



PUBLIC HEALTH
LAW CENTER
at Mitchell Hamline School of Law

Tracking Tobacco Laws

A Minnesota Digest
THIRD EDITION, JUNE 2016





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**Minnesota
Department
of Health**

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FOREWORD

LAW MATTERS. It is through law that society orders its affairs, resolves disputes, protects the vulnerable and restrains the lawless. This alone would make the law an important part of society's response to the greatest health problem of our time, the epidemic of tobacco use that is on course to take the lives of a billion people before this century is over. As tobacco use has become the most-studied of all medical problems, science has come to understand that some of the most effective tools for fighting this epidemic are not clinical, but legal. Evidence suggests that the key to reversing this epidemic will be in transforming the norms and beliefs of society, to de-normalize the use of tobacco. This transformation will surely be expressed through law, because it is in the law that society gives formal voice to its most fundamental values.

We have far to go. Tobacco so permeates our history and culture that tobacco companies have walked virtually untouched through the regulatory revolutions of the last century. Of all consumer products, only the cigarette remains beyond the reach of federal product safety monitors. Of all the toxic chemicals to which Minnesota workers are exposed on the job, only cigarette smoke is excluded from the law guaranteeing workers the right to information about poisons in the air

around them. The irony, of course, is that cigarettes' toll of death and destruction probably exceeds that of all the regulated products, combined.

Still, Minnesota has built an impressive body of tobacco law. Local governments have led the way in banning cigarette vending machines, controlling sales practices, eliminating smoking in government buildings and, most recently, controlling smoking in youth recreational facilities. Free samples have been ended. Sales to minors have been policed. Minnesota's 1998 legal settlement with cigarette manufacturers, and their subsequent settlement with forty-six other states, have added layers of new restrictions on tobacco marketing.

Encouraging as these developments are, understanding and applying this new body of law has become a challenge. The laws have grown piecemeal, and are interspersed throughout Minnesota's statutes and rules. Sometimes, they interact in unpredictable ways with a host of federal laws. The state and national legal settlements create further restrictions, but are not codified or widely distributed. The result is a confusing jumble of law, sometimes difficult to find and often difficult to understand, and there is no roadmap through the tangle.

This digest is an attempt to fill that void. Each law is summarized and explained in plain language, drawing connections to related provisions of federal law. Citations to the laws themselves are included. While it is not possible to identify and summarize the individual ordinances of Minnesota's eighty-seven counties and hundreds of municipalities, the digest identifies the topics commonly addressed by local laws.

In the twelve years since this digest was first published, it has become a standard reference, a field guide for attorneys, local officials, health professionals and others concerned about the impact of tobacco on Minnesotans. We hope that, by making the laws clearer and more accessible, it is helping to make them stronger. In the end, we hope this digest will prove an indispensable tool in the effort to reshape Minnesota's relationship to this most deadly of all consumer products.

D. Douglas Blanke
Director, Public Health Law Center
June 2016

INTRODUCTION

TOBACCO USE, 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 direct medical costs associated with tobacco use in the U.S. are more than \$133 billion annually, with approximately \$156 billion in indirect costs resulting from lost productivity caused by tobacco-related illnesses.³ In Minnesota, tobacco use results in more than \$2.5 billion annually in increased medical expenses, to say nothing of lost productivity and other economic losses.⁴

The adverse health effects of smoking are not limited to smokers themselves. In 2014, Acting U.S. Surgeon General Boris Lushniak published a report highlighting the progress the U.S. has made in reducing 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.⁵

Minnesota's efforts to discourage tobacco use are evident in its smoke- and tobacco-free laws and sales regulations. Minnesota pioneered the use of smoking restrictions to improve the public's health and was the first state to sue cigarette manufacturers for consumer fraud in connection with their harmful and deceptive marketing practices. The 1998 Minnesota settlement, which contains important

1 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL 665 (2014), http://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm.

2 CENTERS FOR DISEASE CONTROL AND PREVENTION, BEST PRACTICES FOR COMPREHENSIVE TOBACCO CONTROL PROGRAMS — 2014, 101 (2014), http://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/states/minnesota.pdf.

3 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING, *supra* note 1 at 679.

4 CENTERS FOR DISEASE CONTROL AND PREVENTION, BEST PRACTICES FOR COMPREHENSIVE TOBACCO CONTROL PROGRAMS — 2014, *supra* note 2.

5 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING, *supra* note 1, at 666.

marketing restrictions, 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, the MSA, and the 2009 Family Smoking Prevention and Tobacco Control Act — historic federal legislation that gives the U.S. Food and Drug Administration (FDA) the authority to regulate the manufacture, distribution, and marketing of tobacco products. Below is 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, modifying the Minnesota Clean Indoor Air Act and prohibiting smoking in almost all public places and workplaces, in public transportation, and at public meetings.

Today, the Act (along with its implementing rules and other complementary provisions) is a comprehensive statewide smoke-free law. Among its main components:

- **“Smoking” Definition.** The Minnesota Clean Indoor Air Act defines “smoking” as inhaling or exhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. The term also applies to carrying a lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product intended for inhalation. Products that are not “lighted” (such as electronic cigarettes) are not covered by this smoking definition. [*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 (wheth-

er 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.*](#)

- **Electronic Cigarettes.** In 2014, the Clean Indoor Air Act was amended to regulate or prohibit the use of “electronic delivery devices” — a broad term used to describe what are more commonly known as “electronic cigarettes” or “e-cigarettes” in a number of specific locations including health care facilities and day care facilities. [*Minn. Stat. § 144.414, subs. 2, 3 and 5.*](#)
- **Duties of Proprietors.** The Clean Indoor Air Act sets out specific duties for those people or entities in charge of public places, places of employment, public meetings, or public transportation. Proprietors must 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 cannot serve anyone who is violating the smoke-free law. If a person smokes in a smoke-free area, the proprietor must ask the person to refrain from smoking, and if the person continues to smoke, the proprietor must ask the person to leave. Anyone who refuses to leave will be treated as a trespasser or as a person acting in a disorderly manner. [*Minn. Stat. § 144.416.*](#)
- **Right to Prohibit Smoking Entirely.** There is no constitutional right to smoke. Proprietors are generally free to adopt stricter restrictions than those contained in the Clean Indoor Air Act. For example, they may prohibit all smoking (or all tobacco use) on the premises, including outdoor areas under their control, such as building entryways or parking lots. [*Minn. Stat. § 144.416\(b\).*](#) Smoking in violation of any private policy is a petty misdemeanor (up to a \$300 fine). [*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 tobacco-free) policy if it will represent a substantial change in the terms and conditions of employment — even when such a change is mandated by law.

- **Whistleblower Protection.** The Clean Indoor Air Act protects employees, job applicants, and 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 Penalties.** The Minnesota Department of Health has the authority to enforce the Clean Indoor Air Act and penalize 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 penalty (up to \$10,000) order for noncompliance. [*Minn. Stat. § 144.991*](#), [*Minn. Stat. § 144.99, subd. 4*](#). In certain circumstances, the Department may enjoin (stop) an activity if there is an immediate risk to public health. [*Minn. Stat. § 144.99, subd. 6*](#). It may also deny, refuse to reissue, suspend or revoke Department-issued businesses' permits, licenses, registrations or certificates for violations. [*Minn. Stat. § 144.99, subds. 5, 8-10*](#).

The general penalty for violating the Clean Indoor Air Act is a petty misdemeanor. [*Minn. Stat. § 144.417, subd. 2*](#). A petty misdemeanor is defined as a fine of up to \$300 that does not constitute a crime. [*Minn. Stat. § 609.02, subd. 4a*](#). This penalty can be imposed by local law enforcement.

For more information or 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*](mailto:health.indoorair@state.mn.us)

651-201-4601 or 800-798-9050

Related State Laws and Regulations. Since 2007, the Minnesota Legislature has continued to strengthen the state's smoke-free laws and youth access provisions, and to increase state taxes on the sale of tobacco products. The [*Tobacco Modernization and Compliance Act of 2010*](#) and subsequent laws have broadened the definitions of "tobacco" and "tobacco products" (allowing Minnesota to become one of the first states in the nation to tax electronic cigarettes) and expanded the reach of state laws that address the sale and use of tobacco, e-cigarettes, and related devices or products.

Role of Local Governments. By adopting regulations that protect the public from exposure to secondhand smoke and reduce the use of tobacco products, local governments can also play a key role in combating the tobacco industry and helping to change social norms at the grassroots level. When local officials pass tobacco

control laws, they have much more control over enforcement than if they rely on state laws alone. Violators can be cited under either state law or local ordinance.

The tobacco industry's concerted efforts to wrest authority from 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 Freedom to Breathe Act, 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*](#).

Prior to the passage of the Freedom to Breathe Act, several local governments adopted ordinances that limited exposure to secondhand smoke in bars, restaurants, or other public places and places of employment. Those ordinances that are weaker than the Minnesota Clean Indoor Air Act are now preempted by the more stringent state law. Also, the rise in e-cigarette use has led many Minnesota communities to adopt (or amend) local "use" regulations.

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 website at www.health.state.mn.us/tobacco.

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 four 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 treasury — payments that will continue as long as the cigarette manufacturers remain in business.⁶ For several years, a small portion of the money was used to address the problems of tobacco use. To balance the 2004–2005 budget, the state legislature shifted the money to the state’s general fund. Today, tobacco manufacturers pay the State more than \$164 million annually under the settlement. However, comprehensive tobacco control programs in Minnesota are being funded at 43.9 percent of the Centers for Disease Control and Prevention’s recommended level.⁷

The Minnesota 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, forty-six other states, the District of Columbia, and the five U.S. territories settled lawsuits against the five largest tobacco companies. This settlement, known as the *Master Settlement Agreement* (or MSA), requires the tobacco industry to pay these states approximately \$10 billion annually, indefinitely, 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.

Family Smoking Prevention and Tobacco Control Act

On June 22, 2009, President Barack Obama signed into law the *Family Smoking Prevention and Tobacco Control Act* (Tobacco Control Act), giving the *U.S. Food and Drug Administration* (FDA) comprehensive authority to regulate the manufacturing, marketing and sale of tobacco products. Before the Tobacco Control Act was enacted, tobacco products were largely exempt from regulation under federal

⁶ *The State of Minnesota v. Philip Morris, Inc.*, No. C1-94-8565 (Minn. Dist. Ct. May 8, 1998).

⁷ American Lung Association, State of Tobacco Control — Minnesota (2016), <http://www.lung.org/our-initiatives/tobacco/reports-resources/sotc>

health and safety laws. The Tobacco Control Act added new provisions to the 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 provided the FDA with jurisdiction to regulate both existing and future or new tobacco products. It enables the FDA to restrict tobacco product marketing and advertising, strengthen cigarette and smokeless tobacco warning labels, reduce federal preemption of certain state cigarette advertising restrictions, and increase nationwide efforts to block tobacco product sales to youth.

The Tobacco Control Act preserves the authority of state, local and tribal governments to regulate 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 tobacco prevention programs; implement counter-marketing campaigns; enhance access to effective cessation treatments; restrict the sale, distribution, and possession of tobacco products; and implement anti-smuggling and tax evasion measures. The Tobacco Control Act also expands the authority of 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. For easy reference, the Tobacco Control Act requirements are specifically identified in this digest.

NOTE: On May 10, 2016, as this publication went to press, the FDA finalized a [regulation](#) that expands the agency’s jurisdiction to regulate tobacco products that were outside its authority, including e-cigarettes, cigars, pipe tobacco and hookah.⁸ Under this regulation, newly classified “tobacco products” will be automatically covered by existing rules. The FDA will also be able to make new rules for tobacco products, as long as the rules are within the agency’s authority. For additional information about the new federal tobacco regulation, visit the Public Health Law Center’s [website](#).

⁸ Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Final Rule, 81 Fed. Reg. 28974 (May 10, 2016) (to be codified at 21 C.F.R. pt. 1100, 1140, and 1143).

HOW TO USE THIS DIGEST

This publication is intended as a resource for public health and legal professionals, local government officials, and the general public. It summarizes the major 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 January 2016. Although many cities and counties have also adopted important tobacco control laws, most local laws are not addressed here. Readers should contact their local officials to learn whether their communities have adopted any tobacco-related laws.

This digest describes tobacco-related laws in the following areas:

1. Use Restrictions
2. Sale, Distribution and Display
3. Advertising
4. Sponsorship and Promotion
5. Taxes and Pricing
6. Disclosure and 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 “Tobacco Control Act” at the end of their headings.

NOTE: Although the Family Smoking Prevention and Tobacco Control Act is a delegation of authority to the U.S. Food and Drug Administration (FDA), the Tobacco Control Act often uses the term “the Secretary” (i.e., Secretary of the Department of Health and Human Services) when referring to the government actor. Because the FDA’s Center for Tobacco Products enforces the law, this digest identifies the FDA as the enforcement agency for these federal requirements.

Disclaimer

This digest is provided for educational purposes only and is not to be construed as legal advice or as a substitute for obtaining legal advice from an attorney. Laws and rules cited are current as of the digest's publication date. The Public Health Law Center provides legal information and education about tobacco and health, but does not provide legal representation. Readers with questions about the application of the law to specific facts are encouraged to consult legal counsel familiar with the laws of their jurisdictions.

