

[Title 17, Chapter 7](#) - TOBACCO PRODUCT REGULATION ACT

§ 17-616 Short title. This chapter shall be known and may be cited as the "Tobacco Product Regulation Act."

§ 17-617 Definitions. For purposes of this chapter, the following terms shall be defined as follows:

a. "Affiliated company" means any business entity which is the holder of a right to place or display advertisements in or on a unit of advertising space and which has a relationship with a holder of a right to place or display advertisements in or on another unit of advertising space; such relationship shall be an identity of all principal owners or all directors; provided, however, that only entities which are holders of a right to place or display advertisements on the same type of units of advertising space shall be considered affiliated companies for purposes of this chapter.

b. "Authorizing agency" means the agency or other unit of local government of the city of New York which is (i) acting on behalf of the city with respect to a written agreement between the city and a private party which allows the placement or display of advertisements in or on a unit of advertising space; (ii) any agency designated by the mayor as having responsibility for a unit of advertising space that is the subject of a written agreement with the city which allows the placement or display of advertisements in or on such unit; or (iii) the issuer of a license or permit that expressly grants the right to place or display advertisements in or on a unit of advertising space. In the event that there is no authorizing agency as defined by this subdivision for a unit of advertising space, the authorizing agency for such unit shall be the agency with the primary expertise in the subject area covered by the written agreement with the city which allows the placement or display of advertisements in or on such unit.

c. "Cigarette license" means the license issued pursuant to section 11-1303 or 20-202 of the code.

d. "City of New York" or "city" means the city of New York or any of its agencies or other unit of local government.

e. "Employee" means any person who provides services for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services without monetary compensation.

f. "For-hire vehicle" means "for-hire vehicle" as defined in section 19-502 of the code.

g. "For-hire vehicle base" means a place of business from which for-hire vehicles are dispatched.

h. "Instrumentality of public transportation" means buses operated pursuant to a franchise or consent issued by or from the city of New York, ferries and ferry terminals owned or operated by the city of New York, trams and their appurtenances, bus stop shelters and licensed vehicles as defined in section 19-502 of the code.

i. "Person" means any natural person, partnership, corporation, government agency, association or other legal entity.

j. "Public health message" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, the primary purpose of which is to communicate the health risks of tobacco product use or the health benefits of not using tobacco products.

k. "Retail dealer" means "retail dealer" as defined in section 11-1301 of the code, and any employee or other agent of such retail dealer.

l. "School premises" means the buildings, grounds or facilities, or any portion thereof, owned or occupied by public or private institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level.

m. "Special event" means an event (i) for which a permit has been issued by the city of New York; (ii) which has a duration of no longer than seven days; and (iii) for which an agreement has been entered into with the city that provides for the placement or display of signage intended to discourage the use of tobacco products.

n. "Taxicab" means "taxicab" as defined in section 19-502 of the code.

o. "Taxicab fleet" means a corporate entity organized for the ownership or operation of twenty-five or more taxicabs, which taxicabs are dispatched from a single location serving as both garage and office of record, which location has been approved by the taxi and limousine commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs, and which location has a dispatcher on the premises at least eighteen hours every day who is responsible for assigning drivers to fleet taxicabs.

p. "Taxicab minifleet" means a corporation licensed by the taxi and

limousine commission to own and operate two or more taxicabs.

q. "Tobacco advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

r. "Tobacco product" means any substance which contains tobacco, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco.

s. "Trademark" means any word, name, symbol, logo, emblem or device, or any combination thereof, used by a person to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

t. "Trade name" means any name used by a person to identify his or her business or vocation.

u. "Unit of advertising space" means any real property, space, facility or instrumentality of public transportation, or any portion thereof, (i) owned or operated by, or leased from or to the city, or which is located or operates on real property owned or operated by or leased from or to the city, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency; or (ii) with respect to which a license or permit has been issued by the city that expressly grants the right to place or display advertisements, but not including licenses or permits issued pursuant to the building code.

v. "Wholesale dealer" means "wholesale dealer" as defined in section 11-1301 of the code, and any employee or other agent of such wholesale dealer.

