

**CALIFORNIA TOBACCO RETAILERS
FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT
JUNE 2016 STATE TOBACCO LAWS
FAQ #2**

MINIMUM SALE AGE FOR TOBACCO PRODUCTS

Q 1: May wire, metal, or cotton designed for use in atomizers be sold to people under 21 years of age?

A. No. If the wire, metal, or cotton is designed for use in an atomizer, it is considered a tobacco product under state law, which includes components, parts and accessories of tobacco products, whether or not sold separately. Therefore, such products may not be sold to individuals younger than 21 years of age (Business and Professions Code Section 22950.5(d) and 22958(a), Penal Code Section 308(a) and 308(f)).

Q 2: May retailers sell glass pipes or water pipes not labeled for tobacco use to individuals under 21 years of age?

A. No. Water pipes and glass pipes are considered tobacco paraphernalia and may not be sold or furnished to individuals younger than 21 years of age (Business and Professions Code Section 22958(a), Penal Code Section 308(a)).

Q 3: Does the new minimum sale age for tobacco products include a grandfather clause that excludes individuals who are currently 18, 19, and 20 years of age?

A. No. It is illegal to sell tobacco products, including electronic smoking devices, or paraphernalia designed for the smoking or ingestion of tobacco products or any controlled substance, to anyone under 21 years of age. This includes individuals that are currently 18, 19, or 20 years of age (Business and Professions Code Section 22958(a) and Penal Code Section 308(a) and 308(f)).

MINIMUM AGE OF CLERK

Q 4: May tobacco retailers or wholesale business owners under 21 years of age obtain a state tobacco license from the State Board of Equalization?

A. Yes. There is no age requirement for obtaining a state license for the sale of cigarettes or tobacco products from the Board of Equalization (BOE), which administers the licensing and tax collection requirements on tobacco businesses. For more information about licensing, visit the BOE [cigarette and tobacco products licensing webpage](#). For more information about tobacco product taxes, visit the BOE [cigarette and tobacco product tax webpage](#).

Q 5: May employees manufacturing items such as vaporizers, pipes, and/or component parts be under 21 years of age?

- A. California state law does not specify an age requirement for employees to manufacture tobacco products, including components, parts, or accessories. However, many local jurisdictions have laws about the minimum legal age of a clerk to sell tobacco products. Please see the list of [California Jurisdictions Known to Have a Minimum Age for Clerks to Sell Tobacco Products](#) or contact your [local health department tobacco control program](#) to find out if there is a specific age requirement for a clerk to sell tobacco products in your jurisdiction.

AGE OF SMOKING

Q 6: May individuals under 21 years of age smoke tobacco-free and nicotine-free products?

- A. California state law prohibits the sale or furnishing of tobacco products (including electronic smoking devices and e-liquids whether or not they contain nicotine or tobacco) to individuals younger than 21 years of age. California does not specify a minimum age for a person to smoke (Business and Professions Code Section 22950.5(d) and 22958(a), Penal Code Section 308(a)).

Q 7: May 18-20 year olds or individuals 21 or over smoke in designated areas of indoor workplaces?

- A. Indoor smoking prohibitions are the same for all individuals regardless of age. California's Clean Indoor Air Law prohibits smoking in enclosed workplaces except for a few narrow exemptions (Labor Code Section 6404.5). Please see the [Smoke-free Protections in the Workplace and Electronic Smoking Devices; A Summary for Employers and Owner-Operated Businesses Factsheet](#) for more information.

AGE OF ENTRY

Q 8: May individuals under 21 years of age bring in their own electronic smoking devices for repair, and/or test or smoke the device in a vape shop?

- A. No. Retailers cannot sell, give, rent, or otherwise furnish tobacco products or tobacco paraphernalia to individuals younger than 21 years of age. An electronic smoking device, even without any e-liquid, falls under the definition of tobacco product (Business and Professions Code Section 22950(d) and 22958(a), Penal Code Section 308(a) and 308(f)). Smoking in an enclosed workplace, such as a vape shop, is prohibited (Labor Code Section 6404.5). See the [Retail Tobacco Laws FAQ #1](#) Question 28 for more information.

