

## **Tobacco Product Regulation Act 2011 Annual Report**

This report is respectfully being submitted pursuant to section 17-625 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 effective February 2010.<sup>1</sup> Provisions of this law forbid the sale of tobacco products to minors, 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. Retailers must post specifically worded signs indicating that sales to minors are prohibited, and must also request and review photo identification from the prospective buyer, unless the purchaser reasonably appears to be at least 25 years of age. Also forbidden under this Act is the use of any tobacco product on school premises. Education about TPRA and the enforcement of TPRA lies with the Department of Health & 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.*, also prohibits the sale of tobacco products to minors, 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. 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 10,000 tobacco retailers in New York City.

Penalties for violation of the TPRA are specified in New York City Administrative Code §17-624(a). First violations and each additional violation on the same day result in a fine of not more than \$1,000. Any subsequent violations occurring on a different day at the same place of business within a two-year period will result in a fine of not more than \$2,000. Repeated violations within a two-year period also can trigger revocation of the vendor’s City cigarette license. DCA’s administrative tribunal adjudicates these violations.

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<sup>1</sup> The 2010 amendments merely renumbered the provisions of the TPRA.

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 2011, which corresponds to Quarters 2, 3 and 4 of ATUPA Grant Year XIV and Quarter 1 of ATUPA Grant Year XIV-X.

Quarter	Compliance checks by adults	Compliance checks with minors <sup>2</sup>	Tobacco sales made to minors	Compliance rate	Total fines assessed <sup>3</sup>	Total fines collected <sup>3</sup>
2 <sup>nd</sup> Quarter Grant XIV Jan. 1- March 31, 2011	17	2033	188	91%	\$359,650	\$371,821
3 <sup>rd</sup> Quarter Grant XIV April 1- June 30, 2011	14	2238	271	88%	\$557,650	\$407,609
4 <sup>th</sup> Quarter Grant XIV July 1- Sept. 30, 2011	7	1089	149	86%	\$437,675	\$322,424
1 <sup>st</sup> Quarter Grant XIV-X Oct. 1- Dec. 31, 2011	12	1610	153	91%	\$303,750	\$271,720
<b>Total</b>	<b>50</b>	<b>6970</b>	<b>761</b>	<b>89%</b>	<b>\$1,658,725</b>	<b>\$1,373,574</b>

## Discussion

Effective October 2008, the contract between NYS and DCA was amended to reduce the number of state-funded ATUPA inspections from 15,500 to 11,500 per year. In subsequent contract amendments, the number of annual ATUPA inspections was further reduced to 10,000. The number of ATUPA/TPRA compliance checks decreased by 23% between 2010 and 2011. The compliance rate remained roughly the same at 89%, and fines collected dropped by 30%. This is due to a decrease in the number of sale to minor violations issued. DCA met the contractually obligated 10,000 inspections during the Grant Year, which runs from October 1 – September 30. 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 purchase, but the business is either closed, no longer sells tobacco, or is deemed by DCA staff to be unsafe for the minor to attempt a purchase.

<sup>2</sup> 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. There were an additional 2298 “field visits.”

<sup>3</sup> These data reflect fines assessed and collected for both TPRA and ATUPA violations.

In 2011, DOHMH provided education to retailers that were newly licensed during the period from May 1, 2010 to March 1, 2011. A total of 814 unique cigarette retailers received one face-to-face visit during which they were provided with educational materials and advice on the NYC and NYS laws governing the sale of tobacco. 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, and information regarding legal signage requirements and tobacco retailer certification programs. Detailers made contact with 853 employees, owners, and managers of these retail locations during the course of the educational campaign. Materials were made available to retailers in English, Spanish, Korean and Arabic; additional educational kits were mailed to 2,000 tobacco retailers with violations throughout the city. Additional materials and kits were also made available to retailers through 311.