

**DLL Tobacco Compliance Testing
Results for Calendar Year 2022
As Required by 7 V.S.A. §1007(b)(3)**

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Published:
January 10, 2023

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**Report to the House Committee on General,
Housing & Military Affairs and Senate
Committee on Economic Development,
Housing & General Affairs**

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EXECUTIVE SUMMARY

Act 58 Report Summary 2022

The Department of Liquor and Lottery (“DLL”), Office of Compliance and Enforcement (OCE) conducted 615 tobacco compliance tests in 2022. OCE performs these checks as required by Act No. 58 (1997) codified at 7 V.S.A. §1007(b)(3).

The overall percentage of compliance for the state during calendar year 2022 was 85.04%. 7 V.S.A. §1007(b)(1) describes a target compliance rate of 90%, compliance for 2022 fell short of that metric by just under 5%.

It should be noted that the total number of licensees checked for tobacco compliance are made up of individual clerks who are trained by DLL via in-person seminars, through on-line training, trained by their employer, or in some cases, not trained at all. Staffing challenges post pandemic at various retailers may have influenced the compliance rate for 2022.

As part of the departments ongoing continuous improvement process, we have rolled out a new online licensing, education, and enforcement portal. Through the portal, the Department believes we will have better oversight of training provided by the employer (in-house training), ensuring that retailers who directly provide this training to their staff do so in a manner that is consistent with DLL provided training and follows DLL guidelines and procedures. The Department is introducing a new education initiative “[Just ask for ID](#)”. This campaign provides various educational materials, in store reminders, and so forth to retailers to reiterate this important step in the responsible regulated product sales process. DLL believes these steps will help improve the compliance rate in 2023.

BACKGROUND ON COMPLIANCE TESTING

Federal law requires that all states, as a condition of receiving substance abuse prevention and treatment block grant funding, comply with section 1926 of the Public Health Service Act, otherwise known as the "Synar Amendment." To meet this requirement, states must have demonstrated a measurable reduction in retail tobacco sales to underage youth in the years after the "Synar Amendment" and to demonstrate a continuation of the reductions in sales.

One major component of the federal requirement is that states must conduct a statewide retail compliance check survey. The purpose of this survey is to gather information regarding the prevalence of illegal retail sales of tobacco products to underage youth. This survey is conducted on an annual basis as an ongoing measure to gauge progress in decreasing the incidence of such sales. The information gathered in the survey is reported annually to the U.S. Department of Health and Human Services, in compliance with the federal Synar legislation. (1997 Synar, State of Wisconsin Website)

In July 1992, Congress enacted the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act (P.L.103-321), which includes an amendment (Section 1926) aimed at decreasing access to tobacco products among individuals under the age of 18. The Synar Regulation requires states to enact and enforce laws prohibiting any manufacturer, retailer, or distributor from selling or distributing tobacco products to individuals under the age of 18. The goal of the amendment is to reduce the number of successful illegal purchases by minors to no more than 20% in each state within a negotiated period. (Synar Regulation: Sample Design Guidance, Center for Substance Abuse Prevention, 1996)

Compliance testing procedures / DLL requires the following:

- That written parental permission be obtained for participating youth (minors).
- A copy of the participating youth's birth certificate and a photograph for DLL's file.
- That participating youth will be always supervised by a DLL Investigator. The Area Investigator will remain outside the establishment and in proximity. An additional enforcement officer enters the establishment as a witness to verify the events taking place and to assist in case the minor is threatened in any way.
- That participating youth will be given the money for the attempted purchase by a DLL Investigator. The Investigator notes the amount of money given to the youth prior to entering the establishment.
- That participating youth will be instructed **not to misrepresent** their age or pressure the clerk to sell tobacco products.
- That participating youth will present valid photographic identification, if asked, when attempting to purchase tobacco products.
- That if asked about his/her age, the youth will admit to their correct age.
- That upon entering the tobacco-selling establishment the youth will observe the clerk selling the tobacco products to obtain a good physical description.
- That after the purchase attempt, the youth will exit with or without the tobacco products.
- That if tobacco products are purchased, the product will be handled in accordance with DLL or FDA rules of evidence, depending on the program being tested.
- 99.9% of the time after conducting underage buy attempts, the Investigator will inform licensees who sold tobacco products to youths. A citation is issued to the clerk by the DLL Investigator who is then available to explain any penalties the licensee has incurred.
- The State pays the minors as Temporary State Employees.

NOTES ON THE AGES OF THE MINORS USED IN THE COMPLIANCE TESTS

When the DLL began conducting tobacco compliance tests in 1997, the age of the minors ranged from 14 to 17, with most minors being 15 or 16.

7 V.S.A. §1007 (b)(1) currently directs the DLL to carry out “...compliance tests of tobacco licensees as frequently and as comprehensively as necessary to ensure consistent statewide compliance with the prohibition on sales to persons under 21 years of age of at least 90 percent for buyers who are between 17 and 20 years of age.

Most minors used in the DLL’s first chewing tobacco underage compliance testing in November 1997, consisted of 15- and 16-year-olds. This was done so the chewing tobacco results could be compared with the cigarette tests without the distortion in comparative results that might occur if only 17-year-olds were used. During a recent legislative session, 7 V.S.A 1007(b)(1) was amended, and the age of minors used for the purposes of compliance checks is now between 17 and 20 years of age.

2022 TOBACCO COMPLIANCE DATA

The tobacco compliance tests were conducted from January 2022 through December 2022, during which time 615 licensees were tested. Of the 615 licensees tested, 92 licensees or 14.96% sold to a minor while 523 or 85.04% did not sell. The results were further analyzed revealing how many sellers asked the minor for an ID and how many did not, and what kind of seller training the responsible clerk received (following page).

