

Tobacco Product Regulation Act 2016 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 8,200 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 2016, which corresponds to Quarter 4 of ATUPA Grant Year XVIII and Quarters 1, 2 and 3 of Grant Year XIX.

Quarter	Compliance checks by adults	Compliance checks with minors ¹	Tobacco sales made to minors	Compliance rate	Total fines assessed ²	Total fines collected ²
4 th Quarter Grant XVIII Jan. 1-March 31, 2016	524	2,335	163	93%	\$180,450	\$218,669.31
1 st Quarter Grant XIX April 1- June 30, 2016	412	3,080	217	93%	\$161,350	\$137,826.68
2 nd Quarter Grant XIX July 1- Sept. 30, 2016	192	2,738	260	91%	\$227,150	\$222,968.02
3 rd Quarter Grant XIX Oct. 1- Dec. 31, 2016	146	2,321	180	92%	\$324,175	\$409,007.23
Total	1,274	10,474	820	92%	\$893,125	\$988,471.24

Discussion

DCA met its contractually obligated 9,200 inspections for Grant Year 18 and has presently exceeded the required 9,500 inspections for Grant Year 19 which runs from April 1,

¹ For purposes of this report, the number of compliance checks with minors does not include "field visits" in which inspectors and youth do not enter the tobacco outlet because the store is either closed or unsafe for minors.

² This data reflects fines assessed and collected for both TPRA and ATUPA violations.

2016 until March 31, 2017. The number of ATUPA compliance checks performed with minors under the age of 18 increased and the resulting compliance rate slightly decreased between calendar years. For the 4th quarter of Grant Year 18 and the 1st quarter of Grant Year 19, the number of compliance checks increased but fines assessed and collected decreased: this decrease was due to the ongoing transition of the DCA Tribunal, which took place in August of 2016. DCA's tribunal activities, and all violations issued on behalf of the Department will be adjudicated by the City's Office of Administrative Trials and Hearings (OATH). Tribunal transition has been delayed and this delay means that the only fines collected are as a result of settlements, resulting in a decrease in these numbers for the 4th quarter of Grant Year 18 and the 1st quarter of Grant Year 19.

The numbers in the above chart do not 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 October 1 to December 20, 2016, DOHMH provided education to retailers that were newly licensed during the period from October 1, 2015 to September 27, 2016. A total of 1,184 unique cigarette 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 new restrictions on the sale of tobacco products and electronic cigarettes to anyone under 21 years old. 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 managers of these retail locations during the course of the educational campaign, spending an average of 10 minutes with each person. Materials were made available to retailers in English, Spanish, Chinese (simplified and traditional), Korean and Arabic, and additional educational kits were mailed to 1,000 tobacco retailers with one or more violations throughout the city. Additional materials were also made available to retailers through the DOHMH website.