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**Testimony of Office of Attorney General on Senate Bill 202  
Presented to the House Federal and State Affairs Committee  
By Chief Deputy Attorney General Jeff Chanay**

**April 6, 2017**

Chairman Barker and members of the Committee, thank you for this opportunity to express the Office of Attorney General's support for the legislature's ratification of the State's tobacco sales and taxation compacts with the Kickapoo Tribe in Kansas and the Sac and Fox Nation of Missouri in Kansas and Nebraska, Senate Bill 202.

A brief overview of the Tobacco Master Settlement Agreement (MSA) is in order.

- The Tobacco Master Settlement Agreement was entered into in November 1998.
- The first four states that filed suit against the tobacco manufacturers (Texas, Minnesota, Mississippi, and Florida) settled in 1997.
- All other states plus the District of Columbia, Puerto Rico, and the 4 U.S. Territories settled claims in 1998 with an estimated present value of \$206 Billion.
- The Participating Manufacturers agreed: (1) To limit substantially the advertising, promotion, marketing or packaging of cigarettes, including a ban on "targeting youth," limitations on tobacco brand name sponsorships, ban on tobacco brand name merchandise, etc. and (2) To make payments to the States in perpetuity
- The settling states agreed to release the Participating Manufacturers from specified claims that the States (but not individuals) had and might have in future for costs arising out of tobacco related illnesses.
- Payments are currently due to the settling states on April 15 of each year. PM payments consist of an "Annual Payment" (in perpetuity) (MSA §IX(c)(1)) and a "Strategic Contribution Fund Payment" (through 2017) (MSA §IX(c)(2)).
- Kansas is expected to receive approximately \$57-61 million in April 2017. The actual number is presently unknown because it has not been announced whether any of the state's funds may be paid into a Disputed Payment Account by the PMs.

Starting in 2003, the PMs began to place portions of the states' MSA payments in a Disputed Payment Account on the theory that the states had failed to diligently enforce their qualifying statutes. When General Schmidt took office in 2011, Kansas was already involved in a large

arbitration proceeding to determine if the state would lose any of its future MSA payments due to its alleged diligent enforcement failures. Over the course of several months, Kansas and several (but not all) of the MSA states began to negotiate a mutually advantageous settlement.

In December 2012, the State of Kansas entered into an agreement with various participating tobacco manufacturers settling claims that in calendar year 2003 Kansas (and most other states) had failed to “diligently enforce” the state’s obligations in regard to the sale of cigarettes and tobacco products by companies (called non-participating manufacturers) that did not enter into the MSA. The settlement covered all years through 2012. The settlement protected the state’s MSA revenue stream and eliminated a large contingent liability that was reported to the State’s auditors and bond holders.

As part of the State’s 2012 settlement obligations, the State was required to broaden the scope of NPM cigarettes sales on which escrow is due. Rather than the original “units sold” definition in the State’s escrow statutes, which was the subject of the dispute, the settlement requires that the diligent enforcement standard will apply to all Federal Excise Tax (FET)-paid NPM sales, as well as all State Excise Tax (SET)-paid sales. This settlement provision had the practical effect of requiring States to diligently enforce its escrow laws as to Internet sales and sales made on Tribal lands on which SET may not be collected by the State, either by choice or by simple non-compliance.

The compacts that are being discussed today have provisions that are mutually beneficial to the Tribes and to the State. From the State’s perspective, the State gets what it needs to “diligently enforce” its obligations under the MSA. Specifically the compacts have provisions that will enable the State to timely identify the quantity, manufacturer, and brand of each cigarette sold by the Tribes (at least to non-members), so that the State can impose and enforce all escrow due by NPMs whose cigarettes have been sold by the Tribes.

The Office of Attorney General believes that these compacts will be an effective tool to aid the State in its diligent enforcement efforts, and thereby protect the revenue stream that was bargained for when the MSA was finalized in 1998.

Thank you and I will turn our presentation over to the Director of our Tobacco Enforcement Unit, Assistant Attorney General Jordan Brewer, who will discuss the technical provisions of the compacts.

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