

In the matter of
CVS Pharmacy, Inc.

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is entered into between the Attorneys General of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and CVS Pharmacy, Inc., a corporation incorporated under the laws of Rhode Island, on its own behalf and on behalf of its store subsidiaries and affiliates (hereafter referred to as “CVS” or the “Company”).

WHEREAS, the undersigned Attorneys General allege that:

- more than 80% of regular adult smokers began smoking as children; and
- every day in the United States more than 2,000 children begin smoking cigarettes, and one third of those children will one day die from a tobacco-related disease; and
- it has been shown that the younger a person begins smoking, the more likely it is that he or she will be unable to quit later in life and will suffer a disease attributable to tobacco use; and
- recent studies indicate that youth demonstrate signs of addiction after smoking only a few cigarettes; and
- the federal Food & Drug Administration (“FDA”) data indicates that, as an average among U.S. retailers, one in every four attempts by a person 15 to 17 years old to purchase cigarettes over the counter results in a sale; and
- an estimated 690 million packs of cigarettes are sold illegally to children each year nationwide; and
- more than 400,000 Americans die each year from diseases caused by tobacco use; and

WHEREAS, the Company is a retailer of tobacco products, among other things; and

WHEREAS, an analysis performed by the Attorneys General of compliance check data collected by state and local authorities indicates that retail outlets owned or operated by the Company made tobacco sales to persons under the age of 18 in controlled compliance checks; and

WHEREAS, the Attorneys General claim that such sales, and/or the corporate policies and practices that result in such sales, violate the Consumer Protection statutes¹ and/or other laws of their respective States; and

WHEREAS, the Company does not admit liability for any of the acts or practices described or referred to herein; and

WHEREAS, the Company reaffirms its continuing commitment to responsible marketing of this age-restricted product and to the health and welfare of our nation's youth, and is committed to employing and enhancing tobacco retailing practices that are designed to prevent the sale of tobacco products to minors;

NOW, THEREFORE, the Attorneys General and the Company as part of their efforts to address the nationwide problem of the sale of tobacco products to minors agree as follows:

¹ § 8-19-1 et seq., Code of Alabama (1975) (AL); A.R.S. § 44-1521 et seq. (AZ); Arkansas Code Annotated 4-88-101 et seq. (AR); Cal. Bus. & Prof. Code § 17200 et seq. (CA); Colorado Consumer Protection Act, §§ 6-1-101 et seq., C.R.S. (2005) (CO); Conn. Gen. Stat. § 42-110a et seq. (2005) (CT); 6 Del. C. Ch. 25, Commerce and Trade; Prohibited Trade Practices (DE); District of Columbia Consumer Protection Procedures Act, D.C. Official Code § 28-3901 et seq. (2001) (DC); Fla. Stat. Ann. §501.201 et seq. (West) (FL); Haw. Rev. Stat. § 481A-1 et seq. (HI); Idaho Code Section 48-601 et seq. (ID); Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 et seq. (IL); Iowa Code § 714.16 (2005) (IA); K.S.A. 50-623, et seq. (KS); KRS 367.110-367.300 (KY); La. Rev. Stat. Ann. §51:1401 et seq. (West) (LA); 5 M.R.S.A. § 203-A, 5 M.R.S.A. § 210, 5 M.R.S.A. §§ 205-A-214 and 10 M.R.S.A. § 1211 (ME); Maryland Annotated Code, Commercial Law Article, §§13-101 et seq. (MD); Michigan Consumer Protection Act, MCL 445.901 et seq. (MI); Minn. Stat. §§ 325F.68-.69 (prevention of consumer fraud) and Minn. Stat. §§ 325D.43-48 (Uniform Deceptive Trade Practices Act) (MN); Miss. Code Ann. 75-24-1 et seq. (MS); Mont. Code Ann. § 30-14-101 et seq., Mont. Code Ann. (2005) (MT); Neb.Rev.Stat. § 87-301 et seq. (Reissue 1999; Cum. Supp. 2004) (NE); Nevada Revised Statutes Chapter 598 (NV); NH Rev.Stat.Ann. 358-A (1995 Michie Butterworth, and Supp. 2005 West) (NH); N.J.S.A. 56:8-1 et seq. (NJ); NMSA 1978 §§ 57-12-1 et seq. (NM); New York Executive Law § 63(12) and General Business Law Article 22-A (NY); Ohio Revised Code Chapter 1345.01 et seq. (OH); 15 O. S. (2001) § 751 et seq. (OK); ORS 646.605, et seq. (OR); Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq. (PA); R.I. General Laws §§ 11-9-13, 11-9-13.1 through 11-9-13.16, and 11-9-14 (RI); S.C. Code Ann., § 39-5-10 et seq. (1976, as amended) (SC); S.D. Codified Laws Chapter 37-24 (SD); Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 et seq. (TN); Tex. Bus. & Com. Code Ann. §17.41 et seq. (Vernon 2002 and Supp. 2005) (TX); Utah Code Ann. §§ 13-5-1 through 13-5-18 & 13-11-1 through 13-11-23 (UT); Vermont Consumer Fraud Act, 9 V.S.A. § 2451 et seq. (VT); Virginia Consumer Protection Act, Va. Code §§ 59.1-196 through 59.1-207 (VA); Wash. Rev. Code Ann. § 19.86.100 (WA); W. VA Code 46A-1-101 et seq. (WV); Wis. Stat. § 100.18(1) (WI); Wyo. Stat. § 40-12-101 et seq. (WY). For those states in which CVS has no retail outlets as of the date this Assurance is executed, the Assurance shall apply if and when CVS develops or acquires a retail outlet in such state.

