforcement: Minnesota Department of Human Rights and the Minnesota Attorney General; civil suit by a private party [*☞ Minn. Stat. § 363A.33.*](#)

Penalties: Any person who commits an unfair discriminatory act or aids, abets, incites, compels, or coerces another to do so, is guilty of a misdemeanor (up to 90 days in jail and/or a \$1,000 fine). Civil damages may include compensatory damages up to three times the actual damages sustained, plus hiring, or back pay and compensation for lost benefits, reinstatement and other equitable relief within the discretion of the administrative law judge, as well as damages for mental anguish or suffering and reasonable attorney's fees, in addition to punitive damages up to \$25,000. [↻ Minn. Stat. §§ 363A.29, subds. 4, 5](#) [↻ 363A.30, subd. 4.](#)

LAND USE REGULATIONS

An issue of great interest to commercial tobacco prevention and control professionals in Minnesota and throughout the country is the extent to which local communities can effectively control the availability and placement of commercial tobacco products, particularly with respect to underage exposure and access to these products. One option is to use zoning laws or other local land use regulations such as conditional use permits to control the location and operation of tobacco retailers. A conditional use permit allows local governments to make an individualized determination as to the suitability of proposed businesses or other uses in a neighborhood.

Although no court has yet addressed tobacco-related land use regulations, courts have upheld the use of land use controls as a tool in other areas of public health. Zoning has been used successfully to control the number and placement of retail alcohol outlets and firearms dealers, as well as commercial tobacco retailers. The legal issue in all land use regulation is whether a rational basis exists for the zoning decision. Given that tobacco products have a substantial negative impact on the health and welfare of a community and disproportionate impacts on communities already marginalized, local governments may reasonably use their zoning powers to regulate the location, density, and operation of commercial tobacco retailers.

Zoning and conditional use permits can be used to:

- **Prevent tobacco retailers from operating in certain zones (e.g., residential zones) or limiting them to certain zones (e.g., industrial zones).** For example, in 2017, the city of Buffalo, NY, overhauled the city's zoning code and restricted new retailers from selling tobacco, hookah, alcohol, and vaping products in all residential zones. (City of Buffalo, New York, *Unified Development Ordinance Ch.496* (2023).)
- **Limit the number or density of tobacco retailers in certain zones.** For example, "cap and winnow" strategies reduce the number of tobacco retailers over time through attrition.⁶⁴ More information and resources on this topic can be found on the Public Health Law Center's website, including [point-of-sale toolkit materials on regulating location, density, and type of tobacco retailers](#) and a [model retail tobacco licensing ordinance](#).
- **Restrict tobacco retailers from operating in certain areas (e.g., near youth-oriented facilities) through conditional use permits.**

While land use laws are often underutilized by local governments as a means of regulating commercial tobacco retail establishments and locations where tobacco products can be used, these laws have the potential to offer communities — particularly growing communities and communities that have borne the brunt of predatory marketing practices by the tobacco industry — additional ways to control the sale and use of tobacco and reduce health damage caused by tobacco products in Minnesota.

⁶⁴ In 2017, Independence, MO, included provisions in its Unified Development Ordinance (UDO) limiting the number of tobacco and convenience stores without fuel sales to one per 15,000 residents, which will eventually reduce by half the number in existence when the ordinance was enacted. (Independence, MO, City Code [Ch. 14-419](#) Unified Development Ordinance (2017).) The UDO also prohibits any new tobacco stores from locating within 500 feet of a residential district, school, church, or public park.

