August 3, 2016

CALIFORNIA TOBACCO RETAILERS FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT NEW STATE TOBACCO LAWS FAQ #1

BE INFORMED

Q 1: Where can I find additional information about the new California tobacco laws?

A. Additional information about the new California tobacco laws can be found at the following links:

- Minimum Sale Age and Electronic Smoking Devices, A Summary for Retailers
- Information about expanding the tobacco product definition to include electronic smoking devices
- Information about minimum age of sale for tobacco products and tobacco retail license fees

Q 2: Why is raising the minimum sale age for tobacco products from 18 to 21 important?

A. Increasing the age of sale to 21 will help to prevent young people from ever starting to smoke or vape. It will also reduce the number of deaths, diseases, and health care costs caused by tobacco use (Campaign for Tobacco-Free Kids).

Q 3: Has this kind of law been implemented elsewhere?

A. Yes. To date, Hawaii and at least 145 localities in 11 states have also passed similar laws (Campaign for Tobacco-Free Kids, May 2016).

MINIMUM SALE AGE FOR TOBACCO PRODUCTS

Q 4: What is the new minimum sales age for tobacco products and its effective date?

A. Starting June 9, 2016, California state law prohibits the sale 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 (Penal Code Section 308 (a)).

Q 5: For the purpose of retail sales, how is "tobacco product" defined?

A. Starting June 9, 2016, "tobacco product" is defined as a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested. This includes traditional tobacco products such as cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff. " Tobacco product" is also defined to include an electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device such as an electronic cigarette, cigar, pipe, or hookah. Finally, the definition of "tobacco product" includes the components, parts and accessories of tobacco products, whether or not sold separately (Business and Professions Code Section 22950.5).

Q 6: Are tobacco cessation products included in the definition of "tobacco products"?

A. No. "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose (Business and Professions Code Section 22950.5).

Q 7: Is there an exemption for military personnel, younger than 21 years of age?

A. Yes. The minimum legal age of sale for active duty military personnel in the United States (U.S.) Armed Forces is 18 years of age upon presentation of a valid identification (ID) card issued by the U.S. Armed Forces indicating that the individual is in the U.S. Armed Forces (Penal Code Section 308 (a)).

Q 8: Does the military exemption apply to personnel in the National Guard or Reserves?

A. No. The exemption only applies to active duty personnel in the U.S. Armed Forces. An ID card issued by the U.S. Armed Forces must indicate the customer is in the armed forces in order to be used as proof of age.

Q 9: Does the State of California's minimum tobacco sale age of 21 apply to local jurisdictions that have an ordinance stating the minimum age of sale for tobacco products is 18 years of age?

A. Yes. The State of California's minimum tobacco sale age of 21 law supersedes any local ordinance that is inconsistent with it (Penal Code Section 308 (d)).

MINIMUM AGE OF CLERK

Q 10: Are clerks younger than 21 years of age permitted to sell tobacco products?

A. California state law does not specify an age requirement for clerks to sell tobacco products; 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 SALE WARNING SIGNS

Q 11: Are retailers required to post new age-of-sale warning signs, which indicate the minimum sale age for tobacco products?

A. Yes. All tobacco retailers are required to post updated age-of-sale warning signs that reflect changes in the minimum age of tobacco sale (Business and Professions Code Section 22952 (b) and Penal Code Section 308 (b)).

Q 12: Where can retailers obtain age-of-sale warning signs that are compliant with state law? When will these signs be available?

A. Age-of- sale warning signs may be downloaded at: New Landmark California Tobacco 21 Law. Additionally, the website includes an order form for adhesive signs.

CHECKING IDENTIFICATION

Q 13: What is a valid ID?

A. An ID issued by a federal, state, county, or municipal government, or an agency thereof, such as a motor vehicle operator's license, which contains the name, date of birth, description, and photograph of the person and must not be expired. For Armed Forces personnel, the ID must include: date of birth, a photograph of the person, and must not be expired.

PARAPHERNALIA, COMPONENTS, PARTS, AND ACCESSORIES

Q 14: May retailers sell tobacco paraphernalia to individuals younger than 21 years of age? What is tobacco paraphernalia?

A. No. Retailers cannot sell tobacco paraphernalia to individuals younger than 21 years of age. "*Tobacco paraphernalia*" is defined as cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products (Business and Professions Code Section 22962 (a) (2) and Penal Code Section 308 (a)).

Q 15: May retailers sell a component, part or accessory of an electronic cigarette (such as an atomizer) to someone who is 18 years of age?

A. No. An atomizer is a component part of an electronic smoking device. Retailers may not sell components, parts or accessories of tobacco products, which include electronic smoking devices, to individuals younger than 21 years of age (Penal Code Section 308 (a) and Penal Code Section 308 (f)).

