

# UNDERSTANDING NEW YOUTH TOBACCO LAWS IN DELAWARE AND TIPS FOR AVOIDING VIOLATION.

## T21bacco

You must be 21 years of age to purchase tobacco products in Delaware.



## DELAWARE LAW NOW PROHIBITS INDIVIDUALS UNDER 21 LEGAL ACCESS TO TOBACCO

Tobacco use remains the nation's leading preventable cause of premature death and disease. Further, the Institute of Medicine, one of the nation's most prestigious scientific authorities, concluded in its March 2015 report, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, that raising the tobacco sale age to 21 will have a substantial positive impact on public health and save lives through reductions in tobacco use by youths.

As a result:

**Effective July 16, 2019**, Delaware law now prohibits the sale or delivery of any tobacco products and/or tobacco substitutes to persons under 21 years of age. This prohibition includes giving away tobacco products and/or tobacco substitutes, samples, or coupons for tobacco products and/or tobacco substitutes to individuals under 21 years of age.

### › What happens if you break the law?

- A person who sells a tobacco product or tobacco substitute **to an individual who is under 18 years of age** is guilty of a violation and is subject to a fine as follows:
  - \$250 for the first offense
  - \$500 for the second offense (one that occurs within 12 months of the first)
  - \$1,000 for a third offense, and all subsequent offenses
- A person who sells a tobacco product or tobacco substitute **to an individual who is at least 18 years of age but less than 21 years of age** is subject to a civil penalty as follows:
  - \$250 for the first offense
  - \$500 for the second offense (one that occurs within 12 months of the first)
  - \$1,000 for a third offense, and all subsequent offenses
- A person who violates § 1116, § 1118, § 1119, or § 1120 of Title 11, Chapter 5 is subject to a civil penalty for selling or distributing any of the following:
  - A tobacco substitute that does not contain nicotine
  - A component or accessory used in the consumption of a tobacco product, including filters, rolling papers, and pipes

› **What can happen to a retail licensee when their employee breaks the law?**

- The owner, proprietor, franchisee, store manager, or other person in charge of the premises is liable for violations committed by their employees.
- The law provides an affirmative defense, which may be used only one time in a 36-month period, if the licensee has:
  - Adopted and enforced a written policy prohibiting the sale of tobacco products or tobacco substitutes to individuals under 21 years of age.
  - Informed employees of the law prohibiting the sale of tobacco products or tobacco substitutes to individuals under 21 years of age.
  - Required employees to sign a form indicating that they were informed of and understand the written policy.
  - Required employees to verify age of persons attempting to purchase tobacco products or tobacco substitutes by means of photographic identification.
- Established and enforced disciplinary sanctions for noncompliance.

› **Delaware law provides persons engaged in the sale or distribution of tobacco products or tobacco substitutes with the right to demand proof of age from persons under the age of 30 attempting to purchase tobacco products or tobacco substitutes. Individuals presented with proof of age that would lead a reasonable person to believe that the individual presenting the identification was 21 years of age or older have an affirmative defense to criminal liability.**

› **Delaware law requires persons engaged in the sale or distribution of tobacco products or tobacco substitutes to display a notice stating that:**

- Sale of tobacco products or tobacco substitutes to persons under 21 years of age is illegal.
- Purchase by anyone under 21 years of age is illegal.
- Violators will be subject to fines.
- Persons selling tobacco products or tobacco substitutes have the right to demand proof of age from persons attempting to purchase tobacco products or tobacco substitutes.
- Failure to post the required notice subjects the owner of licensed tobacco retailers to a fine of \$100.

› **Delaware law prohibits the distribution of tobacco products or tobacco substitutes through vending machines in public places, with the exception of bars, tobacco shops, and premises that prohibit persons under 21 years of age from entering. In these locations, the law requires that vending machines be located at least 25 feet from any entrance, or be directly visible to the owner or supervisor.**

## TIPS TO AVOID SELLING TOBACCO PRODUCTS OR TOBACCO SUBSTITUTES TO YOUTH

**Delaware law forbids the sale of tobacco products (cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, and smokeless tobacco — as well as accessories, including pipes, filters, and rolling papers) and tobacco substitutes (e-cigarettes, JUULs, vape liquids, pens, and devices) to persons under 21 years of age. Here are a few tips to use when selling tobacco products or tobacco substitutes:**

› **Always request ID to determine the age of a tobacco purchaser.**

› **Determine the birthdate that makes someone legally old enough to purchase tobacco products or tobacco substitutes.** A simple way to do this is to take the current year and subtract 21 years.