Locating the Laws

To find the full text of the laws and rules summarized in this digest, refer to the following websites:

- Minnesota Laws
<https://www.revisor.mn.gov/statutes>
- Minnesota Rules
<https://www.revisor.mn.gov/rules>
- Federal Laws and Regulations⁹
<https://www.gpo.gov> <https://www.law.cornell.edu>
- Family Smoking Prevention and Tobacco Control Act 
<http://www.gpo.gov/fdsys/pkg/PLAW-111publ31/pdf/PLAW-111publ31.pdf>
- Master Settlement Agreement
http://www.naag.org/naag/about_naag/naag-center-for-tobacco-and-public-health/master-settlement-agreement/master-settlement-agreement-msa.php
- Minnesota Settlement Agreement
<http://www.publichealthlawcenter.org/sites/default/files/resources/mn-settlement-agreement.pdf>
- U.S. Food and Drug Administration (Tobacco Products)
<http://www.fda.gov/TobaccoProducts/default.htm>

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.

SECTION ONE: USE RESTRICTIONS

Secondhand smoke, also called environmental tobacco 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 smoker. 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 in smokers and nonsmokers alike.¹⁰

The statistics speak for themselves. Secondhand smoke is a leading cause of preventable death in the United States.¹¹ No safe minimum 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.”¹² The consensus of world experts, reflected in guidelines adopted by 168 nations, is that the only effective protection is a comprehensive smoke-free policy eliminating smoking in indoor workplaces and indoor public places.¹³ Despite this, more than 88 million nonsmoking Americans continue to be exposed to secondhand smoke in homes, vehicles, workplaces and other public places, and approximately 41,000 adult nonsmokers and 400 infants will die each year from diseases caused by secondhand smoke exposure.¹⁴

The *Minnesota Clean Indoor Air Act* was enacted in response to this health hazard. It preserves the power of local governments to impose more stringent smoking restrictions and leaves Minnesota businesses and property owners and operators free to prohibit smoking entirely on their premises.

¹⁰ U.S. DEP’T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL (2006), http://www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.

¹¹ U.S. DEP’T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING *supra* note 1, at iii.

¹² American Society of Heating, Refrigerating, and Air Conditioning Engineers, *Environmental Tobacco Smoke* (Position Document) (2013), <https://www.ashrae.org/about-ashrae/position-documents>.

¹³ WHO Framework Convention on Tobacco Control Guidelines on Implementation of Article 8, “Protection from Exposure to Tobacco Smoke” (2013), http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf?ua=1.

¹⁴ Centers for Disease Control & Prevention, *Vital Signs* (2015), <http://www.cdc.gov/vitalsigns/tobacco/index.html>.

This section provides an overview of the Minnesota Clean Indoor Air Act and other laws restricting smoking and the use of tobacco and electronic delivery devices in Minnesota.

AIRPLANES AND AIRPORTS

General Rule: The federal government prohibits smoking on all U.S. airline flights arriving in or departing from the United States. [49 U.S.C. § 41706\(a\)](#); [14 C.F.R. § 252.3](#). 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\(i\)](#). The federal government also prohibits the use of electronic cigarettes on all scheduled flights of U.S. and foreign carriers involving transportation in, to, and from the U.S. www.regulations.gov (DOT-OST-2011-0044).

Airports are subject to the Minnesota Clean Indoor Air Act, which prohibits smoking in public transportation (including “ticketing, boarding, and waiting areas in public transportation terminals”), places of employment, and public places. [Minn. Stat. § 144.413](#), [Minn. Stat. § 144.414, subd. 1](#). The use of electronic cigarettes is prohibited in any state-owned or operated buildings. [Minn. Stat. § 144.414, subd. 5](#). (See “Public Transportation” later in this section for a more detailed description of this restriction.) 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](#).

Enforcement Agency: 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 \(a\)\(1\)](#). Tampering with a smoke detector installed in an airplane lavatory is punishable by a \$2,000 fine. [49 U.S.C. § 46301 \(b\)](#); [14 C.F.R. § 121.317\(b\),\(i\)](#). Smoking 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 penalties.

APARTMENTS

General Rule: Smoking is prohibited in common areas of apartment buildings. *Minn. Stat. § 144.413, subd. 2, Minn. Stat. § 144.414, subd. 1, Minn. Stat. § 144.4167, subd. 3(1).* 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.¹⁵ 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 (as well as the use of electronic cigarettes) throughout an entire building, or anywhere on the rental property.

(See “Condominiums and Cooperative Housing” in this section.)

Enforcement Agency: The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to some local health departments. Building management also enforces restrictions. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). *Minn. Stat. § 144.417, subd. 2(b), 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).*

NOTE: On November 17, 2015, the U.S. Department of Housing and Urban Development announced a proposed rule that would require most of the public housing authorities under its authority to go smoke-free. Specifically, this rule proposes that no later than 18 months from the effective date of the final rule, each housing authority/agency must implement a policy prohibiting combustible tobacco products in all living units, indoor common areas in public housing, and in administrative office buildings. This rule has not been finalized as of the date of this publication.

¹⁵ See *Freedom to Breathe in Rental Apartment Buildings* Fact Sheet, Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/f2brental.pdf>.

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 Agency: 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 their own regulations.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). *Minn. Stat. § 144.417, subd. 2(b)*, *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)*.

BUSES

See “Public Transportation” in this section.

CONDOMINIUMS AND COOPERATIVE HOUSING

General Rule: The Minnesota Department of Health has concluded that the Clean Indoor Air Act does not apply to condominiums and cooperative housing.¹⁶ Smoking is permitted in both the residential units and the common areas, unless the condominium association has adopted a use restriction that prohibits smoking in those places. (See “Apartments” in this section.)

Enforcement Agency: The Minnesota Department of Health and local law enforcement enforce the state smoking restrictions. Condominium associations and cooperative boards enforce private rules and regulations.

¹⁶ See *Freedom to Breathe in Rental Apartment Buildings* Fact Sheet, Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/f2brental.pdf>.

DAY CARE FACILITIES

General Rule: Minnesota prohibits smoking 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. For the purpose of these day care regulations, “smoking” is defined to include the use of electronic delivery devices. 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.¹⁷ [*Minn. Stat. § 144.414, subd. 2, Minn. R. 9502.0425, subp. 19*](#). Local governments may go further and prohibit smoking at any time 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 Agency: The U.S. Department of Health and Human Services enforces the federal smoking restriction. The Minnesota Department of Health and local law enforcement enforce the state smoking restrictions. Local law enforcement enforces local 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 the Minnesota Department of Health 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.

DISABLED VETERANS REST CAMP

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

¹⁷ See *Freedom to Breathe in Family Day Care* Fact Sheet, Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/f2brental.pdf>.

ELECTRONIC DELIVERY DEVICES (E-CIGARETTES)

General Rule: An “electronic delivery device” is any product, or component part of a product, containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. *Minn. Stat. § 609.685 subd. 1*. The use of these devices (more commonly referred to as “electronic cigarettes” or “e-cigarettes”) is prohibited in any building owned or operated by the state or a city, county, township, school district, or other political subdivision; any facility owned by Minnesota State Colleges and Universities (MnSCU) and the University of Minnesota (U of M) systems; any facility licensed by the Department of Human Services (DHS); or any facility licensed by the Department of Health (but only if the facility is also subject to federal licensing requirements).¹⁸ *Minn. Stat. § 144.414, subd. 5*. Local governments and private businesses have the ability to adopt more stringent regulations and restrict the use of electronic delivery devices in public places and places of employment.¹⁹

Enforcement Agent: The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to local health departments. Operators who observe violations are responsible for asking people to refrain from using e-cigarettes in designated nonsmoking areas. Local governments can also enforce the Minnesota Clean Indoor Air Act and have the responsibility to enforce their own 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)*. Consequences for ordinance violations will vary.

FAMILY FARMS

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

¹⁸ See *Electronic Cigarettes and the Minnesota Clean Indoor Air Act* Fact Sheet, Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/ecig.pdf>.

¹⁹ See *E-cigarettes*, ClearWay Minnesota, <http://clearwaymn.org/e-cigarettes>.

- 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, subs. 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” in this section.)

FARM VEHICLES

General Rule: Smoking 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” in this section.)

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 Agency: 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 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 Agency: 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 any enclosed space connected to the home, including a garage, porch, deck, or similar space, or a motor vehicle while a foster child is 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.*](#) The use of an electronic delivery device is also prohibited in any facility licensed by the Department of Human Services. [*Minn. Stat. § 144.414, subd. 5.*](#) Local governments may go further and prohibit smoking and the use of electronic delivery devices in the foster care environment.

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 en-

vironment, 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 Agency: Local child-placing agencies and the Minnesota Department of Human Services, the Minnesota Department of Health, and local law enforcement.

Penalty: The Minnesota Department of Health may issue fines up to \$10,000 by administrative penalty order. [*Minn. Stat. § 144.99, subd. 4\(a\).*](#) Consequences for ordinance violations will vary. Violations of the e-cigarette restrictions in 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.*](#)

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” in this section.)

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. Finally, 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 Agency: 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 and the use of electronic delivery devices is prohibited in state buildings. [Minn. Stat. § 16B.24, subd. 9 \(a\)](#), [Minn. Stat. § 144.414](#). (See “Public Places” and “Places of Employment” in this section.)

Exception: 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” in this section.)

Enforcement Agency: The Plant Management Division of the Minnesota Department of Administration handles enforcement in state-owned 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. [Minn. Stat. § 16B.24, subd. 9](#), [Minn. Stat. 144.417, subd. 2\(d\)](#).

Local Government Buildings

General Rule: Smoking and 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 the location where public meetings occurs. [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. A growing number of local policies prohibit smoking in certain outdoor areas, particularly parks and other youth recreation settings.

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

Penalties: Violations 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).* Penalties for violation of local regulations vary.

HEALTH CARE FACILITIES

General Rule: Smoking and the use of electronic delivery devices is prohibited in any indoor areas 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 go further and prohibit the use of any tobacco products on their grounds and campuses.

Exceptions: Unless a facility has adopted a facility-wide smoke- or 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).*²⁰
- 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.*

²⁰ For more information on this exception, see *Freedom to Breathe Smoking in Licensed Residential Healthcare Facilities* (Fact Sheet), Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/residentialhealth.pdf>.

- Patients in locked psychiatric units may smoke 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 Agency: Minnesota Department of Health, Department of Human Services, local law enforcement, or other designated authorities.

Penalties: Violations are punishable as 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 is permitted in private homes and private residences that are not in use as places of employment. [*Minn. Stat. § 144.4167, subd. 3\(1\)*](#). (See “Places of Employment” in this section.)

HOME-BASED BUSINESSES

General Rule: Smoking 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.²¹ **If a homeowner takes this deduction, the work area will likely need to be smoke-free.**

Enforcement Agency: 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 their own regulations.

Penalties: Violations 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).*

HOTELS AND MOTELS

General Rule: Smoking is prohibited in hotel lobbies, meeting rooms, banquet rooms, registration desks, and indoor swimming pool areas, and other “common areas.” *Minn. Stat. § 144.414, subd. 1.* (See also “Public Places” and “Places of Employment” in this section.) 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 prohibited in any hotel sleeping room designated by a lodging operator or by a local law as smoke-free.²² Innkeepers must post signs conspicuously in all smoke-free sleeping rooms stating that smoking is not permitted. *Minn. Stat. § 327.742, subs. 1, 3.*

Some local governments have removed this discretion. Beltrami County, for example, prohibits smoking in all guest rooms in hotels and motels, rented or leased cabins at resorts, and dormitories. *Beltrami County Smoke Free Ordinance No. 38A, sec. 3, subd. 6 (2013).*

Enforcement Agency: The Minnesota Department of Health is the lead enforcement agency and may delegate enforcement activities to local health departments. Lodging operators who observe violations are responsible for asking people to

²¹ See *Business Use of Your Home*, IRS Publication 587 (2013), <http://www.irs.gov/pub/irs-pdf/p587.pdf>.

²² For more information, see *Freedom to Breathe Smoking in Lodging Establishments* (Fact Sheet), Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/f2blodging.pdf>.

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 regulations.

Penalties: Violations 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\(a\)*](#). Anyone convicted of smoking in a nonsmoking room may be required to reimburse the innkeeper for actual costs incurred to restore the room to its previolation condition, including a service charge of \$30, and may be subject to a civil penalty up to \$100. [*Minn. Stat. § 327.742, subs. 2, 2a*](#).

LIBRARIES

General Rule: State law prohibits smoking 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” in this section.) 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” in this section.)

Enforcement Agency: The Minnesota Department of Health or other local authorities 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*](#). The Minnesota Department of Health 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 Agency: Law enforcement authorities, Minnesota Department of Transportation.

Penalties: Violations are misdemeanor offenses (up to 90 days and/or a \$1,000 fine). A second or subsequent offense will result in a minimum fine in the amount of \$400. A judge may order the offender to pick up litter along any public highway or road for four to eight hours. Convictions for individuals operating a motor vehicle will be 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).
[*Minn. Stat. § 609.5633*](#).

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

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

Penalties: Violations are petty misdemeanors (up to a \$300 fine). [*Minn. Stat. § 609.5633*](#), [*Minn. Stat. § 609.02, subd. 4a*](#).

NATIVE AMERICAN CEREMONIES

General Rule: Members of federally recognized tribes may smoke as part of a traditional Native American spiritual or cultural ceremony. [*Minn. Stat. § 144.4167, subd. 2*](#), [*Minn. Stat. § 144.4165*](#). Adult members of a federally recognized tribe may light tobacco as part of a traditional Native American spiritual or cultural ceremony in a public school. [*Minn. Stat. § 144.4165*](#).

