

California Department of Justice
DIVISION OF LAW ENFORCEMENT
Stephen Woolery, Chief



INFORMATION BULLETIN

<p>Subject:</p> <p>Penalties for Online Sales of Flavored Tobacco Products</p>	<p>No.</p> <p>2024-DLE-17</p> <p>Date:</p> <p>12/18/2024</p>	<p>Contact for information:</p> <p>Division of Public Rights Tobacco Unit tobacco@doj.ca.gov</p>
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TO: ALL TOBACCO PRODUCT SELLERS & CALIFORNIA AGENCIES WITH AUTHORITY TO ENFORCE FLAVORED TOBACCO LAWS

This bulletin identifies penalties and enforcement actions available to state and local agencies against online sellers of flavored tobacco products and tobacco product flavor enhancers in light of California's flavored tobacco ban (Senate Bill 793, Cal. Stats. 2020, ch. 34) and recently enacted legislation related to enforcement of the ban (Senate Bill 1230, Cal. Stats. 2024, ch. 462; Assembly Bill 3218, Cal. Stats. 2024, ch. 849).

Penalties for Online Sales Against Retailers with Storefront Locations

"A tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer."¹ "Tobacco retailer" means a person who engages in this state in the sale of tobacco products directly to the public from a retail location, which includes "[a] building from which tobacco products are sold at retail."² Therefore, *whether the order is placed online or not*, tobacco retailers—including retailers that have a storefront location—may not sell flavored tobacco products or tobacco product flavor enhancers. Further, tobacco retailers may not possess flavored products or tobacco product flavor enhancers with the intent to sell them, regardless of whether the ultimate sale is in-store or online.

Recent amendments to the Stop Tobacco Access to Kids (STAKE) Act provide that, effective January 1, 2025, tobacco retailers that offer for sale or possess with the intent to sell flavored tobacco products or tobacco product flavor enhancers are subject to increased civil penalties by the California Department of Public Health (CDPH), ranging from \$1,000 to more than \$20,000 per violation.³ Additional state agencies (including the Office of the Attorney General) and local law enforcement agencies (including city attorneys, district attorneys, and county counsels) will also be authorized to assess the enhanced STAKE Act civil penalties against retailers.⁴ Tobacco retailers that, within a five year period, receive a third, fourth, or fifth violation for offering for sale or possessing with the intent to sell flavored tobacco products or tobacco product flavor enhancers are referred by CDPH to the California Department of Tax and Fee Administration (CDTFA), which

¹ Health & Saf. Code, § 104559.5, subd. (b).

² *Id.*, subds. (a)(13), (a)(18); Health & Saf. Code, § 104559.5, subds. (a)(14), (a)(19) (effective January 1, 2025).

³ Health & Saf. Code, § 104559.5, subd. (f)(1); see Bus. & Prof. Code, § 22958, subd. (a)(1) (effective January 1, 2025) [providing for a civil penalty of \$1,000 to \$1,500 for the first violation, \$2,000 to \$3,000 for a second violation in five years, \$5,000 to \$10,000 for a third violation in five years, \$10,000 to \$20,000 for a fourth violation in five years, and at least \$20,000 for a fifth violation within five years].

⁴ Bus. & Prof. Code, § 22958, subd. (a)(1) (effective January 1, 2025); Health & Saf. Code, § 104559.5, subds. (a)(4), (f).

shall issue an additional \$250 penalty and suspend or revoke the retailer's cigarette and tobacco retailer's license.⁵

Additionally, effective January 1, 2025, tobacco retailers that possess, own, store, or sell flavored tobacco products or tobacco product flavor enhancers in violation of the flavored tobacco ban are subject to seizure of those items by CDTFA or any other law enforcement agency.⁶ Tobacco retailers shall be issued a \$50 civil penalty by CDTFA for each individual package of flavored tobacco product or tobacco product flavor enhancer seized by either CDTFA or by another law enforcement agency and delivered to CDTFA.⁷ Also, the tobacco retailer's cigarette and tobacco license shall be suspended by CDTFA in the case of a second seizure and revoked in the case of third seizure.⁸

Penalties for Online Sales Against Delivery Sellers

Effective January 1, 2025, cigarette and tobacco product delivery sellers, which include sellers that accept online orders or make or arrange for remote deliveries, are subject to the same restrictions and penalties applicable to flavored tobacco products as retailers with storefront locations.⁹ In addition, delivery sellers that violate restrictions on sales of cigarettes and tobacco products will be subject to a fine up to \$5,000; a misdemeanor, imprisonment in county jail for up to one year; and enforcement actions by the Attorney General, city attorneys, district attorneys, and county counsels for civil penalties ranging from \$1,000 to \$10,000 per violation.¹⁰

Delivery sellers of tobacco products not appearing on the Unflavored Tobacco List (once published) will be subject to additional civil penalties by the Attorney General ranging up to \$10,000 for each product sold, and delivery sellers of tobacco product flavor enhancers will be subject to the same penalties for each flavor enhancer sold beginning January 1, 2025.¹¹ The Attorney General shall publish the Unflavored Tobacco List on or before December 31, 2025.¹²

These administrative, civil, and criminal penalties and remedies are in addition to any civil penalties (up to \$2,500 per violation), disgorgement of profits, and injunctive relief that may be imposed in enforcement actions brought by the Attorney General or local prosecutors under the Unfair Competition Law, Business and Professions Code section 17200 et seq.

⁵ Health & Saf. Code, § 104559.5, subd. (f)(2); see Bus. & Prof. Code, § 22958, subd. (b)(1) [requiring a 45-day licensure suspension for a third violation within five years, a 90-day licensure suspension for a fourth violation within five years, and license revocation for a fifth violation within five years].

⁶ Bus. & Prof. Code, § 22974.2, subd. (a) (effective January 1, 2025).

⁷ *Id.*, subds. (b)(1), (b)(5).

⁸ *Id.*, subds. (b)(2), (b)(3).

⁹ See Rev. & Tax Code, § 30101.7, subds. (c), (d)(4) (effective January 1, 2025).

¹⁰ Rev. & Tax Code, § 30101.7, subds. (d)(4), (e) (effective January 1, 2025); see Rev. & Tax Code, § 30101.7, subd. (g) [authorizing the Attorney General or a city attorney, county counsel, or district attorney to seek a civil penalty of \$1,000 to \$2,000 for the first violation, \$2,500 to \$3,500 for a second violation within five years, \$4,000 to \$5,000 for a third violation within five years, \$5,500 and \$6,500 for a fourth violation within five years, and up to \$10,000 for a fifth violation within five years].

¹¹ See Health & Saf. Code, § 104559.1, subd. (o) (effective January 1, 2025) [providing for a civil penalty of up to \$2,000 for the first violation, \$3,500 for a second violation within five years, \$5,000 for a third violation within five years, \$6,500 for a fourth violation within five years, and \$10,000 for a fifth or subsequent violation within five years].

¹² Health & Saf. Code, § 104559.1, subd. (m) (effective January 1, 2025).