



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 2013**

January 15, 2014



January 15, 2014

House Committee on General, Housing & Military Affairs

Senate Committee on Economic Development, Housing & General Affairs

Tobacco Evaluation & Review Board

Pursuant to Section 13(c) of Act No 58 of 1997 and 2 V.S.A. § 22, there is enclosed our Department's report on tobacco compliance tests conducted during the calendar year 2013.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Hogan". The signature is written in a cursive style with a large, prominent "M" and "H".

Michael J. Hogan
Commissioner of Liquor Control

Act 58 Report Summary-2013

The Department of Liquor Control conducted tobacco compliance tests as required by Act No. 58 of 1997 for the calendar year of 2013. The overall percentage of those licensees who did not sell tobacco to minors was 91%. It should be noted that the total number of licensees checked for compliance are made up of individual clerks who are trained by DLC, 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 is issuing tobacco licenses after the Legislature passed (H149). This will allow the department to have a more accurate database of information for licensing and compliance testing.

Some national studies indicate that aggressive enforcement programs that have raised compliance rates in the mid-to-high 80% range have had no 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 93% (see attachments).

The need to encourage licensees and their employees to attend DLC seminars is underscored by this data.

Tobacco Compliance Tests

Conducted During Calendar Year 2013

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)

Funding for Compliance Checks in Vermont

1997

Section 12, Act No. 58 of 1997 directed the Department of Liquor Control (DLC) 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.” Prior to Act 58, the Department of Liquor Control conducted tobacco compliance tests that met the Federal Synar requirements. The Department of Liquor Control funded these tests.

1998

Section 71 of the FY98 Appropriations Act (Act No. 61 of 1997) appropriated \$80,000 to the Department “to purchase contract services to provide compliance checks and enforcement relating to the sale of tobacco products to minors.” Pursuant to this authority and appropriation, the Department issued a request for proposals to carry out these tests. After going through the RFP process, Thomas Radecki, doing business as Doctors & Lawyers for a Drug Free Youth in Carbondale, Illinois, was the sole bidder.

The Department entered into a contract, for an amount not to exceed \$50,000, to carry out these tests in calendar year 1998. February-September 1998 compliance tests also conformed to protocols and sampling methods, supplied to the Liquor Control Department by the Vermont Department of Health, to comply with the requirements of the Federal Government’s Synar regulations. The contract with Mr. Radecki terminated Oct. 31, 1998. The cost for contract services totaled \$20,034.

1999

The Legislature declined to make any appropriation for fiscal year 1999 compliance tests and indicated the Department should accept a contract from the Federal Food & Drug Administration under which Department of Liquor Control employees would

carry out tobacco compliance checks for the FDA. Pursuant to the Legislature's directive, the Department entered into such a contract with the FDA.

In September 1998, DLC applied for the FDA grant. The grant period was initially for 9-98 to 9-99. In November 1998 the FDA Grant was delayed by the Joint Fiscal Committee for Legislative review in the 1999 Legislative session. The Legislature approved the grant in May 1999 and the Department conducted its first FDA Grant compliance test that month. The Department conducted 1,184 tests from May to December 1999. Of that amount, 243 licensees sold tobacco products to minors, resulting in a 79% compliance rate.

2000

The Department continued its tobacco compliance program in 2000, funded by the FDA grant. Beginning in 2000, during compliance tests, an additional enforcement officer now accompanies the minor and functions as a witness for the attempted purchase of tobacco products. Minors working with DLC for these "stings" are also now required to sign a form that explains the procedures for the compliance tests (see attachments). Additionally, tobacco education is now funded as part of the Alcohol Server Training Program provided to those licensees that hold both alcohol and tobacco licenses. The Department's Education Unit also offers Tobacco Education to those licensees who request it.

