

California Tobacco Sales Laws



California Department of Public Health

California Tobacco Control Program and Food and Drug Branch

Updated June 2020

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), the Stop Tobacco Access to Kids Enforcement (STAKE) Act [Business and Professions Code 22950-22963 & Tobacco Control Act 21 United States Code Section 387f(d)]

Presentation Goals

This presentation will help you learn about:

- California laws that prohibit tobacco sales to persons under 21 years of age
- 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

Important Information Effective December 20, 2019

Tobacco products may not be sold to any persons under the age of 21.

Tobacco products include cigarettes, chewing tobacco, and dipping tobacco; snuff, cigars, bidis, pipe tobacco, and roll your own tobacco; any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, 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.

[Business and Professions Code Section 22952 & 21 United States Code Section 387f(d)]

WHAT IS A “TOBACCO PRODUCT” UNDER CALIFORNIA LAW?



“Tobacco product” means any of the following:
A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, snuffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

 Cigarettes	 Cigars & Cigarillos	 Chew, ZYN, Snus	 Hookah Shisha
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.			
 JUUL & Other Vapes	 Cigalikes	 Vaporizers	 E-juices
Any component, part, or accessory of a tobacco product, whether or not sold separately.			
 Papers	 Atomizers	 Batteries	 Chargers

“Tobacco product” does not include
a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.



Business and Professions Code Section 22950.5 (d) © 2019, California Department of Public Health.

California Tobacco Sales Laws

- Prohibit selling or giving tobacco products to persons under 21 years old
- 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 work with decoys under the age of 21 in inspections to determine if retailers are selling to persons under 21
- Decoys will show their legal ID with their 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 and 21 United States Code Section 387f(d)]

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)
- Sales of flavored cartridge based e-cigarettes

For more detailed information about these laws, see:

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

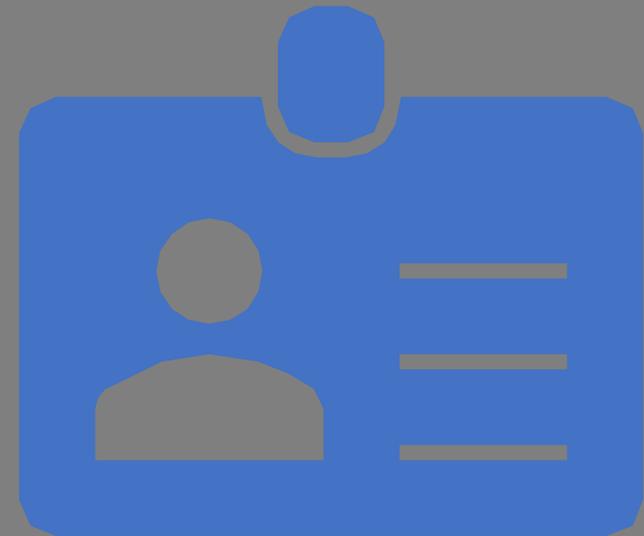
Stopping tobacco sales to persons under 21 years of age depends on commitment and action by you and your employees

