

Approved \_\_\_\_\_

3/19/86  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Bill Morris at  
Vice- Chairperson

11:00 a.m./~~p.m.~~ on March 7, 19<sup>86</sup> in room 254-E of the Capitol.

All members were present except:

Senator Reilly was excused.

Committee staff present:

Mary Torrence, Assistant Revisor of Statutes  
J. Russell Mills, Legislative Research  
Emalene Correll, Legislative Research  
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Don Stumbaugh, Director, Crime Victims Reparations Board

HCR5024 - concerning a constitutional amendment to allow the Legislature to permit, regulate, license and tax the operation of horse and dog racing and parimutuel wagering by non-profit organizations on a county-option basis.

The Chairman said that staff had a hand-out for the Committee concerning elections dealing with parimutuel wagering. (Attachment #1)

The first things before the Committee was the Subcommittee Report on Real Estate Bills -- Senate Bill Nos. 538, 539 and 594. The Chairman asked Senator Martin, Chairman of the Subcommittee, for the Report. Other members of the Subcommittee are Senator Vidricksen and Senator Daniels. Copies of the Subcommittee Report were distributed. (Attachment #2.) Senator Martin explained the recommendations of the Subcommittee.

SB538 - concerning real estate recovery revolving fund.

Senator Arasmith moved to adopt the Report of the Subcommittee on SB538. 2d by Senator Strick. Motion carried.

Senator Arasmith moved that SB538 be reported favorably as amended. 2d by Senator Strick. Motion carried.

SB539 - concerning amendments to real estate brokers' and salespersons' license act.

Senator Martin then proceeded on to SB539 and gave that Report. Senator Arasmith moved that the Report of the Subcommittee on SB539 be adopted except that which appears on page 9 of the balloon. 2d by Senator Anderson. Motion carried.

Senator Strick moved that SB539 be reported favorably as amended. 2d by Senator Arasmith. Motion carried.

SB594 - concerning no private right of action under real estate licensure act.

Senator Martin then continued on with the Report on SB594. He moved the adoption of it. 2d by Senator Anderson. Motion carried.

Senator Martin moved that SB594 be reported favorably. 2d by Senator Anderson. (As it is printed with the amendment.) Motion carried.

The Chairman thanked the Subcommittee for its work on these reports.

SB700 - concerning crime victims reparations; relating to certain alcohol or drug related offenses.

Mr. Don Stumbaugh, Director, Crime Victims Reparations Board, was the first

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 254-E, Statehouse, at 11:00 a.m. ~~AM~~ on March 7, 1986

conferee. He said the trend across the nation is that they are all enacting legislation to include DUI/DWI. He said the sense of the bill is in line 70-71. It would require a plea verdict of guilty. The evidence that the drunk driver was legally drunk makes it possible for the Crime Victims Reparations Board to consider a claim. He also had a hand-out for the Committee. (Attachment #3) which includes his bill summary; impact on agency, agency responsibilities and agency staffing; and fiscal impact; and long-range fiscal effect of the measure.

Mrs. Ruth Meserve was the next proponent of SB700. Mrs. Meserve is a Lobbyist for the Kansas Coalition for Drug-Free Driving. She stated that they feel the financial responsibility should be placed on the drunk driver who has chosen to break the law and endanger the lives of citizens of the community. Her statement is part of these Minutes. (Attachment #4)

Mrs. Meserve also distributed a copy of statement from Mothers Against Drunk Driving. It is a letter from Judy Soza, Chairman, of the organization's State Coordinating Committee. It is also part of these Minutes. (Attachment #5)

SB701 - concerning disposition of monies recovered by Crime Victims Reparations Board.

Mr. Stumbaugh then gave a briefing to the Committee of SB701. He also distributed copies of his paper containing a bill summary; impact (Attachment #6) on agency, agency responsibilities, and agency staffing; fiscal impact; and long-range fiscal effect of the measure. Mr. Stumbaugh also answered questions from the Committee.

The Chairman thanked the participants for their appearances.

SB700 - concerning recovery of reparations for injuries caused by DUI.

Senator Martin moved that SB700 be amended on page 2, line 71, by inserting "or violations of municipal ordinances prohibiting the acts prohibited by that statute" (or whatever language would effect the conceptual motion). 2d by Senator Anderson. Motion carried.

Senator Morris moved that SB700 be recommended favorably for passage as amended. 2d by Senator Anderson. Motion carried.

SB717 - concerning hours constituting workweek for employees of Department of Corrections.

Mr. Charles Simmons of the Department of Corrections was the next conferee. He appeared as a proponent of SB717. Copy of Mr. Richard Mills' letter to the Committee expresses their approval of this measure. (Attachment #7)

Senator Vidricksen moved that SB717 be reported favorably. 2d by Senator Ehrlich. Motion carried.

The meeting was adjourned at noon.

STATE OF KANSAS

3/7/86  
Attachment #1

ARDEN K. ENSLEY, ATTORNEY  
REVISOR OF STATUTES

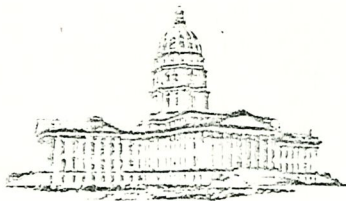
NORMAN J. FURSE, ATTORNEY  
FIRST ASSISTANT REVISOR

JAMES A. WILSON III, ATTORNEY  
SENIOR ASSISTANT REVISOR

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THERESA M. KIERNAN, ATTORNEY  
GORDON L. SELF, ATTORNEY  
MARY SUE HACK, ATTORNEY

COMPUTER INFORMATION STAFF  
MARY O. CHENG, M.S.  
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SECRETARY, LEGISLATIVE  
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SECRETARY, KANSAS COMMISSION  
ON INTERSTATE COMMERCE  
KANSAS STATUTES ANNOTATED  
EDITIONS AND PUBLICATION  
RULES AND REGULATIONS  
BUREAU OF RELEGATION  
LEGISLATIVE INFORMATION SYSTEM

To: Senate Committee on Federal and State Affairs  
From: Mary Torrence, Assistant Revisor of Statutes  
Re: Elections on Parimutuel Wagering  
Date: March 7, 1986

If House Concurrent Resolution No. 5024 is adopted by the voters, the enabling legislation will have to specify the manner for later submitting to the voters of a county the question of having parimutuel wagering in that county. The election on the question would have to be countywide but could be held either separately from any other election or at the same time as another countywide election, depending on the enabling legislation.

The proposition contained in the concurrent resolution does not specify whether counties may "opt out" of parimutuel after "opting in". If the committee wishes to allow this, it would be wise to specifically provide for it.

SUBCOMMITTEE REPORT

3/7/86  
Attachment #2

March 6, 1986

TO: Senate Committee on Federal and State Affairs

FROM: Subcommittee on Real Estate Bills -- Senate Bill  
Nos. 538, 539, and 594

The Subcommittee on S.B.'s 538, 539, and 594 (Senators Martin, Vidricksen, and Daniels) held a total of five meetings to review the assigned bills. The Subcommittee reviewed the bills with staff and received comments on the bills from representatives of the Kansas Real Estate Commission and the Kansas Association of Realtors. In addition, the Chairman of the Senate Judiciary Committee gave the Subcommittee the benefit of his comments on S.B. 594. The Subcommittee makes the following recommendations.

1. S.B. 538 concerns the Real Estate Recovery Revolving Fund and modifies the method of increasing the fund balance through an assessment on licensees when the fund falls below \$100,000. The Subcommittee recommends an amendment to S.B. 538 which is shown on the attached balloon (Attachment 1). The Subcommittee recommends favorable action on S.B. 538, with the proposed amendments.

2. S.B. 539 makes a number of policy changes in the Real Estate Brokers' and Salespersons' License Act. The Subcommittee reviewed the bill in detail and recommends a number of amendments which are shown on the balloon attachment (Attachment 2). The Subcommittee recommends favorable action on S.B. 539, with the proposed amendments.

3. S.B. 594 concerns private rights of action for damages under the Real Estate Brokers' and Salespersons' License Act. The Subcommittee recommends favorable action on the bill.

