

Updated November 2023 Frequently Asked Questions: California's Flavored Tobacco Products Retail Law

Q 1: Is it illegal to sell flavored tobacco products in California?

A: Yes. The sale, offer for sale, or possession with the intent to sell or offer for sale most flavored tobacco products and tobacco product flavor enhancers is prohibited in retail locations in California. The definition of flavored tobacco products includes flavored electronic cigarettes (e-cigarettes) that deliver nicotine or another vaporized liquid, e-liquids, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored blunt wraps, and flavored loose leaf roll-your-own tobacco. The state law also applies to tobacco product flavor enhancers. (see Q11 for information about these products)

The state law does not apply to the retail sale of flavored loose-leaf pipe tobacco or flavored premium cigars with a wholesale price of \$12 or more. Flavored shisha (also known as hookah tobacco) may only be sold in licensed stores that only allow people 21 or older on the premises at any time, operate in accordance with all state or local laws relating to the sale of tobacco, and comply with state and local laws relating to use of tobacco on the premises if tobacco is used on the premises. (Health and Safety Code Section 104559.5)

Q 2: Is it illegal to buy flavored tobacco products in California?

A: No. The penalties in the state law only apply to retailers, or any of the tobacco retailer's agents or employees, who sell, offer for sale, or possess with the intent to sell or offer for sale a flavored tobacco product or tobacco product flavor enhancers. It is the responsibility of retailers to comply with the state law. The state law does not criminalize anyone for purchasing, using, or possessing with the intent to use a flavored or unflavored tobacco product. (Health and Safety Code Section 104559.5(b)(1))

Q 3: When do retailers have to start complying with the law?

A: As of **December 21, 2022**, retailers, their agents or employees can no longer sell, offer for sale, or possess with the intent to sell most flavored tobacco products and tobacco product flavor enhancers.

Q 4: Is there a sell-off period of 60 days for unsold products?

A: No. As of **December 21, 2022**, a retailer, or their agents or employees who sell, offer for sale, or possess with the intent to sell any product covered by the state law are in violation of the law. **Effective January 1, 2024**, violations are punishable by civil penalties in a manner similar to the STAKE Act. (Connolly, AB 935, 2023) Prior to January 1, 2024, violators of the law will incur a \$250 penalty per violation.

On December 21 and 22, 2022, the California Department of Justice (DOJ) Office of the Attorney General issued Notices indicating that the Attorney General's Office removed some brand styles from the California Tobacco Directory, and that retailers had 60 days to sell-off any excess products that were removed from the California Tobacco Directory. The Attorney General maintains this Directory, which includes all tobacco product manufacturers and their cigarette or roll-your-own tobacco product brand families that are certified for sale in California. Once a product is removed from the Directory, these notices of removal are sent out automatically and include language stating that, under the California Tobacco Directory law, a licensed retailer affected by the Notice may possess, transport, or sell the tax-stamped cigarettes for no more than sixty (60) days. (Revenue and Taxation Code (RTC) section 30165.1(c)(5)(D)) The Tobacco Directory and statewide flavored tobacco products retail law are separate laws, and a product illegal for retail sale under SB 793 and AB 935 doesn't become legal for retail sale during the Directory sell-off. Since California's statewide flavored tobacco retail law is effective, the 60-day sell-off period referenced in the Notice does not apply to retailers selling the affected products.

Q 5: Is the Tobacco Directory a list of approved flavored tobacco products?

No. The [California Tobacco Directory website](https://oag.ca.gov/tobacco/directory) (<https://oag.ca.gov/tobacco/directory>) hosts a list of manufacturers and cigarette brands that have complied with the particular requirements of section 30165.1 of the Revenue and Taxation Code. The Tobacco Directory is not a list of tobacco products lawful for sale in the state under the California flavor ban or other state laws. (Compare Health & Saf. § 104559.5.) Rather, the Tobacco Directory operates *in addition* to any state or local restrictions on the retail sale of flavored tobacco products, including Health and Safety code section 104559.5.

