

## MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Steven Brunk at 1:30 p.m. on January 24, 2011, in Room 347-S of the Capitol.

All members were present except:

Representative Judith Loganbill-excused

Representative Mike Peterson-excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes

Doug Taylor, Office of the Revisor of Statutes

Julian Efird, Kansas Legislative Research Department

Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Thomas W. Groneman, Director, Alcoholic Beverage Control

Others attending:

See attached list.

The Chairman called for bill introductions. Representative Marvin KleeB introduced two bills; **HB 2106 concerning trespass and liability, exceptions**. The second was **HB 2089 concerning hunting, relating to hunting dogs; permitting owners to retrieve their dogs from posted land**.

Thomas Groneman, Director, Alcoholic Beverage Control Division gave a presentation about the Alcoholic Beverage Control Division (Attachment 1). The Alcoholic Beverage Control is divided into three divisions; Licensing, Administration and Enforcement. The Licensing division currently has four thousand, four hundred and sixty three (4,463) active liquor licenses. The Gallonage Tax rates for Alcohol/Spirits is \$2.50, for Fortified Wine it is \$0.75, for Light Wine it is \$0.30 and for Beer and CMB it is \$0.18.

The ABC Administrative Unit performs general staff support for the Director and Chief Enforcement Officer and related work such as budget preparation, record management and criminal history background investigations.

The Liquor Enforcement Unit provides investigative support for the Director and Chief Enforcement Officer. There are currently 20 agent positions. They conduct controlled buy operations and bar checks and perform routine compliance checks. ABC is also responsible for Cigarette and Tobacco Enforcement. In addition, ABC agents are responsible for levying drug tax assessments across the state. Kansas has instituted a tax on illegal drugs. Anytime illegal drugs are found without drug tax stamps affixed, ABC agents are called out to assess the appropriate tax and penalty.

Representative Rubin asked what affect it would have on ABC if liquor was allowed in grocery stores. Director Groneman said that it would probably double the number of licensees.

The next meeting is scheduled for January 25, 2011.

The meeting was adjourned at 2:45 p.m.

## ROOM 346-S

[illegible]

---

# Alcoholic Beverage Control Division Legislative Briefing

---



---

Tom Groneman, Director  
January 24, 2011

House Fed & State Affairs  
Date: 1/24/11

Attachment |

The number one priority of the Alcoholic Beverage Control Division (ABC) is to provide regulation of the liquor industry by fairly administering and enforcing the liquor laws of Kansas to ensure compliance and to maintain a level playing field among all licensees.

ABC is divided into three organizational units: licensing, administration and enforcement.

### Licensing

Currently there are 4,463 active liquor licenses and permits for retail liquor stores, distributors, manufacturers, farm wineries, microbreweries, on-premise establishments (class "A" clubs, class "B" clubs and Drinking Establishments), caterers, special order shippers, suppliers and temporary permit holders. In addition, Licensing team members answered 5,992 telephone calls and assisted 398 walk-in customers. ABC requested legislation during the last legislative session to change the term of a license from one year to two years. This legislation passed and became effective July 1, 2010. The change in the license term will be phased in over two years.

The following is a summary of active liquor licenses by license type for fiscal years 2007 through 2011:

| License Type              | 2007         | 2008         | 2009         | 2010         | 2011         |
|---------------------------|--------------|--------------|--------------|--------------|--------------|
| Retail Liquor Store*      | 731          | 734          | 742          | 752          | 766          |
| Class "A" Clubs*          | 315          | 300          | 302          | 296          | 291          |
| Class "B" Clubs*          | 150          | 149          | 136          | 128          | 126          |
| Drinking Establishments** | 1,674        | 1,637        | 1,672        | 1,695        | 1,722        |
| Caterers**                | 120          | 137          | 143          | 157          | 170          |
| Beer Distributors*        | 42           | 41           | 40           | 37           | 37           |
| Spirits Distributors*     | 6            | 17           | 15           | 14           | 23           |
| Wine Distributors*        | 8            | 16           | 15           | 14           | 25           |
| Microbreweries*           | 14           | 16           | 18           | 15           | 17           |
| Farm Wineries*            | 18           | 19           | 22           | 23           | 24           |
| Outlets*                  | 6            | 6            | 8            | 9            | 9            |
| Winery Shipping Permits   |              |              |              |              |              |
| In-State                  |              | 2            | 1            | Repealed     |              |
| Out-of-State              |              | 38           | 57           | Repealed     |              |
| Special Order Shipping*   |              |              |              | 262          | 347          |
| Manufacturers*            | 6            | 7            | 4            | 5            | 5            |
| Temporary Permits         | 338          | 280          | 316          | 315          | 125          |
| Supplier Permits          | 565          | 626          | 693          | 773          | 776          |
| <b>TOTAL</b>              | <b>3,993</b> | <b>4,025</b> | <b>4,184</b> | <b>4,350</b> | <b>4,463</b> |

\* Two year license term effective July 1, 2010.