MINNESOTACARE AND MEDICAID

Access to nicotine dependency treatment is available to Minnesotans on Medicaid and MinnesotaCare. [*☞ Minn. Stat. § 256B.0625.*](#)

OCCUPATIONAL SAFETY & HEALTH ACT

General Rule: The U.S. Occupational Safety & Health Administration (OSHA) works to prevent work-related injuries, illnesses and deaths. The Occupational Safety and Health Division of the Minnesota Department of Labor and Industry, which adopts and enforces the federal OSHA standards as well as some “localized” standards, has a similar mission: to help Minnesotans improve workplace safety and health. However, neither the federal nor state OSHA rules specifically address exposure to secondhand smoke. In 1994, OSHA issued proposed indoor air quality regulations that would have dealt with secondhand smoke in the workplace as well as other issues, but no final regulations were issued. As a result, OSHA rules apply to the harmful effects of secondhand smoke only in extreme circumstances. For example, if contaminants created by a manufacturing process combine with secondhand smoke to create a dangerous workplace air supply, this circumstance may fail OSHA standards. [*☞ Minn. Stat. § 182.65.*](#)

Enforcement: OSHA authorizes the Minnesota Department of Labor and Industry to conduct inspections, issue citations, and propose penalties for alleged violations of the Occupational Safety and Health Act.

Penalties: Penalties for violating an OSHA standard can range up to \$70,000, depending on how likely the violation is to result in serious harm to employees. [*☞ Minn. Stat. § 182.667.*](#)

INDUSTRY PAYOUTS

Any money the State of Minnesota receives from a settlement agreement or litigation brought on behalf of the state or a state agency related to alleged violations of consumer fraud laws in the marketing, sale, or distribution of electronic nicotine delivery systems in this state or other

alleged illegal actions that contributed to the exacerbation of youth nicotine use, must be deposited in the settlement account established in the tobacco use prevention account under *Minn. Stat. § 144.398*. This is notable in light of the 2023 \$60.5 million settlement with Juul and Altria on behalf of the State of Minnesota. [*Minnesota Session Laws 2023, Regular Session, Chapter 70, Art. 4 §4\(h\)*](#).

PROHIBITED CHALLENGES TO COMMERCIAL TOBACCO CONTROL LAWS

General Rule: Settling tobacco manufacturers subject to Minnesota's 1998 settlement agreement must not oppose the passage of certain future Minnesota laws or administrative rules intended to reduce commercial tobacco use by persons under the age of 18; challenge the facial validity or constitutionality of existing Minnesota laws or rules relating to tobacco control; or support in Congress or any other forum, legislation, rules, or policies that would preempt, override, abrogate, or diminish Minnesota's rights or recoveries under the terms of the Minnesota settlement. [*Minn. Settlement § \(IV\)\(A\)*](#).

Enforcement: Minnesota Attorney General (AG).

Penalties: The AG may seek a court order to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

NONWORK HOURS: PROHIBITED EMPLOYER CONDUCT (SMOKERS' RIGHTS LAWS)

General Rule: Employers may not refuse to hire a job applicant or discipline or discharge an employee because that person engages in or has engaged in the use or enjoyment of lawful, consumable products, such as commercial tobacco, if that person's use or enjoyment takes place off the employer's premises during nonworking hours. [*Minn. Stat. § 181.938, subd. 2*](#).

Exceptions: An employer may restrict the use of commercial tobacco products by employees during nonworking hours if the 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 an appearance of a conflict of interest with regard to any responsibilities owed by the employee to the employer. [☞ Minn. Stat. § 181.938, subd. 3.](#)

Enforcement: Minnesota Department of Labor and Industry; civil suit by a private party.

Penalties: Violators may be subject to a civil action for damages, limited to wages and benefits lost by the individual because of the violation. The prevailing party may also be awarded court costs and reasonable attorney fees. [☞ Minn. Stat. § 181.938, subd. 4.](#)

UNEMPLOYMENT INSURANCE LAW

General Rule: Under federal and Minnesota law, employers who employ individuals within the state must contribute unemployment taxes to the Minnesota unemployment insurance trust fund. The purpose of the fund is to provide weekly payments to employees who have lost their jobs through no fault of their own and who, although physically able, have not found suitable reemployment. [☞ Minn. Stat. §§ 268.03](#) [☞ 268.035, subd. 25c](#) [☞ 268.194.](#)

Employees who are discharged for reasons other than misconduct, and employees who quit their employment due to a serious illness or injury or for a good reason caused by the employer, may qualify, under certain circumstances, for the receipt of unemployment insurance benefits. [☞ Minn. Stat. § 268.095, subd. 1 \(7\).](#) Employees who have lost employment because they were unable to continue working due to exposure to secondhand smoke in the workplace may be found eligible for unemployment benefits.

