



Tobacco Control Laws

That Affect
Retail
Businesses

2017



Stop Tobacco Access to Kids
E N F O R C E M E N T A C T

Tobacco Control Laws That Affect Retail Businesses

Dear Business Owner:

This brochure contains basic information on state and federal tobacco control laws that are in effect as of August 2017 and that affect retail businesses in California. Retailers must comply with both state and federal laws. Enforcing agencies may include a local law enforcement agency, a district attorney, a county counsel, a city attorney, the state Attorney General, the Food and Drug Branch of the California Department of Public Health, the United States Food & Drug Administration (FDA), and/or certain other state agents commissioned by the FDA.

In addition to the laws covered in this brochure, many cities and counties regulate the sale and distribution of tobacco products and issue local licenses that authorize the sale of tobacco products. Retailers must also comply with local laws where they exist. Check with your local health department regarding local tobacco control laws that may apply to your retail business.

Tobacco products, as defined under section 22950.5(d)(1) of the Business and Professions Code, include:

- Cigarettes
- Snuff
- Bidis
- Chewing tobacco and dipping tobacco
- Cigars
- Pipe tobacco and roll your own tobacco
- Any electronic smoking device (whether or not it contains nicotine); and any component, part, or accessory of a tobacco product, whether or not sold separately. For example, atomizers, vaping tanks or mods, and “e-liquid” or “e-juice” are tobacco products
- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption

Tobacco products do not include any product that the FDA has approved for cessation or for other therapeutic purposes in which the product is marketed and sold solely for such an approved purpose. For example, nicotine replacement patches are not tobacco products.

Further information on tobacco control laws and enforcement that affect retail businesses is available at:

- **Tobacco 21 Resources for Retailers:**
<https://cdph.ca.gov/Programs/CCDPPH/DCDIC/CTCB/Pages/Tobacco21.aspx>
- **California Attorney General's Office, Tobacco Litigation and Enforcement Section:**
<http://oag.ca.gov/tobacco/litigation>
- **California Department of Tax and Fee Administration (CDTFA):**
<http://cdtfa.ca.gov/>
- **California Department of Public Health, Food and Drug Branch:**
<https://cdph.ca.gov/Programs/CEH/DFDCS/Pages/FoodandDrugBranch.aspx>
- **List of Local Health Department Tobacco Control Program Contacts:**
<https://cdph.ca.gov/Programs/CCDPPH/DCDIC/CTCB/Pages/Partners.aspx>

Words in bold type are defined in the glossary.

Table of Contents

How to Comply with Tobacco Retail Laws- Overview.....	1
Laws About Tobacco Retail Licensure	2
Laws About Selling Tobacco Products	3
Laws About Signs and Storefront Ads	4
Laws About Tobacco Product Packaging.....	5
Laws About Self-Service Displays.....	6
Laws About Restrictions on Tobacco Product Sampling, Coupons, Rebates, and Gift Certificates	7
Laws About the Sale of Flavored Cigarettes.....	8
Laws About the Sale of "Light", "Low", and "Mild" Tobacco Products	8
Laws About the Sale of Bidis.....	8
Glossary.....	9
Additional Information and Citations.....	10
Notes.....	11

How to Comply with Tobacco Retail Laws - Overview

- DISPLAY your tobacco retailer license issued by the California Department of Tax and Fee Administration (CDTFA) so your customers can see it.
- NO tobacco products or tobacco paraphernalia may be sold to anyone under age 21 with the exception of active duty military personnel who are at least 18 years of age with military ID.
- NO sales of single cigarettes or cigarette packs with less than 20 cigarettes.
- NO self-service display of tobacco products or paraphernalia (with limited exceptions for tobacco-only stores that meet all of the conditions specified in Business and Profession Code Section 22962(c) of the STAKE Act).
- NO tobacco vending machines except in bars where persons under 21 years are not allowed. Machines must be at least 15 feet away from the entrance.
- NO free tobacco product sampling in your store except in Adult-Only Facilities.
- NO sales of flavored cigarettes, or flavored cigarette components such as roll-your-own tobacco and tobacco paraphernalia such as filters or papers (with an exception for tobacco or menthol flavoring).
- NO placement of advertising for blunt wraps within two feet of candy, snacks, or nonalcoholic beverages inside any store or business, or placement of advertising for blunt wraps lower than four feet above the floor.
- NO sales of bidis in businesses that allow persons under 18 years of age on its premises.
- POST the required STAKE Act age-of-sale warning signs at each cash register.

