





**Tackling Tobacco in California:  
New Laws Regulating  
Tobacco Sales**

August 17, 2016

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### Speakers



**Derek Carr**  
Legal Fellow  
ChangeLab Solutions



**Tonia Hagaman**  
Chief  
Community and Statewide Interventions  
California Tobacco Control Program  
California Department of Public Health

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### Speakers



**Erin Reynoso**  
Statewide Director, Patient Advocacy & Grassroots  
Organizing  
American Lung Association in California,  
Center for Tobacco Policy & Organizing



**Ray Leung**  
Senior Staff Attorney  
ChangeLab Solutions

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# Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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## Our mission: Healthy communities for all through better laws & policies

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## Agenda

- Overview of New Tobacco Laws
- Effect on Local Tobacco Control Efforts
- Implementation
- Organizing Strategies
- Q&A



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**Overview:**  
New Laws and  
Local Efforts



Tobacco 21

Electronic Smoking  
Devices

BOE Licensing

FDA Deeming Rule

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**STAKE Act  
&  
Penal Code 308**

- Who can enforce the law?
- Whom is the law enforced against?
- How is the law enforced?
- What types of penalties are allowed?

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**Tobacco 21**

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What products does Tobacco 21 apply to?



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Electronic Smoking Devices



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Novel Tobacco Products

Examples include:

- Nicotine gels
- Nicotine sprays
- Dissolvable tobacco products

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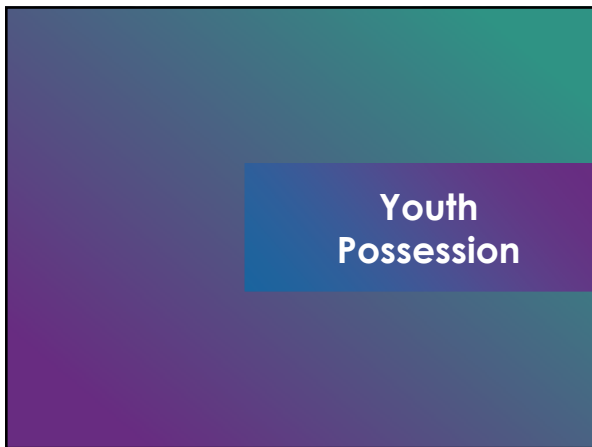
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**Tobacco 21:**  
Frequently Asked Questions

- Are clerks younger than 21 years of age permitted to sell tobacco products?



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**Tobacco 21:**  
Frequently Asked Questions

- Are clerks younger than 21 years of age permitted to sell tobacco products?
- Are non-tobacco herbs, including herbal shisha or flavored hookah, included under Tobacco 21?



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**BOE License: Before**

- One time \$100 registration fee
- No annual renewal fee
- Traditional tobacco products only

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**BOE License: Changes**

- \$265 annual license fee
- Covers all tobacco products
- Currently licensed tobacco retailers do not need additional licenses

Photo credit: ChangeLab Solutions

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**FDA Deeming Rule**

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**Deeming Rule Requirements**

- 1 Adulteration and Misbranding
- 2 Ingredient Listing & HPHC Reporting
- 3 Prohibition on Modified Risk Descriptors
- 4 Premarket Review
- 5 Minimum Age Requirements
- 6 Prohibition on Free Samples

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**Free Sample Restrictions**

- California State Law**  
Cigarettes & Smokeless Tobacco
- Extends Federal Free Sampling Ban**  
Cigarettes, Cigars, Electronic Smoking Devices, E-Liquids & All Other Newly Deemed Tobacco Products
- Qualified-Adult Facility Exception**  
Smokeless Tobacco Only

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**Should Communities Continue Adopting Local Tobacco Laws?**

**Yes!**

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**Should Communities Continue Adopting Local Tobacco Laws?**

**Amendments required if the local law:**

- References a static age (e.g. 18) as opposed to the minimum age set by state law.
- Does not include electronic smoking devices.

