

## Frequently Asked Questions (FAQ) for Tobacco Retailers

New Tobacco Sales Age, “T21”

November 5, 2020

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### I. General

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#### 1. What is the minimum sales age and when does it take effect?

Beginning October 1, 2019, the minimum sales age for all tobacco products in Maryland is 21 (“T21”). This includes sales of all electronic smoking devices—e-cigarettes, vapes, pod devices such as JUUL®, e-liquids, and component parts and accessories.<sup>1</sup>

As of December 20, 2019, the federal minimum age of sale of tobacco products was also raised from 18 to 21 years.<sup>2</sup>

#### 2. How is a tobacco product defined?

As of October 1, 2019, a tobacco product includes cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and snus, electronic smoking devices (ESDs), filters, rolling papers, pipes, and liquids used in electronic smoking devices, regardless of nicotine content, as well as accessories and components.<sup>3</sup>

#### 3. Is there grandfathering or a grace period?

No. There is no “grandfathering,” phase-in, or grace period. As of October 1, 2019, no tobacco sales are permissible to customers under 21.

#### 4. Is there an exemption for military personnel?

The federal law does not include a military exemption. While Maryland’s Tobacco 21 law includes a military exemption, retailers should follow the federal law by not selling any tobacco products to anyone under 21 years old -- no exceptions.

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### 5. Do retailers need to post T21 signs in their stores?

Yes. Retailers are required to post a sign in a clearly visible location using letters at least one-half inch high that states, "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS WITHOUT MILITARY IDENTIFICATION."<sup>4</sup> The Maryland Department of Health mailed T21 compliant signs to all licensed tobacco retailers, including vape shops, across the state. T21 compliant signs are also available for download at [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com).

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## II. Background Information

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### 1. Why is raising the minimum sales age to 21 important?

In 2018, the U.S. Surgeon General warned that e-cigarette use among youth is now an epidemic.<sup>5</sup> Between 2017 and 2018, current e-cigarette use increased 78 percent among U.S. high school students; in 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, reported current e-cigarette use.<sup>6</sup> Raising the sales age to 21 helps reduce youth access to e-cigarettes and other tobacco products, which reduces the likelihood of them ever starting to use tobacco. Most adults who smoke or use tobacco started by age 21.<sup>7</sup>

### 2. Have similar laws been implemented elsewhere?

As of December 20, 2019, the federal minimum age of sale of tobacco products was raised from 18 to 21 years. Additionally, at least 17 other states and 500 localities have raised the sales age to 21.<sup>8</sup>

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## III. Compliance and Enforcement

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### 1. What do retailers need to do to comply with the T21 law?

Retailers need to:

1. Post an age of sale sign compliant with the Maryland T21 law in a clearly visible location.
2. Use a driver's license or government-issued ID to verify customer age.
3. Train all staff on the following steps for every tobacco sale:
  - Ask for valid ID from everyone under 27 attempting to purchase tobacco products (federal law\*).
  - Check ID to make sure each customer is at least 21.
  - Refuse to sell tobacco products to everyone under 21.

\*A retailer may be cited for selling to a person without checking ID if he/she appears under age 27. MDH anticipates the Secretary of HHS to promulgate regulations that would increase this age to under 30.

### 2. Who enforces the T21 law?

The Maryland Department of Health, including local health departments, and local law enforcement agencies are authorized to enforce the T21 law.<sup>9</sup>

### 3. Will retailers be inspected for illegal tobacco sales to individuals under 21?

Yes. State and local enforcement agencies are authorized to conduct random, unannounced inspections at retail sites and to use persons younger than 21 years of age to conduct enforcement activities.<sup>10</sup>

### 4. Will FDA be checking for compliance with T21?

FDA conducts its own retail inspections, separate from state and local enforcement. The federal tobacco sales age remains at 18; however, FDA requires an ID check for all customers under 27\*.<sup>11</sup>

\*A retailer may be cited for selling to a person without checking ID if he/she appears under age 27. MDH anticipates the Secretary of HHS to promulgate regulations that would increase this age to under 30.

