
Alcoholic Beverage Control Division

Legislative Briefing



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January 20, 2015

ABC Mission

Alcoholic Beverage Control Division's (ABC) mission is to promote, serve and protect the health, safety and welfare of Kansans by regulating the liquor industry and enforcing liquor laws.

ABC Priorities/Initiatives

In order to administer and enforce liquor laws in the most efficient, effective and responsive manner, the agency is driven to:

1. Make it as easy as possible for liquor licensees to comply with liquor laws.
 - A. Enforcement agents are delivering new licenses and educating new business owners/managers on how to comply with liquor laws, sharing best practices and answering questions. This promotes a sense of partnership and gets a new licensee off on the right foot.
 - B. Posting everything a liquor licensee needs to understand about how to comply with liquor laws on the agency website including:
 - a. Up to date Handbooks for each license type, written in lay persons' terms with the goal of laying out requirements and expectations in the clearest of terms
 - b. Statutes and regulations
 - c. ABC policies
 - d. Liquor forms
 - e. Links to our online systems for licensing, payments and label registration
 - C. Improved interaction with liquor licensees and ABC stakeholders via social media through the ABC Facebook page.
 - D. Conducting routine meetings with liquor industry representatives to help ensure understanding and open communication.
2. Increase compliance with liquor laws. Enforcement-related activities are generally being re-allocated with an emphasis on changing the behavior of repeat violators. Follow-up visits/investigations are being conducted with the goal of reducing the rate of recidivism.
3. Identify best practices being used in liquor administrative agencies in other states. Diminishing resources over the years has challenged the agency to maintain levels of service acceptable to the public and to the liquor industry.

Implementation of New System

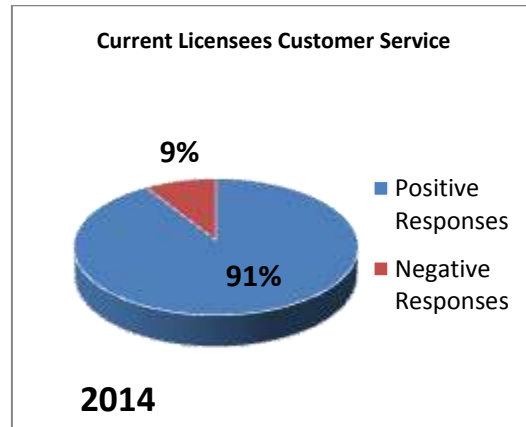
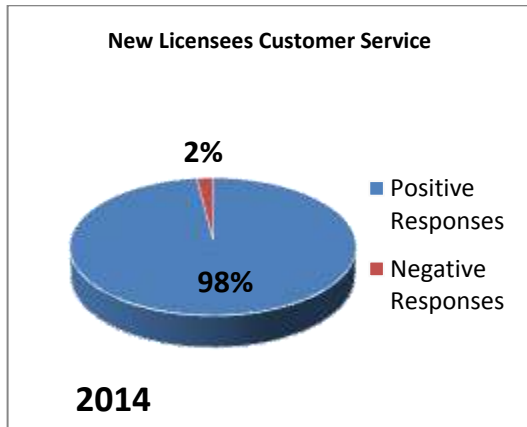
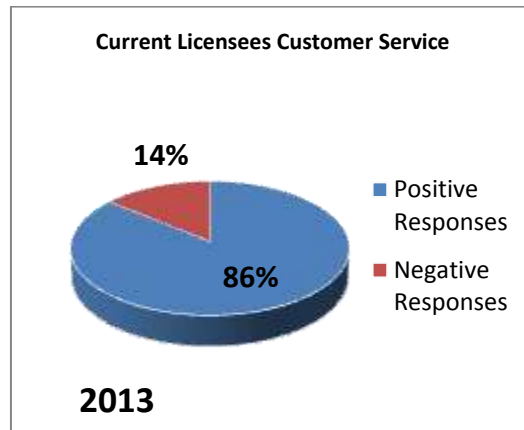
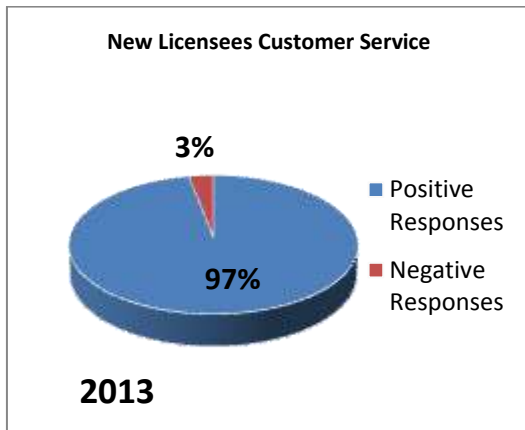
We successfully implemented a new computer system that brings the agency into the 21st century. The new system –POSSE ABC – allows liquor license candidates to apply for new licenses online and existing licensees to renew licenses via an online portal. Licensees can monitor their accounts and status of their applications through the portal as well as pay fees and fines via credit card or electronic check. The user-friendly system guides applicants through the process, reducing errors and making the process much more efficient. Previously, all applications had to be filed via paper rather than electronically. Feedback received from licensees has been universally positive so far.