Senator Phil Martin  
Senator Ben Vidricksen  
Senator Norma Daniels

B86-42.rm

0046 ~~K.S.A. 58-3063, and shall be deposited in the real estate fee fund~~  
 0047 ~~pursuant to this act the commission, without delay, shall assess~~  
 0048 ~~each licensed broker a fee of \$10 and each licensed salesperson a~~  
 0049 ~~fee of \$5. Such fees shall be deposited in the state treasury and~~  
 0050 ~~credited to the real estate recovery revolving fund. If a licensee~~  
 0051 ~~does not pay the assessment within 30 days from the date notice~~  
 0052 ~~of assessment is mailed to the last residence address reported to~~  
 0053 ~~the commission by the licensee, the licensee's license shall be~~  
 0054 ~~automatically suspended until the assessment is paid. A fee of~~  
 0055 ~~\$15 shall be paid by the licensee to reinstate the suspended~~  
 0056 ~~license. Fees paid to reinstate licenses suspended under this~~  
 0057 ~~section shall be deposited in the state treasury and credited to~~  
 0058 ~~the state general fund and the real estate fee fund as provided~~  
 0059 ~~by subsection (a) of K.S.A. 58-3074 and amendments thereto.~~  
 0060 (c) All payments and disbursements from the real estate  
 0061 recovery revolving fund shall be made upon warrants of the  
 0062 director of accounts and reports issued pursuant to vouchers  
 0063 approved by the director of the commission or by any person or  
 0064 persons designated by the commission. Amounts ~~transferred~~  
 0065 ~~credited~~ to the real estate recovery revolving fund under this  
 0066 section shall not be subject to any limitation imposed by any  
 0067 appropriation act of the legislature. All payments and disburse-  
 0068 ments from the real estate recovery revolving fund shall be  
 0069 subject to post audit in accordance with article 11 of chapter 46 of  
 0070 the Kansas Statutes Annotated and any amendments thereto.  
 0071 (d) The pooled money investment board may invest and  
 0072 reinvest the moneys in the real estate recovery revolving fund in  
 0073 (1) direct obligations of, or obligations the principal of and  
 0074 interest on which are unconditionally guaranteed by, the United  
 0075 States of America; ~~or (2) in;~~ (2) interest bearing time deposits in  
 0076 any commercial bank or trust company located in Kansas, except  
 0077 that the amount so invested in any such bank or trust company  
 0078 shall not exceed an amount equal to the total capital and surplus  
 0079 of such bank or trust company and shall be secured in the  
 0080 manner prescribed by subsections (a) ~~to (e); inclusive;~~ through  
 0081 (e) of K.S.A. 75-4218, ~~or and amendments thereto;~~ (3) if the board  
 0082 determines that it is impossible to deposit such moneys in such

may be suspended in accordance with the Kansas administrative procedures act.

(*Atch. 1*) to *Atch. 2*  
*FSA 3/7/86*

**SENATE BILL No. 539**

By Committee on Federal and State Affairs

1-31

0017 AN ACT amending the real estate brokers' and salespersons' license act; amending K.S.A. 58-3035, ~~58-3038, 58-3047,~~ 58-3036, 58-3037, 58-3038, 58-3042  
 0018 3056, 58-3060, 58-3061 and 58-3062 and K.S.A. 1985 Supp.  
 0019 58-3039, 58-3040, 58-3043, 58-3044, 58-3045, 58-3046a and  
 0020 58-3050 and repealing the existing sections.  
 0021

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 58-3035 is hereby amended to read as fol-  
 0024 lows: 58-3035. As used in this act, unless the context otherwise  
 0025 requires:

0026 (a) "Advance listing fee" means any fee charged for services related to promoting the sale or lease of real estate  
 0027 and paid in advance of the rendering of such services, including  
 0028 ~~without limitation~~ any fees charged for listing, advertising or  
 0029 offering for sale or lease any ~~property~~ real estate, but excluding  
 0030 any fees paid solely for advertisement in a newspaper of general  
 0031 circulation or for listing in a publication issued for the sole  
 0032 purpose of promoting the sale or lease of real estate wherein  
 0033 inquiries are directed to the owner of the real estate or to real  
 0034 estate brokers and not to unlicensed persons who publish the  
 0035 listing.

0036 (b) "Associate broker" means an individual who has a  
 0037 broker's license and who is employed by another broker or is  
 0038 associated with another broker as an independent contractor and  
 0039 participates in any activity described in subsection ~~(e)~~ (e).

0040 (c) "Branch broker" means an individual who has a broker's  
 0041 license and who has been designated to supervise a branch  
 0042 office and the activities of salespersons and associate brokers  
 0043 assigned to the branch office.

0044 (d) "Branch office" means a place of business other than the  
 0045 principal place of business of a broker.

*(Attch. 2) to Attch. 2  
 FSA 3/7/86*

0083 *and not to unlicensed persons who publish the list.*

0084 ~~(d)~~ (f) "Commission" means the Kansas real estate commis-  
0085 sion.

0086 ~~(e)~~ (g) "Lease" means rent or lease for nonresidential use.

0087 ~~(f)~~ (h) "Licensee" means any person licensed under this act  
0088 as a broker, ~~associate broker~~ or salesperson.

0089 ~~(g)~~ (i) "Office" means a broker's place of business, where  
0090 records may be maintained and licenses displayed, whether or  
0091 not it is the broker's principal place of business.

0092 ~~(h)~~ (j) "Person" means any individual or any foreign or do-  
0093 mestic corporation ~~or~~, partnership *or association*.

0094 ~~(i)~~ (k) "Real estate" means any interest or estate in land,  
0095 including any leasehold or condominium, whether corporeal,  
0096 incorporeal, freehold or nonfreehold and whether the real estate  
0097 is situated in this state or elsewhere, but does not include oil and  
0098 gas leases, royalties and other mineral interests.

0099 ~~(j)~~ (l) "Salesperson" means ~~any~~ *an* individual, other than an  
0100 associate broker, who is employed by a broker or is associated  
0101 with a broker as an independent contractor and participates in  
0102 any activity described in subsection ~~(e)~~ (e).

0103 (m) "*Supervising broker*" means *an individual, other than a*  
0104 *branch broker, who has a broker's license and who has been*  
0105 *designated as the broker who is responsible for the supervision*  
0106 *of ~~an office~~ and the activities of salespersons and associate*  
0107 *brokers, all of whom are licensed pursuant to subsection (b) of*  
0108 *K.S.A. 58-3042 and amendments thereto. "Supervising broker"*  
0109 *also means a broker who operates a sole proprietorship and with*  
0110 *whom associate brokers or salespersons are affiliated as em-*  
0111 *ployees or independent contractors.*

the primary of a broker

who are assigned to such office and

0112 Sec. 2. K.S.A. 58-3038 is hereby amended to read as follows:  
0113 58-3038. (a) *Except as provided by subsection (b)*, no action shall  
0114 be instituted or recovery be had in any court of this state by any  
0115 person for compensation for any act or service, the performance  
0116 of which requires a license under this act, unless such person  
0117 was duly licensed under this act at the time of offering to perform  
0118 any such act or service or procuring any promise to contract for  
0119 the payment of compensation for any such contemplated act or

0120 service.

0121 (b) Subsection (a) shall not apply to partnerships, associa-  
0122 tions or corporations whose partners, members, officers and  
0123 employees are licensed as provided by subsection (b) of K.S.A.  
0124 58-3042 and amendments thereto.

0125 (c) Nothing herein shall preclude a person who is properly  
0126 licensed as a broker or salesperson in another jurisdiction from  
0127 collecting a referral fee.

0128 Sec. 3. K.S.A. 1985 Supp. 58-3039 is hereby amended to read  
0129 as follows: 58-3039. (a) Any person desiring to act as a broker or  
0130 salesperson must file a written application for a license with the  
0131 commission *or, if required by the commission, with the testing*  
0132 *service designated by the commission.* The application shall be  
0133 in such form and detail as the commission shall prescribe and  
0134 shall be accompanied by the appropriate license fee.

0135 (b) A license to engage in business as a broker or salesperson  
0136 shall be granted only to a person who is 18 or more years of age  
0137 and who has a high school diploma or its equivalent.

