

Nick Jordan, Secretary
Dean Reynoldson, Director

Sam Brownback, Governor

MEMORANDUM

TO: Arlen Siegfroid, Chairman, House Committee on Federal and State Affairs
FROM: Dean Reynoldson, Director of Kansas Alcoholic Beverage Control
DATE: 29 January 2013
SUBJECT: Cigarette and tobacco enforcement

Chairman Siegfroid and members of the committee, thank you for allowing the Alcoholic Beverage Control (ABC) the opportunity to provide an overview of the ABC enforcement activities as it relates to cigarette and tobacco matters.

Because ABC has the infrastructure and expertise to regulate an industry, we have been asked by various agencies to enforce cigarette and tobacco laws, particularly as they relate to sales to minors. These responsibilities include:

1. **Enforce laws that prohibit the sales of cigarettes and other tobacco products to minors** on behalf of the Director of Taxation. The Cigarettes and Tobacco Products Act, which appears in article 33 of chapter 79 of the Kansas Statutes Annotated, provides for the Director of Taxation to administer the cigarette and tobacco laws. As concern for sales of cigarettes to minors grew during the previous decade, the Director of Taxation entered into an agreement for the Alcoholic Beverage Control to take the lead in enforcing these laws and regulating the retail industry with regard to sales to minors.
2. Enforce the cigarette and tobacco related sections of the **Kansas Unfair Trade and Consumer Protection Act** aka MSA Escrow Act (K.S.A. 50-6a01 et seq).
3. Enforce the **cigarette fire safety standards** for the State Fire Marshal as provided in K.S.A. 31-601 et seq. This involves ensure that cigarettes sold at retail meet requirements relating to fire safety.
4. Conduct compliance checks that are required under federal law, known as the Synar amendment to the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (P.L.102-321 section 1926). This legislation was passed in 1992. Failure to maintain federally mandated compliance rate among cigarette licensees would jeopardize millions of dollars in federal grants each year that are issued to the Kansas Department for Aging and Disability Services (KDADS)
5. The U.S. Food and Drug Administration (FDA) and ABC entered into a contract in 2010 to enforce federal rules via the inspection of licensed premises relating to advertising to minors, sales, and access of cigarettes and other tobacco products to minors. This effort is funded by the FDA.

Evolution of Cigarette and Tobacco Enforcement (CATE Team)

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 (Kansas Department for Aging and Disability Services), entered into an Interagency Agreement with ABC to create the CATE Unit.

The CATE team began in July 2007 and is funded annually through funds received from KDADS. The objective of the CATE team is to strengthen the enforcement of cigarette and tobacco laws, ensure compliance with the Synar Amendment and protect federal block grant funds received by the state. Along with a staff attorney and administrative assistant, the CATE team currently consists of 11 statewide Inspector positions conducting enforcement activities for both State and FDA programs.

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:

Inspections	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013 (6 months)
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.

Sales to Minors	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013 (6 months)
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:

The FDA is responsible for regulating the manufacture, distribution, and marketing of cigarettes and tobacco products. 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, labeling, 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.

Thank you for this opportunity. I welcome any questions you may have.