On March 21, 2000, the U.S. Supreme Court ruled that the FDA lacks the authority to regulate tobacco products. The FDA grant ended abruptly. DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2000 through December 2000. The number of licensees sampled was 1320. Those selling to 17-

year-old minors totaled 298, or 23%. Those not selling to 17 year old minors totaled 1,022, or 77%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 298 licensees who failed the compliance test by selling to a minor, 227 asked for ID and 71 did not.

2001

DLC complied with Act 58, and the Department again used monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2001 through December 2001. The numbers of licensees sampled were 1,279. Those selling to 17-year-old minors totaled 231, or 18%. Those not selling to 17 year old minors totaled 1,048, or 82%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 230 licensees who failed the compliance test by selling to a minor, 164 asked for ID and 66 did not.

2002

DLC complied with Act 58, and the Department again used monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2002 through December 2002. The numbers of licensees sampled were 1,086. Those selling to 17-year-old minors totaled 155, or 14%. Those not selling to 17 year old minors totaled 931, or 86%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 155 licensees who failed the compliance test by selling to a minor, 112 asked for ID and 43 did not.

2003

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2003 through December 2003. The number of licensees sampled was 1,111. Those who sold to 17-year-old minors were 172 or 15%. Those not selling to 17 year old minors were 939 or 85%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 172 licensees who failed the compliance test by selling to a minor, 124 asked for ID and 48 did not.

2004

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2004 through December 2004. The number of licensees sampled was 1,614. Those who sold to 17-year-old minors were 179 or 11%. Those not selling to 17 year old minors were 1,435 or 89%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 179 licensees who failed the compliance test by selling to a minor, 110 asked for ID and 69 did not.

2005

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2005 through December 2005. The number of licensees sampled was 1,421. Those who sold to 17-year-old minors were 179 or 13%. Those not selling to 17 year old minors were 1,242 or 87%. The results were further drilled down revealing how many sellers asked purchasers

for an ID and how many did not, results are as follows. Of the 179 licensees who failed the compliance test by selling to a minor, 108 asked for ID and 71 did not.

2006

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2006 through December 2006. The number of licensees sampled was 1,523. Those who sold to 17-year-old minors were 177 or 12%. Those not selling to 17 year old minors were 1,346 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. Of the 177 licensees who failed the compliance test by selling to a minor, 108 asked for ID and 69 did not.

2007

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2007 through December 2007. The number of licensees sampled was 1,434. Those who sold to 17-year-old minors were 188 or 13%. Those not selling to 17 year old minors were 1,246 or 87%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 188 licensees who failed the compliance test by selling to a minor, 86 asked for ID and 102 did not.

2008

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2008 through December 2008. The number of licensees sampled was 1,436. Those who sold to 17-year-old minors were 165 or 11%. Those not selling to 17 year old minors were 1,271 or 89%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 165 licensees who failed the compliance test by selling to a minor, 86 asked for ID and 79 did not.

2009

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2009 through December 2009. The number of licensees sampled was 742. Those who sold to 17-year-old minors were 79 or 10.7%. Those not selling to 17 year old minors were 663 or 89.3%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 79 licensees who failed the compliance test by selling to a minor, 43 asked for ID and 36 did not.

2010

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2010 through December 2010. The number of licensees sampled was 909. Those who sold to 17-year-old minors were 106 or 11.6%. Those not selling to 17 year old minors were 803 or 88.4%. The

results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 106 licensees who failed the compliance test by selling to a minor, 83 asked for ID and 23 did not.

2011

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2011 through December 2011. The number of licensees sampled was 899. Those who sold to 17-year-old minors were 89 or 9%. Those not selling to 17 year old minors were 899 or 91%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 89 licensees who failed the compliance test by selling to a minor, 57 asked for ID and 32 did not.

2012

DLC complied with Act 58, and the Department began using monies appropriated from the National Master Tobacco Settlement. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2012 through December 2012. The number of licensees sampled was 968. Those who sold to 17-year-old minors were 94 or 10%. Those not selling to 17 year old minors were 874 or 90%. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not, results are as follows. Of the 94 licensees who failed the compliance test by selling to a minor, 73 asked for ID and 21 did not.

