

Approved April 1, 1986  
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at  
Chairperson

3:30 ~~am~~ p.m. on March 4, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Duncan, Fuller, Luzzati, Shriver and Teagarden were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Karen Giffiths, Norton, Kansas  
Lynn Menagh, Chief of Police, Norton, Kansas  
Dale Nissan, Nebraska Highway Safety Department  
Col. Bert Cantwell, Kansas Highway Patrol  
Tom Hatton, Kansas Department of Revenue  
Jim Clark, Kansas County and District Attorneys Association  
Brenda Braden, Attorney General's Office  
John Smith, Kansas Department of Revenue

HB 2752 - An act concerning operation or attempted operation of a motor vehicle; relating to certain tests fro blood alcohol concentration.

Karen Griffiths of Norton, Kansas appeared before the committee in support of HB 2752. She explained that the bill allows preliminary screening tests for blood alcohol by allowing law enforcement officers to ask drivers to consent to the test in the field upon reasonable grounds the officer has that the driver has been drinking. The provisions of the bill would allow the citation of a traffic infraction citation for refusal of the test and would not take away a license. She cited a New York case upholding the constitutionality of this type of testing.

Lynn Meangh, Chief of Police of Norton, Kansas appeared in support of this bill. (Attachment 1) He said he had worked in Nebraska after implementation of a similar law there and the result had been positive in increasing officer confidence in citing people for DUI. He stated that this test would not replace the current field sobriety testing but would be an additional test to be used as a backup to the current testing. He cited the major benefits as being getting drunk drivers off the road, stopping persons who are close to the limit and warning them to have someone else drive, utilization of the test on persons otherwise unable to participate in field sobriety tests such as handicapped persons, people with balance problems, etc., relieving liability of officers in instances where they would let a person go if they passed the field sobriety test but were really over the limit and that person is later involved in a serious accident and improving the quality of life of people with drinking problems and their family members by forcing those with problems into treatment because of DUI arrests.

Dale Nissan of the Nebraska Highway Safety Department appeared before the committee in support of HB 2752. He said the arrests in Nebraska have greatly increased since the implementation of this kind of legislation and the use of the equipment in the field.

Col. Bert Cantwell of the Kansas Highway Patrol appeared in support of this bill. (Attachment 2). He stated that passage of the bill would have a great impact on the Patrol's operation in that the blood or breath test must now be done after arrest and process of the driver often involving incarceration. This would enable this to be done immediately and not involve arrest and incarceration if the driver was not beyond the limit. Col. Cantwell stated that 24 other states now allow the use of this testing in the field.

Tom Hatton of the Kansas Department of Revenue appeared before the committee in opposition to HB 2752 (Attachment 3). He stated the Department of Revenue has a problem

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,  
room 313-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on March 4, 1986

with this bill as it pertains to implied consent law. The Revenue Department does not feel the provisions of this bill and the implied consent law should be comingled. He offered two alternatives: 1) allow testing if the officer believes impairment exists; and 2) allow testing at the scene with no sanctions.

HB 3058 - An act concerning traffic citations; amending K.S.A. 1985 Supp. 8-2106. Rep. Tom Walker explained the provisions of this bill and presented a list of items which are currently misdemeanors that would be included under traffic infractions and are not contained in Chapter 8 currently. (Attachment 5) He also presented a balloon with proposed amendments. (Attachment 6).

Jim Clark of the County and District Attorneys Association appeared before the committee and said that his association basically supports the bill but pointed out that SB 498 authorized the Fish and Game Commission to issue similar citations but some district courts in the state have held that this short form does not include a notice to appear. He suggested that 22-2202 be amended to define complaint to include Rep. Walker's list of infractions.

Col. Bert Cantwell appeared in support of this bill and presented a list of additional infractions (Attachment 7).

Brenda Braden of the Attorney General's office appeared stating that 21-3610 and 21-3610(a) should not be on a short form and that 21-4101 should also be required to be on a long form.

HB 3057 - An act concerning children; relating to certain traffic offenses.

Mary Torrence explained that this bill attempts to set out definitions of traffic offenses in the sections dealing with juveniles treated as adults for traffic offenses in the two new codes.

John Smith of the Kansas Department of Revenue presented some proposed amendments to the bill (Attachment 8).

The Chairman adjourned the meeting at 4:50 P.M.