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 Agency: 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 (defined to include the use of an electronic delivery device) is generally prohibited in nursing homes, boarding care facilities, and licensed residential health care facilities.²³ An adult resident or patient in such a facility may smoke in a designated separate, enclosed room maintained in accordance with applicable state and federal laws and meeting ventilation requirements. *Minn. Stat. § 144.414, subs. 3(a) and 5, Minn. R. 4658.4520, Minn. R. 4660.9940, subp. 2.* The Minnesota Department of Health enforces a federal interpretive guideline stating: “... if a facility changes its policy and prohibits smoking, it must allow current residents who smoke to continue smoking in an area that maintains the quality of life for these residents. Weather permitting, this may be an outside area.” U.S. Health Care Financing Admin., State Operations Manual, as amended June 2009, rev. 274, tag F242. Medical centers, nursing homes, or domiciliary care facilities operated by the U.S. Department of Veterans Affairs must allow a suitable indoor, designated smoking area. *38 U.S.C. § 1715.*

Enforcement Agency: For nursing homes, the enforcement agencies are the Facility & Provider Compliance Division of the Minnesota Department of Health, 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.

Penalties: Violations are petty misdemeanors (up to a \$300 fine). *Minn. Stat. § 144.417, subd. 2, Minn. Stat. § 609.02, subd. 4a.* The Minnesota Department of

²³ For more information, see *Freedom to Breathe Smoking in Licensed Residential Healthcare Facilities* (Fact Sheet), Minnesota Department of Health (2014), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/docs/residentialhealth.pdf>.

Health 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 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 playgrounds, outdoor public pools, golf courses, or zoos. Close to 200 Minnesota municipalities have adopted smoke- or tobacco-free ordinances or policies that restrict or prohibit smoking or the use of tobacco in public parks or recreation facilities.²⁴

Enforcement Agency: The Minnesota Department of Health is the lead enforcement agency and may designate enforcement activities to local health agencies. Local law enforcement can also enforce the Minnesota Clean Indoor Air Act and has the responsibility to enforce its own regulations.

Penalties: Violations 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).* Penalties for ordinance violations vary.

PLACES OF EMPLOYMENT

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

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

²⁴ An updated list is available at <http://www.tobaccofreeparks.org/directory.html>.

“Places of employment” include work vehicles (*see “Vehicles” in this section*), home offices (*see “Homes” in this section*), 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. This list is not exhaustive. *Minn. Stat. §144.413, subd. 1b, Minn. Stat. § 144.414, subd. 1.* Local governments and private businesses have the ability to adopt more stringent regulations and to restrict the use of electronic delivery devices in places of employment as well.²⁵

Proprietors of places of employment have specific duties under the Minnesota Clean Indoor Air Act. (*See “Duties of Proprietors” in the Introduction.*)

Enforcement Agency: 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 their own regulations.

Penalties: Violations 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).* Penalties for violating local ordinances vary.

PRISONS AND JAILS

Federal Facilities

General Rule: Federal law prohibits smoking inside all federal correctional facilities. The prison warden must designate a smoking area for smoking that is part of an authorized inmate religious activity. The warden may designate a clearly identified outdoor area for general inmate use. *28 C.F.R. §§ 551.160-551.162.*

Exception: Smoking and the possession of smoking equipment is permitted as part of an authorized inmate religious activity. Indoor smoking by prison staff is permitted only in perimeter towers and perimeter patrol vehicles when occupied by one

²⁵ See *E-cigarettes*, ClearWay Minnesota, <http://clearwaymn.org/e-cigarettes>.

person. The warden may designate outdoor smoking areas inside the prison facility that are reasonably accessible to employees and are protected from the elements.

Enforcement Agency: U.S. Bureau of Prisons.

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

State Facilities

General Rule. Smoking and the use of electronic delivery devices is prohibited in any indoor area at 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 (as well as lighters) are considered contraband, which employees, contractors, visitors, and volunteers may not possess inside a correctional facility. [*Minnesota Department of Corrections, Division Directive 301.030, Contraband \(2015\)*](#).

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 Agency: Minnesota Department of Corrections.

Penalties: Violators are subject to disciplinary action. Contraband will be confiscated. [*Minnesota Department of Corrections, Division Directive 301.030, Contraband \(2015\)*](#).

Local Facilities

General Rule. Smoking and the use of electronic delivery devices is prohibited in any indoor area at a local detention center or correctional facility. [*Minn. Stat. § 144.414*](#). Outdoor use (for individuals in custody, visitors, or staff) may be restricted by local 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 Agency: Minnesota Department of Health and local law enforcement agencies.

Penalties: Violations 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\(a\).*](#) Consequences for violations of local policies vary.

PUBLIC MEETINGS

General Rule: Smoking is prohibited at public meetings. [*Minn. Stat. § 144.414, subd. 1.*](#) A “public meeting” is a meeting of a public body that is subject to the Minnesota Open Meeting Law and must be open for the public’s attendance. [*Minn. Stat. 144.413, sub. 3 Minn. Stat. § 13D.01.*](#) When held inside a government owned or operated building, the use of electronic delivery devices is prohibited as well. [*Minn. Stat. § 144.414, subd. 5.*](#)

Enforcement Agency: 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 their own regulations.

Penalties: Violations 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\(a\).*](#)

PUBLIC PLACES

General Rule: Smoking is prohibited in public places — enclosed, indoor areas that are used by the general public. Examples of “public places” include restaurants, bars, 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. This list is not exhaustive. [*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.*)

Local governments and private businesses can adopt more stringent regulations and also restrict the use of electronic delivery devices in public places.²⁶

Enforcement Agency: 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 restrictions.

Penalties: Violations 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).* Penalties for violating local restrictions vary.

PUBLIC TRANSPORTATION

General Rule: Smoking is prohibited in public transportation, which includes 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; and 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.)

Exception: The driver of a public transportation vehicle may smoke in the vehicle when it is being used for private purposes and no for-hire passengers are present. Drivers who smoke must post a conspicuous sign in the vehicle to inform passengers. *Minn. Stat. § 144.414, subd. 4.*

Enforcement Agency: 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 restrictions. Authorized transit representatives may enforce the restrictions in public transit. *Minn. Stat. § 609.855, subd. 3(b).*

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

²⁶ See *E-cigarettes*, ClearWay Minnesota, <http://clearwaymn.org/e-cigarettes>.

administrative penalty order. *Minn. Stat. § 144.99, subd. 4(a)*. Smoking in a public transit vehicle is punishable as a misdemeanor (up to 90 days and/or a \$1,000 fine). *Minn. Stat. § 609.855, subd. 3(a)(2)*.

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 Agency: 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 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 regulates smoking in those areas. *Minn. Stat. § 144.417, subd. 4*.

Local governments and private businesses can adopt more stringent regulations and restrict the use of electronic delivery devices in public places as well.²⁷ The City of Bloomington, for example, prohibits smoking (defined to include 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 Agency: The Minnesota Department of Health 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 Minnesota Clean Indoor Air 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*.

²⁷ See *E-cigarettes*, ClearWay Minnesota, <http://clearwaymn.org/e-cigarettes>.

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 ordinance violations range from petty misdemeanors to misdemeanors (90 days and/or a \$1,000 fine).

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 tobacco products (in any form) and electronic delivery devices in public elementary, middle, or secondary schools. This includes in all school facilities, whether owned, rented or leased, and in all vehicles that a school district owns, leases, rents, contracts for, or controls. Possession of these products and devices by minors is also prohibited. [*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*](#). As such, the use of tobacco products and electronic delivery devices should also be prohibited within charter school facilities.

Exceptions:

- An adult member of a federally recognized tribe may light tobacco as part of a traditional Native American spiritual or cultural ceremony. [*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 tobacco restrictions outdoors. The Minnesota State High School League also prohibits student athletes, musicians, and participants in fine arts activities (such as speech and debate), from using or possessing tobacco in any form and at any time. [*Student Eligibility Bylaw 200.00*](#).

Enforcement Agency: State law is enforced by the school, the Minnesota Department of Health or local health departments, and local law enforcement agencies. Local regulations are enforced by schools and other local governments. The 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.* The Minnesota Department of Health 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 and Postsecondary 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” where smoking is prohibited by the Clean Indoor Air Act. *Minn. Stat. § 144.413, Minn. Stat. § 144.414, subd. 1.* In addition, the use of an electronic delivery device is prohibited in any facility owned by the Minnesota State Colleges and Universities (MnSCU)²⁸ and University of Minnesota (U of M) systems.²⁹ *Minn. Stat. § 144.414, subd. 5.*

Enforcement Agency: The state law is enforced by school, the Minnesota Department of Health or local health departments, and local law enforcement agencies. Local ordinances are enforced by local governments. The 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.* The Minnesota Department of Health 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).*

²⁸ For a list of universities and colleges in the MnSCU system, https://webproc.mnscu.edu/college-search/public/institution?delMode=&matchPercentage=0&award=&category=&subcategory=&tuitionMax=&activity=&sport=&zipCode=&zipCodeRadius=50&activeTab=collegeSearch&keyword=&c_=1449156159651.

²⁹ For a list of universities in the U of M system, visit <http://twin-cities.umn.edu/about-us>.

STADIUMS AND ARENAS

General Rule: Indoor stadiums and arenas (such as Target Center) are public places (as well as places of employment) in which smoking is prohibited. [*Minn. Stat. § 144.413, subd. 2*](#), [*Minn. Stat. § 144.414, subd. 1*](#). The use of an electronic delivery device is also prohibited in any indoor stadium or arena:

- Owned or operated by the state of Minnesota, a city, county, or other political subdivision; or
- Owned by the Minnesota State Colleges and Universities or University of Minnesota System (such as Williams Arena). [*Minn. Stat. § 144.414, subd. 5*](#).

Outdoor stadiums are not subject to the Clean Indoor Air Act, but may be subject to another state law, municipal ordinance, or facility policy. For example, smoking is prohibited at the Minnesota Twins stadium in Minneapolis. [*Minn. Stat. § 473.756, subd. 4*](#). The City of Duluth also prohibits smoking in Wade Stadium except in designated smoking areas. [*Duluth Code, sec. 28-64\(a\)\(4\)*](#).

Enforcement Agency: The Clean Indoor Air Act is enforced by the Minnesota Department of Health or a local health department, and local law enforcement agencies. Local ordinances are enforced by local governments. 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*](#). The Minnesota Department of Health 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 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*](#).³⁰ Smoking by theater pa-

³⁰ 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).

trons (or other “non-acting” staff) remains prohibited.³¹ Several local ordinances that prohibit smoking in workplaces and public places do not exempt theatrical productions. See, e.g., [*Mankato Code Sec. 9.17*](#).

Enforcement Agency: State law is enforced by the Minnesota Department of Health or a local public health department, and local law enforcement agencies. Local ordinances are enforced by local governments.

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

TOBACCO PRODUCT SHOPS

General Rule: The Minnesota Clean Indoor Air Act provides a limited exception that allows customers or potential customers to smoke for the specific purpose of sampling tobacco products in a tobacco product shop.³² A “tobacco product shop” is a retail establishment:

- With an entrance door opening directly to the outside;
- That derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, herbs, cigars, cigarettes, pipes, other smoking devices for burning tobacco, and related smoking accessories;
- 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 sampling in their clean air laws or retail licensing regulations. See, e.g., [*St. Louis County Ordinance 63*](#), [*Renville County Tobacco Licensing Ordinance*](#).

³¹ For more information, see *Freedom to Breathe Smoking as Part of Theatrical Productions* (Fact Sheet), Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/fib/docs/f2btbeater.pdf>.

³² For more information, see *Freedom to Breathe in Tobacco Product Shops* (Fact Sheet), Minnesota Department of Health (2015), <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/fib/docs/f2btobacco.pdf>.

Enforcement Agency: The state law is enforced by the Minnesota Department of Health or a local public health department, and local law enforcement agencies. Local ordinances are enforced by local governments.

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*](#). The Minnesota Department of Health 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.

UNLAWFUL SMOKING

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 Agency: Law enforcement.

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

VARIANCES

General Rule: The Minnesota Department of Health may grant variances from state tobacco rules. **Variations cannot be granted to the prohibitions on smoking; they may be granted for the 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, the Department 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 Agency: 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 tobacco products (in any form) and electronic delivery devices is prohibited in buses and other school vehicles. [Minn. Stat. § 144.4165](#). (See “Schools” in this section.)

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

- **Heavy Commercial Vehicles:** Smoking is permitted in the cabs of registered truck-tractors and semitrailers weighing more than thirteen tons. [Minn. Stat. § 144.4167, subd. 5](#).
- **Construction Equipment:** Smoking 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 is permitted in farm trucks, tractors, and other implements of husbandry when used for their intended purposes. [Minn. Stat. § 144.4167, subd. 6](#), [Minn. Stat. § 168.002, subd. 8](#), [Minn. Stat. § 168A.01, subd. 8](#). (See “Farms and Farm Vehicles” in this section.)
- **Public Transportation Vehicles in Private Use:** The driver of a public transportation vehicle may smoke when the vehicle is being used for pri-

vate purposes and no for-hire passengers are present. [*Minn. Stat. § 144.414, subd. 4.*](#) (See “Public Transportation” in this section.)

- **Private Automobiles:** Smoking is permitted in private automobiles not being used as places of employment. [*Minn. Stat. § 144.4167, subd. 3\(1\).*](#)

Enforcement Agency: Minnesota Department of Health, which delegates enforcement activities to some local health departments, and local law enforcement.