2. COMPLIANCE TESTS RESULTS, BEFORE 2013

The Department of Liquor Control conducted its first tobacco compliance tests in December 1994 and January 1995.

Four other compliance tests were carried out in 1996, two tests in 1997, eight in 1998, seven in 1999, twelve in 2000-2012. The results of these compliance tests were as follows:

SURVEY #1 - December 1994-December 1996

# Licensees Sampled	1389	100%
# Licensees who sold tobacco products	435	31%
# Licensees not selling	954	69%

SURVEY #2 - June 1997 (SYNAR)

# Licensees Sampled	465	100%
# Licensees who sold tobacco products	36	8%
# Licensees not selling	429	92%

SURVEY #3 - November 1997 (Chewing Tobacco)

# Licensees Sampled	222	100%
# Licensees who sold tobacco products	17	8%
# Licensees not selling	205	92%

SURVEY #4 - February-September 1998 (Radecki)

# Licensees Sampled	2007	100%
# Licensees who sold tobacco products	155	8%
# Licensees not selling	1852	92%

SURVEY #5 - May- December 1999 (FDA Grant)

# Licensees Sampled	1184	100%
# Licensees who sold tobacco products	243	21%
# Licensees not selling	941	79%

SURVEY #6 -Jan-December 2000(Master Settlement Monies)

# Licensees Sampled	1320	100%
# Licensees who sold tobacco products	298	23%
# Licensees not selling	1022	77%

SURVEY #7 -Jan -December 2001 (Master Settlement Monies)

# Licensees Sampled	1279	100%
# Licensees who sold tobacco products	231	18%

# Licensees not selling	1048	82%
<u>SURVEY #8 Jan-December 2002 (Master Settlement Monies)</u>		
# Licensees Sampled	1086	100%
# Licensees who sold tobacco	155	14%
# Licensees not selling	931	86%
<u>SURVEY #9 Jan-December 2003 (Master Settlement Monies)</u>		
# Licensees Sampled	1111	100%
# Licensees who sold tobacco	172	15%
# Licensees not selling	939	85%
<u>SURVEY #10 Jan-December 2004 (Master Settlement Monies)</u>		
# Licensees Sampled	1614	100%
# Licensees who sold tobacco	179	11%
# Licensees not selling	1435	89%
<u>SURVEY #11 Jan-December 2005 (Master Settlement Monies)</u>		
# Licensees Sampled	1421	100%
# Licensees who sold tobacco	179	13%
# Licensees not selling	1242	87%
<u>SURVEY #12 Jan-December 2006 (Master Settlement Monies)</u>		
# Licensees Sampled	1523	100%
# Licensees who sold tobacco	177	12%
# Licensees not selling	1346	88%
<u>SURVEY #13 Jan-December 2007 (Master Settlement Monies)</u>		
# Licensees Sampled	1434	100%
# Licensees who sold tobacco	188	13%
# Licensees not selling	1246	87%
<u>SURVEY #14 Jan-December 2008 (Master Settlement Monies)</u>		
# Licensees Sampled	1436	100%
# Licensees who sold tobacco	165	11%
# Licensees not selling	1271	89%
<u>SURVEY #15 Jan-December 2009 (Master Settlement Monies)</u>		

# Licensees Sampled	742	100%
# Licensees who sold tobacco	79	10.7%
# Licensees not selling	663	89.3%

SURVEY #16 Jan-December 2010 (Master Settlement Monies)

# Licensees Sampled	909	100%
# Licensees who sold tobacco	106	11.6%
# Licensees not selling	803	88.4%

SURVEY #17 Jan-December 2011 (Master Settlement Monies)

# Licensees Sampled	988	100%
# Licensees who sold tobacco	89	9%
# Licensees not selling	899	91%

SURVEY #18 Jan-December 2012 (Master Settlement Monies)

# Licensees Sampled	968	100%
# Licensees who sold tobacco	94	10%
# Licensees not selling	874	90%

3. METHODOLOGY AND PROCEDURES

All compliance tests are carried out using procedures approved by the Vermont Attorney General’s Office. With written parental permission, youth (minors) participate with the Department to help perform the compliance checks, also called “stings.”