I. DEFINITIONS

(A) The term "Attorney General" refers to an Attorney General who is a party to this Assurance of Voluntary Compliance, and the term "Attorneys General" refers collectively to all such parties.²

(B) The term "business day" means a day which is not a Saturday or Sunday or legal holiday on which banks are authorized or required to close in New York, New York.

(C) The term "Compliance Officer" refers to the person appointed by the Company pursuant to paragraph V.A.1.

(D) The term "electronic age verification devices and systems" means cash registers or computerized point of sale ("POS") systems that assist a clerk in verifying the age of the customer.

(E) The term "Independent Entity" means an entity that is not owned by or affiliated with the Company and which conducts the external compliance checks described in Part IV.A.

(F) The term "minor" means a person under the legal age for purchasing tobacco products in the jurisdiction where the purchase is made or attempted to be made.

(G) The term "person experienced in providing youth access training" means someone who has a thorough understanding and working knowledge of the information and possesses the skills necessary to train others.

(H) The term "smoking paraphernalia" means pipes, cigarette rolling papers, and cigarette rolling machines.

(I) The term "third party sale" means an adult purchasing tobacco products or smoking paraphernalia in order to furnish it to a minor.

(J) The term "tobacco product" is intended to include cigarettes of all kinds (including bidis), cigars, loose tobacco, chewing tobacco, snuff, and any other form of tobacco.

(K) The term "vending machine" means a mechanical or electrical device from which one or more tobacco products are dispensed in exchange for consideration.

² Connecticut is represented by the Commissioner of the Connecticut Department of Consumer Protection, who enters into this Assurance pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110j, acting by and through his counsel, Richard Blumenthal, Attorney General for the State of Connecticut. In this Assurance, the designation "Attorney General," as it pertains to Connecticut, refers to the Commissioner of the Connecticut Department of Consumer Protection. With regard to Virginia, this document will be titled an "Agreement."

(L) The term "youth access" is used herein as a shorthand reference to age restrictions on tobacco products only.

II. PERSONNEL PRACTICES RELATING TO THE SALE OF TOBACCO PRODUCTS TO MINORS

The Company agrees to commence implementation of the following personnel practices relating to the sale of tobacco products in accordance with Part VI.B.:

A. Hiring

1. Upon hiring, the Company shall inform new employees for positions that involve selling tobacco or supervising anyone who sells tobacco of the importance of compliance with laws relating to youth access. The information the Company provides shall include references to company policies, legal consequences, and health concerns associated with youth access.

2. The Company shall attempt to minimize the use of persons under the legal age for purchasing tobacco in positions that may involve the sale of tobacco products.

3. The Company shall ask all applicants for positions that involve the selling of tobacco or supervising anyone who sells tobacco about past violations of prohibitions on selling or supplying tobacco to minors by that person or anyone under that person's supervision. The Company shall give any such violations consideration in the hiring decision.

B. Training

1. Before assuming any job duties that involve or may involve the sale of tobacco, an employee shall have received the following training in the laws and company policies relating to tobacco and shall be required to provide an acknowledgment in writing or electronically that he/she has read and understands the information.

