

Tobacco Product Regulation Act 2012 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 2010.¹ 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 9,645 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.

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

¹ The 2010 amendments merely renumbered the provisions of the TPRA.

“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 2012, which corresponds to Quarter 2 of ATUPA Grant Year XIV Extension and Quarters 1, 2 and 3 of Grant Year XV.

Quarter	Compliance checks by adults	Compliance checks with minors ²	Tobacco sales made to minors	Compliance rate	Total fines assessed ³	Total fines collected ³
2 nd Quarter Grant XIV Ext. Jan. 1- March 31, 2012	11	1,968	181	91%	\$289,585	\$239,614
1 st Quarter Grant XV April 1- June 30, 2012	2	2,681	204	92%	\$342,860	\$303,938
2 nd Quarter Grant XV July 1- Sept. 30, 2012	53	2,492	182	93%	\$361,210	\$249,451
3 rd Quarter Grant XV Oct. 1- Dec. 31, 2012	245	2,036	217	89%	\$778,745	\$446,386
Total	311	9,177	784	91%	\$1,772,400	\$1,239,389

Discussion

Effective October 2009, the contract between NYS and DCA was amended to reduce the number of state-funded ATUPA inspections from 11,500 to 10,000 per year. Effective April 2012, due to subsequent contract amendments, the number of annual ATUPA inspections was further reduced to 9,500. DCA met its contractually obligated 4,600 inspections for the Grant Year 14 Extension⁴ and is on target to exceed the required 9,500 inspections for Grant Year 15, which runs from April 1 – March 31. Despite changes in State requirements, the number of ATUPA/TPRA compliance checks increased by 32% during 2012. The compliance rate has remained roughly the same and fines assessed have slightly increased with a noticeable influx between quarters due to the enforcement of new signage laws. 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.

² 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 2,032 “field visits.”

³ These data reflect fines assessed and collected for both TPRA and ATUPA violations.

⁴ The State extended Grant Year 14 for a period of 6 months from October, 1, 2011 through March 31, 2012 to align subsequent grant years with the State fiscal year.

In 2012, DOHMH provided education to retailers that were newly licensed during the period from April 1, 2011 to April 4, 2012. A total of 1469 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, tobacco retailer certification programs, and flavored tobacco. Detailers made contact with 1544 employees, owners, and managers of these retail locations during the course of the educational campaign, spending an average of 14 minutes with each person. Materials were made available to retailers in English and Spanish as well as an additional educational kits were mailed to 2,000 tobacco retailers with violations throughout the city. Additional materials were also made available to retailers through 311.