POSSE ABC also consolidates several previously disparate subsystems, making internal ABC operations more efficient and effective.

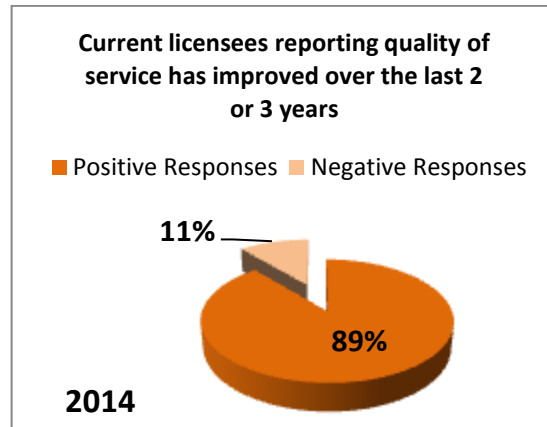
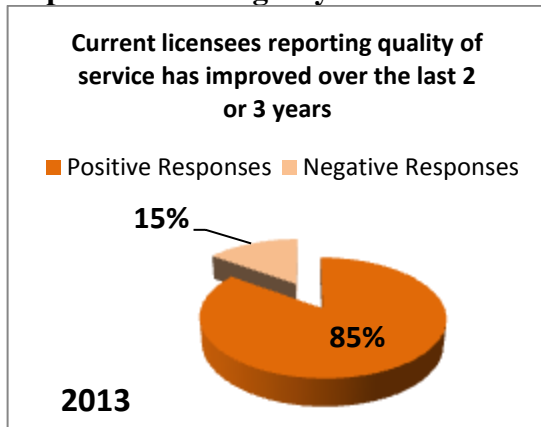
Strategy Paying Off

Our effort to make it as easy as possible for licensees to comply with liquor laws is paying off as measured by anonymous surveys (administered via Survey Monkey) emailed to 125 randomly-selected licensees each quarter. Questions covered customer service, how well staff made the process and requirements understandable as well as responsiveness/timeliness. **New licensees** responded positively to questions at a **98% rate**. Existing licensees responded positively 91% of the time. Results over the past 24 months are shown below.

Customer Service



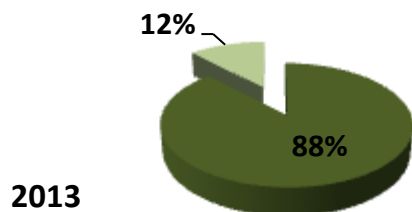
Improvement of agency service



Enforcement-related questions

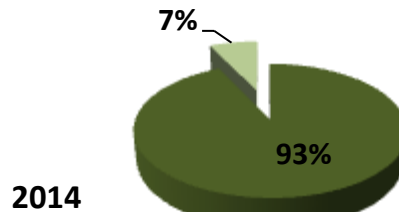
Licensees agreeing that ABC ensures that licensees who fail to comply with liquor laws do not get a competitive advantage over complying licensees

■ Positive Responses ■ Negative Responses



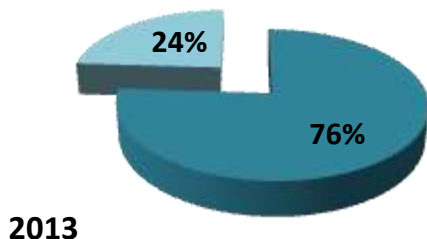
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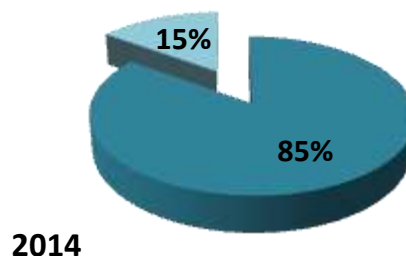
Licensees agreeing that penalties are fair, effective and reasonable