Q 16: May retailers sell matches or lighters to someone who is 18 years of age?

A. Yes. California law does not include a minimum sale age for lighters or matches.

SELF-SERVICE DISPLAYS

Q 17: May retailers have self-service displays for electronic smoking devices?

A. No. Retailers cannot have self-service displays for tobacco products (including electronic smoking devices, e-liquids, components, parts or accessories). A self-service display is any display that allows customers to access items without help from the retailer (Business and Professions Code Section 22962 (b)).

Q 18: May retailers have self-service displays for cigars?

A. No. Under California law, the self-service display of all tobacco products is prohibited, including self-service displays of cigarettes, cigars, pipe tobacco, snuff, or electronic smoking devices. (Business and Professions Code Section 22962 (b)) There is one exemption for the ban on the self-service display of tobacco products: a "*tobacco store"* may have self-service displays of cigars in packages of six or more in the original wrapping (Business and Professions Code Section 22962 (c)).

To qualify as a "tobacco store" for this purpose, the retailer must meet <u>all</u> of the following requirements:

1. Primarily sell tobacco products,
2. Generate more than 60% of its gross annual revenue from the sale of tobacco products and tobacco paraphernalia,
3. Not sell alcohol or food for consumption on the premises, and
4. Prohibit anyone younger than 18 years of age from entering unless that person is accompanied by his or her parent or legal guardian (Business and Professions Code Section 22962 (a) (4)).

ENFORCEMENT AND VIOLATIONS

Q 19: Who enforces the minimum age of sale law?

A. The California Department of Public Health, the State Attorney General's Office, and local law enforcement agencies are authorized to enforce the minimum age of tobacco sales law (Business and Profession Code Sections 22950.5 (b) and 22957).

Q 20: Will inspections occur to determine whether retailers are selling tobacco products to individuals younger than 21 years of age?

A. Yes. State and local enforcement agencies are authorized to conduct random, on-site sting inspections at retail sites and to use persons younger than 21 years of age to conduct these enforcement activities (Business and Professions Code Section 22952).

Q 21: What are the fines and penalties for selling tobacco products to persons younger than 21 years of age?

A. Tobacco retailers who violate the minimum age of tobacco sale law are subject to the following civil and criminal penalties under Penal Code Section 308 (a), and civil penalties under Business and Professions Code Section 22958.

	Penal Code Section 308 (a)	**Business and Professions Code Section 22958**
Effective Date	**June 9, 2016**	**Pending updates to the STAKE Act regulations**
Type of Penalty	**Criminal or Civil Penalty**	**Civil Penalty**
First violation	$200	$400 – $600
Second violation	$500	$900 – $1000 (for second violation within 5 year period)
Third violation	$1,000	$1,200 – $1,800* (for third violation within 5 year period)
Fourth violation	Not Specified	$3,000 – $4,000* (for fourth violation within 5 year period)
Fifth violation	Not Specified	$5,000 – $6,000* (for fifth violation within 5 year period)

*Upon assessment of the third, fourth, or fifth violation under the STAKE Act, the State Board of Equalization will then assess civil penalties and suspend or revoke the tobacco retailer's license as described in Business and Profession Code Section 22958 (b) (1).

TOBACCO LICENSING AND FEES

Q 22: What are the fees for the tobacco retail license?

A. Starting June 9, 2016, the fee is $265 annually. Tobacco retailers renewing their tobacco retail license, please contact the Board of Equalization at 1-800-400-7115 (select the "Cigarette and Tobacco Products" option).

Q 23: How do I apply for a state tobacco retail license?

A. California state tobacco retail licenses are administered by the Board of Equalization. For more information on the process or to apply for a tobacco retail license, please visit the Board of Equalization website or call 1-800-400-7115 (select the "Cigarette and Tobacco Products" option).

Q 24: Are wholesalers, distributors, manufacturers and importers required to have a license to sell tobacco products?

A. Yes. Every wholesaler, distributor, manufacturer and importer is required to obtain and maintain a license to sell tobacco products. Licenses for these businesses are administered by the Board of Equalization. For more information on the process to apply for a license, please visit the Board of Equalization website or call 1-800-400-7115 (select the "Cigarette and Tobacco Products" option).

Q 25: If retailers only sell electronic smoking devices (like electronic cigarettes), do they need a tobacco retail license?

A. Yes. Effective January 1, 2017, retailers who only sell electronic smoking devices, such as vape shops, are required to have a tobacco retail license. For more information, please visit the Board of Equalization website or call 1-800-400-7115 (select the "Cigarette and Tobacco Products" option) (Business and Professions Code Section 22973.3).