Q 9: May 18-20 year olds be in a hookah or smokers' lounge where people 21 years of age and over are smoking?

A: Yes. There is no state law that prohibits anyone under the age of 21 from entering a hookah or smokers' lounge. However, California law prohibits selling, giving, or in any way furnishing tobacco products or tobacco paraphernalia to anyone under the age of 21 and state law prohibits smoking in a lounge unless the lounge meets the definition of a private smokers' lounge, which is defined as "any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products." Additionally, state law prohibits smoking in indoor workplaces unless it qualifies as either a "retail or wholesale tobacco shop" or a "private smokers' lounge" and does not serve food or beverages (Business and Professions Code Section 22958(a), Penal Code Section 308(a), Labor Code Section 6404.5 and Cal. Att'y Gen. Op No.09-507).

Q 10: May a smoking lounge separate individuals under 21 years of age and individuals 21 years of age and older by keeping them on two separate floors, or by identifying age with wristbands?

A: Yes. There is no law in California that prohibits individuals under the age of 21 from entering a hookah bar or smokers' lounge. However, smoking is not allowed inside a lounge unless it meets the definition of a private smokers' lounge, which is "any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products." Additionally, it is a crime to sell, give or in any way furnish tobacco products or tobacco paraphernalia to anyone under the age of 21 (Labor Code Section 6404.5, Penal Code Section 308).

CHECKING IDENTIFICATION

Q 11: Selected U.S. Reserves have the same identification card as Active Duty Military Personnel and are considered to be on active status. Can tobacco be sold to Selected U.S. Reserves 18 years of age?

A. Yes. Under California law, the minimum legal age of sale for active duty military personnel in the United States (U.S.) Armed Forces is 18 years of age. This is upon presentation of a valid identification card, known as a Common Access Card (CAC), issued by the U.S. Armed Forces indicating that the individual is in the U.S. Armed Forces. More information on verifying the United States Armed Forces CAC can be found [here](#) (Business and Profession Code Section 22958(a), Penal Code Section 308(a)).

Q.12: Are individuals required to possess a horizontal license to purchase tobacco?

A. California law does not state one must have a horizontal driver's license (DL) or identification (ID) to buy tobacco. The [ID Verification Tip sheet](#) is a general guideline for retailers. The Department of Motor Vehicles (DMV) issues a vertical DL/ID to persons under 21; therefore, it is an easier method for a retailer/clerk to distinguish a person who is over 21 from a person who is under 21. It is still the

responsibility of the retailer/clerk to check the age on the ID to confirm the customer is age 21 (active duty military members with a valid U.S. Armed Forces ID must be 18 years or older). Retailers/clerks must ensure the ID is not expired and that the ID picture matches the purchaser – even if the DL/ID is horizontal.

ENFORCEMENT AND VIOLATIONS

Q 13: If retailers train their employees on the new law and they sign a document that indicates they were trained, will the business owner be liable if an employee sells, gives, or furnishes tobacco products to individuals under 21 years of age?

A. Yes. The Stop Tobacco Access to Kids Enforcement (STAKE) Act authorizes enforcing agencies to assess civil penalties against any person, firm, or corporation that sells, gives or furnishes any tobacco product or tobacco paraphernalia to another person who is under 21 years of age (Business and Professions Code Section 22958(a)).

Q 14: How do I report an unlawful tobacco sale?

A. Call 1-800-5 ASK-4-ID or 1-800-527-5443.

Q 15: Does the new law change the minimum age of possession to 21?

A. No. While the new law raised the minimum age of sale to 21, the law requiring a minimum age to possess tobacco products was removed from Penal Code Section 308. Removal of the youth possession clause means that youth possession is no longer a violation under the state law.