# CITY OF NORTON

301 East Washington Street  
NORTON, KANSAS 67654



HOUSE BILL 2752

**MAYOR**

H. L. Deines

**CITY ADMINISTRATOR**

Richard Ash

**CITY CLERK**

Carol Wertenberger

**CITY ATTORNEY**

Wm. J. Ryan

**CITY PROSECUTOR**

Douglas Sebelius

**CHIEF OF POLICE**

Lynn Menaugh

**FIRE CHIEF**

Alvin Mapes

**1ST WARD COUNCILMEN**

Larry Strickland  
John Preble

**2ND WARD COUNCILMEN**

Jerry Hawks  
Merle Brannan

**3RD WARD COUNCILMEN**

John R. Van Der Wege  
Vicki Ellis

Reference: PRELIMINARY BREATH TESTING

Statement of Intent: To propose legislation authorizing the use of preliminary breath testing equipment, by Kansas Law Enforcement Officers.

Purpose: To further aid law enforcement officers in the detection of intoxicated operators of motor vehicles. The preliminary test would be used in conjunction with and as a supplement to present field sobriety testing.

Use: Preliminary breath testing equipment would be targeted for use when an officer has reasonable grounds to believe that a person: (1) has alcohol in the person's body; (2) has committed a traffic infraction; (3) has been involved in a motor vehicle accident or collision.

Benefits:

1. An obvious benefit from the use of preliminary breath testing equipment, is the protection of innocent citizens from loss of life, injury, and property damage.
2. The officer is better able to gauge accurately the person's alcohol impairment, regardless of their tolerance to alcohol.
3. Through the use of preliminary breath testing equipment, individuals near the intoxication level of .10 may be released with a warning of possible impairment. Without the use of the pre-test the individual may have been arrested, only to have the case dismissed due to the evidentiary test falling below the .10 level.
4. The officer would be able to accurately gauge the impairment of individuals who are incapable of performing field sobriety test due to the following:

- A. Disabilities
- B. Injuries
- C. Age
- D. Balance Problems

Attachment 1

House Judiciary  
March 4, 1986

5. Governmental agencies may be protected from possible litigation due to the release of an intoxicated driver who causes injury or death upon post release.

6. The use of the preliminary breath test will enable officers to detect a greater number of impaired drivers, and therefore more persons are introduced to treatment programs. In the past few years law enforcement officers have had family members thank them for facilitating a loved one into making a positive life style change.

Disadvantage Of Preliminary Breath Testing To The Motoring Public:

1. The driver that is approaching a level that is near the legal limit, may be detained briefly while the preliminary test is being administered. This brief detention should amount to approximately fifteen minutes. This time factor is due to the operating procedure of allowing fifteen minutes to elapse prior to testing, to insure that any residual mouth alcohol has had sufficient time to dissipate.

Funding:

Preliminary breath testing equipment of good quality can be purchased for approximately \$390 to \$440, depending on the model and make. Funding sources that are available for purchasing preliminary breath testing equipment are listed below:

1. Individual Department Budgets
2. Federal Department of Highway Safety
3. Local or Regional Alcohol and Drug Councils

State of Kansas Administrative Responsibilities If Enacted:

The Department of Health and Environment would be responsible for developing rules and regulations regarding:

1. Review and approval of the preliminary breath testing apparatus.
2. Training and certification of preliminary breath testing operators.

Training of testing officers would most likely be accomplished by:

1. Department of Health and Environment
2. Kansas Law Enforcement Training Center
3. Law enforcement agencies that provide the testing equipment.
4. Colleges and Universities.

Respectfully submitted,

  
Lynn R. Menagh  
Chief of Police

SUMMARY OF TESTIMONY

Before the House Judiciary Committee

House Bill 2752

Presented by the Kansas Highway Patrol  
(Colonel Bert Cantwell)

March 4, 1986

The Patrol strongly supports House Bill 2752.

House Bill 2752 would permit the use of preliminary breath testing (PBT) devices by law enforcement officers under certain conditions as outlined in the bill when alcohol consumption by a driver is suspected. The driver could be charged with an infraction for refusing to submit to the test. The primary purpose of the preliminary breath test is to determine if arrest of the individual and further processing are warranted. Present law requires that a person must be arrested for suspicion of operating a vehicle under the influence before the officer may request a test of a breath, blood or urine sample for alcohol content.

The bill would not affect the agency's responsibility but would have a great impact on our operation in this area. Presently, an officer may stop a driver suspected of alcohol consumption with reasonable cause and after determining that the individual is impaired through the use of certain coordination tests, the officer must arrest and process the driver which includes incarceration in most instances and a test of the driver's blood or breath. The preliminary breath testing device would afford an accurate gauge regarding impairment and immediately cause the arrest or release of the suspected driver. This application would highly enhance safety on the highways and streets of the state.