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What are the key takeaways for  
**Local Tobacco Control Efforts?**

- **No** changes in local legal authority
- Deeming Rule does **not** affect local efforts

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What are the key takeaways for  
**Local Tobacco Control Efforts?**

- **No** changes in local legal authority
- Deeming Rule does **not** affect local efforts
- **Local Tobacco Retail Licensing:**
  - Can enforce statewide laws
  - Do **not** automatically include electronic smoking devices

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What are the key takeaways for  
**Local Tobacco Control Efforts?**

- **No** changes in local legal authority
- Deeming Rule does **not** affect local efforts
- **Local Tobacco Retail Licensing:**
  - Can enforce statewide laws
  - Do **not** automatically include electronic smoking devices
- **Key Takeaway?** Keep pushing ahead!

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## New California Tobacco Sales Laws Implementation and Outreach

Tonia Hagaman, MPH, Chief  
Community and Statewide Interventions  
California Tobacco Control Program




California Department of Public Health

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## Tobacco 21 Implementation Materials

- \* Retailer Mailing
- \* Online Resources for Download
  - \* Webpage:  
<http://www.cdph.ca.gov/programs/tobacco/Pages/Tobacco21.aspx>
  - \* How to Comply – Tips for Retailers
  - \* Frequently Asked Questions #1
  - \* Frequently Asked Questions #2 (in approval)
  - \* Notice to Employees
  - \* Materials provided in mailing




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**New Landmark California Tobacco 21 Law**  
**ATTENTION RETAILERS!**  
New Tobacco 21 Law Goes into Effect June 9, 2016.  
Resources are now available to help you get prepared.

**1-800-5-ASK-4-1D**

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**Other Languages**

- **Arabic - Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers**  
This fact sheet is written in Arabic and summarizes key provisions of new laws related to the age-of-sale for tobacco products and the sale of electronic smoking devices.
- **Chinese - Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers**  
This fact sheet is written in Chinese and summarizes key provisions of new laws related to the age-of-sale for tobacco products and the sale of electronic smoking devices.
- **Korean - Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers**  
This fact sheet is written in Korean and summarizes key provisions of new laws related to the age-of-sale for tobacco products and the sale of electronic smoking devices.
- **Dutch - Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers**  
This fact sheet is written in Dutch and summarizes key provisions of new laws related to the age-of-sale for tobacco products and the sale of electronic smoking devices.
- **Japanese - Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers**  
This fact sheet is written in Japanese and summarizes key provisions of new laws related to the age-of-sale for tobacco products and the sale of electronic smoking devices.
- **Spanish - Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers**  
This fact sheet is written in Spanish and summarizes key provisions of new laws related to the age-of-sale for tobacco products and the sale of electronic smoking devices.
- **Spanish - Letter to Retailers from California Department of Public Health**  
Translated into Spanish, this letter from State Health Officer and California Department of Public Health Director Karen Gold explains new tobacco laws that apply to California retailers and provides information and resources to help them comply.
- **Spanish - ID verification 10-sheet**  
Translated into Spanish, this 10-sheet provides photos and descriptions of California's driver's license for persons under and over age 21, and the United States Armed Forces Common Access Card.
- **Spanish - Tobacco Product Tin Sheet**  
Translated into Spanish, this sheet provides photos of the variety of tobacco products - new and traditional - covered under California law.
- **Spanish - Retail Tobacco Laws FAQ**  
Translated into Spanish, this document responds to questions retailers may have about changes to tobacco laws.
- **Spanish - Minimum Clerk Age Instructions**  
Translated into Spanish, this list identifies cities and counties known to have minimum clerk age requirements, while California state law does not identify a minimum age for clerks to sell tobacco products, many cities and counties do.

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**Window Cling**



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Media

- CDPH News Briefing – 6/9/16
- Advertising support – gas station toppers, convenience store posters

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## Tobacco 21 – Can I Go Farther?