SHISHA/HOOKAH

Q 16: May a retailer sell non-tobacco herbs, including herbal shisha, to individuals under the age of 21?

A. Yes. California law does not have a minimum age restriction related to the sale of herbal shisha that does not meet the legislative definition of a tobacco product. The minimum legal age of sale of 21 applies to tobacco products only. A tobacco product is defined as: 1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, 2) any electronic smoking device (whether or not it contains nicotine), or 3) any component, part, or accessory of a tobacco product, whether or not sold separately (Business and Professions Code Section 22958(a) and Section 22950.5(d), Penal Code Section 308(a)).

Q 17: If a hookah lounge only sells herbal molasses and/or non-tobacco shisha, may 18-20 year olds smoke it inside the lounge?

A: No. In order to allow smoking within a hookah lounge, the lounge must meet the definition of a private smokers' lounge or a wholesale or retail tobacco shop (See question 11 for definition language). A hookah lounge that sells *only* herbal molasses and/or non-tobacco shisha does not meet either definition because the

establishment is not selling tobacco products, and therefore, may not permit anyone of any age to smoke in the establishment (Labor Code Section 6404.5(e)(2)(A)).

Q 18: May a hookah lounge provide a hookah pipe for someone under the age of 21 to smoke herbal molasses and/or non-tobacco shisha?

A: No. California law prohibits selling, giving or in any way furnishing tobacco paraphernalia to anyone under 21 years of age. Even if a hookah pipe is used to smoke non-tobacco shisha, it is still considered tobacco paraphernalia designed for smoking tobacco (e.g., shisha), and therefore cannot be sold to or given to anyone under the age of 21 for any type of use (Business and Professions Code Section 22958(a), Penal Code Section 308).

Q 19: May a 21 year old purchase shisha and share it with 18 – 20 year olds in a hookah lounge?

A. No. California law prohibits selling, giving, or in any way furnishing tobacco products to a person under 21 years of age. Hookah tobacco is considered a tobacco product and may therefore not be sold or given to anyone under 21 years of age, whether it be given by a retailer or another customer (Penal Code Section 308, Business and Professions Code Section 22958(a) and 22950.5).

Q 20: May I serve food or alcohol at a hookah lounge?

A. No. A hookah lounge that serves food or beverages may not allow customers of any age to smoke inside the lounge. (Labor Code Section 6404.5 and Cal. Att’y Gen. Op No.09-507)

Q 21: May customers smoke inside a hookah lounge?

A. California law permits smoking inside hookah lounges if it qualifies as either a “retail or wholesale tobacco shop” or a “private smokers’ lounge” and does not serve food or beverages (Labor Code Section 6404.5 and Cal. Att’y Gen. Op No.09-507).

ONLINE SALES

Q 22: What is the effective date for the new minimum age of sale for tobacco products online?

A. Effective June 9, 2016, the sale of tobacco products, including online sales, to anyone under the age of 21 is prohibited.

Q 23: For online sales or orders placed by mail, telephone, or fax, how can retailers verify age of customers?

A. There are two options retailers may choose for age verification. The first option is to match the name, address, and date of birth provided by the customer to information contained in a database of individuals verified to be 21 or older. The second option is to require the customer to submit verification of age, including a copy of a valid form of government ID. A valid form of government ID includes a

driver's license, state identification card, passport, or an official green card or immigrant visa (Business and Professions Code Section 22963).

Q 24: May military personnel at least 18 years of age legally purchase tobacco products online?

- A. No. Military personnel may not purchase tobacco online using a photocopy or scan of the Common Access Card (CAC) for age verification. The federal government prohibits the unauthorized photocopying of identification cards, including the CAC (Department of Defense Policy at DoD Instruction 1000.13, Enclosure 3, paragraph 3a). More information about the CAC can be found [here](#).

Q 25: For online purchases, are customers (including businesses) required to have the same address on their credit card as the delivery address?

