



Compliance and Local Enforcement Programs

Through licensing and related regulations, local governments (cities and counties) have the opportunity to address the sale of tobacco and related devices and products (such as electronic cigarettes) in the retail environment. This fact sheet provides an overview of considerations involved when administering effective enforcement programs. It is one in a series of resources providing Minnesota-specific information on local retail tobacco licensing and point-of-sale options.

Background

The sale of tobacco is regulated by laws adopted at the federal, state, and local levels. A number of enforcement programs exist to monitor retailer compliance with these different laws and to provide consequences when violations occur.

State-Federal Programs

FDA inspections are conducted to monitor compliance with federal tobacco laws such as illegal sales to minors or other advertising and labeling violations. Failed FDA inspections can result in warning letters, civil penalties and can even lead to a prohibition on the sale of tobacco products (known as a No-Tobacco-Sale Order).

Synar checks (undercover attempted purchases at randomly selected retailers) are conducted to assess

compliance with state youth access laws. Retailers who fail a Synar check are not directly penalized. However, the state's eligibility for federal block grant funding is dependent on the illegal sales rate being below 20 percent statewide.

Both programs are implemented by the Minnesota Department of Human Services (DHS) Alcohol and Drug Abuse Division.

Local Enforcement Programs

As the local licensing agency, cities and counties are responsible for ensuring that retailers comply with state and local tobacco control laws, some of which include:

- **Youth access:** Sales to minors are prohibited.

- **Child-resistant packaging:** Any liquid sold for use in an electronic delivery device must be in child-resistant packaging, regardless of nicotine content.
- **Product placement:** The sale of tobacco products from open product displays that are accessible without the assistance of a store employee is generally prohibited. Similar restrictions apply to the use of vending machines.
- **Samples and Sampling:** The free or low cost distribution of tobacco products is restricted, as is smoking in indoor public places and places of employment. For more information on sampling, see *Policy Options to Address Tobacco Product Samples and Sampling*.
- **Local restrictions:** From minimum clerk age to minimum pricing requirements, local governments may adopt more restrictive tobacco regulations. For more information on minimum clerk age, see *Raising the Age to Sell Tobacco: Establishing a Minimum Clerk Age*.

Retail tobacco licensing ordinances often provide that a violation of any federal, state, or local tobacco control law will be considered a violation of the terms and conditions of that license. This allows local enforcement staff to enforce any tobacco control law and provide “local” consequences for noncompliance. For more information on penalties, see *Violations and Penalties*.

Use and Selection of Minors

Youth access compliance checks require the assistance of minors:

- **Age:** Youth must be 15, 16 or 17 years old.
- **Demographics:** Minors assisting with compliance checks should reflect the actual youth in the community – those who may be attempting illegal purchases.

- **Recruitment:** Many schools incentivize community service. Work with school officials to determine whether interested students could use volunteer hours from the enforcement program in any public service program offered by the school.
- **Training:** All youth should be required to attend training so that all protocols are understood and followed.
- **Parental consent:** Written, signed consent from all parents and/or guardians is required. A sample form is included at the end of this resource.
- **Criminal liability:** While unlawful for minors to purchase tobacco and other devices and products, an exception is provided for youth participating in compliance check programs under direct adult supervision.
- **Assignment:** Avoid sending youth into stores where they may be recognized by peers, family, community members, or store staff.
- **Payment:** Minors can be reimbursed an hourly wage or stipend for their service.
- **Injuries:** Youth will likely be considered employees for workers compensation purposes. Contact your insurance provider to ensure adequate injury coverage.

