

See Red? Retailer Education Materials Sent To Help Retailers Comply With the Law

Retailers in West Virginia have received materials that will help them comply with state law (*WV State Code 16-9A-2(c)*) that prohibits the sale of tobacco products to youth under the age of 18.

Although many clerks already have other materials available to them, many are still unsure about *WV State Code 16-9A-2(c)* prohibiting the sale of tobacco products to minor youth and still, at times, get confused when checking birth dates on IDs. Due to high personnel turnover, many retailers have to train employees on a regular basis. The **See Red?** Retailer Education materials have been developed to assist retailers.

Funded with Federal Substance Abuse Prevention & Treatment (SAPT) block grant funds administered through the West Virginia Department of Health & Human Resources; Bureau for Behavioral Health & Health Facilities, the **See Red?** material is being sent to all retailers in the state. The retailer education material consists of two flyers (for display purposes), a brochure, and stickers for registers/door or point of sale to remind clerks/customers of the law.

Since retailers don't have a lot of time to spend reading through volumes of information, the **See Red?** material was developed for ease in reminding owners/corporations and their clerks not to sell tobacco products to customers under the age of 18. Citations issued for non-compliance with *WV State Code 16-9A-2 (c)* are issued to the clerk at the point of sale along with the store owner and/or corporation. *WV State Code 16-9A-2 (c)* specifies that subsequent violations at the same location or operating unit, firm, corporation, or individual will result in graduated penalties.

The message contained in the material tells the retailer to be aware that it is illegal to sell tobacco products to youth under the age of 18. Tobacco products include: cigarettes, cigarette papers, pipes, cigars, blunts, small cigars (cigarillos), snuff, chewing tobacco, snus, e-cigarettes, vapor products (*WV State Code 16-9A-2 Amended March, 2014*) and other types of tobacco products. Retailers are also advised to always ask for ID when selling tobacco products and to make sure that the ID isn't false.

The background of a WV Driver's license or WV-issued Non-Operator ID is **RED** for anyone under 18. The photos are also positioned vertically. In the upper right-hand corner is listed the 18th and 21st birth days for that youth. Again, if a youth tries to purchase a tobacco

product before the date listed as their 18th birthday, it means that the youth is not old enough to purchase tobacco products. When the clerk sees a red background on the license or non-operator ID, that's a red flag to carefully look at the date of birth.

According to *WV State Code 16-9A-2 (e)*, (Amended March, 2010), any employer who discovers that his or her employee has sold or furnished tobacco products to minor youth may dismiss such employee for cause. Any such discharge shall be considered as 'gross misconduct' for the purpose of determining the discharged employee's eligibility for unemployment benefits in accordance with the provisions of *WV State Code 16-9A-2 (e)*, if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.

Federally-mandated compliance inspections are implemented throughout the year by various agencies in order to monitor compliance with *WV State Code 16-9A-2(c)* and federal FDA regulations. Any clerk who sells tobacco products to a youth compliance inspector during Synar compliance inspections will be cited, on the spot, by a WV State Trooper. The store owner/corporation will also be cited. The clerk/store owner/corporation will not only have to pay a fine but will also have to pay court costs.

There are a number of reasons not to sell tobacco products to youth under the age of 18. It's against the law. We don't want retailers to get in trouble. It's harmful to kids' health. And, West Virginia could lose \$3.5 million annually in federal block grant dollars for treatment and prevention services should the state-wide non-compliance (RVR—retailer violation rate) be more than 20%.

Additionally, with the enactment of the *Family Smoking Prevention and Tobacco Control Act*, the U.S. Food and Drug Administration (FDA) **requires** that retailers verify the age of purchasers of cigarettes or smokeless tobacco who are under the age of 27 by means of photographic identification that contains the bearer's date of birth. For additional information on retailer requirements/penalties of the *Family Smoking Prevention and Tobacco Control Act*, log onto www.fda.gov/tobacco. The FDA implements tobacco compliance inspections as well as advertising and labeling inspections. The **See Red?** material will assist retailers in complying with state and federal tobacco compliance inspections.