The Sale of Tobacco Products to Persons **Under 21 Years
of Age Is Prohibited by Law and Subject to Penalties**

**To Report an Unlawful Tobacco Sale Call
1-800-5 ASK-4-ID**

**U.S. Armed Forces active duty personnel with military ID must be at least 18 years of age
Valid Identification May Be Required**

This sign must be readable by the consumer and must
not be altered, covered or obliterated in whole or in part

Business and Professions Code Section 22952

Laws About Tobacco Retail Licensure

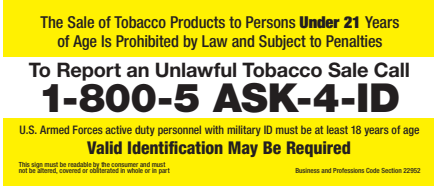
Requirements	<p>Under the California Cigarette and Tobacco Products Licensing Act of 2003, businesses in California that sell cigarettes and other tobacco products, including electronic smoking devices, must have a California Cigarette and Tobacco Products Retailer License. This is true even if you have other permits or licenses issued by the state or a local government. As a license holder, you must:</p> <ul style="list-style-type: none">• Display your license. Failure to do so is an automatic fine of \$500. Your license may also be taken away temporarily or permanently.• Keep complete and readable purchase invoices for tobacco products for four years and at each licensed location where the products are sold. Failure to do so may result in a fine of up to \$5,000 and/or imprisonment for up to one year in a county jail.• Allow California Department of Tax and Fee Administration (CDTFA) staff or law enforcement officers see your tobacco products purchase invoices when they ask for them.
Tobacco Retailer License fee	\$265 per year for each license for each retail location (including a vending machine) where tobacco products are sold. A license is valid for 12-months and must be renewed every year.
License suspension and revocation	If your state tobacco license is suspended or revoked, you may not sell, display for sale, or give away any tobacco products. Tobacco products also cannot be placed in a vending machine or retail stock during a license suspension. Retailers must post the notice of suspension or revocation at each public entrance, cash register, and other points of sale. The penalties for selling, displaying, or giving away tobacco products after notification by the CDTFA that a license has been suspended or revoked range from a \$1,000 fine to seizure and forfeiture of all the tobacco products in your possession.
Purchase Invoice Requirements	<p>Invoices from wholesalers and distributors must have the following information:</p> <ul style="list-style-type: none">• The name, address, telephone and license number of the wholesaler or distributor who sold the products.• Either all California cigarette and tobacco product excise taxes in the total amount of the invoice or the amount of excise tax due to the CDTFA.• Retailer's name, address, and license number.• An itemized list of the tobacco products sold to retailer by wholesaler or distributor.
Illegal Purchases	<p>It is against the law to buy tobacco products from a seller who is not licensed under the California Cigarette and Tobacco Products Licensing Act of 2003. You may only purchase tax paid tobacco products. If you make an illegal purchase, your license may be taken away. You may also be fined and/or sent to prison.</p> <p>Note: A list of California-licensed distributors and wholesalers can be found on the Office of the Attorney General's California Tobacco Directory. https://oag.ca.gov/tobacco/directory</p>

Laws About Selling Tobacco Products

This chart summarizes key requirements in three state and federal laws and their respective fine/penalty schedule.