- A. Yes. For online sales, tobacco products must be delivered to the purchaser's verified billing address on the check or credit card used for payment (Business and Professions Code 22963(b)(1)(A), 22963(b)(1)(B) and 22963(b)(4).

VAPING/SAMPLING

Q 26: May retailers give out free samples of e-liquid with or without nicotine?

- A. No. Federal regulations prohibit the distribution of free samples of tobacco products; this includes e-liquids and all components and parts that are meant to be used with or for the consumption of that e-liquid. Even if a product is advertised as having no tobacco but has nicotine, it is still considered a tobacco product since nicotine is derived from tobacco. If an e-liquid does not contain nicotine, it may still be considered a component or part if it alters the performance, composition, constituents, or characteristics of a tobacco product and may therefore not be distributed as a free sample (Code of Federal Regulations, Title 21, Section 1140.16 (d)).

MARIJUANA

Q 27: May retailers sell an e-cigarette, vape pen, or rolling papers for use with marijuana to someone under 21 with a medical marijuana card purchase?

- A: California law prohibits retailers from selling e-cigarettes, vape pens, or rolling papers to people under 21 years of age. The sale of devices for the use of medical marijuana to a qualified person under 21 years old may be permitted at locally authorized medical marijuana dispensaries, depending on local law (Business and Professions Code Section 19300.5 (n), 22958 and 22962(a)(2), and Penal Code Section 308(a)). Contact your [local medical marijuana program](#) for more information.

Q 28: May someone with a medical marijuana card smoke or vape medical marijuana in a medical marijuana dispensary?

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A: No. California law prohibits smoking medical marijuana in any place where smoking is prohibited by law which would include enclosed indoor workspaces such as a medical marijuana dispensary (Health and Safety Code 11362.79, Business and Professions Code Section 22950.5 and Labor Code Section 6404.5).

Q 29: Are employees/clerks of medical marijuana dispensaries required to be at least 21 years of age?

A: California state law does not specify an age requirement for employees to sell medical marijuana dispensary products; however, different local jurisdictions may have varying laws about the minimum legal age for employee, or whether medical marijuana dispensaries are permitted in the community. Please contact your [local medical marijuana program](#) for more information.

Q 30: Are patients/customers of medical marijuana dispensaries required to be at least 21 years of age?

A: No. A qualified individual under 21 years of age may purchase medical marijuana from locally authorized medical marijuana dispensaries (Health and Safety Code Section 11362.715). Please contact your [local medical marijuana program](#) for more information.

OTHER QUESTIONS

Q 31: When and how were retailers notified of the change in the law?

A. Materials to assist retailers with implementing the new law were posted on June 6, 2016 to the [California Department of Public Health Tobacco 21 \(CDPH T-21\) website](#). Signage and implementation materials were mailed directly to licensed tobacco retailers during the month of July 2016.

Q 32: When and how were signage and implementation materials shipped to retailers?

A. Age-of-sale warning signs and other educational materials were sent to tobacco retailers licensed with the State of California during the month of July 2016 via the U.S. Post Office in an 8.5 X 11 envelope. The sender was the California Department of Public Health and the envelope included the following statement:

ATTENTION: Required STAKE Act materials from California Department of Public Health. DO NOT discard.

Q 33: When were retailer materials shipped?

A. The retailer mailing was sent to each tobacco retailer licensed with the State of California as of June 1, 2016. To order materials, please complete the [order form](#) and follow the instructions on how to submit your form.

Q 34: How many adhesive signs were sent to each retailer?

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A. Two adhesive-backed signs per tobacco retailer licensee were mailed.

Q 35: If a retailer requests additional stickers or posters, will there be a fee?

A. Age-of-sale adhesive signs are available free of charge. Window clings are available while quantities last. Quantity limits and minimum shipping/handling charges may apply. Other materials may be downloaded free of charge.

Q 36: Until official signage is received, what should be used?

A. The [downloadable age-of-sale sign](#) on the CDPH T-21 website meets state requirements for the age of sale warning sign. It must be posted at each cash register.