

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at
Chairperson

1:30 a.m./p.m. on February 19, 1986 in room 526S of the Capitol.

All members were present except:
Rep. Hensley

Committee staff present:
Lynda Hutfles, Secretary
Russ Mills, Research

Conferees appearing before the committee:
Gene Johnson, Kansas Community Safety Action Projects Coordinators Assn.
Ruth Meserve, Kansas Coalition of Drug Free Driving
Reverend Taylor, Kansans for Life at its Best
John Smith, Kansas Department of Revenue
Lt. Bill Jacobs, Kansas Highway Patrol
Jeff Southard, Attorney General's Office

The meeting was called to order by Chairman Miller.

HB2953 - open container

Gene Johnson, Kansas Community Safety Action Projects Coordinators Assn., supported the bill as another method of promoting highway safety in the State of Kansas. Under the proposed legislation, the penalties for the first time offender would be a sentence of probation, conditioned on the enrollment and successful completion of an Alcohol and Drug Safety Action Program. The cost of the school could not exceed \$100. The driver's license restriction would remain the same and the person would be eligible for a restricted driver's license under the normal conditions. See attachment A. The Kansas Alcohol and Drug Council and the Alcohol & Drug Program Directors asked that he express their support.

Ruth Meserve, Kansas Coalition of Drug Free Driving, supports the open container bill that would authorize alcohol evaluation and education for those violating the open container law for first offenders at the cost of the offender and not to the state or county. See attachment B.

Reverend Richard Taylor, Kansans for Life at its Best, expressed his support of the bill.

John Smith, Department of Revenue, expressed his concerns with the bill and made several recommendations to the committee. See attachment C.

Lt. Bill Jacobs, Kansas Highway Patrol, expressed his support of the bill and the recommendations suggested by John Smith.

Hearings were concluded on HB2953.

HB2822 - DUI changes

Jeff Southard expressed support of the bill and recommended that a provision be put in the bill to include violations of ordinances of municipalities.

Hearings were concluded on HB2822.

The meeting was adjourned.

FB
9

TESTIMONY

HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

House Bill 2953
Relating to Transportation in Open Containers

February 19, 1986

Mr. Chairman and Members of the Committee, my name is Gene Johnson and I represent the KS Community Alcohol Safety Action Projects Coordinators Association. Our Association of thirty members provides for the Court and the state of Kansas the evaluation and education for DWI offenders. Our organization is dedicated to the promotion of highway safety in the state of Kansas as it relates to the responsible use of alcoholic beverages and other drugs while operating a motor vehicle.

We support House Bill 2953 as another method of promoting highway safety in the state of Kansas. Under the present law, there is a maximum penalty of \$200 and imprisonment of not more than six months for those offenders who have violated that law. In addition, the Court shall suspend that offender's driver's license for a period of three months. However, the Court does have the authority to grant that person a restricted driver's license which will allow that person to operate a vehicle in the state of Kansas under certain conditions. When granting the restricted license the Court must maintain the 90 day minimum restriction period but not to exceed one year restriction period.

For those who continue to carry open containers, the second offense is a maximum of \$200 and six months in jail, or both, and a suspension of all driving privileges for 90 days.

Under the proposed legislation, the penalties for the first-time offender would be a sentence of probation, conditioned on the enrollment and successful

Testimony, House Bill 2935 - February 19, 1986

completion of an Alcohol and Drug Safety Action Program, or what is better known as an Alcohol Information School, which is certified pursuant to KSA-1008, which regulates the Alcohol Safety Action Projects in the state of Kansas. The cost of such school, or program, would not exceed \$100. The driver's license restriction would remain the same and the person would be eligible for a restricted driver's license under the normal conditions.

If that person failed to complete the Alcohol Information School, or that particular program as recommended by the Alcohol and Drug Safety Action Program, he or she would be returned to Court and be sentenced as a second offender to not less than \$100 nor more than \$500, and imprisonment of not more than six months, or by both. In addition, that person would stand to lose their driving privileges for 90 days.

