



## Recent Changes to the Stop Tobacco Access to Kids Enforcement (STAKE) Act

### Frequently Asked Questions

#### **What is the purpose of the Stop Tobacco Access to Kids Enforcement (STAKE) Act?**

The federal Synar Amendment was passed in 1992 to require states to adopt and enforce laws making it illegal to sell tobacco to minors. States that do not achieve and maintain a rate of illegal tobacco sales to minors of 20 percent or less may lose 40 percent of their Federal Block Grant – a loss of over \$100 million for California. The Stop Tobacco Access to Kids Enforcement (STAKE) Act program was adopted by California in 1994 in order to meet the requirements of the Synar Amendment.

The California Department of Public Health (CDPH) has primary responsibility for enforcing the provisions of the STAKE Act, which involves conducting compliance checks using teenage operatives, serving legal notices on violators, administering penalty appeal hearings, and assessing and collecting penalties. The CDPH Food and Drug Branch (FDB) is responsible for conducting compliance checks and managing a toll-free telephone number to report illegal tobacco sales to minors.

#### **What are the differences in the STAKE Act as a result of the passage of Senate Bill (SB) 624?**

There are three major differences to the STAKE Act:

- **Enforcement authority:** Prior to passage of SB 624, the STAKE Act was enforced only by the CDPH/FDB. If funding was available, FDB could have entered into an “enforcement delegation contract” with local law enforcement jurisdictions to enforce the STAKE Act. Historically, FDB has only had enough funding to operate its own inspection program.

SB 624 provides state and local law enforcement agencies with the authority to enforce the STAKE Act without an enforcement delegation contract. However, other law enforcement agencies must use the enforcement protocol that is outlined in the STAKE Act statewide.

- **Fine structure:** SB 624 increased the fines for the first two violations of the STAKE Act. Please note, when the FDB conducts its enforcement operations and identifies a retailer that sells to a minor, it uses its discretion to assign a penalty (within the range) based on mitigating and aggravating circumstances.
  - The first violation was increased from \$200-\$300 to \$400-\$600
  - The second violation was increased from \$400-\$600 to \$900-\$1,000, within a five-year period
  - The third violation remains \$1,200-\$1,800, within a five-year period
  - The fourth violation remains \$3,000-\$4,000, within a five-year period
  - The fifth violation remains \$5,000-\$6,000, within a five-year period

- **Point-of-sale warning notice requirement:** The STAKE Act requires that each retailer of tobacco products post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 18 years of age is illegal and subject to penalties. The sign must also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 18 years of age. The warning signs must include a toll-free telephone number to the department for persons to report unlawful sales of tobacco products to minors. Prior to the passage of SB 624, the STAKE Act did not establish a specific fine for failure to post the notice. However, the STAKE Act now has a fine structure for retailers that do not post the required notice – the first violation is \$200 and the second and each subsequent violation is \$500.

Penal Code Section 308 also provides a fine for failure to post the STAKE Act notice, which is \$50 for the first offense, \$100 for the second offense, \$250 for the third offense, and \$500 for the fourth and each subsequent offense.

There are two other noteworthy provisions:

- **Collection of fines.** The STAKE Act requires that all monies collected as civil penalties by other state agencies that enforce the STAKE Act (besides CDPH) be deposited into the Sale of Tobacco to Minors Control (STMC) Account.
- **Fine collection cap eliminated:** Prior to passage of SB 624, FDB could collect no more than \$300,000 in fines annually. FDB, nor any state law enforcement agency, is no longer subject to a fine collection cap.

### **Who has the authority to enforce the STAKE Act?**

Any state (Attorney General, Alcohol Beverage Control, Board of Equalization, etc.) or local law enforcement (police department, sheriff, code enforcement, etc.) agency can now enforce the STAKE Act.

### **Can the health department enforce the STAKE Act?**

Only if the enforcement personnel have peace officer status.

### **If I am with a state or local law enforcement agency, do I now have to enforce the STAKE Act?**

No. State and local law enforcement agencies should view the STAKE Act as an additional tool to identify retailers that are selling tobacco products to minors. Each state or local law enforcement agency must first determine whether it is a priority to enforce any youth access to tobacco laws, and then weigh the pros and cons of using the STAKE Act, Penal Code Section 308, or local laws.

### **My community has a tobacco retailer licensing policy in place and we have been using Penal Code 308 to cite retailers that sell to minors. How is STAKE Act enforcement different than both of these tools?**

The local license in your community places conditions on retailers, requiring that they abide by tobacco sales laws in order to maintain their privilege to sell tobacco products. If they do not abide by the conditions, then the license can be suspended or revoked. Currently, if a retailer is selling tobacco to minors, local law enforcement will cite the retailer under PC 308. Depending on how the licensing program is structured, a first violation of PC 308 may result in a suspension of the license.

### ***Communities that already have a licensing policy***

Now that local law enforcement jurisdictions have the authority to enforce the STAKE Act, California Tobacco Control Program (CTCP) funded agencies and their law enforcement partners will have to determine whether they want to begin enforcing the STAKE Act rather than PC 308. Some important

steps include reviewing the existing licensing ordinance to determine if violations of the STAKE Act count against the license and examining whether the STAKE Act enforcement protocol is easier or more difficult to enforce than the existing PC 308 protocol used in that jurisdiction.

**Communities working on adopting a licensing policy**

If you are still working on adopting a local licensing policy, you should at a minimum consider adding STAKE Act violations as counting against the license. You can then choose between using PC 308 or STAKE in conducting your retailer inspections. For assistance in working through these issues, CTCP recommends that you contact the FDB (contact information listed below) to make sure you fully understand the STAKE enforcement protocol and Ian McLaughlin at TALC to discuss the best way to draft or amend your existing licensing policy.