\*\* Two year license term effective July 1, 2011.

The Licensing Team is responsible for collecting the various gallonage taxes, while the Miscellaneous Tax Segment is responsible for collecting liquor enforcement and liquor drink taxes. The following liquor related taxes were collected during FY2007-FY2011.

**Gallonage Tax Rates per Gallon:**

|                 |        |
|-----------------|--------|
| Alcohol/Spirits | \$2.50 |
| Fortified Wine  | \$0.75 |
| Light Wine      | \$0.30 |
| Beer and CMB    | \$0.18 |

| Tax Type                           | FY 2007              | FY 2008              | FY 2009              | FY 2010              | FY 2011<br>(6 months) |
|------------------------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| Gallonage - Beer                   | \$8,328,417          | \$8,382,304          | \$8,713,269          | \$8,473,083          | \$4,348,420           |
| Gallonage - Cereal Malt Beverage   | \$2,090,992          | \$2,228,227          | \$2,088,508          | \$1,989,044          | \$991,058             |
| Gallonage - Alcohol and Spirits*   | \$8,480,249          | \$8,950,393          | \$9,257,287          | \$9,156,711          | \$4,944,730           |
| Gallonage - Wine                   | \$1,045,683          | \$1,068,393          | \$1,088,337          | \$1,146,829          | \$712,339             |
| Gallonage - Farm Wineries          | \$19,140             | \$18,512             | \$20,139             | \$19,863             | \$8,998               |
| Gallonage - Microbreweries         | \$58,593             | \$54,643             | \$61,121             | \$66,104             | \$43,850              |
| Gallonage - Special Order Shippers |                      |                      |                      | \$5,991              | \$115                 |
| <b>Gallonage Tax Total</b>         | <b>\$20,023,074</b>  | <b>\$20,702,472</b>  | <b>\$21,228,661</b>  | <b>\$20,857,625</b>  | <b>\$12,924,727</b>   |
| Liquor Enforcement (8%tax)         | \$47,138,288         | \$49,982,534         | \$53,794,049         | \$54,826,767         | \$27,363,750          |
| Liquor Drink (10% tax)**           | \$34,268,848         | \$35,613,659         | \$36,565,645         | \$35,720,462         | \$17,627,681          |
| <b>TOTAL TAX REVENUE</b>           | <b>\$101,430,210</b> | <b>\$106,298,665</b> | <b>\$111,588,355</b> | <b>\$111,404,854</b> | <b>\$57,916,158</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 alcohol related revenue collected for FY2007- FY2011:

| Revenue Source                             | FY 2007              | FY 2008              | FY 2009              | FY 2010              | FY 2011<br>(6 months) |
|--|----------------------|----------------------|----------------------|----------------------|-----------------------|
| All Liquor Licensing and Registration Fees | \$2,588,600          | \$2,620,664          | \$2,619,254          | \$2,598,314          | \$1,674,106           |
| Supplier's Permit                          | \$19,550             | \$18,275             | \$19,725             | \$20,000             | \$5,100               |
| Label Fees                                 | \$754,225            | \$717,450            | \$692,625            | \$765,250            | \$176,435             |
| Cereal Malt Beverage Retail Stamp          | \$80,225             | \$78,405             | \$81,825             | \$78,325             | \$19,575              |
| ABC Liquor Fines                           | \$455,065            | \$238,095            | \$396,983            | \$530,743            | \$268,049             |
| <b>Total Other Alcohol Liquor Revenue</b>  | <b>\$3,897,665</b>   | <b>\$3,672,889</b>   | <b>\$3,810,412</b>   | <b>\$3,992,632</b>   | <b>\$2,143,265</b>    |
| <b>Total Tax Revenue</b>                   | <b>\$101,430,210</b> | <b>\$106,298,665</b> | <b>\$111,588,355</b> | <b>\$111,404,854</b> | <b>\$57,916,158</b>   |
| <b>TOTAL ABC LIQUOR REVENUE</b>            | <b>\$105,327,875</b> | <b>\$109,971,554</b> | <b>\$115,398,767</b> | <b>\$115,397,486</b> | <b>\$60,059,423</b>   |

## Administration

The ABC Administrative Unit performs general staff support for the Director and Chief Enforcement Officer 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.