0138 (c) In addition to the requirements of subsection (b), each  
0139 applicant for an original license as a broker shall have been  
0140 licensed ~~and actively engaged in business~~ as a salesperson; in  
0141 this or another state; *and shall have been actively engaged in any*  
0142 *of the activities described in subsection (a) of K.S.A. 58-3035 and*  
0143 *amendments thereto* for a period of at least two years during the  
0144 five years immediately preceding the date of the application for a  
0145 license. The commission; ~~in its discretion;~~ may accept proof of  
0146 experience ~~deemed by the commission to be equivalent to two~~  
0147 ~~years' experience as a salesperson.~~ In addition to the other  
0148 requirements of this section; on and after July 1, 1985, the  
0149 provisions of K.S.A. 58-3046a and amendments thereto shall  
0150 ~~apply in the real estate or a related business or a combination of~~  
0151 *such experience and education which the commission believes*  
0152 *qualifies the applicant to act as a broker.*

0153 (d) Except as provided in K.S.A. 58-3040 and amendments  
0154 thereto, each applicant for an original license shall be required to  
0155 pass a written examination covering generally the matters con-  
0156 fronting brokers or salespersons, and no license shall be issued

(e)



0268 license was required.

0269 (b) (c) When an applicant has made a false statement of  
0270 material fact on the application, such false statement may be  
0271 sufficient reason for refusal of a license.

0272 Sec. 6. K.S.A. 1985 Supp. 58-3044 is hereby amended to read  
0273 as follows: 58-3044. If the commission, after an application for a  
0274 license or renewal of a license has been filed with the proper  
0275 form, accompanied by the proper fee, refuses to issue or renew  
0276 the license, it shall give notice to the applicant setting forth the  
0277 reasons for such refusal. Such notice and an opportunity to be  
0278 heard shall be given in accordance with the provisions of the  
0279 Kansas administrative procedure act, unless the application for a  
0280 license or renewal ~~of a license~~ is denied solely because of the  
0281 applicant's failure to pass a required examination.

0282 Sec. 7. K.S.A. 1985 Supp. 58-3045 is hereby amended to read  
0283 as follows: 58-3045. (a) Each license issued or renewed by the  
0284 commission shall expire on a date determined in accordance  
0285 with a schedule established by rules and regulations of the  
0286 commission, which date shall be not more than two years from  
0287 the date of issuance or renewal. Except as otherwise provided by  
0288 this act, applicants for issuance or renewal of a license must  
0289 satisfy all applicable requirements prior to issuance or renewal  
0290 of the license.

0291 (b) Each license shall be renewable upon the filing, *not less*  
0292 *than 30 days* prior to the expiration date of the license, of a  
0293 renewal application. Such application shall be made on a form  
0294 provided by the commission and accompanied by the required  
0295 renewal fee and evidence of compliance with the requirements  
0296 of K.S.A. ~~58-3046~~, 58-3046a and amendments thereto. In each  
0297 case in which a license is issued or renewed for a period of other  
0298 than one year, the commission shall compute to the nearest  
0299 whole month the required fee, based on annual renewal fee  
0300 provided for by K.S.A. 58-3063, and amendments thereto. Fail-  
0301 ure to remit the required fee when due will automatically cancel  
0302 the license, except that any licensee who fails to pay the required  
0303 renewal fee when due may have the licensee's license reinstated  
0304 and renewed by the payment of the required renewal fee and a

strike

0305 late fee of \$50, if such fees are remitted to the commission not  
 0306 later than six months following the expiration date of such  
 0307 license.

; (1) Not later than 12 months following the expiration date of such license, if the commission finds good cause for the failure to pay the renewal fee; and (2)

0308 (c) An application for renewal filed in compliance with the  
 0309 requirements of subsection (b) shall entitle the applicant to  
 0310 continue operating under the applicant's existing license after its  
 0311 specified expiration date, unless such license has been sus-  
 0312 pended or revoked and has not been reinstated or unless such  
 0313 license is restricted, until such time as the commission deter-  
 0314 mines whether the application fulfills such requirements.

, in all other cases

0315 (d) ~~If the commission determines that the applicant has not~~  
 0316 ~~complied with the requirements for renewal of the applicant's~~  
 0317 ~~license, it shall advise the applicant of an extended period for~~  
 0318 ~~compliance under K.S.A. 58-3046, and amendments thereto, or~~  
 0319 ~~advise the applicant that the applicant's right to operate under~~  
 0320 ~~the prior license will expire 25 days from the date such notice is~~  
 0321 ~~mailed or on the date the license would normally expire, which-~~  
 0322 ~~ever is later. The commission may extend the expiration date~~  
 0323 ~~whenever a hearing is requested.~~

0324 Sec. 8. K.S.A. 1985 Supp. 58-3046a is hereby amended to  
 0325 read as follows: 58-3046a. (a) Any person who applies for an  
 0326 original license in this state as a salesperson ~~after July 1, 1982,~~  
 0327 ~~shall submit, at the time of the original application, shall submit~~  
 0328 evidence, satisfactory to the commission, of attendance of a  
 0329 principles of real estate course, of not less than 30 hours of  
 0330 instruction, approved by the commission. *The commission may*  
 0331 *require the evidence to be furnished to the commission with the*  
 0332 *original application for license or it may require the applicant*  
 0333 *to furnish the evidence to the testing service designated by the*  
 0334 *commission as a prerequisite to taking the examination required*  
 0335 *by K.S.A. 58-3039 and amendments thereto.*

0336 (b) Any person who applies for an original license in this  
 0337 state as a broker ~~after July 1, 1985, shall submit, at the time of the~~  
 0338 ~~original application, shall submit~~ evidence, satisfactory to the  
 0339 commission, of attendance of 24 hours of instruction, approved  
 0340 by the commission and received within the 12 months immedi-  
 0341 ately preceding the filing of application for broker's license.

0527 (d) All administrative proceedings pursuant to this section  
 0528 shall be conducted in accordance with the Kansas administrative  
 0529 procedure act.

0530 Sec. 11. K.S.A. 58-3056 is hereby amended to read as fol-  
 0531 lows: 58-3056. The costs of any hearing before the commission  
 0532 may be assessed against the licensee or applicant if the order of  
 0533 the commission is adverse to the licensee or applicant ~~or against~~  
 0534 ~~the complainant, other than the director of the commission, if the~~  
 0535 ~~order is adverse to the complainant.~~ The commission may reduce  
 0536 any such assessment to judgment by filing a petition in the  
 0537 district court of Shawnee county. No license shall be reinstated,  
 0538 renewed or issued if an assessment for costs has not been paid by  
 0539 the holder of or applicant for such license. Costs shall include all  
 0540 ~~items specified by K.S.A. 60-2003, as applicable, and expenses~~  
 0541 ~~for audits, appraisals, surveys and title examinations:~~

0542 (a) *Statutory fees and mileage of witnesses attending a*  
 0543 *hearing or for the taking of depositions used as evidence;*

0544 (b) *reporter's or stenographic charges for the taking of dep-*  
 0545 *ositions used as evidence or for transcripts of the hearing;*

0546 (c) *expenses for audits, appraisals, surveys and title exami-*  
 0547 *nations; and*

0548 (d) *such other charges authorized to be taxed as costs, as*  
 0549 *specified by K.S.A. 60-2003 and amendments thereto.*

0550 Sec. 12. K.S.A. 58-3060 is hereby amended to read as fol-  
 0551 lows: 58-3060. ~~Every~~ (a) *Each* licensed resident broker shall  
 0552 have and maintain a principal place of business in the state of  
 0553 Kansas, *or in an adjoining state with the written permission of*  
 0554 *the commission, which shall serve as such broker's primary*  
 0555 *office for the transaction of business. Such office shall be the*  
 0556 *place at which the broker's license and those of salespersons and*  
 0557 *associate brokers employed by or associated with the broker are*  
 0558 *displayed* Each licensed nonresident broker shall have and  
 0559 maintain a principal place of business in the broker's state of  
 0560 residence or in the state of Kansas which shall serve as such  
 0561 broker's primary office for the transaction of business.

0562 (b) A supervising broker shall be designated ~~for each office~~  
 0563 ~~which has more than one broker.~~ Each additional office or place

(e) Notwithstanding any provision of this act to the contrary, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 1985 Supp. 77-536 and amendments thereto, to summarily suspend the license of any licensee if the commission has reasonable cause to believe that the licensee's trust account is in unsound condition or that the licensee is misappropriating funds belonging to other persons.

to supervise the primary office and the activities of salespersons and associate brokers assigned to the primary office

0564 of business of a broker shall be designated a branch office and  
 0565 shall be supervised by a branch broker.

