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Department of Liquor Control
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January 15, 2018

Vermont State House
115 State Street
Montpelier, VT 05633

To the Honorable:
House General, Housing & Military Affairs Committee
Senate Economic Development, Housing & General Affairs Committee
Vermont Tobacco Evaluation & Review Board

Honorable Committee and Board Members:

Pursuant to 7 V.S.A. §1007 (b)(3) enclosed is the Department of Liquor Control's report on tobacco compliance tests conducted during the calendar year 2017.

Respectfully submitted,

Sincerely,



Gary Kessler, Deputy Commissioner
Department of Liquor Control

Liquor Control Board:

Martin Manahan –Chair; Sam Guy, Martin Manahan, Julian Sbardella, Thom Lauzon - Members

**REPORT TO THE LEGISLATURE REGARDING
TOBACCO COMPLIANCE TESTING CONDUCTED
DURING CALENDAR YEAR 2017
AS REQUIRED BY 7 V.S.A. §1007(B)(3)**

**Submitted to the
House General, Housing & Military Affairs Committee,
Senate Economic Development, Housing & General Affairs Committee,
Tobacco Evaluation Review Board**

Department of Liquor Control

January 15, 2018

2017 Report Summary

The Department of Liquor Control (“DLC”) conducted tobacco compliance tests as required by Act No. 58 (1997) codified at 7 V.S.A. §1007(b)(3). As required by statute the tobacco compliance tests were conducted from January 1, 2017 through December 31, 2017. The number of licensees sampled was 985. Of those 897 or 91.07% did not sell to minors. This result exceeds the standard of 90% compliance set out in statute. A total of 88 or 8.93% tested did sell to the minors. The results were further broken down revealing how many sellers asked purchasers for an ID and how many did not. Of the 88 licensees who failed the compliance test by selling to a minor, 49 asked for ID and 39 did not.

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 (14% of the tested sample), through on-line training (22% of the tested sample), trained in-house by their employer (60% of the tested sample), or not trained at all (4% of the tested sample). The DLC has observed a strong correlation between the method of training for employees and their success in compliance testing. For licensees educated at an in-person training provided by DLC’s Education Division, rates of tobacco compliance over the past 12 months exceeded 95%. This higher success rate over the years demonstrates the superiority of the DLC supplied training over in-house training and no training. This is the primary driver behind DLC’s efforts to require either in-person or on-line training for every tobacco seller and in so doing to establish a reduce period of time that in-house provided training will be valid.

In 2008 the DLC was given the responsibility for the issuance of tobacco licenses. This provides the DLC with a more complete and accurate database of information for licensing and compliance testing. In 2017 Title 7 VSA 1007(b)(1) was amended to now allow both 16 and 17-year-old minors to conduct compliance checks and both 16 and 17-year-olds were employed in the reported compliance test results.

Tobacco Compliance Tests Conducted During Calendar Year 2017

This report is called for by section 13(c), Act No. 58 of 1997 codified at 7 V.S.A. §1007 (b)(3).

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.

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 time period. (Synar Regulation: Sample Design Guidance, Center for Substance Abuse Prevention, 1996)

Tobacco Compliance Tests Results January 2017 - December 2017

Licenses Tested	985	
Licenses who sold tobacco	88	8.93%
Licenses who did not sell	897	91.07%

For the DLC social responsibility is key component of its overall mission. To help further that social responsibility mission the DLC maintains a dedicated Education Unit that travels the State conducting seminars on tobacco and alcohol laws. Tobacco Law is also a part of our overall Alcohol Servers Program. The DLC issues signage for stores stating the law regulating the sale of tobacco products (VSA Title 7 Chapter 40). Colored stickers are issued to help clerks calculate the date for tobacco and alcohol sales after reviewing birth dates on driver's licenses. The DLC recommends that these stickers be prominently placed on or near the licensee's cash register to support and assist compliance efforts.

The effectiveness of this program can be seen in recent statistics that show a 95.8% success rate for those licensee's employees who attend a DLC in-person seminar and pass the required examination.

ATTACHMENTS:

- Tobacco Compliance Survey Results for 2017
- Education and methods of training
- Penalty Schedule for Tobacco Compliance Tests
- Procedures for Tobacco Purchase Compliance Survey

Tobacco Compliance Survey Results January 2017 thru December 2017

	Licensees Tested	Licensees That Sold	Licensees That Did Not Sell
TOTAL	985	88 = 8.93%	897= 91.07%

Tobacco Training	Number of Employees	Sold	Did Not Sell	%
Attended in-person seminars	143	6	137	95.8
Online seminars	216	14	202	93.5
Trained in-house	588	62	526	89.5
Not trained	38	6	32	84.2
Totals	985	88	897	91.07

2017 Compliance Breakdown-Who Asked for ID and Who Did Not Ask for ID

Of the tobacco licensees who sold tobacco products to the minors working for DLC, **49 asked** for valid photo identification which was provided, yet they still made the sale. **39 did not ask** for any type of identification and made the sale.

Who Asked for ID:	49	56%
Did Not Ask for ID:	39	44%
Total:	88	100%

TOBACCO COMPLIANCE VIOLATION PENALTY SCHEDULE

Compliance penalty schedule for tobacco licensees for failing a State conducted compliance check

1 st Offense:	Warning
2 nd Offense:	\$100 fine
3 rd Offense:	\$250 fine
4 th Offense:	\$500 fine
5 th Offense:	\$750 fine
6 th 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. A Licensee may appeal to the Liquor Control Board (“Board”) 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.

In a separate report submitted to the Legislature in 2018 examined the sufficiency of penalties and fines under the authority of the DLC. Based on this examination a recommendation was made to lengthen the existing six-month period that a violation remains on a licensee’s record to three years as this will allow a more meaningful opportunity to gauge compliance. Presently it is very rare for a licensee to accumulate even a second offense as a direct result of the very short time that a violation remains on record. By extending the length of time a violation stays on a licensee’s record the DLC believes that an incentive will be created that will result in an increase to the compliance rate.

Compliance penalty schedule for a store clerk failing a State conducted tobacco compliance check

1 st Offense	\$100 maximum fine
2 nd and subsequent offense	\$500 maximum fine

The DLC believes that the \$100 fine levied on a store clerk who sells tobacco products to a minor creates a meaningful incentive that encourages store clerks to properly check ID prior to making a sale.

VERMONT DEPARTMENT OF LIQUOR CONTROL

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