A most important additional benefit would be a great savings in time for both the officer and the suspect driver should no further action be required or warranted.

The Patrol feels that the use of PBT equipment would greatly increase the ability of law enforcement officers to detect and remove the problem drinker from our highways.

The 1985 report submitted by the National Commission Against Drunk Driving concerning a progress report on the implementation of recommendations by the Presidential Commission on Drunk Driving indicates that 24 states have laws permitting preliminary breath testing.

We would respectfully ask for favorable consideration and passage of House Bill 2752.

Attachment 2  
House Judiciary  
March 4, 1986

NEW LEGISLATION--PRELIMINARY SCREENING TEST ALTERNATIVES

ALTERNATIVE A

New Section K.S.A. 8-1012(a). K.S.A. 8-1001(a) shall apply to preliminary screening tests of breath, subject to the provisions of this act.

(b) A law enforcement officer may require one or more preliminary screening tests at the scene of an investigative stop or other initial encounter between the officer and a motor vehicle operator if the officer has reason to believe that: (1) the person's ability to operate a motor vehicle is impaired by alcohol, or; (2) the person was operating a motor vehicle that was involved in an accident. As used herein "impaired" means a state less than intoxication in which the person's speech, coordination or other physical response show affects that may be caused by alcohol.

(c) The refusal of a person to submit to a preliminary screening test upon a lawful request by a law enforcement officer is a traffic infraction.

(d) The results of a preliminary screening test may not be used as evidence except to assist a court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(e) A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test.

(f) A person who submits to a preliminary screening test shall remain subject to the requirements of K.S.A. 8-1001 and K.S.A. 8-1002 for the purposes of the testing described in those sections. Refusal to take such a preliminary screening test shall not be deemed a refusal under K.S.A. 8-1001 nor shall the submission to and completion of such a test satisfy the requirements of the implied consent provisions of K.S.A. 8-1001. No person has a right to expect or demand a preliminary screening test and the absence of an offer of such testing shall not effect, in any way, any criminal prosecution or administrative proceeding. For purposes of this subsection, "a preliminary screening test" shall not include tests on any device that collects samples of breath for later analysis.

K.S.A. 65-1,107: and (e) approve devices for use by law enforcement officers in conducting preliminary screening tests of a person's breath to aid in the determination of probable cause for arrest.

Attachment 3  
House Judiciary  
March 5, 1986

K.S.A. 65-1,109: (a)(3) nothing in this subsection shall be construed as prohibiting preliminary screening tests for law enforcement purposes on devices approved pursuant to K.S.A. 65-1,107 or any amendments thereto.

#### ALTERNATIVE B

New section K.S.A. 8-1012(a). A law enforcement officer may test a person suspected of violating K.S.A. 8-1567 with a preliminary screening device one or more times at the scene of an investigative stop or other initial encounter between the officer and the person. The results of a preliminary screening test may not be used in evidence except to assist a court or hearing officer in determining a challenge to the validity of an arrest.

(b) A person who submits to a preliminary screening test shall remain subject to the requirements of K.S.A. 8-1001 and K.S.A. 8-1002 for the purposes of the testing described in those sections. Refusal to take such a preliminary screening test shall not be deemed a refusal under K.S.A. 8-1001 nor shall the submission to and completion of of such a test satisfy the requirements of the implied consent provisions of K.S.A. 8-1001. No person has a right to expect or demand a preliminary screening test and the absence of an offer of such testing shall not effect, in any way, any criminal prosecution or administrative proceeding. For purposes of this subsection, "a preliminary screening test" shall not include tests on any device that collects samples of breath for later analysis.

K.S.A. 65-1,107: and (e) approve devices for use by law enforcement officers in conducting preliminary screening tests of a person's breath to aid in the determination of probable cause for arrest.

K.S.A. 65-1,109: (a)(3) nothing in this subsection shall be construed as prohibiting preliminary screening tests for law enforcement purposes on devices approved pursuant to K.S.A. 65-1,107 or any amendments thereto.

# Kansas Coalition for Drug-Free Driving

P.O. Box 195 Riley, KS 66531

913-485-2789

March 3, 1986

Mr. Chairman and Members of the committee.

My name is Ruth Meserve and I am Lobbyist for the Kansas Coalition for Drug-Free Driving.

