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**STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL**

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**Summary
of
Juvenile Tobacco Sales
Enforcement
1999**

JUN 12 2000

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May 10, 2000

ACKNOWLEDGEMENTS

This report represents the the results of the combined efforts of the the Maine Department of Human Services/Bureau of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services/Office of Substance Abuse, and the Department of the Attorney General. The work of the Nicotine Independent Center, the Maine Sheriffs Association and the effort of the police departments, supervisors and student interns throughout Maine who participated in the inspections of tobacco outlets further contributed to this work.

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Photo: Boy smoking by Michael Giessinger-used by permission of the "Campaign for Tobacco Free Kids"

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SCOPE:

Unannounced inspections of licensed tobacco outlets were conducted throughout 1999. The inspections were carried out pursuant to Maine's Juvenile Tobacco Law, 22 MRSA §1551 *et seq.* and the U.S. Food and Drug Administration's "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" CFR Part 801, *et seq.* Agents of the Maine Sheriffs Association and officers of the Portland, Westbrook, Lewiston, and Auburn Police Departments were trained and commissioned as officers of the U.S. Department of Health and Human Services. Working with underage purchasers trained in the Enforcement Procedures and Protocols for Unannounced Inspections of Tobacco Vendors and adult supervisors, the agents and purchasers conducted the inspections under contract with the Maine Department of Human Services¹. The Maine Department of Mental Health Mental Retardation and Substance Abuse Services, Office of Substance Abuse (OSA), is required by the Synar amendment² to report results of tobacco inspections to the U.S. Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention (CSAP) pursuant to the terms of the Substance Abuse Prevention and Treatment Block Grant. The results were also reported to the FDA and letters of violation or compliance with federal regulations were mailed to each of the inspected locations. The results are also used to file complaints against violators of Maine law including both license holders and their employees.

INSPECTIONS:

Of 3072 outlets visited 2393 were inspected. The remaining 679 locations were either closed at the time of inspection, out of business or considered inappropriate for the underage buyers to attempt the investigation. With the exception of the 489 sites selected for the 1998 random sample from those licensed by the Department of Human Services³, all licensees inspected in 1999 were used to satisfy the requirements of the Substance Abuse Prevention and Treatment Block Grant administered by OSA. Agents and underage purchasers attended one of two one day training sessions held in Portland and Bangor and were trained on Procedures and Protocols developed by

¹ 22 MRSA § 1556-A-DHS authority to contract enforcement

² Section 1926(b)(2) Public Health Service Act [42 USC 300x-26(b)(2)] 1992

³ Required by 22 MRSA § 1551-A.

the Department of the Attorney General and FDA procedures. Additional training was provided on how to complete reports, and included role playing of likely situations during inspections and when testifying in court. Training is ongoing and all participants must attend trainings to update their understanding of the most current procedure and practice.

Agents and underage purchasers were assigned regions and four regional coordinators developed inspection schedules. Inspection results were filed with both the FDA and the Department of the Attorney General. Results for the purposes of the Synar requirement were submitted to the Office of Substance Abuse and reported to CSAP.

The safety and security of the underage buyers is of paramount importance to the cooperating agencies. To assure that underage buyers and their parents understand the program, it is encouraged that both read the procedures and protocols prior to participation. Parents are given the opportunity to inquire about the conduct of the compliance investigations, provided copies of the procedures and required to sign permission agreements indicating their parental consent for their child to participate. Also required are medical release forms that allow the supervising adults to obtain any treatment required in the event of a medical emergency. Often parents accompany their child if a court appearance is required. Parental approval and participation is a key factor in the success of these investigations.

RESULTS OF INSPECTIONS:

Of the 2393 outlets inspected, the underage purchasers purchased tobacco products 236 times. The overall "buy rate" for all inspections during 1999 was 9.86%. This rate of non-compliance is up approximately 3% from the non-compliance rate of 6.56% for 1998. It is important to note that while the buy rate increased, Maine retailers posted the best compliance rate in the nation during the FDA compliance program (*see Appendix*).

The buy rates ranged from a high of 27.08% to 5.26%. Six counties (Aroostook, Cumberland, Franklin, Knox, Penobscot, and York) posted buy rates under 10%; 10 counties (Androscoggin, Hancock, Kennebec, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Waldo

and Washington) had rates exceeding 10%; five counties (Hancock, Lincoln, Piscataquis, Sagadahoc and Washington) had a rate of 20% or more.

Whenever tobacco products were purchased, law enforcement officers, trained as tobacco control agents and commissioned as FDA officers, issued Notices of Civil Administrative Action. Both clerks and owners were served notices pursuant to 22 MRSA § 1555-B. Copies of the notices and reports were forwarded to the Department of the Attorney General and civil complaints were filed with the Administrative Court and/or warnings were issued to the violators. An FDA compliance check form was submitted to FDA. For first offenses FDA issued a warning letter. Repeat offenses were subject to federal fines up to \$10,000. Under Maine law a violator may be fined up to \$1500 and tobacco sales licenses may be suspended or revoked.

A small number of violators complained about the procedures used during inspections. Complaints continued to focus on being unable to confront the underage purchaser who purchased the tobacco product at the time violators were served the Notice of Civil Administrative Action⁴. All such complaints were addressed and the Department of the Attorney General considered the circumstances of a given inspection when making the final decision on pursuing a complaint, deciding at times to seek a reduced fine or issue a warning. These decisions are based on interviews with the violator, purchasers and agents involved. Anyone served notice may contest the alleged violation and request a hearing in Administrative Court⁵.

Of the 399 Complaints brought by the Department of the Attorney General on behalf of the Department of Human Services, an agreement resulting in consent orders or judgments being entered was reached in 361 of the cases. Thirty-eight cases remain to be scheduled for hearings. Of the cases settled, 100% included admissions or findings of a violation.

⁴ Both State and FDA Procedures prohibit the purchaser from returning to the store for safety concerns. Purchasers are named in complaints and appear for contested hearings in Administrative Court.

⁵ As of March 1, 2001 all Administrative complaints will be heard by the District Court

RECOMMENDATIONS:

Continued review of procedures and on going training to assure the safety of participants is required. Communication among all agencies and contractors involved needs to continue so that proven efficiencies of a collaborative effort can to be realized.

The Procedures and Protocols must be reviewed periodically and any insights gained from experience in the field incorporated. This field experience needs to be shared with the federal agencies involved to assure that federal requirements meet the needs of Maine's program. New training must continue to address situations, which are to be avoided such as conducting inspections where underage purchasers are known. Training must continue to stress strict adherence to the protocols. It must also be clear that purchasers involved in a buy may be required to testify in court.

A yearly license renewal could reduce the large number of stores that were found upon inspection to be out of business or closed. Dates of seasonal operations within license applications and regular renewals would reduce unproductive inspection operations.

Because most locations now have a record of the results of inspections, a program to recognize licensees with superior performance is required. Additionally, an effort to assist retailers to implement responsible tobacco retailing practices is needed to compliment current enforcement strategies.

In order to attract and retain dedicated participants, compensation of underage purchasers, law enforcement agents and adult supervisors must remain competitive with other employment opportunities available to them.

ONGOING EFFORTS:

On March 21, 2000 the United States Supreme Court found that the FDA did not have authority to regulate tobacco. (*Food and Drug Administration et al. v. Brown & Williamson Tobacco Corp. et al.*) The FDA has terminated its contract with all states in lieu of this decision.

