

TOBACCO CONTROL LAWS THAT AFFECT CALIFORNIA RETAIL BUSINESSES

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Dear Business Owner:

This brochure contains basic information on state and federal tobacco control laws that are in effect as of January 2021 and that affect retail businesses in California. Retailers must comply with state, city and county jurisdictions, 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.

Words in **bold** type are defined in the glossary.

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

- Cigarettes
- Snuff
- **Bidis**
- Lozenges, snus, pouches and other oral nicotine products
- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption
- Heated tobacco products
- Chewing tobacco and dipping tobacco
- Cigars, little cigars, and cigarillos
- Pipe tobacco and roll your own tobacco
- Any electronic smoking device (whether or not it contains nicotine)
- 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.

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/CCDPHP/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/CCDPHP/DCDIC/CTCB/Pages/Partners.aspx>





TABLE OF CONTENTS

How to Comply with Tobacco Retail Laws—Overview	1
Laws About Tobacco Retail Licensure	2
Laws About Selling Tobacco Products	4
Laws About Selling Flavored Tobacco Products	5
Laws About Online Sales of Tobacco Products	6
Laws About Signs and Storefront Ads	8
Laws About Tobacco Product Packaging	9
Laws About Self-Service Displays	10
Laws About Tobacco Product Sampling, Couponing, Rebates, and Gift Certificates	11
Laws About the Sale of “Light,” “Low,” and “Mild” Tobacco Products	12
Laws About the Sale of Bidis	12
Glossary	13
Additional Information and Citations	14

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.
- POST the required STAKE Act age-of-sale warning signs at each point of sale (including cash registers and vending machines).
- NO sales of single cigarettes or packs with less than 20 cigarettes.
- NO **self-service display** of tobacco products or tobacco paraphernalia (with limited exceptions for tobacco-only stores that meet all of the conditions specified in Business and Professions 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.
- NO sales of cartridges for electronic cigarettes and solutions for filling or refilling an electronic cigarette unless the cartridge is in child-resistant packaging and meets federal child-resistant packaging standards and testing procedures.
- 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 the premises.
- VERIFY that the purchaser or recipient of a tobacco product is 21 years of age or older before selling or distributing a tobacco product directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the internet.
- NO sales of tobacco products where cannabis is sold.



STAKE ACT AGE-OF-SALE WARNING SIGN

LAWS ABOUT TOBACCO RETAIL LICENSURE

Requirements

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:

- **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 to see your tobacco products purchase invoices when they ask for them.

Tobacco Retailer License Cost

\$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, must be renewed every year, and is not assignable or transferable. Licenses will not be issued for any location where a license has been revoked in the last five years, unless a new owner obtained the property in an arms-length transaction.

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.

LAWS ABOUT TOBACCO RETAIL LICENSURE (CONTINUED)

Purchase Invoice Requirements

Invoices from wholesalers and distributors must have the following information:

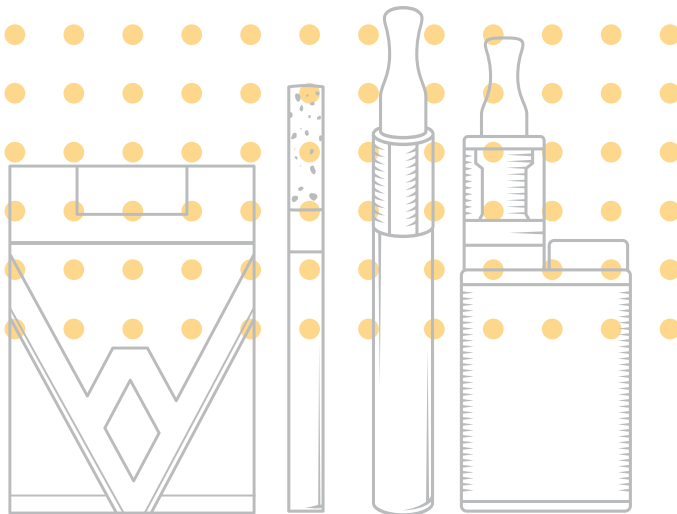
- The name, address, telephone, and license number of the wholesaler or distributor who sold the products.
- Either all California cigarette and tobacco product excise taxes in the total amount of the invoice or the amount of excise tax due to the CDTFA.
- Retailer's name, address, and license number.
- An itemized list of the tobacco products sold to retailer by wholesaler or distributor.
- The date that the cigarettes or tobacco products were purchased.

Illegal Purchases

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 and product may be seized. You may also be fined and/or sent to prison.

