

## **Frequently Asked Questions: California's Statewide Flavored Tobacco Sales Law**

### **Q 1: Is it illegal to sell flavored tobacco products in California?**

A: Yes. The sale of most flavored tobacco products and tobacco product flavor enhancers is prohibited in retail locations in California. The definition of flavored tobacco products include: flavored electronic cigarettes (e-cigarettes) that deliver nicotine or another vaporized liquid, e-liquids, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored blunt wraps, and flavored loose leaf roll-your-own tobacco. The state law also applies to tobacco product flavor enhancers (see question four for information on these products). This does not apply to the retail sale of flavored loose-leaf pipe tobacco or flavored premium cigars with a wholesale price of \$12 or more. Flavored shisha (also known as hookah tobacco) may only be sold in licensed stores that only allow people 21 or older on the premises at any time, operate in accordance with all state or local laws relating to the sale of tobacco, and comply with state and local laws relating to use of tobacco on the premises if tobacco is used on the premises. (Health and Safety Code Section 104559.5)

### **Q 2: Is it illegal to buy flavored tobacco products in California?**

A: No. The penalties in the state law only apply to retailers, or any of the tobacco retailer's agents or employees, who *sell, offer for sale, or possess with the intent to sell or offer for sale* a flavored tobacco product, and it is the responsibility of retailers to comply with the state law. The state law does not criminalize anyone for purchasing, using, or possessing with the intent to use a flavored or unflavored tobacco product. (Health and Safety Code Section 104559.5(b)(1))

### **Q 3: When will the state law go into effect?**

A: The state law is effective 5 days after the election results are certified. The Secretary of State's office has until December 16 to certify the election results, so retailers will be required to stop selling flavored tobacco covered by the law by December 21 at the latest. However, retailers should be prepared to stop selling these products sooner should the election results be certified before December 16. Retailers should continue to check the [Secretary of State's webpage](#) for updated information.

**Q 4: What are “tobacco product flavor enhancers”?**

A: Tobacco product flavor enhancers include any product that adds flavoring to a tobacco product, even if the product does not have tobacco or nicotine in it. The state law defines “tobacco product flavor enhancers” as “a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.” (Health and Safety Code Section 104559.5(a)(15))

**Q 5: What types of retail locations does the state law apply to?**

A. This state law applies to the sale of flavored tobacco products from a building where tobacco products are sold at retail and vending machines. (Health and Safety Code Section 104559.5 (a)(11))

**Q 6: Is mint or menthol flavor included in the state law?**

A: Yes. The definition of a “characterizing flavor” under the state law includes mint and menthol flavors. While the sale of mint cigarettes was already prohibited by federal law, the state law now prohibits the retail sale of all menthol cigarettes, and the sale of all mint and menthol e-cigarettes, little cigars and cigarillos, smokeless tobacco, loose leaf roll-your-own tobacco, and tobacco product flavor enhancers from a retail location. (21 U.S.C. § 387g(a)(1)(A); Health and Safety Code Section 104559.5(a)(1))

**Q 7: What types of flavored tobacco products are included in the state law?**

A: The state law prohibits the retail sale of nearly all flavored tobacco product in retail stores and vending machines, including all menthol cigarettes, flavored e-liquids, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored blunt wraps, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers. The retail sale of flavored e-cigarettes, regardless of whether they deliver nicotine, is also prohibited. (Health and Safety Code Section 104559.5)

**Q 8: Are e-cigarettes and other devices used for smoking or vaping nicotine or other liquids included in the state law?**

A: Yes. If an e-cigarette or other device that delivers nicotine or other vaporized liquids is sold in combination with flavored e-liquid (regardless of whether the e-liquid contains nicotine), then it is considered a flavored tobacco product. (Health and Safety Code Section 104559.5(a)(4)). If an e-cigarette or other device is sold on its own and does not include any type of flavoring, then the product is not covered by the state law and may continue to be sold.

All e-cigarettes, whether or not they deliver nicotine, and other tobacco product accessories, components or parts are considered tobacco products and may only be sold to a person who is 21 years or older. (Health and Safety Code Section 104495(a)(8)(A) and Business and Professions Code 22958(a)(1))

**Q 9: Are flavored aromatherapy or essential oil vape pens still allowed to be sold in California?**

A: No. A flavored aromatherapy or essential oil vape pen is included under the definition of a tobacco product, even if it does not contain nicotine, and may no longer be sold in retail locations in California. The state law defines a tobacco product as “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” and prohibits the retail sale of all flavored products that meet this definition. (Health and Safety Code Section 104559.5(a)(14))

**Q 10: Can I sell e-juice flavor enhancers that can be used with a tobacco product but do not contain tobacco or nicotine?**

A: No. Under the state law, the retail sale of any product or substance that can be used with a tobacco product to add flavor is prohibited, regardless of whether it contains tobacco or nicotine. The state law defines a tobacco product flavor enhancer as “a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.” (Health and Safety Code Section 104559.5(a)(15) and (b)(1))