Maine's underage tobacco access laws are unaffected by the Court's decision. The Maine Department of Human Services' Bureau of Health/Partnership for Tobacco Free Maine has current contracts with law enforcement and youth supervisors to continue compliance investigations under the authority of 22 M.S.R.A. § 1551 et seq. A number of bills that would restore FDA authority over tobacco have been submitted in the United States House of Representatives. Further, some major tobacco companies have expressed an interest in "appropriate" legislation to regulate tobacco.

The United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) has identified enforcement of youth tobacco access laws as one of the best practices for tobacco control programs⁶. CDC recommends states spend between \$0.43 and \$0.80 per capita per year for enforcement programs.

It is the consensus of all the Departments involved that inspections in Maine will be ongoing. Media campaigns continue to alert the public to this program. Retailers will continue to receive information about the program from DHS. The Tobacco Prevention and Control Advisory Council, established in 22 MRSA § 271 et seq, continues to be informed of the results of tobacco inspections and advises the Bureau of Health on all components of the Tobacco Prevention and Control Program including the stated goal of increased law enforcement efforts.

By statute 50% of the fines collected from tobacco violations are returned to "law enforcement."⁷ Currently, the Maine Criminal Justice Academy administers these funds. The Academy has formed a committee with representatives of the Maine Sheriffs Association, the Maine Chiefs of Police Association, the Office of Substance Abuse and the Department of the Attorney General to oversee the account. To date, \$129,624 has been distributed to local law enforcement agencies for youth drug and tobacco outreach programs and education.

⁶ Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs-August 1999*. Atlanta GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, August 1999

⁷ 22 MRSA § 1555-B ¶ 9.

Finally, Attorneys General in several states have taken action against large retail chains operating either regionally or nationally. These actions, based on unfair and deceptive trade practice statutes, have resulted in Assurances of Discontinuance signed by the retailers requiring the implementation of responsible retail practices and monetary contributions. The Tobacco Retail Responsibility Initiative working with the National Association of Attorneys General has identified these practices⁸.

CONCLUSIONS:

The unannounced retail tobacco inspection program is an important piece in the overall strategy for reducing tobacco use by underage teenagers. The underage purchasers, adult supervisors, and agents perform professionally. Most civil actions initiated by the Department of the Attorney General are resolved quickly by negotiated consent orders. The rate of out of court settlements for 1999 is over 89%. Although the compliance rate declined in 1999 from 93% to 90%, Maine continues to post the best compliance rates in the United States. These rates indicate the effectiveness of a comprehensive tobacco prevention strategy with enforcement of youth access laws an important component. The results demonstrate that the intended change of attitude toward tobacco sales among retailers is being maintained.

The program is successful in its operation and in assessing penalties for violations. Maine law requires that sellers check identification of any person age 27 or younger and sets a clear parameter for sellers and provides a clear determination if a violation has occurred.

Credible enforcement programs, when combined with education, increased product cost and media campaigns reduce the availability of tobacco products to underage individuals and will lead to lowered demand for tobacco by teens. Even a 90% compliance rate indicates that one out of 10 stores may still be selling tobacco to underage minors and the effort to lower this sales rate is essential if Maine is to continue to address its high rates of youth and young adult tobacco use. In

⁸ *Preventing Teenage Access to Tobacco-June 1999* Institute for Health Policy, Heller Graduate School, Brandeis University, Tobacco Retailer Responsibility Initiative. Waltham, MA 1999

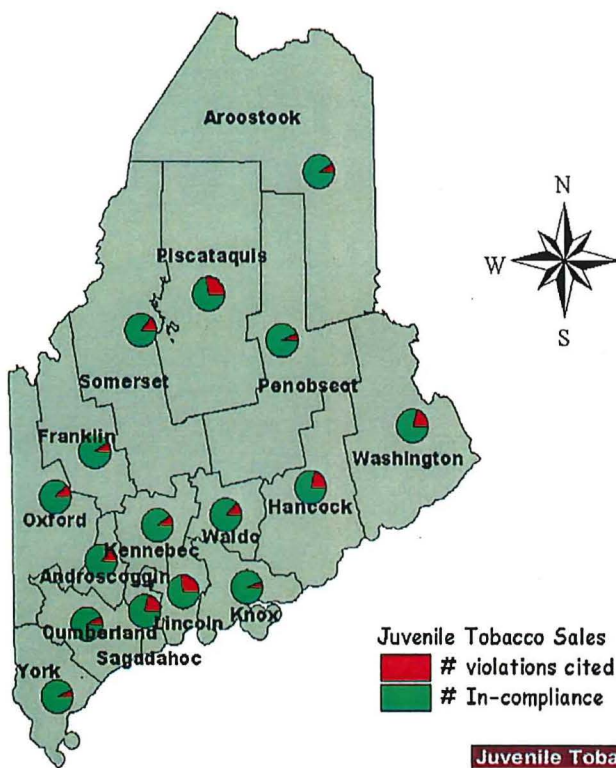
NO SALE: Youth, Tobacco and Responsible Retailing-December 1994 Findings and Recommendation of a working Group of State Attorneys General
 Maine Department of the Attorney General

addition to these efforts, the need to study ways to reduce youth access to tobacco through social sources must be addressed.

APPENDIX

1999 Maine Juvenile Tobacco Sales

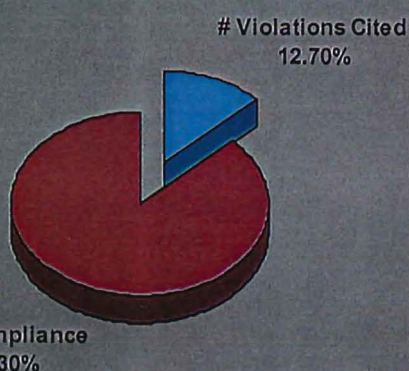
Maine 1999 Juvenile Tobacco Sales



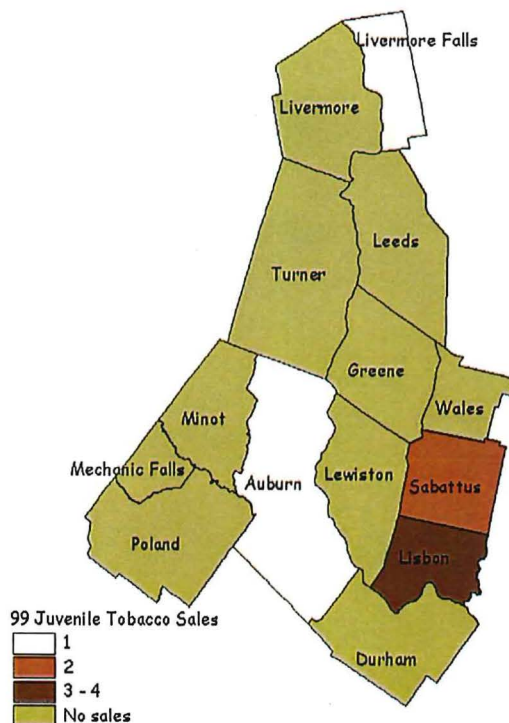
Juvenile Tobacco Sales Enforcement-1999					
County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Androscoggin	8	55	63	12.70%	87.30%
Aroostook	25	271	296	8.45%	91.55%
Cumberland	36	439	475	7.58%	92.42%
Franklin	6	59	65	9.23%	90.77%
Hancock	20	77	97	20.62%	79.38%
Kennebec	31	278	309	10.03%	89.97%
Knox	3	54	57	5.26%	94.74%
Lincoln	13	35	48	27.08%	72.92%
Oxford	3	22	25	12.00%	88.00%
Penobscot	23	298	321	7.17%	92.83%
Piscataquis	7	19	26	26.92%	73.08%
Sagadahoc	9	34	43	20.93%	79.07%
Somerset	23	143	166	13.86%	86.14%
Waldo	7	52	59	11.86%	88.14%
Washington	4	16	20	20.00%	80.00%
York	18	305	323	5.57%	94.43%
Total	236	2157	2393	9.86%	90.14%



