

The seal of the State of South Carolina is faintly visible in the background. It features a central figure of a woman holding a staff with a snake coiled around it, surrounded by a circular border with the text "OFFICE OF THE ATTORNEY GENERAL" and "STATE OF SOUTH CAROLINA".

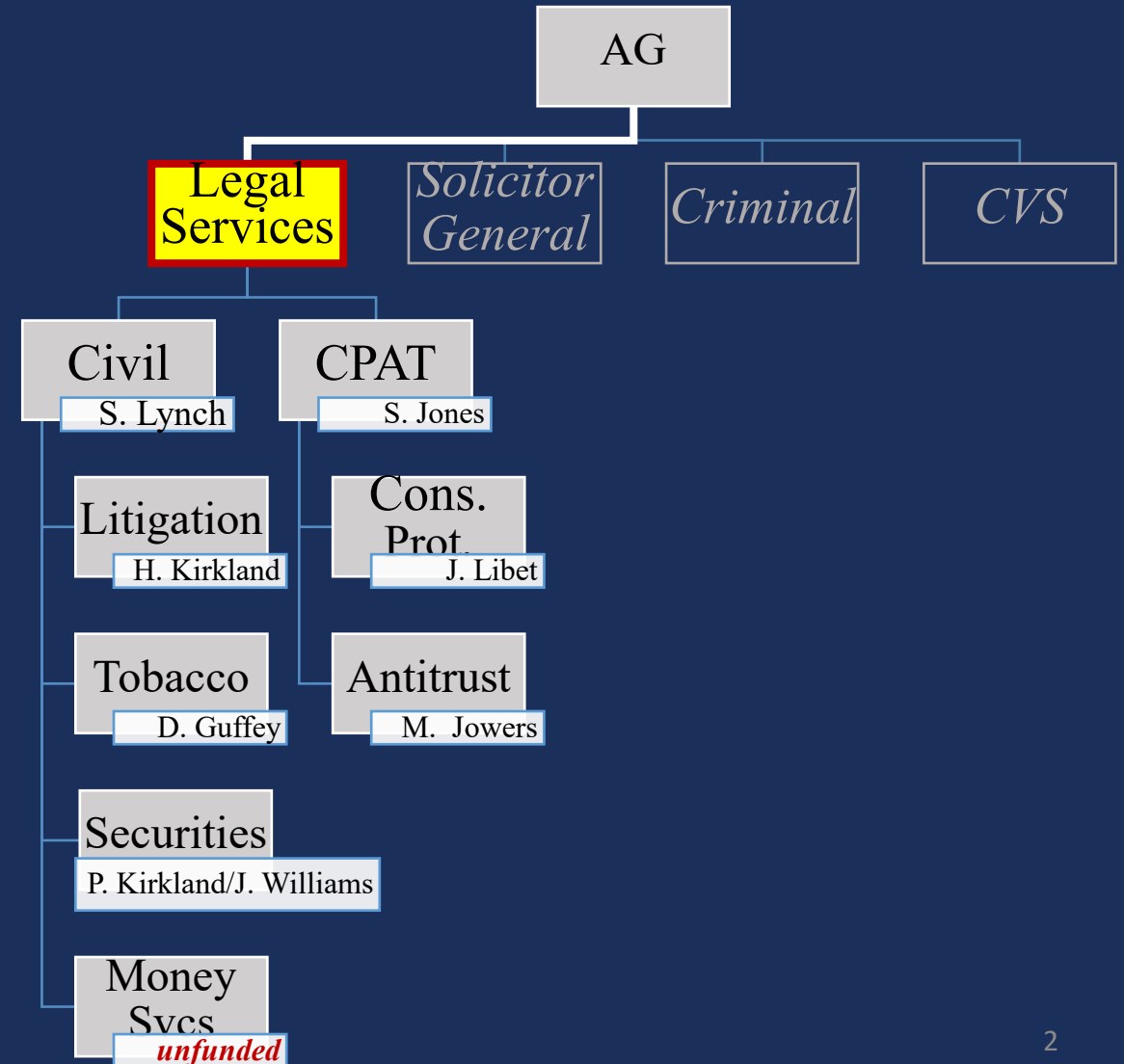
LEGAL
SERVICES
DIVISION



LEGAL SERVICES

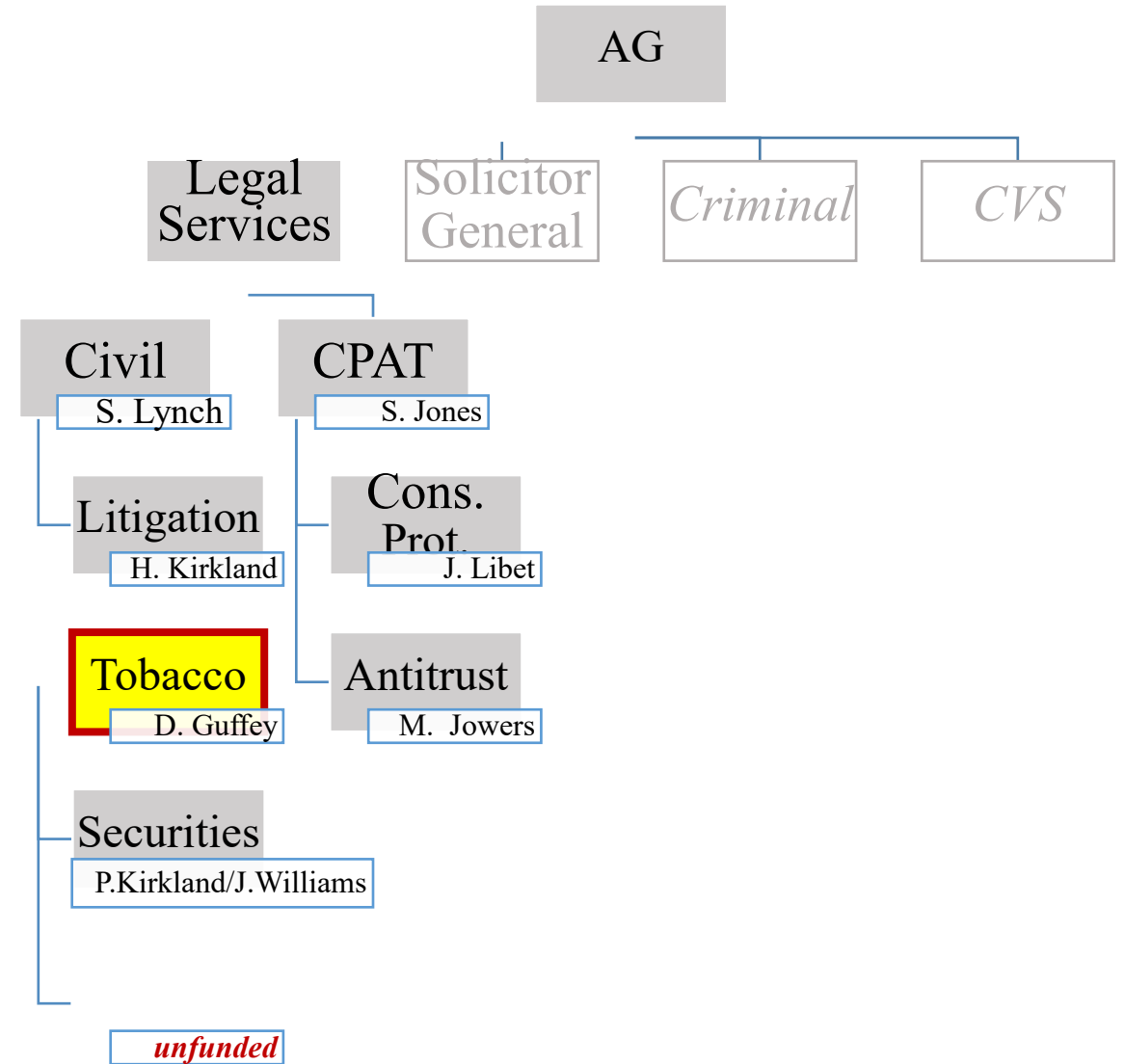
Legal Services is commonly referred to as the Civil Division.

