



NEW YORK CITY DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE  
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Commissioner

## **Tobacco Product Regulation Act 2022 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 2020. Provisions of this law forbid the sale of cigarettes, tobacco products, e-cigarettes, or non-tobacco smoking products 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), the Department of Consumer and Worker Protection (DCWP), and the Department of Finance (DOF).

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 youth, though on a statewide basis. In 2019, ATUPA was amended to increase the minimum legal sale age from 18 to 21. 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, State Department of Health (SDOH) funds DCWP 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, DCWP employs underage youth to make undercover attempts of over-the-counter purchases of tobacco, non-tobacco smoking products and e-cigarettes during compliance checks. DCWP 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). At the end of the reporting period, March 31<sup>st</sup>, 2023, DCWP licensed 4,539 Tobacco Retail Dealers, and 1,953



Electronic Cigarette Dealers in NYC. This represents a reduction of 626 Tobacco Retailer Dealers and 126 Electronic Cigarette Dealers Licenses during the reporting period.

Penalties for violation of the TPRA are specified in New York City Administrative Code §17-710. 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 of certain offenses within a three-year period can also trigger revocation of the vendor's City Tobacco Retail Dealer license. Office of Administrative Trials and hearings (OATH) adjudicates these violations. Penalties for violations of ATUPA are specified by state law. Fines range from \$100 to \$2,500. 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 and vapor products dealer registrations and state lottery license.

### Results

The following table reflects the tobacco inspection activity during Grant Year XXV, April 1, 2022, to March 31, 2023.

<b>Quarter</b>	<b>Compliance checks by adults</b>	<b>Compliance checks with youth</b>	<b>Tobacco sales made to youth</b>
1st Quarter Grant XXV Apr. 1-June 30, 2022	1,334	1,988	1,217
2nd Quarter Grant XXV July 1-Sept. 30, 2022	2,414	2,660	1,080
3rd Quarter Grant XXV Oct. 1-Dec. 31, 2022	1,974	2,169	978
4th Quarter Grant XXV Jan. 1, 2022-March 31, 2023	2,942	2,011	945
<b>Total</b>	<b>8,664</b>	<b>8,828</b>	<b>4,220</b>



## Discussion

A total of 17,238 compliance checks were performed between April 2022 and March 2023. Of these, 8,828 were undercover purchase attempts with underage youth. The remaining 8,664 were comprehensive adult compliance checks.

Between April 1, 2022, to March 31, 2023, DOHMH provided education to retailers licensed to sell tobacco or electronic cigarette products in NYC in multiple ways. DOHMH representatives visited 1090 licensed tobacco and e-cigarette retailers in NYC that received a PHL 13-F or NYC related law violation between June 2021 and May 2022. During the face-to-face visits, DOHMH representatives provided educational materials (a toolkit) and information on the NYC and NYS laws governing the sale of tobacco. The toolkit of educational materials contained a cover letter, handouts on the relevant NYS and NYC laws, penalties, tobacco retailer certification programs, as well signs and a consumer-facing poster. Materials were also made available to retailers in English, Spanish, Chinese (simplified and traditional), Korean and Arabic through the DOHMH website. DOHMH also mailed letters about the toolkit of materials to all 4,173 unique owners of licensed tobacco and/or electronic cigarette retailers in NYC. Finally, DOHMH engaged with other stakeholders (e.g., NYC Department of Consumer and Worker Protections, NYC Department of Finance, NYC Small Business Services, DOHMH Shop Healthy Program, Yemeni American Merchants Association, United Bodegas of America, etc.) who work with retailers through emails, meetings, trainings, and phone calls.

DCWP's Visiting Inspector Program (VIP) also provides free consultations to newly licensed businesses on the laws and rules enforced by DCWP. Between April 2022 and March 2023, VIP inspectors provided business education to 269 newly licensed tobacco and e-cigarette retail dealers. Since 2017, DCWP has conducted nearly 12,000 VIP visits, reaching nearly 11,000 unique businesses.

DCWP also conducted 81 outreach events, citywide, targeting brick and mortar businesses and shared information from our Tobacco Retail Dealer and Electronic Cigarette Retail Dealer inspection checklists, as well as additional resources made available by the agency.