- 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



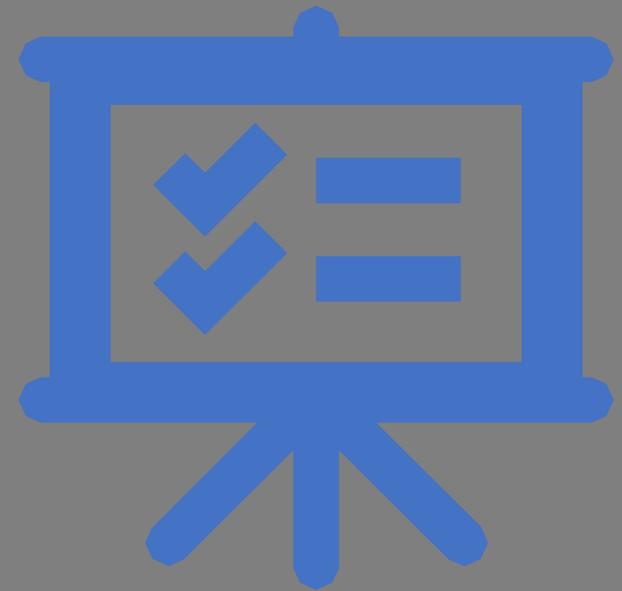
Develop and Follow Store Policies

- 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



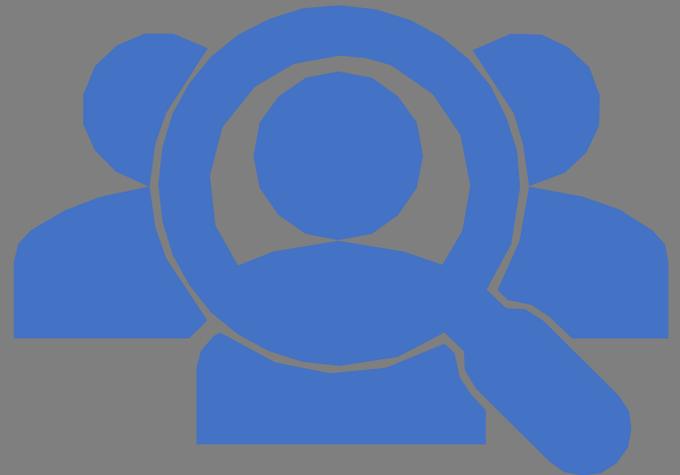
Train Your Employees

- Ask for ID from anyone who looks younger than age 27
- Accept only valid government-issued IDs and check for expiration dates
- Check or calculate the age on the ID to confirm the customer is at least 21
- To 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!

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

Valid Identification May Be Required

Business and Professions Code Section 22952 21 U.S.C 387f(d)

This sign must be readable by the consumer and must not be altered.



- Open camera or QR code reader on your smartphone.
- Hold your smartphone over QR Code so that it's clearly visible within camera screen.
- Look for the notification banner or tap to

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 that appears to be 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

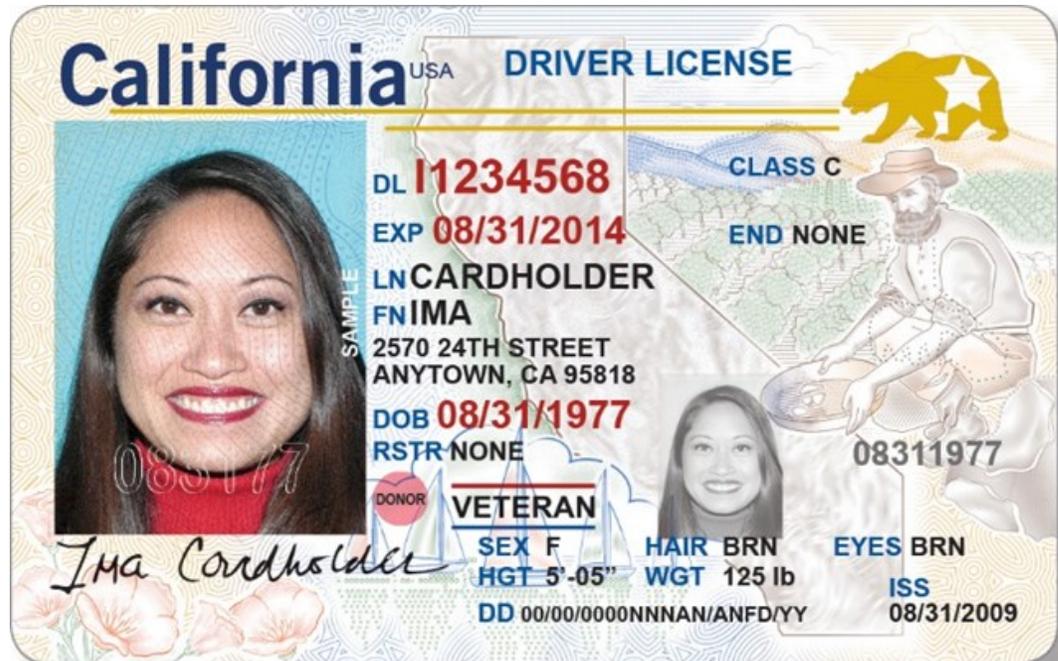
Ask for ID – Look for Fakes

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

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

Other Resources

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/](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>