FY10 and FY11 budgets for the division are as follows:

| Expenditures   | FY 2010 Actual     | FY 2011 Budget     |
|----------------|--------------------|--------------------|
| Salary & Wages | \$2,352,116        | \$2,423,958        |
| OOE            | \$259,972          | \$312,047          |
| <b>TOTAL</b>   | <b>\$2,612,008</b> | <b>\$2,736,005</b> |

## Liquor Enforcement

The Enforcement Unit provides investigative support for the ABC Director and Chief Enforcement Officer. There are currently 20 agent positions, of which one is vacant. Enforcement agents are certified law enforcement officers. They conduct criminal and administrative investigations to determine compliance with liquor laws. Agents provide training to licensees and local law enforcement officers; conduct controlled buy operations and bar checks; investigate complaints and hidden ownerships; and, perform routine compliance checks. Enforcement works closely with local, state and federal law enforcement agencies 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 and/or the ABC Assistant Attorney General (AAG) for administrative action against the licensee.

Enforcement Activities for FY2007- FY2011:

| Activity                           | 2007  | 2008  | 2009  | 2010  | 2011<br>(6 months) |
|------------------------------------|-------|-------|-------|-------|--------------------|
| <b>INSPECTIONS</b>                 |       |       |       |       |                    |
| Number Performed                   | 1,647 | 1,757 | 2,541 | 2,866 | 1,278              |
| Violations                         | 83    | 78    | 150   | 197   | 84                 |
| Compliance Rate                    | 95%   | 96%   | 94%   | 93%   | 93%                |
| <b>SALES TO MINORS</b>             |       |       |       |       |                    |
| Random Controlled Buys Performed   | 529   | 537   | 420   | 608   | 240                |
| Violations                         | 149   | 110   | 83    | 97    | 42                 |
| Compliance Rate                    | 72%   | 80%   | 80%   | 84%   | 83%                |
| Chosen Controlled Buys Performed   | 399   | 615   | 323   | 631   | 282                |
| Violations                         | 112   | 104   | 55    | 101   | 43                 |
| Compliance Rate                    | 72%   | 83%   | 83%   | 84%   | 85%                |
| <b>OTHER ENFORCEMENT ACTIVITY*</b> |       |       |       |       |                    |
| Liquor Investigations Performed    | 909   | 1,132 | 1,204 | 1,535 | 488                |
| Violations                         | 84    | 86    | 86    | 155   | 59                 |
| Compliance Rate                    | 91%   | 92%   | 92%   | 90%   | 88%                |

1-4

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

- Bar checks
- Furnishing checks
- Joint enforcement operations with local law enforcement
- Joint enforcement operations for special events only, i.e. Fake St. Patrick's Day
- Process Service
- Retail Liquor Store checks
- Surveillance
- Undercover membership operations

The Licensee Administrative Action Unit (LAA) is staffed by the Assistant Attorney General (AAG) assigned to the ABC, a legal assistant and one support staff. The AAG reviews the cases presented by the enforcement section 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 FY2007 through FY2011 and the total fines collected for those years:

| Activity                      | FY 2007   | FY 2008   | FY 2009   | FY 2010   | FY 2011<br>(6 months) |
|-------------------------------|-----------|-----------|-----------|-----------|-----------------------|
| <b>CITATIONS</b>              |           |           |           |           |                       |
| Liquor                        | 572       | 470       | 645       | 547       | 266                   |
| Tax Orders                    | 264       | 144       | 229       | 215       | 94                    |
| Total Liquor Citations Issued | 836       | 614       | 874       | 762       | 360                   |
| <b>FINES</b>                  |           |           |           |           |                       |
| Liquor                        | \$273,614 | \$105,275 | \$243,380 | \$367,836 | \$173,749             |
| Tax Orders                    | \$181,451 | \$132,820 | \$153,603 | \$162,907 | \$94,300              |
| Total Liquor Fines Collected  | \$455,065 | \$238,095 | \$396,983 | \$530,743 | \$268,049             |

**Cigarette and Tobacco Enforcement**

Over the years the ABC has been assigned other duties, including conducting the compliance checks 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 block grant monies allocated to SRS for substance abuse programs. During FY2010 ABC agents and Underage Cooperating Individuals (UCI's) performed 313 random buy attempts to measure compliance under the Synar Amendment resulting in 24 sales for a 92% compliance rate. This compares to FY 2006, FY 2007, FY 2008 and FY2009 results as follows:

| Activity        | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|-----------------|---------|---------|---------|---------|---------|
| Attempted buys  | 447     | 580     | 413     | 425     | 313     |
| Sales made      | 88      | 70      | 66      | 33      | 24      |
| Compliance Rate | 80.31%  | 88.10%  | 84%     | 92%     | 92%     |

