



Understanding AB 795

Using Citations and Fines to Enforce Smokefree Campus Policies in California's Public Colleges and Universities

This fact sheet explains how public colleges and universities in California can use citations and fines as a tool to enforce smokefree/tobacco-free policies, in order to better protect and promote the health of their students, staff, and visitors.

The health risks associated with smoking and tobacco use are well known. Tobacco-related disease is the leading cause of preventable death in the United States, accounting for an estimated 443,000 deaths every year, due to heart disease, cancer, stroke, emphysema, and other respiratory diseases.^{1,2} Secondhand smoke is also a leading cause of death, with the U.S. Centers for Disease Control and Prevention estimating that approximately 50,000 nonsmokers die every year from diseases caused by secondhand smoke.³

Colleges and universities throughout the United States are strengthening their tobacco use policies to protect the health and well-being of their students, employees, and visitors. Unfortunately, even with stronger smokefree/tobacco-free policies, secondhand smoke may drift into buildings, cigarette litter may be a persistent problem on campus, and compliance with policies may be minimal. As a result, colleges may seek to increase compliance by issuing citations and fines to individuals who violate a campus tobacco use policy.



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Background

California law gives authority to public college and university campuses (e.g., campuses of the University of California, the California State University, or the California Community College system) to prohibit smoking or tobacco use anywhere on their premises.⁴ The law was amended in 2011 to authorize the governing bodies of these institutions to enforce these policies with citations and fines. This amendment, referred to by its bill number, AB 795, provides an important tool for California’s public educational institutions to protect the health of their students, faculty, staff, and visitors.

Smokefree campus policies prior to AB 795

California public colleges and universities have adopted and implemented smokefree/tobacco-free policies for over 12 years. A handful of campuses began adopting policies in the late 1990s that prohibited smoking on parts of their premises, but the majority of campuses did not begin to regulate smoking or tobacco use until 2004, when a state law prohibiting smoking near entryways of public buildings (including public college and university buildings) became effective.⁵

This law, often known by its bill number AB 846, required public colleges and universities to prohibit smoking within 20 feet of all building entryways, operable windows, and air intake units. This law also gave local colleges and universities the authority to adopt and enforce smokefree/tobacco-free policies that were more restrictive than existing state law with regard to smoking and tobacco use.

Purpose of AB 795

While AB 846 gave college governing bodies the authority to enforce tobacco use policies, the law did not specify a legal mechanism that campuses could use to issue citations and fines. Although campuses could enforce a smokefree/tobacco-free policy through their student codes of conduct, fines were not issued as a means of enforcement. In 2011, with support from the Health Services Association of California Community

Colleges (HSACCC), Assembly member Marty Block (D – San Diego) introduced AB 795, which amended existing law to give public colleges and universities specific authority to issue citations and fines for violations of their smokefree/tobacco-free policies.

Who is authorized to issue citations and fines pursuant to AB 795?

AB 795, codified as California Government Code section 7597.1, authorizes the governing bodies of the California State University (CSU), the University of California (UC), and each community college district to enforce their smokefree/tobacco-free policies by citation and fine. For the UC system, the governing bodies consist of the Chancellors of each campus, the UC Board of Regents, and the UC Office of the President. The CSUs are governed by the President of each campus, the CSU Board of Trustees, and the CSU Chancellor’s Office. The governing bodies of Community College districts consist of the Presidents of each campus, locally-elected Boards of Trustees, and the Community College Chancellor’s Office (see chart below).

Governing Bodies of California’s Public Colleges and Universities

Institution Type	Local Governance	System-wide Governance
University of California	<ul style="list-style-type: none"> • Campus Chancellor 	<ul style="list-style-type: none"> • UC Board of Regents • UC Office of the President
California State University	<ul style="list-style-type: none"> • Campus President 	<ul style="list-style-type: none"> • CSU Board of Trustees • CSU Chancellor’s Office
Community College Districts	<ul style="list-style-type: none"> • Campus President • District Board of Trustees 	<ul style="list-style-type: none"> • Community College Chancellor’s Office



Components of AB 795

Setting Enforcement Standards

AB 795 grants authority to the governing bodies of the UC system, the CSU system, and each community college district to set enforcement standards for their local campuses.⁶ This means that the governing bodies have leeway to determine where smoking or tobacco use is allowed and where it is prohibited on each particular campus, and to determine how violations of a smokefree/tobacco-free policy are to be addressed, i.e., with verbal warnings, education, fines, etc.