0566 (c) A branch broker's license and those of salespersons and  
 0567 associate brokers assigned to the branch office shall be dis-  
 0568 played in the branch office. All other licenses of brokers, sales-  
 0569 persons and associate brokers shall be displayed in the broker's  
 0570 primary office.

0571 (d) A broker shall give written notice to the director of any  
 0572 change in location of any office of the broker, by returning  
 0573 licenses for cancellation and reinstatement under the new loca-  
 0574 tion as provided by K.S.A. 58-3047 and amendments thereto.

0575 (e) The requirement of maintaining an office as provided by  
 0576 this section shall not apply to an associate broker, to a broker  
 0577 whose license is on deactivated status or to an officer of a  
 0578 corporation, partner of a partnership or member of an associa-  
 0579 tion who is not designated as the supervising broker of an office.

0580 Sec. 13. K.S.A. 58-3061 is hereby amended to read as fol-  
 0581 lows: 58-3061. (a) Unless exempt under subsection (f), each  
 0582 broker shall maintain, in the broker's name or the broker's firm  
 0583 name, a separate trust account in this state, or in an adjoining  
 0584 state with written permission of the commission, designated as  
 0585 such; in which. All down payments, earnest money deposits,  
 0586 advance listing fees or other trust funds received in a real estate  
 0587 transaction by the broker or by the broker's associate brokers or  
 0588 salespersons on behalf of a principal or any other person shall be  
 0589 deposited or invested in such account unless all parties having  
 0590 an interest in the funds have agreed otherwise in writing. The  
 0591 account shall be with an insured bank or savings and loan  
 0592 association or credit union which is insured with an insurer or  
 0593 guarantee corporation as required under K.S.A. 17-2246; and  
 0594 amendments thereto. A broker shall not retain any interest  
 0595 accrued on moneys held in an interest-bearing trust account  
 0596 without the written consent of all parties to the transaction.  
 0597 (b) Each broker shall notify the commission of the name of  
 0598 the bank, credit union or savings and loan association in which  
 0599 the trust account is maintained and of the account name by  
 0600 completing a consent to audit form obtained from the commis-

, other than the primary office,

shall be designated to supervise such office and  
 the activities of salespersons and associate  
 brokers assigned to such office

0601 sion. A broker may maintain more than one trust account if the  
0602 commission is advised of each such account as required by this  
0603 subsection and authorized to examine all such accounts. If a  
0604 separate trust account is maintained for a branch office, the  
0605 branch broker shall maintain trust account records required by  
0606 rules and regulations of the commission and all transaction files  
0607 related to the branch office trust account.

0608 (c) Each broker shall grant full access to all records pertain-  
0609 ing to the broker's trust account to the commission and its duly  
0610 authorized representatives. A trust account examination shall be  
0611 made at such time as the commission ~~may direct~~ directs.

0612 ~~(d) A broker may maintain more than one trust account if the~~  
0613 ~~commission is advised of each such account as required in~~  
0614 ~~subsection (b) of this section and authorized to examine all such~~  
0615 ~~accounts in accordance with subsection (c) of this section.~~

0616 ~~(e) If a broker maintains a separate trust account for any~~  
0617 ~~office, the broker shall maintain a separate bookkeeping system~~  
0618 ~~in such office.~~

0619 ~~(f) (d) No payments shall be made from the broker's trust~~  
0620 ~~account other than a withdrawal of earned commissions pay-~~  
0621 ~~able to the broker or distributions made on behalf of the bene-~~  
0622 ~~ficiaries of the trust account. A broker shall not be entitled to~~  
0623 ~~any part of the earnest money or other money paid to the broker~~  
0624 ~~in connection with any real estate transaction as part or all of the~~  
0625 ~~broker's commission or fee until the transaction has been con-~~  
0626 ~~summated or terminated unless otherwise agreed in writing by~~  
0627 ~~all parties to the transaction.~~

0628 ~~(g) (e) A broker shall make available, for inspection by the~~  
0629 ~~commission and its duly authorized representatives, all records~~  
0630 ~~relating to the broker's real estate business. Such records shall be~~  
0631 ~~kept in a form and for a term prescribed by the commission. Any~~  
0632 ~~inspection shall be made at such time as the commission may~~  
0633 ~~direct directs.~~

0634 (f) The requirement of maintaining a trust account shall not  
0635 apply to: (A) A broker whose license is on deactivated status; (B)  
0636 a broker who acts as an associate broker; (C) a broker who is an  
0637 officer of a corporation; ~~(D)~~ a member of an association or a

0638 partner of a partnership and who is not the supervising broker of  
0639 an office of the corporation, association or partnership; or ~~(E)~~ a (D)  
0640 broker whose real estate activities, in the opinion of the com-  
0641 mission, do not necessitate the holding of trust funds.

0642 (g) Upon acceptance of an offer and deposit of earnest  
0643 money in a broker's trust account, such deposit may be dis-  
0644 bursed only:

0645 (1) Pursuant to written authorization of buyer and seller;

0646 (2) pursuant to a court order; or

0647 (3) when a transaction is closed according to the agreement  
0648 of the parties.

0649 (h) Nothing in this section shall prohibit the parties to a real  
0650 estate contract from agreeing, in the sales contract, to the  
0651 following procedure:

0652 "Notwithstanding any other terms of this contract providing  
0653 for forfeiture or refund of the earnest money deposit, the parties  
0654 understand that applicable Kansas real estate laws prohibit the  
0655 escrow agent from distributing the earnest money, once depos-  
0656 ited, without the consent of all parties to this agreement. Buyer  
0657 and seller agree that failure by either to respond in writing to a  
0658 certified letter from broker within seven days of receipt thereof  
0659 or failure to make written demand for return or forfeiture of an  
0660 earnest money deposit within 30 days of notice of cancellation  
0661 of this agreement shall constitute consent to distribution of the  
0662 earnest money as suggested in any such certified letter or as  
0663 demanded by the other party hereto."

0664 Sec. 14. K.S.A. 58-3062 is hereby amended to read as fol-  
0665 lows: 58-3062. (a) No licensee shall:

0666 (1) Intentionally use advertising that is misleading or inac-  
0667 curate in any material particular or that in any way misrepresents  
0668 any property, terms, values, policies or services of the business  
0669 conducted, or uses the trade name, collective membership mark,  
0670 service mark or logo of any organization owning such name, mark  
0671 or logo without being authorized to do so.

0672 (2) Fail to account for and remit any money which comes into  
0673 the licensee's possession and which belongs to others.

0674 (3) Commingle the money or other property of the licensee's

0786 (2) Fail to deliver to the seller in every real estate transaction,  
 0787 at the time the transaction is closed, a complete, detailed closing  
 0788 statement showing all of the receipts and disbursements handled  
 0789 by the broker for the seller, or fail to deliver to the buyer a  
 0790 complete statement showing all money received in the transac-  
 0791 tion from such buyer and how and for what the same was  
 0792 disbursed, or fail to retain true copies of such statements in the  
 0793 broker's files, except that the furnishing of such statements to the  
 0794 seller and buyer by an escrow agent shall relieve the broker's  
 0795 responsibility to the seller and the buyer.

0796 (3) Fail to properly supervise the activities of an associated or  
 0797 employed salesperson or associate broker.

0798 (4) Lend the broker's license to a salesperson, or permit a  
 0799 salesperson to operate as a broker.

0800 ~~(5) Fail to return or release an earnest money deposit, except~~  
 0801 ~~by court order or upon written agreement of the buyer and seller,~~  
 0802 ~~when the transaction is terminated or consummated.~~

0803 ~~(6) After an offer has been accepted, disburse an earnest~~  
 0804 ~~money deposit, except by court order or upon written agreement~~  
 0805 ~~of the buyer and seller, when the transaction has not been~~  
 0806 ~~terminated or consummated.~~

0807 (7) (5) Fail to provide to the principal a written report every  
 0808 ~~thirty (30)~~ 30 days, along with a final report, itemizing disburse-  
 0809 ments made by the broker from advance listing fees.