1-5

In 2005, the compliance rate for tobacco sales to minors dropped to 62% and the state had to decide between taking a \$5.4M reduction in IRS block grant funds or pay a \$2.2M penalty to be used to raise the compliance rate. SRS entered into an Interagency Agreement with ABC to create a Cigarette and Tobacco Enforcement Team (CATE). The CATE team began in July 2007 and is funded annually through funds received from SRS. 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 SRS.

The CATE inspectors perform statewide cigarette and tobacco enforcement activities aimed at reducing sales of cigarette and tobacco products to minors. CATE conducts controlled buy visits at all youth accessible retail licensee locations. Targeted enforcement revisits are made at locations that have failed prior enforcement visits.

The CATE team currently consists of eight (8) statewide inspectors conducting enforcement activities; along with a staff attorney and one administrative assistant.

CATE enforcement activities for FY2008 – FY2011. The increase of inspection violations for FY2011 is due to non fire safe compliant violations.

| Activity                         | FY 2008 | FY 2009 | FY 2010 | FY 2011<br>(6 months) |
|----------------------------------|---------|---------|---------|-----------------------|
| <b>INSPECTIONS</b>               |         |         |         |                       |
| Number Performed                 | 1,660   | 2,847   | 3,624   | 1,530                 |
| Violations                       | 22      | 47      | 81      | 380                   |
| Compliance Rate                  | 99%     | 98%     | 98%     | 75%                   |
| <b>SALES TO MINORS</b>           |         |         |         |                       |
| Chosen Controlled Buys Performed | 1,893   | 3,967   | 5,185   | 2,238                 |
| Violations                       | 218     | 440     | 370     | 130                   |
| Compliance Rate                  | 88%     | 89%     | 93%     | 94%                   |

On September 9, 2010, ABC was awarded a contract with the Federal Food and Drug Administration (FDA) for the enforcement of certain federal laws pertaining to the sale and advertising of cigarettes and smokeless tobacco particularly to youth. This is an annual contract subject to renewal on a yearly basis.

The FDA contract will expand the CATE team to perform the obligations listed in the executed contract. The duties of this contract are currently being reviewed and implemented, including the hiring of a statewide program coordinator, four additional inspectors and one admin support staff.

KDOR/ABC recently entered into a Memorandum of Understanding with the State Fire Marshall to inspect tobacco retailers and seize cigarettes that are not fire safe compliant. The agreement imposes specific duties on the Team to seize and pursue administrative cases for certain violations of the Kansas Fire Safety Standard and Firefighter Protection Act. The duration of this contract is one year, and it is anticipated once all retailers have been inspected there will be a reduction of such

1-6



violations by the end of the contract term and this agreement will be reviewed for the need to renew at that time.

### **Drug Tax Enforcement**

In addition, ABC agents are responsible for levying drug tax assessments across the state. Kansas has instituted a tax on illegal drugs. Anytime illegal drugs are found without drug tax stamps affixed, ABC agents are called out to assess the appropriate tax and penalty. Of the drug tax collected, 75% goes to the local law enforcement agency and 25% goes into the State General Fund. During FY 2011, agents made 541 drug tax assessments totaling \$18,103,419 resulting in collections of \$1,351,868.

| Activity    | FY 2007     | FY 2008     | FY 2009     | FY 2010      | FY 2011<br>(6 months) |
|-------------|-------------|-------------|-------------|--------------|-----------------------|
| Assessments | 433         | 555         | 549         | 541          | 347                   |
| Amount      | \$4,621,953 | \$7,972,261 | \$8,461,529 | \$18,103,419 | \$4,192,462           |
| Collected   | \$1,051,508 | \$1,180,969 | \$1,053,011 | \$1,351,868  | \$269,533             |

### **Attachments:**

2010 Amendments to Kansas Liquor Laws  
History of Kansas Liquor Tax Rates

### **ABC Liquor Density Maps:**

Liquor-by-the-Drink (Wet/Dry Counties)  
Dry Cities  
Total Active Off-Premise Retailers  
Total Active On-Premise Retailers  
Total Active Distributors  
Total Active Farm Wineries and Outlets  
Total Active Microbreweries  
Total Active Manufacturers