■ Positive Responses ■ Negative Responses



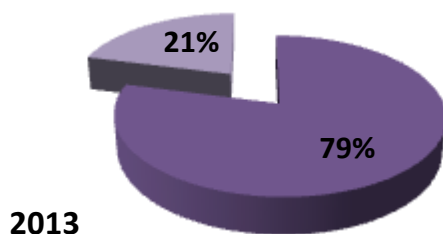
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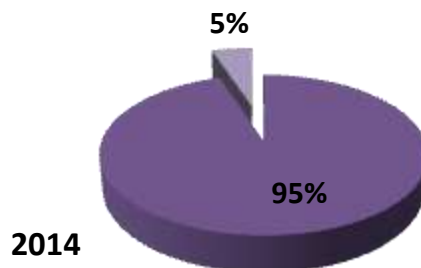
Licensees agreeing that licensees who violate liquor laws are held accountable

■ Positive Responses ■ Negative Responses



Licensees agreeing that licensees who violate liquor laws are held accountable

■ Positive Responses ■ Negative Responses



2014 Legislative Changes

The 2014 legislature passed House Bill 2223 and it was signed into law by Governor Sam Brownback on April 17th, 2013. Changes made by the bill include:

1. Homemade fermented beverages may be provided to guests and judges at a contest or competition so long as no compensation is provided to the maker either for producing the beverage or allowing its consumption. The term “guest” is defined as a natural person known to the host and who received a private invitation to the event conducted by the host. That definition of “guest” is restricted to this section only. Prior to this change, homemakers of beer and wine were limited to serving their product to family members only. Amends K.S.A. 41-104. We received a lot of questions when the bill took effect but have not heard of any problems or abuses.
2. The production cap on microbreweries is raised from the current 15,000 barrels per year to 30,000 barrels. The cap is now applied to a calendar year rather than a license year given that licenses are now valid for two years rather than one. Amends K.S.A. 41-308b. There has not yet been any impact because no microbrewery has yet hit the 15,000 barrel plateau.
3. Farm wineries are allowed to participate in free tastings at retail liquor stores. Amends K.S.A. 41-311.
4. The U.S. citizenship requirement to be eligible for a liquor license is modified to merely require citizenship rather than requiring it for 10 years. Amends K.S.A. 41-311.

Recent Court Ruling Prevents ABC from Issuing Citations Based on Local Law Enforcement Reports

The Kansas Court of Appeals ruled in *Kite’s Bar & Grill v. KDOR*, Alcoholic Beverage Control Division Kansas Court of Appeals Case No. 110,315 that K.S.A. 41-106 requires that a citation be delivered to a liquor licensee at the time of the violation. This ruling is based on the language in the statute following an amendment made during the 2000 legislative session. The requirement for an immediate citation is not problematic when an ABC agent observes an alleged violation. For violations detected by local law enforcement, however, ABC had been issuing a citation within 30 days of the violation when an alleged violation is referred to us by local law enforcement. That practice is no longer legally acceptable. Since the court decision was issued in June 2014, ABC has been unable to issue administrative citations on violations documented by local law enforcement agencies, and, in fact, was forced to dismiss dozens of pending citations and decline prosecution on dozens more.

Because we believe legislative intent is for ABC to issue citations when notified of violations observed by local law enforcement agencies, we have a prepared a legislative proposal that would allow us to resume the practice.

Organizational Units

The Office of Special Investigations (OSI) is being removed organizationally from ABC and is returning to the Office of Secretary as I return to my former position as Chief Investigator of OSI and a new ABC Director assumes the position. OSI provides investigative and fraud prevention and detection services to the Division of Vehicles and Taxation

<u>Unit</u>	<u>FTE</u>
Administration/LAA (Legal)	8
Licensing	12
Enforcement	18
Tobacco	12
TOTAL	50

Licensing

There are currently 4,741 active liquor licenses and permits. Additionally, 235 temporary liquor permits have been issued to date in FY2015. The following is a summary of active liquor licenses by license type for 2011 through 2015:

