

Tobacco Product Regulation Act 2009 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. Enforcement of the 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 and the consequences of noncompliance.²

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 10,200 tobacco retailers in New York City.

Penalties for violation of the TPRA are specified in New York City Administrative Code §17-624(a). First and subsequent violations on the same day result in a fine of not more than \$1,000. Subsequent violations 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.

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

² The ATUPA enforcement activity described in this report was performed during the last three quarters of ATUPA Grant Year XII (GY XII) and the first quarter of ATUPA Grant year XIII (GY XIII).

Penalties for violations of ATUPA are specified by state law. Fines range from \$300 to \$1,500. In addition, the statute sets forth a scheme by which some violations result in “points” on a retailer’s record. The accumulation of a specific number of 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 2009, which corresponds to Quarters 2, 3 and 4 of ATUPA Grant Year XII and Quarter 1 of ATUPA Grant Year XIII.

Quarter	Compliance checks by adults	Compliance checks with minors ³	Tobacco sales made to minors	Compliance rate	Total fines assessed ⁴	Total fines collected ⁴
2 nd Quarter Grant XII Jan. 1- March 31, 2009	444	2,824	333	88%	\$ 653,430	\$ 648,739
3 rd Quarter Grant XII April 1- June 30, 2009	148	1,901	278	85%	\$ 448,270	\$ 461,301
4 th Quarter Grant XII July 1- Sept. 30, 2009	198	2,295	402	82%	\$ 723,390	\$609,336
1 st Quarter Grant XIII Oct. 1- Dec. 31, 2009	159	2,185	305	86%	\$806,910	\$701,971
Total	949	9,205	1,318	86%	\$2,632,000	\$2,421,347

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 a subsequent contract amendment effective October 2009, the number of annual ATUPA inspections was further reduced to 10,000. As a result of these contract changes, the number of ATUPA/TPRA compliance checks declined significantly from 2008 to 2009. Although the compliance rate declined from 90% in 2008 to 86% in 2009, the percentage of assessed fines that were collected improved by 14%.

In 2009, DOHMH provided education to retailers that were newly licensed during the period from August 2008 – April 2009. A total of 1,048 stores received two face-to-face visits during which they were provided with materials and advice on the NYC and NYS laws governing the sale of tobacco. The educators provided extensive information on TPRA and

³ 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.

⁴ These data reflect fines assessed and collected for both TPRA and ATUPA violations.

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 conducted almost 3,500 one-on-one visits with owners, managers and employees of these stores. Materials were translated into Spanish; additional educational kits were also mailed to over 2,000 tobacco retailers with violations throughout the city. Kits were also made available through 311.

Going forward, DOHMH plans to continue providing face-to-face education to newly licensed tobacco retailers and mailing educational materials to non-compliant retailers; materials will be developed in Korean for retailers in Queens. In addition, DOHMH will use retailer feedback to create more user-friendly materials and tools that can be used at the point of sale to support compliance.