

A Tool for Reducing Youth Access to Tobacco: The Tobacco Retailer License
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The West Virginia Bureau for Behavioral Health and Health Facilities (BHHF) and the West Virginia Bureau for Public Health (BPH) continue in a strong collaborative effort for tobacco prevention and cessation efforts in West Virginia. We recommend that the State adopt and enforce strong tobacco retailer licensing ordinances in order to reduce the illegal sales rate of tobacco to minors and to encourage compliance with all local, state and federal tobacco laws.

I. The Problem of Youth Tobacco Use

Despite long-standing state laws prohibiting tobacco sales to minors, youth continue to obtain cigarettes and other tobacco products at alarming rates. Each year in the United States, minors 12 to 17 years of age consume about 924 million packs of cigarettes, yielding the tobacco industry over \$500 million in illegal profits from underage smokers.

Preventing the use of tobacco products by young people provides an important opportunity to reduce or prevent the death and disability that potentially accompany tobacco use. One part of a comprehensive strategy to reduce youth tobacco use is to reduce youth access to tobacco products. Recent research has shown that youth who perceive easy access to tobacco products through retailers are more likely to acquire and experiment with these products thereby increasing their risk for smoking initiation.

Selling tobacco to kids has been illegal for more than 100 years, yet nearly half of youth smokers report buying their own cigarettes. West Virginia State Code (16-9A-2) is very clear: It is “illegal to sell, give, or furnish any tobacco product to any person under the age of 18.” It is also illegal for any person under the age of eighteen to use or possess any tobacco products.

According to the BHHF, the illegal 2010 sale rate to minors (for annual, federally-mandated Synar compliance inspections) in West Virginia is 14.6 percent (reported retailer violation rate, or RVR). According to the State Alcohol Beverage Control Agency’s tobacco compliance inspections, the overall RVR for illegal sales to youth in 2010 was reported at 14.42%.

In other words, stores in West Virginia sell tobacco to youth one in every seven times they try to buy cigarettes. There currently is not an ‘official’ certificate or license required of tobacco retailers in West Virginia, or any provision to allow a revocation of the ability to sell tobacco products of any merchant repeatedly in violation of illegal sales to youth.

An additional issue is that there is no law that requires store clerks to be eighteen years of age in order to sell tobacco products as is required for the sale of alcohol products.

II. Benefits of Tobacco Retailer Licensing

A licensing ordinance or law that requires all businesses selling tobacco products to obtain a license is a tool that can reduce illegal tobacco sales to minors and increase compliance with local, state and federal tobacco laws.

A. Identification of retailers: A licensing requirement can generate an accurate list of tobacco retailers in a community on an annual basis that can be used to educate, monitor and encourage retailers to comply with tobacco laws. The list can be updated when new businesses apply for local licenses, and when businesses renew their licenses. An accurate retailer list is also required for federal Block Grant purposes and requirements such as required coverage studies which are required every three years.

B. Education of retailers: The licensing process can be used to conduct merchant education regarding the rules and regulations surrounding tobacco sales. These efforts can be positively implemented by community and regional coalitions and other groups. The licensing authority can send out a letter or other educational materials each year to an accurate list of tobacco retailers in order to assist retailer compliance with WV State Code 16-9A-2.

C. Monitoring retailers: Licensing can establish a methodical and ongoing process to monitor compliance with tobacco laws. Assistance and resources can then be provided to those retailers who need additional technical assistance.

D. Encouragement of compliance: A tobacco retailer's license is a powerful tool for encouraging retailers to comply with all existing tobacco-related laws, including no-sales to minors laws and laws and ordinances prohibiting self service displays of tobacco products. Such an ordinance can provide for the suspension or revocation of the license if the merchant sells tobacco to minors or violates other local, state, or federal laws related to tobacco. In this way, a licensing ordinance creates a greater financial deterrent than a fine to discourage retailers from violating the law. For many merchants, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products costs far more than a fine of several hundred dollars. Put another way, the threat of license suspension or revocation encourages compliance with federal, state and local tobacco laws, regulations.

III. Key Provisions

At a minimum, the following provisions should be incorporated into a licensing law:

A. Require compliance with all local, state and federal tobacco control and signage laws and with other relevant laws governing the sale of products that are illegal for minors as a condition of holding the license.