### 5. What are the fines and penalties for selling tobacco products to individuals under 21?

Penalties can include criminal and civil fines, as follows:

- \$300 for first violation;
- \$1,000 for second violation within two years;
- \$3,000 for each subsequent violation within two years of the preceding violation.<sup>12</sup>

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**6. Who is responsible for paying fines for T21 violations?**

Civil fines are paid by the retailer, regardless of who illegally sold tobacco.<sup>13</sup> Criminal fines are the responsibility of the individual or entity that received the criminal citation.<sup>14</sup>

**7. If a retailer trains staff on the T21 law and the staff acknowledge this training in writing, is the retailer still liable if a staff member sells tobacco to a person under 21?**

Yes. Retailers are responsible for civil fines resulting from illegal sales at their establishment. Free training materials are available 24/7 at [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com).

**8. Does the federal T21 law apply to local jurisdictions that have an ordinance stating the minimum age of sale for tobacco products is 18 years of age?**

Yes. The federal T21 law applies in every jurisdiction. Local tobacco sales laws may additionally be enforced.

**9. Does the T21 law change the age of sale for other CBD products such as topicals or sublinguals?**

The T21 law prohibits the sale of tobacco- and nicotine-derived products as well as the sale of electronic smoking devices and any substance aerosolized or vaporized during the use of a such device, to anyone under 21. For questions on the sale of specific CBD products, contact your legal counsel for current information. Questions related medical marijuana (aka, medical cannabis) should be directed to the Maryland Cannabis Commission at <https://mmcc.maryland.gov/Pages/home.aspx>

**10. Is the new IQOS device covered under the T21 law?**

IQOS is a tobacco heating system intended for human inhalation. Because it contains tobacco, IQOS is covered by the T21 law and cannot be sold to individuals under 21.

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### IV. Electronic Smoking Devices (e-cigarettes/vapes)

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**1. How is an electronic smoking device (ESD) defined?**

As of October 1, 2019, an electronic smoking device (ESD) is defined as a tobacco product and includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, electronic hookah, vape pens, pod devices such as JUUL®, vaping liquid and any component, part, or accessory of such a device, regardless of whether it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device.<sup>15</sup>

**2. Can retailers sell non-nicotine e-cigarettes (vapes) or non-nicotine e-liquid to individuals under 21?**

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No. E-cigarettes (vapes) as well as e-liquids, regardless of nicotine content, are considered tobacco products and cannot be sold to anyone under 21.

**3. Can retailers sell e-cigarettes (vapes) or e-liquid containing CBD to individuals under 21?**

No. E-cigarettes, vapes, vaping liquids as well as any substance intended to be aerosolized or vaporized during the use of electronic smoking devices are considered tobacco products and cannot be sold to anyone under 21.<sup>16</sup>

**4. Can retailers sell an e-cigarette, vape pen, or rolling papers for use with marijuana to someone under 21 with a medical marijuana card?**

No. Maryland law prohibits retailers from selling e-cigarettes, vape pens, or rolling papers to anyone under age 21.

**5. Can retailers sell wire, metal, or cotton designed for use in atomizers to individuals under age 21?**

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.<sup>17</sup>

**6. Can retailers sell shisha to individuals under 21?**

No. Shisha is considered a tobacco product since it is made or derived from tobacco, and cannot be sold to anyone under age 21.<sup>18</sup>

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## V. New Signage

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**1. Where can retailers obtain a sign compliant with the Maryland T21 law?**

Compliant signs are available to download, along with other training materials and resources at [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com).

**2. Are retailers required to use the sign provided by the Maryland Department of Health?**

No. Any sign that meets the legal requirements (outlined earlier) is acceptable. However, using the free sign from the Maryland Department of Health ensures the retail outlet is following the law.

**3. What if retailers don't post a sign compliant with the Maryland T21 law?**

The Office of the Comptroller has the authority over signage requirements and may enforce this provision.<sup>19</sup>

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### VI. Clerk Age

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#### 1. Are clerks younger than 21 permitted to sell tobacco products?

Yes, clerks under 21 are permitted to sell tobacco products. If the clerk is under 18 years of age, they must obtain a work permit from the [Maryland Department of Labor](#) before starting any job in Maryland.<sup>20</sup>

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### VII. Checking ID

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#### 1. What is a valid ID?

A current (not expired) driver's license or valid government-issued ID (e.g., passport). School and employer-issued ID are not acceptable.<sup>21</sup>

#### 2. How should I determine if a customer is 21?

In Maryland, the Motor Vehicle Administration (MVA) issues a vertical driver's license or ID card to persons under 21. Out-of-state driver's licenses and other forms of government-issued ID may not have a vertical orientation for persons under 21 so be sure to check date of birth. For members of the military, check the date of birth on the back of the Common Access Card to ensure age is at least 18. **In all cases, confirm that the ID matches the customer and is valid (not expired).** For more information, visit the **ID Guide** at [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com).

