Training Presentation: California Retailers and California Tobacco Sales Laws

California Department of Public Health
California Tobacco Control Program and Food and Drug Branch

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Disclaimer

• This training is for information and education purposes only

• It is your responsibility to know and comply with state and local tobacco laws

• Viewing this training session and adopting the recommended policies does not constitute compliance with the laws and is not a defense if you or your employees are cited for violating Penal Code (PC) 308(a) or the Stop Tobacco Access to Kids Enforcement (STAKE) Act [Business and Professions Code 22950-22963]
Presentation Goals

This presentation will help you learn about:

- California laws that prohibit tobacco sales to persons under 21 years of age
- Updates to California’s Tobacco Licensing Law
- How to Comply With the Laws
- Training Clerks/Employees
- Other Resources
Tobacco Laws:
What You Need to Know

• You are required to know the laws related to the sale of tobacco in California
• You and the employee face fines or penalties if laws are broken
• Tobacco laws are actively enforced
Tobacco products may not be sold to persons under the age of 21 with the exception of active duty military personnel with valid identification.

[Business and Professions Code Section 22952]
California Tobacco Sales Laws

• Prohibit selling or giving tobacco products to persons under 21 years old unless person is over the age of 18 with a valid military ID
• Sellers must check the ID of anyone who looks younger than 27 years old
• The California Department of Public Health and any state agency or local law enforcement agency may use decoys under age of 21 in inspections to determine if retailers are selling to persons under 21
• Decoys will show their legal ID with real age if asked

Penal Code (PC) Section 308(a) and Stop Tobacco Access to Kids Enforcement (STAKE) Act [Business and Professions Code Section 22950-22963]
California Tobacco Sales Laws

• Businesses are inspected at random, in response to public complaints, or if found in violation at a previous inspection
• Sales of tobacco products made over the phone, via mail or via the Internet to persons under 21 are also investigated and prosecuted
• Require age-of-sale warning signs with 1-800-5 ASK-4-ID to be posted conspicuously at each point of purchase

Penal Code (PC) Section 308(a) and Stop Tobacco Access to Kids Enforcement (STAKE) Act [Business and Professions Code Section 22950-22963]
Fines/Penalties for California Tobacco Sales Laws

**PC 308(a)**
- $200 for the first violation
- $500 for the second violation
- Fines may increase with subsequent violations up to $1,000
- Additional penalties and/or injunction under the Unfair Competition Law

**STAKE Act**
- $400-$600 for the first violation
- $900-$1,000 for the second violation (within a 5-year period)
- Fines may increase with subsequent violations up to $6,000
- Additional penalties and/or injunction under the Unfair Competition Law
Other Tobacco Laws Affecting Retailers

Under PC 308 (a), the STAKE Act, and the federal 2009 Tobacco Control Act the following are prohibited:

- Sales of bidi cigarettes
- Sales of single cigarettes
- Free samples of tobacco products are prohibited except in Adult-Only Facilities
- Self-service displays of all tobacco products and paraphernalia
- Sales of flavored cigarettes and tobacco paraphernalia (other than menthol)

For more detailed information about these laws, see:

PC 308 (a): http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=308.

STAKE Act: http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BPC&division=8.5.&title=&part=&chapter=&article

2009 Tobacco Control Act: https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm205021.htm
California State Tobacco License Requirements

- Tobacco product retailers must obtain a license annually ($265) from the California Department of Tax and Fee Administration (CDTFA)
- A retailer must display the state license so that it is visible to the public
- A retailer may only purchase tobacco products from a licensed tobacco wholesaler, distributor, or importer
California State
Tobacco License Penalties

- Penalties for noncompliance with the state tobacco license requirement may result in a fine of up to $5,000, imprisonment up to one year, or both*
- Failure to post the state tobacco license may result in a fine of $500*
- CDTFA investigators and local law enforcement officers inspect tobacco retailers for compliance with tobacco licensing and other tobacco laws

*Cigarette and Tobacco Products Licensing Act of 2003, Division 8.6 (commencing with section 22970) of the California Business and Professions Code
Local Tobacco Retail License Requirements

• Some jurisdictions in California have passed local tobacco retail licensing laws

• Check with your local health department regarding local tobacco control laws that may apply to your retail business
How to Comply With the Laws

Stopping tobacco sales to persons under 21 years of age depends on commitment and action by you and your employees