The Coalition is in support of Speaker Mike Hayden's bill that would enable Kansas law enforcement officers to utilize state of the art preliminary breath screening tests, in conjunction with driving while under the influence violations.

Beyond the obvious benefit of improved highway safety, the bill would have a positive affect on the quality of life in Kansas, and to keep pace with contemporary enforcement of intoxicated drivers.

Sincerely,

*Ruth N. Meserve*

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

*Ruth N. Meserve*  
KANSAS COALITION FOR  
DRUG FREE DRIVING

Attachment 4  
House Judiciary  
March 5, 1986

REGISTERED  
LOBBYIST

913-649-1177



HOUSE BILL 3058

21-3610     Furnishing intoxicants to a minor  
21-3610a    Furnishing cereal malt beverages to a minor  
21-3722     Littering  
21-3725     Tampering with a traffic signal  
21-4101     Disorderly conduct?  
40-3104     Operating without proper insurance  
41-724      Transporting liquor into state  
41-804      Open container (Liquor)  
41-2719     Open container (cereal malt beverage)  
41-2720     Consumption of cereal malt beverage while operating vehicle  
47-607      Transportation of uninspected animals into state  
66-1,139    KCC Registration  
66-1,140    KCC Rules & Registration  
66-273      Permitting trains to stand on public highway  
66-1324     Motor Vehicles to stop at inspection stations  
66-1325     Port of entry requirement  
66-1330     Wrecker permits--local  
66-1331     Insurance & permit requirements--wreckers  
66-1332     Markings of wrecker & fee  
68-2104     Flagman--restricted use of road under repair etc.  
68-2106     Destruction or removal of barricades  
79-34,122   Refund of interstate sale of motor fuel.

66-1314     Liability Insurance--motor carriers without permit  
66-1328     Liquid fuel carriers--special trips

Attachment 5  
House Judiciary  
March 5, 1986

HOUSE BILL No. 3058

By Committee on Judiciary

2-25

0017 AN ACT concerning traffic citations; amending K.S.A. 1985  
0018 Supp. 8-2106 and repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 1985 Supp. 8-2106 is hereby amended to  
0021 read as follows: 8-2106. (a) ~~When a person is stopped by a police~~  
0022 ~~officer for any violation of any provision of the uniform act~~  
0023 ~~regulating traffic on highways, which violation is a misdemeanor~~  
0024 ~~or a traffic infraction and is not required to be taken before a~~  
0025 ~~judge of the district court, the~~ A police officer may prepare and  
0026 deliver to the a person a written traffic citation if the police  
0027 officer stops the person for a violation of:

0028 (1) *The uniform act regulating traffic on highways, which*  
0029 *violation is a misdemeanor or a traffic infraction and is not*  
0030 *required to be taken before a judge of the district court;*

0031 (2) *K.S.A. 21-3610, 21-3610a, 21-3722, 21-3725, ~~21-4101~~ 40-*  
0032 *3104, 41-724, 41-804, 41-2719, 41-2720, 47-607, 66-1,139, 66-*  
0033 *1,140, 66-273, 66-1324, 66-1325, 66-1330, 66-1331, 66-1332, 68-*  
0034 *2104, 68-2106 or subsection (b) of K.S.A. 79-34,122, and*  
0035 *amendments thereto;*

0036 (3) *K.S.A. 31-155 and amendments thereto involving trans-*  
0037 *portation of bottle rockets;*

0038 (4) *K.S.A. 66-1314 or 66-1328, and amendments thereto, and*  
0039 *any rules and regulations adopted pursuant thereto;*

0040 (5) *any rules and regulations adopted pursuant to K.S.A.*  
0041 ~~*2-122, 68-2001 or 31-146, and amendments thereto; or*~~

0042 (6) *any rules and regulations adopted pursuant to K.S.A.*  
0043 *31-133 and amendments thereto relating to transportation of*  
0044 *materials or fuel.*

0045 (b) *The citation shall contain a notice to appear in court, the*

strike

2-1212

Attachment 6  
House Judiciary  
March 4, 1986

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0046 name and address of the person, the state registration number of  
0047 the person's vehicle, if any, the offense charged, the time and  
0048 place when and where the person shall appear in court, and any  
0049 other pertinent information.

0050 ~~(b)~~ (c) The time specified in the notice to appear shall be at  
0051 least five days after the alleged violation unless the person  
0052 charged with the violation demands an earlier hearing.

0053 ~~(e)~~ (d) The place specified in the notice to appear shall be  
0054 before a judge of the district court within the county in which the  
0055 offense is alleged to have been committed.