#### 3. Are there calendars available to verify a customer is 21?

FDA is providing free digital calendars that can be adjusted for T21 age verification. If you have not received a digital calendar, you can order one at [https://digitalmedia.hhs.gov/tobacco/print\\_materials/RE-26](https://digitalmedia.hhs.gov/tobacco/print_materials/RE-26).

#### 4. Can retailers accept government-issued ID from other countries?

Government-issued ID from other countries, such as passports, are acceptable, provided you can properly verify the ID is valid (non-expired), a photo is present, and you are able to determine customer age.

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### VIII. Tobacco Treatment Products

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**1. Can retailers sell tobacco treatment products such as the patch, gum, or lozenge to individuals under 21?**

Over-the-counter FDA-approved tobacco treatment (aka, cessation) aids may be sold to individuals who are 18 and older; anyone under 18 needs a physician prescription for tobacco treatment products.<sup>22</sup>

**2. Where can I find resources for quitting tobacco use?**

Free posters, wallet cards, and other materials can be downloaded – or shipped to your retail location at no cost. Visit [www.smokingstopshere.com](http://www.smokingstopshere.com). Additionally, the Maryland Tobacco Quitline (1-800-QUIT-NOW) is a free service available 24/7 to Marylanders ages 13 and older who are ready to quit use of any tobacco product, including e-cigarettes. Callers ages 18 and older may be eligible for free nicotine replacement therapy (e.g., patch, gum, lozenge).

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### IX. Licenses

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**1. What are the current tobacco license fees?**

Find current information on tobacco license fees at [https://taxes.marylandtaxes.gov/Business\\_Taxes/General\\_Information/Business\\_Tax\\_Forms\\_and\\_Instructions/Tobacco\\_Tax\\_Forms/](https://taxes.marylandtaxes.gov/Business_Taxes/General_Information/Business_Tax_Forms_and_Instructions/Tobacco_Tax_Forms/)

**2. Since ESDs or vapes are now considered tobacco products – as a vape shop vendor or ESD retailer, can I continue to use my existing license?**

Yes. The T21 law has not changed the type of license required to continue selling your retail products (e.g., ESDs/vapes, cigarettes, cigars).

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### X. Military

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**How does the federal Tobacco 21 law impact Maryland's military exemption?**

The federal Tobacco 21 law went into effect immediately upon signing on December 20, 2019. This law does not include a military exemption. In order to be compliant with the federal law, Maryland retailers should no longer sell tobacco products to any military member who is 18-20 years old. No tobacco products may be sold to anyone under 21 years of age – no exceptions.

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### XI. Other Questions

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**1. When and how are retailers notified of the new T21 law?**

The Maryland Department of Health, Center for Tobacco Prevention and Control (CTPC), mailed information and new T21 compliant signs to licensed tobacco retailers across the state. Free T21 compliant signs and training materials are also available for download at [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com).

**2. Are there penalties for individuals under 21 who attempt to purchase tobacco products?**

No. As of October 1, 2019, there are no penalties for underage purchase or possession of tobacco.<sup>23</sup> Youth purchase and possession laws have not been shown to be effective in reducing youth access and may unfairly target certain groups, including minority groups.

**3. How do I report an illegal tobacco sale?**

If an illegal sale is suspected, violation concerns can be reported to local law enforcement, your local health department, or the Maryland Department of Health at 1-866-703-3266. These reports may be given anonymously.

**4. Who does retailer refer to?**

For these purposes, a retailer is the same as a licensee or owner.

**5. Where can I find additional information?**

Visit [www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com). The Maryland Department of Health will continue to update this site with new information.

**6. Who can I contact with additional questions?**

Contact the Maryland Department of Health at [MDH.NoTobaccoSalesToMinors@maryland.gov](mailto:MDH.NoTobaccoSalesToMinors@maryland.gov).

**7. Where can I get a copy of the Maryland T21 law?**

[http://mgaleg.maryland.gov/2019RS/chapters\\_noln/Ch\\_396\\_hb1169E.pdf](http://mgaleg.maryland.gov/2019RS/chapters_noln/Ch_396_hb1169E.pdf)

**8. Do customers of medical marijuana dispensaries need to be 21?**

All questions regarding medical marijuana (aka, cannabis) should be directed to the Maryland Cannabis Commission at <https://mmcc.maryland.gov/Pages/home.aspx>.