The selection of retailers to be tested is made by the Department of Liquor Control, utilizing software designed to randomly select retailers for testing from a database that is updated the first of every month. The following procedures are used in conducting tobacco compliance surveys:

Tobacco Compliance Test Procedures

DLC 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 Liquor Control Investigator will remain outside the establishment and in close proximity, or may enter shortly after the youth enters. 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 attempt to 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, an identifying sticker will be placed on the product to identify it with the tobacco compliance report, to be completed immediately.
- That after conducting tobacco stings (immediately afterward or at least within three days), 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.
- That payment for assisting with the tobacco compliance check will be delivered to participating minor at a later date.

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

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

Section 13 (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 2013:** The Department is using monies appropriated from the National Master Tobacco Settlement to comply with Act 58. These monies continue to fund our tobacco compliance program and ongoing education efforts for tobacco and alcohol.

The tobacco compliance tests were conducted from January 2013 through December 2013. The number of licensees sampled was 1,265. Those who sold to 17-year-old minors were 118 or 9%. Those not selling to 17 year old minors were 1147 or 91%. 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 118 licensees who failed the compliance test by selling to a minor, 92 asked for ID and 26 did not.

Tobacco Compliance Tests (January 2013- December 2013)-Calendar

# Licensees Sampled	1265	100%
# Licensees who sold tobacco	118	9%
# Licensees not selling	1147	91%

The Department of Liquor Control, as mentioned above, has a dedicated Education Unit that travels all over the state 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.

Newly adopted 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.

As of July 1, 2008, the Department of Liquor Control is issuing tobacco licenses after the Legislature passed (H149). This will allow the department to have a more accurate database of information for licensing and compliance testing.

The department has started on-line training effective December 2010.

As of July 1, 2013, see new laws relating to tobacco products. (Act 14- H.71)

6. COMPLIANCE TEST PLANS FOR CALENDAR YEAR 2014 The Department of Liquor Control will test licensees as frequently as necessary 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 93% success rate for those licensee's employees who attend DLC seminars.** The Department will be contracting with the FDA to do compliance testing. The contract has been approved and the training by the federal government will start in 2014. The data from these tests will be used to meet the requirements of Act 58 and the Federal Synar requirement.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael J. Hogan". The signature is written in a cursive, flowing style.

MICHAEL J. HOGAN

Commissioner of Liquor Control

January 15, 2014

ATTACHMENTS:

- **Tobacco Compliance Survey Results- January-December 2013**
- **Monthly Results- January- December 2013**
- **Breakdown of how many tobacco licensees asked for ID's and how many did not ask for ID's.**
- **Effectiveness of DLC Educational Training**
- **Procedures for Tobacco Purchase Compliance Survey**
- **Penalty Schedule For Tobacco Compliance Tests**

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

Month	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
January 2013	116	12	10%	104	90%
February 2013	118	5	4%	113	96%
March 2013	118	10	8%	108	92%
April 2013	102	7	7%	95	93%
May 2013	109	13	12%	96	88%
June 2013	105	9	9%	96	91%
July 2013	93	13	14%	80	86%
August 2013	98	12	12%	86	88%
September 2013	95	4	4%	91	96%
October 2013	92	10	11%	82	89%
November 2013	105	9	9%	96	91%
December 2013	114	14	12%	100	88%
TOTAL	1265	118	9%	1147	91%

**Tobacco Compliance Survey Results by County
January 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Bennington	9	0	0%	9	100%
Caledonia	10	0	0%	10	100%
Chittenden	38	2	5%	36	95%
Lamoille	11	2	18%	9	82%
Rutland	20	1	5%	19	95%
Washington	10	0	0%	10	100%
Windham	9	5	56%	4	44%
Windsor	9	2	22%	7	78%
TOTAL	116	12	10%	104	90%

Of the 12 tobacco licensees who sold tobacco products to a minor (17 years old), 8 requested valid photographic identification from the minor and made the sale. 4 did not ask for identification.