Q 6: What types of retail locations does the state law apply to?

A. State law applies to a retail location inclusive of the following: a building where tobacco products are sold at retail, and any vending machine, vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public. (Health and Safety Code Section 104559.5 (a)(13))

Q 7: Can customers place an order for flavored tobacco products or enhancers online and pick them up in a store that falls under the definition of a retail relocation?

A: No. Under the law, a tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer. (Health and Safety Code Section 104559.5) Retailers in California are prohibited from possessing flavored tobacco products with the intent to sell, even if orders are placed online and picked up in person.

Q 8: Does the statewide flavored tobacco products retail law apply to distributors or wholesalers?

A: The state law 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, nearly all flavored tobacco products in retail locations. (Health and Safety Code Section 104559.5) State law does not apply to the distribution or wholesale of flavored tobacco products. Please visit the [California Department of Tax and Fee Administration’s website](#) to find out more about licenses and other requirements for retailers, distributors, and wholesalers.

Q 9: Is mint or menthol flavor included in the state law?

A: Yes. The definition of a “characterizing flavor” under the state law includes mint and menthol flavors. While the sale of mint cigarettes is already prohibited by federal law, the state law now 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 all menthol cigarettes, all mint and menthol e-cigarettes, little cigars and cigarillos, smokeless tobacco, loose leaf roll-your-own tobacco, and tobacco product flavor enhancers from a retail location. (21 U.S.C. Section 387g(a)(1)(A); Health and Safety Code)

Q 10: What types of flavored tobacco products are included in the state law?

A: The state law 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 nearly all flavored tobacco products in retail locations, including all menthol cigarettes, flavored e-liquids, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored blunt wraps, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers. The retail sale of flavored e-cigarettes, regardless of whether they deliver nicotine, is also prohibited. (Health and Safety Code Section 104559.5)

Q 11: What are “tobacco product flavor enhancers”?

A: Tobacco product flavor enhancers include any product that adds flavoring to a tobacco product, even if the product does not contain tobacco or nicotine. The state law defines “tobacco product flavor enhancers” as “a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.” (Health and Safety Code Section 104559.5(a)(17))

Q 12: Are e-cigarettes and other devices used for smoking or vaping nicotine or other liquids prohibited under the state flavored tobacco products retail law?

A: Yes. If an e-cigarette or other device that delivers nicotine or other vaporized liquid is sold in combination with flavored e-liquid (regardless of whether the e-liquid contains nicotine), then it is considered a flavored tobacco product. (Health and Safety Code Section 104559.5(a)(6)) If an e-cigarette or other device is sold on its own and does not include any type of flavoring, then

the product is not covered by the state law and may continue to be sold. All e-cigarettes, regardless of if they deliver nicotine, and other tobacco product accessories, components or parts are considered tobacco products and may only be sold to a person who is 21 years or older. (Health and Safety Code Section 104495(a)(8)(A) and Business and Professions Code 22958(a)(1))

Q 13: Are flavored aromatherapy or essential oil vaping pen prohibited under the state flavored tobacco products retail law?

A: Yes. A flavored aromatherapy or essential oil vape pen is included under the definition of a tobacco product, even if it does not contain nicotine, and may no longer be sold in retail locations in California. The state law defines a tobacco product as “an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah” and prohibits the retail sale of all flavored tobacco products that meet this definition. (Health and Safety Code Section 104559.5(a)(14)) If an aromatherapy or essential oil vaping pen is sold on its own and does not include any type of flavoring, then the product is not covered by the state law and may continue to be sold.

Q 14: Is flavored hemp prohibited under the state flavored tobacco products retail law?

A: Yes. Under California state law, a flavored hemp oil vape pen is included under the definition of a tobacco product, even if it does not contain nicotine, and may no longer be sold in retail locations in California. The state law defines a tobacco product as “an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah” and prohibits the retail sale of all flavored products that meet this definition. (Health and Safety Code Section 104559.5(a)(14)) Flavored hemp in forms other than vape oil that can be inhaled from an electronic vaping device are not included under the law.