§ 17-617.1 License Required. It shall be unlawful for a person to engage in business as a wholesale dealer without a license as prescribed

in section 11-1303 of the code, or as a retail dealer without a license as prescribed in section 20-202 of the code.

§ 17-618 Out-of-package sales prohibited. All tobacco products sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer or packager which bears a health warning required by federal statute.

§ 17-619 Age restriction on handling. It shall be unlawful for a retail dealer to permit an employee or other agent of the retail dealer to sell, dispense or otherwise handle a tobacco product unless such employee or other agent is (1) at least eighteen years of age; or (2) under the direct supervision of the retail dealer or an employee or other agent of the retail dealer who is at least eighteen years of age, and who is present on the premises.

§ 17-620 Sale of tobacco products to minors prohibited. Any person operating a place of business wherein tobacco products are sold or offered for sale must be licensed as required by section 17-617.1 of this code and is prohibited from selling such products to individuals under eighteen years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, ROLLING PAPER OR PIPES, TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height. Sale of tobacco products in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under eighteen years of age.

§ 17-621 Public health messages required where tobacco advertisements appear on certain properties. a. (1) There shall be a minimum of one public health message placed or displayed in or on a unit of advertising space for every four tobacco advertisements placed or displayed in or on such unit. Twenty-five percent of the public health messages placed or displayed in or on such unit shall be directed to the youth population. In the event that there is at least one tobacco advertisement but fewer than four tobacco advertisements placed or displayed in or on a unit of advertising space, there shall be a minimum of one public health message placed or displayed in or on such unit and such public health message shall be directed to the youth population. Unless otherwise expressly provided, the requirements set forth in this section shall not be applicable to any advertisements placed or displayed in connection with a special event; provided, however, that any advertisements placed or displayed in connection with a special event which would otherwise be subject to the requirements of this section shall not be exempt from such requirements where the advertisements are placed or displayed more than thirty days prior to the commencement of such special event. In addition, the requirements set forth in this section shall not be applicable to any tobacco advertisement which is less than one hundred forty-four square inches and is placed or displayed in or on a sales counter where the sale of tobacco products is transacted in a place of business that is located on real property owned or operated by or leased from or to the city.

(2) The public health messages required by this section shall, to the greatest extent possible, be comparable in size, location and visibility to the tobacco advertisements placed or displayed in or on a unit of advertising space and shall be installed and maintained by the holder of the right to place or display advertisements in or on such unit in accordance with the same standards, and the holder shall utilize the same materials and methods for display, as are used by such holder for any advertisements placed or displayed in or on such unit.

b. (1) It shall be the responsibility of the holder of the right to place or display advertisements in or on a unit of advertising space (i) to maintain at all times the ratio of public health messages to tobacco advertisements required by this section; and (ii) to maintain accurate

records indicating on a daily basis the number of tobacco advertisements and public health messages placed or displayed by such holder, the locations of such advertisements and public health messages, and any other information deemed necessary by the authorizing agency or the department of health and mental hygiene. Such holder shall provide to the city council and the authorizing agency for such unit a quarterly report containing the number of tobacco advertisements and public health messages placed or displayed by such holder during the preceding three months, the locations of such advertisements and public health messages, the dates on which such advertisements and public health messages were placed and displayed and any other information deemed necessary by the authorizing agency or the department of health and mental hygiene. The authorizing agency shall provide a copy of the quarterly report to the department of health and any analysis of such report deemed necessary by the department. Any such holders who are affiliated companies may combine their units of advertising space for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. Taxicabs which are part of a taxicab fleet or taxicab minifleet may be combined for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. For-hire vehicles affiliated with a for-hire vehicle base may be combined for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. In such cases, the owner of the taxicab fleet, taxicab minifleet or for-hire vehicle base shall comply with the ratio requirements, maintain the daily records and provide the quarterly report on behalf of the owners of the taxicabs or for-hire vehicles.

