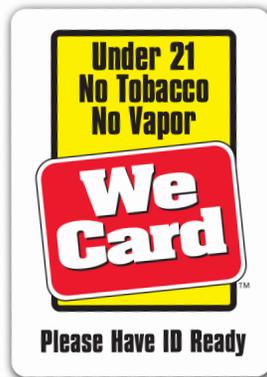


# New York's New Law



**Minimum-Age: 21 years old**

**Effective Date  
November 13, 2019**

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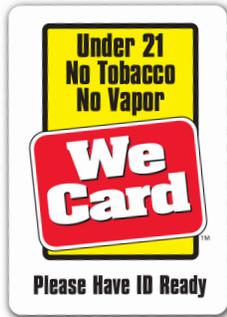
Legal Disclaimer: This information provided herein and found on the *We Card* website is provided as a service of the *The We Card* Program, Inc. This information is not intended to be, or to provide, legal advice or analysis, and it is not intended to be complete representation of federal, state or local law, or federal Food & Drug Administration (FDA) regulations. Federal, state and local laws, as well as FDA regulations, may contain additional rules and restrictions relating to tobacco products not mentioned on this web site. Users of this web site should not rely on this web site as complete or accurate descriptions of applicable federal, state or local law, or FDA regulations. Users with questions about the law should seek the advice of counsel. Each state law is unique and possibly represents multiple legislative or regulatory acts. Local laws may differ. Check with local authorities for variations from federal or state law.

## Minimum Age Restrictions

### New York Law Summary

**NEW MINIMUM-AGE Law effective November 13, 2019 is 21 years old.**

It is illegal to sell, offer to sell, barter or give tobacco products to persons under 21 years of age.



**Note:** Persons under 21 years of age are allowed to sell tobacco products to persons of legal age, provided however, that they are under the supervision of a person of legal age.

**Electronic Age Verification:** Any person that sells Restricted Products may perform a transaction scan as a precondition for the purchases. Whenever the information deciphered by the transaction scan fails to match the information printed on the driver's license or nondriver identification card, or the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied. A licensee, agent or employee of such licensee shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices for the purposes of verifying the identification of the purchaser. No licensee or agent or employee of such licensee shall disseminate or resell the information recorded to any third person. Use of a transaction scan shall not excuse any person from the exercise of reasonable diligence.

**FDA Summary (Federal)** You must follow the New York's 21 year minimum-age since it is higher than FDA's 18 year minimum-age requirement.

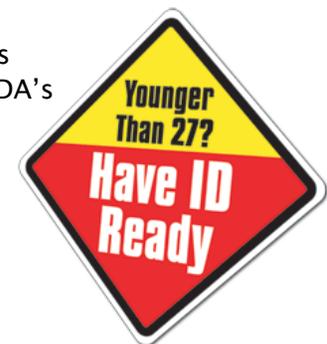
## Minimum Age to Ask for ID

**New York Law Summary** The state's requirement of asking for ID of under 25 year olds is lower than the FDA's requirement. Therefore you must follow FDA's requirement of asking for ID of under 27 year olds.

### FDA Summary (Federal)

You must **Check photo ID of everyone appearing under age 27** who attempts to purchase FDA regulated products and verify the customer is of legal age to purchase. This is an each-and-every time requirement (even if you know the person to be of legal age.) If you "carded" them yesterday, you must "card" them again today!

**Decline a sale** when the customer is underage, has no photo ID, the photo ID contains no date-of-birth or the photo ID has expired.



# Age Restricted Products - Tobacco and Vapor

## New York Law Summary

Cigarettes, cigars, chewing tobacco, e-cigarettes, liquid nicotine, powdered tobacco, herbal cigarettes, electronic cigarettes or other tobacco products, smoking paraphernalia (pipe, water pipe, hookah, rolling papers, vaporizer or any other equipment or apparatus designed for the inhalation of tobacco), bidis, gutka (a product containing lime paste, spices, areca and tobacco) or shisha (tobacco-based product designed to be smoked in a hookah). Only persons operating a tobacco-only business may sell bidis or gutka.

## FDA Summary (Federal)



**Cigarettes,  
Cigarette Tobacco  
& Roll-Your-  
Own Tobacco**



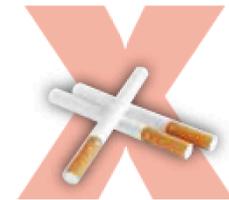
**Smokeless  
Tobacco**



**Cigars**



**Hookah  
& Pipe  
Tobacco**



**Loose Cigarettes**



**Nicotine  
Gels**



**Dissolvable  
Tobacco  
Products**



**Electronic  
Nicotine  
Delivery Sales  
(ENDS)**

### **BANNED: SINGLE CIGARETTES OR "LOOSIES"**

Do not sell single cigarettes ("loosies") or break open packs of 20 cigarettes to sell them in quantities of less than 20 cigarettes OR sell any quantity of smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use.\*\*

**ENDS** include e-cigarettes, e-hookah, ecigars, vape pens, advanced refillable personal vaporizers, electronic pipes, components & parts (such as e-liquids, atomizers, tank systems, batteries)

## Acceptable forms of ID

### ***New York Law Summary***

A valid driver's license or a nondriver's identification card issued by the state department of motor vehicles, or any other state, United States federal government or any territory, commonwealth or possession thereof, the District of Columbia or a Canadian provincial government, a valid United States passport or that of any other country, or an identification card issued by the armed forces of the United States.

### ***FDA Summary (Federal)***

Unless otherwise required by state or local law, FDA recommends that retailers accept only government-issued photographic identification with the bearer's date of birth. (e.g., State-issued driver's license or identification card, military identification card, passport or immigration card) for establishing a legal age to purchase FDA regulated products. The Photo ID is not acceptable if it has expired.