Q 15: Are e-juice flavor enhancers that can be used with a tobacco product but do not contain tobacco or nicotine prohibited under the state flavored tobacco products retail law?

A: Yes. The law 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, any product or substance that can be used with a tobacco product to add flavor. Such sale is prohibited, regardless of whether it contains tobacco or nicotine. The state law 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.” (Health and Safety Code Section 104559.5(a)(17) and (b)(1))

Q 16: How can I tell if a tobacco product is flavored?

A: State law 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 tobacco products that taste or smell like a flavor other than tobacco before or during use, including any smoke, vapor, or aerosol that the product may produce. A tobacco product may also be prohibited if it contains an additive other than tobacco, water, or reconstituted tobacco sheet, that gives the product a distinguishable taste or aroma, or both, and is added by the manufacturer during the production of the final tobacco product. Finally, a tobacco product will be assumed to be flavored if a manufacturer (or their agents or employees) has stated or made claims that the tobacco product has or produces a characterizing flavor. This may be determined based on text, color, images, or all, on a tobacco product's labeling or packaging that communicates or implies that the tobacco product has a characterizing flavor. (Health and Safety Code Section 104559.5(a)(1), (a)(2), and (b)(2))

Q 17: Can I continue to sell flavored tobacco products that are already in my stores after the state law goes into effect?

A: No. Effective immediately, retailers that sell, offer for sale, or possess with the intent to sell or offer for sale flavored e-cigarettes, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers are in violation of the law. **Effective January 1, 2024**, the state flavored tobacco products retail law will be enforced in a manner similar to the Stop Tobacco Access to Kids Enforcement (STAKE) Act punishable by civil penalties in a manner similar to the STAKE Act. (Connolly, AB 935, 2023) Prior to January 1, 2024, violators of the law will incur a \$250 penalty per violation.

Q 18: Are there penalties for selling flavored tobacco products?

A: Yes. **Effective January 1, 2024**, any retailer, their agents or employees, who sell or possess with the intent to sell or offer for sale any of the flavored tobacco products covered by state law will incur civil penalties in a manner similar to the STAKE Act. (Connolly, AB 935, 2023) Prior to January 1, 2024, violators of the law will incur a \$250 penalty per violation.

Q 19: Can I be penalized for selling a flavored tobacco product if I didn't know that the product was flavored?

A: Yes. It is incumbent upon the retailer, their agents or employees to understand which products are flavored under the definition in the state law and to ensure that they are not selling prohibited products. Any retailer that sells, offers for sale, or possesses with the intent to sell or offer for sale a flavored tobacco product or tobacco product flavor enhancer is in violation of the state law.

Q 20: Will a person who is not a retailer be penalized for giving a flavored tobacco product to another person?

A: No. This state law does not penalize a person who is not a retailer, their agent or employee, from giving a flavored tobacco product to another person. A tobacco retailer is defined as a person who engages in the sale of tobacco products directly to the public from a retail location, which is defined as a building from which tobacco products are sold at retail and any vending machine, vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public. (Health and Safety Code Section 104559.5 (a)(18), (a)(13))

Q 21: What can retailers do with excess or unsold inventory?

A: After December 21, 2022, California retailers may contact the distributor or wholesaler from whom they purchased the product and request a refund for any excess or unsold inventory of flavored tobacco products or tobacco product flavor enhancers prohibited for sale under the state law. Distributors may request a refund of the excise tax on returned product only if they reported and paid this excise tax. For information on how to initiate a claim for refund on cigarette tax stamps, read [Publication 63, Cigarette Distributor Licensing and Tax Stamp Guide](#). Retailers looking to dispose of flavored tobacco products should contact their hazardous waste department to see how to best dispose of the products. You can find information on county agencies that manage hazardous waste on [CalRecycle's hazardous waste directory](#).

