



OFFICE OF THE DISTRICT ATTORNEY
MARIN COUNTY, CALIFORNIA

Prevention ★ Prosecution ★ Protection

Edward S. Berberian
District Attorney

TO: ALL MARIN COUNTY LAW ENFORCEMENT AGENCIES

FROM: KEVIN O'HARA, DEPUTY DISTRICT ATTORNEY

DATE: AUGUST 16, 2016

RE: NEW TOBACCO 21 LAW

On June 9, 2016, new legislation took effect in California regarding tobacco sales to minors. The legislation, known as the Tobacco 21 Law, amended the STAKE (Stop Tobacco Access to Kids Enforcement) Act (Business and Professions Code sections 22950-22964), Penal Code section 308, and various sections of the Government, Health and Safety, Labor, Public Utilities, Vehicle and Education Codes, with the following changes relevant to law enforcement:

- Pursuant to new Penal Code section 308(a)(1)(A)(i), no person or business shall knowingly sell, give, or in any way furnish to another person who is under 21 years of age any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products (see expanded definition below), or any controlled substance. A violation of Penal Code section 308(a)(1)(A)(i) is a misdemeanor.
- "Smoking" is now defined to include the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form. (Business and Professions Code section 22950.5(c).)
- The previous criminal provision of Penal Code section 308(b) making it unlawful for a minor to purchase, receive or possess any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance, was intentionally deleted from the code by the Legislature.

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Although it is now illegal for a person or business to sell, give, or furnish tobacco or tobacco products to a person under the age of 21, it is no longer illegal for a minor (under the age of 21) to purchase, possess, or use tobacco products or paraphernalia designed for the smoking of tobacco and tobacco products under the new law. Note: Health and Safety Code section 11364 was not affected by this new legislation.

- The definition of "Tobacco Product" has been expanded to mean not only a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, but also electronic devices that deliver nicotine or other vaporized liquids (whether or not it contains nicotine) to the person inhaling from the device. This means that in addition to traditional tobacco products (cigarettes, cigars, little cigars/cigarillos, and smokeless tobacco, etc.), products such as e-cigarettes, e-hookah, vape pens, vaping devices, vape tanks/mods, vape atomizers, e-liquids, hookah, etc., are covered by the legislation (Business and Professions Code section 22950.5(d)(1) and Penal Code section 308).
- Since electronic smoking devices are now included in the definition of tobacco products, the use of these devices is now prohibited in those areas where traditional tobacco products are prohibited by state law relative to enclosed places of employment (workplaces, restaurants, bars, movie theaters, etc.), public buildings, railroad passenger seating areas, and vehicles, etc. (See Labor Code section 6404.5; Government Code section 7597; Public Utilities Code sections 561 and 99580; Health and Safety Code section 118948; Vehicle Code section 12523.)
- This legislation does not apply to active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.
- This legislation states that a city or county shall not adopt any ordinance or regulation inconsistent with the new law; however, under Business and Professions Code section 22964, cities or counties may impose a more restrictive legal age to

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purchase or possess tobacco products. With regard to enforcement under your city or county ordinance or regulation that may be more restrictive than Penal Code section 308(a)(1)(A)(i) or the STAKE Act, please consult with your supervisor and city attorney or county counsel, where applicable.

- This legislation does not change or alter any law or regulation regarding the use of medical marijuana.
- Please keep in mind that while this new legislation has decriminalized the use of tobacco products by minors, the Education Code still prohibits schools from permitting smoking or use of a tobacco product by pupils of the school while on campus, or while attending school-sponsored activities, or while under the supervision and control of school district employees. (See Education Code section 48901(a).)

BOTTOM LINE: Under Penal Code Section 308, it is no longer illegal for minors (persons under the age of 21) to buy, possess, or use tobacco products; however, if a minor sells, gives or in any way furnishes tobacco products to another person under 21, he or she is in violation of Penal Code section 308(a)(1)(A)(i). In addition, "smoking" is now defined to include the use of an electronic smoking device.

This information is not intended as legal advice, but as a guide for law enforcement. For more information on the new legislation, refer to the California Department of Health's website at: <http://www.cdph.ca.gov/programs/tobacco/Pages/Tobacco21.aspx>.

KOH:hcp

cc: Mary Jane Burke, Marin County Superintendent of Schools