- \* No sales to under 21, exemption for active duty military
- \* Preemption ambiguity
- \* Local Projects will not receive Prop. 99 funds to work on these issues



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## State and Local Youth Purchase Surveys

- \* State Surveys
  - \* 2 surveys – youth and young adult
- \* Local Surveys
  - \* Contact your Program Consultant to discuss
  - \* Updated protocol in development

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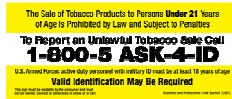
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## STAKE Compliance

- \* Changes in CDPH FDB STAKE Act compliance activities
- \* Regulations approved



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## Board of Equalization

- \* BOE September and November Mailings
  - \* To Retailers, Vape Shops, Marijuana Dispensaries
- \* Where Local TRLs May Prevent Use of State License
  - \* If BOE issued a state license in cases where a local license cannot be issued, they are willing to discuss case by case
  - \* Retailer needs to call the BOE Helpline

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## State and Local Licensing

- \* Inform Retailers About Local Restrictions
- \* BOE Posting Information
- \* BOE Helpline at 1-800-400-7115
- \* Case-by-case review by BOE

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## COMMUNITY ORGANIZING & THE NEW RETAIL LAWS

Presented by:  
**The Center for Tobacco Policy & Organizing**  
*Community organizing and policy resources  
for California's tobacco control advocate*

Erin Reynoso

August 17, 2016



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**WHO WE ARE**



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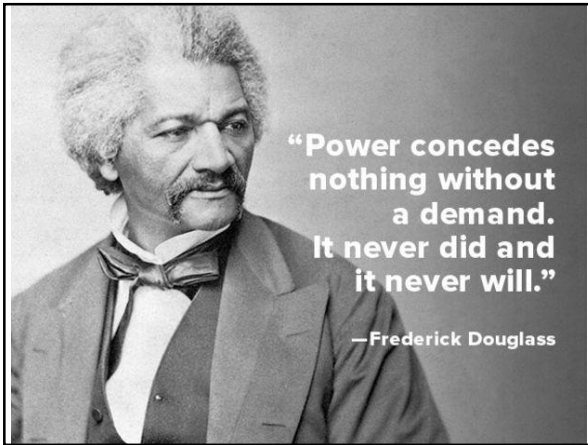
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**NEW RETAIL MESSAGES**



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**We just fixed the statewide license so local licensing laws are not necessary.**



Response:

- New law still does not do much to reduce illegal tobacco sales to minors.
- The new fees collected as part of the license deals primarily with tax evasion and smuggling and will not result in additional enforcement.
- The penalties for violating the statewide license are so weak that retailers are at little risk of losing their licenses if they violate the law.
- Local tobacco retailer licensing is essential if our community wants to address the issue of underage tobacco sales, and the statewide licensing law does not preempt these local ordinances.

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**Come January, retailers will be faced with a major increase in the statewide licensing fee. We can't put another fee on top of that.**



Response:

- According to the National Association for Convenience and Petroleum Retailing (NACS), cigarettes are the top selling product inside stores and account for average sales of \$622,248.
- Additional fees that are used to ensure youth are not accessing tobacco will not harm them.
- Furthermore, the amount of the tobacco retailer license fee is limited by the costs of administering and enforcing the license provisions.
- Such licenses and fees are commonly applied to specific businesses which sell potentially dangerous products.

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**Licensing stores that sell cigarettes isn't going to make a bit of difference in reducing youth smoking.**



Response:

- While a recently adopted law has raised the purchase age of tobacco to 21 it will not address all the ways youth are able to access tobacco.
- Illegal sales to minors are a public health concern and tobacco retailers need to be part of the solution.
- That can only happen through strong local licensing laws.
- Local TRL can go further than state licensing via "plug-in" policies that can prohibit tobacco retailers near schools, limit number of retailers, etc.

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**The FDA's Deeming Regulation regulates e-cigarettes so we do not need to pass local policy.**

DDP



Response:

- FDA regulations don't require e-cigarette retailers to have local or state licenses
- Most enforcement efforts are funded by local licensing fees
- There is no direct federal enforcement of age-to-purchase laws, local-level enforcement and funding is necessary

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**The state now has added e-cigs to their definition of tobacco, so we do not need to pass local policy defining e-cigs as tobacco.**



Response:

- Local licensing laws still need to specifically include electronic cigarettes. Otherwise, local policies that go above and beyond the state regulations will not automatically include electronic cigarettes.
- The best way for local communities to reduce underage purchases of electronic cigarette products is to specifically include these products in their local retail licensing ordinances.

