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**Alcoholic Beverage Control Division**  
Legislative Briefing

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## **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 the liquor, tobacco and other laws administered by the Kansas Department of Revenue.

## **ABC Priorities**

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

1. Make it as easy as possible for liquor licensees to comply with liquor laws.
  - A. The agency is putting everything a liquor licensee needs to understand about how to comply with liquor laws on the website.
  - B. We have recently revised the industry handbooks. These guidelines are written in lay person's terms with the goal of laying out requirements and expectations in the clearest of terms.
  - C. Liquor statutes and regulations are on the website as well as forms, policies and handbooks.
  - D. 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.
  - E. We are 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.
4. Upgrade antiquated systems that currently require redundant data entry. The goal is to provide licensees the opportunity to file license applications online and to provide computer-based training.

## **2012 Legislative Changes**

The 2012 legislature passed Senate substitute for House Bill 2689 which amends the Liquor Control Act (#1 thru #6 below), the Club and Drinking Establishment Act (#7 thru #12 below), the Cereal Malt Beverage Act, the Liquor Enforcement Tax Act, and the Liquor Drink Tax Act. Governor Brownback signed the bill into law on May 25, 2012 and the bill was published in the Kansas Register on May 31, 2012. Changes made by the bill include:

1. New license types for Public Venues and Microdistilleries.
2. Retailers may serve free samples of alcoholic liquor on the retail premises and at adjacent premises, monitored and regulated by the ABC.
3. Manufacturers may serve free samples of alcoholic liquor manufactured by the licensee on the manufacturer's licensed premises.

4. Farm wineries may sell and serve domestic wine manufactured by the licensee for consumption on the farm winery premises.
5. Farm wineries and farm winery outlets may sell domestic wine manufactured by the licensee in the unopened container at special events monitored and regulated by the ABC.
6. The Kansas agricultural product requirement for the production of domestic wine is reduced from 60% to 30%.
7. All statutes relating to salespersons' permits are repealed.
8. Alcoholic liquor may be sold and served by the individual drink by a railway car which possesses a drinking establishment license.
9. Licensees and permit holders may charge different prices for the same drink throughout the business day.
10. Licensees and permit holders may charge any price over acquisition cost plus tax for any drink.
11. Licensees and permit holders may serve beer and cereal malt beverage in pitchers.
12. Individual drink is defined as a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals.

### **Implementing the Historic Changes to Liquor Laws**

The 2012 Legislative Session produced the largest number of changes to the liquor laws since liquor-by-the-drink was implemented in 1987. To effectively implement the legislation, ABC:

- ✓ Convened several industry meetings to discuss the most effective strategies in implementing the statutory changes.
- ✓ Updated the industry handbooks to explain the changes in lay person's terms. These handbooks are available on the ABC website.
- ✓ Promulgated regulations relating to the statutory changes.
- ✓ Reviewed all of the ABC regulations within context of the changes in order to bring them up to date, ensure consistency and understandability.
- ✓ Updated ABC processes, forms and computer systems.
- ✓ Updated the agency website.
- ✓ Provided Industry Notice to licensees.

ABC is continuing to meet with industry representatives to finalize drafts of new regulations and amendments to existing regulations, and to identify regulations which should be revoked. The public comment period on the permanent regulations for retailers closed January 10, 2013.

### **Administration**

The ABC Administrative Unit performs general staff support and related work such as budget preparation, personnel record keeping, equipment management, records management, systems management, criminal history background investigations on licensees and coordinates the division's activities. Division funding is provided

through the vehicle operating fund. Fiscal Year (FY) 2012 and FY 2013 budgets for the division are as follows:

Expenditures	FY 2012 Actual	FY 2013 Budget
Salaries & Wages	\$3,364,456	\$2,974,317
OOE	\$468,688	\$471,392
<b>TOTAL</b>	<b>\$3,833,144</b>	<b>\$3,445,709</b>

### Licensing

Currently there are 4,794 active liquor licenses and permits for retail liquor stores, distributors, manufacturers, farm wineries, microbreweries, microdistilleries, on-premise establishments (class "A" clubs, class "B" clubs, public venues and drinking establishments), caterers, special order shippers, non-beverage users, packaging and warehousing facilities, suppliers and temporary permit holders. In addition, the Licensing Unit members answered 12,627 telephone calls and assisted 418 walk-in customers.