1999 Maine Juvenile Tobacco Sales Androscoggin County

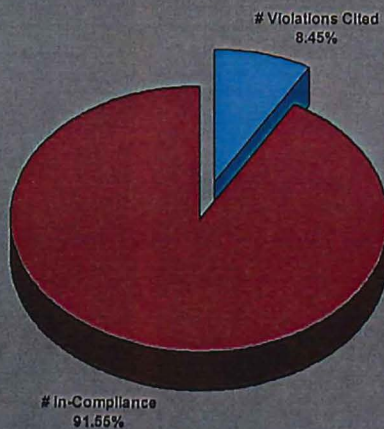


Maine
1999 Juvenile Tobacco Sales
Androscoggin County

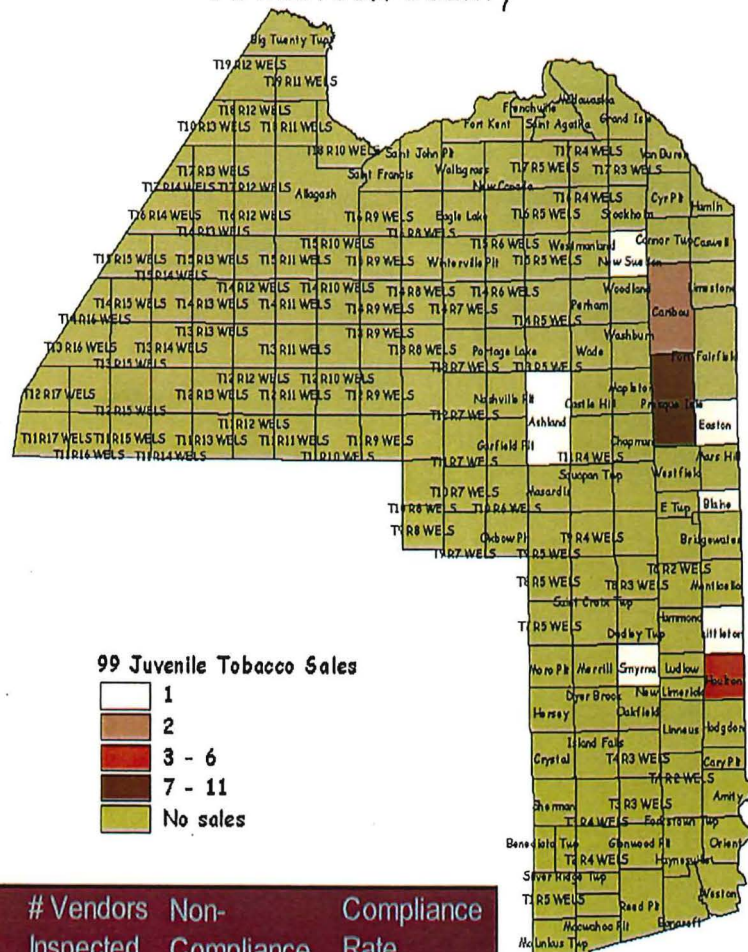


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Androscoggin	8	55	63	12.70%	87.30%

1999 Maine Juvenile Tobacco Sales Aroostook County



Maine 1999 Juvenile Tobacco Sales Aroostook County

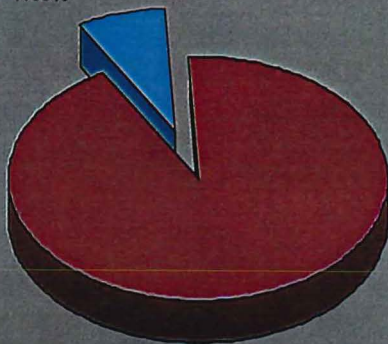


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Aroostook	25	271	296	8.45%	91.55%