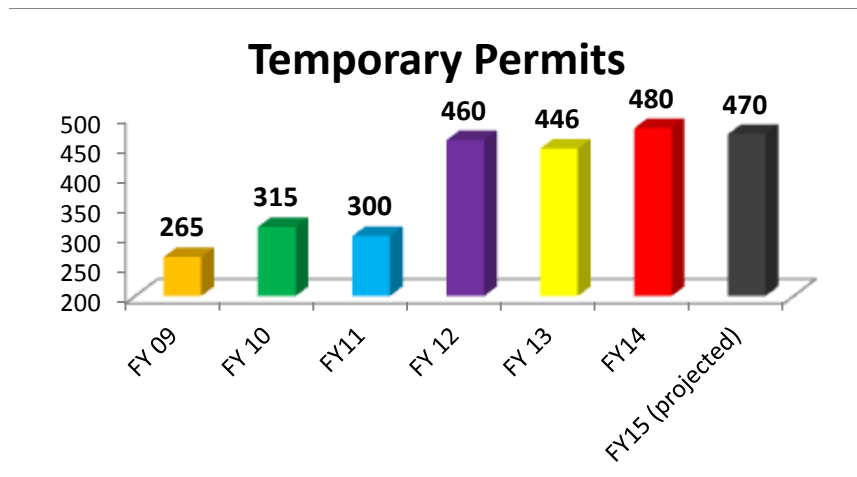
License Type	2011	2012	2013	2014	2015
Retail Liquor Stores	764	761	761	752	753
Class "A" Clubs	287	285	276	264	252
Class "B" Clubs	114	118	114	101	78
Public Venues		4	4	5	5
Drinking Establishments	1726	1731	1751	1788	1797
Caterers	181	181	188	192	193
Beer Distributors	36	36	36	35	35
Spirits Distributors	24	24	25	26	28
Wine Distributors	27	27	38	37	41
Microbreweries (MB)	20	19	19	25	23
MB Packaging & Warehousing Facility	0	1	1	1	1
Microdistilleries			2	3	4
Non-Beverage User	12	13	11	11	11
Farm Wineries	29	29	31	33	36
Farm Winery Outlets	10	11	8	10	8
Farmers' Market Sales Permit	4	3	6	6	6
Special Order Shipping	380	398	433	478	513
Packaging & Warehousing Facility	1	1	2	1	1
Manufacturers	5	5	3	4	2
Supplier Permits	746	792	835	871	934
Temporary Permits	300	460	446	480	235
TOTAL	4666	4899	4794	5024	4956

Trend

Temporary liquor permits have been steadily increasing over the past few years as indicated in the graphic to the right.

Temporary liquor permits are \$25 per day.

NOTE - FY15 projection is based on 235 permits issued July 1 – Dec 31.



Cereal Malt Beverage (3.2% beer) licensing

Cereal Malt Beverage (CMB) retailers are licensed and regulated by the cities and counties. The attached maps show the number of CMB retailers reported to the ABC for Calendar Year 2014. The locally issued CMB license allows the business to sell cereal malt beverages containing 3.2 percent alcohol by weight or less.

Gallonge Tax

The ABC Licensing Unit is responsible for collecting gallonge taxes while the Miscellaneous Tax Segment, which is part of the Division of Taxation, is responsible for collecting liquor enforcement and liquor drink taxes. The following liquor related taxes were collected during FY 2011- FY 2015.

Gallonge Tax Rates per Gallon:

Alcohol/Spirits	\$2.50	Fortified Wine	\$0.75
Beer, CMB and FMB	\$0.18	Light Wine	\$0.30

Liquor Tax Revenue:

Tax Type	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (6 months)
Gallonge – Alcohol and Spirits*	\$9,542,052	\$10,039,513	\$11,067,034	\$10,431,695	\$5,359,833
Gallonge - Beer	\$8,325,291	\$7,771,472	\$7,426,081	\$8,172,990	\$4,208,733
Gallonge - CMB	\$1,905,212	\$2,081,419	\$1,855,093	\$1,849,542	\$821,348
Gallonge - Wine	\$1,363,314	\$1,735,929	\$1,568,866	\$1,567,530	\$893,155
Liquor Enforcement (8% tax)	\$56,120,348	\$58,861,685	\$60,511,555	\$64,538,260	\$33,467,222
Liquor Drink (10% tax)**	\$36,012,091	\$38,113,772	\$39,208,693	\$40,619,417	\$20,597,675
TOTAL TAX REVENUE	\$113,267,960	\$118,603,470	\$121,637,322	\$127,419,434	\$65,347,966

* 10% of Gallonge Tax on alcohol and spirits goes to KDADS Community Alcoholism and Intoxication Program and 90% to the state general fund.