The following is a summary of active liquor licenses by license type for 2009 through 2013:

License Type	2009	2010	2011	2012	2013
Retail Liquor Stores	742	752	764	761	761
Class "A" Clubs	302	296	287	285	276
Class "B" Clubs	136	128	114	118	114
Public Venues				4	4
Drinking Establishments	1672	1695	1726	1731	1751
Caterers	143	157	181	181	188
Beer Distributors	40	37	36	36	36
Spirits Distributors	15	14	24	24	25
Wine Distributors	15	14	27	27	38
Microbreweries (MB)	18	15	20	19	19
MB Packaging & Warehousing Facility	0	0	0	1	1
Microdistilleries					2
Non-Beverage User	9	9	12	13	11
Farm Wineries	22	23	29	29	31
Farm Winery Outlets	8	9	10	11	8
Winery Shipping Permits	58				
Farmers' Market Sales Permit			4	3	6
Special Order Shipping		262	380	398	433
Warehouses	4	3			
Packaging & Warehousing Facility			1	1	2
Manufacturers	4	5	5	5	3
Supplier Permits	693	773	746	792	835
Temporary Permits	316	315	300	460	250
<b>TOTAL</b>	<b>4197</b>	<b>4507</b>	<b>4666</b>	<b>4899</b>	<b>4794</b>

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

The ABC Licensing Unit is responsible for collecting the various gallonage 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 2009- FY 2013.

**Gallonage Tax Rates per Gallon:**

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

<b>Tax Type</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013 (6 months)</b>
Gallonage – Alcohol and Spirits*	\$9,257,287	\$9,156,711	\$9,542,032	\$10,039,464	\$5,257,006
Gallonage - Beer	\$8,713,269	\$8,473,083	\$8,237,208	\$7,677,622	\$4,204,072
Gallonage - Cereal Malt Beverage	\$2,088,508	\$1,989,044	\$1,905,212	\$2,081,419	\$991,888
Gallonage - Wine	\$1,088,337	\$1,146,829	\$1,337,687	\$1,705,625	\$820,002
Gallonage – Farm Wineries	\$20,139	\$19,863	\$17,714	\$19,866	\$8,207
Gallonage - Microbreweries	\$61,121	\$66,104	\$88,064	\$93,825	\$48,944
Gallonage - Microdistilleries					\$1,308
Gallonage – Special Order Shippers		\$5,991	\$7,604	\$10,192	\$803
<b>Gallonage Tax Total</b>	<b>\$21,228,661</b>	<b>\$20,857,625</b>	<b>\$21,135,521</b>	<b>\$21,628,013</b>	<b>\$11,332,230</b>
Liquor Enforcement (8%tax)	\$53,794,049	\$54,826,767	\$56,120,348	\$58,861,685	\$30,920,203
Liquor Drink (10% tax)**	\$36,565,645	\$35,720,462	\$36,012,091	\$38,113,772	\$19,221,351
<b>TOTAL TAX REVENUE</b>	<b>\$111,588,355</b>	<b>\$111,404,854</b>	<b>\$113,267,960</b>	<b>\$118,603,470</b>	<b>\$61,473,784</b>

\* 10% of Gallonage Tax on alcohol and spirits goes to SRS 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.