STATE LAWS VERSUS LOCAL ORDINANCES

Q 26: If a local jurisdiction requires a licensing fee for a local Tobacco Retailer License to sell tobacco products in that jurisdiction, do tobacco retailers have to pay their local licensing fee or the state licensing fee?

A. Both. All tobacco retailers are required by state law to have a state tobacco retailer license. If a local jurisdiction has a tobacco retailer license ordinance, retailers in that jurisdiction are also required to have a local tobacco retail license. As of January 2016, more than 150 local jurisdictions require tobacco retailers to have a local tobacco retail license. For more information contact your local health department tobacco control program to learn more about local tobacco retail licensing ordinances.

SHISHA/HOOKAH

Q 27: Does California's minimum sale age requirement apply to the sale of shisha?

A. Yes. Products that contain, or are made or derived from, tobacco or nicotine (e.g., cigarettes, cigars, shisha) are tobacco products that cannot be sold to anyone under 21 years of age. In addition, products used for electronic smoking devices (e.g., e-liquids) are tobacco products even if the product does not contain tobacco or nicotine. However, herbal or other plant products intended for hookah smoking, and which do not contain, and are not made or derived from, tobacco or nicotine (e.g., herbal shisha that do not contain tobacco or nicotine), are not tobacco products.

Q 28: May retailers sell, give, rent, or furnish electronic smoking devices, hookah, or other smoking equipment to individuals younger than 21 years of age?

A. No. Retailers cannot sell, give, rent or 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. A hookah or other smoking equipment is tobacco paraphernalia (Penal Code Section 308 (a)).

Q 29: Do retailers need a state tobacco retailer license if they only sell herbal or other plant products, and none of the products contain, or are made or derived from tobacco or contain nicotine (e.g., herbal cigarettes or herbal shishas that do not contain tobacco or nicotine)?

A. It depends. Products which do not contain, or are not made or derived from, tobacco or nicotine, (e.g., cigarettes, cigars, shisha) do not require a state tobacco retailer license to sell these products. But products used for electronic smoking devices (e.g., e-liquids) do require a state tobacco retailer license even if the product does not contain tobacco or nicotine (Business and Professions Code Section 22971.7 and 22972).

Q 30: May retailers operate a hookah lounge for smoking customers younger than 21 years of age if I am only selling non-nicotine, non-tobacco products?

A. California law prohibits the sale of non-nicotine liquids used in electronic smoking devices to persons younger than 21 years of age and it prohibits the selling, giving, or furnishing electronic smoking devices, hookah, or other smoking equipment to individuals younger than 21 years of age. California law permits smoking in "retail or wholesale tobacco shops" and "private smokers' lounges." A "private smokers' lounge" is defined as an enclosed area in or attached to a "retail or wholesale tobacco shop" that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes (Penal Code Section 308 (a) and Labor Code Section 6404.5 (e)).

OTHER QUESTIONS

Q 31: Does the tobacco 21 law apply to tribal lands?

A. It depends. Federally-recognized tribes that engage in casino-style Class III gaming have compacts with the State of California. These compacts currently exempt those tribes from any state laws or regulations governing the use of tobacco. Most compacts do not exempt the tribes from state laws or regulations governing the sale of tobacco for use off the reservation, but a few set the minimum purchase age at 18 years. State minimum age law does not apply to the sale of tobacco by a tribal member to another member of the same tribe on their reservation. Tribes may adopt minimum purchase age ordinances and tribal members who operate retail outlets on tribal land may refuse to sell to individuals under 21.

Q 32: If a tobacco retailer sells non-tobacco items such as books, toys, and incense, may they allow individuals under 21 enter their store and can these individuals purchase these items?

A. Yes. Individuals under 21 years of age can enter a retailer store selling tobacco products and can purchase items that are not tobacco products. California's tobacco minimum sale age requirement applies only to tobacco products.

Q 33: Is smoking or vaping allowed in vape shops?

A. No, unless the vape shop qualifies as either a retail or wholesale tobacco shop, or a private smokers' lounge. A retail or wholesale tobacco shop is any business establishment that has the main purpose of selling tobacco products and smoking accessories. A private smokers' lounge is any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products. The exemptions for a retail or wholesale tobacco shop and private smokers' lounge do not apply to businesses that sell alcohol (Labor Code Section 6404.5).

Q 34: Where can retailers go for answers to other questions about the new California tobacco laws?

A. The following state agencies can assist you with other questions.

1. California Department of Public Health, California Tobacco Control Program or via telephone at 916-449-5500 to find educational materials and signage about the new tobacco laws.
2. California Board of Equalization or via telephone at 1-800-400-7115 (select the "Cigarette and Tobacco Products" option) regarding questions and information about tobacco retail licensing and fees.
3. California Department of Public Health, Food and Drug Branch or via telephone at 916-650-6500 regarding questions and information about retail enforcement and compliance.