Note: A list of California-licensed distributors and wholesalers can be found on the CDTFA California Cigarette & Tobacco Products Licensees web page.

<https://www.cdtfa.ca.gov/taxes-and-fees/cigarette-licensees.htm>



LAWS ABOUT SELLING TOBACCO PRODUCTS

This chart summarizes key requirements in these 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. § 387f(d)
Requirements	<ul style="list-style-type: none"> ■ Prohibits selling or giving tobacco products to persons under 21 years old. ■ Under federal law, 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 21 in onsite inspections to determine if retailers are selling to persons under 21 years old. ■ Businesses are inspected at random, in response to public complaints, or if found in violation at a previous inspection. 		
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 civil penalties, including fines, license suspension or revocation may be assessed after the third, fourth or fifth violation. ■ 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 \$297 for the second violation within a one-year period. ■ Fines/penalties may increase with subsequent violations up to \$11,904 within a 48-month period and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

LAWS ABOUT SELLING FLAVORED TOBACCO PRODUCTS

This chart summarizes key requirements in the federal law and the respective fine/penalty schedule.

	2009 Tobacco Control Act (Federal) 21 U.S.C. § 333, 372, 387g, 387f(d) Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised): Guidance for Industry, U.S. Department of Health and Human Services January 2020
Requirements	<ul style="list-style-type: none">■ No manufacturing of cigarettes that contain a flavor or spice other than menthol.■ No sale of clove cigarettes.■ Flavored cartridge-based e-cigarettes (other than tobacco- or menthol-flavored) may no longer be sold in the United States (U.S.) unless that product has been authorized for sale by the FDA. <p>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.</p>
Fines/ Penalties	<ul style="list-style-type: none">■ A warning letter for the first violation.■ Up to \$297 for the second violation within a one-year period.■ Fines/penalties may increase with subsequent violations up to \$11,904 and may include a no-tobacco-sale order. This prohibits the sale of tobacco products for a specified period or permanently.

LAWS ABOUT ONLINE SALES OF TOBACCO PRODUCTS

This chart summarizes key requirements in the state and federal law and respective fine/penalty schedule for retailers.

Stop Tobacco Access to Kids Enforcement (STAKE) Act

Business and Professions Code Section 22963

*This law is specific to retailers selling to consumers in California

Requirements

- No sale or distribution (including **nonsale distribution**) of tobacco products to any person under the age of 21 through public or private postal or package delivery services.
- Any person selling or distributing tobacco products (including nonsale distribution), to a consumer in California through any public or private postal or package delivery service must:
 - Confirm that the age of the buyer or recipient is at least 21 by matching their name, address, and date of birth to a database of age-verified individuals.
 - If you are unable to verify that the buyer or recipient is 21 or older, they must submit a signed document stating that they are 21 or older and provide a copy of a valid form of government ID.
 - Verify that the billing address on the check or credit card used for payment matches both the address listed in the database and the address listed in the form of government ID.
 - Require a two-carton minimum on each order of cigarettes.
 - Require the buyer to pay with a personal check or credit card.
 - Call the buyer after 5 p.m. to confirm the order before shipping the tobacco products.
 - In the case of a nonsale, deliver to the recipient's verified mailing address; in the case of a sale, deliver to the buyer's verified billing address on the check or credit card used for payment.
 - Deliver tobacco products ordered online 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."
 - Obtain the signature of a person aged 21 or older upon delivery.

Fines/ Penalties

- \$1000-\$2000 for the first violation.
- \$2500-\$3500 for the second violation.
- Fines may increase with subsequent violations up to \$10,000 within a five-year period.

LAWS ABOUT ONLINE SALES OF TOBACCO PRODUCTS (CONTINUED)

Prevent All Cigarette Trafficking (PACT) Act (Federal)

15 U.S.C. Section 375, 376a, 377

18 U.S.C Section 1716E

*Retailers selling to consumers in California must comply with the STAKE Act requirements

Requirements

- No delivery sales of cigarettes (including roll-your-own), e-cigarettes, and smokeless tobacco through the United States Postal Service.
- Common carriers (e.g., UPS, FedEx) may deliver a package containing cigarettes, e-cigarettes or smokeless tobacco if the package weights less than 10 pounds and bears the stamps and signs verifying all local, state, and federal taxes have been paid.
- Upon delivery of cigarettes, e-cigarettes, or smokeless tobacco, the age and identity of the buyer must be confirmed, and the recipient must be 21.

Fines/ Penalties

- Up to three years imprisonment.
- Civil penalty fines not to exceed \$5,000 for the first violation.
- \$10,000 for a subsequent violation.