1999 Maine Juvenile Tobacco Sales Cumberland County

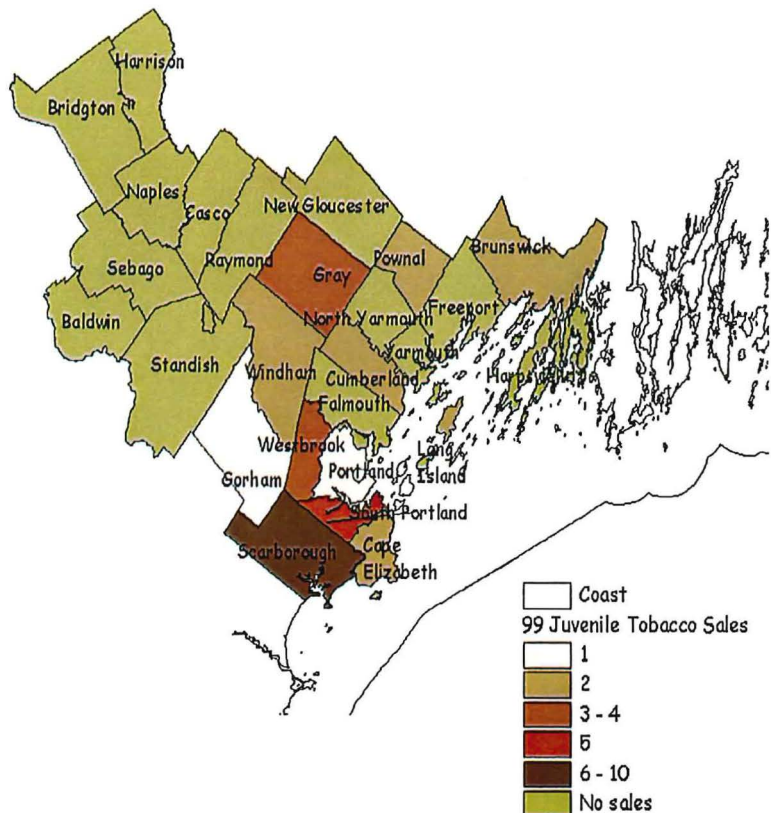


Violations Cited
7.58%



In-Compliance
92.42%

Maine 1999 Juvenile Tobacco Sales Cumberland County

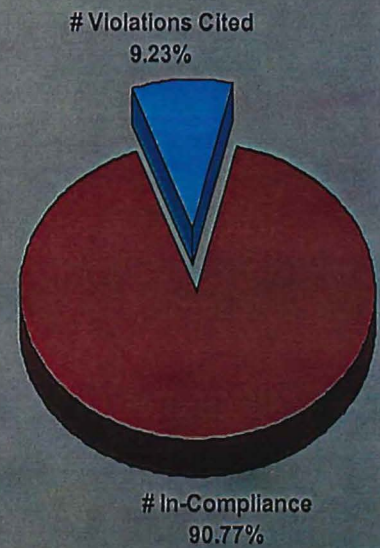
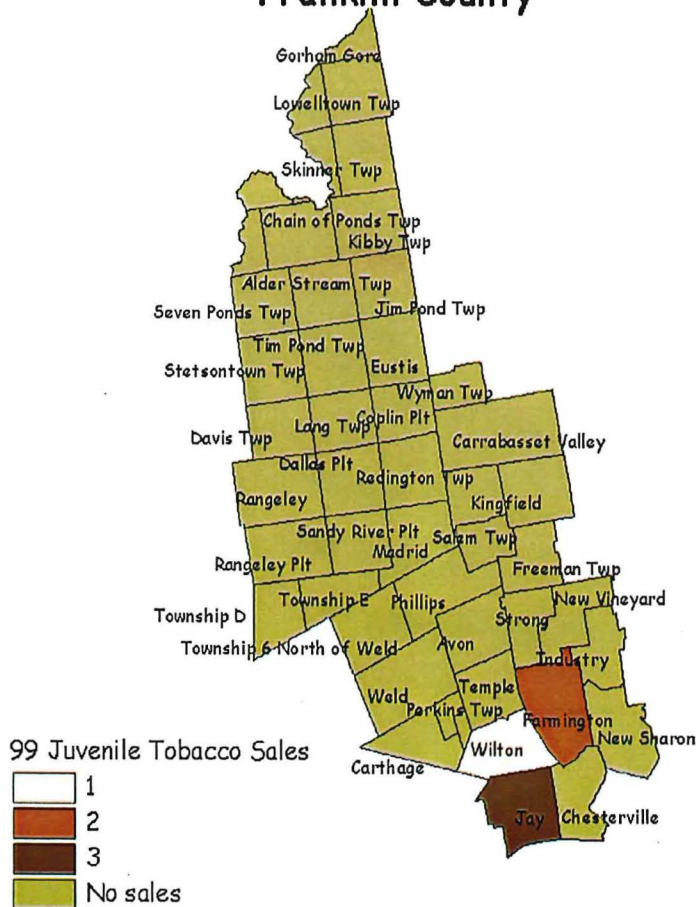


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Cumberland	36	439	475	7.58%	92.42%



1999 Maine Juvenile Tobacco Sales Franklin County

Maine 1999 Juvenile Tobacco Sales Franklin County

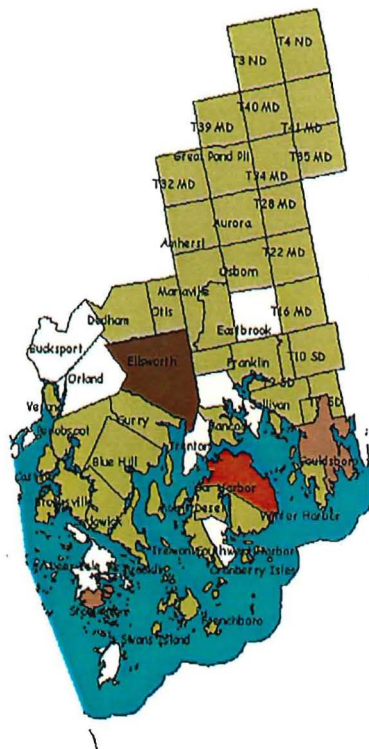


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Franklin	6	59	65	9.23%	90.77%



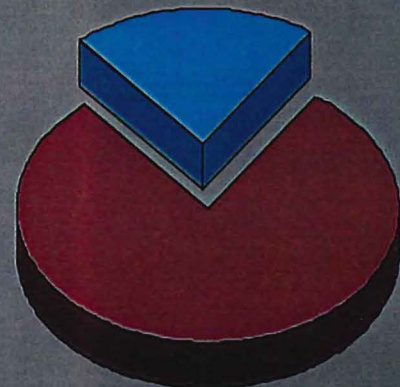
1999 Maine Juvenile Tobacco Sales Hancock County

Maine
1999 Juvenile Tobacco Sales
Hancock County



99 Juvenile Tobacco Sales
1
2
3
4-5
No sales

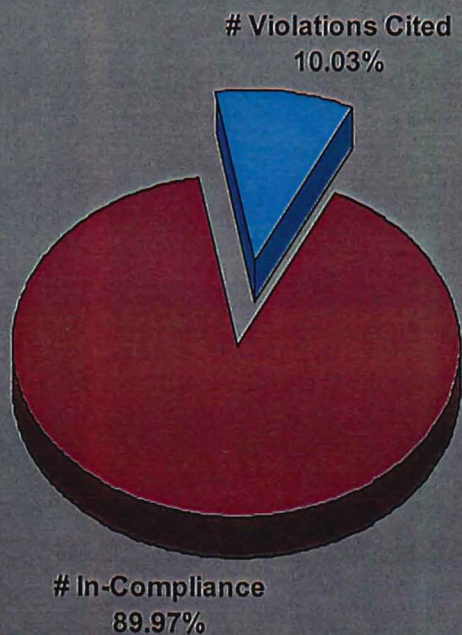
Violations Cited
20.62%



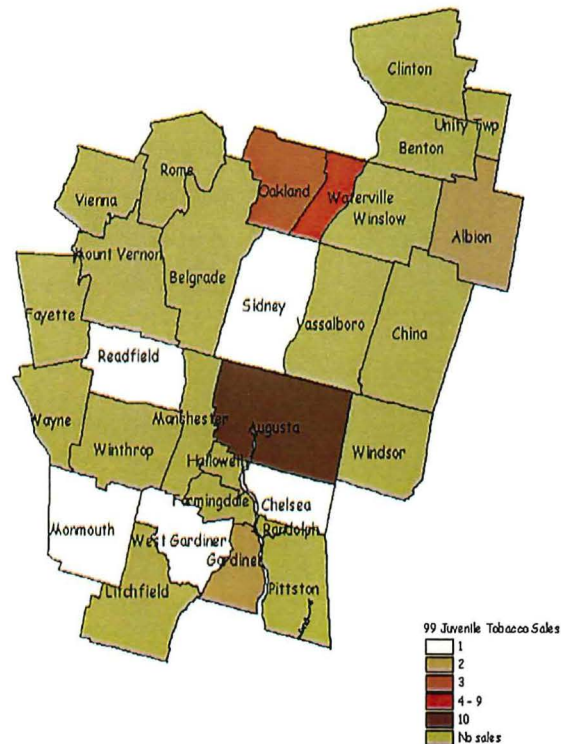
In-Compliance
79.38%

County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Hancock	20	77	97	20.62%	79.38%

1999 Maine Juvenile Tobacco Sales Kennebec County



Maine
1999 Juvenile Tobacco Sales
Kennebec County

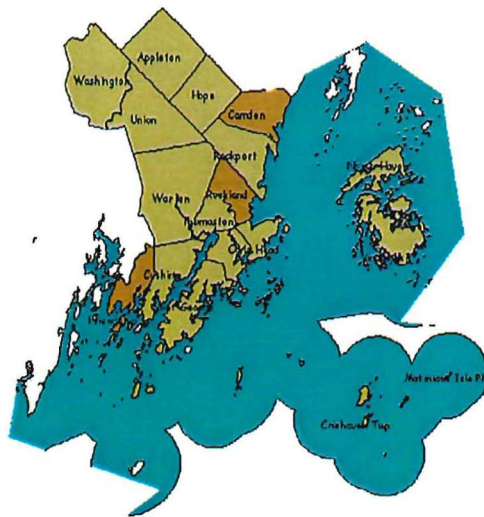




County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Kennebec	31	278	309	10.03%	89.97%