There are very distinct functions for Litigation, Tobacco, Securities, Money Services, and CPAT sections.





Tobacco Section



Personnel

| | Turnover | Number of Employees | |
|---------|----------|------------------------|------------------------|
| | | Leave unit during year | In unit at end of year |
| 2016-17 | 0% | 0 | 3 |
| 2017-18 | 0% | 0 | 3 |
| 2018-19 | 67% | 2 | 3 |
| 2019-20 | 0% | 0 | 3 |

Note: During FY 2019, 50% of turnover was due to employment with another state agency, and 50% was due to an internal promotional opportunity. Due to the section's small staff size, the loss of two employees in FY 2019 resulted in a significant turnover rate.

Exit interviews or surveys conducted?

| | |
|---------|-----|
| 2016-17 | No |
| 2017-18 | No |
| 2018-19 | Yes |
| 2019-20 | No |

Employee satisfaction tracked?

| | |
|---------|-----|
| 2016-17 | No |
| 2017-18 | Yes |
| 2018-19 | No |
| 2019-20 | No |

Overview

In 1998, the Attorney General's Office (AGO) joined 45 other States, the District of Columbia, and five U.S. territories in settling claims with the then four major U.S. cigarette manufacturers.

Master Settlement Agreement (MSA) is the largest financial recovery in legal history

Settlement

- Imposes major restrictions on the industry's advertising and marketing, and
- Provides States with annual payments in perpetuity to help reimburse the states for healthcare costs and harm caused by tobacco use
 - **Average MSA payment: \$75M**

AGO

- Enforces the tobacco statutes that were enacted pursuant to the MSA
 - Works with the Department of Revenue and SLED along with the Attorneys General across the country

Tobacco Litigation: Parties and Timeline

Non-Participating Manufacturers (NPMs)

did not join the MSA but, to sell cigarettes in S.C., are subject to compliance with tobacco enforcement statutes

NOTE:

TPM = NPM + OPM + SPM

Participating Manufacturers (PMs)

PM = OPM + SPM

Original Participating Manufacturers (OPMs) sign MSA

Subsequent Participating Manufacturers (SPMs) join MSA after the OPMs; Some join immediately after the settlement; option still available to join



Four largest cigarette manufacturers¹ settle with 52 states/territories²

- ¹ Phillip Morris, RJ Reynolds (RJR), B&W, and Lorillard (RJR later buys B&W (2003) and Lorillard (2015))
- ² MS, MN, TX, and FL did not join

Master Settlement Agreement (MSA) entered

- States agreed to enact certain legislation, which requires NPMs to place funds into an escrow account for sales each year
- PMs payment to states adjusted down if state has not “**diligently enforced** the provisions of [the escrow statute]”

States settle payment disputes PMs raised in each year 1999-2002
(PMs annually claim States did not “diligently enforce”)

PMs dispute 2003 MSA payment, claiming States failed to “diligently enforce”

(no money lost while working to resolve, but a portion may have been delayed)

Arbitrators impaneled to hear 2003 payment dispute

S.C. Diligent Enforcement Arbitration Hearing
(S.C. could lose up to \$80M for 2003 alone)

S.C. and 25 other states discuss language to settle 2003 payment dispute clarifying “diligently enforce”

Final Settlement Agreement entered
(includes 2003 dispute and disputes PMs raised in years 2004-2017)

Add’l Settlements entered 2018 -2022
(PMs continue to annually claim States did not “diligently enforce”)



Legislation

- MSA required a “Qualifying Statute”
 - S.C. Code Section 11-47-10, *et seq.* (eff. June 1999)
- Then, a “Complementary Statute”
 - S.C. Code Section 11-48-10, *et seq.* (eff. May 2005)
- Regulations were added to enhance enforcement efforts
 - S.C. Code of Regs Section 13-1101 thru 1111 (eff. June 2014)
- Tobacco Settlement Revenue Management Authority
 - S.C. Code Section 11-49-10, *et seq.*



Associated Services

The next slides only contain information on services that are associated with this section of the agency.