Enforcement: Minnesota Department of Employment and Economic Development.

Penalties: Employers are subject to monetary penalties, credited to the state's trust fund, for making false statements or misrepresentations or knowingly failing to disclose a material fact (e.g., to prevent or

reduce payment of benefits to an applicant for unemployment insurance). [*☞ Minn. Stat. § 268.184, subd. 1.*](#)

WHISTLEBLOWER ACT

General Rule: An employer may not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law (e.g., a company smoking violation) to an employer or to any governmental body or law enforcement official. [*☞ Minn. Stat. § 181.932.*](#)

Enforcement: Minnesota Department of Labor and Industry or civil action brought by a private party.

Penalties: Civil penalties may include all damages recoverable at law, costs and disbursements, including reasonable attorney's fees, and any injunctive or equitable relief determined by the court. [*☞ Minn. Stat. § 181.935.*](#)

WORKERS' COMPENSATION ACT

General Rule: Minnesota's Workers' Compensation Act provides benefits to injured employees when the injury (or death) is related to work activity (arising out of and in the course of employment), without regard to the question of negligence. The burden of proof is upon the employee. All Minnesota employers, with very limited exceptions, are subject to the Act. Injured employees must demonstrate that the risk of harm was increased by being at work or by performing job functions, and that the job injury took place during the course of employment. An employee, for example, who becomes ill as a result of long-term exposure to secondhand smoke in the workplace may qualify for workers' compensation benefits (as well as unemployment insurance benefits and disability payments). [*☞ Minn. Stat. § 176.021.*](#)

Enforcement: Minnesota Department of Labor and Industry. The Minnesota Workers' Compensation Act is the exclusive remedy for work-related injury or death, and covered employees do not have a private right of action against covered employers. [🔗 Minn. Stat. § 176.031](#).

Penalties: Employers are liable for specifically defined benefits including wage loss, medical expense, and permanent injury, as well as monetary penalties for noncompliance. [🔗 Minn. Stat. § 176.194, subd. 4](#) [🔗 Minn. Stat. § 176.85](#).

Related Federal Laws

AMERICANS WITH DISABILITIES ACT

General Rule: The Americans with Disabilities Act (ADA) prohibits discrimination against a person with a disability. The law applies to discrimination in certain settings including employment, schools and public accommodations. [🔗 42 U.S.C. § 12101](#). The law applies to employers with at least 15 employees; government services, including transportation; and those who operate places where the public is invited, such as restaurants, hotels, and theaters. [🔗 42 U.S.C. §§ 12112\(a\)](#) [🔗 12132](#) [🔗 12182\(a\)](#). Disability is defined as (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. [🔗 42 U.S.C. § 12102\(2\)](#). Breathing is specifically listed as one of the major life activities covered by the ADA and a major life activity is defined as the operation of a major bodily function, including respiratory functions. [🔗 42 U.S.C. § 12102\(2\)\(A\)-\(B\)](#).

The ADA requires employers to provide “reasonable accommodation” to qualified disabled employees unless that accommodation causes the employer an undue hardship. [🔗 42 U.S.C. §§ 12111\(9\)](#) [🔗 12112\(b\)\(5\)](#). Places of public accommodation must afford patrons with disabilities equal opportunities to enjoy the goods, services, facilities, privileges, advantages, or accommodations of such a place. Where these facilities pose barriers to use by those with disabilities, the owner must make reasonable modifications to policies, practices, procedures,

or architectural barriers to accommodate the disabled customer or employee. [§ 42 U.S.C. § 12182\(b\)\(2\)\(A\)](#). Persons with respiratory problems, for example, may be able to use the ADA to prove that smoke sensitivity disables them by impairing their ability to perform a major life activity (breathing freely), and that a reasonable modification would be a smoking prohibition.