**Tobacco Compliance Survey Results by County
February 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Addison	9	0	0%	9	100%
Bennington	10	1	10%	9	90%
Caledonia	8	0	0%	8	100%
Chittenden	30	0	0%	30	100%
Franklin	4	0	0%	4	100%
Lamoille	5	0	0%	5	100%
Orange	13	0	0%	13	100%
Orleans	11	2	18%	9	82%
Rutland	10	0	0%	10	100%
Windham	8	1	13%	7	88%
Windsor	10	1	10%	9	90%
TOTAL	118	5	4%	113	96%

Of the 5 tobacco licensees who sold tobacco products to a minor (17 years old), 3 requested valid photographic identification from the minor and made the sale. 2 did not ask for identification.

**Tobacco Compliance Survey Results by County
March 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Bennington	10	2	20%	8	80%
Chittenden	29	2	7%	27	93%
Franklin	3	0	0%	3	100%
Grand Isle	6	0	0%	6	100%
Lamoille	10	1	10%	9	90%
Orleans	10	3	30%	7	70%
Rutland	20	0	0%	20	100%
Washington	10	0	0%	10	100%
Windham	10	2	20%	8	80%
Windsor	10	0	0%	10	100%
TOTAL	118	10	8%	108	92%

Of the 10 tobacco licensees who sold tobacco products to a minor (17 years old), 10 requested valid photographic identification from the minor and made the sale. 0 did not ask for identification.

**Tobacco Compliance Survey Results by County
April 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Addison	8	1	13%	7	88%
Bennington	10	1	10%	9	90%
Caledonia	3	0	0%	3	100%
Chittenden	26	1	4%	25	96%
Essex	1	0	0%	1	100%
Franklin	10	0	0%	10	100%
Orange	1	0	0%	1	100%
Orleans	5	0	0%	5	100%
Rutland	11	0	0%	11	100%
Windham	7	3	43%	4	57%
Windsor	20	1	5%	19	95%
TOTAL	102	7	7%	95	93%

Of the 7 tobacco licensees who sold tobacco products to a minor (17 years old), 6 requested valid photographic identification from the minor and made the sale. 1 did not ask for identification.

**Tobacco Compliance Survey Results by County
May 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Bennington	9	0	0%	9	100%
Caledonia	10	1	10%	9	90%
Chittenden	23	1	4%	22	96%
Franklin	9	1	11%	8	89%
Rutland	19	1	5%	18	95%
Washington	20	4	20%	16	80%
Windham	9	4	44%	5	56%
Windsor	10	1	10%	9	90%
TOTAL	109	13	12%	96	88%

Of the 13 tobacco licensees who sold tobacco products to a minor (17 years old), 12 requested valid photographic identification from the minor and made the sale. 1 did not ask for identification.

**Tobacco Compliance Survey Results by County
June 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Addison	14	1	7%	13	93%
Bennington	7	3	43%	4	57%
Caledonia	3	0	0%	3	100%
Chittenden	9	0	0%	9	100%
Grand Isle	6	0	0%	6	100%
Orange	10	0	0%	10	100%
Orleans	11	0	0%	11	100%
Rutland	11	3	27%	8	73%
Washington	13	1	8%	12	92%
Windham	9	1	11%	8	89%
Windsor	12	0	0%	12	100%
TOTAL	105	9	9%	96	91%

Of the 9 tobacco licensees who sold tobacco products to a minor (17 years old), 7 requested valid photographic identification from the minor and made the sale. 2 did not ask for identification.