Purpose of the Services:

Cigarette smoking presents serious financial concerns for the State. It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State. The Master Settlement Agreement obligates these manufacturers to pay substantial sums to the State (tied in part to their volume of sales). 1999 Act No. 47: Section 11-47-10; Section 11-48-10; Section 11-48-110; 1999 Act No. 47, Section 1; 2005 Act No. 61, Section 1.A.

Monitor and review MSA payment issues

- Monitor and review MSA payment issues with Price Waterhouse Cooper (the Independent Auditor); the NAAG Center for Tobacco and Public Health; Office of the SC Treasurer; and the Office of SC Revenue and Fiscal Affairs

Master Settlement Agreement Payments to the State (millions)



- MSA payments may trend downward due to a reduction in cigarette sales across the country. The good news is that national cigarette sales are down 40% since the inception of the MSA (1998), which means fewer people around the country are smoking.
 - NOTE: This does not mean the number of people smoking in S.C. is down and the AG does not track that information.
- Since the MSA payment is based on national cigarette sales and PM/NPM activity and is subject to a number of adjustments, including volume, profit, inflation, and NPM adjustment, payments may fluctuate.
 - NOTE: The number of cigarettes sold in S.C. every year after the year the MSA was entered, has no impact on the payment S.C. receives.

Agency Service #20: Monitor and review MSA payment issues

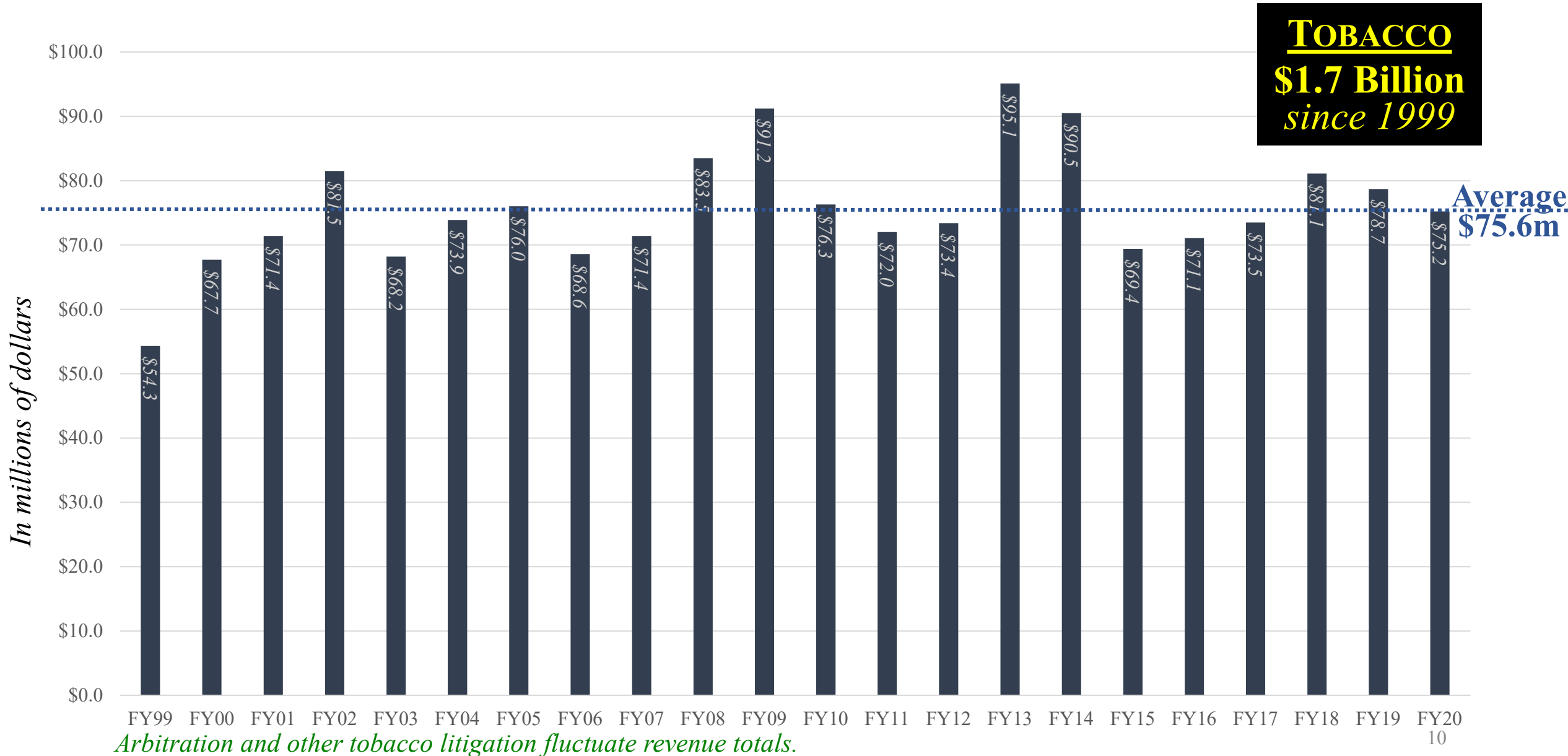
Does law require it: Yes
 Assoc. Laws: Section 11-47-10;
 Section 11-48-10; Section 11-48-110