	Penal Code Section 308	Stop Tobacco Access to Kids Enforcement (STAKE) Act Business and Professions Code Sections 22950–22963	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.
Requirements	<ul style="list-style-type: none"> Prohibits selling or giving tobacco products to persons under 21 years old unless the person is over the age of 18 with a valid military ID. Sellers must check ID of anyone who looks younger than 27 years old. State health department, and any state agency or local law enforcement agency, may use decoys under age of 21 in onsite inspections to determine if retailers are selling to persons under 21. Decoys will show their legal ID with real age if asked but they do not have to state their real age. FDA may use decoys under age of 18 in onsite inspections to determine if retailers are selling to persons under 18. Businesses are inspected at random, in response to public complaints, or if found in violation at a previous inspection. Sales of tobacco products to persons under age of 21 made over the phone, mail or via the Internet are also investigated and prosecuted. 		
Fines/Penalties	<ul style="list-style-type: none"> \$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. 	<ul style="list-style-type: none"> \$400–\$600 for the first violation. \$900–\$1,000 for the second violation (within a five-year period). Fines may increase with subsequent violations up to \$6,000. Additional penalties and/or injunction under the Unfair Competition Law. 	<ul style="list-style-type: none"> A warning letter for the first violation. Up to \$279 for the second violation within a one-year period. Fines/penalties may increase with subsequent violations up to \$11,182, and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

Laws About Signs and Storefront Ads

	Penal Code Section 308	Stop Tobacco Access to Kids Enforcement (STAKE) Act Business and Professions Code Sections 22950–22963	Master Settlement Agreement
Requirements	<p>Every business that sells tobacco must post a STAKE Act age-of-sale warning sign at each point of purchase, such as near a cash register.</p>  <p>You can get free signs by contacting the Tobacco Education Clearinghouse of California at (800) 258- 9090 x 103 or www. TobaccoFreeCatalog.org. You can also get signs from your local health department tobacco control program.</p> <p>Note: the We Card sign provided by the tobacco industry does not meet the state law requirements.</p>		<p>Under the Tobacco Master Settlement Agreement between California and the major tobacco companies, signs advertising cigarettes and smokeless tobacco that are displayed outside a tobacco retail store, outside an event, or on a window facing outward, may not be more than 14 square feet. “Mosaics” are also not allowed if the display is larger than 14 square feet.</p>
Fines/Penalties	<ul style="list-style-type: none"> • \$50 for the first violation. • \$100 for the second violation. • Fines may increase with subsequent violations up to \$500 and/or imprisonment up to 30 days. • Subsequent violations- imprisonment up to 30 days. 	<ul style="list-style-type: none"> • \$200 for the first violation. • \$500 for each additional violation. 	<ul style="list-style-type: none"> • Subject to state enforcement actions and proceedings.

Laws About Tobacco Product Packaging

	Penal Code Section 308	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.
Restrictions	<ul style="list-style-type: none"> • No sale of single cigarettes (“loosies”). • No sale of cigarettes in packages of less than 20. • Roll-your-own tobacco may not be manufactured for sale, distributed, sold, or offered for sale in a package containing less than 0.60 ounces of tobacco. 	<ul style="list-style-type: none"> • No sale of single cigarettes (“loosies”). • No sale of cigarettes in packages of less than 20. <p>Exception: packaged single cigarettes may be sold from vending machines in locations where no person under 18 is permitted to enter at any time.</p>
Fines/Penalties	<ul style="list-style-type: none"> • \$200 for the first violation. • \$500 for the second violation. • Fines may increase with subsequent violations up to \$500 and/or imprisonment up to 30 days. 	<ul style="list-style-type: none"> • A warning letter for the first violation. • Up to \$279 for the second violation within a one-year period. • Fines/penalties may increase with subsequent violations up to \$11,182, and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