Civil Fines

AB 795 allows college campuses to issue civil fines for violations of a smokefree/tobacco-free policy and to set the amount of the fine for each violation, up to a maximum of \$100 per citation.⁷ Colleges and universities can determine if the fine will be the same for each violation or different for first, second, third, and subsequent violations.

Fund Allocation

The law requires that the funds collected from civil fines are allocated to programs and activities that support the smokefree/tobacco-free policy, such as the designated enforcement agency, policy promotion and education, and/or tobacco cessation programs.⁸

Signage Provision

Section (b) of the law states that if a CSU campus or a community college district adopts enforcement and fine measures pursuant to AB 795, the campus or district **must** post signs that state the policy at all locations where smoking or tobacco use is explicitly prohibited **and** at locations where smoking or tobacco use is explicitly allowed (e.g., designated smoking areas). For UC campuses, this is not required, although the law states that these campuses “may” post such signage. Even where not required, signage is recommended, as it helps to communicate the policy and facilitate compliance.

Notice to Students and Staff

The final component of the law is a requirement that if a CSU campus or community college district adopts enforcement and fine measures under AB 795, it **must** inform employees and students of the campus policy and of the specific enforcement measures in place on campus. This can be done through the campus website, direct mail, email, student and employee handbooks, etc.⁹ As with the signage provision, campuses of the UC system are not required to provide this notification, although the law states that they “may” do so. Providing notice in this way is generally recognized as a best practice, as communicating the policy facilitates compliance.

Other Types of Enforcement of Smokefree/Tobacco-free Campus Policies

By authorizing campuses to issue citations and fines, AB 795 provides them an important tool for enforcing smokefree/tobacco-free policies. But citations and fines are not the only means available for enforcing these policies.

For example, campuses of the CSU system are authorized to treat policy violations as a misdemeanor, pursuant to California Education Code section 89031. Charging someone with a misdemeanor also allows CSU campuses to issue fines, but it is important to note that a misdemeanor is a fairly serious criminal offense, so any campus wishing to enforce in this way should be cautious about how they do so.

Campuses can also enforce a smokefree/tobacco-free policy by treating violations as a breach of the student code of conduct. Pursuant to California Education Code section 76033, intentional or repeated smoking in violation of a smokefree policy constitutes “good cause” to discipline a student, potentially leading to suspension or expulsion (but not including fines).

Finally, in many cases, a public college or university may be located in a community with a local smokefree air ordinance that prohibits smoking in public outdoor spaces. A campus may have additional enforcement options pursuant to such a local ordinance, depending on the specific terms that the ordinance contains. To determine whether a particular community has a smokefree outdoor areas ordinance, review the local municipal or county code, or contact the local department of public health’s tobacco control program. Contact information for local tobacco control programs is available on ChangeLab Solutions’ website: www.changelabsolutions.org/tobacco-control/resources-tenants?field_county_value=All&field_tenant_resource_type_tid=103





Frequently Asked Questions about AB 795

What is the process for creating enforcement/citation mechanisms?

Although this may vary from campus to campus, campus decision-makers will typically research best practices from other campuses that have adopted citation procedures. Then they will draft proposed language for their own procedures, and have this language reviewed by campus counsel, by campus police (and any other enforcement department), and, finally, by the school President or Chancellor.

Who can be cited pursuant to an enforcement mechanism created under AB 795?

Smokefree/tobacco-free campus policies that are created pursuant to California Government Code section 7597 may apply to students, employees, and all members of the public. Campuses are authorized to impose fines against anyone who violates such a policy, including visitors.

How much should the fine be?