**Example:** January 1, 2019 - 21 years = January 1, 1998. You may only sell tobacco products or tobacco substitutes to anyone with a birthday on or before this date.

› **Be prepared to handle situations that may occur.** Think about how you will handle them. Some examples and suggestions are listed below:

- A written note from a parent or another adult to purchase tobacco products or tobacco substitutes is not acceptable. Remind the individual that the person purchasing the tobacco products or tobacco substitutes **must be at least 21 years of age and must have ID** on them.
- If an underage person tries to frustrate you, the cashier, by searching for their ID, saying they are in a hurry, or causing a scene, remember to stay calm and make sure to check a valid ID first.
- A beautiful young woman or a handsome young man walks in to purchase tobacco products or tobacco substitutes. You are worried about being embarrassed for having to check their ID. Just remember, **it's against the law to sell to a person under 21 years of age, and you could be fined.**
- Some kids from your school come in and want to purchase tobacco products or tobacco substitutes. They tell you it's cool to sell to them, and that no one will ever know. Remember, by law, **it is illegal to sell to anyone under 21 years of age. State law requires a \$250 fine** for the first time you sell tobacco products or tobacco substitutes illegally.
- A young person comes in with someone over 21 years of age to purchase tobacco products or tobacco substitutes. Remember, the person who purchases tobacco products or tobacco substitutes **must be at least 21 years of age.**

**Always remember, you are doing the right thing by asking for identification. Delaware law requires that you do this. When you fail to check for identification, you put yourself at risk of being fined or fired, or both.**

## SAMPLE POLICY PROHIBITING THE SALE OF TOBACCO TO YOUTH

Delaware law forbids the sale of tobacco products (cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, and smokeless tobacco — as well as accessories, including pipes, filters, and rolling papers) and tobacco substitutes (e-cigarettes, JUULs, vape liquids, pens, and devices) to persons under 21 years of age.

\_\_\_\_\_ has established the following policy:

*Store name*

- \* Always request ID to determine the age of a tobacco purchaser. According to state law, it is illegal to sell tobacco products or tobacco substitutes to anyone under the age of 21.
- \* Valid forms of identification include a driver's license, state ID card, military identification, and passport. School identification cards are **NOT** acceptable.
- \* Employees must read and sign a copy of the employee acknowledgement form, indicating that they understand and accept the responsibility of abiding by the store's policy.
- \* Failure to cooperate with \_\_\_\_\_'s store policy could result in the following:
  - **Probation**
  - **Payment of fine**
  - **Termination of employment**
  - **Suspension without pay**

*Store name*

Should you have any questions/concerns regarding this law, please contact:

\_\_\_\_\_  
*(Name and phone number of person responsible for store policy training)*

\_\_\_\_\_  
*(Store's phone number)*

## EMPLOYEE ACKNOWLEDGEMENT OF STORE'S TOBACCO POLICY

I, \_\_\_\_\_, have read

*Employee's name*

and understand \_\_\_\_\_'s

*Store name*

policy prohibiting the sale of tobacco products or tobacco substitutes to youth. I accept the responsibility to ask for and check identification for persons under the age of 21. I understand that a violation of this policy could result in probation, payment of a fine, and/or termination of employment at the store's discretion.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## HELPFUL PHONE NUMBERS

Division of Alcohol & Tobacco Enforcement – **302-741-2721**

Division of Public Health Tobacco Prevention & Control Program – **302-744-1010**

Division of Revenue (Licensing Questions) – **302-577-8200**

Delaware Helpline – **211**

Department of Labor (Clean Indoor Air Act/Workplace) – **302-761-8200** or **302-422-1134**