Customers:
 State of South
 Carolina

Single Unit:
 MSA Payment to South Carolina

| | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> |
|---------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|
| 2016-17 | 1.00 | \$34,414.59 | 0.18 | \$34,414.59 | 0.18% |
| 2017-18 | 1.00 | \$30,178.80 | 0.18 | \$30,178.80 | 0.05% |
| 2018-19 | 1.00 | \$37,950.85 | 0.18 | \$37,950.85 | 0.06% |
| 2019-20 | 1.00 | \$23,835.27 | 0.18 | \$23,835.27 | 0.03% |

Revenue from Tobacco



Monitor and enforce compliance/use of Qualified Escrow Fund Accounts

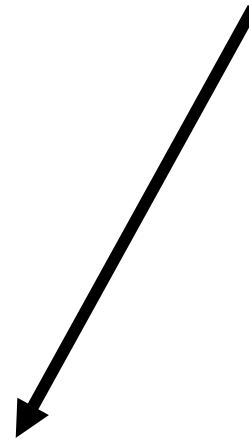
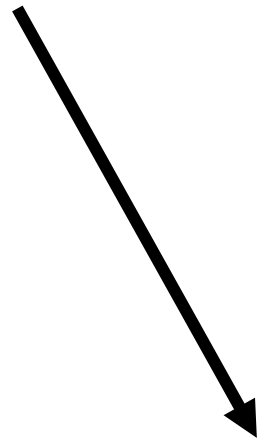
(Agency Service #21)

- Ensure all NPMs have created a qualified escrow fund account
- Review accounts for maintenance of required principal and effects of investments on principal
 - Monitoring after deposits are made by NPMs

Create, review, and regulate required tobacco product manufacturer certification applications

(Agency Service #22)

- Create, review, approve, deny, or otherwise regulate required certification applications to the Attorney General by Tobacco Product Manufacturers, Participating and Non-Participating, who want to sell cigarettes in SC
 - Note: Does not include e-cigarettes, dip, etc.



Develop and maintain a directory of approved Tobacco Product Manufacturers

(Agency Service #23)

Develop and maintain a directory of approved Tobacco Product Manufacturers; published on the Attorney General's website on the 1st and 15th of each month

Agency Service #21: Monitor and enforce compliance/use of Qualified Escrow Fund Accounts

Does law require it: Yes
Assoc. Laws: Section 11-47-30

Customers:
Non-participating
Manufacturers (NPMs)

Single Unit:
Bank Statements received

| | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> |
|---------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|
| 2016-17 | 127.00 | \$291.25 | 0.21 | \$36,989.26 | 0.19% |
| 2017-18 | 127.00 | \$254.47 | 0.21 | \$32,318.14 | 0.05% |
| 2018-19 | 127.00 | \$272.98 | 0.21 | \$34,668.71 | 0.05% |
| 2019-20 | 127.00 | \$213.07 | 0.21 | \$27,060.01 | 0.04% |

Agency Service #22: Create, review, and regulate required tobacco product manufacturer certification applications

Does law require it: Yes
Assoc. Laws: 11-48-30; Reg. 13-1106;
Reg. 13-1108; Reg. 13-1109