LAWS ABOUT SIGNS AND STOREFRONT ADS

	<p>Penal Code Section 308 (b)</p>	<p>Stop Tobacco Access to Kids Enforcement (STAKE) Act</p> <p>Business and Professions Code Sections 22952(b), 22957, 22958(e)</p>	<p>Master Settlement Agreement</p>
<p>Requirements</p>	<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> <div data-bbox="496 732 992 947" data-label="Image"> </div> <p>You can get free signs by contacting the Tobacco Education Clearinghouse of California at (800) 258-9090 or www.tecc.org.</p> <p>You can also get signs from your local health department tobacco control program.</p> <p><i>Note:</i> The We Card sign does not meet the state law requirements.</p>	<p>Under the Tobacco Master Settlement Agreement between settling states (including 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>	
<p>Fines/ Penalties</p>	<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 per violation and/or 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 308.3	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq	California Health and Safety Code § 119406
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. ■ Exception: packaged single cigarettes may be sold from vending machines in locations where no person under 18 is permitted to enter at any time. 	<ul style="list-style-type: none"> ■ No sales of cartridges for electronic cigarettes and solutions for filling or refilling an electronic cigarette unless the cartridge is in child-resistant packaging and meets federal child-resistant packaging standards and testing procedures.
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 \$1000. 	<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 \$11,904 and may include a no-tobacco-sale order for more than five violations within a 36-month period. This prohibits the sale of tobacco products for a specified period or permanently. 	

LAWS ABOUT SELF-SERVICE DISPLAYS

	<p>Stop Tobacco Access to Kids Enforcement (STAKE) Act Business and Professions Code Sections 22958, 22960, 22962</p>	<p>2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq.</p>
<p>Restrictions</p>	<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 not sold in the manufacturer’s original sealed packaging containing fewer than six cigars.</p>	<ul style="list-style-type: none"> ■ Self-service display of cigarettes, smokeless tobacco or cigarette tobacco/roll your own tobacco is allowed in retail stores that do not permit anyone under the age of 18 to enter at any time. <p><i>Note:</i> covered tobacco products such as cigars, e-cigarettes, e-liquids and hookah tobacco are allowed to be sold using a self-service display.</p>
<p>Fines/ Penalties</p>	<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 \$297 for the second violation within a one-year period. ■ Fines/penalties may increase with subsequent violations up to \$11,904 and may include a no-tobacco-sale order for more than five violations within a 36-month period. 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 C.F.R. § 1140.16(d) 21 C.F.R. § 1140.34(b)
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 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.</p> <ul style="list-style-type: none"> No coupons, rebates, or gift certificates for free or low-cost cigarettes or smokeless tobacco products may be given away. <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 samples of 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 violation. \$500 for the second violation. Fines may increase with subsequent violations up to \$1,000. 	<ul style="list-style-type: none"> A warning letter for the first violation. Up to \$297 for the second violation within a one-year period. Fines/penalties may increase with subsequent violations up to \$11904 and may include a no-tobacco-sale order for more than five violations within a 36-month period. 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	<ul style="list-style-type: none">■ Graduated fines of up to \$11,904 depending on number of violations, possible criminal prosecution, and seizure of the products.

LAWS ABOUT THE SALE OF BIDIS

	2009 Tobacco Control Act (Federal) 21 U.S.C. § 387, et seq
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	<ul style="list-style-type: none">■ \$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.

Nonsale Distribution: to give smokeless tobacco or cigarettes to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for smokeless tobacco or cigarettes to the general public at no cost or at nominal cost. Distribution of tobacco products, coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers in connection with the sale of another item, including tobacco products, cigarette lighters, magazines, or newspapers shall not constitute nonsale distribution.

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 their gross annual revenue from the sale of tobacco products and paraphernalia, prohibit unaccompanied minors, and 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: state law that prohibits 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: 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 22970-22991

Family Smoking Prevention and Tobacco Control Act (2009 Tobacco Control Act): 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.

<https://www.gpo.gov/fdsys/pkg/PLAW-111publ31/pdf/PLAW-111publ31.pdf>

21 U.S.C. § 387, et seq.

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.

<http://leginfo.legislature.ca.gov>

Penal Code Section 308

Stop Tobacco Access to Kids Enforcement (STAKE) Act: a state law that outlaws selling or giving tobacco products or paraphernalia to persons under the age of 21 and places other restrictions on the sale of tobacco products.

<http://leginfo.legislature.ca.gov>

Business and Professions Code Sections 22950–22964

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 of California 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.