Penalties: Violations 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\(a\).*](#)

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 Minnesota, and every other state, prohibits the sale of cigarettes and other tobacco products to minors, approximately one in four high school seniors in the United States smoke.³³ Easy access to tobacco products and prominent displays of tobacco products in retail stores encourage tobacco use. The regulation of tobacco retailers and distributors helps reduce the number of illegal sales to minors, transform norms and de-normalize the use of tobacco. This section outlines licensing requirements for tobacco retailers and distributors and summarizes state and federal laws on the retail sale, distribution, and display of 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 tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.³⁴ It authorizes cities, townships and counties to regulate tobacco sales and requires that a local ordinance, incorporating the minimum state law requisites, cover every area of the state. It allows municipalities to impose regulations on the sale and display of tobacco products that are more restrictive than state law, and many communities have done so. For example, a city may prohibit all tobacco product vending machines, while the state law allows vending machines in certain adult-only settings. The state's minimum requirements, however, cannot be weakened or compromised.

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

³³ U.S. DEP'T OF HEALTH & HUMAN SERVS., PREVENTING YOUTH TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL ch. 3 (2012), <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/index.html#Fact%20Sheets>.

³⁴ *Minn. Stat. ch. 461*.

some restrict tobacco product advertising as well. Agreements are in place with retailers BP Amoco/BP North America, Conoco Phillips, Exxon-Mobil, Shell, Walgreens, and Wal-Mart.

Licensing Requirements

DISTRIBUTORS AND SUBJOBBER

General Rule: Cigarette and tobacco product distributors³⁵ and subjobbers³⁶ must obtain a state license to sell tobacco products, including electronic delivery devices and nicotine and lobelia delivery products that contain nicotine derived from tobacco.³⁷ The fee for a two-year cigarette distributor's license is \$300; a two-year tobacco products distributor's license costs \$75. The fee for a two-year cigarette subjobber's license is \$24; a two-year subjobber's license costs \$20. [*Minn. Stat. § 297F.03.*](#)

Enforcement Agency: The Minnesota Department of Revenue and local law enforcement.

Penalties: Licensing-related violations are generally misdemeanors (up to 90 days and/or a \$1,000 fine). [*Minn. Stat. § 297F.20, subd. 12;*](#) [*Minn. Stat. § 609.02, subd. 3.*](#) The Minnesota Department of Revenue may impose administrative penalties and revoke or suspend licenses for violations. [*Minn. Stat. § 297F.04, subd. 1.*](#) Sales 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 “Distributors” are persons who sell or manufacture tobacco products or cause them to be brought into Minnesota for sale, persons who ship or transport tobacco products into the state to be sold by retailers, or 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, subs. 4, 20.*](#)

³⁶ “Subjobbers” are persons who 1) buy cigarettes or other tobacco products upon which the tax has already been paid and sell them to persons “other than the ultimate consumer”; or 2) are licensed distributors delivering, selling, or distributing cigarettes or tobacco products from a location different than provided in the distributor's license. [*Minn. Stat. § 297F.01, subs. 5, 21.*](#)

³⁷ A distributor or subjobber license is not required to sell a 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. [*Minn. Stat. § 297F.01, subd. 19.*](#)

RETAILERS

General Rule: Every retailer must obtain a license to sell:

- **Tobacco.** 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 including but not limited to cigarettes; 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 tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. [*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 vapors of tobacco or tobacco products. This includes components of tobacco-related devices that may be marketed or sold separately. [*Minn. Stat. § 609.685, subd. 1\(b\).*](#)
- **Electronic delivery devices.** Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. This includes component parts of a product, whether or not marketed or sold separately. [*Minn. Stat. § 609.685, subd. 1\(c\).*](#)
- **Nicotine and lobelia delivery products.** Any product containing nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined by state law. [*Minn. Stat. § 609.6855.*](#)

Retail licenses are issued by local governments. Cities and townships are authorized to adopt licensing laws, and many have done so. Counties must license and regulate in unorganized territories and in any city or township that has not adopted its own licensing law. [*Minn. Stat. § 461.12.*](#)

Exceptions: A license is not required to sell products approved by the U.S. Food and Drug Administration for sale as tobacco cessation products, tobacco-dependen-

dence products, or for other medical purposes, and that are being marketed and sold solely for such an approved purpose. *Minn. Stat. § 609.685, subd. 1, Minn. Stat. § 608.6855*. Also, blind persons are not required to pay a fee for cigarette licenses. *Minn. Stat. § 461.15*.

Enforcement Agency: Local law enforcement and local licensing authorities. The State Agricultural Society licenses and regulates sales on the State Fairgrounds.

Penalties: Licensing-related violations of state law are petty misdemeanors (up to a \$300 fine). *Minn. Stat. § 645.241, Minn. Stat. § 609.02, subd. 4a*. Licensing ordinances also provide administrative and criminal penalties for violations. *Minn. Stat. § 461.12, subs. 2–4, Minn. Stat. § 375.53, Minn. Stat. § 412.231, Minn. Stat. § 366.01, subd. 10, Minn. Stat. § 609.02, subd. 3*.

Sale, Distribution and Display Requirements

ELECTRONIC DELIVERY DEVICES / LIQUID PACKAGING (CHILD-RESISTANT)

General Rule: Any liquid (whether or not it contains nicotine) that is intended for human consumption and use in an electronic delivery device must be sold in packaging that was designed and tested to be child-resistant. *Minn. Stat. § 461.20; 16 C.F.R. 1700.15(b)(1)*.

Enforcement Agent: Local law enforcement, 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 that violates a requirement of the state retail laws will be charged an administrative penalty of \$75 for the first violation and \$200 for a second violation at the same location within 24 months of the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 will be imposed and the license will be suspended for at least seven days. *Minn. Stat. § 461.12, subd. 2*. Local ordinances may provide for higher administrative fines and criminal penalties for violations.

ELECTRONIC DELIVERY DEVICES / LIQUID PACKAGING (CHILD-RESISTANT) — FEDERAL

General Rule: Any nicotine provided in liquid nicotine containers sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the U.S. must be packaged in accordance with Consumer Product Safety Commission standards and testing procedures established to prevent children under age five from opening the containers. *Pub. L. No. 114-116, 130 Stat. 3, 15 U.S.C. § 1472a; 16 C.F.R. § 1700.20, 16 C.F.R. § 1700.15*

NOTE: “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.

Enforcement Agent: Consumer Product Safety Commission.

Penalties: Failure to comply with this requirement may result in a civil penalty.

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.³⁸ 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 Agency: The Minnesota Fire Marshal, Minnesota Attorney General, and Minnesota Department of Revenue. *Minn. Stat. § 299F.854, subd. 6, Minn. Stat. § 299F.855.*

³⁸ The Minnesota State Fire Marshal maintains an inventory of certified brands, <https://dps.mn.gov/divisions/sfm/programs-services/Pages/approved-cigarette-brands.aspx>.

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 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) 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\(a\)\(1\)\(A\).*](#)

NOTE: The U.S. Food and Drug Administration has the authority to regulate 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.*](#)

Exception: This provision does not apply to tobacco products other than cigarettes.

Enforcement Agency: U.S. Food and Drug Administration, 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\(f\)\(9\).*](#)

GIFT EXCHANGES BASED ON PROOF OF PURCHASE

General Rule: Tobacco manufacturers subject to Minnesota's 1998 settlement agreement and the Master Settlement Agreement (MSA) 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). [*MSA III\(b\)*](#).

Enforcement Agency: Minnesota Attorney General's office.

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

INTERNET / MAIL ORDER SALES / DELIVERY SALES

General Rule: Minnesota restricts the sale of cigarettes, smokeless tobacco and premium cigars that are:

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

When accepting the first delivery order from a consumer, the 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. If an order is made as a result of an advertisement over the Internet, the retailer must request the email 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.³⁹

[*Minn. Stat. § 325F.781*](#).

³⁹ 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.

Enforcement Agency: The Minnesota Attorney General and other state and local authorities. [*Minn. Stat. § 325F.781, subd. 10.*](#)

Penalties: A cease and desist order will be issued for violations. Committing a second violation within two years of the cease and desist order is a misdemeanor offense (up to 90 days and/or a \$1,000 fine). Subsequent violations within two years of the cease and desist order is a gross misdemeanor (up to one year and/or a \$3000 fine). Civil penalties for violations are not more than \$1,000 for the first violation and not more than \$5,000 for subsequent violations. 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. [*Minn. Stat. § 325F.781*](#), [*Minn. Stat. §§ 325D.09-16*](#), [*Minn. Stat. § 609.02.*](#)

NOTE: The sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years is also a misdemeanor offense. Subsequent illegal sales within five years of a previous conviction is a gross misdemeanor. [*Minn. Stat. § 609.685*](#), [*Minn. Stat. § 609.6855.*](#)

INTERNET / MAIL ORDER TOBACCO SALES — FEDERAL PACT ACT

General Rule: The Prevent All Cigarette Trafficking Act (PACT Act) prohibits the delivery of sales of cigarettes (including roll-your-own and smokeless tobacco) via the U.S. Postal Service. Other delivery services, such as UPS and FedEx, may deliver a package containing cigarettes or smokeless tobacco if the package weighs less than ten pounds and bears stamps and signs verifying that all appropriate local, state and federal taxes have been paid. The buyer's age and identity must be confirmed upon delivery, and the recipient must be of minimum legal age to purchase tobacco products. [*Pub L. 111-154.*](#)

Exception: U.S. Postal Service restrictions do not apply to sales 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. mail by age-verified adults as long as certain restrictions are met. Additional exceptions apply for authorized business/ regulatory purposes, as well as for consumer testing and public health purposes.

Enforcement Agency: Postmaster General with the cooperation of any other federal agency or 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 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 new 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 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 cigarettes or smokeless tobacco, including all federal, state and local taxes. Any cigarettes or smokeless tobacco products that are deposited in the mails shall be subject to seizure and forfeiture. Any tobacco 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*](#).

KIOSK SALES (MOVEABLE PLACES OF BUSINESS)

General Rule: The sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products from a moveable place of business is prohibited. A “moveable 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 nonmotorized vehicle. [*Minn. Stat. § 461.21*](#).

Enforcement Agent: Local law enforcement, 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 that violates the state retail laws will be charged an administrative penalty of \$75 for the first violation and \$200 for a second violation at the same location within 24 months of the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 will be imposed, and the license will be suspended for at least seven days. [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 higher administrative fines and criminal penalties for violations.

“LIGHT,” “LOW,” “MILD” TOBACCO PRODUCT DESCRIPTORS

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](#).⁴⁰

Enforcement Agency: The 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 AND SINGLE ITEMS

General Rule: Retailers may not sell cigarettes or smokeless tobacco in an amount that is less than the smallest package distributed by the manufacturer for individual consumer use. In addition, cigarettes may not be manufactured, sold or distributed in packages containing fewer than 20 cigarettes. [21 C.F.R. § 1140.14\(d\)](#), [21 C.F.R. § 1140.16\(b\)](#).

⁴⁰ 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).

Enforcement Agency: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period;
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil money penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁴¹ 21 C.F.R. § 17.2.

⁴¹ For more information, see Guidance for FDA and Tobacco Retailers (Sept. 2013) at www.fda.gov.

MISBRANDED TOBACCO PRODUCTS

General Rule: A tobacco product is deemed to be misbranded if the package label does not contain:

1. The name and address of the manufacturer, packer, or distributor;
2. An accurate net quantity statement;
3. The percentage of tobacco that is foreign versus domestic; and
4. The statement “Sale only allowed in the United States.”

A tobacco product is also misbranded if its labeling is false or misleading. The U.S. Food and Drug Administration may issue regulations requiring prior approval of statements made on the label of a tobacco product. [21 U.S.C. § 387c](#).

Exception: The U.S. Food and Drug Administration shall establish regulations to permit “reasonable variations” and exemptions for “small packages.”

Enforcement: The 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 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\(f\)\(9\)](#).

MODIFIED RISK TOBACCO PRODUCTS

General Rule: A “modified risk” tobacco product is a tobacco product sold or distributed for use to reduce the harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. No person may sell such a product without approval from the U.S. Food and Drug Administration. The FDA will approve modified risk products if it determines that the product, as it is actually used by consumers, (1) significantly reduces harm and the risk of tobacco-related disease to individual tobacco users, and (2) benefits the health of the population as a whole. [21 U.S.C. § 387k](#).

Approval is conditioned on the applicant’s agreement to conduct postmarket surveillance and studies and submit the results to the FDA annually so the agency can determine the impact of such marketing on consumer perception, behavior

and health. The FDA may also impose additional marketing and label restrictions. Approval is limited to a five-year term but may be renewed. Approval may be withdrawn if requirements are not met. [21 U.S.C. § 387k](#).

Exception: In some cases, a modified risk tobacco product can be introduced if it is not commercially marketed.

Enforcement: The U.S. Food and Drug Administration, 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 \$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 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\(f\)\(9\)\(B\)](#).

ORIGIN LABELING

General Rule: All tobacco products must bear the statement “sale only allowed in the United States” on all labels, packaging and shipping containers. [21 U.S.C. § 387t\(a\)\(1\)](#).

NOTE: This provision took effect for “non-cigarette” tobacco products on July 22, 2010. For cigarettes, labeling was intended to take effect on September 22, 2012 — 15 months after the U.S. Food and Drug Administration issued cigarette label and advertising regulations. As a result of a 2011 lawsuit⁴² in which several tobacco manufacturers successfully challenged the FDA’s new graphic warning rule, the FDA instead plans to develop and propose a new graphic warning rule.