** 70% of Liquor Drink Tax goes to Local Alcoholic Liquor fund; 5% goes to the SRS Community Alcoholism and Intoxication Program; and, 25% to the state general fund.

Revenue Collected by ABC for FY 2011 - FY 2015:

Revenue Source	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (6 months)
Liquor License, Registration and Permit fees	\$3,269,927	\$3,577,135	\$2,199,635	\$2,077,790	\$1,239,330
Label fees	\$809,185	\$838,818	\$934,635	\$546,013	\$853,205
Cereal Malt Beverage Retail Stamps	\$82,440	\$80,800	\$92,605	\$78,425	\$28,885
Gallonge Tax	\$21,135,521	\$21,628,013	\$21,917,074	\$22,021,757	\$11,283,069
ABC Liquor Fines	\$552,871	\$445,757	\$488,891	\$605,595	\$234,554
Total Liquor Revenue Collected	\$25,849,944	\$26,592,683	\$25,632,840	\$25,329,580	\$13,639,043

Liquor license and permit fees range from \$0 - \$10,000 and are deposited in the State General Fund with the exception of 50% of on-premise licenses fees. See attachment for license and permit fees.

Liquor Enforcement

The Enforcement Unit provides investigative services necessary for the agency to effectively enforce the liquor laws. There are currently 18 enforcement agent positions, one of which is vacant. Enforcement agents are certified law enforcement officers. They conduct criminal and administrative investigations to determine compliance with liquor laws. Agents:

- ✓ Perform background investigations relating to liquor license applications
- ✓ Conduct educational visits with first-time licensees
- ✓ Provide training to licensees, local law enforcement officers, Regional Prevention Centers (RPC) and other interested coalitions
- ✓ Conduct hidden ownership investigations when there is reason to believe the licensee of record is not the true owner
- ✓ Conduct underage enforcement including controlled-buy investigations, bar checks, and furnisher checks
- ✓ Perform private club membership checks
- ✓ Investigate complaints
- ✓ Conduct routine compliance inspections
- ✓ Lead or participate in joint enforcement operations with local law enforcement agencies focusing on issues relating to public safety including underage laws, over-service and source investigations
- ✓ Provide law enforcement presence for KDOR Civil Tax Enforcement (CTE) during execution of tax warrants as requested by CTE
- ✓ Enforce the tax on illegal drugs on behalf of the Director of Taxation

Enforcement agents work closely with local, state and federal law enforcement agencies as well as local, regional and state public safety coalitions. Investigations resulting in alleged criminal violations are presented to the County or District Attorney for possible criminal prosecution against the individual suspect and/or the ABC Assistant Attorney General (AAG) for potential administrative action against the licensee.

Enforcement Activities for FY 2011 to present:

Activity Performed	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (6 months)
SALES TO MINORS					
Random Controlled Buys Performed	512	490	538	479	206
Violations	83	79	93	74	30
Compliance Rate	84%	84%	83%	85%	85%
Recidivism - RCB Performed			83	87	31
Compliance Rate			88%	86%	90%
Other Enforcement Activities* Performed					
Inspections	2843	2787	2796	1889	848
New License Delivery – Educational visits	440	458	384	405	107
Other Liquor Investigations	1210	1034	1289	1277	605

Licensee Administrative Action

The Licensee Administrative Actions (LAA) Unit is staffed by an Assistant Attorney General (AAG) assigned to the ABC, a legal assistant and one administrative specialist. The AAG reviews cases presented by enforcement agents and local law enforcement agencies to determine the appropriateness of the charges, and administratively prosecutes violations of the liquor laws before the Director. Following are the number of liquor citations issued for FY 2010 through FY 2014 and the total fines collected for those years:

Activity	FY 2011	FY 2012	FY 2013	FY 2014	FY2015 (6 months)
CITATIONS					
Liquor Law Violations	564	517	435	318	237
Tax Orders	211	230	220	245	86
Total Liquor Citations Issued	775	747	655	563	323
FINES					
Liquor Law Violations	\$361,475	\$226,879	\$304,580.47	\$411,089.96	\$98,800
Tax Orders	\$191,396	\$218,878	\$185,310.64	\$194,505.11	\$135,754.21
Total Liquor Fines Collected	\$552,871	\$445,757	\$489,891.11	\$605,595.07	\$234,554.21

Administration

The ABC Administrative Unit performs general staff support and related work such as budget preparation and maintenance, personnel record keeping, management of equipment, records and systems. Division funding is provided through the vehicle operating fund.

