



Department of Liquor Control

**Report to the House Committee on General,
Housing & Military Affairs, Senate Committee on
Economic Development, Housing & General
Affairs, & Tobacco Evaluation Review Board
on
Tobacco Compliance Tests Conducted During
Calendar Year 2015**

January 15, 2016



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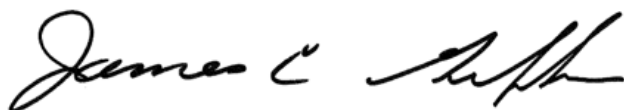
House Committee on General, Housing & Military Affairs

Senate Committee on Economic Development, Housing & General Affairs

Tobacco Evaluation & Review Board

Pursuant to Section 38 of Act No 139 of 2012 and 2 V.S.A. § 22, there is enclosed our Department's report on tobacco compliance tests conducted during the calendar year 2015.

Sincerely,



James Giffin
Interim Commissioner of Liquor Control



Act 58 Report Summary-2015

The Department of Liquor Control conducted tobacco compliance tests as required by Act No. 58 of 1997 for the calendar year of 2015. The overall percentage of those licensees who did not sell tobacco to minors was 88%. It should be noted that the total number of licensees checked for compliance are made up of individual clerks who are trained by DLC via in person seminars or through internet training, trained by their employer, or not trained at all. Also, Vermont is one of a few States to use 17-year olds exclusively for compliance tests. Vermont's compliance data is statistically incomparable to that of other states using 15 and 16-year-old minors.

As of July 1, 2008, the Department of Liquor Control issued tobacco licenses after the Legislature passed H149. This allowed the Department to have a more accurate database of information for licensing and compliance testing.

Some national studies (Fichtenberg CM, Glantz SA. *Pediatrics*. 2002 Jun; 109(6):1088-92. PMID: 1204257; Forster JL, Wolfson M. Youth access to tobacco: Policies and politics. *Annual Review of Public Health*. 1998; 19:203-235) indicate that strong enforcement of youth access does not affect youth smoking have therefore had little impact upon teenage tobacco use rates (in part because of a shift to social sources when commercial sources are less plentiful). The Vermont Department of Liquor Control (DLC) has observed a strong correlation between education of licensees and their employees and increased success in compliance testing rates. For licensees educated by Vermont Department of Liquor Control's Education Division, rates of tobacco compliance have consistently (over the past 12 months) exceeded a 90% success rate, with an average of 94% (see attachments). The need to encourage licensees and their employees to attend DLC seminars is consistently underscored by this data.

Tobacco Compliance Tests Conducted During Calendar Year 2015

This report is called for by section 13 (c), Act No. 58 of 1997.

1. BACKGROUND: TOBACCO COMPLIANCE TESTS

“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." In order to meet this requirement, states must have demonstrated a measurable reduction in retail tobacco sales to underage youth in the years subsequent to 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. Named for its sponsor, Congressman Mike Synar of Oklahoma, 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 time period.” (Synar Regulation: Sample Design Guidance, Center for Substance Abuse Prevention, 1996)

In 2013 the Department was contracted by the FDA to conduct compliance tests and Advertising and Labeling inspections at locations licensed to sell tobacco, tobacco paraphernalia and tobacco substitutes. The testing under the contract began in earnest in September of 2014 once the Department was allowed to hire a Program Coordinator.

DLC Investigators participating in the FDA contract became Credentialed FDA Inspectors and during underage testing and Advertising & Labeling inspections have to identify themselves as such. Once testing is completed, Investigators become DLC Investigators and handle violations on the State level.

The rate for testing and inspections was contracted to be 50% underage buy attempts and 50% Advertising & Labeling inspections. Due to the fact that Vermont has for many years been ahead of the national curve for laws such as banning vending machines and single cigarette sales, no violations were found during Advertising & Labeling inspections. As a result, Vermont entered a new contact with FDA on October 1, 2015 to change the ratios from 50-50 to 75% underage buy tests and 25% Advertising and Labeling inspections. The Department will strive to conduct underage buy tests for the remaining 25% to gain 100% underage tests on all Vermont licensed tobacco licensees.

Tobacco Compliance Test Procedures

DLC, through the contract with FDA requires:

- That written parental permission be obtained for participating youth (minors).
- A copy of the participating youth's birth certificate and a photograph for DLC's file.
- That participating youth will be supervised **at all times** by a Liquor Control Investigator. The Area Liquor Control Investigator will remain outside the establishment and in close proximity. An additional enforcement officer enters the establishment as a witness to verify the events taking place and also 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 Liquor Control 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 FDA rules of evidence and will be bagged and tagged with an identifying sticker that will be placed on the product to identify it with the tobacco compliance report, to be completed immediately.
- 99.9% of the time after conducting underage buy attempts, the Liquor Control Investigator will inform licensees who sold tobacco products to youths. A citation is issued to the clerk by the Liquor Control 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 Department began conducting tobacco compliance tests in 1997, the age of the minors ranged from 14 to 17, with most minors being 15 or 16.