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

Penalties: Violators 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\(f\)\(9\)](#).

⁴² See *R.J. Reynolds Tobacco Co. v. U.S. Food & Drug Administration*, 696 F.3d 1205 (D.C. Cir. 2012).

PRE-MARKET REVIEW OF NEW TOBACCO PRODUCTS TCA

General Rule: New tobacco products or modified tobacco products (i.e., those not commercially marketed in the U.S. as of February 15, 2007) must be authorized by the U.S. Food and Drug Administration prior to commercial release. Authorization may be withdrawn as information changes and new findings are made. [21 U.S.C. § 387j](#); [21 U.S.C. § 387e](#).

Exception: A tobacco product that was introduced into the commercial market between February 15, 2007 and March 22, 2011 may be exempted from premarket review if the manufacturer submitted a report during that period claiming that the product is substantially equivalent to a product commercially marketed as of February 15, 2007, and the FDA does not issue an order to the contrary. If an order is issued finding that such a product is not substantially equivalent, the product is considered adulterated and misbranded.⁴³ [21 U.S.C. § 387j](#).

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

Penalty: 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 the U.S. Food and Drug Administration provides written notice, 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 violations ruled on in a single proceeding. [21 U.S.C. § 333\(f\)\(9\)\(B\)](#).

PUBLIC ASSISTANCE (EBT CARDS)

General Rule: Purchasing tobacco products with an electronic benefit transfer (EBT) card is prohibited. Tobacco stores 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.

⁴³ For more information, see *Guidance for Industry and Tobacco Retailers: Enforcement Policy for Certain (Provisional) Tobacco Products that FDA Finds Not Substantially Equivalent* (Sept. 2015), at www.fda.gov.

Penalties: Violations can lead to disqualification from assistance. [*Minn. Stat. § 256.987, subd. 4.*](#)

SELF-SERVICE SALES (OPEN DISPLAYS)

General Rule: The sale of 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 revenue from tobacco products and tobacco-related devices and where the retailer ensures that no person younger than 18 is present or permitted to enter at any time. [*Minn. Stat. § 461.18\(d\).*](#) However, a large number of cities and counties prohibit self-service sales in all retail locations.

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

Penalties: A retailer that violates state retail laws will be charged an administrative penalty of \$75 for the first violation and \$200 for a second violation at the same location within 24 months of the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 will be imposed, and the license will be suspended for at least seven days. [*Minn. Stat. § 461.12, subd. 2.*](#) Local ordinances may provide for higher administrative fines and criminal penalties for violations. Violations of state tobacco control laws are petty misdemeanors (up to a \$300 fine). [*Minn. Stat. § 645.241.*](#) [*Minn. Stat. § 609.02, subd. 4a.*](#)

SELF-SERVICE SALES

General Rule: Cigarettes and smokeless tobacco may only be sold 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\(c\)*](#), [*21 C.F.R. § 1140.16\(c\)\(1\)*](#), [*21 U.S.C. § 387a-1.*](#)

Exception: Mail-order sales are permitted (the redemption of coupons and distribution of free samples through the mail do not fall within the exception and are

prohibited). Vending machines and self-service displays are permitted in facilities where the retailer ensures that no person under the age of 18 is present or allowed to enter at any time. [21 C.F.R. § 1140.16\(c\)\(1\)](#), [21 U.S.C. § 387f\(d\)](#).

Enforcement Agency: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁴⁴ [21 C.F.R. § 17.2](#).

⁴⁴ For more information, see [Guidance for FDA and Tobacco Retailers](#) (Sept. 2013) at www.fda.gov.

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.⁴⁵ 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 Agency: Minnesota Department of Commerce and authorized agents, the Minnesota Attorney General’s office, and private persons.

Penalties: Violations are misdemeanors (up to 90 days 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 attorneys fees. *Minn. Stat. § 325D.40, subd. 1.*

SMUGGLING

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.*

⁴⁵ Minnesota Department of Commerce, Minnesota Minimum Legal Cigarette Prices, <https://mn.gov/commerce/industries/retailers/cigarette-vendors.jsp>.

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 Agency: 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, 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 18 at any time. [Minn. Stat. § 461.18, subd. 2.](#) A number of Minnesota communities prohibit the use of all vending machines, regardless of location. [Minn. Stat. § 461.19](#)

Design: A cigarette vending machine must be designed to allow 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\(b\).](#)

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.](#)

Enforcement Agency: Local law enforcement, local public health departments, and local licensing authorities. The Minnesota Attorney General’s office 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 that violates the state retail tobacco laws is subject to an administrative penalty of \$75 for a first violation and \$200 for a second violation within 24 months and \$250 for a third violation within 24 months of the first violation. Upon the third violation, the license to sell tobacco, tobacco-related devices, and similar products must also be suspended for not less than seven days. [*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 higher administrative fines and criminal penalties for violations.

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

Sale and Distribution to Minors

COMPLIANCE CHECKS

General Rule: The local licensing authority (county, city, or town) is required to conduct at least one unannounced compliance check each calendar year at each location where tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia products are sold, to verify each retailer's compliance with the state law prohibiting the sale of tobacco to minors. Compliance checks must involve minors over age 15 but under age 18 who, with the prior written consent of a parent or guardian, attempt to purchase these products under the direct supervision of a law enforcement officer or an employee of the licensing authority. [*Minn. Stat. § 461.12, subd. 5*](#).

Enforcement Agency: Local licensing authorities.

Penalties: The sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years is a misdemeanor (up to 90 days and/or a \$1,000 fine). Subsequent illegal sales within five years of a previous conviction is a gross misdemeanor (up to one year and/or a \$3,000 fine). [*Minn. Stat. § 609.685*](#), [*Minn. Stat. § 609.6855*](#). [*Minn. Stat. § 609.02*](#).

A retailer that violates the state retail tobacco laws is subject to an administrative penalty of \$75 for a first violation and \$200 for a second violation within 24 months and \$250 for a third violation within 24 months of the first violation. Upon the third viola-

tion, the license to sell tobacco, tobacco-related devices, and similar products must also be suspended for not less than seven days. [*Minn. Stat. § 461.12, subd. 2.*](#)

A clerk or other individual who sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years must be charged an administrative penalty of \$50. [*Minn. Stat. § 461.12, subd. 3.*](#)

Local ordinances may provide for higher administrative fines and criminal penalties for violations.

ID CHECKS

General Rule: Tobacco retailers must verify that a purchaser of any tobacco products, including e-cigarettes, is 18 years of age or older through a photo identification card containing the individual’s date of birth. [*21 C.F.R. § 1140.14\(b\).*](#)

Exception: Verification is not required for any person over the age of 26.

NOTE: Minnesota law does not require retailers to verify purchaser age through photo identification. However, “reasonable reliance” on proof of age demonstrated through one of the following forms of identification can be a defense to an illegal sale to a minor in violation of state law:

- 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, by a valid passport. [*Minn. Stat. § 461.12, subd. 6*](#), [*Minn. Stat. § 609.685, subd. 1a*](#), [*Minn. Stat. § 609.6855, subd. 1\(b\)*](#), [*Minn. Stat. § 340A.503, subd. 6*](#), [*Minn. Stat. § 171.05.*](#)

Enforcement Agent: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁴⁶ [21 C.F.R. § 17.2.](#)

⁴⁶ For more information, see [Guidance for FDA and Tobacco Retailers](#) (Sept. 2013) at www.fda.gov.

POSSESSION OR USE BY MINORS

General Rule: It is unlawful for anyone under the age of 18 to possess or use tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. [*Minn. Stat. § 609.685, subd. 3*](#), [*Minn. Stat. § 609.6855, subd. 3*](#).

Exception: A Native American under the age of 18 years may use tobacco as part of a traditional spiritual or cultural ceremony. [*Minn. Stat. § 609.685, subd. 5\(a\)*](#), [*Minn. Stat. § 260.755, subd. 12*](#).

Enforcement Agency: Local law enforcement, local public health departments, and local licensing authorities.

Penalties: Minors who possess or use tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are guilty of a petty misdemeanor (up to a \$300 fine). [*Minn. Stat. § 609.685, subd. 3*](#), [*Minn. Stat. § 609.6855, subd. 3*](#), [*Minn. Stat. § 609.02, subd. 4a*](#).

The local licensing authority must consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for minors who possess and consume these products. The licensing authority and the 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*](#).

PURCHASE OR ATTEMPTED PURCHASE BY MINORS

General Rule: No person under the age of 18 may purchase or attempt to purchase tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. [*Minn. Stat. § 609.685, subd. 3*](#), [*Minn. Stat. § 609.6855, subd. 3*](#). The use of false identification (such as a fake driver's license, Minnesota identification card, or other type of identification) to purchase or attempt to purchase tobacco products, is also prohibited. [*Minn. Stat. § 609.685, subs. 2\(b\), 3*](#), [*Minn. Stat. § 609.6855, subs. 2, 3*](#).

Exception: Penalties do not apply to a person under the age of 18 who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices while under the direct supervision of a responsible adult for training, education, research or law enforcement purposes. [*Minn. Stat. § 609.685, subd. 5\(b\)*](#).

NOTE: There is no minimum state age for store employees who sell tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. This activity may be regulated by a local ordinance.

Seizure of Identification: A retailer may seize a form of identification if there is reasonable grounds to believe that it 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 Agency: Local law enforcement, local public health departments, and local licensing authorities.

Penalties: Minors who purchase or attempt to purchase tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are guilty of a petty misdemeanor (up to a \$300 fine). The use of false identification is a misdemeanor (up to 90 days and/or a \$1,000 fine). [*Minn. Stat. § 609.685, subs. 2, 3, Minn. Stat. § 609.6855, subs. 2, 3, Minn. Stat. § 609.02, subd. 4a.*](#) Minors convicted of using false identification to purchase or attempt to purchase tobacco, tobacco-related devices, or electronic delivery devices, as well as persons convicted of lending or permitting a minor to use false identification, may have their driver's licenses suspended for 90 days. [*Minn. Stat. § 171.171.*](#)

The local licensing authority must consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for minors who 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.*](#)

SALE (OR FURNISHING) TO MINORS

General Rule: It is unlawful to sell or otherwise provide tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to any person under the age of 18. [*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 for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose, may be sold to minors. [*Minn. Stat. § 609.6855, subd. 1\(c\)*](#).

A Native American may furnish tobacco to a Native American under the age of 18 years as part of a traditional spiritual or cultural ceremony. [*Minn. Stat. § 609.685, subd. 5\(a\)*](#), [*Minn. Stat. § 260.755, subd. 12*](#).

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

Penalties: The sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years is a misdemeanor (up to 90 days and/or a \$1,000 fine). Subsequent illegal sales within five years of a previous conviction is a gross misdemeanor (up to one year and/or a \$3,000 fine). [*Minn. Stat. § 609.685*](#), [*Minn. Stat. § 609.6855*](#). [*Minn. Stat. § 609.02*](#).

A retailer who violates (or whose employees violate) the state retail tobacco laws is subject to an administrative penalty of \$75 for a first violation and \$200 for a second violation within 24 months and \$250 for a third violation within 24 months of the first violation. Upon the third violation, the license to sell tobacco products, tobacco-related devices, and similar products must also be suspended for not less than seven days. [*Minn. Stat. § 461.12, subd. 2*](#).

A clerk or other individual who sells or otherwise furnishes tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years must be charged an administrative penalty of \$50. [*Minn. Stat. § 461.12, subd. 3*](#). Local ordinances may provide for higher administrative fines for violations.

Defense: Reasonable reliance on proof of age is an affirmative defense to the charge of an illegal sale to a minor. [*Minn. Stat. § 340A.503, subd. 6*](#). (See “ID Check Requirements” in this section.)

SALES TO MINORS — SYNAR AMENDMENT

General Rule: To receive federal funding under the Substance Abuse Prevention and Treatment block grant, a state must have (and must enforce) a law prohibiting the sale of tobacco products to individuals under the age of 18. The state must conduct annual youth purchase surveys to monitor compliance with the law and report the results to the U.S. Food and Drug Administration. [42 U.S.C. § 300x-26](#); [45 C.F.R. § 96.130](#).

Enforcement Agent: The U.S. Food and Drug Administration is authorized to monitor each state's compliance and to reduce block grant funding for noncompliance. [45 C.F.R. § 96.130](#).

Penalties: States reporting more than a 20 percent failure rate of illegal sales to youth will have their annual Substance Abuse Prevention and Treatment federal block grant funding reduced by up to 40 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](#).

SALES TO MINORS

General Rule: It is unlawful for any tobacco retailer to sell any tobacco products, including e-cigarettes, to any person under the age of 18. [21 C.F.R. § 1140.14\(a\)](#).

NOTE: The FDA may not establish a minimum age of sale older than 18, although states are free to establish a minimum age of 19 years and older.

Enforcement Agent: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;

- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁴⁷ [21 C.F.R. § 17.2.](#)

⁴⁷ For more information, see [Guidance for FDA and Tobacco Retailers](#) (Sept. 2013) at www.fda.gov.

SECTION THREE: ADVERTISING

The tobacco industry spends billions of dollars annually on advertising and promotion.⁴⁸ Tobacco products now include many electronic cigarette brands and related nicotine delivery devices. Many studies have shown the powerful effect of this advertising, particularly on the purchasing habits of adolescents and their decisions to begin using tobacco.⁴⁹ This section summarizes laws that pertain to the advertisement of tobacco products in Minnesota.