Customers:
Tobacco Product
Manufacturers (TPMs)

Single Unit:
Certification Application submitted; Letter of
Approval or Denial

| | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> |
|---------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|
| 2016-17 | 32.00 | \$1,195.01 | 0.31 | \$38,240.28 | 0.19% |
| 2017-18 | 30.00 | \$1,255.37 | 0.31 | \$37,661.21 | 0.06% |
| 2018-19 | 28.00 | \$1,809.57 | 0.30 | \$50,668.07 | 0.08% |
| 2019-20 | 25.00 | \$1,071.88 | 0.30 | \$26,797.03 | 0.03% |

Agency Service #23: Develop and maintain a directory of approved Tobacco Product Manufacturers

Does law require it: Yes
Assoc. Laws: Section 11-48-30; Reg. 13-1107

Customers:
Retailers, Distributors, Tobacco
Product Manufacturers, SC Citizens

Single Unit:
South Carolina Tobacco
Directory

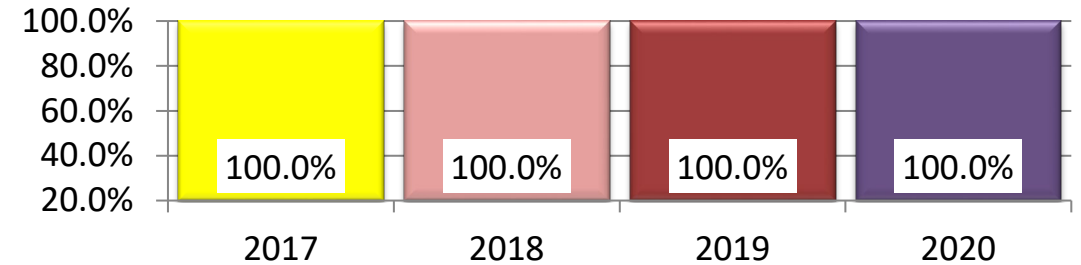
| | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> |
|---------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|
| 2016-17 | 24.00 | \$1,152.28 | 0.18 | \$27,654.68 | 0.14% |
| 2017-18 | 24.00 | \$1,019.66 | 0.18 | \$24,471.90 | 0.04% |
| 2018-19 | 24.00 | \$236.17 | 0.18 | \$5,668.07 | 0.01% |
| 2019-20 | 24.00 | \$849.93 | 0.18 | \$20,398.23 | 0.03% |

Monitor and enforce quarterly non-participating manufacturers escrow deposits

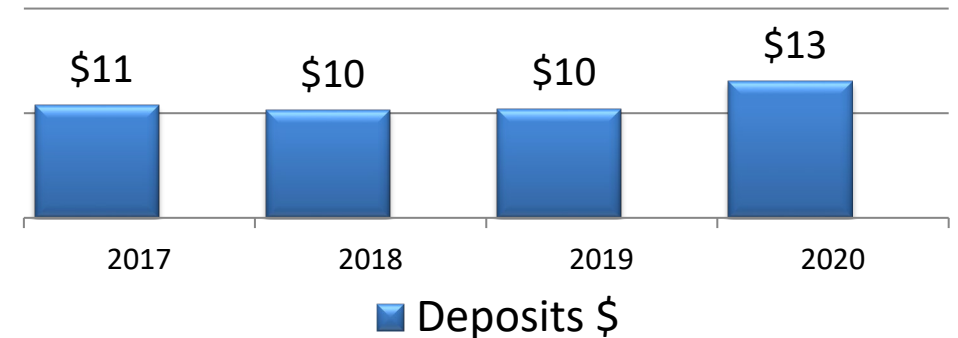
(Agency Service #25)

- Monitor and enforce, with at least a 96% compliance rate, quarterly NPM escrow deposits based on state excise tax (SET) paid sales data as reported to the Department of Revenue (DOR)
 - If state fails to ensure at least 96% compliance, the PMs can request an adjustment to the payment
- Review quarterly NPM Report showing sales for each NPM that is compiled by DOR and make demand for escrow deposits along with NPM Quarterly Reports, including proofs of deposit. This includes escrow deposit demands of DOR audit results of individual distributors
- Receives distributors' reports and data compiled by DOR

