

# New Laws and Penalties for Cigarette and Other Tobacco Product Violations in New York City

# What You Need to Know

## What does Local Law 97, “Sensible Tobacco Enforcement,” mean for enforcement of cigarette tax laws and other tobacco laws?

This law creates new requirements and restrictions for cigarette retail dealers. The law also increases fines and creates new penalties for cigarette retail dealers engaged in illegal activity, including operating without a license or selling untaxed cigarettes.

## New Requirements

### Signage Requirements

#### What signs are required?

The law requires retailers who sell cigarettes, other tobacco products, electronic cigarettes, shisha, pipes, rolling papers or smoking paraphernalia to post two signs in highly visible places:

1. **Age Restriction Sign:** A revised age restriction sign, stating that some products cannot be sold to people younger than 21 years old and other products cannot be sold to people younger than 18 years old. (Note: This sign must replace the current age restriction sign.)
2. **Tax Stamp Sign:** A new sign stating that all cigarettes sold in New York City must be in packages bearing a valid New York City and State tax stamp.

#### What is the penalty for failing to post these signs?

Retailers who fail to post the required signs will be subject to a fine of up to \$500 for each violation.

#### When does this law take effect?

1. The age restriction sign requirement takes effect on May 18, 2014.
2. The tax stamp sign requirement took effect on March 19, 2014.

### Retail Dealer Definition

#### What is the new law?

This law changes the definition of “retail dealer.” The new definition of retail dealer is any person who possesses or transports more than 400 cigarettes. A retail dealer is subject to various requirements, including having a valid New York City cigarette retail dealer license and a valid New York State Certificate of Registration to sell cigarettes or tobacco and paying required taxes on cigarettes in his or her possession.

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## **Who is not covered by the retail dealer definition?**

The retail dealer definition does not apply to any person delivering cigarettes in the regular course of business for a manufacturer, agent or licensed wholesale or retail dealer.

## **What are the penalties for acting as a retail dealer without a license?**

Unlicensed retail dealers will be subject to fines of up to \$5,000 for the first violation, fines of up to \$10,000 for a second or subsequent violation within three years and sealing of the store for the third violation within three years.

## **When did this new definition of retail dealer take effect?**

January 18, 2014.

## **Cigarette Tax Evasion**

### **How does this law apply to cigarette tax evasion?**

Cigarette retail dealers are prohibited from:

- Selling cigarettes to an unlicensed dealer or dealer whose license has been suspended or revoked.
- Purchasing cigarettes from any person other than a manufacturer or licensed wholesale dealer.
- Selling, offering, possessing or transporting altered or counterfeit cigarette tax stamps, imprints or impressions.
- Hiding or concealing cigarettes that are in unstamped or unlawfully stamped packages, loose cigarettes not contained in a pack or tax stamps that are unattached, altered or counterfeit.

### **What are the penalties for violations?**

- Up to \$2,000 for a first violation.
- Up to \$5,000 for a second (different day) violation and each subsequent violation within three years.
- Revocation of license for second or subsequent (different day) violation within three years.
- Sealing of premises for three violations within three years.

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- Retail dealers who violate this law will also be subject to pre-existing civil cigarette tax penalties of up to:
  - \$100 for each 200 cigarettes (in excess of 1,000 cigarettes) in unstamped or unlawfully stamped packages in the possession of or under the control of that retailer.
  - \$200 for each 200 cigarettes (in excess of 1,000 cigarettes) in unstamped or unlawfully stamped packages knowingly in the possession of or knowingly under the control of that retailer.
  - \$200 for each 10 affixed or unaffixed false, counterfeit tax stamps, imprints or impressions, in excess of 100.

## When did the new law regarding cigarette tax evasion take effect?

January 18, 2014.

## New Enforcement Authority

### Sealing Persistent Violators

#### What does it mean to “seal” a store?

Sealing is the forced closure of an establishment by padlocking or otherwise preventing access to the premises.

#### When can a retail store be sealed?

This law permits sealing a store that has repeatedly violated certain tobacco laws:

- A retailer or wholesaler that operates without a license more than **two times** within a **three-year** period.
- A retailer or wholesaler that violates the following laws **three times** within a **three-year** period:
  - Evasion of New York City cigarette taxes.
  - Sale of loose cigarettes or cigars. (Cigars priced at \$3.01 or more may be sold individually, but cigars that are \$3 or less must be sold in packs of at least four. Little cigars must be sold in packs of at least 20.)
  - Allowing an employee younger than 18 years old to sell, dispense or handle tobacco products without supervision by a store owner or employee who is at least 18 years old.

