

Assessing Vermont's 2019 Tobacco Control Policies: Compliance & Implications for Young Vermonters' Access

April 2022



In response to troubling trends, the Vermont Legislature took action.

In 2019, to address major increases in young people's use of e-cigarettes, Vermont implemented [three policies](#):

T21

increased the legal age of sale of tobacco products to 21

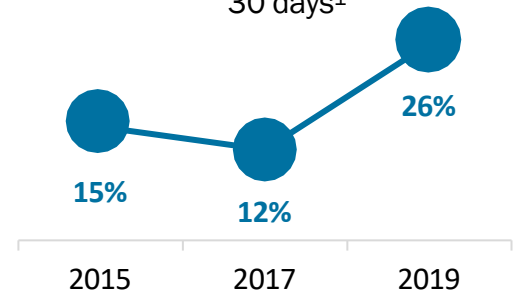
Delivery sales ban

prohibited the sale of e-cigarettes by mail

E-cigarette tax

taxed e-cigarettes at 92% of wholesale price

Percent of high schoolers who used e-cigarettes in past 30 days¹



Vermont has compliance successes to celebrate, yet gaps to address.

T21

- ✓ Strong compliance means limited ability to purchase tobacco in-store for Vermonters under 21.
- ! Young people can access tobacco in other ways, such as through older friends or family.

Delivery sales ban

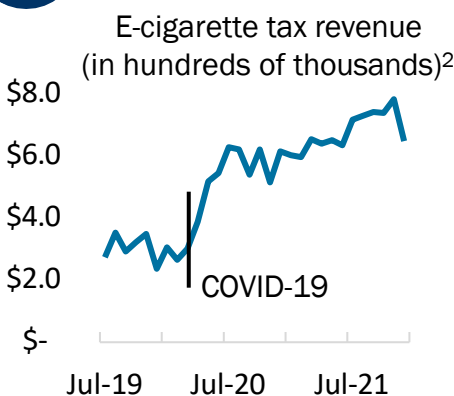
- ✓ Compliance improved, indicating decreased online access.
- ! 1/3 of tested online retailers continue to sell to Vermont residents.
- ! International online retailers pose a challenge to enforcement efforts.

E-cigarette tax

- ✓ Compliance with the law as it is currently written is satisfactory.
- ! E-cigarette retailers also register as wholesalers to decrease tax burden.
- ! The tax's effects on price and access are uncertain.



Forthcoming surveillance data will shed more light on policy impact.



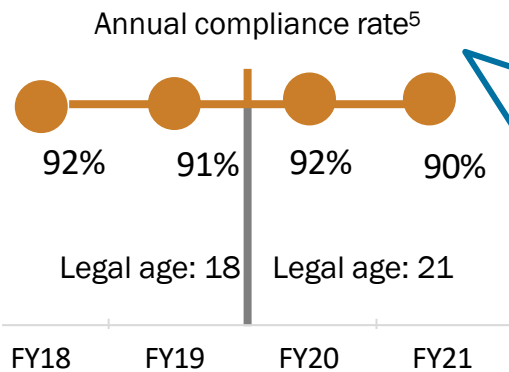
Upon implementation, revenue from the e-cigarette tax was higher than expected^{3,4} and has continued to increase. [This is not the trend that Vermonters who care about public health wish to see.](#) Future studies, using updated surveillance data, will examine potential explanations for this trend and what it means for young Vermonters' access to and use of tobacco products.

Brick-and-Mortar Retailer Compliance with T21

Strong compliance indicates decreased access for those under 21.

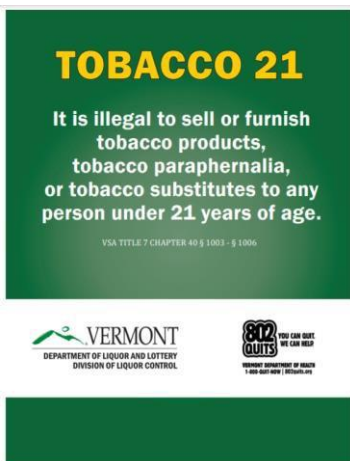
Annual retailer compliance with age requirements is consistently high.