We feel that alcohol information and education has progressed positively in the past twelve years since the Alcohol Safety Action Projects have been operating in the state of Kansas. Locally, in 1974, we were faced with what we call a 37% recidivism rate of those DUI offenders. That means that 37% of the people who had previously been arrested for DWI were returning for seconds, thirds, and fourths. Now I am happy to report that our recidivist rate locally is far less than 10%.

We feel that education and word of the mouth advertising is making the rounds in the state of Kansas as far as DUI and alcohol related offenses are concerned. We would support this Bill on five different points. First, that under the present law the law enforcement officer cannot file with the Court a uniform traffic summons for an open container because of the fact that the open container law is now placed in Chapter 41 of our statutes. In order for that matter to be adjudicated, the District Attorney, County Attorney, or City Attorney must dictate a complaint with language explaining the offense in accordance with the statute. The presiding judge then must review that complaint and accept its validity and then proceed on with the adjudication proceedings. This

Testimony, House Bill 2935 - February 19, 1986

results in many delays in filing because of the necessary paperwork involved. This is borne out in checking with the Department of Revenue and finding that in 1985 they listed 283 people who had their licenses suspended or revoked because of open container violations. In addition, there were 1738 offenders who had their licenses restricted because of open container violations. However, the Department of Revenue was able to determine there were 916 arrests that they had no record of knowing what had happened to those cases. In other words, no action was taken by the Court. It is also known that many cases did not get reported to the Department of Revenue. Because of this difficulty with the statute they are not even filed and are plea bargained or dismissed prior to that offender appearing in Court. This is a serious loophole in which some effort should be made to correct the situation.

Secondly, we feel by offering these offenders education on their first alcohol related offense, such as driving with an open container, we may prevent that individual through proper information and education from repeating that offense and possibly being apprehended for driving while under the influence. Our past record of lowering the recidivism for DUI offenders from the previous high of in excess of 35% to less than 10% speaks for itself as far as education is concerned.

Three, we feel that traffic safety is of utmost concern for the citizens of Kansas and anybody who is operating a motor vehicle on our highways should be concentrating 100% on their driving and not what they are consuming. The effects of alcohol, once consumed, are always present. Even one beer in some individuals has a negative effect on their judgment and decision making. By offering information to these so-called minor traffic offenses we may be in effect saving lives and serious injuries to those individuals in the future.

Four, we have found in the past that people who attend our Alcohol Information Schools sometimes become our best ambassadors of information. They, in


Testimony, House Bill 2953 - February 19, 1986

turn, will tell their friends of the information they have received in this School and advise them that it is not a good idea to operate a motor vehicle while consuming alcohol. The ripple effect we have through the Alcohol Information Schools has spread in a positive manner throughout our communities.

Fifth, and last, we are not asking the Legislature to provide us any funds to finance this type of an educational program. We are asking you as legislators to place the burden of the education and information schools on the back of the person who violated that statute. In other words, the offender must pay for the knowledge that they have received.

Thank you for permitting me to appear before this Committee today in support of this legislation which will promote more safety on our streets and highways of the state of Kansas.

Respectfully,


Gene Johnson, Chairman
KS Community ASAP Coordinators Association

Ruth N. Meserve
KANSAS COALITION FOR
DRUG FREE DRIVING

B

for Drug-Free Driving

31

913-485-2789

REGISTERED
LOBBYIST

913-649-1177

Mr. Chairman and Members of the Committee;

I am Ruth Meserve, Lobbyist for the Kansas Coalition for Drug-Free Driving.

The Coalition supports the open container bill that would authorize alcohol evaluation and education for those violating the open container law- for 1st offenders at the cost of the offender and not to the state or county.

We feel that an open container in a vehicle distracts from driving in an orderly manner. It is also a primary escape for those under age to have a friend of age stop at a convenient store and buy alcoholic beverages and drive around drinking.

We feel those who violate the law are a high risk for having alcohol or drug problems.

We feel it is important for the courts to know this before sentencing.

