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State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

October 2023

Dear Tobacco Retailer/Wholesaler/Distributor:

Changes to Statewide Flavored Tobacco Products Retail Law that Affect California Retailers

Effective **January 1, 2024**, the statewide flavored tobacco products retail law, Health and Safety Code (HSC) Section 104559.5, which prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale most flavored tobacco products and tobacco product flavor enhancers in retail locations in California, will now be enforced with civil penalties similar in manner to the Stop Tobacco Access to Kids Enforcement (STAKE) Act. This letter contains a summary of state law and information to help you learn about and comply with the law.

Summary of State Flavored Tobacco Products Retail Law

HSC Section 104599.5:

- Prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale most flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers.
- Defines an "enforcing agency" as the State Department of Public Health, another state agency, including, but not limited to, the office of the Attorney General, or a local law enforcement agency, including, but not limited to, a city attorney, district attorney, or county counsel.
- Defines a "flavored tobacco product" as any tobacco product that contains an ingredient that imparts a "characterizing flavor."
- Defines a "characterizing flavor" as a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. This may include, but is



not limited to tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, dessert, menthol, mint, wintergreen, herb, or spice.

- Defines a “tobacco product flavor enhancer” as a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.
- The law does not apply to flavored premium cigars with a wholesale price of \$12 or more and flavored loose-leaf pipe tobacco. Flavored shisha/hookah tobacco may only be sold in licensed stores that only allow people 21 or older on the premises at any time.
- Licensed stores must also operate in accordance with all state or local laws relating to the sale of tobacco and consumption of tobacco on the premises (for hookah retailers that permit consumption of tobacco on the premises).

Penalties: Effective January 1, 2024

An enforcing agency may assess civil penalties against any person or entity that violates the flavored tobacco law according to the schedule of civil penalties prescribed in paragraph (1) of subdivision (a) of Section 22958 of the Business and Professions Code, as follows: (1) a civil penalty of four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within a five-year period.

In addition to the civil penalties, upon the assessment of a civil penalty for the third, fourth, or fifth violation, the California Department of Tax and Fee Administration shall then assess a civil penalty of two hundred fifty dollars (\$250) and suspend or revoke a license issued pursuant to Chapter 2 (commencing with Section 22972) of Division 8.6 of the Business and Professions Code, in accordance with the schedule listed in paragraph (1) of subdivision (b) of Section 22958 of the Business and Professions Code.

Please visit the California Department of Public Health (CDPH) website at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/TobaccoRetailersResources.aspx> for more detailed information.

Reminder: California Law Prohibits Tobacco Sales to People Under Age 21

The Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits the sale and furnishing of tobacco products to persons under the age of 21 (Business and Professions Code Division 8.5). A “tobacco product” is any product containing, made or derived from tobacco or nicotine that is intended for human consumption, an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, and any tobacco product component, part, or accessory, whether or not they contain nicotine or are sold separately. For example, atomizers, tobacco rolling papers, vaping tanks or mods, and e-liquids are all tobacco products [Business and Professions Code Section 22950.5 (d)(1)].

Materials to Help You Comply with the Law

CDPH has developed the following resources to assist your transition to comply with the law:

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/TobaccoRetailersResources.aspx>.

- Frequently Asked Questions (FAQ): California's Flavored Tobacco Products Retail Law October 2023
- California's Flavored Tobacco Products Retail Law (Fact Sheet October 2023)

Tobacco retailers are responsible for knowing and complying with all federal, state, and local laws regarding the sale and distribution of tobacco products.

Local jurisdictions may have more restrictive ordinances. If a local ordinance is more restrictive than the state flavored tobacco product retail law, then retailers in that jurisdiction must abide by the stronger local ordinance. Thank you for complying with California tobacco laws.

Enforcement questions or to report potential violations of the statewide flavored tobacco products retail law can be directed to the California Department of Public Health's Office of Youth Tobacco Enforcement (OYTE) by emailing OYTE@cdph.ca.gov or calling (916) 650-6522.

If you have any other questions, please contact the California Tobacco Control Program at (916) 449-5500 or CTPPInbox@cdph.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Tomás Aragón". The signature is written in a cursive style.

Tomás J. Aragón, MD, DrPH
Director and State Public Health Officer
California Department of Public Health