1999 Maine Juvenile Tobacco Sales Knox County

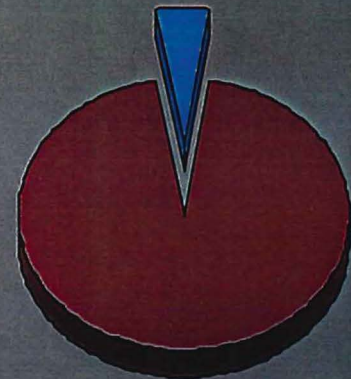


Maine
1999 Juvenile Tobacco Sales
Knox County



99 Juvenile Tobacco Sales
 1
 No sale

Violations Cited
5.26%



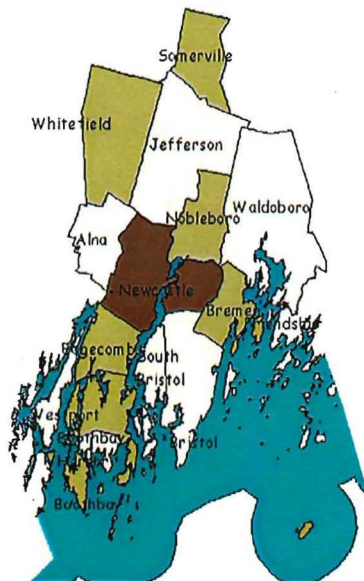
In-Compliance
94.74%

County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Knox	3	54	57	5.26%	94.74%

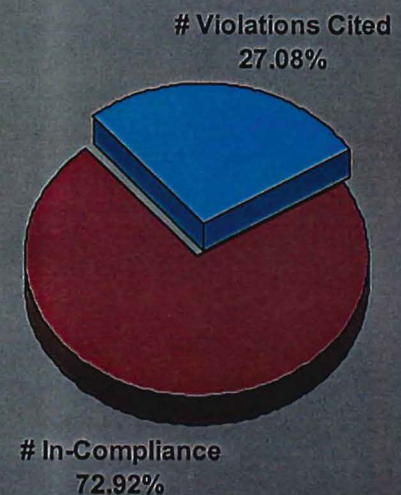
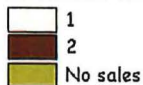
1999 Maine Juvenile Tobacco Sales Lincoln County



Maine
1999 Juvenile Tobacco Sales
Lincoln County



99 Juvenile Tobacco Sales

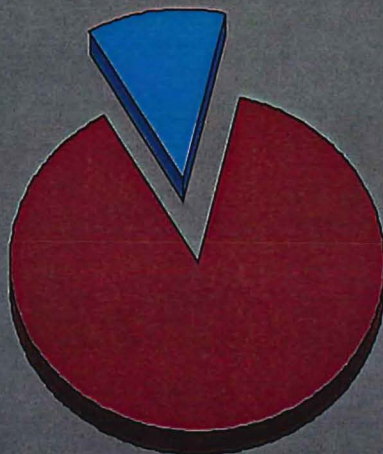


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Lincoln	13	35	48	27.08%	72.92%

1999 Maine Juvenile Tobacco Sales Oxford County

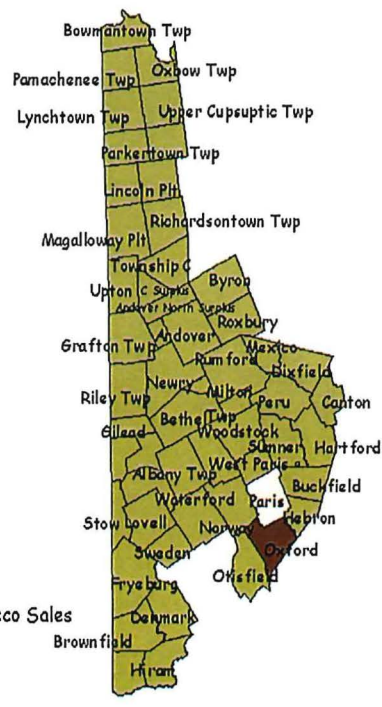


Violations Cited
12.00%



In-Compliance
88.00%

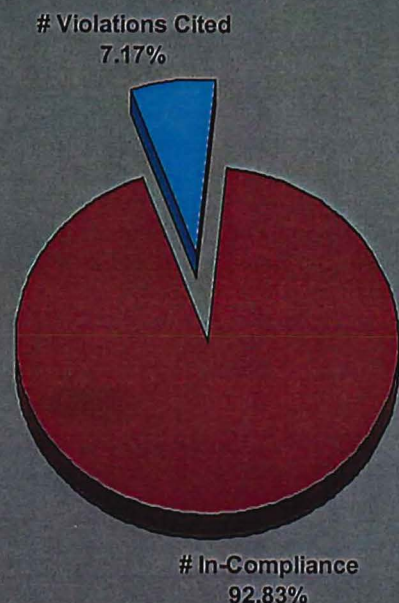
Maine 1999 Juvenile Tobacco Sales Oxford County



99 Juvenile Tobacco Sales
1
2
No sales

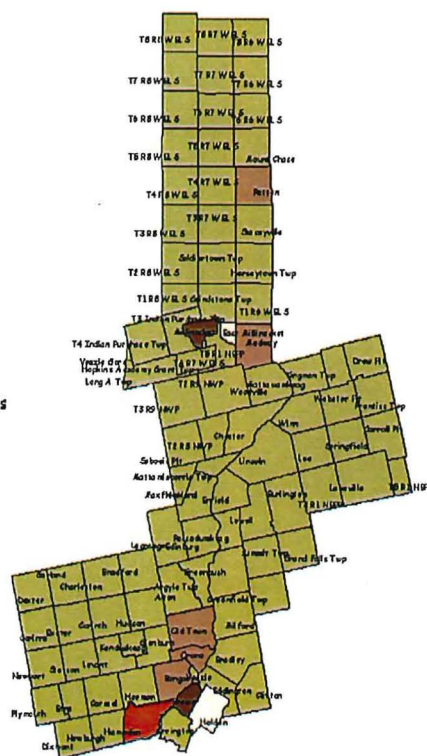
County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Oxford	3	22	25	12.00%	88.00%

1999 Maine Juvenile Tobacco Sales Penobscot County



Maine 1999 Juvenile Tobacco Sales Penobscot County

99 Juvenile Tobacco Sales



County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Penobscot	23	298	321	7.17%	92.83%

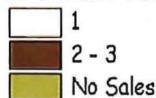
1999 Maine Juvenile Tobacco Sales Piscataquis County