(2) The holder of the permit authorizing a special event shall provide a report to the authorizing agency containing the number, locations and dates of placement and display of (i) advertisements which promoted the special event, identifying those advertisements which were tobacco advertisements; (ii) signage which was intended to discourage the use of tobacco products; and (iii) any public health messages. Such report shall also include any other information deemed necessary by the authorizing agency or the department of health and mental hygiene. The authorizing agency shall provide a copy of such report to the

department.

c. The department of health and mental hygiene, together with the authorizing agencies, shall encourage the creation and submission of public health messages by interested individuals, groups or other entities. The authorizing agency for a unit of advertising space shall ensure that (i) at least twenty-five percent of the public health messages placed or displayed in or on such unit are directed to the youth population; and (ii) the ratio of public health messages to tobacco advertisements required by this section is achieved for such unit, through regular monitoring and enforcement activities.

d. Any interested individual, group or other entity may develop, print and make available for distribution such public health messages at no cost to the city of New York or the holders of the right to place or display advertisements in or on units of advertising space. Such public health messages shall be printed utilizing the same materials as are used for any advertisements placed or displayed in or on each unit of advertising space. Any costs associated with the posting of the public health messages required by this section and any costs in terms of foregone advertising revenues associated with the placement or display of such public health messages in or on a unit of advertising space shall be borne by the holder of the right to place or display advertisements in or on such unit. Where the city is the sole holder of the right to place or display advertisements in or on a unit of advertising space, the city shall bear any costs associated with the posting of the public health messages and any costs in terms of foregone advertising revenues.

e. (1) Any interested individual, group or other entity may submit a proposed public health message to the department of health and mental hygiene for approval. The department shall select for placement or display in or on a unit of advertising space those public health messages which it deems to communicate most effectively the health risks of tobacco product use or the health benefits of not using tobacco products. Such public health messages shall not use the name, image or likeness of any individual without the consent of that individual or shall not infringe any person's trade name, trademark, service mark or copyright, under applicable federal and state law. The department shall, to the greatest extent possible, select public health messages which are

sufficiently different in visual images and text in order to ensure the holder of the right to place or display advertising an adequate selection of public health messages for placement or display in or on such holder's unit of advertising space. The department shall clearly indicate those public health messages which it deems to be directed to the youth population.

(2) The authorizing agency for a unit of advertising space shall review the public health messages selected by the department for conformance to the same standards, if any, regarding form, appearance and appropriateness to which advertisements accepted for placement or display in or on such unit are required to conform, pursuant to any agreement applicable to such unit to which the city is a party, or to any license or permit which has been issued by the city that expressly grants the right to place or display advertisements in or on such unit. The authorizing agency shall submit to the holder of the right to place or display advertising in or on such unit, those public health messages which it deems to conform to applicable standards pursuant to any agreement with or license or permit from the city applicable to such holder's unit. Within one week after the receipt of such public health messages, the holder of the right to place or display advertisements or his or her designee shall submit to the authorizing agency any recommendations concerning the selected public health messages based upon the standards, if any, regarding form, appearance and appropriateness to which advertisements accepted for placement or display in or on the unit of advertising space are required to conform pursuant to any contracts governing the placement or display of advertisements in or on such unit. Within two weeks after the receipt of any recommendations from the holder of the right to place or display advertising, the authorizing agency shall make its final decision as to which public health messages conform to applicable standards and notify the department which samples of public health messages the authorizing agency will make available to the holder for placement or display. The holder of the right to place or display advertisements in or on the unit of advertising space shall not be required to replace a public health message placed or displayed in or on such unit with a different public health message more than four times annually.