2. Such training shall be performed by a person experienced in providing youth access training, and shall include, at a minimum, the following components:

(a) A review of applicable federal, state, and local laws relating to youth access;

(b) A review of all Company policies relating to youth access;

(c) An explanation of the health-related reasons that the law and Company policy deem youth access an important matter, which shall include the following topics:

(i) the age of most beginning users (approximately 80% of adult smokers started smoking before the age of 18);

(ii) the fact that nicotine is addictive, and that young people may show signs of addiction after smoking only a few cigarettes or using smokeless tobacco products for only a short time;

(iii) the fact that the younger a person becomes a regular tobacco user, the more likely it is that he or she will become addicted for life and that he or she will suffer serious health damage; and

(iv) the fact that more than 400,000 Americans die each year from tobacco-related diseases;

(d) A review of the Company's disciplinary policies for failure to comply with the Company's policies relating to youth access;

(e) A review of the range of tobacco products and smoking paraphernalia, to which Company policies and/or youth access laws apply;

(f) A review of identification procedures including:

(i) the age that triggers the I.D. requirement (see paragraph III.E.2.);

(ii) acceptable forms of I.D. (as listed in paragraph III.E.7.);

(iii) features of an I.D. that must be checked, with particular emphasis on the government-issued forms of identification most commonly possessed by adults in the market area;

(iv) how to tell if an I.D. may have been altered or is being misused; and

(v) what to do if an I.D. appears altered or misused.

(g) An explanation of the fact that many illegal sales are made to minors who produce I.D.'s showing that they are in fact under the legal age, and the importance of devoting the time and effort needed to perform the necessary calculation to establish that a customer is of legal age;

(h) A review of prescribed methods, practical techniques, and stock phrases (where appropriate) for handling the following recurring situations:

(i) asking for I.D.;

(ii) making the necessary age calculation;

(iii) declining to make a sale based on concerns relating to whether the I.D. has been altered or is being misused;

(iv) declining to make a sale for failure to have an I.D.;

(v) recognizing a potential "third party" sale;

(vi) declining to make a sale that appears to be a "third party" sale;

- (vii) declining to make a sale of smoking paraphernalia;
- (viii) resisting customer pressure and handling a customer's abusive conduct; and
- (ix) contacting the police when appropriate to do so;

(i) Instruction that an employee is not required to make a tobacco sale, and must decline to do so, if the circumstances reasonably suggest that doing so would violate the laws or Company policies regarding youth access; and

(j) Instruction on the proper use of electronic age verification devices and any other systems employed by the Company in connection with age screening for the purchase of tobacco products.

3. In the case of an employee who is eighteen (18) years old or younger, training shall also emphasize the special challenges associated with declining to sell tobacco to underage persons who are friends, acquaintances, and/or peer group members, and on techniques and methods for meeting such challenges.

4. The Company shall use a test (which may be in electronic form, including via an interactive voice response, or "IVR" telephone system) to establish that its employees have fully acquired the knowledge required to perform in accordance with the laws and Company policies relating to youth access. Employees with responsibilities relating to tobacco shall be required to pass this test upon completion of initial training and supplemental training pursuant to paragraph II.B.5. Thereafter the Company shall obtain an acknowledgment in writing or electronically (which may include IVR) every six (6) months from employees with responsibilities relating to the sale of tobacco that he/she has read and understands the laws and Company policies relating to youth access. The Company shall retain for three (3) years the test results and acknowledgments completed by each employee.

5. The Company shall provide supplemental training to any employee it desires to retain who:

- (a) allegedly sells tobacco products to a minor or manages an employee who allegedly sells tobacco products to a minor, after the Effective Date of this Assurance, and the Company receives notice from a governmental agency of the alleged violation;
- (b) fails to pass an external compliance check as set forth in Part IV.A.; or
- (c) fails to pass the test described in paragraph II.B.4.

6. The Company shall provide all employees who sell tobacco or manage those who sell tobacco periodic refresher training (which may be a shortened version of the initial training described above) at least annually to ensure that they maintain the requisite knowledge, skill, and motivation.

C. Supervision

1. On-site supervisors shall be instructed to monitor staff compliance with youth access laws and policies on an on-going basis.
2. The Company shall minimize the use of persons under the age of 18 as supervisors of employees involved in the sale of tobacco products.

III. TOBACCO RETAILING POLICIES AND PRACTICES

A. Vending Machines

The Company shall not use vending machines to sell tobacco products.

B. Restricted Sales Area

1. The Company shall display tobacco products for sale in only one area of the store, except for those tobacco products that are displayed in the manner required by paragraph III.B.2.