Federal law limits the ability of states and local governments to regulate cigarette advertising.⁵⁰ Regulating cigarette advertising or promotion based on concerns about smoking or health is barred, or “preempted.”⁵¹ In 2009, the Tobacco Control Act amended the federal law by allowing state or local governments to impose “specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.”⁵² The ability of state or 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.

⁴⁸ Centers for Disease Control and Prevention, *Economic Facts about U.S. Tobacco Production and Use* (2015), http://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm.

⁴⁹ 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>.

⁵⁰ *Federal Cigarette Labeling and Advertising Act of 1966*, 15 U.S.C. § 1331, 15 U.S.C. § 1334.

⁵¹ 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.

⁵² 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).

Despite these serious limitations on state and local control over tobacco advertising, the *Minnesota Settlement Agreement* and *Master Settlement Agreement* with leading cigarette manufacturers place important restrictions on the ways in which the tobacco industry can advertise its products. Both agreements prohibit manufacturers from targeting children. In those areas where the Master Settlement Agreement created advertising restrictions not included in the original Minnesota settlement, the Minnesota Attorney General's office has the ability to incorporate the provisions of the MSA into Minnesota's settlement and enforce them against participating manufacturers (the provisions only apply to parties to the settlements). 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.⁵³

Minnesota has also entered into formal legal agreements ("Assurances of Voluntary Compliance") with large national retailers doing business in the state, some of which restrict tobacco product advertising, as well as the sale of tobacco products. (*See "Sale, Distribution and Display."*)

In recent years, the tobacco companies have been challenged repeatedly over violations of the marketing provisions in the Master Settlement Agreement, as well as related deceptive trade practices. In August 2006, U.S. District Court Judge Gladys Kessler issued her Final Opinion in the U.S. government's landmark racketeering case against tobacco companies, describing in meticulous detail how the tobacco companies falsely marketed and promoted "low tar"/"light" cigarettes as less harmful than other cigarettes, intentionally targeted youth with sophisticated marketing campaigns, and misled the public on smoking and disease-related issues and nicotine addiction.⁵⁴ Despite repeated appeals by the tobacco companies, Judge Kessler's 2006 opinion and the majority of the requirements it imposed on the major tobacco companies, such as the requirement to make corrective statements in the press, continue to be valid.

Also in 2006, the attorneys general of forty jurisdictions reached a settlement with R. J. Reynolds Tobacco Company to stop the marketing of candy, fruit and alcohol-flavored cigarettes in the United States.⁵⁵ The attorneys general contended that these flavored cigarettes violated the 1998 MSA, which prohibits tobacco

⁵³ *Smokeless Tobacco Master Settlement Agreement (2004)*.

⁵⁴ *U.S. v. Philip Morris*, 449 F. Supp. 2d 1 (D. D.C. 2006).

⁵⁵ *See* R.J. Reynolds Agreement, http://www.doj.state.or.us/releases/pdf/2006rj_reynolds_agreement.pdf.

marketing targeted at children. The outcome of the federal government's racketeering lawsuit against the tobacco industry, the impact of the flavored cigarette settlement, and federal requirements enacted as a result of the Family Smoking Prevention and Tobacco Control Act have all had an impact on the way in which tobacco products are marketed and advertised in Minnesota.

CARTOON CHARACTERS

General Rule: No cartoons or cartoon-like depictions of people, creatures, animals, or objects may be used in tobacco advertising and packaging. A cartoon is defined 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. [*MSA II\(l\)*](#), [*MSA III\(b\)*](#).

Enforcement Agency: Minnesota Attorney General's office.

Penalties: The Minnesota Attorney General's office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

EQUAL TREATMENT OF RETAIL OUTLETS

General Rule: The U.S. Food and Drug Administration must issue rules requiring that retail establishments whose primary business is the sale of tobacco products must comply with all advertising restrictions that apply to retail establishments accessible to people under 18 years of age. [*21 U.S.C. § 387m*](#).

NOTE: This provision ensures that tobacco stores are subject to the same advertising restrictions as other retailers, such as supermarkets and convenience stores.

Enforcement Agency: 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 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\(f\)\(9\)*](#).

OUTDOOR ADVERTISING

General Rule: Participating cigarette manufacturers 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. Cigarette manufacturers 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. [*MSA II\(ii\)*](#), [*MSA III\(d\)*](#). Participating cigarette 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\(C\)*](#).⁵⁶

Some local sign codes restrict the size, number, placement, and type of outdoor signs. These codes generally apply to all outdoor signs and are not specific to tobacco advertising.

Exceptions:

- Ads outside an “adult-only facility.” [*MSA II\(ii\)*](#).
- 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 II\(ii\)*](#).
- Ads inside a retail store that sells tobacco. [*MSA II\(ii\)*](#).
- Billboards advertising a tobacco brand-sponsored event at the site of the event for 90 days before the event and 10 days after. [*MSA III\(c\)\(3\)\(E\)\(ii\)*](#).
- Ads outside a tobacco manufacturing facility. [*MSA II\(ii\)*](#).

Enforcement Agency: Minnesota Attorney General’s office.

⁵⁶ 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.

Penalties: The Minnesota Attorney General's office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

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 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 Agents: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁵⁷ [21 C.F.R. § 17.2.](#)

SCHOOL BUSES

General Rule: The Minnesota Department of Health 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 is prohibited. [Minn. Stat. § 123B.93.](#)

Enforcement Agency: Minnesota Department of Health

TELEVISION, RADIO AND OTHER BROADCAST ADVERTISING

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

Exception: Cigars other than “little cigars” may be advertised on television, radio or other electronic media under the jurisdiction of the Federal Communications Commission. In 2000, the seven largest cigar makers in the U.S. reached settlement agreements with the FTC in which they agreed to include Surgeon Gener-

⁵⁷ For more information, see [Guidance for FDA and Tobacco Retailers](#) (Sept. 2013) at www.fda.gov.

al's warnings on their cigar labels and advertisements, including television, radio and Internet ads.⁵⁸

Enforcement Agency: The U.S. Department of Justice and, in some situations, the Federal Trade Commission.

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

TRANSIT ADVERTISING

General Rule: Tobacco transit ads are prohibited. 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, or similar location. [MSA II\(xx\)](#), [MSA III\(d\)](#); [Minn. Settlement Agreement I\(C\)\(14\)](#), [IV\(C\)](#). Note that this prohibition applies not only to “transit” settings in the sense of bus, taxi or light rail facilities, but also to airports and train stations.

Exception: This prohibition does not apply to ads located outside an “adult-only facility” (where no minors are present) promoting an event with a brand name, no more than 14 days before the event, nor does it apply to vehicles bearing a tobacco brand name outside a brand-sponsored event.

Enforcement Agency: Minnesota Attorney General’s office.

Penalties: The Minnesota Attorney General’s office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

YOUTH TARGETING

General Rule: Participating cigarette manufacturers may not target youth directly or indirectly in the advertising, promotion or marketing of tobacco products, or take any action the primary purpose of which is to initiate, maintain, or increase youth smoking. For example, a California appeals court found that R.J. Reynolds

⁵⁸ 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>

indirectly targeted youth by placing ads in magazines with high youth readership.⁵⁹
MSA III(a); Minn. Settlement Agreement (Consent Judgment V(D)).

Enforcement Agency: Minnesota Attorney General's office.

Penalties: The Minnesota Attorney General's office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

⁵⁹ *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 11 Cal.Rptr.3d 317 (Cal.App. 4 Dist., 2004).

SECTION FOUR: SPONSORSHIP & PROMOTION

One of the most effective ways tobacco manufacturers market their products is by creating strong brand image and identity through promotions and sponsorship. The manner in which tobacco products in Minnesota are promoted and used in brand name sponsorships is regulated by both federal and state law. The *Minnesota Settlement* and *Master Settlement Agreement* also contain several provisions that apply to specific marketing tactics.⁶⁰ This section describes the major federal and state requirements, as well as the settlement provisions, that apply to tobacco industry sponsorships and promotions.

BRAND NAME LIMITATIONS

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. § 387a-1*](#); [*21 C.F.R. § 1140.16\(a\)*](#).

Exception: This provision does not apply to a 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, 1995.⁶¹

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

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. [*21 U.S.C. § 333\(f\)\(9\)*](#).

NOTE: This provision is not currently in effect.

⁶⁰ 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.

⁶¹ For more information see *Guidance for Industry and FDA Staff: Enforcement Policy Concerning Certain Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco* (May 2010) and *Guidance for Industry: Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents* (August 2013), www.fda.gov.

BRAND NAME MERCHANDISE

General Rule: The sale or distribution of any apparel or merchandise that bears a tobacco product brand name, logo, or other identifying features is prohibited. [*MSA III\(f\)*](#), [*Minn. Settlement Agreement \(IV\)\(E\)*](#). This covers giveaway items and anything with a utilitarian function beyond advertising, such as watches, clocks, napkins or coasters. One court held that branded matchbooks are within the definition of “merchandise” and would violate the MSA even if given away for free.⁶²

Exception: This does not apply to tobacco products or any item used solely to advertise tobacco products, such as a poster.

Enforcement Agency: Minnesota Attorney General’s office.

Penalties: The Minnesota Attorney General’s office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

JOINT MARKETING

General Rule: A tobacco product (any 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, including a drug, food, cosmetic, medical device, or dietary supplement. [*21 U.S.C. § 321\(rr\)*](#).

Enforcement Agency: 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 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\(f\)\(9\)*](#).

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\(c\)*](#).

⁶² *State ex rel. Petro v. R.J. Reynolds Tobacco Co.*, 820 N.E.2d 910 (Ohio 2004).

Enforcement Agency: 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

General Rule: It is illegal to make any express or implied statement 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 FDA;
- Endorsed by the FDA;
- Deemed safe by the FDA; or
- Less harmful due to FDA regulation. [21 U.S.C. § 331\(tt\)](#).

Enforcement Agency: 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 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

General Rule: Cigarette manufacturers may not pay for product placement in movies, television, theater, video games, or other performances, nor may 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. [MSA III\(e\)](#); [Minn. Settlement Agreement \(IV\)\(D\)](#).

Exception: This does not apply to media not intended for public distribution, media within an adult-only facility, or instructional media concerning non-conventional cigarettes viewed only by adult smokers. [MSA III\(e\)](#).

Enforcement Agency: Minnesota Attorney General's office.

Penalties: The Minnesota Attorney General's office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

SALE AND DISTRIBUTION OF NON-TOBACCO ITEMS

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\(a\)](#); [21 U.S.C. § 387a-1](#).

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

Enforcement Agency: The 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 or 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 tobacco stores.

Enforcement Agency: The Minnesota Attorney General's office.

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

SAMPLES, COUPONS AND PROMOTIONAL OFFERS

General Rule: Manufacturers, distributors and retailers may not distribute (or cause to be distributed) free samples of any tobacco products, including e-cigarettes. [21 U.S.C. § 387a-1](#), [21 U.S.C. § 387f\(d\)](#); [21 C.F.R. § 1140.16\(d\)](#).

Exception: The distribution of free samples of smokeless tobacco is permitted in a qualified adult-only facility, provided the facility:

- Has a law enforcement officer present to check photo ID and yo ensure that access is limited to adults;
- Is a temporary structure created for the purpose of distributing free samples of smokeless tobacco;
- Is enclosed by a barrier that prevents people outside the facility from seeing inside the facility unless they make an unreasonable effort to do so;
- Does not sell, serve, or distribute alcohol;
- Is not located adjacent to or immediately across from an area used primarily for youth-oriented marketing, promotional, or other activities; and
- Does not have exterior advertising other than brand names in conjunction with a word to identify the qualified adult facility. [21 C.F.R. § 1140.16\(d\)](#)

Qualified adult-only facilities are not permitted at any football, basketball, baseball, soccer, or hockey events. The U.S. Food and Drug Administration has the authority to add additional types of events to this list in the future. An adult consumer may only leave with one package (15 grams) of smokeless tobacco.

NOTE: This provision does not affect the authority of a state or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco. It also does not cover other tobacco products (e.g., cigars, little cigars, or pipe tobacco).

Enforcement Agency: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period;
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁶³ [21 C.F.R. § 17.2](#).

SPONSORSHIP

General Rule: Each cigarette manufacturer is limited to only one “brand name” event sponsorship per year. A national or multi-state series or tour (e.g., NA-

⁶³ For more information, see [Guidance for FDA and Tobacco Retailers](#) (Sept. 2013) at www.fda.gov.

SCAR) counts as one brand name sponsorship. Brand name sponsorship is prohibited at events where the intended audience consists of a “significant percentage of youth” (this term is undefined); events in which participants or contestants are under the age of 18; concerts; and football, basketball, soccer, baseball or hockey games. [MSA III\(c\)](#).

A stadium or arena may not be named with a tobacco brand name and tobacco companies are prohibited from paying football, basketball, baseball, soccer or hockey leagues to use a tobacco brand name. [MSA III\(c\)\(5\)-\(6\)](#).

Exception:

- Events at “adults-only facilities,” where minors are not present and cannot see inside. [MSA II\(j\)](#).
- Vehicles displaying a brand name outside a brand-sponsorship event. [MSA III\(c\)\(3\)\(E\)](#).
- Billboards for a brand-sponsored event at the site of the event for ninety days before and ten days after the event. [MSA III\(c\)\(3\)\(E\)](#).
- Corporate name sponsorship. [MSA III\(c\)\(4\)](#). This allows sponsorship in the name of the parent company (e.g., Altria), but not in the name of a tobacco brand (e.g., Marlboro).

Enforcement Agency: Minnesota Attorney General’s office.