Other related revenue collected by ABC for FY 2009 - FY 2013:

<b>Revenue Source</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013 (6 months)</b>
All Liquor Licensing and Registration Fees	\$2,619,254	\$2,598,314	\$3,249,252	\$3,577,135	\$1,131,944
Supplier's Permit	\$19,725	\$20,000	\$20,675	\$22,160	\$4,700
Label Fees	\$692,625	\$765,250	\$809,185	\$838,818	\$246,185
Cereal Malt Beverage Retail Stamp	\$81,825	\$78,325	\$82,440	\$80,800	\$26,750
Gallonage Tax	\$21,228,661	\$20,857,625	\$21,135,521	\$21,628,013	\$11,332,230
ABC Liquor Fines	\$396,983	\$530,743	\$552,871	\$445,757	\$259,371
<b>Total Liquor Revenue Collected</b>	<b>\$25,039,073</b>	<b>\$24,850,257</b>	<b>\$25,849,944</b>	<b>\$26,592,683</b>	<b>\$13,001,180</b>
Cigarette and Tobacco Fines	\$303,115	\$339,310	\$292,230	\$116,085	\$55,305
Drug Tax Collections	\$1,053,011	\$1,351,868	\$1,040,648	\$1,245,610	\$707,945
<b>TOTAL ABC REVENUE COLLECTED</b>	<b>\$26,395,199</b>	<b>\$26,541,435</b>	<b>\$27,182,822</b>	<b>\$27,954,378</b>	<b>\$13,764,430</b>

## Liquor Enforcement

The Enforcement Unit provides investigative services necessary for the agency to effectively enforce the liquor laws. There are currently 20 enforcement agent positions, of which two are vacant. Enforcement agents are certified law enforcement officers. They conduct criminal and administrative investigations to determine compliance with liquor laws. In addition, agents provide training to licensees, local law enforcement officers, Regional Prevention Centers (RPC) and other interested coalitions; conduct educational visits with first-time licensees, controlled buy investigations, bar checks, furnisher checks, and private club membership checks; investigate complaints; conduct hidden ownership investigations; and perform routine compliance inspections. Enforcement agents work closely with local, state and federal law enforcement agencies; local, regional and state public safety coalitions; as well as the Division of Taxation in carrying out these activities. Investigations resulting in alleged violations are presented to the County or District Attorney for criminal prosecution against the individual suspect and/or the ABC Assistant Attorney General (AAG) for possible administrative action against the licensee.

The Enforcement Unit is piloting a program designed to enhance the capacity of local law enforcement agencies to enforce liquor laws. The process involves:

1. Providing training to local law enforcement officers on liquor laws, investigative techniques and requirements for submission of reports for possible administrative action.
2. Joint operations with newly trained officers to reinforce the training.
3. Certification of officers as subject matter experts who can provide leadership within their agencies and be called upon by ABC for assistance.

### Enforcement Activities for FY 2009 - FY 2013:

Activity Performed	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013 (6 months)
<b>SALES TO MINORS</b>					
Random Controlled Buys Performed	420	608	512	490	280
Violations	83	97	83	79	47
Compliance Rate	80%	84%	84%	84%	83%
Recidivism - RCB Performed				48	23
Violations				7	2
Compliance Rate				85%	91%
<b>Other Enforcement Activities* Performed</b>					
Inspections	2541	2866	2843	2787	1283
License Delivery – Educational visits	503	750	440	458	198
Other Liquor Investigations	1204	1535	1210	1034	634

**\*Examples of Other Enforcement Activities:**

- Hidden ownership investigations
- Bar checks
- Joint enforcement operations with local law enforcement
- Joint enforcement operations for special events
- Private club membership investigations
- Training and consultation (licensees, local law enforcement, regional preventions centers and other coalitions)
- Process Service

**Licensee Administrative Action (LAA)**

The LAA Unit is staffed by the AAG assigned to the ABC, a legal assistant and one support staff person. 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 2009 through FY 2013 and the total fines collected for those years:

Activity	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013 (6 months)
<b>CITATIONS</b>					
Liquor	645	547	564	517	272
Tax Orders	229	215	211	230	114
<b>Total Liquor Citations Issued</b>	<b>874</b>	<b>762</b>	<b>775</b>	<b>747</b>	<b>386</b>
<b>FINES</b>					
Liquor	\$243,380	\$367,836	\$361,475	\$226,879	\$121,379
Tax Orders	\$153,603	\$162,907	\$191,396	\$218,878	\$137,992
<b>Total Liquor Fines Collected</b>	<b>\$396,983</b>	<b>\$530,743</b>	<b>\$552,871</b>	<b>\$445,757</b>	<b>\$259,371</b>

