



**DEPARTMENT OF LIQUOR AND LOTTERY
DIVISION OF LIQUOR CONTROL**

**Department of Liquor and Lottery
Division of Liquor Control
Office of Compliance and
Enforcement**

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

**Tobacco Compliance Testing Conducted During
Calendar Year 2020
As Required by 7 V.S.A. §1007(b)(3)**

January 14, 2021



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House Committee on General, Housing & Military Affairs
Senate Committee on Economic Development, Housing & General
Affairs

Pursuant to 7 V.S.A. §1007 (b)(3) enclosed is our Department's report on tobacco compliance tests conducted during the calendar year 2020.

Sincerely,

Patrick T. Delaney

Patrick Delaney
Commissioner
Department of Liquor and Lottery



Act 58 Report Summary 2020

The Division of Liquor Control (“DLC”), Office of Compliance and Enforcement (OCE) conducted tobacco compliance tests as required by Act No. 58 (1997) codified at 7 V.S.A. §1007(b)(3) for the calendar year 2019. **The overall percentage of compliance for the state during calendar year 2020 was 89.92%.** 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, through on-line training, trained by their employer, or not trained at all. Additionally, a significant impact to the state’s tobacco laws took effect September 1st, 2019 as part of Act No. 27 (2019). As part of that legislation, the legal age to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia, was increased from 18 to 21 years of age. Additionally, 7 V.S.A 1007(b)(1) amended the age of minors used for the purposes of compliance checks from 16 and 17 years of age, to individuals between 17 and 20 years of age. Lastly of note, the global COVID-19 pandemic did have operational impacts on the ability to DLC to safely conduct compliance checks. A moratorium on compliance checks was instituted and no compliance checks were completed during the months of March, April, and November.

As of June 21, 2002, The Division of Liquor Control, 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. For licensees educated at an in-person or online training provided by DLC’s Education Division, rates of tobacco compliance are statistically higher than other methods of complying with the training requirement. In 2019, of the documented 70 sales made to minors via the compliance checks, 19 of those clerks responsible to the sale to minors were trained by DLC. Conversely, of those same 70 sales, 41 clerks were trained in-house by their respective employers and 6 had received no training at all. The need to encourage licensees and their employees to attend DLC seminars is consistently underscored by this data. Compliance of those clerks trained by the DLC Office of Education remains at or above 95%.

As of July 1, 2008, The Division of Liquor Control, Office of Licensing has had the responsibility of the issuance of tobacco licenses. This allowed the DLC to have a more complete and accurate database of information for licensing and compliance testing.

Tobacco Compliance Tests Conducted During Calendar Year 2020

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 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.
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NOTES ON THE AGES OF THE 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. §1007 (b)(1) currently directs the DLC 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.

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. 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.

The tobacco compliance tests were conducted from January 2020 through December 2020. The number of licensees sampled was 595. Those who sold to minors were 60 licensees or 10.08%. Those not selling to minors were 535 or 89.91%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not. See attachments page titled “Tobacco Compliance Survey Results January 2020 thru December 2020” for details on those metrics. Of the 60 licensees who failed the compliance test by selling to a minor, 26 asked for ID and 34 did not.

Tobacco Compliance Tests (January 2020 - December 2020) -Calendar

# Licensees Sampled	595	
# Licensees who sold tobacco	60	10.08%
# Licensees not selling	535	89.91%

The DLC Office of Education 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 that these stickers 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, 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 generally show a 90% or greater success rate for those licensee's employees who attend DLC in-person seminars.

ATTACHMENTS:

- Tobacco Compliance Survey Results January 2020 thru December 2020
 - Procedures for Tobacco Purchase Compliance Survey
 - Penalty Schedule for Tobacco Compliance Tests
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**Tobacco Compliance Survey Results
January 2020 thru December 2020**

	Licensees Sampled	Licensees That Sold	Licensees That Did Not Sell
TOTAL	595	60 = 10.08%	535 = 89.91%

2020 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, **26 asked** for valid photo identification which was provided, yet they still made the sale. **34 did not ask** for any type of identification and made the sale.

Who Asked:	26	43.33%
Did Not Ask:	34	56.66%
Total:	60	100%

**Tobacco Compliance Survey Education Results
January 2020 thru December 2020**

Tobacco Training	Employees	Sold	Did Not Sell	Compliance%
DLC in-person seminars	32	0	32	100%
DLC on-line seminars	209	17	192	91.86%
3rd Party Online seminars	13	0	13	100%
Trained in-house	320	38	282	88.12%
Not trained	21	5	16	76.19%
Total:	595	60	535	

**VERMONT DIVISION OF LIQUOR CONTROL
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 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