f. It shall be the responsibility of the interested individuals,

groups or other entities to provide the public health messages required by this section. To the extent that such public health messages are not provided in sufficient quantity to maintain the ratio between tobacco advertisements and public health messages required by this section: (1) those public health messages actually provided shall be placed or displayed in or on a unit of advertising space in accordance with the requirements of this section to the extent possible; and (2) tobacco advertisements may continue to be placed or displayed in or on such unit in a proportion in excess of the ratio required by this section.

g. (1) Any person who is the holder of a valid license or permit from, or is a party to an otherwise valid agreement with, the city of New York in effect on the date of enactment of the local law that added this section shall not be subject to the requirements of this section for the term of such license, permit or agreement. However, where such agreement provides for a right or rights of renewal for one or more periods upon the same terms and conditions or terms and conditions set forth in such agreement, the holder who is a party to such agreement or any agreements entered into pursuant to such right or rights of renewal shall be subject to the requirements of this section five years after the commencement of the first renewal period.

(2) Any holder of the right to place or display advertisements in or on a unit of advertising space who is subject to a collective bargaining agreement in effect on the date of enactment of the local law that added this section which provides for an apportionment of revenues resulting from advertisements placed or displayed in or on such unit shall not be subject to the requirements of this section until the expiration of the collective bargaining agreement.

h. If on the date of enactment of the local law that added this section, any party to a valid agreement with, or holder of a valid license or permit from, the city of New York is also a party to a valid contract entered into on or prior to such date with an entity other than the city of New York which extends beyond the term of such party's agreement with, or license or permit from, the city, such party shall not be subject to the requirements of subdivisions a through g of this section if compliance with such subdivisions would result in a material breach of the contract between such party and an entity other than the city, provided that such party:

1. shall promptly comply with subdivisions a through g of this section upon the expiration of such contract term, excluding any periods of time subject to an option to renew such contract, or upon the removal of any legal barrier to compliance prior to the expiration of the original contract term, whichever is earlier. Any person who claims to be covered by this paragraph and who fails to comply with subdivisions a through g of this section within the time limits set forth herein shall be liable for a civil penalty of not more than five hundred dollars for each day of non-compliance following the expiration of the original contract term or upon the removal of any legal barrier to compliance, whichever is earlier. Such civil penalty shall be recovered in accordance with the provisions of subdivision b of section 17-624; and

2. shall within ten days of the effective date of the local law that added this section, notify the authorizing agency for the unit of advertising space in writing of such person's inability to comply with subdivisions a through g of this section, setting forth in detail the reasons therefor and the earliest date upon which compliance can be achieved. The authorizing agency shall, as soon as practicable after receipt of such information, forward it to the department of health and mental hygiene and the city council. Any person who fails to notify the authorizing agency as required by this paragraph or who knowingly submits information required by this paragraph which is false or misleading shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than one thousand dollars.

i. Nothing in this chapter shall be construed to permit the placement of a tobacco product advertisement as defined in subdivision m of section 27-508.2 of this code where such advertisement is prohibited by section 27-508.3 of this code or by any other law or rule.

§ 17-622 Use of tobacco products on school premises prohibited. It shall be unlawful for any person to use a tobacco product, including chewing tobacco, on school premises at any time.

§ 17-623 Enforcement. The department of health and mental hygiene and the department of consumer affairs shall enforce the provisions of this chapter. In addition, designated enforcement employees of any authorizing agency and the department of finance shall have the power to enforce the provisions of this chapter.

§ 17-625 Report. Not later than twelve months after the effective date

of the local law that added this section and each year thereafter, the department shall submit a report to the mayor and the city council concerning the administration and enforcement of this chapter.

§ 17-626 Construction. Nothing contained in this chapter shall be construed to preclude the city of New York from prohibiting the placement or display of tobacco advertisements in or on units of advertising space.