Drug Tax Enforcement

ABC agents enforce the tax on illegal drugs across the state. Agents issue drug tax assessments and execute tax warrants, seizing property from drug dealers to satisfy the drug tax debt. Three quarters (75%) of drug taxes collected is distributed to the local law enforcement agency that conducted the drug investigation, while the remaining 25% is deposited into the state general fund.

Drug Tax Collections

Activity	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (6 months)
No. of Assessments	541	655	458	466	180
Collected	\$1,042,291	\$1,245,610	\$1,280,399	\$1,452,241	\$495,132

Cigarette and Tobacco Enforcement (CATE)

The compliance rate for tobacco sales to minors dropped to 62% in 2005 - well below the federally required 80% rate. At that time, the state had to decide between taking a \$5.4M reduction in prevention and treatment block grant funds or pay a \$2.2M penalty to be used to raise the compliance rate. The Kansas Department for Aging and Disability Services (KDADS) entered into an Interagency Agreement with ABC to create the CATE Unit.

The CATE Unit began in July 2007 and is partially funded annually through KDADS. The objective of the CATE Unit is to ensure compliance with the Synar Amendment and protect federal block grant funds received by KDADS by strengthening enforcement of the cigarette and tobacco laws and addressing issues that may arise associated with the Master Settlement Agreement and its components. It also enhances KDOR efforts to enforce the cigarette and tobacco products act, the requirements for the sale of cigarettes, and any amendments or regulations adopted thereunder. In addition to CATE objectives, CATE conducts the compliance checks under the Synar Amendment, contracts with the Federal Food and Drug Administration (FDA) to conduct tobacco inspections, and investigates for Fire Standard Compliance violations.

The CATE Unit consists of 10 statewide inspectors partially funded by the FDA, one half time one attorney,

State of Kansas CATE Responsibilities:

CATE Inspectors perform statewide cigarette and tobacco enforcement activities aimed at reducing sales of cigarette and tobacco products to minors. These activities include inspections at all licensee locations and controlled-buy investigations at all youth accessible retail licensee locations. Follow-up enforcement revisits are made at locations that have sold to a minor.

Outcome for CATE enforcement activities for FY 2011 – FY 2015:

Inspections	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (6 months)
Number Performed	2723	3221	2750	2860	1449
Violations	495	143	144	85	34
Compliance Rate	81%	96%	95%	97%	98%

Note: The increase of inspection violations for FY 2011 was due to non-fire standard compliant violations.

Sales to Minors	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (6 months)
Other Controlled Buys Performed	5811	3083	3107	2979	1853
Violations	297	166	144	158	143
Compliance Rate	95%	95%	95%	97%	92%

Synar Responsibilities:

CATE inspector responsibilities include conducting controlled-buy investigations required under the federal Synar amendment. Under Synar, the state must maintain a minimum compliance rate of 80% for sales of cigarettes to minors or risk losing a portion of the federal block grant monies allocated to Kansas for substance abuse programs.

Activity	FFY 2011	FFY 2012	FFY 2013	FFY 2014
Attempted Buys	330	337	131	364
Sales Made	20	10	7	37
Compliance Rate	93%	97%	94%	88%

Food and Drug Administration (FDA) Responsibilities:

On September 9, 2010 ABC was awarded a contract with the FDA to conduct, on their behalf, tobacco inspections of retail locations for compliance of FDA regulations pertaining to the advertising and sale of tobacco products to youth. This is an annual contract with renewal options through FFY2017. The FDA contract allowed expansion the CATE Unit to perform the obligations of the contract and also funds an FDA Coordinator and one administrative position.

Attachments:

1. Liquor License and Permit Fees
2. Retailer Licenses
3. On-Premise Licensess
3. Liquor-by-the-Drink (Wet/Dry Counties)
4. Dry Cities (No Retail Sales)
5. Distributor Licenses
6. Farm Winery and Outlet Licenses
7. Microbrewery Licenses
8. Microdistillery Licenses
9. Manufacturer Licenses
10. CMB Off-Premise Retailers – licensed & regulated by cities and counties
11. CMB On-Premise Retailers – licensed & regulated by cities and counties