Enforcement: Charges of discrimination in employment may be filed by individuals with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC is required to investigate the charge. If the EEOC decides not to litigate, the charging party will receive a Notice of Right to Sue and may file a lawsuit within 90 days. [§ 42 U.S.C. § 2000e-5](#).

More generally, the U.S. Attorney General may also investigate and enforce the ADA by bringing a civil action in federal district court requesting a permanent injunction, restraining order, or other order against persons or entities responsible for any pattern or practice in violation of the ADA and as deemed necessary to ensure the full enjoyment of the rights listed under the ADA. [§ 42 U.S.C. §§ 2000e-6](#) [§ 2000e-8](#).

People alleging discrimination related to public accommodations may file civil actions for preventive relief. The U.S. Attorney General may also intervene in these cases. [§ 42 U.S.C. §§ 12117\(a\)](#) [§ 2000a-3](#) [§ 12188](#). Note, the ADA does not apply to private housing, which is covered by the [Federal Fair Housing Act](#).

Penalties: Penalties may include fees, which are limited based on the number of employees of a business; court orders to stop the ADA violation; and attorneys' fees. [§ 42 U.S.C. § 2000e-5](#).

FEDERAL FAIR HOUSING ACT

General Rule: The Fair Housing Act (FHA) prohibits discrimination in housing against, among others, persons with handicaps or disabilities, including persons with severe breathing problems that are exacerbated by secondhand smoke. The FHA applies to virtually all rental and condominium housing, with the exception of single-family housing sold or rented by an owner without the use of a broker or agent, and multi-

unit rental housing with no more than four units if the building owner lives in one of the units. [🔗 42 U.S.C. §§ 3601-3619.](#)

If a resident has a “handicap” under the FHA, landlords and condominium associations are required to make reasonable accommodations in rules, practices, policies, and services that provide the resident an equal opportunity to use and enjoyment of the premises. For example, a tenant who is sensitive to secondhand smoke because of a respiratory condition may request a reasonable accommodation by being permitted to break a lease without penalty, relocate to a vacant unit to avoid smoke exposure, or require that no smoking policies be implemented for common areas. The affected person must prove an adverse health reaction to secondhand smoke that substantially limits one or more major life activities and that is severe and long-term.

Enforcement: People may file a complaint with the Office of Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development (HUD). HUD, or a state or local agency with the same fair housing powers as HUD, is required to investigate the complaint. If the parties are unable to agree, cases may go to administrative hearings or HUD may authorize the U.S. Attorney General to file an action in federal district court on the complainant’s behalf. Parties may also file suit in federal district court or state court at their own expense. [🔗 42 U.S.C. §§ 3610-3614.](#)

Penalties: Penalties in an administrative hearing may include actual damages, injunctive or other equitable relief, attorney’s fees and costs, and civil penalties, ranging from a maximum of \$10,000 for a first violation to \$50,000 for a maximum violation. Federal or state courts may also award punitive damages. [🔗 42 U.S.C. § 3612\(g\)\(3\)\(A\)-\(C\).](#)

HOUSING AND URBAN DEVELOPMENT SMOKE-FREE RULE

General Rule: Under the U.S. Department of Housing and Urban Development (HUD), all public housing authorities administering public housing must have a policy prohibiting the use of commercial tobacco products that includes all indoor areas, including dwelling units (including

but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as outdoor areas within 25 feet of public housing and administrative office buildings. Prohibited tobacco products include items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes, as well as hookahs (or waterpipes). Public housing authorities are required to implement the rule by amending all applicable public housing authority plans and tenant leases. HUD may use certifications to verify that public housing authorities have implemented smoke-free policies and use periodic inspections and audits to help monitor whether policies are being enforced. [!\[\]\(f4912148590488019602cab6e009e597_img.jpg\) 24 C.F.R. §§ 965.653–956.655.](#)

Exceptions

- The rule excludes dwelling units in mixed-finance projects and does not apply to housing assisted under Section 8, public housing authority properties that have converted to project-based rental assistance contracts under the Rental Assistance Demonstration Program, or Tribal housing.
- Electronic smoking devices, including e-cigarettes, are not included in the rule.