The Department of Liquor & Lottery (DLL) tests all brick-and-mortar tobacco retailers for compliance with age requirements at least once per year. Between FY18 and FY21, DLL tested **more than 1,100** unique retailers.



Annual retailer compliance rates with age requirements were **90% or higher** over the past four fiscal years, both pre- and post-T21.

Retailer engagement around the new policy boosted compliance rates.



The rollout of T21 was a success. Before and during the implementation of T21, intentional efforts went into engaging tobacco retailers to prepare them for the new policy. Additionally, T21 received significant media attention.⁶

These factors could explain why **retailer compliance reached 98% over the three months after T21 went into effect**, much higher than the typical quarterly compliance rate.

In-store access is limited for Vermonters under 21, but gaps remain.

Brick-and-mortar retailers' high rates of compliance with age requirements is a good sign that **T21 is effectively limiting in-store access to tobacco products for those under 21.**

However, age restrictions do not eliminate access for those under the legal age. In 2019, **78% of e-cigarette users under the legal age primarily accessed them through someone else.**⁷ It is plausible that Vermonters under 21 continue to access tobacco this way.

Surveillance data will be available later in 2022 to better understand T21's impact on youth and young adult access to and use of tobacco products.

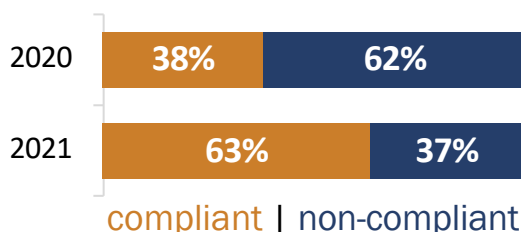
Online Retailer Compliance with Delivery Sales Ban

Rising compliance means online access has decreased, with room to improve.

Online retailer compliance increased markedly over the previous year.

Through funding from the Vermont Tobacco Control Program, DLL maintains a comprehensive list of online tobacco retailers and tests them for compliance with the delivery sales ban. Between 2020 and 2021, DLL tested **273 unique retailers**, some multiple times.

In 2021, **63%** of tested online retailers were in **compliance**, compared to only **38%** in 2020.⁸



The partnership between VTCP, DLL & AGO strengthens enforcement.

The online retailers that DLL finds to be non-compliant with Vermont's delivery sales ban are referred to the Office of the Vermont Attorney General (AGO).

As of November 2021, the partnership between VTCP, DLL and AGO has resulted in **21 settlements with non-compliant online retailers, bringing in \$618,000 in penalties** to the state and contributing to improved compliance.⁹ The vast majority of these funds went to the State of Vermont general fund.



Improved compliance means decreased access, with limitations.

With the implementation of T21 and the COVID-19 pandemic, Vermont's delivery sales ban became an even more critical strategy to limit youth and young adults' access to tobacco.

While the major improvement in online retailers' compliance with this policy is a positive development, about **one-third of online retailers that were tested in 2021 continue to sell to Vermont residents** and most have no age verification measures in place.

Further, some online retailers are based outside the U.S., which makes enforcement more complicated. The effectiveness of current enforcement efforts with respect to those companies may depend on outreach, education, resources and resolving jurisdictional questions. **International retailer activity may have significant implications for young Vermonters' online access to tobacco.**



Due to the dynamic nature of the online tobacco marketplace, continued attention to compliance and further measurement of youth and young adult access and use will be essential to further progress in limiting online access.

Wholesaler Compliance with E-Cigarette Tax

Compliance with the tax is satisfactory, but effects on price are uncertain.

☑ Wholesaler education has resulted in improved compliance.