B. Impose meaningful penalties on retailers who violate the law, such as suspension periods during which tobacco products cannot be sold to anyone. For example:

1. First violation: suspension of the license for up to 30 days.

2. Second violation within 24 months of the first violation: suspension of the license for up to 60 days.

3. Third violation within 24 months of the first violation: suspension of the license for up to one year.

4. *Graduated suspension of the sale of lottery tickets for retailers who sell tobacco products to minor youth. *this has served as a great deterrent in other states and has dramatically lowered their RVR rate.*

C. Fund a portion of the enforcement and administration of the licensing program through the licensing fee. Authors suggest a \$100 license fee per individual retailer.

D. Require a minimum number of annual enforcement operations to be conducted by Federal, State and/or local enforcement agencies, including site inspections for licensing, signage and self service displays. Require a minimal number of undercover buys to establish the level of compliance, or base line, with no sales to minors laws. It is suggested that every retailer have between one and three undercover buy operations per store annually, and between one and two site inspections.

E. Require removal of tobacco products and advertising for suspended or revoked licenses for the duration of the suspension period.

F. Provide for private enforcement of license violations in both magistrate and/or small claims court (so that residents of the local community can assist in enforcing the law/ ordinance) and allow for establishment of appropriate administrative fines.

IV. Conditions of the License

A tobacco retailer's license ordinance can enhance retailers' compliance with all local, state and federal tobacco laws, and with laws that govern the sale of products that are illegal for minors (e.g. alcohol). In addition to the basic provisions stated above, tobacco retailer licenses can require retailers to meet certain conditions in order to maintain the license. For example, banning "help yourself" displays of tobacco and requiring employees to get the products for customers reduces youth access to cigarettes, chew, cigars and other forms of tobacco. By moving the tobacco into limited access areas, it is more likely that clerks will check for identification and thereby comply with federal and state laws prohibiting sales to minors and. Fewer self service displays translate into fewer underage sales because the clerk has a reminder to check the customers' identification.

V. Enforcement

Enforcing a tobacco licensing law is essential to increasing compliance with tobacco sales laws. This point cannot be overstated. Costs associated with implementing and enforcing a tobacco retailer licensing ordinance include:

A. Administration of the license. An entity of the local jurisdiction must develop and implement the application process and the distribution of the licenses themselves.

B. Site inspections to check for posting of the license and compliance with other tobacco sales laws. An entity or contractor of the federal or state government should conduct site inspections to verify that the license is posted and that other laws are being obeyed, including the ban on self service displays of tobacco products and signage laws. Law enforcement does not necessarily need to be involved in this aspect of enforcement, but it can be.

C. Undercover buy operations to test compliance with no-sales to minors laws should be frequently done.

D. Data collection. The entity charged with overseeing the program must be prepared to keep records of the names and locations of tobacco retailers, details about site inspections and undercover buy operations, and the prosecution of violations.

Overall, the licensing fees themselves can only partially cover the costs of implementing and enforcing a tobacco retailer licensing ordinance.

VI. Resources

See Red? Retailer Education materials, funded with Federal Substance Abuse Prevention & Treatment (SAPT) block grant funds administered through the West Virginia Department of Health and Human Resources; Bureau for Behavioral Health and Health Facilities, is sent to all 'eligible for inspection' retailers in the state. Due to high personnel turnover, many retailers have to train employees on a regular basis. The **See Red?** Retailer Education materials have been developed, and distributed state wide, in order to assist retailers. The material includes a brochure, register stickers, and flyers that have been developed to assist retailers to stay in compliance with the law. Retailers themselves have had input into the development and revision of the material. 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, and chewing tobacco which includes snus and other types of tobacco products. Retailers are also advised to always ask for ID when selling tobacco products and make sure that the ID isn't false. The WV Graduated Driver's license for youth under the age of 18 has a vibrant red background with a yellow bar along the side of the photo that shows the date the person turns 18 ('Turns 18 On ____'). The clerk is encouraged to closely check the date of birth using the color coding (background of the license) as a red flag. They are also advised that if a youth doesn't have an ID, not to sell. It's not worth the risk of being fined or being fired. Additionally, a grantee in Region I, United in Prevention, has developed merchant education for retailers in the sixteen counties that they serve. Their merchant education emphasizes the vertical of the facing UP shape of minor ID's. They also emphasize the red color of the background of the ID and the yellow bar next to the photo stating the youth's birth date that works in conjunction with the **See Red?** materials.

Tobacco Control Legal Consortium, *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool (2010)*.

U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), FFY 2009 Annual Synar Report, *Youth Tobacco Sales (2010)*

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