

Tobacco Product Regulation Act 2019 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 2019. 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) 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 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, 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 tobacco, non-tobacco smoking products 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 more than 6,000 licensed tobacco retail dealers and 2,600 licensed electronic retail cigarette dealers in New York City.

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 within a three-year period, also can 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 \$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 Grant Year XXI, April 1, 2019 to March 31, 2020.

Quarter	Compliance checks by adults	Compliance checks with minors	Tobacco sales made to minors	Compliance rate
1st Quarter Grant XXI Apr. 1-June 30, 2019	153	2,772	393	86%
2nd Quarter Grant XXI July 1-Sept. 30, 2019	142	3,495	381	89%
3rd Quarter Grant XXI Oct. 1-Dec. 31, 2019	209	2,944	372	87%
4th Quarter Grant XXI Jan. 1, 2020-March 31, 2020	273	2,850	359	87%
Total	777	12,061	1,505	88%

Discussion

DCA conducted all initial inspections required in both Grant Year 20 and Grant Year 21. The number of ATUPA compliance checks performed with minors under the age of 18 increased between calendar years. Compliance rates remained steady during this period.

The numbers in the above chart include Field Visits with Minors (FVM), which are included in the ATUPA reports to the New York 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 18th, 2019 to March 16th, 2020, DOHMH provided education to retailers that were newly licensed to sell tobacco products or that failed compliance checks and were charged (relating to terms and conditions of New York State Public Health Law Article 13-F, and related New York City tobacco laws) between March 2019 and January 2020. A total of 629 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 and related products, including newly passed restrictions. (With permission from NYS Department of Health, educational visits ceased early on March 16th, 2020 due to the COVID-19 outbreak.) DOHMH 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 laws and legal signage requirements, along with other resources for electronic cigarettes and tobacco retailer certification programs. DOHMH Representatives 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. Materials were also made available to retailers in English, Spanish, Chinese (simplified and traditional), Korean and Arabic through the DOHMH website.

DCA also educated tobacco retailers through its Visiting Inspector Program (VIP), which provides free consultations by senior inspectors, who visit businesses to advise them on what they need to know to comply with DCA regulations and avoid violations. VIP inspectors completed 316 visits to tobacco retailers during Grant Year XXI.