



Kansas Attorney General

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WRITTEN TESTIMONY FOR HOUSE JUDICIARY COMMITTEE

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

**FROM: PATRICK BROXTERMAN, ASSISTANT ATTORNEY GENERAL, TOBACCO
ENFORCEMENT UNIT**

DATE: FEBRUARY 6, 2012

RE: HOUSE BILL 2521

Chairman Kinzer and Members of the Committee:

On behalf of the Office of Attorney General Derek Schmidt, I offer the following written testimony in opposition to House Bill 2521.

House Bill 2521 creates a 90-day statute of limitations for civil penalties imposed by certain alcohol and tobacco laws. While the Office of Attorney General generally opposes any attempt to set such a short statute of limitations for civil penalties imposed by virtue of violations of Kansas's alcohol and tobacco laws, these comments are specifically focused on the first tobacco-related provision of the bill.

Section 1 of House Bill 2521 would set a 90-day statute of limitations for violations of K.S.A. 50-6a01 *et seq.* This provision is particularly problematic for the State of Kansas. K.S.A. 50-6a01, 6a02, and 6a03 are known as the tobacco Master Settlement Agreement (MSA) qualifying statute. Under the MSA, states must pass and maintain a qualifying statute as the first of two steps to avoid a potential Nonparticipating Manufacturer (NPM) Adjustment. The second step is to "diligently enforce" this qualifying statute. If both of these steps are not done, Kansas (or any other state party to the MSA) could potentially lose its entire MSA payout for a given year. Absent agreement by both the state and the Participating Manufacturers (PM) to the MSA, this qualifying statute (K.S.A. 50-6a01 – 03) may not be changed or the state risks the potential loss of MSA payouts.

The qualifying statute does not create a licensing requirement for a tobacco manufacturer in Kansas. As such, unless a tobacco manufacturer is a licensed cigarette wholesale dealer or tobacco distributor, many if not all of the administrative licensing requirements and penalties do not apply.

Instead as to tobacco manufacturers selling in Kansas, the Attorney General may enforce compliance by filing a civil action in district court. This 90-day requirement is likely problematic for Kansas Administrative Procedure Act (KAPA) enforcement actions. However, it is particularly problematic for non-KAPA actions filed in the district court system. In a KAPA action, an administrative agency has some control over docketing and when an action is heard. In a judicial action, these administrative and docketing issues are under the purview of the courts. Thus, the Attorney General's Office may have little to no control as to when these penalties are imposed.

In addition to the MSA qualifying statute, "complementary" tobacco enforcement laws allow the Kansas Department of Revenue, and to a lesser extent the Office of Attorney General, to regulate licensed wholesale dealers, distributors, and retail dealers. The Attorney General has authority to file suits under the Kansas Consumer Protection Act, in special cases such as when a dealer or distributor offers for sale a product not on the Attorney General's tobacco manufacturers directory. These special cases are implicitly covered by this bill. The narrowest statute of limitations under the Kansas Consumer Protection Act is one year. Consequently, this bill limits the Attorney General's ability to file lawsuits against bad actors under a consumer protection theory.

While the Office of Attorney General was not asked to place a fiscal note on the bill, there could be significant budgetary impact to the state as well. The passage of this bill could jeopardize the state's annual MSA payout. As such, passage of this bill in its current form could cost the state approximately \$60 million a year in MSA payouts for as long as the statute is law. The bill would place an additional administrative burden on the Office of Attorney General and the Department of Revenue.

For these reasons, the Office of Attorney General opposes House Bill 2521, and in particular Sections 1 of the bill.