Section 2 (a), Act No. 58 of 1997 directs the Department to carry out “compliance tests of tobacco licensees as frequently and as comprehensively as necessary to assure consistent statewide compliance with the prohibition on sales to minors of at least 90 percent for 17-year old buyers.”

Section 13 (a) took effect on July 1, 1997, after the 1997 cigarette compliance test had been completed. This test was carried out to comply with the Federal Government’s Synar mandate. The Federal Government recommends that 15 and 16-year olds be used in the Synar tests, and most, but not all, of the minors in this test were 15 and 16.

The majority of minors used in the Department’s first chewing tobacco sting, 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.

The Department currently uses 17-year old minors exclusively.

4. TEST RESULTS FOR CALENDAR 2015:

Prior to the FDA contract being implemented in 2014, the Department used funds appropriated from the National Master Tobacco Settlement to comply with Act 58. These monies funded in part our tobacco compliance program and ongoing education efforts for tobacco and alcohol. When the funds were exhausted, funding continued through the Enforcement budget. All of Vermont’s underage

compliance testing for 2015 and future years will be funded through the reimbursable contract with the FDA.

The tobacco compliance tests were conducted from January 2015 through December 2015. The number of licensees sampled was 853 out of 982. Those who sold to 17-year-old minors were 105 or 12%. Those not selling to 17-year-old minors were 748 or 88%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows (See Attachments for details). Of the 105 licensees who failed the compliance test by selling to a minor, 75 asked for ID and 30 did not.

Tobacco Compliance Tests (January 2015- December 2015)-Calendar

# Licensees Sampled	853	87%
# Licensees who sold tobacco	105	12%
# Licensees not selling	748	88%

The Department of Liquor Control has a dedicated Education Unit that travels State wide conducting seminars on tobacco and alcohol laws. Tobacco Law is also a part of our overall Alcohol Servers Program. The Department issues signage for stores stating the law regulating the sale of tobacco products (VSA Title 7 Chapter 40). Colored stickers are issued as well, to help clerks calculate the date for tobacco and alcohol sales after reviewing birth dates on driver's licenses. DLC recommends that these stickers be prominently placed on or near the licensee's cash register to support and assist compliance efforts. Books are available showing all 50 states driver's licenses, as well as tear off sheets with dates for age calculation 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.

5. LEGISLATIVE CHANGES

- MANDATORY TOBACCO EDUCATION

The 2001-2002 legislature enacted mandatory tobacco education:

Sec. 2. 7 V.S.A. § 1002a is added to read:

§ 1002a. LICENSEE EDUCATION

(a) An applicant for a tobacco license that does not hold a liquor license issued under this title shall be granted a tobacco license pursuant to section 1002 of this title only after the applicant has met with a liquor control investigator for the purpose of being informed about the Vermont tobacco laws pertaining to the purchase, storage and sale of tobacco products. A corporation, partnership or association shall designate a director, partner or manager to comply with the requirements of this subsection.

(b) The holder of a tobacco license that does not also hold a liquor license issued pursuant to this title for the same premises shall:

(1) Complete the department's enforcement seminar at least once every three years. A corporation, partnership or association shall designate a director, partner or manager to comply with this subdivision.

(2) Ensure that every employee involved in the sale of tobacco products completes a training program approved by the department of liquor control before the employee begins selling or providing tobacco products, and at least once every 24 months thereafter. A licensee may comply with this subdivision by conducting its own training

program on its premises using information and materials furnished by the department of liquor control. A licensee who fails to comply with the requirements of this subsection shall be subject to suspension of the tobacco license for no less than one day.

Approved: June 21, 2002

- **COMPLIANCE TEST WARNING TO TOBACCO LICENSEES FOR 1ST OFFENSE**

Sec. 1. 7 V.S.A. § 236(b) is amended to read:

(b) As an alternative to and in lieu of the authority to suspend or revoke any permit or license, the liquor control board shall also have the power to impose an administrative penalty of up to \$2,500.00 per violation against a holder of a wholesale dealer's license or a holder of a first, second or third class license for a violation of the conditions under which the license was issued or of this title or of any rule or regulation adopted by the board. The administrative penalty may be imposed after a hearing before the board or after the licensee has been convicted by a court of competent jurisdiction of violating the provisions of this title. The board may also impose an administrative penalty under this subsection against a holder of a tobacco license for up to \$100.00 for a first violation and up to \$1,000.00 for subsequent violations. For the first violation during a tobacco or alcohol compliance check during any three-year period, a licensee shall receive a warning and be required to attend a department server training class.


Regulations: Effective September 1, 2005

Regulation 15: No person under sixteen years of age shall be permitted to sell alcoholic liquor or **tobacco** on a paid or voluntary basis within or in connection with the establishment of any licensee holding a second-class license.

Starting July 1, 2008, the Department of Liquor Control had sole authority to issue tobacco licenses. This allowed the Department to have a more accurate database of information for licensing and compliance testing. The Department started on-line training for tobacco effective December 2010.