It depends. The law allows for a tiered fine mechanism, with different fines for first, second, and third violations, and for each subsequent violation, with a maximum fine of \$100 per violation. Some campuses set their smoking violation fine structures to be the same as fines for other policy violations, such as biking or skateboarding on campus. Campus police (or any peace officer in the jurisdiction, pursuant to California Penal Code 830-832.17) may issue these citations.

Can a citation be issued to someone smoking on adjacent property, like a public sidewalk?

It depends. Although a campus smokefree/tobacco-free policy only applies within the boundaries of the campus itself, California Government Code section 7597 prohibits smoking within 20 feet of a door or operable window of any public building, including public college and university buildings.¹⁰ So, if an individual is smoking on adjacent property, such as a parking lot, public sidewalk, etc., campus police (or any peace officer in the jurisdiction, pursuant to California Penal Code 830-832.17) may cite them for a violation of Government Code section 7597, rather than for a violation of campus policy.¹¹

Crafting a Smokefree Campus Policy

The Sample Tobacco-free Policy (on page 7) was developed by the California Youth Advocacy Network to provide standard language to help California college and university campuses limit tobacco use and unwanted exposure to secondhand smoke on their premises. The sample is intended to be used for reference purposes, and any campus wishing to use similar language should customize it to suit their particular needs. ChangeLab Solutions and the California Youth Advocacy Network are available to provide technical assistance to campuses in California as they develop smokefree/tobacco-free policies.

Matrix of California Campuses that Issue Fines

The following matrix of colleges that currently issue citations for violations of their smokefree/tobacco-free policies was developed by the California Youth Advocacy Network, and is current as of August 2013. The matrix lists each campus that issues citations, the legal provision they invoke for issuing citations,¹² and the amount and structure of their fines. It also contains a note as to whether enforcement is currently

occurring or is planned for some future date. Note that this is not an exhaustive list of colleges that have smokefree policies, but rather a list of those colleges which enforce their policies through citations. For a comprehensive list of campuses that have smokefree policies, see CYAN's database of tobacco-free campus policies at: <http://cyanonline.org/college/policies/>

California Colleges Issuing Citations (as of August 2013)

Campus	Citation Authority	Fine Structure	Fine Amount	Currently Enforcing
Chico State University	Education Code 89031	Set	\$49	Unknown
San Francisco State University	Education Code 89031 Title 5 CA Code of Regulations section 42356	Set	\$58	Yes
Butte College	Unknown	Set	\$10 Fee will be waived if violator watches smoking cessation DVD	Yes
DeAnza College	Government Code 7597.1	Tiered	1st = \$25 2nd = \$50 3rd = \$75	Yes
Foothill College	Government Code 7597.1	Tiered	1st = \$25 2nd = \$50 3rd = \$75	Yes
Glendale Community College	Government Code 7597.1	Set	\$100 per citation	Unknown
Los Angeles Harbor College	Government Code 7597.1	Set	\$50-\$100	Unknown
Mt. San Antonio College	Government Code 7597.1	Set	Price of parking violations	Unknown
Ohlone College	Government Code 7597.1	Unknown	Unknown	As of Winter 2014
Pasadena City College	Government Code 7597.1	Tiered	1st = \$25 2nd = \$50 3rd = \$75	No
Peralta Community College District	Government Code 7597.1	Set	Price of parking violations	Unknown
San Bernardino Community College District	Government Code 7597.1	Set	\$20	Unknown
Santa Rosa Junior College	Santa Rosa City Code Ord. 3786 section 1, 2006	Tiered	1st = \$100 2nd = \$250 3rd = \$500	Unknown

Additional Resources

ChangeLab Solutions has been providing technical assistance on tobacco-related issues to California communities for over fifteen years. We have a variety of materials available on our website, including fact sheets, model policies, legal memos, and FAQs. For more, please visit us at www.changelabsolutions.org/tobacco-control.