The Vermont Department of Taxes administers tobacco taxes, which involves educating wholesalers on Vermont's tax policies and monitoring their compliance.



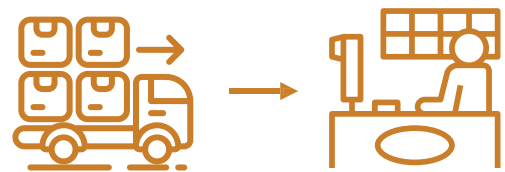
Wholesaler compliance is satisfactory. **Most wholesaler non-compliance that does occur is unintentional** due to errors like categorizing products incorrectly.¹⁰

The Department of Taxes approached wholesalers' early mistakes as learning opportunities and has seen improved compliance over time.

📊 A common business structure allows wholesalers to lessen tax burden.

Though wholesalers are in compliance with the law as it is currently written, the Department of Taxes and DLL have discovered that it is common for wholesalers to also be licensed as retailers. This business structure, permissible under current policy, **allows wholesalers and retailers to lessen the tax by selling the products to themselves at lower rates.** In effect, when the wholesaler and retailer are the same company, the wholesaler can decrease the taxes owed and the retailer can lower the price the consumer pays without decreasing the company's profit per product sold.

Allowing this business structure could mean less revenue coming to the state and lower e-cigarette prices. This also means the tax could have a lower than intended impact on young Vermonters' access to and use of tobacco products.



💰 Compliance is satisfactory, but the effects on prices are uncertain.

For a tax to have its intended effect in raising prices and decreasing access, the tax must be reflected in the prices of the products. However, **effects on prices are not always predictable** due to discounting and practices to decrease tax burden, like those described above.

Changing the policy to no longer allow this business structure would help ensure the tax has its intended effect. Alcohol retailers are prohibited from registering as both wholesalers and retailers for similar reasons.¹¹ Making this change for tobacco entities would require an administrative rulemaking process.

References

1. 2019 Vermont Youth Risk Behavior Survey: Statewide Results. (2020). Vermont Department of Health.
https://www.healthvermont.gov/sites/default/files/documents/pdf/CHS_YRBS_statewide_report.pdf.
2. Vermont Department of Taxes. Program data: Post-discount tax revenue. Received February 2022.
3. WCAX. (2019). Vermont Vape Shops Take a Hit from New Taxes.
<https://www.wcax.com/content/news/Vape-shops-take-a-hit-from-new-Vermont-taxes-564809851.html#:~:text=Strong%20sales%20appear%20to%20be,year%202020%2C%22%20Farnham%20said.>
4. Vermont Legislative Joint Fiscal Office. (2019). Fiscal Note: H.47 (Act 28) An Act Relating to the Taxation of Electronic Cigarettes. https://lifo.vermont.gov/assets/Publications/As-Passed-by-the-General-Assembly/a7c1be1044/GENERAL-337944-v2-H_47_Fiscal_Note_House.pdf.
5. Vermont Department of Liquor and Lottery. Tobacco Youth Enforcement Program data. Received December 2021.
6. VTDigger. (2019). 'Tobacco 21' to Take Effect Sept. 1.
<https://vtdigger.org/2019/08/29/tobacco-21-to-take-effect-september-1/>.
7. 2019 Vermont Youth Risk Behavior Survey: Statewide Results. (2020). Vermont Department of Health.
https://www.healthvermont.gov/sites/default/files/documents/pdf/CHS_YRBS_statewide_report.pdf.
8. Vermont Department of Liquor and Lottery. Online Sale Enforcement Program data. Received December 2021.
9. Office of the Vermont Attorney General. (2021). Press Release: Vermont to Receive \$145,750 from Online Vaping Retailers.
<https://ago.vermont.gov/blog/2021/11/23/vermont-receive-145750-online-vaping-retailers> .
10. Interviews with Vermont Department of Taxes staff, 2021-2022.
11. Interviews with Vermont Department of Liquor & Lottery staff, 2022.