**Tobacco Compliance Survey Results by County
July 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Addison	11	3	27%	8	73%
Bennington	6	2	33%	4	67%
Chittenden	6	0	0%	6	100%
Essex	1	0	0%	1	100%
Franklin	7	0	0%	7	100%
Lamoille	9	0	0%	9	100%
Orleans	8	0	0%	8	100%
Rutland	16	4	25%	12	75%
Washington	9	2	22%	7	78%
Windham	12	1	8%	11	92%
Windsor	8	1	13%	7	88%
TOTAL	93	13	14%	80	86%

Of the 13 tobacco licensees who sold tobacco products to a minor (17 years old), 10 requested valid photographic identification from the minor and made the sale. 3 did not ask for identification

**Tobacco Compliance Survey Results by County
August 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Addison	9	0	0%	9	100%
Bennington	5	1	20%	4	80%
Caledonia	7	2	29%	5	71%
Chittenden	18	4	22%	14	78%
Franklin	6	2	33%	4	67%
Lamoille	7	1	14%	6	86%
Orleans	1	0	0%	1	100%
Rutland	19	0	0%	19	100%
Washington	10	2	20%	8	80%
Windham	9	0	0%	9	100%
Windsor	7	0	0%	7	100%
TOTAL	98	12	12%	86	88%

Of the 12 tobacco licensees who sold tobacco products to a minor (17 years old), 8 requested valid photographic identification from the minor and made the sale. 4 did not ask for identification.

**Tobacco Compliance Survey Results by County
September 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Addison	10	0	0%	10	100%
Bennington	10	0	0%	10	100%
Caledonia	4	0	0%	4	100%
Chittenden	29	3	10%	26	90%
Essex	4	1	25%	3	75%
Franklin	9	0	0%	9	100%
Lamoille	8	0	0%	8	100%
Orleans	2	0	0%	2	100%
Rutland	10	0	0%	10	100%
Windham	9	0	0%	9	100%
TOTAL	95	4	4%	91	96%

Of the 4 tobacco licensees who sold tobacco products to a minor (17 years old), 4 requested valid photographic identification from the minor and made the sale. 0 did not ask for identification.

**Tobacco Compliance Survey Results by County
October 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Bennington	10	1	10%	9	90%
Caledonia	6	0	0%	6	100%
Chittenden	26	3	12%	23	88%
Franklin	8	1	13%	7	88%
Orange	1	0	0%	1	100%
Rutland	10	1	10%	9	90%
Washington	15	2	13%	13	87%
Windham	8	1	13%	7	88%
Windsor	8	1	13%	7	88%
TOTAL	92	10	11%	82	89%

Of the 10 tobacco licensees who sold tobacco products to a minor (17 years old), 9 requested valid photographic identification from the minor and made the sale. 1 did not ask for identification.

**Tobacco Compliance Survey Results by County
November 2013**

County	Licensees Sampled	Licensees That Sold		Licensees That Did Not Sell	
Bennington	9	1	11%	8	89%
Chittenden	30	3	10%	27	90%
Franklin	7	1	14%	6	86%
Lamoille	9	1	11%	8	89%
Orange	11	2	18%	9	82%
Rutland	20	0	0%	20	100%
Washington	1	0	0%	1	100%
Windham	9	0	0%	9	100%
Windsor	9	1	11%	8	89%
TOTAL	105	9	9%	96	91%

Of the 9 tobacco licensees who sold tobacco products to a minor (17 years old), 5 requested valid photographic identification from the minor and made the sale. 4 did not ask for identification.