Maine 1999 Juvenile Tobacco Sales Piscataquis County



99 Juvenile Tobacco Sales

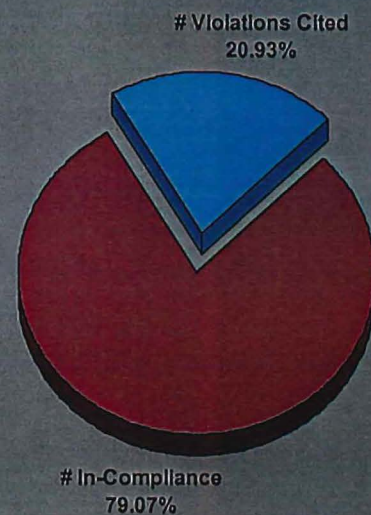
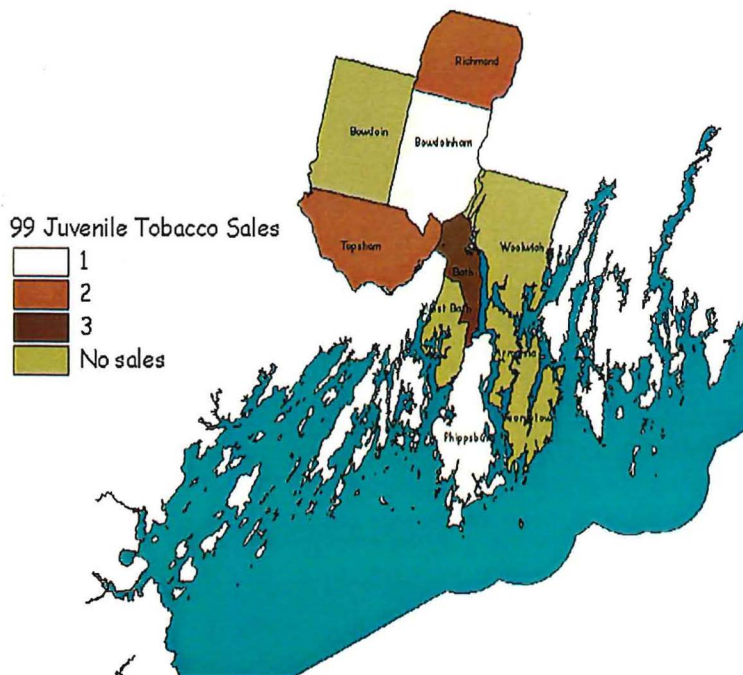


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Piscataquis	7	19	26	26.92%	73.08%

1999 Maine Juvenile Tobacco Sales Sagadahoc County

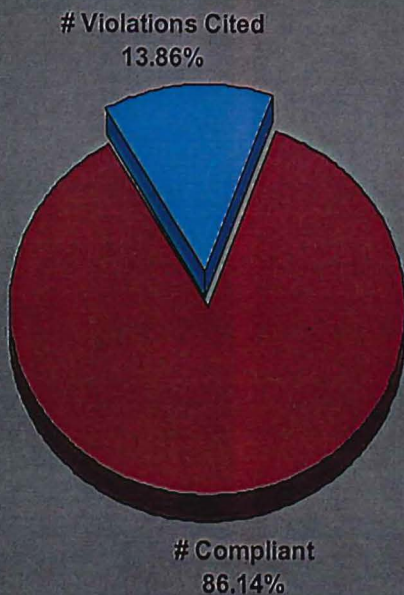


Maine
1999 Juvenile Tobacco Sales
Sagadahoc County

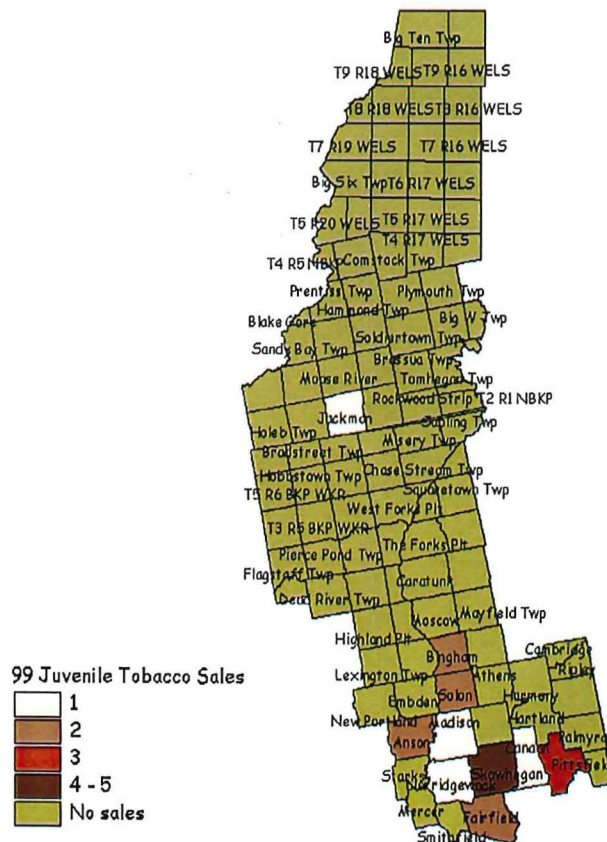


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Sagadahoc	9	34	43	20.93%	79.07%

1999 Maine Juvenile Tobacco Sales Somerset County



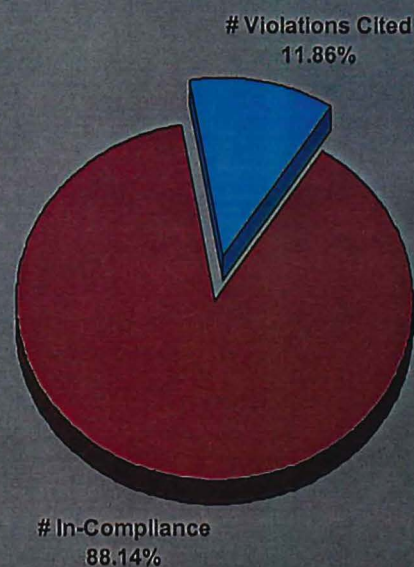
Maine 1999 Juvenile Tobacco Sales Somerset County



County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Somerset	23	143	166	13.86%	86.14%

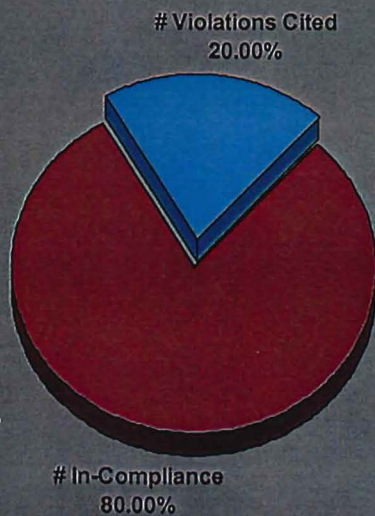
A map of West Virginia showing its 50 counties. Lincoln County is highlighted in dark brown. The surrounding counties are colored olive green, while the water bodies are colored blue. The highlighted county is Lincoln.

	1
	2 - 5
	No sales





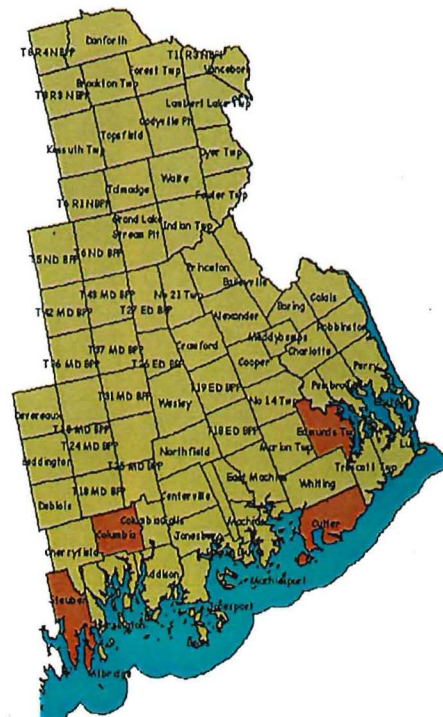
County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Waldo	7	52	59	11.86%	88.14%

1999 Maine Juvenile Tobacco Sales Washington County



Maine
1999 Juvenile Tobacco Sales
Washington County

99 Juvenile Tobacco Sales
 1
 No sales

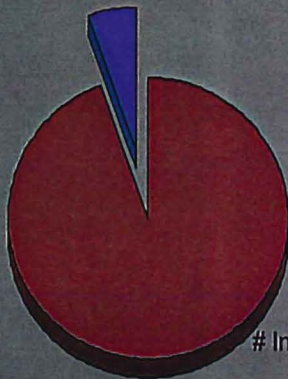


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
Washington	4	16	20	20.00%	80.00%

