

Updated October 2023

California Law Updates Enforcement of the Flavored Tobacco Products Law from Retail Locations Health and Safety Code Section 104559.5

Fact Sheet

On August 28, 2020, California Governor Gavin Newsom signed Senate Bill (SB) 793 (Chapter 34, Statutes of 2020) into law, and on November 8, 2022, California voters upheld the law via referendum. The law prohibits a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possession with the intent to sell or offer for sale menthol cigarettes and nearly all other flavored tobacco products, including flavored electronic cigarettes (e-cigarettes), as well as tobacco product flavor enhancers, from retail locations in California.

Effective December 21, 2022, the sale, offer for sale, or possession with the intent to sell or offer for sale of the following tobacco products from retail locations is no longer permitted:

- Flavored e-cigarettes or vapes that deliver nicotine or another vaporized liquid, e-juice, pods, or cartridges
- Menthol cigarettes
- Flavored little cigars and cigarillos
- Flavored smokeless tobacco products
- Flavored blunt wraps
- Flavored loose-leaf roll-your-own tobacco
- Flavored tobacco rolling papers
- Tobacco product flavor enhancers

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 and/or local laws relating to the sale of tobacco and use of tobacco on the premises (for hookah retailers that permit use of tobacco on the premises).

Penalties: As a result of Governor Newsom signing Assembly Bill (AB) 935 (Chapter 351, Statutes of 2023), **effective January 1, 2024**, retailers or their agents or employees that sell, offer for sale, or possess with the intention of selling, any of the flavored tobacco products or tobacco product flavor enhancers covered by the law are subject 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.

This law does not include penalties for personal purchase, use, or possession with the intent to use a flavored tobacco product. The penalties in the law only apply to retailers who sell, offer for sale, or possess with the intention of selling a flavored tobacco product or tobacco product flavor enhancer. Compliance with the law lies solely with retailers.

Compliance: Retailers are expected to comply with the law and are required to immediately remove the current stock of flavored tobacco products covered by the law and tobacco product flavor enhancers from their shelves.

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

Jurisdictions with Existing Local Flavored Tobacco Laws: All jurisdictions in California must implement the state law and prohibit the retail sale, offer for sale, or possession with the intent to sell or offer for sale of flavored tobacco products and tobacco product flavor enhancers covered by the law. In jurisdictions that have an existing ordinance related to the sale of flavored tobacco products, the state law replaces an existing local ordinance unless the local ordinance is more restrictive than the state law. If an existing local ordinance is more restrictive than the state law (for example, prohibits the sale of all flavored tobacco products or any of the products not covered in the state law), then retailers in that jurisdiction must comply with the more restrictive local ordinance. The state law allows for local jurisdictions to continue to pass more restrictive local ordinances that prohibit sales of flavored tobacco products not included in the state law. For example, a jurisdiction may apply these same restrictions to hookah tobacco and prohibit the sale of all hookah tobacco from all stores in that jurisdiction.