**Q 11: How can I tell if a tobacco product is flavored?**

A: The state law prohibits the retail sale of most tobacco products that taste or smell like a flavor other than tobacco before or during use, including any smoke, vapor, or aerosol that the product may produce. A tobacco product may also be prohibited for retail sale if it contains an additive other than tobacco, water, or reconstituted tobacco sheet, that gives the product a distinguishable taste or aroma, or both and is added by the manufacturer during the production of the final tobacco product. Finally, a tobacco product will be assumed to be flavored if a manufacturer (or their agents or employees) has stated or made claims that the tobacco product has or produces a characterizing flavor. This may be determined based on text, color, images, or all, on a tobacco product's labeling or packaging that communicates or implies that the tobacco product has a characterizing flavor. (Health and Safety Code Section 104559.5(a)(1), (a)(2), and (b)(2))

**Q 12: Can I continue to sell flavored tobacco products that are already in my stores after the state law goes into effect?**

A: No. Effective immediately, retailers that sell, offer for sale, or possess with the intent to sell flavored e-cigarettes, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers will be guilty of an infraction and fined \$250 for each violation of the state law. (Health and Safety Code Section 104559.5)

**Q 13: Will there be a grace period between the referendum vote in November 2022 and when the state law will be enforced?**

A: No. California voters upheld the state law on November 8 during the statewide general election, and the law will go into effect 5 days after the election results are certified. The Secretary of State's office has until December 16 to certify the election results, so retailers will be required to stop selling flavored tobacco covered by the law by December 21 at the latest. However, retailers should be prepared to stop selling these products sooner should the election results be certified before December 16. Retailers should continue to check the [Secretary of State's webpage](#) for updated information.

**Q 14: Are there penalties for selling flavored tobacco products?**

A: Yes. Any retailer, their agents or employees, who sells or possesses with the intent to sell any of the flavored tobacco products covered by the state law will be guilty of an infraction and fined \$250 for each violation of the state law. (Health and Safety Code Section 104559.5(f))

**Q 15: Can I be penalized for selling a flavored tobacco product if I didn't know that the product was flavored?**

A: Yes. It is incumbent upon the retailer, their agents or employees to understand which products are flavored under the definition in the state law and to ensure that they are not selling the prohibited products. Any retailer that sells, offers for sale, or possesses with the intent to sell or offer for sale a flavored tobacco product or tobacco product flavor enhancer is in violation of the state law and guilty of an infraction. (Health and Safety Code Section 104559.5(b)(1) and (f))

**Q 16: Will a person who is not a retailer be penalized for giving a flavored tobacco product to another person?**

A: No. This state law does not penalize a person who is not a retailer, their agent or employee, from giving a flavored tobacco product to another person. A

retailer is defined as a person who engages in the sale of tobacco products directly to the public from a retail location and includes a person who operates vending machines from which tobacco products are sold in California. (Health and Safety Code Section 104559.5(a)(16) and (b)(1))

**Q 17: How is this state law different than the Federal Food and Drug Administration's (FDA) policy regulating the sale of some flavored tobacco products?**

A: The state law is more comprehensive than federal law. Under federal law, the FDA [prioritizes enforcement](#) of some flavored e-cigarettes, but does not regulate many of the other flavored tobacco products included in California's flavored tobacco sales law. The state law applies to products that the FDA rule does not cover, including flavored disposable e-cigarettes, any menthol- or tobacco-flavored e-cigarette, and other flavored tobacco products like little cigars and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers. (Health and Safety Code Section 104559.5)

The FDA has [proposed rules](#) to prohibit menthol as a characterizing flavor in cigarettes and prohibit all characterizing flavors (other than tobacco) in cigars. As of November 2022, these proposed rules are still being considered by the FDA and are not in effect.

**Q 18: If my city or county passed an ordinance banning the sale of flavored tobacco products for all stores except adult-only stores, can these adult-only stores continue to sell flavored tobacco products?**

A: No. The state law replaces all local ordinances that restrict the retail sale of flavored tobacco products unless the local ordinance is more restrictive than the state law. The state law prohibits the retail sale of most flavored tobacco products in all retail locations, which includes retail stores where tobacco products are sold and vending machines. (Health and Safety Code Section 104559.5(g))

**Q 19: If my city or county passed an ordinance that bans the sale of flavored tobacco products but makes an exemption for menthol, can tobacco retailers continue to sell menthol-flavored tobacco products?**

A: No. The state law replaces all local ordinances that restrict the retail sale of flavored tobacco products unless the local ordinance is more restrictive than the state law. The state law prohibits the retail sale of all menthol and other flavored e-cigarettes; cigarettes; little cigars and cigarillos; smokeless tobacco; loose leaf roll-your-own tobacco; and tobacco product flavor enhancers in

retail stores and vending machines. (Health and Safety Code Section 104559.5(g))

**Q 20: If my city or county's existing flavored tobacco ordinance is more restrictive than the state law, which law should I follow?**

A: If a local ordinance is more restrictive than state law and prohibits the retail sale of all flavored tobacco products or more flavored tobacco products than required by state law, then stores in that jurisdiction must abide by the local ordinance. The state law allows jurisdictions to pass their own flavored tobacco sales ordinances and continue to enforce existing ordinances if they are more restrictive than state law. (Health and Safety Code Section 104559.5(g))