Penalties: The Minnesota Attorney General’s office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

SPONSORSHIP

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, in 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\(d\)](#), [21 U.S.C. § 387a-1](#).

Exception: Manufacturers, distributors or retailers are allowed to 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 Agencies: The 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 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 with an approved training program in place that complies with standards developed by the FDA are subject to the following penalties, not to exceed:

- A warning letter for a first violation;
- \$250 for a second violation within a 12-month period;
- \$500 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

Retailers who violate this provision and do not have an approved training program in place are subject to civil penalties, not to exceed:

- \$250 for a first violation;
- \$500 for a second violation within a 12-month period;
- \$1,100 for a third violation within a 24-month period;
- \$2,000 for a fourth violation within a 24-month period;
- \$5,000 for a fifth violation within a 36-month period; and
- \$11,000 for a sixth or subsequent violation within a 48-month period.

In addition to civil penalties, no-tobacco-sale orders may be imposed on retailers who repeatedly violate restrictions.⁶⁴ [21 C.F.R. § 17.2](#).

TOBACCO BRAND NAMES COMBINED WITH NON-TOBACCO PRODUCTS

General Rule: Tobacco brands may not use the names of a non-tobacco product or any nationally recognized sports team, entertainment group, or celebrity. [MSA III\(j\)](#).

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

Enforcement Agency: Minnesota Attorney General's office.

Penalties: The Minnesota Attorney General's office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

⁶⁴ For more information, see [Guidance for FDA and Tobacco Retailers](#) (Sept. 2013) at [www.fda.gov](#).

SECTION FIVE: TOBACCO TAXES & PRICING

Federal and state governments tax tobacco products to raise revenue and discourage consumer use. However, the taxes collected do not begin to recoup the costs that tobacco imposes on society. Tobacco-related illnesses cost the United States billions of dollars in health care costs and lost productivity each year. In 2009, tobacco use in Minnesota resulted in over 5,000 premature deaths and \$2.87 billion in excess medical expenditures — a per capita expense of \$554 for every man, woman and child in the state.⁶⁵

Minnesota imposes an excise tax on the sale or possession of cigarettes of \$2.90 per pack of 20, with the tax rate adjusted annually for the change in the average retail price of cigarettes in the state. An excise tax of 95 percent of the wholesale price applies to other tobacco products, such as cigars, pipe tobacco, snuff, and chewing tobacco. Increasing the price of 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.⁶⁶

By increasing tobacco prices, Minnesota seeks to reduce both the number of tobacco users in the state and future medical and insurance expenses. This section covers taxes imposed on tobacco products sold in Minnesota, as well as tax-sharing agreements covering sales of tobacco products on American Indian reservations in the state.

FEDERAL TAXES

General Rule: The federal government imposes an excise tax of 39 cents per pack of “small cigarettes” that is, regular cigarettes (weighing less than 3 pounds per thousand), 82 cents per pack of “large cigarettes” (weighing more than 3 pounds

⁶⁵ Blue Cross Blue Shield of Minnesota, *Health Care Costs and Smoking in Minnesota* (2010), http://www.acscan.org/ovc_images/file/action/states/mn/Cost_of_Smoking_BCBS.pdf.

⁶⁶ 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 (2012), <http://www.tobaccofreekids.org/research/factsheets/pdf/0146.pdf>.

per thousand), 58.5 cents per pound of snuff tobacco, 19.5 cents per pound of chewing tobacco, \$1.10 per pound of pipe tobacco, 1.22 cents for each 50 cigarette papers, 2.44 cents for each 50 cigarette tubes and \$1.10 per pound of roll-your-own tobacco. Small cigars (weighing less than 3 pounds per thousand) are taxed at 1.83 cents per thousand and large cigars (weighing more than 3 pounds per thousand) are taxed equal to 20.719 percent of the price for which they are sold, but not more than \$48.75 per thousand. [26 U.S.C. § 5701](#).

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

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 cigars that weigh 4.5 pounds per thousand or less and products that meet other specified characteristics, even if they are labeled as cigars, little cigars, small cigars, cigarillos, mini-cigarillos, etc. [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 \$2.90 per pack of twenty. 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. The Commissioner of Revenue annually adjusts the tax rate for inflation on January 1 to correspond to the change in the average retail price of cigarettes in the state.⁶⁷

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, all products derived from tobacco (other than cigarettes) are considered to be “tobacco products.” These products include cigars, snuff, pipe tobacco, and chewing tobacco. [*Minn. Stat. § 297F.01, subd. 19*](#).

General Rule: Minnesota imposes an excise tax on all tobacco products, which is collected from the distributor. The excise tax on tobacco products (other than cigarettes), is currently 95 percent of the wholesale sales price of any product containing or derived from tobacco — that is, the price at which a distributor purchases a tobacco product. The wholesale sales price includes any applicable

⁶⁷ At the time this publication went to press, legislation affecting cigarette and electronic cigarette taxes was under discussion as part of special session negotiations.

federal taxes, shipping costs, and packaging costs. Since this tax is a percentage of price, it fluctuates as the prices of the products change.

Exceptions:

- **Moist Snuff:** A minimum tax applies to each container of moist snuff equal to the tax rate on a pack of 20 cigarettes.
- **Premium Cigars** (hand-rolled with a wholesale sales price of \$2/cigar or more): A maximum tax of \$3.50 per cigar applies. [*Minn. Stat. § 297F.05, subd. 3a.*](#)

Use Tax: A use tax also applies to consumers for the use or storage of untaxed tobacco products in the state. [*Minn. Stat. § 297F.05, subd. 4.*](#) 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.*](#)

Electronic Cigarettes

General Rule: E-cigarettes and e-juice that contain nicotine derived from tobacco are considered to meet the definition of tobacco products for taxation purposes and are subject to the tobacco excise tax. [*Minn. Stat. § 297F.01, subd. 19, Minn. Stat. § 297F.05, subd. 3.*](#) The cartridge containing nicotine is a component of the e-cigarette. The excise tax on an e-cigarette starter kit is calculated on its total cost unless the nicotine cartridges are sold separately, in which case the tax is only on the nicotine cartridge value.⁶⁸ Similarly, a disposable e-cigarette may have the tax calculated on its nicotine cartridge value if the cartridge is replaceable. [*Minn. Dep't of Revenue Notice #12-10.*](#)⁶⁹

Exceptions: The Department of Revenue assumes that all nicotine is derived from tobacco. If it can be documented that the nicotine has been derived from sources other than tobacco, it will not be taxable as a tobacco product.

Enforcement Agency: Minnesota Department of Revenue.

⁶⁸ At the time this publication went to press, legislation affecting cigarette and electronic cigarette taxes was under discussion as part of special session negotiations.

⁶⁹ For more information, visit the Minnesota Department of Revenue's website at <http://www.revenue.state.mn.us/businesses/tobacco/Pages/e-Cig.aspx>.

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 the filing of false or fraudulent returns). Distributors who owe \$500 or more in delinquent taxes or who, after demand, fail to file tax returns, may have their licenses revoked or may not have them issued or renewed. [*Minn. Stat. § 297F.04*](#), [*Minn. Stat. § 297F.20*](#).

INFORMATIONAL REPORTING

General Rule: Manufacturers of 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*](#).

Enforcement Agency: Minnesota Department of Revenue.

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

SALES ON INDIAN RESERVATIONS

General Rule: The Minnesota Department of Revenue has entered into tax-sharing agreements with the governing bodies of ten of eleven federally recognized Native American tribes in the state. [*Minn. Stat. § 270C.19*](#).⁷⁰ Sales tax on cigarettes and 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 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

⁷⁰ See Minnesota Department of Revenue, *Sales Tax Fact Sheet* 160 (1999), <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS160.pdf>.

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 tobacco products other than cigarettes. The agreements also require the state to make payments to the tribes based on the amount of cigarettes and 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.

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 tribe 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 Agency: The Minnesota Department of Revenue is the lead enforcement agency. 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 “Tobacco Taxes & Pricing” section.

UNSTAMPED CIGARETTES AND UNTAXED TOBACCO PRODUCTS

General Rule: Cigarette packages must be stamped to evidence payment of taxes. 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 “Indian stamps” affixed to the packages. *Minn. Stat. § 297F.08, Minn. Stat. § 297F.20*.

Enforcement Agency: Minnesota Department of Revenue.

Penalties: Penalties are determined by the number of unstamped cigarettes, or value of untaxed tobacco products, and range from a misdemeanor to a felony. *Minn. Stat. § 297F.20*.

SECTION SIX: DISCLOSURE & REPORTING

Over seventy compounds in tobacco smoke are known human carcinogens.⁷¹ Little is known about the relative lethality of particular brands of cigarettes and tobacco products. Federal and state law requires tobacco manufacturers to submit periodic reports on ingredients in their products — both in their unburned state and in the smoke they emit. Tobacco manufacturers, as well as distributors and retailers operating in Minnesota, must disclose other information to the state as well. For example, state law requires tobacco 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 tobacco product manufacturers, distributors and retailers in Minnesota.

CONTENT DISCLOSURES TO THE PUBLIC

General Rule: Each tobacco product manufacturer or importer is required to submit information on the content of its products. The U.S. Food and Drug Administration will determine whether tar and nicotine yields of cigarette and 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 the public health. The FDA has established a list of harmful and potentially harmful tobacco product constituents, which is shared with the public. Although the FDA is required to maintain this list and republish it annually, it has not done so to date. The publication deadline was April 2013.⁷² [21 U.S.C. § 387d](#); [15 U.S.C. § 1333](#).

⁷¹ Centers for Disease Control & Prevention, *Health Effects of Secondhand Smoke* (2016), http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm.

⁷² U.S. Food & Drug Admin., *Harmful and Potentially Harmful Constituents (HPHCs)*, <http://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm20035927.htm>.

Exception: Mandatory disclosures of yields of cigarette or tobacco constituents, other than tar or nicotine, cannot appear directly on the face of any cigarette package or advertisement.

Enforcement Agencies: The U.S. Attorney General is authorized to enforce this provision, acting through several U.S. attorneys. 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](#); [15 U.S.C. § 1336](#), [15 U.S.C. § 1339](#).

Penalties: A violation is considered a misdemeanor, and a conviction will subject the violator to a fine of \$10,000 or less. [15 U.S.C. § 1338](#).

DISCLOSURE OF PAYMENTS LIKELY TO AFFECT PUBLIC POLICY

General Rule: Tobacco manufacturers subject to Minnesota’s 1998 settlement agreement must disclose to the Minnesota Attorney General’s office and Office of the Governor 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 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](#).

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 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 “political contributions” as defined under state and federal law. [Minn. Stat. § 10A.01, subd. 11](#), [11 C.F.R. § 100.51](#).

Enforcement Agency: Minnesota Attorney General’s office.

Penalties: The Minnesota Attorney General's office 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 tobacco products distributors, retailers and subjobbers, such as vending machine operators, must retain itemized invoices of all cigarettes and tobacco products purchased and the names and addresses of those to whom they provided products, other than the ultimate consumer. Legible copies of each invoice must be preserved for at least three and a half years from the date of sale. 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 Agency: The Minnesota Department of Revenue is the lead enforcement agency. Department representatives may enter the place of business of a distributor or retailer during normal business hours to inspect required records and cigarette packages, tobacco 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*](#), [*Minn. Stat. § 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 Agency: The Minnesota Fire Marshal, Minnesota Attorney General, and Minnesota Department of Revenue enforce this law. [*Minn. Stat. § 299F.854, subd. 6*](#), [*Minn. Stat. § 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 \$5,000 for subsequent offenses. [*Minn. Stat. § 299F.854, subd. 3, Minn. Stat. § 299F.854, subd. 4.*](#)

INGREDIENTS REPORT

General Rule: Manufacturers of 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 the product 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\(a\), 15 U.S.C. § 4403\(a\)\(1\).*](#)

Enforcement Agency: The Minnesota Department of Health and the Minnesota Attorney General's office 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\(9\), 15 U.S.C. § 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 Minnesota Attorney General's office 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, 15 U.S.C. § 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 Agency: The 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\(a\)\(2\)](#).

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\(a\)\(1\)\(B\)](#).⁷³

Enforcement Agency: The 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

General Rule: The U.S. Food and Drug Administration must issue regulations regarding how any person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports 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 for individual purchasers who purchase tobacco products for personal consumption. The U.S. Food and Drug Administration must have the express written consent of an Indian tribe before inspecting records located in a reservation.

⁷³ 32 Fed. Reg. 11178 (Aug. 1, 1967); see also 62 Fed. Reg. 48158 (Sept. 12, 1997) & 73 Fed. Reg. 40350 (July 14, 2008), www.ftc.gov.

Enforcement Agent: The U.S. Food and Drug Administration, 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

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

Enforcement Agent: The U.S. Food and Drug Administration, 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

General Rule: Tobacco product manufacturers and importers or their agents must provide the U.S. Food and Drug Administration 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, tobacco manufacturers and importers must furnish the FDA with any or all documents (including underlying scientific information) relating to tobacco product research activities.

Enforcement Agent: The U.S. Food and Drug Administration, 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

General Rule: Tobacco product manufacturers must pay the U.S. Food and Drug Administration 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 Agent: The U.S. Food and Drug Administration, 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 tobacco manufacturers actually welcomed the introduction of these weak warnings in the expectation that they would later be able to argue, when sued by dying smokers, that their customers had been informed of the hazards of smoking and had made the choice to continue.⁷⁴ Since then, dramatic scientific evidence has revealed the significant health risks posed by other tobacco products. The federal government now requires health warning labels on the packages and advertisements of all cigarettes, cigars and smokeless tobacco products. A growing number of countries, including Canada, Brazil, Thailand and the European Union, require warnings or visual images for cigarette packages that are much larger and more powerful than those required in the United States.