1999 Maine Juvenile Tobacco Sales York County

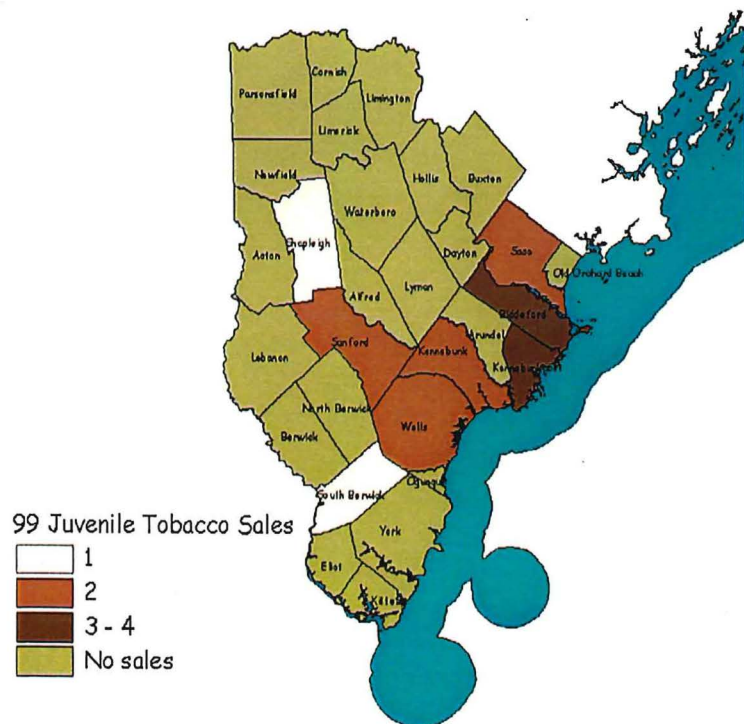


Violations Cited
5.57%



In-Compliance
94.43%

Maine 1999 Juvenile Tobacco Sales York County

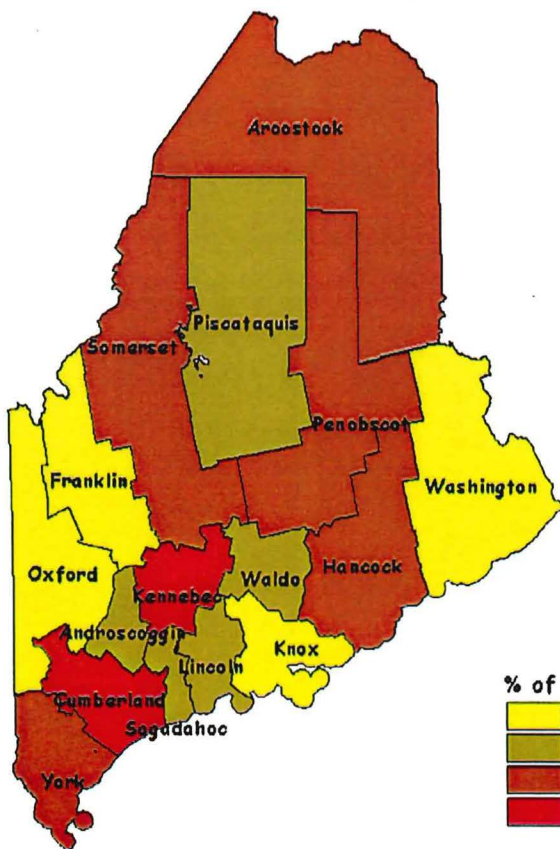


County	# Violations Cited	# In-Compliance	# Vendors Inspected	Non-Compliance Rate	Compliance Rate
York	18	305	323	5.57%	94.43%

1999 Maine Juvenile Tobacco Sales Fine Distribution



Maine 1999 Juvenile Tobacco Sales Distribution of Fines Paid

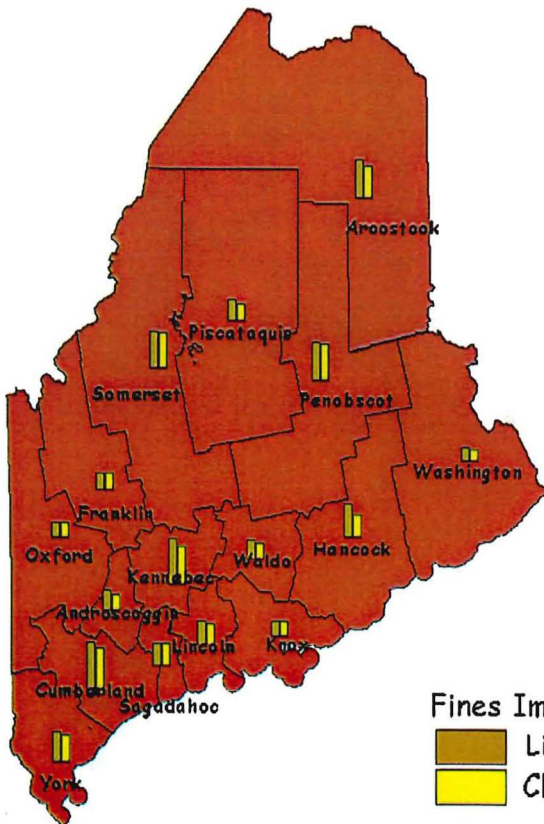


County	Licensee Fines	Amount of Licensee Fines	Clerk Fines	Amount of Clerk Fines	Total Fines
Androscoggin	7	\$ 1,700.00	4	\$ 200.00	\$ 1,900.00
Aroostook	21	\$ 5,000.00	16	\$ 850.00	\$ 5,850.00
Cumberland	31	\$ 7,100.00	27	\$ 1,400.00	\$ 8,500.00
Franklin	4	\$ 650.00	4	\$ 300.00	\$ 950.00
Hancock	17	\$ 4,300.00	9	\$ 450.00	\$ 4,750.00
Kennebec	26	\$ 5,600.00	20	\$ 1,050.00	\$ 6,650.00
Knox	3	\$ 900.00	3	\$ 150.00	\$ 1,050.00
Lincoln	10	\$ 2,300.00	8	\$ 400.00	\$ 2,700.00
Oxford	3	\$ 600.00	3	\$ 150.00	\$ 750.00
Penobscot	21	\$ 4,500.00	19	\$ 1,100.00	\$ 5,600.00
Piscataquis	7	\$ 1,700.00	4	\$ 300.00	\$ 2,000.00
Sagadahoc	9	\$ 2,400.00	9	\$ 500.00	\$ 2,900.00
Somerset	19	\$ 3,800.00	18	\$ 900.00	\$ 4,700.00
Waldo	6	\$ 1,500.00	4	\$ 200.00	\$ 1,700.00
Washington	2	\$ 700.00	0	\$ -	\$ 700.00
York	15	\$ 3,200.00	12	\$ 850.00	\$ 4,050.00
Total	201	\$ 45,950.00	160	\$ 8,800.00	\$54,750.00