Sincerely,

Ruth N. Meserve

Ruth N. Meserve
Lobbyist for Kansas Coalition
Drug-Free Driving

ATTACHMENT B

H. FISA

2/19/86

Substitute for HOUSE BILL NO. 2953

By Committee on Federal and State Affairs,

AN ACT concerning alcoholic beverages; relating to transportation in open containers and consumption while operating a motor vehicle; repealing K.S.A. 41-804, 41-2719 and 41-2720.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) No person shall operate a motor vehicle upon a highway or street while there is in such vehicle any alcoholic beverage unless such beverage is:

(1) In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;

(2) in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(3) in the exclusive possession of a passenger in a recreational vehicle or bus who is not in the driving compartment of such vehicle or bus or who is in a portion of such vehicle or bus from which the driver is not directly accessible.

(b) Violation of this section is a misdemeanor punishable:

(1) Upon conviction of the first violation, by a sentence of probation conditioned on enrollment in and successful completion of an alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and payment of an assessment not exceeding \$100, to be disposed of in the manner prescribed for assessments pursuant to K.S.A. 8-1008 and amendments thereto. If the conditions of probation are not met, the court shall revoke probation and sentence the violator pursuant to subsection (b)(2).

(2) Upon conviction of a second or subsequent violation, or on revocation of probation for conviction of the first violation, by a fine of not less than \$100 nor more than \$500 or by imprisonment for not more than six months, or by both.

H. FUSA
2/19/84

(c) Except as provided in subsection (d), upon conviction of a violation of this section, the judge, in addition to any other penalty or disposition ordered pursuant to law, shall suspend the person's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. Upon conviction of the first violation by such person, the suspension shall be for three months. Upon conviction of a second or subsequent violation, the suspension shall be for not less than one year.

Upon suspension of a license pursuant to this section, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless the person's driver's license or privilege to operate a motor vehicle has been revoked, suspended or canceled for another cause and the revocation, suspension or cancellation has not expired.

(d) In lieu of suspending the driver's license or privilege to operate a motor vehicle, as provided in subsection (c), the judge, upon conviction of a person for the first violation of this section, may place restrictions on the person's driver's license pursuant to K.S.A. 1985 Supp. 8-292 and amendments thereto.

(e) The district or municipal court shall report every conviction of a violation of this section or of an ordinance which prohibits the acts prohibited by this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section or of an ordinance which prohibits the acts prohibited by this section to the division. Prior to sentencing under the provisions of this section, the district or municipal court shall

request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(f) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty and license suspension and restriction in any such ordinance shall not be less than nor exceed the minimum penalty and license suspension and restriction prescribed by this act for the same violation, nor shall the maximum penalty and license suspension and restriction in any such ordinance exceed the maximum penalty and license suspension and restriction prescribed for the same violation.

(g) If a person is convicted under this section or under a city ordinance declaring acts prohibited or made unlawful by this act as unlawful or prohibited in the city and already has a restricted, suspended or revoked driver's license, any period of license suspension or restriction under this section shall not begin until the prior period of restriction, suspension or revocation has elapsed.

(h) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(i) As used in this section:

(1) "Alcoholic beverage" means any alcoholic liquor, as defined by K.S.A. 41-102 and amendments thereto, or any cereal malt beverage, as defined by K.S.A. 41-2701 and amendments thereto.

(2) "Bus" has the meaning provided by K.S.A. 8-1406 and amendments thereto.

(3) For the purpose of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or of K.S.A. 41-804, 41-2719 or 41-2720 as they existed before their repeal by this act or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section or of K.S.A. 41-804, 41-2719 or 41-2720 as they existed before their repeal by this act;

(B) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(C) only convictions of violations committed in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(4) "Highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

(5) "Recreational vehicle" has the meaning provided by K.S.A. 75-1212 and amendments thereto.

(j) This section shall be part of and supplemental to the uniform act regulating traffic on highways.

Sec. 2. K.S.A. 41-804, 41-2719 and 41-2720 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.