Laws About Self-Service Displays

	Stop Tobacco Access to Kids Enforcement (STAKE) Act Business and Professions Code Sections 22950–22963	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.
Restrictions	<ul style="list-style-type: none"> • No self-service display of tobacco products, or paraphernalia. • No placement of advertising for blunt wraps within two feet of candy, snacks, or nonalcoholic beverages, or placement of advertising for blunt wraps lower than four feet above the floor. <p>Exception: tobacco only stores may have self-service displays of pipe tobacco, snuff, chewing tobacco, dipping tobacco, or cigars, as long as they are seal packaged in no less than six cigars.</p>	<ul style="list-style-type: none"> • No self-service display of tobacco products, including e-cigarettes, hookah tobacco, and cigars.
Fines/Penalties	<ul style="list-style-type: none"> • \$400–\$600 for the first violation. • \$900–\$1,000 for the second violation within a five-year period. • Fines may increase with subsequent violations up to \$6,000. 	<ul style="list-style-type: none"> • A warning letter for the first violation. • Up to \$279 for the second violation within a one-year period. • Fines/penalties may increase with subsequent violations up to \$11,182, and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

Laws About Tobacco Product Sampling, Couponing, Rebates, and Gift Certificates

	California Health and Safety Code Section 118950	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.
Restrictions	<ul style="list-style-type: none"> No free or low-cost cigarettes or smokeless tobacco products may be given to persons in any public building, park or playground, or on any public sidewalk, street, or other public grounds, or on any private property that is open to the general public. <p>Exception: Free or low-cost cigarettes or smokeless tobacco products may be distributed in an enclosed location that minors are restricted access by a peace officer or licensed security guard. No coupons, rebates, and gift certificates for free or low-cost cigarettes or smokeless tobacco products may be given away.</p> <p>Exception: coupons, rebates, and gift certificates may be distributed in connection with the sale of another item, for example, tobacco products or cigarette lighters.</p>	<ul style="list-style-type: none"> No distribution of free tobacco products or coupons. <p>Exception: One 15-gram package of smokeless tobacco may be given per adult customer only in a qualified Adult-Only Facility (AOF).</p>
Fines/ Penalties	<ul style="list-style-type: none"> \$200 for the first item. \$500 for the second item. Fines may increase with subsequent violations up to \$6,000. 	<ul style="list-style-type: none"> A warning letter for the first violation. Up to \$279 for the second violation within a one-year period. Fines/penalties may increase with subsequent violations up to \$11,182, and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

Laws About the Sale of Flavored Cigarettes

	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.
Restrictions	<ul style="list-style-type: none"> • No sale of cigarettes that contain a flavor or spice other than menthol. • No sale of clove cigarettes. • NOTE: Some local jurisdictions have ordinances prohibiting the sale of flavored tobacco products, including e-cigarettes and menthol cigarettes. Check with your local health department regarding any additional local restrictions.
Fines/ Penalties	<ul style="list-style-type: none"> • A warning letter for the first violation. • Up to \$279 for the second violation within a one-year period. • Fines/penalties may increase with subsequent violations up to \$11,182, and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

Laws About the Sale of “Light,” “Low,” and “Mild” Tobacco Products

	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.
Restrictions	<ul style="list-style-type: none"> • No sale of tobacco products with labeling that includes the descriptors “light,” “low,” “mild,” or other similar words.
Fines/ Penalties	Very substantial fines.

Laws About the Sale of Bidis

	Penal Code Section 308.1
Restrictions	<ul style="list-style-type: none"> • No sale, offer for sale, distribution, or importation of “bidis” (also known as “beedies”), except where persons under the age of 18 are not allowed.
Fines/ Penalties	\$2,000 for each sale.

Glossary

Adult-Only Facilities (AOF): A qualified AOF must:

- Have a law enforcement officer present to check photo ID and limit access only to adults.
- Not serve, sell, or distribute alcohol.
- Be a temporary, enclosed structure created for the purpose of distributing smokeless tobacco samples.
- Have an interior which is not visible from outside the structure, unless a person makes an unreasonable attempt to see inside.
- Not be permitted at basketball, baseball, football, soccer, or hockey events.

Bidis (beedies): hand-rolled cigarettes containing tobacco wrapped in temburi or tendu leaf that are imported mainly from India and some Southeast Asian countries. They come in a variety of candy-like flavors and often are sold in packs of fewer than 20.