6. COMPLIANCE TEST PLANS FOR CALENDAR YEAR 2016 The Department of Liquor Control will strive to test 100% of Vermont licensees to assure statewide compliance with the prohibition on sales to minors of at least 90% for 17-year old buyers. DLC will also continue its mandated education program to licensees and their employees. **The effectiveness of this program can be seen in recent statistics that show a 94% success rate for those licensee's employees who attend DLC seminars.**

Respectfully submitted,



James Giffin

Interim Commissioner of Liquor Control

January 15, 2016

ATTACHMENTS:

- **Tobacco Compliance Survey Results- 2013, 2014 & 2015**
- **Breakdown of how many tobacco licensees asked for ID's and how many did not ask for ID's.**
- **Education % and methods of training**
- **Procedures for Tobacco Purchase Compliance Survey**
- **Penalty Schedule For Tobacco Compliance Tests**

**Tobacco Compliance Survey Results by Month
January 2013 thru December 2013**

	Licensees Sampled	Licensees That Sold	Licensees That Did Not Sell
TOTAL	1265	118 = 9%	1147 = 91%

2013 Compliance Breakdown-Who Asked For ID and Who Did Not Ask For ID.

Of the 118 tobacco licensees who sold tobacco products to the 17-year-old minor working for DLC, **92 asked** for valid photo identification and made the sale. **26 did not ask** for any type of identification and made the sale.

<u>Who Asked:</u>	<u>92</u>	<u>78%</u>
<u>Did Not Ask:</u>	<u>26</u>	<u>22%</u>
Total:	118	

Vermont Department of Liquor Control
Education, Licensing and Enforcement

January 2013 thru December 2013 Employee Training

	Number of Employees	Sold	Did Not Sell	%
Tobacco				
Attended seminars	405	30	375	93
Online seminars	124	11	113	91
Trained in-house	687	63	624	91
Not trained	49	14	35	71

**Tobacco Compliance Survey Results by Month
January 2014 thru December 2014**

	Licensees Sampled	Licensees That Sold	Licensees That Did Not Sell
TOTAL	712	84 = 12%	628 = 88%

2014 Compliance Breakdown-Who Asked For ID and Who Did Not Ask For ID.

Of the 84 tobacco licensees who sold tobacco products to the 17-year-old minor working for DLC, **63 asked** for valid photo identification and made the sale. **21 did not ask** for any type of identification and made the sale.

<u>Who Asked:</u>	<u>63</u>	<u>75%</u>
<u>Did Not Ask:</u>	<u>21</u>	<u>25%</u>
Total:	84	

Vermont Department of Liquor Control
Education, Licensing and Enforcement

January 2014 thru December 2014 Employee Training

Number of	Employees	Sold	Did Not Sell	%
Tobacco				
Attended seminars	183	12	171	93
Online seminars	90	11	79	88
Trained in-house	393	57	336	85
Not trained	28	7	21	75

**Tobacco Compliance Survey Results by Month
January 2015 thru December 2015**

	Licensees Sampled	Licensees That Sold	Licensees That Did Not Sell
TOTAL	853	105 = 12%	748 = 88%

2015 Compliance Breakdown-Who Asked For ID and Who Did Not Ask For ID.

Of the tobacco licensees who sold tobacco products to the 17-year-old minor working for DLC, **75 asked** for valid photo identification and made the sale. **30 did not ask** for any type of identification and made the sale.

<u>Who Asked:</u>	<u>75</u>	<u>71%</u>
<u>Did Not Ask:</u>	<u>30</u>	<u>29%</u>
Total:	105	

Vermont Department of Liquor Control
Education, Licensing and Enforcement

January 2015 thru December 2015 Employee Training

Number of	Employees	Sold	Did Not Sell	%
Tobacco				
Attended seminars	221	13	208	94
Online seminars	108	13	95	88
Trained in-house	487	69	418	86
Not trained	38	10	28	74

**VERMONT DEPARTMENT OF LIQUOR CONTROL
Education, Licensing & Enforcement Division**

PROCEDURES FOR TOBACCO COMPLIANCE PURCHASE ATTEMPT

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 Department 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

Compliance penalty schedule for tobacco licensees, for failing a State conducted "compliance check" operation.

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

Any violation by a tobacco licensee (7 V.S.A. 1003a) 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: (1) Two violations- One weekday, (2) Three violations- Two weekdays, (3) Four violations- Three weekdays, (4) Five violations- Three weekend days, Friday through Sunday.

Or the Licensee may appeal to the 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.

Note 1: Mandatory training for the licensee, and its employees including the person who sold is required under the first and second offense for fine, suspension, or warning. The Department of Liquor Control will require that a list of all employees attending the mandatory training be sent to its offices in Montpelier.

Note 2: If no compliance test violation occurs during a 3-year period, the oldest compliance test violation will be removed from the licensee's history record of compliance. 7 V.S.A. § 236(b)