

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:00 a.m. on March 21, 2000 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Russell Mills, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Bob Longino, Acting Director ABC
Tom Palace, Petroleum Marketers and Convenience Stores

Others attending: See Attached Sheet

Chairman Oleen recognized Bob Longino, Acting Director, Alcoholic Beverage Control (ABC). Mr. Longino presented information on the Tobacco Compliance Programs used by KDOR and Food and Drug Administration (FDA) Tobacco Compliance Program. (Attachment 1). He stated that the ABC conducts between 700 and 750 random-controlled buys on tobacco licensees throughout the state. He stated that in 1999 the Food and Drug Administration contracted with the Department of Revenue to perform 4000 tobacco controlled buy investigations on all tobacco licensees in Kansas. Mr. Longino stated the contract budget is \$578,000 and includes all costs associated with the program. He stated that \$125,000 of this is allocated for 25 prevention programs to local health coalitions. Mr. Longino stated that he had received information just before coming to the meeting that the Supreme Court released a decision today and FDA has directed the suspension of FDA compliance checks until further notice.

Chairman Oleen ask if Tom Palace would explain for the committee the training procedure that tobacco licensees go through for the "we card" training. Mr. Palace stated he is with Petroleum Marketers and Convenience Store Assn. Of Kansas which represents 1100 convenience stores in Kansas and the "we card" training program is the one used for their licensees. He stated that the contract kit includes a video tape and questionnaire which is sent to the licensees to use in training their clerks. Mr. Palace stated that when the training is completed the employee signs a paper showing the date the training is done and it is retained in a file by the employer. He stated that there are other training programs which are used by larger organizations.

Chairman Oleen ask the committee to return to discussion on **HB 2670 Cigarettes, sales of certain cigarettes restricted.** Senator Biggs reported that **SB 278** has been afforded a hearing in the House Federal and State Affairs and **Senator Biggs moved to withdraw his motion to amend HB 278 into HB 2670 and Senator Gooch agreed to withdraw his seconded. Senator Vratil moved to amend provisions in HB 2917 which passed out favorably in the House Federal and State Affairs Committee into HB 2670. Senator Jones seconded the motion. The motion passed.**

Senator Becker moved to report HB 2670 as amended favorably to the full senate. Senator Biggs seconded the motion. The motion passed.

Chairman Oleen ask for action on minutes of the committee for March 14, March 15, March 16, and March 17. **Senator Jones moved to approved the minutes of the committee. Senator Becker seconded the motion. The motion passed.**

The meeting adjourned at 11:55 a.m. The next meeting will be March 22, 2000 at 11:00 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: MARCH 21, 2000

| NAME | REPRESENTING |
|---------------|----------------------|
| Pat Hubbell | BTW |
| Jerri Freed | KS Dental Bd |
| Mark Goodwin | Hein + Weir |
| Jeff Botterby | Kansas St. Affs Assn |
| Roger Trautzo | KGC |
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STATE OF KANSAS

Bill Graves, Governor

Robert Longino, Acting Director
Division of Alcoholic Beverage Control
Kansas Department of Revenue
200 SE 6th Street
Topeka, KS 66603



DEPARTMENT OF REVENUE

Karla Pierce, Secretary

(785) 296-7015
FAX (785) 296-1279

Division of Alcoholic Beverage Control

Memorandum

TO: Senator Lana Oleen, Chairperson
Senate Committee on Federal and State Affairs

FROM: Robert Longino, Acting Director

RE: Tobacco Compliance Programs

DATE: March 21, 2000

Madame Chairperson and members of the committee – Good Morning

Thank you for the chance to appear before the committee this morning. My goal is to briefly describe the tobacco compliance program undertaken by the Department of Revenue.

I have passed out two additional items, the first one is a two-page fact sheet on the KDOR and Food and Drug Administration Tobacco Compliance Program. The second document is a brochure we developed and sent to all tobacco licensees in the state. I will not go over in detail all that is before you but will briefly discuss the programs and allow you to review those documents and ask any questions you might have.

The state compliance program officially began in January of 1997. The Revenue Enforcement Agents from ABC conduct random controlled buys on tobacco licensees throughout the state. Our goal is 700 to 750 per year on the over 4000 tobacco licensees.

There are detailed procedures in place governing the conduct of the controlled buys, the specifics are addressed in the fact sheet. Of particular interest I would think is the penalty structure. Current law authorizes penalties for violations of up to \$1000. We have established a penalty grid whereby each violation is assessed a \$250 fine for the first offense and subsequent offenses increase by \$250 until they reach the maximum fine at \$1000 on the fourth offense. The fines can be reduced if the licensees have an approved training program such as "we card" in place. The law also allows for suspensions of licensees.

If an attempted controlled buy is unsuccessful, the minor is not sold tobacco products, the licensee will get a letter in the mail telling them of the attempt and informing them they

lm. Sen. Federal & State Affairs Comr
Date: 3-21-00
Attachment: # 1-1

are in compliance. If they sell, they will be issued a citation at that time explaining the situation and their options.

In 1999 the Food and Drug Administration contracted with the Department of Revenue to perform compliance checks on all tobacco licensees in Kansas. The contract budget is for \$578,000 and includes all costs associated with the program and some additional funds available for local health coalitions.

The FDA program follows the same procedures as the ABC Revenue Enforcement Agents employ. The FDA agents are part time employees who have full time jobs in various local law enforcement agencies. The FDA has the authority to seek Civil Money Penalties when violations are found. This program commenced in Kansas during October of 1999.