• Develop and follow store policies for checking identification
• Train and monitor your clerks
• Put up reminder posters
• Obtain and display your tobacco license and the STAKE Act age-of-sale warning sign
Develop and Follow Store Policies

• Require your employees to ask for valid government-issued photo ID and to check the age of anyone who looks younger than age 27

• Develop a written company policy that employees must read and sign

• Emphasize to employees that checking IDs is important — no matter how many people are in line

• Remind your employees that state and local enforcement agencies conduct tobacco compliance checks

• Caution employees that store owners and clerks may be cited, which may result in a fine and criminal record
Train Your Employees

• Ask for ID from anyone who looks younger than age 27
• Accept only valid government-issued IDs and check for expiration dates
• How to check or calculate the age on the ID to confirm the customer is 21 or over (active duty military members with a valid U.S. Armed Forces ID must be 18 or older)
• Make sure employees know about and can identify all tobacco products that your store sells (including electronic cigarettes/vapes/e-liquids)
• How to refuse a sale
Monitor Your Employees

• Observe your clerks and give prompt feedback on what they are doing right and how they could improve

• Conduct periodic secret shopper programs to check on your store’s compliance with tobacco laws

• Follow through with rewards and corrections
Use Reminders and Other Aids

- Post the legally required STAKE Act age-of-sale warning signs at each point of sale.
- Place calendars and other age-of-sale reminders by all registers. Many types of calendars are available, including decals, daily paper and electronic calendars.
- Use register screen pop-ups as reminders to check age.
- Install electronic scanning devices or other age verification devices, and teach employees how to use them and NOT to override them!
Role Playing Scenario

It’s important for clerks to practice refusing a sale

Practice with another clerk or the manager. Here are two scenarios:

• An adult under 27 attempts to buy cigarettes. You ask for ID, and the person becomes upset. What do you do and say?

• An underage friend asks you for cigarettes. How do you refuse the sale?
Refusing a Sale: What to Say

• “I’m sorry. It’s against the law.”

• “I’m sorry. I can’t sell tobacco without a picture ID.”

• “I’m sorry. It’s store policy to check ID’s.”

• “I could be fined if I break the law.”
Refusing a Sale: What to Do

• After politely refusing the sale, remain calm

• If a customer insists or becomes argumentative, contact your supervisor

• If the customer takes the product, leaves money, and runs away, DO NOT RING UP THE SALE. Treat it as a theft and report the incident
Ask for ID – Look for Fakes

Look for these clues:

- Has the ID expired?
- Does the photo match the person?
- Does the ID look altered?
- IDs with holes, glue lines, bumpy surfaces, or other signs of tampering should not be accepted

IMPORTANT: If you’re not sure the ID is valid, refuse the sale.
How to Check Age

The easiest way to check a person’s age is to ask for and check their:

- California driver license
- California ID
- Military Common Access Card (CAC)
Provisional Licenses

- These licenses are vertical to help retailers know when a person is younger than 21.

- A red strip also tells you the year the person turns 21.
How to Check Age with a California ID Card

- A customer may hand you a California ID card when you ask for ID
- California ID cards may look similar to California driver licenses
- California ID cards must be checked for age

CAUTION: some California ID cards may not have a red strip
Checking Age with a Military Common Access Card (CAC)

- This is the standard ID card for active duty military personnel
- Date of Birth is on the back of card
The California Department of Tax and Fee Administration (CDTFA) offers a free, interactive class for tobacco retailers, “Selling Cigarettes and Tobacco in CA”

You will learn:
- Who must be licensed
- What brands can be sold in CA
- When flavored cigarettes became illegal
- What to expect during an inspection
- What records to maintain
- How to avoid fines and penalties
- And much more

For more information go to [CDTFA](https://www.cdtfa.ca.gov/)
Where to Get Signs and Tobacco Retail Information

• To obtain STAKE Act signs contact Tobacco Education Clearinghouse of California https://www.tecc.org/

• Tobacco 21 Resources for Retailers https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/Tobacco21.aspx

• For information on retail sales, call the STAKE Act hotline: 1-800-5 ASK-4-ID

• For information about California’s licensing law, call the CDTFA at 1-800-400-7115 or visit California Cigarette & Tobacco Products Licensing Act of 2003 - Cigarette Manufacturer/Importer License http://www.cdtfa.ca.gov/taxes-and-fees/spctmanufacturer.htm