Q 22: How is this state law different from the Federal Food and Drug Administration's (FDA) policy regulating the sale of some flavored tobacco products?

A: The state law is more comprehensive than federal law. Under federal law, the FDA prioritizes enforcement of some flavored e-cigarettes, but does not regulate many of the other flavored tobacco products included in California's flavored tobacco products retail law. The state law applies to products that the FDA rule does not cover, including flavored disposable e-cigarettes, any menthol- or tobacco flavored e-cigarette, and other flavored tobacco products like little cigars and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers. (Health and Safety Code Section 104559.5) The FDA has proposed rules to prohibit menthol as a characterizing flavor in cigarettes and prohibit all characterizing flavors (other than tobacco) in cigars. As of October 2023, these proposed rules are not in effect.

Q 23: Who will be enforcing California's statewide flavored tobacco products retail law?

A: **Effective January 1, 2024**, 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 will enforce the law. (Health and Safety Code Section 104559.5 (a)(4)) Prior to January 1, 2024, local law enforcement agencies are authorized to enforce this law.

Q 24: Who should I reach out to with enforcement questions or to report potential violations of the statewide flavored tobacco products retail law?

A: The California Department of Public Health's Office of Youth Tobacco Enforcement (OYTE) is the primary enforcement entity. They can be reached by emailing OYTE@cdph.ca.gov or visiting [Office of Youth Tobacco Enforcement \(ca.gov\)](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/OfficeofYouthTobaccoEnforcement.aspx).

Q 25: If my city or county passed an ordinance banning the sale of flavored tobacco products for all stores except adult-only stores, can these adult-only stores continue to sell flavored tobacco products?

A: No. The state law replaces all local flavored tobacco product ordinances that restrict the retail sale of flavored tobacco products unless the local ordinance is more restrictive than the state law. The state law 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 in all retail locations, which include a building from which tobacco products are sold at retail and any vending machine, vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public. (Health and Safety Code Section 104559.5)

Q 26: If my city or county passed an ordinance that bans the sale of flavored tobacco products but makes an exemption for menthol, can tobacco retailers continue to sell menthol-flavored tobacco products?

A: No. The state law replaces all local flavored tobacco product ordinances that restrict the retail sale of flavored tobacco products unless the local ordinance is more restrictive than the state law. The state law 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, all menthol and other flavored e-cigarettes, cigarettes, little cigars and cigarillos, smokeless tobacco, loose leaf roll-your-own tobacco, and tobacco product flavor enhancers in retail locations, which includes a building from which tobacco products are sold at retail and any vending machine, vehicle, mobile unit, booth, stand, or concession that conducts in-person sales of tobacco products directly to the public. (Health and Safety Code Section 104559.5)

Q 27: If my city or county's existing flavored tobacco ordinance is more restrictive than the state law, which law should I follow?

A: If a local ordinance is more restrictive than state law and 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 all flavored tobacco products or more flavored tobacco products than required by state law, then stores in that jurisdiction must abide by the local ordinance. The state law allows jurisdictions to pass their own flavored tobacco product retail ordinances and continue to enforce existing ordinances if they are more restrictive than state law. (Health and Safety Code Section 104559.5(i))

Q 28: If my city or county already has a law banning the sale of all flavored tobacco products, including flavored shisha or hookah tobacco, can hookah retailers now start selling flavored shisha/hookah tobacco?

A: No. The state law replaces all local flavored tobacco product ordinances that restrict the retail sale of flavored tobacco products unless the local ordinance is more restrictive than the state law. If a local ordinance is more restrictive than the state law, then stores in that jurisdiction must abide by the local ordinance. A local ordinance that 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 all flavored tobacco products, including flavored shisha or hookah tobacco, it is more restrictive than the state law and therefore shall be followed in that jurisdiction. (Health and Safety Code Section 104559.5(i))

Q 29: Can convenience stores continue to sell flavored shisha or hookah tobacco products?