**Cigarette and Tobacco Enforcement (CATE)**

CATE inspectors perform statewide cigarette and tobacco enforcement activities to reduce sales of cigarettes and tobacco products to minors and ensure compliance with cigarette and tobacco laws. CATE conducts controlled buy visits at retail licensee locations with underage cooperating individuals (UCIs). Targeted reinforcement visits are made in locations that have failed prior enforcement visits. CATE maintains databases with updates from the enforcement activities, coordinates services, communication and data with Kansas Department for Aging and Disability Services (KDADS). CATE LAA pursues administrative action through the issuance of citations, administrative hearings and license suspensions and revocations.

In 2005, the compliance rate for tobacco sales to minors dropped to 62%, 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. Social and Rehabilitation Services (SRS),



now the Department known as KDADS, entered into an Interagency Agreement with ABC to create the CATE Unit.

The CATE Unit began in July 2007 and is funded annually through KDADS. The objective of the State 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 State 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 State CATE Unit consists of 11 statewide Inspectors, one state CATE staff attorney and one administrative specialist.

**State 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 State CATE enforcement activities for FY 2009 – FY 2013:

<b>Inspections</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013 (6 months)</b>
Number Performed	2847	3624	2723	3221	1455
Violations	47	81	495	143	139
Compliance Rate	98%	98%	81%	96%	90%

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

<b>Sales to Minors</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013 (6 months)</b>
Other Controlled Buys Performed	3967	5185	5811	3083	1563
Violations	440	370	297	166	65
Compliance Rate	89%	93%	95%	95%	96%

**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. During Federal Fiscal Year (FFY) 2012, CATE Inspectors performed 337 random controlled buy investigations to measure compliance under the Synar Amendment resulting in 10 sales for a 97% compliance rate.

Activity	FFY 2009	FFY 2010	FFY 2011	FFY 2012
Attempted Buys	425	313	330	337
Sales Made	33	24	20	10
Compliance Rate	92%	92%	93%	97%

**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 subject to renewal option through FY2014.

The FDA contract has expanded the CATE Unit to perform the obligations of the contract; it funds 50% of inspector wages, provides funding for a State Program Coordinator and an Administrative Specialist necessary to fulfill contract requirements.

**FSC responsibilities:**

In FY 2011, ABC entered into a Memorandum of Understanding with the Kansas State Fire Marshal (KSFM) to inspect tobacco retailers and seize cigarettes that are not fire standard compliant. The agreement calls for the CATE Unit to seize noncompliant products and pursue administrative prosecution for violations of the Kansas Fire Safety Standard and Firefighter Protection Act. This agreement has been renewed for FY 2013. The amount of the funding will decrease by 50% in FY 2014 and will be eliminated in FY 2015 as we see the non-fire standard products disappear from the market and as companies become fully compliant in state certification for fire standard compliance through the KSFM.

**Drug Tax Enforcement**

ABC agents are responsible for enforcing 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.

Activity	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013 (6 months)
Assessments	549	541	655	458	156
Amount	\$8,461,529	\$18,103,419	\$8,348,844	\$15,714,483	\$17,633,612
Collected	\$1,049,416	\$1,338,358	\$1,042,291	\$1,245,610	\$707,945

**Attached 2013 Maps:**

1. Active Off-Premise Retailers
2. Active On-Premise Retailers
3. Liquor-by-the-Drink (Wet/Dry Counties)
4. Dry Cities (No Retail Sales)
5. Active Distributors
6. Active Farm Wineries and Outlets
7. Active Microbreweries and Microdistilleries
8. Active Manufacturers
9. Active CMB Off-Premise Retailers – licensed & regulated by cities and counties
10. Active CMB On-Premise Retailers – licensed & regulated by cities and counties

