

# Legal Update

from the Tobacco Control Legal Consortium



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## Dear Colleague:

Welcome to the latest issue of the Tobacco Control Legal Consortium's online newsletter! The Consortium is a national network of legal programs supporting tobacco control policy change by giving advocates better access to legal expertise. We invite you to visit our website at [www.tclconline.org](http://www.tclconline.org).

## Land Use Regulation for the Location and Operation of Tobacco Retailers



One way to reduce youth access to tobacco products may be to use local land use regulations, such as zoning laws, to control the location and operation of tobacco retailers. The Consortium's latest publication, *Local Land Use Regulation for the Location and Operation of Tobacco Retailers*, describes ways in which land use regulation can give municipalities control over the placement of future tobacco retail stores, such as preventing them from locating across the street from schools or playgrounds. It highlights analogous land use regulation in other areas of public health, notes constitutional concerns related to land use as a tool in tobacco control, and explains why communities should ideally adopt land use controls *before* a tobacco retailer seeks to locate within a local government's geographic jurisdiction.

This legal synopsis was written by tobacco control attorney Randolph Kline of the Technical Assistance Legal Center in Oakland, California. To view a pdf version of the synopsis, click on the image above or go to [www.wmitchell.edu/tobaccolaw/resources/Kline.pdf](http://www.wmitchell.edu/tobaccolaw/resources/Kline.pdf).

## Landmark Tobacco Control Treaty to Take Effect

On November 30, the world's first public health treaty, the Framework Convention on Tobacco Control (FCTC), was ratified by the last of 40 countries required for it to take effect, meaning it will come into force, and will become a binding international obligation of the participating nations, on February 28, 2005. The treaty obligates countries to adopt surprisingly strong policies across the spectrum of tobacco control. For example, it requires participating nations to adopt a comprehensive ban on tobacco advertising, promotion and sponsorship, with an exception for nations with constitutional constraints, such as the United States. It also requires participating nations to put large health warning labels on cigarette packs, and to clamp down on smuggling and secondhand smoke. The treaty can be found online at [http://www.who.int/tobacco/framework/en/fctc\\_booklet\\_english.pdf](http://www.who.int/tobacco/framework/en/fctc_booklet_english.pdf)

The U.S. will not become bound by the treaty unless it is ratified by the Senate, and prospects for ratification are uncertain. Although outgoing Secretary of Health and Human Services Tommy Thompson praised the treaty when negotiations were concluded last year, the Administration has yet to submit the treaty to the Senate. Even without ratification, however, the treaty promises to be an important tool for advocates in the U.S. and other non-ratifying countries. By declaring a unanimous global consensus about scientifically appropriate responses to the epidemic of tobacco use, the treaty will "raise the bar" of public debate worldwide.

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- U.S. DOJ Litigation Against Tobacco Companies

## Affiliated Legal Resource Centers:

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Arkansas Tobacco Legal Resource Center
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- **Minnesota**  
Tobacco Law Center
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Among the countries that have already ratified the treaty are Australia, Bangladesh, Canada, France, Ghana, Hungary, Iceland, India, Japan, Jordan, Kenya, Mexico, Mongolia, New Zealand, Norway, Pakistan, Peru, Singapore, Slovakia, Sri Lanka, Syria, Thailand and Uruguay. Many other countries are in the process of ratification, and most of the world's governments have formally indicated their intention to do so. More information can be found at [www.fctc.org](http://www.fctc.org), the website of the Framework Convention Alliance for Tobacco Control, a global coalition of hundreds of nonprofit organizations working for effective implementation of the treaty and for improved tobacco control policies worldwide.

### Minnesota Court Permits Historic Tobacco Class Action to Proceed

In an important and unexpected development, Hennepin County (Minnesota) District Court Judge Allen Oleisky reconsidered and reversed his earlier decision and certified as a class action a pending case on behalf of Minnesota purchasers of Marlboro Lights. The plaintiffs in the case, *Curtis et al. v. Philip Morris Co.*, have brought claims for common law fraud, unjust enrichment and violation of Minnesota's consumer protection statutes, based on Philip Morris's allegedly deceptive marketing of its so-called "light" cigarettes.

Judge Oleisky relied heavily on last August's decision by the Massachusetts Supreme Judicial Court in *Aspinall v. Philip Morris Companies Inc.*, which was rendered after his initial decision. In *Aspinall*, the court granted class certification to Massachusetts plaintiffs claiming injury as a result of the tobacco company's unfair and deceptive marketing practices. Both cases involve Philip Morris's marketing and sale of cigarettes labeled as "lights," described in marketing campaigns as having "low tar," "low nicotine" or "low tar and nicotine." According to Judge Oleisky, "[A] class action is not only an appropriate method to resolve the plaintiff's allegations, but pragmatically, the only method whereby purchasers of Marlboro Lights in Minnesota can seek redress for the alleged deception."

Meanwhile, advocates nationwide await a decision in *Susan Miles v. Philip Morris*, the pioneering Illinois class action involving similar allegations. In this case, the Illinois Supreme Court is reviewing an historic \$10.1 billion verdict against Philip Morris, and heard oral arguments Nov. 10 on the question of whether Illinois smokers were misled into believing that Philip Morris's "light" cigarettes were less hazardous than its higher-tar brands. It could be months before the court makes its ruling.

### Safeway Tobacco Suit Settled

Grocery retailer Safeway, Inc. and the state of California settled a lawsuit this month, which alleged that Safeway sold cigarettes to minors, failed to prevent sales to minors at its state stores, and failed to display tobacco retail permits prominently. Settlement terms call for Safeway to pay \$245,000 in penalties and legal costs, as well as implement new policies to reduce tobacco-product sales to underage customers at its 538 Safeway, Vons, Pavilions and Pay 'n Save stores in California. The policies include checking IDs of any person purchasing tobacco products who looks younger than 27, hiring an outside firm to conduct random compliance checks at 90 stores each year, programming cash registers to prompt ID checks on all tobacco sales, and training employees on state and local laws and store policies regarding tobacco sales to minors. To access the settlement, go to *Safeway v. Lockyer*.

### Contact Us:

**Phone:**  
651-290-7506

**Email:**  
[tobaccolaw@wmitchell.edu](mailto:tobaccolaw@wmitchell.edu)

**Web:**  
[www.tclconline.org](http://www.tclconline.org)

**Address:**  
875 Summit Avenue  
St. Paul, MN 55105



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