## Post Signs Required by State Law

### ***New York Law Summary***

NY state law requires multiple signs and a NEW sign requirement has become required as of Sept. 2019.

The New York Dept. of Health (and/or the county level health departments) will be sending out all required signage before the November 13, 2019 effective date of the 21 year minimum age law.

The law requires retailers to post a white sign with red letters that are at least 1/2 inch in height must be conspicuously posted in retail establishments. Signs must state:

SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW.

**Businesses that sell bidis or gutka** shall post in a conspicuous place a sign stating "SALE OF BIDIS (GUTKA) TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW" on a white card in red letters at least onehalf inch in height.

**NEW:** **Businesses that sell e-cigarettes/vaping products** must post a vaping warning poster, [available here](#).

Retailers who violate this requirement are subject to fines, arrest and jail. For the 1st violation, retailers are subject to a \$300 to \$1,000 fine. For subsequent violations, retailers are subject to a \$500 to \$1,500 fine. Further, the retailer shall be assigned two points per violation.

**ONLINE:** To download pdfs of the required NY state signs, go to this link:

[https://www.health.ny.gov/prevention/tobacco\\_control/educational\\_materials.htm](https://www.health.ny.gov/prevention/tobacco_control/educational_materials.htm)

For the NY City sign: <https://www1.nyc.gov/assets/doh/downloads/pdf/csi/noid-prohibited-by-law.pdf>



# Penalties and Fines

## ***New York Law Summary***

Retailers and retail employees who offer to sell, barter or give tobacco products, e-cigarettes or vaping products, bidis or gutka to persons under 21 are subject to fines, arrest and jail. For the 1st violation, retailers are subject to a \$300 to \$1,000 fine (and the retailer's name and address may be published in a local newspaper); for retail employees the maximum fine for a first violation is \$500. For subsequent violations, retailers and retail employees are subject to a \$500 to \$1,500 fine. Further, the retailer shall be assigned two points per violation. If the individual who committed the violation holds a certificate of completion from a state certified tobacco sales training program, then only one point will be assigned.

If the retail dealer accumulates three points or more, the dealer's tobacco registration and license (and lottery sales license) shall be suspended for six months, after which the points shall be erased. If the retailer is found in violation while its registration was suspended, the retailer shall be subject to a \$2,500 fine and have its registration revoked permanently. If a retailer is found in violation four times within three years, the dealer's registration and license shall be revoked for one year.

Points assigned to a retail dealer's record shall be assessed for a period of thirty-six months beginning on the first day of the month following the assignment of points. Any retail dealer who is assigned points shall be reinspected at least two times a year until points assessed are removed from the retail dealer's record.

## ***FDA Summary (Federal)***

FDA has a variety of enforcement tools to address retailers who violate Federal statutes or regulations, including civil money penalties, warning letters, seizures, injunctions, no-sale orders and/or criminal prosecution. Retailers who violate the regulations may also be in violation of state law and subject to state penalties or other related orders.

<b>FDA FINES &amp; PENALTIES</b>	
<b># of Violations</b>	<b>Fine</b>
1st	Warning Letter
2 within 12 months	\$285
3 within 24 months	\$570
4 within 24 months	\$2,282
5 within 36 months	\$5,705
6 within 48 months	\$11,410
5 or more within 36 months	No Sale Order

Fines and penalties shown here are as of Sept. 25, 2019.

## Customers Who Are Now Underage Due to 21 Year Law

New "21" state laws\* require retailers to refuse the sale of tobacco and vapor products to anyone under the age of 21. And it's quite possible that you, the retailer, will be the first one to inform your customers about this new law.

We Card training covers challenges like handling difficult situations including refusing an underage sale using the A-E-R-O method.

\* See state laws summaries for any exceptions to the 21 year minimum-age.

**We recommend A-E-R-O when speaking with customers who are no longer the legal age to buy tobacco and vapor products.**

# A-E-R-O

**APOLOGIZE**   **EXPLAIN**   **REMOVE**   **OFFER**  
the product from the counter   another service



## What do YOU say?



Hey, can I get that vape pen and 2 refill cartridges?

Sure, can I see some ID?

Here you go.

Thanks. I'm sorry, this ID shows you're under 21 so it would be against the law for me to sell the vape pen to you . . .

I'm 20 years old. I buy vape stuff and refills all the time!  
**WHAT'S WRONG WITH YOU?**

I'm sorry, there's a new state law with 21 as the minimum age. We have to follow that law. Can I get you something else in the store?

Oh, I didn't now about the new law. Just this bottled water, thanks.

Store Sales Associate

# Responsible Retailing Resources

## About We Card

The *We Card* Program is a national non-profit organization focused on ensuring that age-restricted product retailers are fully educated, trained and prepared to reject underage sales.



When you need *We Card* at your fingertips!



wecardnow.com

## We Card eLearning Center



Award-winning training, now even better!  
• Employee • Refresher • Manager

Learn FDA Requirements of Retailers, Rules on Regulated Products, FDA Fines and Penalties  
*\*Based upon FDA Guidance for Tobacco Retailer Training Programs*

Additional interactive exercises and more practice in the steps employees need to prevent tobacco sales to minors.

Built to be LMS-ready and SCORM-compliant. Ask for a test drive on your LMS!



## Equip Your Stores



Call 1-800-934-3968 or visit wecard.org.

## Mystery Shopping

*We Card* offers the ID Check-Up mystery shopping service at a low cost of \$26 per mystery shop which allows even the smallest retail store to participate in an ID checking system that is proven to increase carding rates.



www.wecard.org