0810 ~~Sec. 15. K.S.A. 58-3035, 58-3038, 58-3047, 58-3056, 58-3060,~~  
 0811 ~~58-3061 and 58-3062 and K.S.A. 1985 Supp. 58-3039, 58-3040,~~  
 0812 ~~58-3043, 58-3044, 58-3045, 58-3046a and 58-3050 are hereby~~  
 0813 ~~repealed.~~

0814 Sec. 16. This act shall take effect and be in force from and  
 0815 after its publication in the statute book.

Insert §§ 15-17, attached and renumber  
 remaining sections

58-3036, 58-3037, 58-3038, 58-3042

Sec. 15. K.S.A. 58-3036 is hereby amended to read as follows: 58-3036. Unless exempt from this act under K.S.A. 58-3037 and amendments thereto, no person shall:

(a) Directly or indirectly engage in or conduct or represent that such person engages in or conducts the business of a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(b) Directly or indirectly act or represent that such person acts as a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(c) Perform or offer, attempt or agree to perform any act described in subsection ~~(e)~~ (e) of K.S.A. 58-3035 and amendments thereto, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act.

Sec. 16. K.S.A. 58-3037 is hereby amended to read as follows: 58-3037. The provisions of this act shall not apply to:

(a) Any person who directly performs any of the acts within the scope of this act with reference to such person's own property.

(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection ~~(e)~~ (e) of K.S.A. 58-3035 and amendments thereto is in connection with the sale, purchase,



lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a corporation which owns or leases such real estate, if such employee owns not less than ~~five-percent-(5%)~~ 5% of the stock of such corporation.

(j) The sale or lease of new homes by a person, partnership, association or domestic corporation who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, partnership or association or by any employee of such corporation who owns less than ~~five-percent-(5%)~~ 5% of the stock of such corporation.

(k) The lease of real estate for agricultural purposes.

Sec. 17. K.S.A. 58-3042 is hereby amended to read as follows: 58-3042. (a) No real estate license shall give authority to any person other than the person to whom the license is issued.

(b) No license shall be granted to a corporation or partnership. Each person who is an officer of a corporation or a member of a partnership or association and who performs any act described in subsection ~~(e)~~ (e) of K.S.A. 58-3035 and amendments thereto shall be a licensed broker, and each person who is employed by or associated with a corporation, partnership or association and who performs any act described in subsection ~~(e)~~ (e) of K.S.A. 58-3035 and amendments thereto shall be a licensed broker or licensed salesperson.



*JA*  
3/7/86  
Attachment #3

STATE OF KANSAS  
CRIME VICTIMS REPARATIONS BOARD

112 W 6TH  
SUITE 400  
TOPEKA, KANSAS 66603-3810  
(913) 296-2359

TO: Gary Stotts, Acting Director of the Budget  
FROM: Don Stumbaugh, Director  
DATE: March 5, 1986  
RE: SB 700 Fiscal Impact Statement

I. Bill Summary:

Existing law excludes injured victims of motor vehicle incidents, to be eligible for reparations, except when conduct arising out of the ownership, maintenance or use of a motor vehicle was intended to cause personal injury or death. SB 700 would extend eligibility of injured victims resulting from DUI/DWI crashes. Under SB 700 a victim of a DUI/DWI crash would be eligible to receive reparations for uninsured losses under the same restrictions and limitations provided to victims of violent crimes.

II. Impact on agency, agency responsibilities, and agency staffing:

Through survey of other states' compensation programs providing reparations to victims of DWI/D&I incidents it is believed the proposal would have minimal impact on the agency and agency responsibilities by an increase in number of claims received but could be implemented at current level of staffing.

III. Fiscal Impact:

Although there would be a fiscal impact on the agency funds from which reparations are paid statistical data is unavailable to analyze and measure in terms of dollars the anticipated fiscal impact. Theoretically since each incident should by law be covered by some form of insurance, i.e. the uninsured motorist's provision of the victims insurance as well as the insurance of the intoxicated driver can be used to compensate the victim and would reduce a victim's claim to an amount representing the uninsured losses not to exceed \$10,000.

Also because Crime Victims Reparations Board statutes provide for subrogation in case there is a law suit against the drunk driver recovery of some expenditures are anticipated.

Gary Stotts  
March 5, 1986  
Page 2

A sample survey of states providing reparations to victims of DUI/DWI incidents indicates a small fiscal impact on agency funds.  
(See attachment)

IV. Long-range fiscal effect of the measure:

Same as above.

SURVEY OF STATES WITH REPARATIONS FOR DUI/DWI

Alabama -- # of claims received -- 4	From Jan. 85 - Sept. 85
All claims were awarded but total \$ amount not available	
Delaware -- # of claims received	7/1/84-6/30/85
2 vehicular assault	6 vehicular homicide
1 denied	1 denied
1 award - \$4,950.00	4 withdrawn
	1 award \$10,000
# of claims received	7/1/85-2/1/86
6 vehicular assault	3 vehicular homicide
2 withdrawn	1 withdrawn
2 award - \$10,071.70	1 award - \$5,278.55
1 denied	1 denied
1 pending	
Florida -- # of claims received	2
	From July '85 - current
Claims are still being investigated -- \$ amount not available	
Iowa -- # of claims received FY 85 - 9	\$ amount not available
FY 86 - 3	\$ amount not available
Kentucky -- # of claims received -- 11	From August '84 - current
Denied - ?	2 - unknown
Awarded - 1 \$15,000.00	8 - pending
New York -- # of claims received - 50 to 75	From August '85 - current
# of claims denied and/or awarded - not available	
South Carolina - # of claims received - Approx. 100	FY 83 to present
No other information available	
Washington -- # of claims FY 84	5 vehicular homicide
	7 vehicular assault
# of claimd FY 85	18 vehicular homicide
	40 vehicular assault
Claims denied and/or awarded not available	
West Virginia -- # of claims received -- 15	From 1982 - current
8 awards -- 2 denials -- 5 status unavailable	

EOJ

3/6/86

Attachment #4

# Kansas Coalition for Drug-Free Driving

P.O. Box 195 Riley, KS 66531  
Donna Bolek, President

913-485-2789

March 6, 1986

Mr. Chairman and Committee Members;  
I am Ruth Meserve, Lobbyist for Kansas Coalition for Drug-Free Driving.

We feel the financial responsibility should be placed on the drunk driver who has chosen to break the law and endanger the lives of citizens of the community. We suggest an assesment of \$5 to \$10 for each convicted drunk driver through court costs.

The drunk driving crash is sudden, the cause is senseless, and the pain is deep. Whether the pain is physical or in the heart, it remains with the victim for the rest of their life. Surviving victims, including family members, of drunk driving crashes suffer serious physical, psychological, and financial damage as a result of their victimization.

Kansas has always been a leader in the protection of its residents. Twenty states now have compensation laws that do provide services for victims of drunk driving crashes including our neighboring states of Colorado, Iowa and Missouri.

Thank you for your support

Sincerely,

*Ruth Meserve*

Ruth Meserve, Lobbyist  
Kansas Coalition for Drug-Free Driving

Ruth N. Meserotte  
KANSAS COALITION FOR  
DRUG-FREE DRIVING



3/7/86 J.W.  
Attachment #5  
RECEIVED BY

JAN 15 1986

C. V. R. B.

## Mothers Against Drunk Driving

MADD • Box 58093 • Topeka, KS 66658 • 913-286-0555

January 14, 1986

913-649-1177

Mr. Don Stumbaugh, Director  
Crime Victims Reparations Board  
Suite 400  
112 West Sixth  
Topeka, Kansas 66603

Dear Mr. Stumbaugh:

It has been brought to our attention the Crime Victims Reparations Board will present a bill before the 1986 legislature requesting drunk driver victims be eligible for payment of medical expenses and any allowable expenses derived from DUI crashes.

The drunk driving crash is sudden, the cause is senseless, and the pain is deep. Whether the pain is physical or in the heart, it remains with the victim for the rest of their life. Surviving victims, including family members, of drunk driving crashes suffer serious physical, psychological, and financial damage as a result of their victimization.

The financial responsibility should be placed on the drunk driver who has chosen to break the law and endanger the lives of citizens of the community. We suggest an assesment of \$5 to \$10 for each convicted drunk driver through court costs.

Kansas has always been a leader in the protection of its residents. Twenty states now have compensation laws that do provide services for victims of drunk driving crashes including our neighboring states of Colorado, Iowa and Missouri.

We certainly support your efforts and if we may be of any assistance, please let us know.