Blunt Wraps: cigar papers or cigar wrappers of all types that are designed for smoking or ingestion of tobacco products and contain less than 50 percent tobacco.

Mosaics or Mosaic Ads: ads placed next to each other on windows, doors, or walls.

Self-service Display: a display of tobacco products and tobacco paraphernalia that the public can access without help from a clerk.

Tobacco Paraphernalia: cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments designed for the smoking or ingestion of tobacco products.

Tobacco Samples: free or nearly free cigarettes or smokeless tobacco, or coupons, coupon offers, or rebate offers for these products.

Tobacco Only Stores: stores that make more than 60% of gross annual revenue from the sale of tobacco products and paraphernalia, that prohibit unaccompanied minors, and that do not sell alcohol or food for consumption on the premises. This definition only applies for the purposes of self-service display laws.

We Card: a program of the Coalition for Responsible Tobacco Retailing that reminds retailers to check customer ID for tobacco purchases. We Card signs do not meet the requirements for signage under the STAKE Act and should not be used instead of STAKE Act signs.

Additional Information and Citations

California Health and Safety Code Section 118950: a state law prohibiting free or nominal-cost cigarettes or smokeless tobacco products (or coupons, coupon offers, rebate offers, gift certificates, gift cards, or “other similar offers” for such products) from being distributed on public grounds or on private grounds that are open to the public.
<http://leginfo.legislature.ca.gov>
California Health and Safety Code Section 118950

California Cigarette and Tobacco Products Licensing Act of 2003: a state law that requires California businesses to have a license to sell cigarettes and other tobacco products to the public, which must be renewed annually.
<http://leginfo.legislature.ca.gov>
Business and Professions Code Sections 22970-22995

Family Smoking Prevention and Tobacco Control Act (2009 Tobacco Control Act): a federal law that authorizes the Food and Drug Administration (FDA) to regulate tobacco products; the law places several restrictions on the sale of cigarettes and smokeless tobacco products.
21 U.S.C. § 387, et seq.
<https://www.gpo.gov/fdsys/pkg/PLAW-111publ31/pdf/PLAW-111publ31.pdf>

Penal Code Section 308: a state law that makes it a crime to sell or give tobacco products or paraphernalia to persons under the age of 21. It does not apply to the sale, giving, or furnishing of any tobacco products to active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.
<http://leginfo.legislature.ca.gov>

Stop Tobacco Access to Kids Enforcement (STAKE) Act: a state law that outlaws selling or giving tobacco products or paraphernalia to person under the age of 21 and places other restrictions on the sale of tobacco products. It does not apply to the sale, giving, or furnishing of any tobacco products to active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.
<http://leginfo.legislature.ca.gov>
Business and Professions Code Section 22950–22963

Tobacco Master Settlement Agreement: The Master Settlement Agreement (or MSA) prohibits the participating manufacturers from certain types of marketing, including targeting youth, using cartoons to advertise tobacco products, using brand-name merchandise, sponsoring youth-oriented events, and paying for product placement in media.
<https://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/1msa.pdf>

DISCLAIMER

This material has been prepared for informational purposes only, and it may or may not reflect the most current legal developments. The State of California Department of Public Health, California Tobacco Control Program and the Office of the Attorney General have provided this brochure as a guide to the current laws regulating tobacco sales and use in California (at the time of this printing). THIS IS NOT LEGAL ADVICE. The reader is advised that laws frequently change, and it is your responsibility to keep current with those legal requirements that affect the operation of your business or your personal conduct.



Stop Tobacco Access to Kids
E N F O R C E M E N T A C T



**Tobacco
21 Law**

**The Sale of
Tobacco Products
or Electronic
Smoking Devices
to Persons Under
21 is Prohibited**

© Revised 2017. California Department of Public Health.

Distributed by the Tobacco Education Clearinghouse of California
www.tecc.org