**Q 21: If my city or county already has a law banning the sale of all flavored tobacco products, including flavored shisha or hookah tobacco, can hookah retailers now start selling flavored shisha/ hookah tobacco?**

A: No. The state law replaces all local ordinances that restrict the retail sale of flavored tobacco products *unless* the local ordinance is more restrictive than the state law. If a local ordinance is more restrictive than the state law, then stores in that jurisdiction must abide by the local ordinance. A local ordinance that bans the retail sale of all flavored tobacco products, including flavored shisha or hookah tobacco, is more restrictive than the state law and is therefore, still the law in that jurisdiction. (Health and Safety Code Section 104559.5(g))

**Q 22: Can convenience stores continue to sell flavored shisha or hookah tobacco products?**

A: The convenience store must meet the requirements to sell flavored shisha or hookah tobacco as defined in the state law. In order to sell flavored shisha or hookah tobacco, a shisha/hookah tobacco retailer must: 1) have a valid license to sell tobacco, 2) not permit anyone under the age of 21 years of age to be present or enter the premises at any time 3) operate in accordance with all state and local laws relating to the retail sale of tobacco products, and 4) operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including but not limited to those specified in Section 6404.5 of the Labor Code, if consumption of tobacco products is allowed on the premises. (Health and Safety Code Section 104559.5(c))

**Q 23: Can someone over the age of 21 still buy flavored tobacco products?**

A: The state law prohibits the retail sale of all flavored e-cigarettes, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco,

flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers at a retail location to any person, regardless of age. A person over the age of 21 in California may purchase flavored loose-leaf pipe tobacco, flavored premium cigars with a wholesale price of \$12 or more, and flavored shisha or hookah tobacco from a licensed retail location that meets the requirements to sell these products. (Health and Safety Code Section 104559.5). The state law also prohibits a person from selling, giving, or in any way furnishing any tobacco product or tobacco paraphernalia to a person under the age of 21. (Business and Professions Code Section 22958, Penal Code Section 308(a)(1)(A)(i))

**Q 24: Can adult-only stores continue to sell flavored tobacco products?**

A: The state law prohibits any tobacco retailer, including retailers at adult-only stores, from selling flavored e-cigarettes, menthol cigarettes, flavored little cigars and cigarillos, flavored smokeless tobacco, flavored loose leaf roll-your-own tobacco, and tobacco product flavor enhancers. Retailers at adult-only stores may continue to sell flavored loose-leaf pipe tobacco and flavored premium cigars with a wholesale price of \$12 or more, as well as flavored shisha or hookah tobacco under certain conditions. In order to sell flavored shisha or hookah tobacco, a retailer 1) must have a valid license to sell tobacco, 2) must not permit anyone under the age of 21 years of age to be present or enter the premises at any time, 3) shall operate in accordance with all state and local laws relating to the sale of tobacco products, and 4) if consumption of tobacco products is allowed on the premises, the retailer must operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer including but not limited to those specified in Section 6404.5 of the Labor Code. (Health and Safety Code Section 104559.5(b)(1), (c), (d), and (e))

**Q 25: Can Shisha or Hookah Bars/Lounges still allow people to smoke flavored shisha or hookah tobacco products inside?**

A: The shisha or hookah bar or lounge must meet the requirements as defined by the state law. In order to sell flavored shisha or hookah tobacco, a hookah tobacco retailer; 1) must have a valid license to sell tobacco, 2) must not permit anyone under the age of 21 years of age to be present or enter the premises at any time and 3) shall operate in accordance with all state and local laws relating to the sale of tobacco products, and 4) if consumption of tobacco products is allowed on the premises, the retailer must operate in accordance with all state and local laws relating to the consumption of tobacco products on

the premises of a tobacco retailer including but not limited to those specified in Section 6404.5 of the Labor Code. (Health and Safety Code Section 104559.5(c))

The state law permits smoking inside a hookah bar/lounge if the business qualifies as either a “retail or wholesale tobacco shop” or a “private smokers’ lounge.” A “retail or wholesale tobacco shop” is defined as any business establishment whose main purpose is the sale of tobacco products, and a “private smokers’ lounge” is defined as an enclosed area in or attached to a “retail or wholesale tobacco shop” that is dedicated to the use of tobacco products. (Labor Code Section 6404.5(e)(2)(A) and (B)). A hookah bar or lounge that allows customers to smoke inside may not serve food or beverages. (Labor Code Section 6404.5 and California Attorney General Opinion No.09-507)

Retailers must also adhere to any other state or local laws that place requirements on the sale of flavored tobacco products or on the operating of hookah lounges/bars. Stores in jurisdictions that have enacted laws that are more restrictive than the state law, such as prohibiting the sale of flavored shisha or hookah tobacco or prohibiting smoking in hookah bars/lounges, must adhere to the more restrictive laws in the jurisdiction. (Health and Safety Code Section 104559.5(g))