Enforcement Protocols

Local jurisdictions have flexibility in determining their own inspection protocols. But once established, they should be closely followed. Having a reasonable and fair process will help defend against claims of discrimination or entrapment. Training on the established protocols

for the enforcement program is important, especially for youth. Issues to consider include:

- **Which retailers should we inspect?** While local licensing agencies are required to conduct a **minimum of one youth access compliance check at each retailer every year**, they may be conducted more frequently. The number of compliance checks performed should be considered when determining the appropriate license fee. For more information on license fees, see *Retail License Fees*. Retailers may be randomly selected or chosen based on relevant factors. Enforcement staff may revisit retailers that fail local checks or ones conducted under Synar or FDA programs. Visits may be in response to complaints. Stores frequented by youth or located near youth-oriented facilities may be prioritized.
- **When should we inspect them?** In larger jurisdictions, consider inspecting every store in one community (or neighborhood), then move on to the next. In smaller cities, checking every licensee within a short window of time on the same day may be preferable. Once an area gets “hot,” retailers may warn their peers that checks are underway.
- **What products should minors attempt to purchase?** The sale of **tobacco** (such as cigarettes, cigars, or chewing tobacco), **tobacco-related devices** (such as pipes and rolling papers), **electronic delivery devices** (e-cigarettes), or **nicotine or lobelia delivery products** to anyone under 18 is prohibited. While youth may attempt to purchase any of these products, consider what may be “best” for compliance checks purposes. While youth cigarette use has been declining in recent years, use of cigars and e-cigarettes have remained steady or grown. Flavored and less costly products are also preferable. Take these

factors into consideration; ask your youth what is popular among their peers.



- **Should the minor carry photo identification?** Although retailers who request photo identification are less likely to sell to a minor, many illegal underage sales occur after identification was produced (even when it indicates the purchaser is under 18). Decide whether your youth will carry their actual identification or none at all.
- **Should youth lie about their age?** Because most young people attempting to purchase tobacco are willing to lie about their age, allowing your youth to also lie about their age may best mimic actual purchase attempts. While state law does not prohibit youth from lying about their age, some jurisdictions may be uncomfortable with this, or worry that a citation will be dismissed if lying occurred. These possible concerns can be discussed with the courts or administrative hearing officers.
- **Is it necessary for the enforcement officer to be in the store with the youth?** The law requires that youth must be “under the direct supervision” of law enforcement or licensing staff. However, this does not require enforcement staff be inside the store. An officer may want to be present to ensure the safety of youth. Having officers present also allows them to testify in a trial or hearing that they witnessed the illegal sale.
- **Do all compliance checks involve minors?** No, many of the tobacco control laws may be enforced without youth assistance (such as open product display restrictions or child-resistant packaging requirements). Enforcement officers

may visit a licensee at any time and issue warnings or citations for violations.

- **How will we know if liquid packaging is child-resistant?** Request the testing report from the licensee. Enforcement staff will likely be unable to determine whether any packaging passed the testing requirement through visual or physical inspections. Retailers can request a copy of this report from the manufacturer or supplier. Cities and counties should inform their licensees that they will need to provide this upon request.

Final Considerations

Before a new enforcement program becomes operational, consider:

- Educating retailers about the relevant laws and their responsibilities.
- Informing judges or administrative hearing officers about the program, the protocols being used, and learn how they would like evidence presented.

After citations are issued, you should consider:

- Referring repeat violators for license suspension or revocation.
- Publishing the names of violators and/or those who complied with the law in local media.

CONTACT US

Please feel free to contact the Public Health Law Center at (651) 290-7506 or publichealthlaw@mitchellhamline.edu with any questions about the information included in this fact sheet or to discuss concerns you may have about implementing these policy options.

Sample Form: Parental Consent for Minor to Purchase Tobacco

I do hereby give permission for my child _____ to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under direct adult supervision as a part of compliance checks of retail tobacco outlets, conducted by _____ to determine whether they are in compliance with our state's youth access laws, Minn. Stats. §§ 609.685-.6855.

I understand that while Minn. Stat. § 609.685, subd. 3, provides that that the possession, purchase, or attempted purchase of tobacco, tobacco-related devices, and electronic delivery devices by minors is a petty misdemeanor offense, that penalty does not apply to a person under the age of 18 who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

Minor's Name: _____

Minor's Address: _____

Minor's Phone: (_____) _____

Parent/ Legal Guardian name (please print)

Parent/ Legal Guardian signature

Date