Sincerely,

Judy Soza, Chairman  
State Coordinating Committee

CC: Kansas MADD Chapters  
Central Office

Sen. Fed. & State Affairs  
3/7/86 Attachment 5

## VICTIM COMPENSATION LAWS

The basis for government crime victim compensation programs is the inadequacy of other remedies - e.g., self-help, civil actions against the criminal, restitution through the criminal process, insurance, and charity. Crime victims compensation schemes are generally created by state statute. Unlike restitution statutes, compensation schemes involve payment by the state rather than by the offender. Perhaps the greatest practical difference between compensation and restitution is that whereas compensation assures the claimant of a deep pocketed source, restitution only becomes a valuable tool in those few instances where the offender has resources which can be claimed.

Following, find a brief summary of the Victim Compensation laws in the states that do provide services for victims of drunk driving crashes.

### ALABAMA

Alabama's Crime Victim's Compensation Bill was passed into law on 5/31/84 and it does include victims of crashes as victims of "criminally injurious conduct." It allows injured victims or family members of deceased victims to collect for medical care, rehabilitation, occupational training, loss of income, loss of replacement services and other economic losses. Up to \$2000 is allowed for funeral and burial expenses. Maximum coverage is \$10,000. Law enforcement must have been notified within 72 hours. Prosecution or conviction of the defendant is not required. Application must be made within one year following the crime. Eligibility is determined by a Crime Victims Compensation Commission of three persons, one of whom must be a victim. Funding is by court costs levied on those convicted of offenses ranging from moving traffic violations to felonies. For further information, contact Anita Morgan at (205)261-4007.

### ALASKA

The 1983 Alaska Legislature amended their statutes to include innocent victims of drunk drivers. The amended statute became effective October 23, 1983, and because of the two year limitation on filing a claim they are able to include victims of drunk drivers back to October 23, 1981. The maximum award is \$25,000 (up to \$40,000 if there are multiple dependents). Attorney's fees are covered as 25% of the first \$1,000 and 15% of the next \$9,000. An emergency award up to \$1500 is considered. If the victim is guilty of contributory misconduct the benefit may be reduced or denied. Victims may be compensated for loss of earnings, medical expenses incurred, burial expenses, pecuniary loss to the dependents of the deceased victim and any other loss which the board determines to be reasonable. Law enforcement must have been notified of the crime within five days. The filing deadline with the compensation program is within two years. Processing time is approximately three months for services, except the emergency benefit. Payment is generally in the form of lump sum with joint checks being available to vendors. They are linked with the Victim/Witness program. The average award in 1982 was \$3500. The percent of applicants receiving benefits is 80%. For further information contact Mrs. Nola K. Knapp, Administrator, Violent Crime Compensation Board, Pouch N, Juneau, Alaska 99811

## Victim Compensation

### CALIFORNIA

Victims of drunk driving crashes are covered in California for uninsured losses for medical bills up to \$10,000, for loss of income up to \$10,000, for vocational retraining expenses up to \$3,000, and for funeral expenses up to \$2,275. In the event the victim is killed, each dependent can file for loss of income up to \$10,000. The total is not to exceed \$23,000. A unique feature of the California program is that third parties assuming expenses on the part of the victim are also eligible for benefits in the case of the death of the victim. There is a financial hardship test for recovering in California, although the board would like to eliminate this in the future. Attorney's fees covered include 10% of the award, not to exceed \$500. An emergency award is available, not to exceed \$1,000. There is no time period requirement for reporting the victimization to law enforcement. The filing deadline for the compensation program is one year. Processing time, other than the emergency fund, averages eight to ten months and is expected to be reduced to six months in 1985. Payment procedures include lump sum, installments, checks to the victim or joint checks. Compensation program is linked with the Victim/Witness Program. The average award in 1983 was \$1,745, for a total of \$15.2 million. Other unusual features are: (1) Private citizens in California acting to prevent the commission of a crime against another, or apprehending criminals, are also eligible along with their surviving dependents for a maximum of \$10,000 in benefits if they are victimized as well; (2) California receives no general fund support and the program is funded solely from fines and penalties. All felonies and most misdemeanors are assessed a \$4.00 penalty for every \$10.00 fine. Of these monies, 24.6% go to the Victim Compensation Fund, with the balance going to the Victim/Witness Program and Rape Crisis Centers. For further information contact Mr. Fred Buenrostro, Assistant Executive Secretary, Victims of Violent Crime Program, State Board of Control, 926 J Street, Suite 300, Sacramento, California 95814 ((916)445-1540.

### COLORADO

Victims of drunk driving crashes may collect in Colorado as of July 1, 1983. Crashes may be covered dating back to July 1, 1982, although the claim must have been filed within six months of the crash. Victims, dependents of victims, or persons authorized to act on behalf of the victim may apply. Compensation is for medical expenses, counseling, loss of earnings, homemaker and home health services, burial expenses, loss of support to dependents, eyeglasses, hearing aids, and prosthetic devices. Attorney's fees are not covered. The maximum award is \$10,000. Report of the crime must have been made to law enforcement within 72 hours. An emergency award of up to \$500 is available within 24 hours. Processing time is less than sixty days. The program is linked with the Victim/Witness Program, with payment being made directly to victims. Funding is through court costs, including \$20.00 for DUI's. Colorado is unique in that each judicial district establishes procedure for utilization of the fund with decision making power being given to a three member board appointed by the District Attorney for the district. Therefore, there is not complete uniformity within the state. Application is made through the district attorney's office.



## DELAWARE

Drunk driving crash victims qualify in Delaware if the victim has been "assaulted." This is determined based on the police report inference that the assault occurred by the motor vehicle. Effective 7/1/84 the maximum benefit increased from \$10,000 to \$20,000. Coverage includes unreimbursed medical, funeral, lost earnings, disability, counseling for mental and emotional problems and out of pocket expenses such as prescriptions, glasses, dentures, etc. Attorney fees up to 15% or up to \$1000 are included. An emergency award up to \$10,000 may be available as soon as expenses are verified. Application must be made within one year of the crash. Payment is by lump sum and installment directly to vendors. Processing time ranges from two weeks to six months depending on the extent of verification required. The average award in 1983 was \$1,800. Funding is through a 15% surcharge on all fines and penalties including traffic violations and court ordered restitution to be paid into the fund by convicted defendants. Application may be made to: Mr. Oakley Banning, Jr., Violent Crime Compensation Board, 1500 E. Newport Pike, Suite 10, Wilmington, DE 19804.

## FLORIDA

Effective July 1, 1985, victims of drunk driving crashes are included in the Florida Crimes Compensation Act. Maximum award is \$10,000, with a \$500 emergency award available. A means test is required, and third parties are excluded, except for intervenors. Benefits include out of pocket expenses not covered by insurance, including medical care, loss of earnings, support, funeral expenses, including rehabilitation and counseling and other related expenses. The amount of the award can be reduced or denied by contribution. Funding is by \$20 court costs and \$1.3 million in Federal Government funds. Further information is available through the Crimes Compensation Office, 2551 Executive Center Circle West, Tallahassee, FL 32301. Phone (904)488-0840 or SUNCOM 278-0848.

## ILLINOIS

Drunk Driving crash victims now qualify in Illinois if the crash occurred after 9/24/83 and if the drunk driver was criminally convicted. Non-state residents do qualify if the crash occurred in Illinois. The maximum benefit is \$15,000 with an additional \$2,000 funeral expense maximum. Covered are unreimbursed medical, counseling, disability rehabilitation, reasonable attorney fees, and loss of wages if the victim had been employed for six months prior to the crash. There is a \$200 deductible. There is no emergency award. The crime must have been reported within 72 hours and the claim must be filed within one year of the crash. Payment is made in lump sum to vendors with the victim's name on the check. Lost wages up to \$750 per month go directly to the victim. Processing time averages six to seven months. The average award in 1983 was \$2,928. Funding is through general revenue. Application should be made to: Neil F. Hartigan, Office of the Attorney General, 188 West Randolph, Suite 2500, Chicago, IL 60601

## IOWA

Crash victims now qualify in Iowa if the defendant plead guilty or was given a guilty verdict for driving under the influence of alcohol or drugs, or with a blood alcohol content of .13 or above. For crashes occurring after 7/1/84, compensation may be awarded for medical expenses up to \$10,000, loss of income up to \$2,000, loss of support for dependents up to \$6,000, and funeral or burial expenses up to \$2,500. The crime must have been reported within 24 hours and application must be made within 180 days following the crime, 120 days if death occurred. Application should be made at Iowa Department of Public Safety, Crime Victim's Reparation, Wallace State Office Building, Des Moines, IA 50319. Phone number is (515)281-5044.

