

Senate Bill 39: Changes to California's Online Tobacco Sales Law

The Problem

Young people can easily obtain tobacco products online because they can skirt weak online age verification systems.

Several studies have shown that minors have been able to successfully purchase cigarettes and other tobacco products online.¹⁻³ The online verification systems used on tobacco company websites do very little to prevent underage access to these products.⁴ To address the problem, California enacted Senate Bill (SB) 39 (Jerry Hill, Chapter 295, Statutes of 2019), which amended Section 22963 of the Business and Professions Code.



Senate Bill (SB) 39

On September 16 2019, Governor Gavin Newsom signed SB 39 into law in California to reduce illegal online sales of tobacco products to youth. SB 39 strengthened existing laws in California for age verification and delivery of tobacco products. Pursuant to Business and Professions Code Section 22963:

- A tobacco product must be delivered only in a container that is conspicuously labeled with the words, "CONTAINS TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY."
- A person aged 21 or older must provide a signature in order to receive a tobacco product delivery.
- Unlike federal restrictions on tobacco delivery under the federal PACT Act, which only apply to some tobacco products, the standards in SB 39 apply to **all** tobacco products and electronic smoking devices sold for delivery.

How SB 39 Updates Existing Online Sales Law



Under existing California law, Stop Tobacco Access to Kids Enforcement (STAKE) Act,⁵ it is illegal to sell tobacco products to anyone under the age of 21 through the United States Postal Service (USPS) or any other public or private delivery service.⁶ This law sets standards for sellers designed to ensure that people under the age of 21 cannot purchase tobacco products online. It requires that:

1. Sellers match the name, address, and date of birth of the customer to a database of individuals verified to be 21 or older

2. If the purchaser's age cannot be determined through the database, the customer must submit a valid form of identification
3. All purchases be made by personal check or credit card
4. The seller calls all purchasers to confirm their orders prior to shipment

Prior to SB 39, existing law was not adequate to address the problem of underage online sales. A 2015 study on the sale of e-cigarettes to youth, found that youth were able to successfully purchase e-cigarettes online 93 percent of the time and that 95 percent of time, e-cigarettes deliveries were left at the door with no attempt to verify age.⁴

SB 39 imposes stricter age verification requirements for tobacco products sold online or by mail to make it more difficult for minors to receive tobacco products deliveries.

How SB 39 Strengthens Federal Tobacco Product Delivery Law

Federal law, Prevent All Cigarette Trafficking (PACT) Act, bans the mailing of cigarettes, e-cigarettes and smokeless tobacco products through USPS. The PACT Act requires that packages containing cigarettes, e-cigarettes and smokeless tobacco be labeled and requires that sellers use delivery services, such as United Parcel Service (UPS) and Federal Express (FedEx), that check government ID and obtain a signature at the door when delivering packages containing cigarettes, e-cigarettes and smokeless tobacco. E-cigarettes were not initially included in the PACT Act but were added in December 2020. However, this law does not apply to other tobacco products, such as hookah tobacco or little cigars and cigarillos. SB 39 resolves such loopholes in the PACT Act by requiring that all tobacco product deliveries include labels specifying that the package contains a tobacco product, and by mandating the signature of someone over 21 at the door for packages containing **any** tobacco product.



Citations

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2. Unger JB RL, Ribisl KM. Are adolescents attempting to buy cigarettes on the Internet? *Tobacco Control*. 2001;10:360-363.
3. Ribisl KM KA, Williams RS. . Are the sales practices of Internet cigarette vendors good enough to prevent sales to minors? . *American Journal of Public Health*. 2002;92:940-941.
4. Williams RS, Derrick J, Ribisl KM. Electronic Cigarette Sales to Minors via the Internet. *JAMA Pediatrics*. 2015;169(3):e1563-e1563.
5. Stop Tobacco Access to Kids Enforcement (STAKE) Act [Business and Professions Code 22950-22964].
6. Business & Professions Code 22963 (a)