§ 17-624 Violations and penalties. a. Any person found to be in violation of section 17-618, 17-619 or 17-620 shall be liable for a civil penalty of not more than one thousand dollars for the first violation, and not more than one thousand dollars for each additional violation found on that day; and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a two-year period. In addition, for a second violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a two-year period, any person who engages in business as a retail dealer shall be subject to the mandatory revocation of his or her cigarette license for such place of business. For purposes of this section, any violation of section 17-618, 17-619 or 17-620 by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the commissioner of consumer affairs with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision e of this section and that the sale or lease was not conducted, in whole or in part, for the purpose or permitting the original licensee to avoid the effect of violations on the premises. A cigarette license shall be revoked at the same hearing at which a retail dealer is found liable for a second violation or subsequent violations at the same place of business within a two-year period. Any person who shall knowingly make a false statement or who shall falsify or allow to be falsified any record or report required by section 17-621, shall be guilty of a misdemeanor and upon conviction

thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars, or by imprisonment not to exceed six months, or both. Any person who shall make a false statement or who shall falsify or allow to be falsified any record or report required by section 17-621, or who shall fail to maintain any record or submit any report required by section 17-621, shall be liable for a civil penalty of not less than three hundred dollars nor more than one thousand five hundred dollars. Any person who violates section 17-622 shall be liable for a civil penalty of not more than fifty dollars for each violation.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-618, 17-619 or 17-620 of this chapter shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health where the department of health and mental hygiene issues such notice or the adjudication division of the department of consumer affairs where that department or a designated employee of any authorizing agency or the department of finance issues such notice. Such notice shall contain a statement that any hearing for a second violation or subsequent violations of section 17-618, 17-619 or 17-620 at the same place of business within a two-year period shall also constitute a hearing for the revocation of a retail dealer's cigarette license where the retail dealer is found to be in violation of any such sections. Where the department of health and mental hygiene finds a retail dealer to be liable for a violation of section 17-618, 17-619 or 17-620 that department shall notify the department of consumer affairs within thirty days of such finding. Where the department of consumer affairs finds a retail dealer to be liable for a violation of section 17-618, 17-619 or 17-620, that department shall notify the department of health within thirty days of such finding. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-621 or authorized pursuant to subdivision h of section 17-621 shall be returnable to the administrative tribunal established by the board of health. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-622 shall be returnable to the

administrative tribunal established by the board of health. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section or subdivision h of section 17-621 of this chapter. The adjudication division of the department of consumer affairs shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-618, 17-619 or 17-620 of this chapter.

c. The penalties provided by subdivision a of this section and subdivision h of section 17-621 of this chapter shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

d. Whenever any person has engaged in any acts or practices which constitute a violation of any provision of this chapter or of any rule promulgated thereunder, the city may make application to a court of competent jurisdiction for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order or other order enjoining such acts or practices.

e. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

- (1) a sale between relatives; or
- (2) a sale between related companies or partners in a business; or
- (3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises.

f. Notwithstanding the provisions of subdivision a of this section, the mandatory revocation of a license for a second offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the mandatory revocation acted against the licensee's will in committing such violations, the licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-618, 17-619 and 17-620 of this code, and the licensee has terminated any financial or employment relationship with each person who committed the violations which are the basis of the mandatory revocation of its license or has taken other significant disciplinary action against such persons. The commissioner shall not determine that a licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-618, 17-619 and 17-620 of this code unless the licensee submits satisfactory proof demonstrating that the licensee had, prior to the second violation which is the basis for the mandatory revocation of its license, done the following:

(1) implementing a clear policy requiring all persons working in the place of business to strictly comply with the provisions of sections 17-618, 17-619 and 17-620 of this code and permitting persons working in the place of business to complete a tobacco product sales transaction only after establishing the age of a prospective purchaser of tobacco products through identification that has been verified for authenticity or through photographic identification as required by section 17-620 of this code; and

(2) trained all persons working in the place of business to comply with any such policy before they are allowed to sell tobacco products to the public; and

(3) monitored the performance of persons working in the place of business to ensure that they adhere to such policy, or, in accordance with rules promulgated by the commissioner, conducted periodic retraining of persons working in the place of business.