This program's penalty structure is a bit different as you can see in the fact sheet as the first offense is a warning and the fourth offense is a \$10,000 fine. Since the program is new, the first incidence of a 2nd violation just recently occurred.

If the FDA agent has a violation, they will:

- complete FDA paperwork on the federal violation
- issue a state citation for the violation of the state law
- issue a criminal citation to the clerk selling the product
- submit the FDA paperwork to the Washington DC office who will send the warning or penalty letter.

I need to add that it appears the FDA program for tobacco compliance may be on its way out as a Supreme Court Decision released today stated: "the FDA overreached when it reversed its decades-old policy in 1996 and sought to crack down on cigarette sales to minors." Just prior to coming over here this morning we checked with the FDA for guidance and were directed to temporarily suspend FDA compliance checks until further notice.

That was a brief rundown on the tobacco compliance programs in the state, I am now prepared to attempt and answer any questions you might have.

Kansas Department of Revenue and Federal Food and Drug Administration Tobacco Compliance Program

The Kansas Legislature amended the cigarette and tobacco laws in 1996 in an attempt to help curb underage usage of cigarettes and tobacco products. The Kansas Department of Revenue, Investigation and Criminal Enforcement initiated an underage tobacco enforcement program to enforce the requirements of the new laws enacted.

The Kansas Department of Revenue, Investigation and Criminal Enforcement has a goal of conducting between 700-750 random controlled buys per year. Chosen controlled buys are also conducted at retail locations where complaints of sales to minors have been reported or the establishment has a history of violations. When agents of the Kansas Department of Revenue conduct a tobacco controlled buy, no FDA citation is issued. The first state citation was issued in January 1997.

The following procedures are used when conducting a tobacco controlled buy:

- an underage cooperating individual (between 15-17½ years old) is sent into an establishment possessing a cigarette license;
- they attempt to purchase cigarettes or tobacco products;
- if the sale is not made, they leave, no violation;
- a letter is sent to the licensee informing them that a controlled buy was conducted at their establishment and they were found in compliance.
- If the sale is made:
 - they leave and inform the agent of the sale;
 - the agent enters the establishment and contacts the clerk who made the sale;
 - the agent informs the clerk of the violation and the associated penalties;
 - the agent issues an administrative citation to the cigarette license holder;
 - the agent issues a criminal citation to the clerk who made the sale;
 - the agent leaves and goes to the next location randomly selected for a controlled buy.

The underage cooperating individual (UCI) utilized for tobacco controlled buys (both state and FDA) must meet the following requirements. They:

- must have a youthful appearance;
- must be between the ages of 15-17½;
- can only have one form of ID on their person (their true ID);
- must show their ID if requested and give their true age if asked;
- must have a clean record.

The Kansas Department of Revenue uses the following fine structure:

- 1st offense - \$250 fine for the licensee, \$125 fine if have an approved training program
- 2nd offense - \$500 fine for the licensee, \$300 fine if have an approved training program
- 3rd offense - \$750 fine for the licensee, \$525 fine if have an approved training program
- 4th offense - \$1000 fine for the licensee, \$800 fine if have an approved training program

Kansas law allows for an approved training program to be a mitigating circumstance in assessing a fine against a licensee for the actions of an employee. The law also allows for suspension of a businesses license to sell cigarettes. This is something that will be considered in cases where a licensee has had multiple violations.

. every instance where there is a violation, the clerk who made the actual sale is issued a citation in the local jurisdiction. The fine in the statute is a minimum of \$200 plus court costs.

The Food and Drug Administration (FDA) contracted with the Kansas Department of Revenue to perform 4000 tobacco controlled buy investigations per year. The contract budget is \$578,120 for the current year, which runs from October 1, 1999 to September 30, 2000. The money in the budget is for salaries, supplies, training, travel expenses, phone charges, etc. \$125,000 of the contract budget is allocated for 25 \$5000 contracts to local health coalitions. The local coalitions apply for the contracts through the Kansas Department of Health & Environment (KDHE). Once a contract is approved, the Kansas Department of Revenue transfers the funds to KDHE to fund and monitor the contract with the local coalition.

The FDA Tobacco Enforcement Program follows the same procedures as the Kansas Department of Revenue's Tobacco Enforcement Program. The FDA has been provided the authority to seek Civil Money Penalties (CMP) when violations of the underage tobacco regulations are found. The first citation issued by the FDA was in August 1999, during the first contract year. The FDA uses the following fine structure:

- 1st offense – warning letter
- 2nd offense - \$250 fine to the retailer
- 3rd offense - \$1,500 fine to the retailer
- 4th offense - \$10,000 fine to the retailer
- subsequent offenses would result in higher fines

If there is not a violation detected when an FDA Investigator conducts a controlled buy, the FDA sends a letter to the licensee informing them that a controlled buy was conducted at their establishment and they were found in compliance. Because the FDA is enforcing regulations, which if violated, also violate state law, they are also issuing citations based on the violation of the state law.

Example: an FDA Investigator conducts a controlled buy and a sale is made to the UCI, the investigator will:

- fill out the paperwork for a violation of the FDA regulations;
- fill out and issue a state citation for the violation of the state law;
- fill out and issue a criminal citation to the clerk who made the sale;
- file the FDA paperwork with the office in Washington DC, and the FDA will send the warning letter or CMP notice to the licensee (whichever applies).