



**PROJECTWATCH**  
Working Against Tobacco Companies' Harm

# RESTRICTING YOUTH ACCESS TO TOBACCO

## WHAT DOES MINNESOTA LAW SAY ABOUT SELLING TOBACCO TO YOUTH?



It is illegal to sell or furnish tobacco or tobacco-related devices (such as, pipes or rolling papers), or sell nicotine delivery products (such as e-cigarettes) to any person who is under the age of 18. Approved cessation devices are exempt. This is commonly referred to a Minnesota's "youth access law." Minn. Stat. § 609.685-.6855.

These statewide "youth access" laws are, like many other state laws, enforced locally. Cities may choose to enforce this law through tobacco licensing. If the cities do not license and regulate, the county must.

Local tobacco licensing ordinances should be compatible with state law and ensure that:

- All tobacco vendors are licensed;
- Tobacco products are not offered for sale in open displays and accessible by the public without clerk assistance;
- At least one unannounced "compliance check" is conducted at each tobacco vendor every calendar year; and
- Violations are penalized.

Local ordinances should be in compliance with these minimum state provisions. Local governments are allowed to build upon these state laws to strengthen youth access within their jurisdiction.

## WHAT ARE COMPLIANCE CHECKS AND WHY DO THEY MATTER?

Compliance checks are an important tool for measuring whether or not tobacco vendors are complying with youth access laws. They also help demonstrate that a city or county takes restricting youth access to tobacco seriously and considers the sale of tobacco to be a privilege, one that comes with responsibilities.

### COMPLIANCE CHECKS WORK TO DISCOURAGE YOUTH TOBACCO USE

A study conducted by researchers at the University of Minnesota indicated that enforcement of youth access ordinances can significantly reduce adolescent smoking rates.

Source: Forster J, Murray DM, Wolfson M, Blaine TM, Wagenaar AC, Hennrikus DJ. The effects of community policies to reduce youth access to tobacco. *American Journal of Public Health*, 88, 1193-1198.

In addition, compliance checks are **required** by state law. The licensing authority must conduct at least one unannounced compliance check per tobacco vendor per year. Compliance checks involve minors (someone over 15 but less than 18) who, with the prior written consent from a parent or guardian and while supervised by law enforcement or a licensing authority employee, attempt to purchase tobacco or tobacco-related devices. Minn. Stat. § 461.12, subd. 5.

When conducting compliance checks, the licensing authority does not use deception to "trick" the tobacco vendor into making an illegal sale. Youth should be instructed to show their real identification when asked; fake IDs should be not be used. When asked their age, the youth should tell the truth.

While a city/county is required to complete one check per vendor per year, it can choose to increase the required number of annual checks of all vendors, or require additional checks of those vendors that were not in compliance.

## HOW SHOULD A CITY OR COUNTY PAY FOR COMPLIANCE CHECKS?

By charging a license fee large enough to cover all costs associated with licensing, administration, and enforcement. These costs include, but are not limited to: administrative staff time, law enforcement staff time, mailing costs, stipends for youth buyers, etc. **However, the license fee should not exceed the total costs associated with administering and policing a license.** See *Orr v. City of Rochester*, 193 Minn. 371, 258 N.W. 569 (1935).

Tobacco license fees range greatly across the state. While some cities/counties charge as little as \$12, others charge more than \$1,000.

### HOW DO SYNAR CHECKS FIT IN?

*In 1992, Congress passed the Synar Amendment. This amendment (named after Senator Mike Synar from Oklahoma) tied federal Substance Abuse Prevention and Treatment (SAPT) Block Grant funding to tobacco compliance rates.*

*In order to get full SAPT funding, the Minnesota Department of Human Services (DHS) is required to conduct annual, unannounced compliance checks at a **random sample** of tobacco retailers from across the state and report findings to the U.S. Department of Health and Human Services. It is important to note that:*

- Synar checks **do not** result in any enforcement action;
- Cities and counties play no role in Synar checks; and
- Synar checks do not satisfy the annual compliance checks required under state law.

### WHAT HAPPENS IF A TOBACCO RETAILER FAILS A COMPLIANCE CHECK?

They are penalized. State law sets a minimum penalty structure. If licensees (or their employees) sell tobacco or tobacco-related devices to a minor, they must pay a minimum administrative penalty of:

- **\$75** for the first offense;
- **\$200** for the second offense in the same location within 24 months; and
- **\$250 plus a mandatory 7 day tobacco license suspension** for the third offense at the same location within 24 months of the initial violation.

In addition, any person who sells tobacco to a minor:

- Must pay an administrative penalty of \$50;
- Is guilty of a misdemeanor (up to 90 days in jail and/or \$1,000 fine) for the first violation; and
- Is guilty of a gross misdemeanor (up to one year in jail and/or \$3,000 fine) for any additional violations within five years of a previous conviction.

*Minn. Stat. § 461.12, subd. 4; Minn. Stat. § 609.685, subd. 1a.*

In terms of penalties, state law sets the “floor.” A city/county **may not** be less restrictive in its penalty structure but **can be** more restrictive. *Minn. Stat. § 461.19; Minn. Stat. § 609.685, subd. 4.* Some cities and counties have adopted higher penalties for ordinance violations, including those associated with the sale of tobacco to minors.

### EVERYONE HAS A ROLE TO PLAY IN REDUCING YOUTH TOBACCO USE.