2. Cigarettes, chewing tobacco, and snuff shall be displayed and stored in a manner that requires an employee's assistance in retrieving a product from a restricted access location and does not permit a customer to take possession of the product until the sale is completed.

C. Age Limitation on Sale of Smoking Paraphernalia

The Company shall have a policy requiring that no one under the legal age for purchasing tobacco products is permitted to purchase smoking paraphernalia.

D. Cooperation in Enforcement of Youth Access Laws

The Company shall have a policy requiring that store personnel make every reasonable effort to cooperate in the enforcement of applicable youth access laws.

E. Age Verification

1. The Company shall not sell tobacco products or smoking paraphernalia to minors.
2. The Company shall require its employees to obtain identification before sales are made from persons seeking to purchase tobacco products or smoking paraphernalia who appear to be under the age of 27 (or such higher age as the Company determines appropriate) in accordance with paragraph III.E.7.
3. The Company agrees to implement, to the extent practicable and in accordance with Part VI.B., an electronic age verification device and system by completing the programming of its cash registers to:

(a) lock when a tobacco product is scanned;

(b) prompt the employee to I.D. the customer;

(c) require the clerk to enter the birth date shown on the I.D. for customers seeking to purchase tobacco products who appear to be under the age of 27 (or such higher age as the Company determines appropriate), or, if it cannot be programmed in that manner, display the date on or before which the customer must have been born in order to make a legal tobacco purchase; and

(d) indicate whether the tobacco sale can proceed.

4. The Company shall use the cash register prompts provided for in paragraph III.E.3., so that each person with responsibility for selling tobacco is reminded prior to a sale of tobacco products of the importance of performing proper I.D. checks for tobacco purchases.

5. To the extent that the Company uses electronic age verification devices or systems that have the capacity to store data that would assist in evaluating whether the systems are being properly used by employees responsible for the sale of tobacco products, when appropriate it shall review such data periodically and provide remedial training and support, as necessary, for those employees who appear to need it.

6. Nothing in this assurance authorizes or sanctions the retention of personally identifiable information for marketing or other purposes.

7. Unless otherwise required by law, the Company shall have a policy that only the following forms of photo-I.D. are acceptable for purposes of establishing legal age to purchase tobacco: (a) Driver's License; (b) State-Issued Identification Card; (c) U.S. Passport; (d) Military Identification Card; and (e) U.S. Immigration Card. The I.D. must be current and valid.

F. Sale of Look-Alike Products

The Company shall not offer for sale candy, chewing gum, or like items designed to look like cigarettes.

G. Advertising

1. The Company shall limit tobacco signage to brand names, logos, and prices.

2. The Company shall ensure that all tobacco advertising signage inside the store is confined to the area where tobacco products are sold.

H. Placement of Minimum Age Signs

1. In addition to meeting whatever signage and posting requirements or restrictions may be embodied in local, state or federal law, the Company shall post signs stating that the Company will not sell tobacco products to persons under the minimum age for sale in the State where the store is located and that persons who appear to be under age 27 will be asked for identification before a sale is made.

2. The signs shall be placed at the following locations:

(a) on or at the front entrance window or front door by which a customer may enter the establishment (facing out),

(b) at each cash register at which tobacco products are displayed, and

(c) at each tobacco product display.

3. No later than 270 days after the Effective Date, signs placed in locations pursuant to paragraph III.H.2.(b) shall state that the Company will not sell tobacco products to persons under the minimum age for sale in the State where the store is located and that persons who appear to be under the age of 27 will be asked for identification before a sale is made.

I. Free Samples

The Company shall not permit the distribution of free samples of tobacco products anywhere on store premises, including walkways and any parking area controlled by the Company.

IV. MONITORING

A. External compliance checks

1. The Company shall implement and maintain a program of external compliance checks in the States whose Attorney Generals are parties to this Assurance designed to assist CVS in determining whether individual stores and their employees are in compliance with youth access laws and policies.

2. Compliance checks shall be unannounced. Procedures shall be adopted that ensure that employees whose compliance is being checked (both clerks and supervisors responsible for the performance of the clerks) have no reason to know that a given attempt to purchase tobacco is actually a compliance check.

3. The compliance check will determine whether the employee selling the tobacco product asked the purchaser to produce identification, whether the purchaser provided an acceptable form of identification (see paragraph III.E.7.), whether the employee checked the identification to verify whether the purchaser is of legal age, and whether the sale was