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**Cutting through the clutter**



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## Slide 46

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**DD2** People might also ask how to frame the questions they're getting that are similar to this only "The state now has added e-cigs to their definition of tobacco, so we do not need to pass local policy defining e-cigs as tobacco."

If you get that question or want to talk about it, I think it's important to emphasize that in order for communities to be empowered to go further than state laws (so for example, limiting tobacco retailers near schools) they still should pursue adding e-cigs to their definition of tobacco/smoking if they haven't already. The state's definition of e-cigs as tobacco only applies to the state-level laws. Local communities that have worked hard to go a step further than the state need to specifically include e-cigs if they want their laws to apply to them.

Diana Douglas, 8/9/2016



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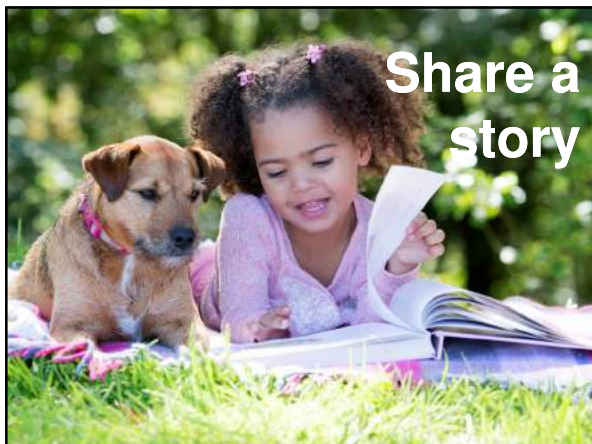
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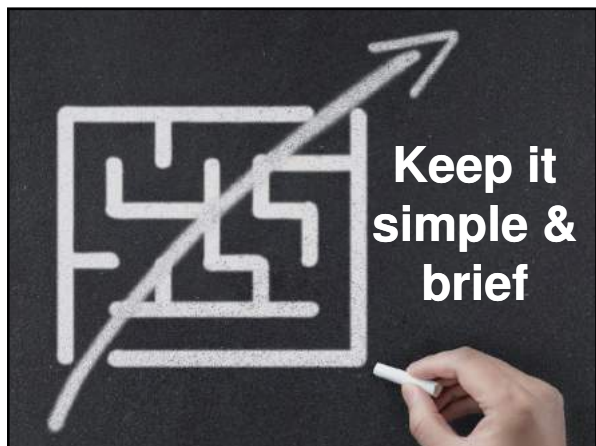
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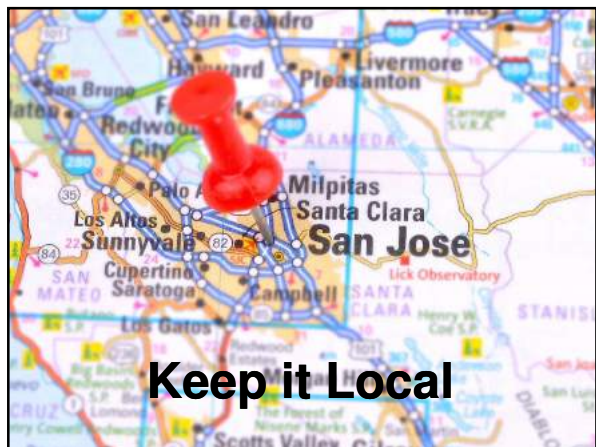
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**CONTACT INFORMATION**

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erin.reynoso@lung.org



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**Thank you!**

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<http://cdph.ca.gov/tobacco/>

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**Slide 55**

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**DC13** Livia: can you change this to include all the proper logos?  
Derek Carr, 8/1/2016