Compliance Percentages



Escrow Deposits/Defaults (millions \$)



| Does law require it: | Customers: | Year | Number of Customers Served | Customer satisfaction evaluated | Single Unit: NPM Quarterly Reports submitted | Year | Units provided | Cost per unit | Employee equivalents | Total Cost of service | % of total agency costs |
|----------------------|--|---------|----------------------------|---------------------------------|--|---------|----------------|---------------|----------------------|-----------------------|-------------------------|
| Yes | Non-participating Manufacturers; State of South Carolina | 2016-17 | 13 | | | 2016-17 | 54.00 | \$663.10 | 0.21 | \$35,807.62 | 0.18% |
| | | 2017-18 | 13 | | | 2017-18 | 54.00 | \$575.58 | 0.21 | \$31,081.53 | 0.05% |
| | | 2018-19 | 10 | No | | 2018-19 | 39.00 | \$482.89 | 0.21 | \$18,832.65 | 0.03% |
| | | 2019-20 | 10 | No | | 2019-20 | 37.00 | \$876.72 | 0.21 | \$32,438.81 | 0.04% |

Monitor and enforce compliance with...

S.C. Tobacco Directory Approved Sales

(Agency Service #26 and #27)

Department of Revenue (DOR) Reports

- Audits all distributors that sell cigarettes
- Inspects retailers
 - Process in place ensures DOR and SLED are not visiting same retailers close in time
- Example - In 2021, DOR conducted 39 complete audits of distributors, inspected 1,581 retail locations, seized 8,117 packs of contraband cigarettes, and assessed **\$2,295,674.16 in unpaid taxes**

State Law Enforcement Division (SLED) Reports

- Visits all retail locations to confirm everything being sold is on the directory
- Example - In 2021, SLED performed 3,086 inspections of retail locations and seized 2,796 contraband packs in 131 seizures

Prevent All Cigarette Trafficking Act Reports

(Agency Service #24)

- Distributors shipping cigarettes into S.C. submit to the Attorney General and DOR

Agency Service #26: Monitor and enforce compliance with S.C. Tobacco Directory approved sales as reported by SLED

| | | | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> | |
|--------------------------|---------------------|--|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|-------|
| Does law require it: Yes | Customers: | Single Unit: | 2016-17 | 6,412.00 | \$3.37 | 0.15 | \$21,582.96 | 0.11% |
| Assoc. Laws: 11-48-60; | Retailers; State of | Cigarette Inspection Forms and Cigarette | 2017-18 | 6,501.00 | \$3.88 | 0.15 | \$25,230.27 | 0.04% |
| Section 11-48-90 | South Carolina | Seizure Forms submitted | 2018-19 | 5,565.00 | \$37.66 | 0.15 | \$20,953.60 | 0.03% |
| | | | 2019-20 | 2,604.00 | \$4.86 | 0.15 | \$12,646.99 | 0.02% |

Agency Service #27: Monitor and enforce compliance with S.C. Tobacco Directory approved sales as reported by DOR

| | | | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> | |
|--------------------------|---------------------|---------------------------------------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|-------|
| Does law require it: Yes | Customers: | Single Unit: | 2016-17 | 754.00 | \$28.62 | 0.15 | \$21,582.96 | 0.11% |
| Assoc. Laws: 11-48-60; | Retailers; State of | FS-31 DOR Regulatory Violation and | 2017-18 | 534.00 | \$47.25 | 0.15 | \$25,230.27 | 0.04% |
| Section 11-48-90 | South Carolina | Proposed Assessment Reports submitted | 2018-19 | 845.00 | \$24.80 | 0.15 | \$20,953.60 | 0.03% |
| | | | 2019-20 | 1,069.00 | \$11.83 | 0.15 | \$12,646.99 | 0.02% |