**Tobacco Compliance Survey Results by County
December 2013**

County	Licensees		Licensees That Sold		Licensees That Did Not Sell	
	Sampled					
Addison	2	0	0%	2	100%	
Bennington	7	2	29%	5	71%	
Caledonia	3	0	0%	3	100%	
Chittenden	30	5	17%	25	83%	
Franklin	10	1	10%	9	90%	
Lamoille	4	0	0%	4	100%	
Orange	2	0	0%	2	100%	
Orleans	8	1	13%	7	88%	
Rutland	18	1	6%	17	94%	
Washington	12	1	8%	11	92%	
Windham	8	2	25%	6	75%	
Windsor	10	1	10%	9	90%	
TOTAL	114	14	12%	100	88%	

Of the 14 tobacco licensees who sold tobacco products to a minor (17 years old), 10 requested valid photographic identification from the minor and made the sale. 4 did not ask for identification.

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

January of the 12 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **8 asked** for valid photo identification and made the sale. **4 did not ask** for any type of identification and made the sale.

February of the 5 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **3 asked** for valid photo identification and made the sale. **2 did not ask** for any type of identification and made the sale.

March of the 10 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **10 asked** for valid photo identification and made the sale.

April of the 7 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **6 asked** for valid photo identification and made the sale. **1 did not ask** for any type of identification and made the sale.

May Of the 13 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **12 asked** for valid photo identification and made the sale. **1 did not ask** for any type of identification and made the sale.

June of the 9 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **7 asked** for valid photo identification and made the sale. **2 did not ask** for any type of identification and made the sale.

July of the 13 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **10 asked** for valid photo identification and made the sale. **3 did not ask** for any type of identification and made the sale.

August of the 12 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **8 asked** for valid photo identification and made the sale. **4 did not ask** for any type of identification and made the sale.

September of the 4 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **4 asked** for valid photo identification and made the sale.

October of the 10 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **9 asked** for valid photo identification and made the sale. **1 did not ask** for any type of identification and made the sale.

November of the 9 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **5 asked** for valid photo identification and made the sale. **4 did not ask** for any type of identification and made the sale.

December of the 14 tobacco licensees who sold tobacco products to the 17 year old minor working for DLC, **10 asked** for valid photo identification and made the sale. **4 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	%
First Class				
Attended seminars	71	4	67	94
Online seminars	21	1	20	95
Trained in-house	42	5	37	88
Not trained	16	5	11	69
Second Class				
Attended seminars	132	7	125	95
Online seminars	40	5	35	88
Trained in-house	247	18	229	93
Not trained	7	2	5	71
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
Total				
Attended seminars	608	41	567	93
Online seminars	185	17	168	91
Trained in-house	976	86	890	91
Not trained	72	21	51	71

Education, Licensing & Enforcement Division

PROCEDURES FOR TOBACCO PURCHASE COMPLIANCE SURVEY

1. Written parental permission must be obtained.
2. Copy of participating youth's birth certificate and photograph for file.
3. Participating youth will be supervised **at all times** by a Liquor Control Investigator. Liquor Control Investigator will remain outside the establishment and in close proximity, or may enter shortly after youth enters.
4. Participating youth will be given the money for the attempted purchase. Investigator to note amount of money given to the youth prior to entering the establishment.
5. Participating youth will be instructed **not to misrepresent** their age or pressure clerk to sell tobacco products.
6. Participating youth will present valid photographic identification if asked when attempting to purchase tobacco products.
7. If asked about his/her age, the youth will admit to their correct age.
8. Upon entering the tobacco selling establishment the youth will attempt to observe the clerk selling the tobacco products to obtain a good description.
9. After the purchase attempt, the youth will exit with or without the tobacco products.
10. If tobacco products are purchased, an identifying sticker will be placed on the product to identify it with the alcohol compliance report, which will be completed immediately.
11. After conducting tobacco stings (immediately afterward or at least within three days), the Liquor Control Investigator will inform licensees who sold tobacco products to youths.
12. Payment will be delivered to participating minor at a later date.
13. The minor information sheet for each participating minor will need to be submitted to the Montpelier office in order for payment to be remitted.

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.

Note1: **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.**

Note2: **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. VSA 236(b)**

DLC
July 1, 2002