Note: Local public housing authorities can (and often do) include e-cigarettes in their local policies.

Enforcement: Public housing authorities are required to implement the rule by amending all applicable public housing authority plans and tenant leases. HUD may use certifications to verify that public housing authorities have implemented smoke-free policies and use periodic inspections and audits to help monitor whether policies are being enforced.

Penalties: Local public housing authorities may enforce the rule via verbal warnings, written warnings, final notice, and ultimately lease termination and eviction proceedings.

PATIENT PROTECTION AND AFFORDABLE CARE ACT

General Rule: The Patient Protection and Affordable Care Act (ACA) requires individuals to have health insurance and prohibits insurers from denying coverage based on factors such as health status. Tobacco users can be charged up to 50 percent more for health insurance premiums than non-tobacco users in the individual or small group market. [42 U.S.C. § 300gg\(a\)\(1\)](#). For purposes of the premium surcharge, “tobacco use” is defined as using any tobacco product, other than for religious or ceremonial use, an average of four or more times per week within the past six months.

Most health insurance offered must provide coverage for the ten “essential health benefits” listed in the ACA, which include “preventive and wellness services,” as well as “mental health and substance use disorder services.” Most people will access tobacco cessation coverage as a “preventive service,” for which there will be no cost to the patient. However, it is also possible that tobacco dependence could be treated as a substance use disorder.

The Mental Health Parity and Addiction Equity Act (MHPAEA) requires that insurance coverage of mental health and substance use disorders is comparable to, and no more restrictive than, coverage of medical/surgical conditions. [45 C.F.R. § 156.115](#). Neither the ACA nor the MHPAEA require individual insurance companies to include benefits for a particular substance use disorder, such as tobacco addiction.

The ACA generally expands tobacco cessation coverage in most health insurance plans; however, specific requirements vary based on insurance type. The ACA provides guidance on the following types of health insurance:

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

- These plans must provide coverage for tobacco cessation at no cost to the insured. This requirement does not apply to plans in existence prior to March 23, 2010.

- Plans can satisfy this requirement by, for example, covering at least two cessation attempts per year, with each attempt including, at minimum, coverage for four counseling sessions and a 90-day supply of any FDA-approved cessation medication. U.S. Dept. of Labor, *FAQs About Affordable Care Act Implementation (Part XIX)*, Q5 (May 2014).

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

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

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

- In all states, Medicaid covers tobacco cessation therapy and doctor-approved cessation medications for pregnant women and for people under the age of 21. The Centers for Medicare and Medicaid Services (CMS), *Dear State Medicaid Director Letter, SDL # 11-007* (June 2011).
- State Medicaid programs are prohibited from excluding coverage for tobacco cessation drugs. CMS, *Medicaid Drug Rebate Program Notice Release No. 165* (Sept. 2013).
- In states that adopted expanded Medicaid coverage under the ACA, individuals in the expansion population, as well as other Medicaid beneficiaries receiving coverage through an Alternative Benefits Package, must receive coverage for tobacco cessation at no cost to the patients. Medicaid programs can satisfy this requirement by, for example, covering at least two cessation attempts per year, with each attempt including, at minimum, coverage for four counseling sessions and a 90-day supply of any FDA-approved cessation medication. U.S. Department of Labor, *FAQs About Affordable Care Act Implementation (Part XIX)*, Q5 (May 2014).

The ACA establishes a Prevention and Public Health Fund to be administered by the U.S. Department of Health and Human Services (HHS), which is made available to individual communities for tobacco prevention and other public health programs on a competitive basis. Information about funding distribution is available at <https://www.hhs.gov/open/prevention/index.html#Funding%20Distribution>.