## KENTUCKY

Crash victims are eligible in Kentucky effective August, 1984, when the murder vehicle was operated in violation of DWI statutes. Crash must have been reported within 48 hours, and application must be made within one year following the crash. The maximum allowed is \$15,000. Minimum loss to the victim must be \$100 or at least two continuous weeks of loss of earnings. Uninsured medical and funeral benefits and loss of wages are covered. Attorney fees up to 15% of the total award are allowed at the board's discretion. There is a \$100 deductible required. An emergency award up to \$1000 is available. Processing time is approximately six months. Payment is by lump sum and installment, either to the victim or directly to the vendors. Eligibility is determined by a single board member review. Application should be made to Crime Victims Compensation Board, 113 East Third Street, Frankfort, KY 40601, (502)564-2290.

## LOUISIANA

In Louisiana, DWI related offenses are not included in the Crime Victim Reparation program, but homicide and aggravated battery are. The Attorney General has written an opinion that it may be possible to construe crash victims under these categories, but it would be a board decision case by case. If eligible, victims may qualify for unreimbursed medical, counseling, loss of earnings and support, catastrophic property loss, attorney fees, and funeral expenses. The maximum benefit is \$10,000 with a \$250 deductible. An emergency award of up to \$500 may be available. Charlie Adams of the Crime Victim's Reparation Program states he feels that the move is to eliminate alcohol related offenses, but he will take applications. The address is Crime Victims Reparation Program, P. O. Box 44304, Baton Rouge, LA 70804

## MISSOURI

Missouri's Victims of Violent Crime statute has been amended to include victims of drunk driving crashes which occur after 8/13/84. The maximum award available is \$10,000 with a required \$200 deductible. Coverage is for unreimbursed out of pocket expenses resulting directly from the death or personal injury. Included are medical, funeral, lost wages and attorney fees not to exceed 15% of the total. An emergency award of \$100.00 is available for expenses directly related to personal injury. Filing must take place within 90 days following a death or within one year following injury. Checks go to victims with vendor's name listed although in the future checks may go directly to vendor except for lost wages of the victim. Funding is from a \$26.00 surcharge on all drunk driving offenses, \$25.00 going into the fund and \$1.00 for administration. Claims cannot be paid unless/until there are sufficient moneys in the fund. Collection begins 8/13/84. Contact person is Connie Souden, Department of Workers' Compensation, Crime Victims Division, P. O. Box 58, Jefferson City, Missouri 65102

## NEW MEXICO

New Mexico's Crime Victim Reparation Fund did not include victims of drunk driving crashes until July 1, 1983. Therefore, persons victimized prior to that date do not qualify. Benefits include medical expenses, loss of earnings, loss of future earnings, funeral expenses and other expenses deemed reasonable. Financial need is not considered. The maximum award is \$12,500, with attorney's fees not being included. The claim may be reduced if the victim is guilty of contributory misconduct. The time period required to report to law enforcement is 30 days. The filing deadline with the program is one year. Payment is by lump sum or installments. The program is linked with the Victim/Witness Program. A distinctive feature of the New Mexico program is that review is by a single commissioner. The average award is \$1,050. Funding is by general revenue. Because the program is so new other data is not available. The contact person is Mr. Daniel Martinez, Director, Crime Victims Reparation Commission, P. O. Box 871, Albuquerque, New Mexico 87103.

## NEW YORK

Effective August, 1985, victims of motor vehicle crimes, including drunk driving, have been included in benefits. The maximum award for loss of earnings is \$30,000. This fund is available only after all other sources of compensation have been exhausted. Attorney's fees up to \$1,000 are available, but only when used to represent the claimant before the board. An emergency award is available up to \$1500. The crime must be reported to authorities within one week, and filing deadline is one year unless the claimant can show good cause for this to be extended. Processing time is 6 to 9 months, and an appeal must be filed within 30 days after denial. Payments are made both in installments, and are made to both victim and vendor. The fund is supported from general revenue, and federal funds. Claim forms are available at all police departments, emergency rooms, etc. For further information contact Crime Victims Compensation Board, 97 Central Avenue, Albany, NY 12206. [518]473-9649.

## OREGON

Oregon compensates for hospital expenses up to \$10,000. Included in the \$10,000 is a maximum of \$1,000 for psychiatric counseling. Oregon also compensates for loss of earnings up to \$200 a week to a maximum of \$10,000. Rehabilitation expenses of up to \$3,000 are covered as are burial expenses up to \$1,000 and loss of support up to \$10,000. Although Oregon has no specific financial need provision, there is a \$250 deductible requirement except in cases of extreme hardship. Attorney's fees are not covered. An emergency award up to \$1,000 is available. This money is generally available within one week of application. If the victim is guilty of contributory misconduct the claim will be reduced or denied. The time period required for reporting to law enforcement is 72 hours. The filing deadline with the compensation program is within six months, with an extension for good cause up to one year. Processing time is generally one to two months. Payment is by monthly installment with payment to vendors made directly. The program is linked with the Victim/Witness Program. The average award is \$2500. Oregon has a unique restitution statute, allowing the victim compensation program to recoup costs from third parties such as drinking establishments who may be held responsible for the criminal acts of its patrons. The percentage of applicants receiving benefits is 57%. The contact person in Oregon is Mr. Jerry L. Flakus, Director, Crime Victims Compensation Program, Department of Justice, 100 State Office Building, Salem, Oregon 97310.

## Victim Compensation

### SOUTH CAROLINA

In May, 1984, the Attorney General rendered an opinion in South Carolina that victims of drunk driving crashes could qualify under the category of reckless injury or death by motor vehicle. The crime must have been reported within 48 hours and application must be made within six months. The maximum benefit is \$10,000 with a \$100 deductible. Coverage includes unreimbursed medical, funeral up to \$2,000, and lost wages if the victim has not been able to work for at least two weeks. Victims can collect as many as three emergency awards up to \$500 each. Funding is through court assessments of \$2 per conviction in municipal court and up to \$20 per conviction in circuit court, to be shared with the parole department. Contact person is Dick Walker, Workman's Compensation Fund, 1026 Sumter St., Columbia, SC 29201.

### TEXAS

Benefits covered include medical expenses, counseling, disability, loss of earnings, loss of future earnings and funeral expenses. Also eligible for benefits in Texas are a surviving spouse and a posthumous child. Losses incurred in caring for minor children are also compensated. Maximum award for victims of crashes after September 1, 1983, is \$25,000. Applications prior to that date may receive a maximum of \$50,000. Attorney's fees are covered based on time and expense. An emergency award of up to \$1500 is available, generally within one month of reporting. The time period required to report the victimization to law enforcement is 72 hours. The filing deadline with the program is one year following the date of the crash. Processing time is generally four to five months. Payment is by lump sum for past lost wages, or by installments for loss of future wages. Joint checks are available for vendors. The program is linked with the Victim/Witness Program. A distinctive feature in Texas is that victims are paid first before providers. The average award in 1983 was \$2,329. Funding is by fines and penalties as follows: \$20.00 on all felony convictions, \$15.00 on all Class A and Class B misdemeanors, \$12.50 on Class C misdemeanors. These include penalties of more than \$200 fines or incarceration. Of the states offering compensation to victims of drunk driving crashes Texas has the lowest percentage of applicants receiving benefits. In 1983, 1,168 claims were filed with only 511 actually being awarded, the remainder being put on a waiting list. The legislature has only recently increased the benefits on felonies, Class A and B misdemeanors, and added the fee for Class C misdemeanors. Hopefully this will increase the fund enough so that a larger percentage of applicants will be awarded compensation. The contact person in Texas is Mr. Jerry Belcher, Texas Industrial Accident Board, Crime Victim Division, P.O. Box 12757, Capitol Station, Austin, Texas 78701 (512) 448-7900.

## Victim Compensation

### UTAH

Victims of drunk and drugged driving crashes which occurred after 7/1/83 may apply for the Utah Victim Restitution Fund effective 7/1/84. A unique feature of the Utah statute is that the victim must pursue a civil suit against the drunk driver with an affirmative judgement prior to qualifying for the restitution fund. The maximum benefit is \$25,000, covering all direct losses including personal and property losses. Medical, funeral, rehabilitation, loss of wages, and other expenses deemed reasonable by the commission are covered. Application must be made within one year of the civil judgement. There is no deductible and no emergency award. Funding is through a \$100.00 surcharge over any other fine levied against the drunk driver at the time of conviction. The contact person in Utah is Bart Fitzgerald, Utah Division of Highway Safety, 4501 South 2700 West, Salt Lake City, Utah 84119.