A: The convenience store must meet the requirements to sell flavored shisha or hookah tobacco as defined in the state law. In order to sell flavored shisha or hookah tobacco, a shisha/hookah tobacco retailer must: 1) have a valid license to sell tobacco, 2) not permit anyone under the age of 21 years of age to be present or enter the premises at any time, 3) operate in accordance with all state and local laws relating to the retail sale of tobacco products, and 4) operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including but not limited to those specified in Section 6404.5 of the Labor Code, if consumption of tobacco products is allowed on the premises. (Health and Safety Code Section 104559.5(c))

Q 30: Can someone over the age of 21 still buy flavored tobacco products?

A: The state law 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 all flavored e-cigarettes, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers at a retail location to any person, regardless of age. A person over the age of 21 in California may purchase flavored loose-leaf pipe tobacco, flavored premium cigars with a wholesale price of \$12 or more, and flavored shisha or hookah tobacco from a licensed retail location that meets the requirements to sell these products. (Health and Safety Code Section 104559.5) The state law also prohibits a person from selling, giving, or in any way furnishing any tobacco product or tobacco paraphernalia to a person under the age of 21. (Business and Professions Code Section 22958, Penal Code Section 308(a)(1)(A)(i))

Q 31: Can adult-only stores continue to sell flavored tobacco products?

A: The state law prohibits any tobacco retailer, including retailers at adult-only stores, 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 flavored e-cigarettes, menthol cigarettes, flavored little cigars

and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers. Retailers at adult-only stores may continue to sell flavored loose-leaf pipe tobacco and flavored premium cigars with a wholesale price of \$12 or more, as well as flavored shisha or hookah tobacco under certain conditions. In order to sell flavored shisha or hookah tobacco, a retailer 1) must have a valid license to sell tobacco, 2) must not permit anyone under the age of 21 years of age to be present or enter the premises at any time, 3) shall operate in accordance with all state and local laws relating to the sale of tobacco products, and 4) if consumption of tobacco products is allowed on the premises, the retailer must operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including but not limited to those specified in Section 6404.5 of the Labor Code. (Health and Safety Code Section 104559.5(b)(1), (c), (d), and (e))

Q 32: Can shisha or hookah bars/lounges still allow people to smoke flavored shisha or hookah tobacco products inside?

A: The shisha or hookah bar or lounge must meet the requirements as defined by the state law. In order to sell flavored shisha or hookah tobacco, a hookah tobacco retailer 1) must have a valid license to sell tobacco, 2) must not permit anyone under the age of 21 years of age to be present or enter the premises at any time, 3) shall operate in accordance with all state and local laws relating to the sale of tobacco products, and 4) if consumption of tobacco products is allowed on the premises, the retailer must operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including but not limited to those specified in Section 6404.5 of the Labor Code. (Health and Safety Code Section 104559.5(c)) The state law permits smoking inside a hookah bar/lounge if the business qualifies as either a “retail or wholesale tobacco shop” or a “private smokers’ lounge.” A “retail or wholesale tobacco shop” is defined as any business establishment whose main purpose is the sale of tobacco products, and a “private smokers’ lounge” is defined as an enclosed area in or attached to a “retail or wholesale tobacco shop” that is dedicated to the use of tobacco products. (Labor Code Section 6404.5(e)(2)(A) and (B)) A hookah bar or lounge that allows customers to smoke inside may not serve food or beverages. (Labor Code Section 6404.5 and California Attorney General Opinion No.09-507) Retailers must also adhere to any other state or local laws that place requirements on the sale of flavored tobacco products or on the operating of hookah lounges/bars. Stores in jurisdictions that have enacted laws that are more restrictive than state law, such as prohibiting the sale of flavored shisha or hookah tobacco or prohibiting smoking in hookah bars/lounges, must adhere to the more restrictive laws in the jurisdiction. (Health and Safety Code Section 104559.5(i))