Enforcement: The U.S. Departments of Labor and the Treasury generally have enforcement authority over private, employment-based group health plans. The U.S. Department of Health and Human Services has direct enforcement authority over non-federal government plans, such as those sponsored by state and local government employers.

Penalties: Each state must repay the federal government any amount found not to have been expended in accordance with this division, or the Health and Human Services Secretary may offset these amounts against any other funds to which the state is entitled under this division.

TRICARE SMOKING CESSATION PROGRAM

General Rule: The TRICARE smoking cessation program is a behavioral modification program to assist eligible beneficiaries who desire to quit smoking. On February 27, 2013, the U.S. Department of Defense issued regulations regarding this smoking cessation program, which provides health benefits for military personnel, military retirees, and their dependents. The regulations state that smoking cessation medications are available through TRICARE at no cost to the beneficiary, and that TRICARE covers individual and group cessation counseling. Beneficiaries also have access to a toll-free quit line and web-based resources. [!\[\]\(6605b201d6f14d9b3bcb8ab5f274d107_img.jpg\) 32 C.F.R. § 199.4\(e\)\(30\)](#).

TOBACCO CONTROL ACT: ADDITIONAL REGULATIONS

General Rule: Under the Family Smoking Prevention and Tobacco Control Act (TCA), the U.S. Food and Drug Administration (FDA) may issue additional regulations, such as 1) establishing product standards for the protection of public health; 2) restricting the sale and distribution of

tobacco products; and 3) restricting the advertising and promotion of tobacco products. Regulations must be appropriate for the protection of public health, which should be determined with respect to the risks and benefits to the population as a whole and taking into account whether individuals are more or less likely to stop or start using tobacco products. [🔗 21 U.S.C. §§ 387f-g.](#)

Exceptions: The FDA may not limit the sale or distribution of a tobacco product to prescription by licensed medical professionals; prohibit the sale of a tobacco product in face-to-face transactions in a specific category of retail outlets; or raise the minimum age for the sale of tobacco products above the age of 21. The FDA also may not ban all products in a few specific classes: cigarettes, smokeless tobacco, little cigars, all other cigars, pipe tobacco, and roll-your-own tobacco, or lower nicotine yields to zero. [🔗 21 U.S.C. § 387f.](#)

Note: Restrictions on the advertising or promotion of a tobacco product must be consistent with the First Amendment to the U.S. Constitution.

Enforcement Agency: The FDA is authorized to enforce this provision with the help of other federal agencies and state governments. [🔗 21 U.S.C. § 372.](#)

Penalties: Any person who violates these provisions is subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\).](#) Manufacturers who intentionally misrepresent that they meet tobacco product standards may be subject to civil penalties of up to \$250,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. If violations continue after the FDA provides written notice of violation, the violator is subject to a penalty of \$250,000 for the first 30-day period, which doubles every 30 days after the violation continues, up to \$1 million in any 30-day period or \$10 million for all such violations ruled on in a single proceeding. [🔗 21 U.S.C. § 333\(f\)\(9\)\(B\).](#)

TOBACCO CONTROL ACT: PRESERVATION OF STATE AND LOCAL AUTHORITY

General Rule: The Tobacco Control Act allows state, Tribal, and local governments to enact more stringent requirements related to the sale, distribution, possession, use, availability, advertising, and promotion of tobacco products than what is required under federal law. The Act also does not limit the existing ability of Tribal, state, and local governments to regulate the reporting of information to the state, the taxation of tobacco products, and measures relating to fire safety standards for tobacco products. [🔗 21 U.S.C. § 387p\(a\)\(1\)](#).

Limitation: State and local governments cannot enact restrictions that are different from or in addition to the provisions in the Tobacco Control Act regarding tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products. [🔗 21 U.S.C. § 387p\(a\)\(2\)](#).