### WASHINGTON

Victims of drunk driving crashes have been served by the Victim Compensation Program in Washington only since July 24, 1983. Coverage is secondary to all other benefits such as insurance, workman's compensation, Social Security VA, etc. Injured victims are entitled to unlimited medical expense benefit. Loss of earnings and permanent disability benefits are also covered, the combination of which may not exceed \$15,000. Survivors of deceased victims are entitled to burial expenses to a maximum of \$500. If a spouse and/or child or children survive and the victim was employed, the survivors are additionally entitled to an immediate payment of \$1,600, together with a monthly pension to a maximum of \$10,000. If the victim was not employed, the survivors are entitled to a lump sum payment of \$7,500 in lieu of the immediate payment and pension benefit. Attorney's fees are not covered. There is no emergency award available in Washington. Benefits are denied if the victim is guilty of contributory misconduct. Payment is by lump sum or installment with payment being made directly to victims or vendors. The program is linked with the Victim/Witness Program. The average award in the state of Washington is \$2,088. Funding is by fines and penalties. Fines include a \$50 fine on felony or gross misdemeanor convictions and \$25 fines on misdemeanors. Juveniles are included. The percentage of applicants receiving benefits of 51.7%. The contact person is Mr. G. David Hutchins, Assistant Director, Crime Victims Compensation Section, Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.

## Victim Compensation

### WEST VIRGINIA

Crash victims may collect in West Virginia if the defendant is found guilty of DUI, reckless driving, or homicide. Losses recoverable include medical expenses, rehabilitation, loss of earnings, loss of future earnings, maximum funeral benefits of \$500, attorney's fees as deemed reasonable by the court up to \$500, and pain and suffering if it results in direct financial loss. Emergency awards are not available. Benefits may be reduced or denied if the victim is guilty of contributory misconduct. The time period required for reporting to law enforcement is 72 hours. The filing deadline with the program is two years. Processing time is generally 12 months. Method of payment is by check to the victim. Distinctive features of the West Virginia program include the fact that after the court of claims makes the award to the victim, that award must be approved by the legislature before it can be paid. The legislature meets annually between January and March. There is a \$10.00 filing fee in order to receive benefits unless an indigency affidavit is filed. Funding is by fine and penalty with a \$3.00 court cost imposed on any felony or misdemeanor conviction including moving traffic violations. In 1983 funds collected totalled between \$30,000 and \$40,000 per month. The contact person is Cheryle M. Hall, Clerk, West Virginia Court of Claims, Crime Victims Reparation Division, State Capitol, Charleston, West Virginia 25305.

### WISCONSIN

Injured victims and survivors of drunk driving crashes are now covered by Wisconsin's Victim Compensation Fund if the crash occurred on or after April 24, 1984. A victim qualifies if he/she was a pedestrian or in the car hit, was a child victim in the offender's car, or was an adult passenger in the offender's car (unless the adult passenger's blood alcohol concentration was .10 or more or unless the adult passenger knew the driver was under the influence of alcohol or an illegal drug). Losses recoverable include medical, hospital, surgical, psychological, drug expense, loss of wages, up to \$2,000 for reasonable funeral expenses, and up to \$500 for immediate emergency expenses. Wisconsin also compensates for homemaker replacement services. Maximum benefit is \$10,000. Not covered are compensation for pain and suffering, property loss, costs covered by insurance (yours or the offender's), and losses paid for by the offender, public funds, or other sources. The crime must have been reported to law enforcement within five days of the crime, and the victim compensation claim must be filed within two years of the date of the crime. The victim does not need an attorney to file a claim, but if he/she does so and if the claim is non-contested, the attorney can collect \$100 or 10% of the award, whichever is less. The amount is deducted from the total award. The claim will be denied if the victim is guilty of contributory misconduct. Payment is in lump sum or installments with payment going directly to vendors. The program is linked with the Victim/Witness program. Average processing time is four to five months. The average award in 1983 was \$2,600. Funding is by general revenues. The contact person is Mr. Richard H. Anderson, Crime Victims Compensation Program, P. O. Box 7951, Madison, Wisconsin 53707.



3/7/86  
Attachment #6

STATE OF KANSAS  
CRIME VICTIMS REPARATIONS BOARD

112 W 6TH  
SUITE 400  
TOPEKA, KANSAS 66603-3810  
(913) 296-2359

TO: Gary Stotts, Acting Director of the Budget  
FROM: Don Stumbaugh, Director  
DATE: March 5, 1986  
RE: SB 701 Fiscal Impact Statement

I. Bill Summary:

The proposed legislation would permit disposition of moneys recovered by the Crime Victims Reparations Board through subrogation to be deposited into the Crime Victims Reparations Fund. Existing law requires such moneys to be deposited into the General Fund as a reimbursement of general fund expenditures program operations. Under the Governor's FY 87 budget recommendations the Crime Victims Reparations Board would become a user fee agency funded from a \$2 fee assessment on court docket fees. In conjunction with the Governor's recommendation the proposed legislation would shift any reimbursement of reparation expenditures to the fund from which the expenditures were made.

II. Impact on agency, agency responsibilities, and agency staffing:

None.

III. Fiscal Impact:

For FY 1981 through FY 1985 a total of \$35,096 has been recovered through subrogation or a yearly average of \$7,019. The agency estimates that the proposed legislation could provide anywhere from \$5,000 to \$20,000 additional revenues which would be available to the agency for current and future program expenditures.

IV. Long-range fiscal effect of the measure:

As more persons are being placed on probation and parole with conditions of payment of resitution the amounts recovered by the Crime Victims Reparations Board should increase over a long period of time.



	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
SUBROGATION FILED OR BOARD HAS INTERVENED IN CIVIL SUITS	4	7	3	8	11
AMOUNT FILED	\$10,205.23	\$18,138.96	\$12,181.11	\$17,112.19	\$7,488.55
AMOUNT RECEIVED AND DEPOSITED	\$4,371.34	\$1,869.00	\$12,082.00	\$13,889.73	\$2,884.21



# KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR

RICHARD A. MILLS — SECRETARY

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603-3798  
913-296-3317

3/7/86

Attachment #7

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
FROM: RICHARD A. MILLS, SECRETARY OF CORRECTIONS  
RE: S.B. 717  
DATE: MARCH 7, 1986

The Department of Corrections requested S.B. No. 717 in order to rescind K.S.A. 75-5232 which establishes the work week for the Department of Corrections. The impact of favorable action on this bill will be to place the Department of Corrections under the provisions of K.S.A. 75-5505 which establishes the work week for most other state employees. The Department believes such a change will better enable it to comply with the provisions of the Fair Labor Standards Act which became applicable to state employees early in 1985.

K.S.A. 75-5232 currently provides for a 40 hour work week for Department of Corrections personnel. It also provides for overtime for those individuals who work in excess of 40 hours per week and for compensatory time.

The specific language of this statute appears to duplicate the language of 75-5505. K.S.A. 75-5505 establishes as a policy of the state a 40 hour work week for state employees. However, the statute also allows for a deviation from the 40 hour work week when the appointing authority of an agency determines that it is necessary to meet the needs of that agency. The statute also allows greater flexibility in determining what the work week is.

The provisions for overtime and compensatory time in K.S.A. 75-5232 appear to be duplications of Department of Administration regulations concerning these subjects.

The provisions of K.S.A. 75-5232 also appear to limit the flexibility of the Secretary of Corrections in meeting the needs of the department while also limiting overtime expenditures. This is a very important issue since the Fair Labor Standards Act became applicable to the state government early in 1985. For example, the Fair Labor Standards Act permits law enforcement

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officers, including correctional officers, to have a standard work week of 43 hours before the agency is liable for overtime costs. The statutory provisions of K.S.A. 75-5232 appear to restrict the Secretary from establishing a 43 hour work week for these individuals. Therefore, the Secretary is precluded from exercising this option as a means of limiting potential overtime costs. The language of K.S.A. 75-5505 would appear to allow the Secretary enough flexibility to develop an agency policy establishing a 43 hour work week for corrections officers if necessary and appropriate.

RAM:CES/pa