Since 1998, the California Youth Advocacy Network College Program has been partnering with college students, faculty, staff, and tobacco control professionals to transform tobacco-related norms on college campuses. We provide a variety of services to individuals, organizations, and coalitions working on tobacco-related issues at college or university campuses. For more information about how CYAN can support local efforts, please visit us at www.cyanonline.org/college.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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- ¹ U.S. Centers for Disease Control and Prevention. (2011). *Tobacco Use: Targeting the Nation's Leading Killer*. Accessed from www.cdc.gov/chronicdisease/resources/publications/aag/osh.htm.
- ² Centers for Disease Control and Prevention. (n.d.). *Smoking & Tobacco Use: Tobacco-Related Mortality*. Accessed from www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm.
- ³ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm.
- ⁴ Cal. Gov't Code § 7596-7598.
- ⁵ See Cal. Gov't Code § 7597.
- ⁶ Cal. Gov't Code § 7597.1(a).
- ⁷ *Id.*
- ⁸ Cal. Gov't Code § 7597.1(a)(2) states that funds “shall be allocated to include, but not be limited to,” programs and activities to support a smokefree/tobacco-free policy, meaning that some of these funds may be allocated for other purposes. The law does not specify what portion of the funds must be allocated to supporting the smokefree/tobacco-free policy.
- ⁹ Cal. Gov't Code § 7597.1(c).
- ¹⁰ Cal. Gov't Code § 7596(a).
- ¹¹ Note: Campus police have the same authority to enforce Gov't Code § 7597 as any other law enforcement officers, because they are defined as peace officers pursuant to California Penal Code § 830.
- ¹² Note: Chico State University and San Francisco State University have issued fines for policy violations by invoking their authority under California Education Code § 89031, which makes it a misdemeanor to violate rules and regulations governing CSU campuses. At the time of writing, these were the only two campuses to have invoked this authority. In addition, Santa Rosa Junior College has relied upon a provision of the Santa Rosa Municipal Code to issue citations for violating their smokefree policy.

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Sample Tobacco-Free Policy

(100% Tobacco-Free)

Background

Tobacco use is the number one cause of preventable disease and death in the United States. The Surgeon General has concluded that there is no risk-free level of exposure to secondhand tobacco smoke. The United States Environmental Protection Agency (EPA) has found secondhand tobacco smoke to be a risk to public health, and has classified secondhand smoke as a class A carcinogen, the most dangerous class of carcinogens. Furthermore, the California Air Resources Board has categorized secondhand smoke as a toxic air contaminant. Tobacco smoke is hazardous to smokers and non-smokers alike. To promote a safe and healthy campus environment, [College / University Name] has adopted this tobacco-free policy.

Policy

Smoking, including the use of electronic smoking devices, and the use of tobacco products is prohibited on all property and in all indoor and outdoor spaces owned, leased, licensed, or otherwise controlled by [College / University Name]. Smoking, including the use of electronic smoking devices, and the use of smokeless tobacco products is prohibited in all vehicles owned by [College / University Name] and at any event or activity on campus property. Furthermore, the use of nicotine products or nicotine delivery systems that are not regulated by the Food and Drug Administration (FDA) as cessation devices are prohibited in all indoor and outdoor spaces where smoking and tobacco use are prohibited. Products covered under this policy include, but are not limited to, cigarettes, cigars, pipes, water pipes (hookahs), electronic smoking devices such as electronic cigarettes and electronic hookahs, chewing tobacco, spit tobacco, snus, snuff, and dissolvable tobacco products.

Compliance and Enforcement

The success of this policy relies on the consideration and cooperation of all [College / University Name] students, faculty, staff, and visitors. It is the responsibility of [Name of Enforcement Department] to ensure the successful enforcement of this policy. Any complaints or conflicts resulting from this policy should be reported to [Name of Contact and Contact Information]. If full compliance has not been achieved by [Date], [College / University Name] is authorized to impose fines upon violators pursuant to California Government Code Section 7597.1

Cessation

For individuals interested in quitting smoking or smokeless tobacco use, free cessation services are provided at [List Campus or Local Resources]. For additional help with quitting, please contact the California Smokers' Helpline at 1-800-NO-BUTTS or www.californiasmokershelpline.org.