TOBACCO CONTROL ACT: SALES TO MINORS (TOBACCO 21)

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

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

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

Penalties: Retailers in violation of this provision are subject to a civil penalty of up to \$15,000 for each violation and up to \$1 million for multiple violations ruled on in a single proceeding. (The FDA is required to adjust these amounts annually to reflect inflation.)

TOBACCO CONTROL ACT: SCIENTIFIC ADVISORY COMMITTEE

General Rule: The U.S. Food and Drug Administration's Tobacco Products Scientific Advisory Committee provides advice, information, and recommendations on a variety of safety, dependence, and health issues related to tobacco products, as requested by the FDA. The twelve appointed members include seven individuals from the medical, dental, scientific, and health care industries; one government employee; one member of the general public; and three nonvoting members representing the tobacco manufacturing industry, the small business tobacco manufacturing industry, and tobacco growers. [🔗 21 U.S.C. § 387q.](#)

Exception: Full-time employees of the FDA or any agency responsible for enforcing the Tobacco Control Act may not be appointed to this committee. Committee members must not have received salary, grants, or other payments or support from any manufacturer, distributor, or retailer of tobacco products for the 18 months before they become members. [🔗 21 U.S.C. § 387q\(b\)\(1\)\(c\).](#)

FEDERAL TOBACCO-RELATED LAWS

The major federal acts and rules affecting the use of commercial tobacco products have included, in chronological order:

- [🔗 *Federal Cigarette Labeling and Advertising Act of 1966*](#). Requires health warnings on all cigarette packages: "Caution: Cigarette Smoking May be Hazardous to Your Health."
- [🔗 *Public Health Cigarette Smoking Act of 1969*](#). Bans cigarette advertising on television and radio and required a stronger health warning on cigarette packages: "Warning: The Surgeon General Has Determined that Cigarette Smoking is Dangerous to Your Health."
- [🔗 *Little Cigar Act of 1973*](#). Bans little cigar ads from television and radio.
- [🔗 *Comprehensive Smoking Education Act of 1984*](#). Requires rotation of health warnings on cigarette packages and advertisements.

- [!\[\]\(effbd7993c63c039a58fd3395789cf3f_img.jpg\) Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. §§ 4401-4406](#). Requires rotation of three health warnings on smokeless tobacco packages and advertisements and bans smokeless tobacco advertising on broadcast media.
- [!\[\]\(144980d038f2541d7b588a8a9132bd70_img.jpg\) Pro-Children Act of 1994, 20 U.S.C. §§ 6081-6084](#). Requires all federally funded children's services to become smoke-free.
- [!\[\]\(c4ce2d477989700c971cf3d240ad9283_img.jpg\) Prohibitions of Cigarette Sales to Minors in Federal Buildings and Lands Act, Pub. L. No. 104-52, sec. 636](#) [!\[\]\(5013555a72072875cb154b597e002a46_img.jpg\) 20 C.F.R. 368 \(1995\)](#). Prohibits the sale of commercial tobacco products through vending machines on federal property and prohibits the distribution of free samples of tobacco products on federal property.
- [!\[\]\(bf2038c114ec21ea58ad011774351c98_img.jpg\) Prevent All Cigarette Trafficking Act \(PACT Act\) of 2009](#). Prohibits the delivery of sales of cigarettes (including roll-your-own and smokeless tobacco) via the U.S. Postal Service.
- [!\[\]\(1ad0c3425edfa4762c2f20e33e3e5bbf_img.jpg\) Family Smoking Prevention and Tobacco Control Act](#). The 2009 federal law granting the U.S. Food and Drug Administration (FDA) the authority to regulate the manufacture, distribution, and marketing of commercial tobacco products to protect public health. On April 28, 2022, the FDA, using its authority under the Family Smoking Prevention and Tobacco Control Act, proposed rules to ban the sale of Menthol Cigarettes and Flavored Cigars. (See [**Section Two: Sale, Distribution, & Display**](#).)

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