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## **Will I be notified before my business is sealed?**

Yes. After an administrative tribunal finds that a store should be sealed, an order to seal the store will be posted on the establishment at least 10 days before it is sealed.

## **How can my establishment be unsealed?**

An establishment may be unsealed after the sealing period ordered by the commissioner (a maximum of 60 days) has ended, and all outstanding fines and costs have been paid.

## **When did this law take effect?**

January 18, 2014.

## **Seizure of Illegal Tobacco Products**

### **When can tobacco products be seized?**

Law enforcement personnel from the Department of Finance, including Sheriff's Officers, can seize any flavored tobacco products offered for sale (except in tobacco bars) or any cigarettes possessed or offered for sale by unlicensed retailers or wholesalers. Finance law enforcement personnel had already been authorized to seize tobacco products for which the required taxes were not paid.

### **Can inspectors seize flavored tobacco products?**

Yes. The sale of flavored tobacco products, other than menthol, mint or wintergreen is prohibited in New York City, except in tobacco bars.

### **When did the new rules regarding seizure of tobacco products take effect?**

November 19, 2013.

## **License Revocation and Suspension**

### **When can a license be revoked or suspended?**

A cigarette retail dealer's license must be revoked when a store does any of the following **two times** or more—on different days—within a **three-year** period:

- Selling cigarettes, other tobacco products or electronic cigarettes to individuals under 21 years old.
- Selling non-tobacco shisha, pipes, rolling papers or smoking paraphernalia to individuals under 18 years old.

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- Selling loose cigarettes.
- Selling cigars that cost \$3 or less in packages of fewer than four cigars.
- Selling little cigars in packages of fewer than 20.
- Permitting an individual under 18 years old to handle or sell tobacco without being supervised by an individual who is at least 18 years old and on the premises.
- Selling, possessing or hiding counterfeit tax stamps or cigarette packs without a valid New York City and State tax stamp.

A cigarette retail dealer's license must be suspended when a store sells or offers flavored tobacco products **three times** or more within **three years**.

A cigarette retail dealer's license may also be suspended for the failure to pay any civil penalty related to the violation of cigarette or tobacco laws.

### When did the new rules regarding revocation and suspension take effect?

January 18, 2014.

## Increased Fines

### What are the fines for violations of these laws?

The table below explains the fines and penalties for various violations.

## Fine Structure for New York City Tobacco Retailers

Violation	Fines and Penalties
Acting as a cigarette retail dealer without a license	<ul style="list-style-type: none"><li>• Up to \$5,000 for first violation</li><li>• Up to \$10,000 for second (different day) violation and each subsequent violation</li><li>• Sealing of premises for two violations within three years</li></ul>

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Violation	Fines and Penalties
<b>Sale, possession or concealment of untaxed cigarettes or counterfeit stamps</b>	<ul style="list-style-type: none"> <li>• Up to \$2,000 for first violation</li> <li>• Up to \$5,000 for second (different day) violation and each subsequent violation within three years</li> <li>• Mandatory revocation of license for second or subsequent (different day) violation within three years</li> <li>• Sealing of premises for three violations within three years</li> </ul> <p><b>Plus the following civil cigarette tax penalties with respect to the possession:</b></p> <ul style="list-style-type: none"> <li>• Up to \$100 for each 200 cigarettes in excess of 1,000 cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of a retail dealer</li> <li>• Up to \$200 for each 200 cigarettes in excess of 1,000 cigarettes in unstamped or unlawfully stamped packages in the knowing possession or under the knowing control of a retail dealer</li> <li>• Up to \$200 for each 10 affixed or unaffixed false, altered or counterfeit tax stamps, imprints or impressions in excess of 100 in the possession or under the control of a retail dealer</li> </ul>
<b>Sale of herbal cigarettes to minors</b>	<p>At least \$500 (\$2,000 maximum) for each violation</p>
<b>Sale of, or possession with intent to sell, flavored tobacco products</b>	<ul style="list-style-type: none"> <li>• Up to \$1,000 for first violation</li> <li>• Up to \$2,000 for second violation within three years</li> <li>• Up to \$5,000 for third and subsequent violations within three years</li> <li>• Mandatory suspension of license for up to one year for third violation on different day and all subsequent violations on different days within three years</li> <li>• Sealing of premises for three violations within three years</li> </ul>

### How can I read this fact sheet in other languages or see the actual law?

Visit [nyc.gov](http://nyc.gov) and search “tobacco laws,” or call 311.

### What if I have questions or need more information?

Call 311 and ask for information about Sensible Tobacco Enforcement.