**9. Are vape and tobacconist shops considered essential businesses during the COVID-19 pandemic?**

In response to the ongoing COVID-19 pandemic, Governor Hogan issued an Executive Order on March 19, 2020 regarding the closure of non-essential businesses.<sup>24</sup> This Executive Order was put into place for the health and well-being of all Marylanders and refers to federal guidance on

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the issue of essential and non-essential businesses: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. **This list does not include vaping and/or tobacco establishments as essential businesses.**

With this potential reduced access, free assistance to help Maryland residents quit any tobacco use, including smoking and vaping is available. The Maryland Tobacco Quitline, 1-800-QUIT-NOW, offers phone, web, and text message support 24/7 and free nicotine replacement therapy (e.g. patches and gum), to all Marylanders 13 and older. More information can be found at [www.SmokingStopsHere.com](http://www.SmokingStopsHere.com).

For more information about the COVID-19 pandemic, please visit: <https://coronavirus.maryland.gov/>.

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<sup>1</sup> HB 1169, Chapter 396 of Acts of 2019, available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>2</sup> Center for Tobacco Products, Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21, FDA, Accessed 24January2020 at <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>

<sup>3</sup> Bus Reg 16-3A-01, 16.7-101, Crim Law 10-101, Health Gen 13-1001, Local Gov 1-1201, available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>4</sup> Bus Reg 16-209, 16.5-214.1, 16.7-204.1 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>5</sup> Surgeon General's Advisory About E-Cigarettes, Accessed 20June2019 at <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

<sup>6</sup> Surgeon General's Advisory About E-Cigarettes, Accessed 20June2019 at <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

<sup>7</sup> NAP, Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products 2015, [http://www.nationalacademies.org/hmd/~/media/Files/Report%20Files/2015/TobaccoMinAge/tobacco\\_minimum\\_age\\_report\\_brief.pdf](http://www.nationalacademies.org/hmd/~/media/Files/Report%20Files/2015/TobaccoMinAge/tobacco_minimum_age_report_brief.pdf)

<sup>8</sup> For a current list of T21 states and localities, visit [https://www.tobaccofreekids.org/assets/content/what\\_we\\_do/state\\_local\\_issues/sales\\_21/states\\_localities\\_MLSA\\_21.pdf](https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf)

<sup>9</sup> Health Gen 24-305, 24-307; Crim Law 10-107 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>10</sup> Bus Reg 16-308-2, 16-308.2, 16.5-214.1, 16.5-217.1, 16.7-213.1; Health Gen 24-307; Crim Law 10-107 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>11</sup> For more information visit <https://www.fda.gov/tobacco-products/compliance-enforcement-training/retail-sales-tobacco-products#sellingtobacco>

<sup>12</sup> Crim Law 10-107; Health Gen 24-305, 24-307 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>13</sup> Health Gen, 24-305 or 24-307 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>.

<sup>14</sup> Crim Law 10-107 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>15</sup> Bus Reg 16.7-101 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>16</sup> Bus Reg 16.7-101 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>17</sup> Bus Reg 16.7-101 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>18</sup> Bus Reg 16-3A-01, 16.7-101, Crim Law 10-101, Health Gen 13-1001, Local Gov 1-1201, available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>19</sup> Bus Reg 16-209 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

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<sup>20</sup>For more information, visit

[https://taxes.marylandtaxes.gov/Business\\_Taxes/Taxpayer\\_Assistance/Business\\_Tax\\_FAQs/Alcohol\\_and\\_Tobacco\\_Tax/Consumer\\_FAQs\\_about\\_Tobacco.shtml](https://taxes.marylandtaxes.gov/Business_Taxes/Taxpayer_Assistance/Business_Tax_FAQs/Alcohol_and_Tobacco_Tax/Consumer_FAQs_about_Tobacco.shtml)

<sup>21</sup> Crim Law 10-107, Health Gen 24-305, 24-307, Local Gov 1-1203, available at

<http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>22</sup> (Bus Reg 16-3A-01, 16.7-101, Crim Law 10-101, Health Gen 13-1001, Local Gov 1-1201 available at

<http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>23</sup> Crim Law 10-108 available at <http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

<sup>24</sup> The State of Maryland, Executive Order available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-THIRD-AMENDED-3.23.20.pdf>