

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

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Prepared by:

Chief Skyler Genest,
Director, Office of Compliance
and Enforcement

Vermont Department of Liquor
and Lottery

Skyler.Genest@vermont.gov
802-477-2429

From:

Wendy Knight,
Commissioner

Vermont Department of Liquor
and Lottery

Wendy.Knight@vermont.gov

802-828-7632

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 2021

As Required by 7 V.S.A. §1007(b)(3)

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EXECUTIVE SUMMARY

Act 58 Report Summary 2021

The Department of Liquor and Lottery (“DLL”) 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 2021. **The overall compliance rate for the state was 90.41%.** Licensees checked for compliance are clerks who have either been trained by DLL through in-person seminars, online classes, in-house employer led courses, 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), 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) raised the age of minors who participate in compliance checks from 16 or 17 years of age to 17 through 20 years of age. The global pandemic also had operational implications on DLL’s tobacco compliance program. Mainly, ensuring safety of the public, our employed minors, and the investigators during compliance checks became more difficult. However, DLL is pleased to report that the requirements of 7 V.S.A. §1007(b)(1) were met with no reported cases of infection related to our compliance work in 2021.

In June of 2002, the DLL Office of Education began providing all entities engaged in the sale of tobacco products, tobacco substitutes, or tobacco paraphernalia with the ability to train staff in the responsible sale of those products. Since that time, the Office of Education has observed a strong correlation between the education of licensees and employee compliance testing rates. For licensees educated through an in-person or online training provided by DLL’s Education Division, rates of tobacco compliance are statistically higher than other training methods. The need to encourage licensees and their employees to attend DLL seminars is consistently underscored by this data. Compliance of those clerks trained by the DLL Office of Education in-person remains just below 95%.

TOBACCO COMPLIANCE TESTS CONDUCTED

CALENDAR YEAR 2021

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

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

DLL, in accordance with requirements by the FDA, requires:

- Written parental permission be obtained for participating youth (minors).
- A copy of the participating youth's birth certificate and a photograph for DLL's file.
- Participating youth to be supervised **at all times** by a DLL 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 to assist in case the minor is threatened in any way.
- Participating youth to be given the money for the attempted purchase by a DLL Investigator. The Investigator must note the amount of money given to the minor prior to entering the establishment.
- Participating youth to be instructed **not to misrepresent** their age or pressure the clerk to sell tobacco products.
- Participating youth to 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.
- Upon entering the tobacco-selling establishment the youth will observe the clerk selling the tobacco products to obtain a good physical description.
- After the purchase attempt, the youth will exit with or without the tobacco products.
- If tobacco products are purchased, the product is to be handled in accordance with FDA rules of evidence. Items 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.
- After conducting underage buy attempts, the Investigator should inform licensees who sold tobacco products to minors. A citation is issued to the clerk by the DLL Investigator who is then available to explain any penalties the licensee has incurred.
- The State pays the minors as Temporary State Employees.

AGES OF MINORS USED IN COMPLIANCE TESTS

When the DLL 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 DLL 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 DLL’s first chewing tobacco underage compliance testing in November 1997 were 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. Now, the age of minors used for the purposes of compliance checks is between 17 and 20 years of age.

In 2021 tobacco compliance tests were conducted from January through December. In total, 1085 licensees were sampled. 105 licensees, or 9.68%, sold to minors. 981 licensees, or 90.41%, did not sell to minors. The results were further drilled down revealing how many sellers asked purchasers for an ID and how many did not. The page titled “2021 Tobacco Compliance Survey Results” contains details on those metrics. Of the 105 licensees who failed the compliance test by selling to a minor, 40 asked for ID and 65 did not.

Tobacco Compliance Tests (January 2021 - December 2021) - Calendar

# Licensees Sampled	1087	
# Licensees who sold tobacco	105	9.68%
# Licensees not selling	981	90.41%

As part of our overall Alcohol Servers/Sellers programs, The DLL Office of Education conducts in-person seminars on tobacco and alcohol laws throughout the state, delivers virtual instructor-led classes, and offer a self-paced online learning module. Tobacco law is also a part of our overall Alcohol Servers/Seller programs. Additionally, the Office of Education issues signage for stores stating the law regulating the sale of tobacco products (VSA Title 7 Chapter 40).

Colored stickers and color-coed posters are issued as well, to help clerks calculate the date for tobacco and alcohol sales after reviewing birth dates on driver's licenses. The DLL recommends that these stickers and posters 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 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 consistently show a compliance success rate for those licensee's employees who complete DLL in-person seminars at nearly 95%.

ATTACHMENTS:

- Tobacco Compliance Survey Results January 2021 thru December 2021
- Procedures for Tobacco Purchase Compliance Survey
- Penalty Schedule for Tobacco Compliance Tests

2021 TOBACCO COMPLIANCE SURVEY RESULTS

	Licensees Sampled	Licensees That Sold	Licensees That Did Not Sell
Total	1085	105 = 9.68%	981 = 90.41%

2021 COMPLIANCE BREAKDOWN: WHO ASKED FOR ID AND WHO DID NOT

Of the tobacco licensees who sold tobacco products to the minors working for DLL, 40 asked for valid photo identification which was provided, yet they still made the sale. 65 did not ask for any type of identification and made the sale.

Who Asked	40	38.09%
Did Not Ask	65	61.90%
Total	105	100%

TOBACCO COMPLIANCE SURVEY EDUCATION RESULTS JANUARY THROUGH DECEMBER 2021

Tobacco Training	Employees	Sold	Did Not Sell	Compliance
DLL in-person seminars	17	1	16	94.12%
3rd Party Online seminars	54	4	50	92.59%
Trained in-house	512	40	473	92.38%
DLL on-line seminars	463	52	411	88.77%
Not trained	39	8	31	79.49%
Total	1085	105	981	90.41%

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

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

The Licensee may appeal to the Liquor Control Board (“Board”) at any time for a hearing on the merits. At that 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 consider 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