0056 ~~(d)~~ (e) Except in the circumstances to which subsection (d) of  
0057 K.S.A. 8-2104 and amendments thereto apply, in the discretion of  
0058 the police officer, a person charged with a misdemeanor may  
0059 give written promise to appear in court by signing at least one  
0060 copy of the written citation prepared by the police officer, in  
0061 which event the police officer shall deliver a copy of the citation  
0062 to the person and shall not take the person into physical custody.

0063 ~~(e)~~ (f) When a person is charged with a traffic infraction, the  
0064 notice to appear shall provide a place where the person may  
0065 make a written entry of appearance, waive the right to a trial and  
0066 plead guilty or no contest. The notice to appear shall provide a  
0067 space where the police officer shall enter the appropriate fine  
0068 specified in the uniform fine schedule contained in K.S.A. ~~1984~~  
0069 *1985 Supp. 8-2118 and amendments thereto* for the violation  
0070 charged and court costs in the amount provided by law. If the  
0071 notice to appear does not do so, the police officer shall provide a  
0072 person charged with a traffic infraction a form explaining the  
0073 person's right to appear and right to a trial, the person's right to  
0074 pay the appropriate fine and court costs prior to the appearance  
0075 date, and that failure to either pay such fine and court costs or  
0076 appear at the specified time may result in suspension of the  
0077 person's driver's license. The police officer shall provide the  
0078 person with the address of the court to which the written entry of  
0079 appearance, waiver of trial, plea of guilty or no contest and  
0080 payment of fine and court costs shall be mailed.

0081 ~~(f)~~ (g) Any officer violating any of the provisions of this  
0082 section is guilty of misconduct in office and shall be subject to

0083 removal from office.

0084 Sec. 2. K.S.A. 1985 Supp. 8-2106 is hereby repealed.

0085 Sec. 3. This act shall take effect and be in force from and

0086 after its publication in the ~~statute book.~~ \_\_\_\_\_ Kansas register

SUMMARY OF TESTIMONY

Before the House Judiciary Committee

House Bill 3058

Presented by the Kansas Highway Patrol  
(Colonel Bert Cantwell)

March 4, 1986

The Patrol strongly supports House Bill 3058.

House Bill 3058 would establish the specific statutes for which a Notice to Appear (NTA) would suffice as a legal complaint.

At present, most courts will accept an NTA as a legal complaint for any offense related to traffic upon a highway. However, in the last several months, at least two courts have dismissed charges of transporting open containers because they felt an NTA was not a legal complaint except for offenses of chapter 8 of the Kansas Statutes.

We think this particular bill would alleviate that problem in the future and would bring all courts into conformance.

If law enforcement officers are required to go to the court and file long form complaints on offenses that previously were accepted on an NTA, it would require many hours off the road and substantially hinder our patrolling activities.

We would also request that the bill be amended to include the following statutes which constitute a substantial number of charges being filed:

- 21-3724 Tampering with a landmark  
(Includes milepost markers)
- 40-3106 Prohibited vehicle operation by certain non-residents  
(The statute that requires non-residents to have liability insurance)

- 41-715 Unlawful acts by minors in connection with purchase or possession of alcoholic liquors
- 41-2721 Violation of prohibition of consumption by minors (Pertaining to cereal malt beverages)
- 66-1,111 Requires motor carriers to comply with this act (Enforcement statute used for failure to register as required with the Corporation Commission)
- 66-1,129 Safety rules and regulations of the Corporation Commission
- 66-1314 Liability insurance requirements for vehicles not having Kansas motor carrier permits



KANSAS DEPARTMENT OF REVENUE  
*Division of Vehicles*  
State Office Building · Topeka, Kansas 66626-0001

H.B. 3057

The Department respectfully requests that the following amendments be considered to prevent circumvention of driver license penalties required by other statutes.

**LINE 0034:** after the word "child", begin the next sentence with "Unless the statute under which the child is convicted requires a revocation or suspension of driving privileges...".

**LINE 0050:** after the word "fee", add "provided such child's driver's license or privilege to operate a motor vehicle has not been revoked, suspended, or cancelled for some other cause which has not expired."

**LINE 0052:** after the word "may", add "place restrictions on the child's driving privileges pursuant to K.S.A. 8-292", and delete the remainder of subparagraph (b).

**LINES 0053 THROUGH 0088:** delete.

Attachment 8  
House Judiciary  
March 4, 1986