1999 Maine Juvenile Tobacco Sales Fine Comparison



Maine 1999 Juvenile Tobacco Sales Fine Comparison

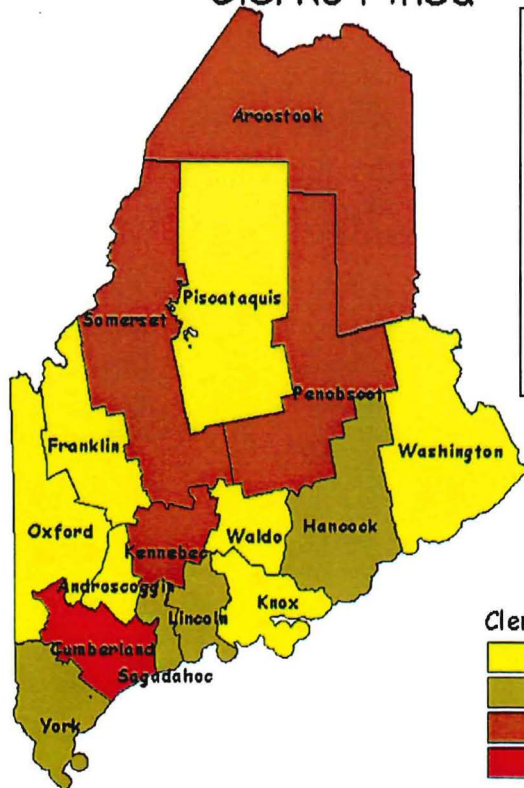


Juvenile Tobacco Sales Fines 1999					
County	Licensee Fines	Amount of Licensee Fines	Clerk Fines	Amount of Clerk Fines	Total Fines
Androscoggin	7	\$ 1,700.00	4	\$ 200.00	\$ 1,900.00
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1999 Maine Juvenile Tobacco Sales Clerks Fined



Maine 1999 Juvenile Tobacco Sales Clerks Fined



Clerks Fined

- 0 - 4
- 5 - 12
- 13 - 20
- 21 - 27

State of Maine - 1999 Juvenile Tobacco Sales
Amount of Clerks Fines

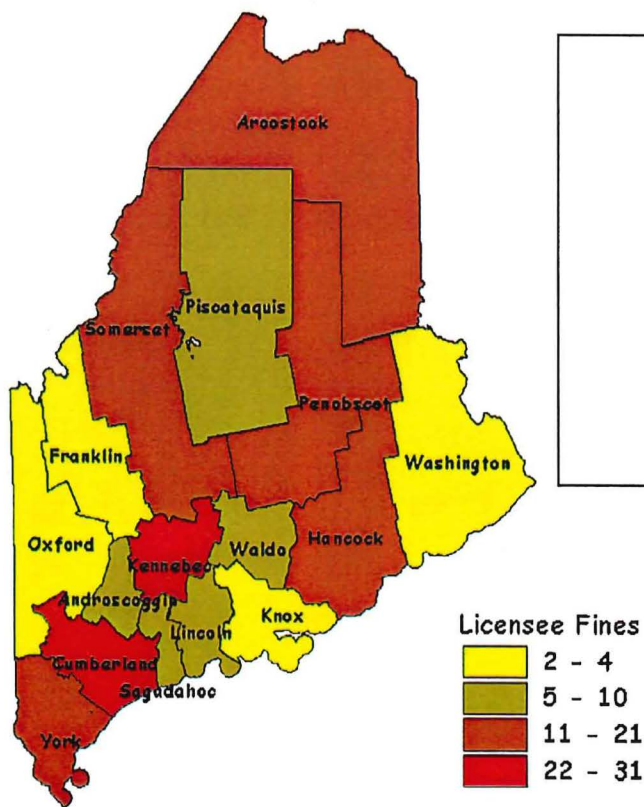
- Androscoggin
- Arrostook
- Cumberland
- Franklin
- Hancock
- Kennebec
- Knox
- Lincoln
- Oxford
- Penobscot
- Piscataquis
- Sagadahoc
- Somerset
- Waldo
- Washington
- York



1999 Maine Juvenile Tobacco Sales Licensees Fined



Maine 1999 Juvenile Tobacco Sales Licensees Fined



- Androscoggin
- Aroostook
- Cumberland
- Franklin
- Hancock
- Kennebec
- Knox
- Lincoln
- Oxford
- Penobscot
- Piscataquis
- Sagadahoc
- Somerset
- Waldo
- Washington
- York

1999 Juvenile Tobacco Sales
Amount of Licensee Fines

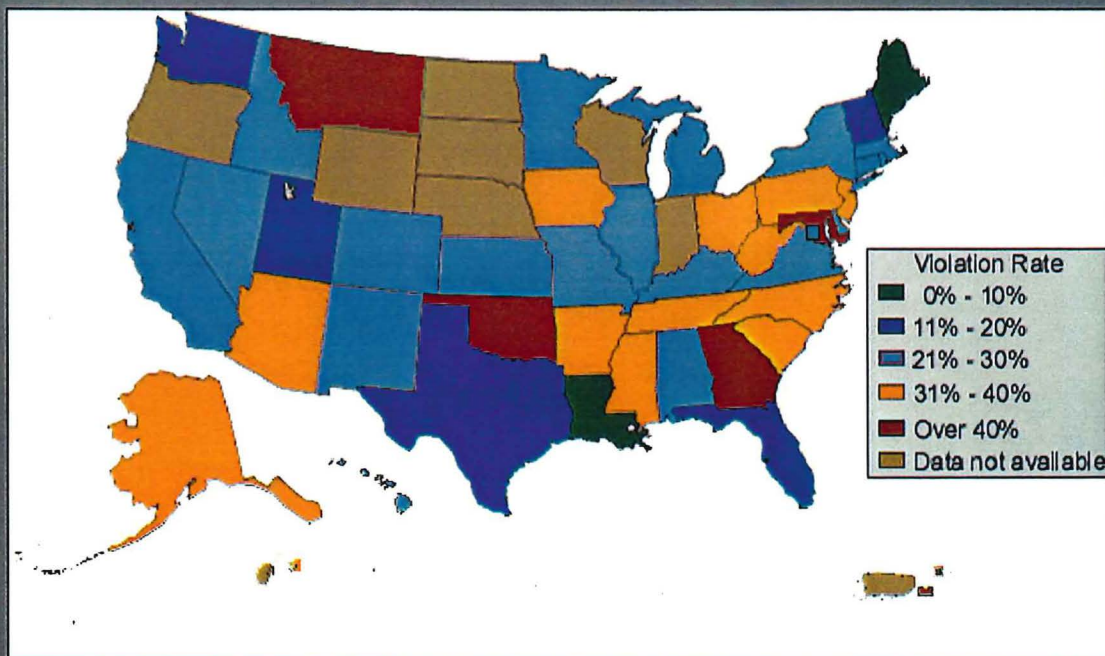


1999 Maine Juvenile Tobacco Sales FDA Results



Children & Tobacco
ComplianceChecker

- FDA Homepage
- Children & Tobacco homepage



1999 Maine Juvenile Tobacco Sales FDA Results



**Children & Tobacco
ComplianceChecker**

[FDA Homepage](#)
[Children & Tobacco homepage](#)

Report Selection

Summary - State Report for Maine

	Total Checks Completed	Violation Rate *	Violations	In Compliance
Complete Report	3205	9 %	294	2911
2000	122	11 %	13	109
1999	2116	10 %	214	1902
1998	967	7 %	67	900

*Note: Report does not include results of investigations less than 90 days old for year 2000. State data for investigations conducted through March 21, 2000 show 831 completed checks with 51 violations for a 6% violation rate.