Under the *Family Smoking Prevention and Tobacco Control Act*, the U.S. Food and Drug Administration has the authority to mandate large, prominent warning labels for cigarettes and smokeless tobacco products. Only federal lawmakers can require health warnings for tobacco packaging and advertisements. Preemptive provisions of the federal tobacco labeling laws bar state and local authorities from requiring additional health warnings on cigarette or smokeless tobacco packaging and advertising.

This section covers health warning labels for tobacco product packaging and advertisements, as well as labels indicating cigarettes meet “reduced ignition propensity” (fire-safety”) standards. It does not address secondhand smoke warnings posted in public places, which are sometimes required under local “use” laws.

CIGARETTE LABEL AND ADVERTISING WARNINGS

General Rule: All cigarette packages made, sold, or distributed within the United States, and all related advertising and marketing, are required to bear specified warnings regarding associated health risks. The warning labels must adhere to placement and typography restrictions. The U.S. Food and Drug Administration can make

⁷⁴ See *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

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 tobacco products. These labels cannot be altered or deleted. [15 U.S.C. § 1333](#), [15 U.S.C. § 1334](#).

Exception: This provision does not apply to tobacco products other than cigarettes or to foreign distribution of cigarettes. 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.

NOTE: This provision was the subject of two lawsuits. In 2009, six tobacco manufacturers and retailers challenged in federal court the constitutionality of several parts of the Tobacco Control Act, including the graphic warning label requirement. [Discount Tobacco City & Lottery, Inc. v. United States](#), 674 F.3d 509 (6th Cir. 2012). The U.S. Court of Appeals for the Sixth Circuit upheld the graphic warning label and related requirements.

In 2011, several tobacco manufacturers challenged the FDA's graphic warning rule. [R.J. Reynolds Tobacco Co. v. U.S. Food & Drug Administration](#), 696 F.3d 1205 (D.C. Cir. 2012). The U.S. Court of Appeals for the D.C. Circuit struck down the FDA's graphic warning rule, and the U.S. Attorney General chose not to seek Supreme Court review of the decision. The FDA instead plans to develop and propose a new graphic warning rule. Until the FDA issues a new rule, the old Surgeon General's warning still appears on packages.

Enforcement Agency: The U.S. Food and Drug Administration is authorized to enforce this provision. 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: This provision is currently not being enforced. When it is enforced, failure to display the cigarette health warning or to display the warning properly will be a misdemeanor, punishable by a fine of up to \$10,000. [15 U.S.C. § 1338](#).

CIGAR WARNING LABELS

General Rule: Cigar packages and advertisements in the U.S. must clearly and prominently display one of six health warning statements. [21 C.F.R. § 1143.5](#).

Enforcement Agency: U.S. Food and Drug Administration.

Penalties: Failure to display the cigar warning or to display the warning properly may result in a civil penalty of up to \$11,000.

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 Agency: The 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 \$5,000 for any subsequent offense. [*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. “Other tobacco products” include hookah, pipe tobacco, dissolvable tobacco products, e-cigarettes and other products containing tobacco or nicotine derived from tobacco. [*21 C.F.R. § 1143.1, 3*](#)

Enforcement Agent: 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

General Rule: Smokeless tobacco products (any finely cut, ground, powdered or leaf tobacco that is intended to be placed in the mouth or nose) manufactured, packaged or imported for sale must display one of a series of rotating warning messages prescribed

by the Federal Trade Commission. Smokeless tobacco manufacturers, importers, and packagers may not advertise their products without including one of the mandated warnings in the ad. Warning 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. The U.S. Food and Drug Administration 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. Neither state nor local governments may require additional health warnings for smokeless tobacco product packages or advertisements. The warning labels must adhere to placement and typography restrictions. [15 U.S.C. § 4402](#), [15 U.S.C. § 4406](#).

Exception: This provision does not apply 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 Agency: The U.S. Food and Drug Administration. 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: Failure to display the cigarette health warning or to display the warning properly is a misdemeanor, punishable by a fine of up to \$10,000. [15 U.S.C. § 1338](#).

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 Agency: The Minnesota Attorney General.

Penalties: Violations are misdemeanors (up to 90 days 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 tobacco use and commerce. Of course, many other laws affect tobacco use and commerce in an indirect fashion. The lawsuits brought by states in the early 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 outlines some of the other laws that apply to tobacco use and commerce in an indirect fashion, but that may be of particular interest or importance.

RELATED MINNESOTA LAWS

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. [*Minn. Stat. § 182.653*](#). 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 Agency: 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. [*Minn. Stat. § 182.666*](#).

Human Rights Act

General Rule: The Minnesota Human Rights Act, like the Americans for Disabilities Act (see later in this section), prohibits unfair discrimination in business, credit, education, employment, housing, public accommodations, and other public services. The 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*](#). Qual-

ified disabled persons are disabled individuals who, with reasonable accommodation, can perform the essential functions required of all employees performing the job in question; or those who — with or without reasonable modifications to rules, policies, or practices, removal of architectural, communications, or transportation barriers, or 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*](#). Disabled persons who wish to be protected from secondhand smoke in the workplace, housing, and other areas, may file a human rights complaint with the state agency or bring a lawsuit under the Minnesota Human Rights Act. [*Minn. Stat. § 363A.28 et seq.*](#)

Enforcement Agency: Minnesota Department of Human Rights and the Minnesota Attorney General.

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 back pay and compensation for lost benefits, reinstatement, punitive damages up to \$25,000, compensation for mental pain and suffering, and a civil penalty. [*Minn. Stat § 363A.30, subd. 4*](#), [*Minn. Stat. § 329A.29, subd. 4*](#).

Land Use Regulations

An issue of great interest to 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 tobacco products, particularly with respect to youth access and exposure to these products. One option may be 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 a proposed business or other use 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, for example, to control the number and placement of retail alcohol outlets and firearms dealers. 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, local governments might reasonably use their zoning powers to reg-

ulate the location and operation of tobacco retailers. A community might use its land use authority, for example, to prevent a tobacco retailer from locating across the street from a high school or playground.

While land use regulation is a relatively unexplored area of tobacco control law, it may offer communities — particularly growing communities — another way to control the sale and use of tobacco and reduce health damage caused by tobacco products in Minnesota.

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. Neither the federal nor state OSHA rules specifically address exposure to tobacco smoke, however. In 1994, OSHA issued proposed indoor air quality regulations that would have dealt with secondhand smoke in the workplace, as well as other issues. No final regulations were issued. As a result, OSHA rules apply to the harmful effects of tobacco smoke only in rare and extreme circumstances. For example, contaminants created by a manufacturing process may combine with tobacco smoke to create a dangerous workplace air supply that fails OSHA standards. [*Minn. Stat. § 182.65 et seq.*](#)

Enforcement Agency: The Occupational Safety and Health Administration 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.*](#)

Prohibited Challenges to Tobacco Control Laws

General Rule: 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 tobacco use by children; challenge the facial validity or constitutionality of existing Minnesota laws or rules relating to tobacco

control; or support in Congress or any forum, legislation, rules or policies that would preempt, override, abrogate or diminish Minnesota's rights or recoveries under the Minnesota settlement. *Minn. Settlement Agreement (IV)(A)*.

Enforcement Agency: Minnesota Attorney General's office.

Penalties: The Minnesota Attorney General's office may seek injunctive relief to stop violations of the provisions, as well as monetary penalties and the costs of enforcement.

Prohibited Employer Conduct (Smokers Rights Laws)

General Rule: Employers may not refuse to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of lawful consumable products, such as tobacco, if the 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 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 appearance of a conflict of interest with any responsibilities owed by the employee to the employer. *Minn. Stat. § 181.938, subd. 3*.

Enforcement Agency: Minnesota Department of Labor and Industry.

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 both federal and Minnesota law, employers who employ individuals within the state must contribute unemployment taxes to the federal and state reemployment insurance fund.⁷⁵ 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*.

⁷⁵ For more information, see U.S. Dep't of Labor, *Federal-State Partnership* (2015), <http://workforcesecurity.doleta.gov/unemploy/pdf/partnership.pdf>.

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 benefits. Non-smoking employees who have lost employment because they were unable to continue working due to exposure to secondhand smoke in the workplace have been found eligible for unemployment benefits. [*Minn. Stat. § 268.095.*](#)

Enforcement Agency: Minnesota Department of Economic Security.

Penalty: Employers are liable for specially defined unemployment benefits of eligible employees, as well as for penalties for misconduct. [*Minn. Stat. § 268.184.*](#)

Whistleblower Act

General Rule: An employer may not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, condition, 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 (such as a company smoking violation) to an employer or to any governmental body or law enforcement official. [*Minn. Stat. § 181.932.*](#)

Enforcement Agency: Minnesota Department of Labor and Industry.

Penalties: Civil penalties may include all damages recoverable at law, costs and disbursements, 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 is related to work activity. All Minnesota employers, with very limited exceptions, are subject to the Act. Workers' compensation benefits are awarded regardless of fault or negligence. 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 and disability payments). [*Minn. Stat. § 176.021.*](#)

Enforcement Agency: Minnesota Department of Labor and Industry.

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

RELATED FEDERAL LAWS

Americans with Disabilities Act

General Rule: The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in employment, services 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\(a\), 42 U.S.C. § 12132, 42 U.S.C. § 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\(2\).*](#) A person with asthma and limited breathing ability, for example, may be considered “disabled” under the law.

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\(9\), 42 U.S.C. § 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 Agency: Complaints of discrimination in employment may be filed with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC is required to investigate the complaint. If the EEOC decides not to file an action based on the complaint, the person affected can file a private lawsuit. [*42 U.S.C. § 2000e-4, 42 U.S.C. § 2000e-5, 42 U.S.C. § 2000e-6, 42 U.S.C. § 2000e-8;*](#)

[*42 U.S.C. § 12117\(a\)*](#). 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. § 2000a-3*](#), [*42 U.S.C. § 12188*](#).

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*](#).

A tenant or condominium owner who is sensitive to tobacco smoke may be able to use the FHA to obtain relief from secondhand smoke infiltration. The affected person must prove an adverse health reaction to secondhand tobacco smoke that substantially limits one or more major life activities and that is severe and long-term.

Enforcement Agency: 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\(g\)\(3\)\(c\)*](#).

Patient Protection and Affordable Care Act

General Rule: The *Patient Protection and Affordable Care Act* (ACA) requires individuals to have health insurance starting January 1, 2014, 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.

The ACA expanded Medicaid coverage to include tobacco cessation therapy for pregnant women, effective October 1, 2010. As of January 1, 2014, states are prohibited from excluding tobacco cessation coverage from the Medicaid program. [42 U.S.C. § 300u-11](#), [42 U.S.C. § 300gg](#), [42 U.S.C. § 1396d](#), [42 U.S.C. § 1396o](#), [42 U.S.C. § 1397e](#), [42 U.S.C. § 1396r-8](#).

Most health insurance offered as of January 1, 2014, 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.

A federal law — the Mental Health Parity and Addiction Equity Act or 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.⁷⁶ 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 establishes a Prevention and Public Health Fund, administered by the U.S. Food and Drug Administration, which is available to individual communities for tobacco prevention and other public health programs on a competitive basis.

⁷⁶ [45 C.F.R. § 156.115](#); [Pub. L. No. 110-343](#), [122 Stat. 3765 \(2008\)](#); Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program, [78 Fed. Reg. 68239](#) (Nov. 13, 2013), <https://www.federalregister.gov/articles/2013/11/13/2013-27086/final-rules-under-the-paul-wellstone-and-pete-domenici-mental-health-parity-and-addiction-equity-act>.

Enforcement Agency: 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 to the United States 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.

Additional Regulations

General Rule: Under the Family Smoking Prevention and Tobacco Control Act, the U.S. Food and Drug Administration 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, taking into account whether individuals are more or less likely to stop or start using tobacco products. [*21 U.S.C. § 387f*](#), [*21 U.S.C. § 387g*](#).

Exception: The U.S. Food and Drug Administration cannot 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 18. The FDA also cannot 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: 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 the Tobacco Control Act 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 U.S. Food and Drug Administration 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).

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.⁷⁷ 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. § 387g.

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. § 387g(b)(1)(c).

Preservation of State and Local Authority

General Rule: The Tobacco Control Act preserves the authority of state 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 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

⁷⁷ For more information, visit <http://www.fda.gov/advisoryCommittees/CommitteesMeetingMaterials/tobaccoproductsScientificAdvisoryCommittee/default.htm>.

tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products. [21 U.S.C. § 387p\(a\)\(2\)](#).

Miscellaneous Federal Tobacco-Related Laws

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

- [Family Smoking Prevention and Tobacco Control Act](#).  The 2009 federal law granting the U.S. Food and Drug Administration the authority to regulate the manufacture, distribution, and marketing of tobacco products to protect public health.
- [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.
- [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.
- [Pro-Children Act of 1994, 20 U.S.C. §§ 6081-6084](#). Requires all federally funded children’s services to become smoke-free.
- [Prohibitions of Cigarette Sales to Minors in Federal Buildings and Lands Act, Pub. L. No. 104-52, sec. 636; 20 C.F.R. 368 \(1995\)](#). Prohibits the sale of tobacco products through vending machines on federal property and prohibits the distribution of free samples of tobacco products on federal property.

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