Agency Service #24: Monitor and enforce compliance with Prevent All Cigarette Trafficking Act Reports

| | | | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> | |
|---------------------------------|-----------------------------|------------------------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|-------|
| Does law require it: Yes | Customers: | Single Unit: | 2016-17 | 1,308.00 | \$26.05 | 0.24 | \$34,079.62 | 0.17% |
| Assoc. Laws: Section 11-48-50; | Tobacco Product | PACT Reports submitted | 2017-18 | 1,157.00 | \$28.61 | 0.24 | \$33,105.90 | 0.06% |
| 15 U.S.C. 376; 15 U.S.C. 376(a) | Manufacturers; Distributors | | 2018-19 | 859.00 | \$38.18 | 0.24 | \$32,794.06 | 0.05% |
| | | | 2019-20 | 927.00 | \$32.66 | 0.24 | \$30,272.09 | 0.04% |

File, defend, and, if appropriate, settle lawsuits

(Agency Service #29)

- File, defend, and, if appropriate, settle lawsuits
- Potential lawsuits include:
 - Certification denials
 - Removals from the SC Tobacco Directory
 - Default on escrow deposits
 - Contraband sales
 - Potential Excess Escrow Release
- Participate in multi-state settlements and bankruptcy proceedings
- Work with counsel to resolve matters without litigation when appropriate

Does law require it: Yes
 Assoc. Laws: Section 11-47-30;
 Section 11-48-60; Section 11-48-70

Customers:
 State of South Carolina

Single Unit:
 Cases concerning default on
 escrow deposit and removal
 from the SC Tobacco Directory

| | | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> |
|---------|--|---------------------------|--------------------------|---------------------------------|----------------------------------|------------------------------------|
| 2016-17 | | 1.00 | \$21,582.96 | 0.15 | \$21,582.96 | 0.11% |
| 2017-18 | | 0.00 | Insufficient data | 0.15 | \$25,230.27 | 0.04% |
| 2018-19 | | 1.00 | \$20,953.60 | 0.15 | \$20,953.60 | 0.03% |
| 2019-20 | | 0.00 | Insufficient data | 0.15 | \$12,646.89 | 0.02% |

Participate in National Association of Attorneys General (NAAG) Center for Tobacco and Public Health working groups and projects

(Agency Service #28)

Work collaboratively with other States to resolve issues with TPMs, importers, escrow agents, distributors, and other entities involved in the manufacture and distribution of cigarettes around the country

Participate in NAAG sponsored training in areas pertinent to Tobacco enforcement (e.g., bankruptcy, banking practices, and litigation skills)

Work directly with NAAG staff on SC specific issues and provide litigation assistance

SC Tobacco attorneys maintain leadership roles in national litigation, enforcement efforts, and instruction

| Does law require it: No Assoc. Laws: 11-48-10 Customers: State of South Carolina | Purpose: To ensure adherence to the terms of the Master Settlement Agreement including the diligent enforcement of SC's qualified statutes; and to work collaboratively with other States to resolve issues with tobacco product manufacturers, importers, escrow agents, distributors and other entities involved in the manufacture and distribution of cigarettes. | Single Unit: Workii Group Calls | <u>Units provided</u> | <u>Cost per unit</u> | <u>Employee equivalents</u> | <u>Total Cost of service</u> | <u>% of total agency costs</u> |
|---|--|------------------------------------|-----------------------|----------------------|-----------------------------|------------------------------|--------------------------------|
| | | 2016-17 | 120.00 | \$179.86 | 0.15 | \$21,582.96 | 0.11% |
| | | 2017-18 | 120.00 | \$210.25 | 0.15 | \$25,230.27 | 0.04% |
| | | 2018-19 | 120.00 | \$174.61 | 0.15 | \$20,953.60 | 0.03% |
| | | 2019-20 | 181.00 | \$69.87 | 0.15 | \$12,646.99 | 0.02% |



Current/Future Issue

- Electronic Cigarettes (E-Cigs), Vaping Products, Electronic Nicotine Delivery System (ENDS)
- **These products are not covered under the MSA**
- Many states are moving to tax and monitor these products like cigarettes in addition to enforcing age limitation on use
 - Georgia, Maryland, North Carolina, Virginia, West Virginia, Kentucky (CDC Report 2021)
- Currently, S.C. does not tax these products like cigarettes
- At this time, the only S.C. legislation that addresses these products is our statute prohibiting underage smoking