The table below provides some key differences between the three enforcement tools.

Gathering the evidence: protocols for sting operations		
STAKE Act	PC 308	Local TRL ordinance
<p><b>Must follow protocols for use of minor decoys:</b></p> <ul style="list-style-type: none"> <li>• 15 or 16 year-olds only</li> <li>• Minor must present valid ID if asked</li> <li>• Photograph or video recording of appearance</li> <li>• Supervision by peace officer</li> </ul>	<p><b>No protocols established in state law</b></p> <ul style="list-style-type: none"> <li>• Many local agencies use “guidelines” similar to STAKE Act protocols</li> <li>• Failure to follow guidelines does not provide retailer with a legal defense</li> </ul>	<p><b>Depends on whether stings conducted under STAKE Act or PC 308</b></p> <ul style="list-style-type: none"> <li>• Must follow protocols of underlying law</li> </ul>
Proving the violation occurred		
STAKE Act	PC 308	Local TRL ordinance
<p><b>Administrative Hearing funded by enforcing agency</b></p> <ul style="list-style-type: none"> <li>• Presided by Administrative Law Judge, or alternative hearing process established by city/county</li> <li>• Prosecuted by representative of enforcing agency</li> <li>• Civil court lawsuit as alternative</li> </ul>	<p><b>Criminal Court Proceeding</b></p> <ul style="list-style-type: none"> <li>• Prosecuted in County Superior Court (criminal)</li> <li>• Prosecuted by District Attorney or City Attorney</li> <li>• Civil proceeding as alternative</li> </ul>	<p><b>Flexibility for local agency to establish process</b></p> <ul style="list-style-type: none"> <li>• Administrative proceeding</li> <li>• Court prosecution or</li> <li>• Combination of both</li> </ul>

Penalties for selling to minors		
STAKE Act	PC 308	Local TRL ordinance
<b>Civil fine</b> <ul style="list-style-type: none"> <li>• Fine paid by business</li> <li>• Fines collected by state agencies go to the state</li> <li>• Fines collected by local agencies are retained by local agency</li> </ul> 1st violation - \$400-\$600 2nd violation - \$900-\$1000 3rd violation - \$1200-\$1800	<b>Fine paid by clerk</b> <ul style="list-style-type: none"> <li>• Misdemeanor</li> <li>• 25% of fine to city/county</li> <li>• 25% of fine to prosecuting attorney's office</li> </ul> 1st violation - \$200 2nd violation - \$500 3rd violation - \$1,000	<b>Suspension or revocation of license</b> <ul style="list-style-type: none"> <li>• May also be a fine if prosecuted under STAKE Act or PC 308</li> </ul>

### **Will the FDB help me recruit, train, and pay for youth decoys to conduct STAKE inspections?**

No. Any state or local law enforcement agency that chooses to enforce the STAKE Act must determine how they will recruit their own youth decoys and determine appropriate incentives and stipends for the youth to participate, and also provide them with appropriate training.

### **Can my local law enforcement agency choose to only enforce the STAKE Act sign requirement?**

Yes. Nothing prevents a state or local law enforcement agency from using the STAKE Act to cite retailers for not posting the required STAKE Act warning sign.

### **Is there any funding provided by the CDPH to help local law enforcement agencies enforce the STAKE Act?**

No. With the elimination of the enforcement delegation contract, the STAKE Act is no longer required to provide any funding to a state or local law enforcement agency that chooses to enforce it.

### **Can my local jurisdiction keep the fines we collect from citing violators of the STAKE Act?**

It depends on what sort of agency you work for. If you are a state law enforcement agency, the fines must be deposited into the STMC Account.

If you are a local law enforcement agency, you may keep the fines that are collected from violations of the STAKE Act. However, you will need an additional source of funding for local enforcement and adjudication efforts, as fines are not likely to cover the entire cost of enforcing the STAKE Act.

### **If I choose to enforce the STAKE Act in my law enforcement jurisdiction, how will I know that CDPH is not already enforcing the law?**

Whether you are a state or local law enforcement agency, it is critical to contact the FDB before you begin enforcing the STAKE Act. In the STAKE Act legislation, both state and local enforcement agencies are encouraged, in order to avoid duplication, to share the results of inspections and coordinate with the FDB when enforcing the STAKE Act.

## **Are there other enforcement tools that help reduce the sale of tobacco to minors in my community?**

There are many tools that can help reduce sale of tobacco to minors in your community. The STORE Campaign website is an excellent repository of resources to help you with your local enforcement efforts. The STORE Campaign has conducted high quality technical assistance and training teleconferences since 2001 on issues of Penal Code 308, youth purchase surveys, and local tobacco retailer licensing. The materials remain timely. Visit the link at:

<http://www.tcsstore.org/training/training.html>

Additionally, a new "How-To Guide" addressing the tracking and reporting of sales to minors violations was recently posted on the site. It is an important tool for local enforcement. Check out the Guide at:

<http://www.tcsstore.org/appendix/Final%20How-to%20Guide%202-14-08.pdf>

## **Who should I contact for more information?**

For questions about enforcing the STAKE Act, please contact Glen Lawrence, CDPH/FDB at 916-650-6600 or at [glen.lawrence@cdph.ca.gov](mailto:glen.lawrence@cdph.ca.gov)

For general questions about reducing the sale of tobacco to minors in your community, please contact Mary Strode, CDPH/CTCP at 916-449-5496 or at [mary.strode@cdph.ca.gov](mailto:mary.strode@cdph.ca.gov)

For questions about developing a new or amending an old licensing ordinance, please contact Ian McLaughlin, TALC Staff Attorney at 510-444-8252 ext. 315 or [imclaughlin@phlpnet.org](mailto:imclaughlin@phlpnet.org)