



**DEPARTMENT OF LIQUOR AND LOTTERY
DIVISION 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 Testing Conducted During
Calendar Year 2018
As Required by 7 V.S.A. §1007(b)(3)**

January 4, 2019





State of Vermont
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State of Vermont
House Committee on General, Housing & Military Affairs
Senate Committee on Economic Development, Housing & General Affairs
Vermont Tobacco Evaluation & Review Board

Pursuant to 7 V.S.A. §1007 (b)(3) enclosed is our Department's Report on Tobacco Compliance Tests conducted during the calendar year 2018.

Sincerely,

Patrick Delaney
Commissioner,
Department of Liquor and Lottery

Liquor and Lottery Control Board:
Martin Manahan, Chair; Edward Flanagan, Sam Guy, Sabina Haskell, Thom Lauzon - Members



Act 58 Report Summary 2018

The Department of Liquor and Lottery, Division of Liquor Control (“DLC”) conducted Tobacco Compliance Tests as required by Act No. 58 (1997) codified at 7 V.S.A. §1007(b)(3) for the calendar year 2018. The overall percentage of those licensees who did not sell tobacco to minors was nearly ninety-two percent (91.91%). It should be noted the total number of licensees checked for compliance are made up of individual clerks who are trained by DLC via in-person seminars, through on-line training, trained by their employer, or not trained at all. Recent legislative changes to Title 7 VSA 1007(b)(1) now allow 16 and 17-year-old minors to conduct compliance checks.

As of July 1, 2008, the DLC was given the responsibility for the issuance of tobacco licenses. This allowed the DLC to have a more complete and accurate database of information for licensing and compliance testing.

The DLC has observed a strong correlation between education of licensees, their employees, and increased success in compliance testing rates. For licensees educated at an in-person or online training provided by DLC’s Education Division, rates of tobacco compliance over the past twelve (12) months was ninety-five percent (95%). The need to encourage licensees and their employees to attend DLC seminars is consistently underscored by this data.

DLC is committed to providing to the public data gathered from their respective compliance programs, including the Tobacco Compliance Program. DLC understands this data is useful for community stakeholders and local control commissioners alike. Near real-time compliance data is available at the Liquor Control website, at:

<https://liquorcontrol.vermont.gov/enforcement>.

Tobacco Compliance Tests

Conducted During Calendar Year 2018

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.”

(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 twenty percent (20%) in each state within a negotiated time period.” (Synar Regulation: Sample Design Guidance, Center for Substance Abuse Prevention, 1996).

Tobacco Compliance Test Procedures

DLC, through a 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 DLC Investigator. The Area 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 DLC 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 Investigator will inform licensees who sold tobacco products to youths. A citation is issued to the clerk by the DLC 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 minors used in the compliance tests

When the DLC 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. §107 (b)(1) directs the DLC to carry out “compliance tests of tobacco licensees as frequently and comprehensively as necessary to ensure consistent statewide compliance with the prohibition on sales to persons under 18 years of age of at least ninety percent (90%) for buyers who are 16 or 17 years of age. An individual under 18 years of age participating in a Compliance Test shall not be in violation of section 1005 of this title.

The majority of minors used in the DLC’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. The DLC currently now uses both 16 and 17 year-old minors.

Tobacco Compliance Tests were conducted from January 2018 through December 2018. The total number of licensees sampled was 1038. Of that group, sixty-two (62) attempted undercover buys were classified as incomplete. An incomplete check can result from circumstances such as the employed minor knowing the clerk, the establishment no longer engaging in the sale of tobacco products or being closed at the time of the check. The number of licenses sampled where the attempted purchased was completed was 976. Those licensees who sold to minors number seventy-nine (79) in total, or roughly eight percent (8.09%). Those not selling to minors were 897 or nearly ninety two percent (91.90%). The results were further reduced, revealing how many sellers asked purchasers for an ID and how many did not. The results are as follows (See Attachments for details). Of the eighty-eight (88) licensees who failed the compliance test by selling to a minor, forty-nine (49) asked for ID and thirty-nine (39) did not.

Tobacco Compliance Tests (January 2018 - December 2018) -Calendar

| | | |
|-------------------------------------|------|--------|
| # Licensees Sampled | 1038 | |
| # of Incomplete Attempts | 62 | |
| # of Successfully Sampled Licensees | 976 | |
| # Licensees who sold tobacco | 79 | 8.09% |
| # Licensees not selling | 897 | 91.90% |

The DLC has 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 as well, to help clerks calculate the date for tobacco and alcohol sales after reviewing birth dates on driver's licenses. The DLC recommends 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.

The effectiveness of this program can be seen in recent statistics that show a ninety-five percent (95%) success rate for those licensee's employees who attend DLC in-person seminars.

ATTACHMENTS:

- Tobacco Compliance Survey Results - 2018
- Breakdown of how many tobacco licensees asked for ID's, and how many did not
- Education percentage and methods of training
- Procedures for Tobacco Purchase Compliance Survey
- Penalty Schedule for Tobacco Compliance Tests

Tobacco Compliance Survey Results
January 2018 thru December 2018

| | | |
|--------------------------------|---------------------|-----------------------------|
| Licensees Successfully Sampled | Licensees That Sold | Licensees that Did Not Sell |
| 976 | 79 = 8.09% | 897 = 91.90% |

2018 Compliance Breakdown-Who Asked for ID and Who Did Not

Of the tobacco licensees who sold tobacco products to minors working for DLC, fifty-five **(55)** asked for valid photo identification which was provided, yet they still made the sale. Twenty-four **(24)** did not ask for any type of identification and made the sale.

| | | |
|---------------------|-----------|----------------|
| Who Asked: | 55 | (69.6%) |
| Did Not Ask: | 24 | (30.4%) |
| Total: | 79 | (100%) |

Vermont Department of Liquor and Lottery
Office of Compliance and Enforcement & Office of Education

Employee Training - January 2018 thru December 2018

| Tobacco Training | Number of Employees | Sold | Did Not Sell | % |
|-----------------------------|----------------------------|-------------|---------------------|----------|
| Attended in-person seminars | 100 | 5 | 95 | 95 |
| Online seminars | 251 | 17 | 230 | 91.6 |
| Trained in-house | 569 | 50 | 546 | 91.6 |
| Not trained | 56 | 7 | 49 | 87.5 |

VERMONT DEPARTMENT OF LIQUOR AND LOTTERY
OFFICE OF COMPLIANCE AND ENFORCEMENT

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

Enf. Div. 4/15

TOBACCO COMPLIANCE VIOLATION PENALTY SCHEDULE

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

| | |
|--------------------------|-------------------|
| 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.

Or 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.

Note 1: Mandatory training for the licensee, and its employees including the person who sold the product to the underage purchaser is required under the first and second offense for fine, suspension, or warning. The DLC 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)