Tobacco Compliance Test - Calendar Year 2022 615 Licensees Sampled

	Total Establishments	Failure Rate
Licensees Selling Tobacco to youth	92	14.96%
Licensees Not Selling Tobacco	523	85.04%

Of the tobacco licensees who sold tobacco products to the minors working with DLL Investigators, **33 asked** for valid photo identification which was provided, yet they still made the sale to the minor. **59 did not ask** for any type of identification and made the sale to the minor

	Total Establishments	Percentage Rate
Asked for ID	33	35.86%
Did Not Ask for ID	59	64.13%
Total:	92	100%

SELLER EDUCATION DATA

As of June 21, 2002, The DLL Office of Education has provided all entities engaged in the sale of tobacco products, tobacco substitutes, or tobacco paraphernalia the statutorily required ability to train staff in the responsible sale of those products. Since that time, the Office of Education has observed a strong correlation between education of licensees and their employees and increased success in compliance testing rates.

The Department sees this training as a crucial step in the compliance process. As part of our overall Alcohol Servers/Sellers programs, DLL Office of Education travels the State conducting seminars on tobacco and alcohol laws, delivers virtual instructor-led classes, and a self-paced online learning module. Tobacco Law is also a part of our overall Alcohol Servers/Seller programs. DLL also issues signage for stores stating the law regulating the sale of tobacco products (VSA Title 7 Chapter 40). Colored stickers and color-coded posters are issued as well, to help clerks calculate the date for tobacco and alcohol sales after reviewing birth dates on driver's licenses. The DLL recommends that these stickers and posters be prominently placed on or near the licensee's cash register to support and assist compliance efforts. Books are available showing forensic examples of all 50 states driver's licenses and various wall and counter posters on sales of tobacco to minors, to aid clerks in carrying out the laws regulating the sale of tobacco and alcohol.

DLL collects various data to inform our future training offerings and to measure the effectiveness of our current programs – following is a graphic from the 2022 seller education data collected on the 615 compliance checks performed.

Type of Training	Total Employees	Sold	Did not Sell	Compliance Rate
DLL IN-Person Seminar	11	4	7	63.63%
3 rd Party Online Seminar	39	4	35	89.74%
DLL On-Line Seminars	231	39	192	83.11%
Trained In-House	199	45	154	77.27%
Not Trained	22	10	12	54.54%
*Total	502	102	400	79.68%

*Does not include 113 "N/A" compliance checks – N/A checks are when an investigator is unable to complete the check for various reasons such as establishment closed, no longer selling tobacco, etc.

TOBACCO COMPLIANCE PROCEDURES

1. Written parental permission must be obtained.
2. Copy of participating minor's birth certificate and photograph for file.
3. Participating minor will be supervised **at all times** by a Liquor Control Investigator. Liquor Control Investigator may enter establishment shortly after minor enters.
4. Participating minor will be given the money for the attempted purchase. Investigator to note amount of money given to the minor prior to entering the establishment.
5. Participating minor will be instructed **not to misrepresent** their age or pressure clerk to sell tobacco products.
6. Participating minor will present valid photographic identification if asked when attempting to purchase tobacco products.
7. If asked about his/her age, the minor will admit to their correct age.
8. Upon entering the tobacco selling establishment the minor will attempt to observe the clerk selling the tobacco products to obtain a good description.
9. After the purchase attempt, the minor will exit with or without the tobacco products.
10. If tobacco products are purchased, the products are immediately handed over to the assigned Investigator and the minor then completes the Minor Narrative Report form.
11. Payment will be delivered to participating minor at a later date.
12. The minor information sheet for each participating minor will need to be submitted to the Montpelier office in order for payment to be remitted.
13. The participating minor understands that he or she must maintain confidentiality regarding Division of Liquor Control's procedures and involvement with the FDA Tobacco Compliance Program with the State of Vermont.

I, _____, acknowledge that I have read and have had these
procedures

Explained to me by Investigator _____ and that I understand them.

Signature

Date

TOBACCO COMPLIANCE VIOLATION PENALTY SCHEDULE

Administrative Compliance penalty schedule for tobacco licensees, for failing a State conducted "compliance check" as imposed by the Board of Liquor and Lottery.

1 st Offense	Warning
2 nd Offense	\$100 Administrative Penalty
3 rd Offense	\$250 Administrative Penalty
4 th Offense	\$500 Administrative Penalty
5 th Offense	\$750 Administrative Penalty
6 th Offense	Mandatory Hearing

Note: The Licensee may appeal to the Liquor Control Board ("Board") at any time for a hearing on the merits, at which time, if the Board determines that a violation has occurred, it will impose such penalty as in its discretion it deems appropriate. The Board will also take into account any mitigating circumstances such as the licensee's history of compliance.

Any violation by a tobacco licensee (7 V.S.A. 1007(b)(2)) after a first sale violation or during a compliance test conducted within six months of a previous violation shall be considered a multiple violation and shall result in the minimum license suspension in addition to any other penalties available under this title. Minimum license suspensions for multiple violations shall be assessed as follows: Two violations- Two weekday, Three violations- 15 Day Suspension, Four violations- 90 Day Suspension, Five violations- 1 Year Suspension. See table below:

1st Offense:	Warning
2nd Offense:	Two Weekday Suspension
3rd Offense	15 Day Suspension
4th Offense:	90 Day Suspension
5th Offense:	1 Year Suspension