

## **Tobacco Product Regulation Act 2017 Annual Report**

This report is respectfully submitted pursuant to section 17-711 of the New York City Administrative Code which requires an annual report to the City Council and the Mayor of New York regarding the administration and enforcement of the Tobacco Product and Regulation Act.

### **Introduction**

The Tobacco Product Regulation Act (TPRA), New York City Administrative Code §17-701 *et seq.*, became effective in April 1993, and was last amended in November 2013. Provisions of this law forbid the sale of cigarettes, tobacco products, or e-cigarettes to persons under the age of 21, the sale of unpackaged cigarettes ("loosies"), and the sale of tobacco products by anyone under the age of 18, unless that person is under the direct supervision of another employee who is of age and on the premises. Beginning in 2014, retailers were required to post specifically worded signs indicating that tobacco and e-cigarette sales to those under the age of 21 are prohibited, and must also request and review photo identification from the prospective buyer, unless the purchaser reasonably appears to be at least 30 years of age. The responsibility for educating retailers about TPRA and the enforcement of TPRA lies with the Department of Health and Mental Hygiene (DOHMH) and the Department of Consumer Affairs (DCA).

The Adolescent Tobacco Use Prevention Act (ATUPA), New York State Public Health Law §1399-aa *et seq.*, similarly prohibits the sale of tobacco products to minors under the age of 18, though on a statewide basis. ATUPA provides authority for the State Department of Health (SDOH) to fund local government entities to enforce ATUPA in their jurisdictions. Pursuant to this authority, SDOH funds DCA to perform ATUPA compliance checks and funds DOHMH to educate tobacco retailers about the provisions of ATUPA, TPRA and the consequences of noncompliance.

To enforce the provisions of both the TPRA and ATUPA, DCA enforcement officers conduct compliance checks using underage youth who attempt over-the-counter purchases of cigarettes and e-cigarettes. DCA compliance checks include annual inspections of all retailers and follow-up inspections with retailers that have received "points" for past violations. (See below for more information about points). There are currently about 8,100 licensed cigarette retailers in New York City.

Penalties for violation of the TPRA are specified in New York City Administrative Code §17-710, and they were increased by the 2013 amendment. Fines range from \$500 to 5,000. In some cases, the amounts of fines escalate for repeat offenders so long as the violations take place within a three year period. Repeated violations within a three-year period, also can trigger revocation of the vendor's City cigarette license. Office of Administrative Trials and hearings (OATH) adjudicates these violations. Penalties for violations of ATUPA are specified by state law. Fines range from \$300 to \$1,500. In addition, the statute sets forth a process by which sale-to-minor violations result in "points" on a retailer's record. The accumulation of three or more points can result in suspension or revocation of a

retailer’s state tobacco registration and state lottery license.

**Results**

The following table reflects activity during 2017, which corresponds to Quarter 4 of ATUPA Grant Year XIX and Quarters 1, 2 and 3 of Grant Year XX.

<b>Quarter</b>	<b>Compliance checks by adults</b>	<b>Compliance checks with minors</b>	<b>Tobacco sales made to minors</b>	<b>Compliance rate</b>	<b>Total fines assessed</b>	<b>Total fines collected</b>
4th Quarter Grant XIX Jan. 1- March 31, 2017	543	1,950	193	90%	\$594,700	\$284,579
1st Quarter Grant XX April 1- June 30, 2017	346	2,514	213	92%	\$424,800	\$329,606
2nd Quarter Grant XX July 1- Sept. 30, 2017	475	2,059	213	90%	\$459,100	\$289,569
3rd Quarter Grant XX Oct. 1- Dec. 31, 2017	677	2,124	226	89%	\$394,550	\$277,606
<b>Total</b>	2,041	8,647	845	90%	\$1,873,150	\$1,181,360

**Discussion**

DCA conducted all 8,500 initial inspections required in both Grant Year 19 and Grant Year 20. The number of ATUPA compliance checks performed with minors under the age of 18 and the resulting compliance rate decreased slightly between calendar years. Total fines assessed increased, while total fines collected increased slightly.

The numbers in the above chart include Field Visits with Minors (FVM), which are included in the ATUPA reports to the State Department of Health. FVMs are inspections where a minor would have attempted a tobacco or e-cigarette purchase, but the business was either closed, no longer sells tobacco, or was deemed by DCA enforcement to be unsafe for the minor to attempt a purchase.

From December 12<sup>th</sup> to February 27<sup>th</sup>, 2018, DOHMH provided education to retailers that were newly licensed during the period from September 1, 2016 to November 7<sup>th</sup>, 2017. A total of 1,282 unique tobacco retailers received one face-to-face visit during which they were provided educational materials and advice on the NYC and NYS laws governing the sale of tobacco including newly passed restrictions. Health Department representatives provided extensive information on TPRA and ATUPA provisions, training on how to check IDs and refuse sales to minors, tips to prevent violations, information regarding new legal signage requirements to include electronic cigarettes, tobacco retailer certification programs, and flavored tobacco. Detailers contacted employees, owners, and/or managers of these retail locations during the course of the educational campaign, spending an average of 10 minutes with each person. Additional educational kits were mailed to 1,000 tobacco retailers with one or more violations throughout the city. Materials were also made available to retailers in English, Spanish, Chinese (simplified and traditional), Korean and Arabic through the DOHMH website.