

Approved

4/25/86
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:40 a.m. on April 10, 1986 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

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

Conferees appearing before the committee:

The Chairman told the Committee that his plan is to meet for a short while at this time, and to recess and return at 1:00 p.m.

HB2655 - expansion and enforcement of use of prison-made goods.

The Chairman said there was no objection to striking certain language in the bill as far as the Department of Corrections is concerned. The Committee then proceeded.

Senator Martin moved to strike lines 86 through 91 of HB2655. 2d by Senator Strick. Motion carried.

Senator Morris moved to strike lines 114-119 of HB2655. 2d by Senator Strick. Motion carried.

Staff pointed out that in line 113 the word "type" could be inserted.

HB2813 - prohibiting certain practices in sales of alcoholic beverages.

The Chairman said he will welcome any suggestions as to what the Committee wants to do with HB2813.

It was discussed that "cost" will have to be defined by the Director.

There was Committee discussion concerning amendments to the bill.

Senator Strick made the conceptual motion to add a list of items regarding the sale of cereal malt beverage to the bill. 2d by Senator Martin. Motion carried. The Chairman stated that the amendments are adopted. Senator Daniels asked to be recorded as voting "no."

Staff was directed to take care of provisions dealing with the Department of Transportation. Senator Strick moved conceptually that these amendments be adopted. 2d by Senator Martin. Motion carried.

HB2733 - alcoholic beverages, minimum quantity

Senator Martin moved that HB2733 be amended into HB2813. 2d by Senator Strick. Motion carried.

Senator Martin moved that HB2813 be passed out favorably as amended. 2d by Senator Anderson. Motion carried.

The meeting was recessed at 12:10 p.m.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:40 a.m. ~~on~~ on April 10, 1986

The meeting was reconvened by the Chairman at 1:00 p.m.

HB3114 - tort claims act; relating to exceptions from liability.

The Chairman introduced Marjorie Van Buren from the Office of Judicial Administrator. A copy of her statement is Attachment #1. They support addressing the problem growing from reluctance on that part of government agencies to accept offenders sentenced to perform community service because of possible large claims in case of injury or damage to third parties caused by the offender. The Office takes no position on whether to provide immunity to such claims nor does it have a position on the part of the bill affected by the amendments from the House Committee of the Whole.

Representative Michael O'Neal was present as a proponent of HB3114. He said he carried it without any knowledge there would be an amendment on the Floor, and he does support the amendment.

Representative O'Neal explained the difficulty of rural townships and the cost of liability insurance policies. He does not think that any local units are going without insurance. The problem is that they simply cannot afford the type of coverage that would be afforded them. He feels the courts have taken a great deal of liberty with the tort claims act as it was originally adopted, and that whenever government is involved in proprietary functions there should be no immunity. He believes legislative policy should be reevaluated in view of the liability status he has in his county.

Staff said there are some proposed amendments by the legislative counsel on language. (Attachment #2) It would separate out the exception for governmental functions and create a new section for exemptions. The alternative would be to have it apply to municipalities.

Senator Martin offered an amendment to strike the language amended by the House committee of the old bill lines 59 and lines 61 through 64 in the brackets. 2d by Senator Anderson.

Senator Daniels made the substitute motion to take this language that has been inserted and place it in another part of the bill. 2d by Senator Strick. Motion carried.

HB2752 - certain tests for blood alcohol concentration.

Lt. Bill Jacobs of the Kansas Highway Patrol was the proponent of HB2752. His statement is Attachment #3.

Senator Martin moved to strike lines 962-966. 2d by Senator Strick. Motion carried.

Mr. Bill Edds, Chief Counsel for the Kansas Department of Revenue, appeared. His statement is Attachment #4. He introduced his assistant, Mr. Tom Hatten.

Senator Martin moved the adoption of the amendments of the Department of Revenue to HB2752. 2d by Senator Daniels. Motion carried. Senator Anderson moved the bill be passed out favorably as amended. 2d by Senator Strick. Motion carried.

HB2961 - cash deposit appearance bond prohibited.

Senator Strick moved the bill be reported adversely. 2d by Senator Martin. A substitute motion was made by Senator Anderson that HB2961 be tabled. 2d by Senator Daniels. Motion carried.

Senator Ehrlich moved that the Minutes of the Meeting of April 9, 1986, be approved. 2d by Senator Martin. Motion carried.

The meeting was adjourned at 2:00 p.m.

HD 3114

Attachment #1

4/10/86

Sen. Comm. on Federal & State Affairs

The Office of Judicial Administration supports addressing the problem of growing reluctance on the part of government agencies to accept offenders sentenced to perform community service because of concern for possible large claims in case of injury or damage ^{to third parties} caused by the offender.

The decision of whether providing immunity to such claims is the proper or best solution is a matter of legislative policy & we take no position on that issue.

(Also we have no comment nor position on the portion of the bill affected by the House COW amendments.)

Marjorie J. VanBuren
Office of Judicial Administration

HB 3114 - Am. by HCW

As to "municipality"

Sec. 2

Page 4 - between lines 0138 and 0139 insert:

(s) Governmental functions, including, but not limited to, any of the other subsections in this section or any other action taken by the governing body or board of a municipality in its capacity as a governing body in the exercise of any governmental or discretionary function.

Sec. 2 (a) would need to be amended to restore it to its original language.

HB 3114 - Am. by HCW

As to "all"

Sec. 2

Page 4 - between lines 0138 and 0139 insert:

(s) Governmental functions, including, but not limited to, any of the other subsections in this section or any other action taken by or on the part of a governmental entity or employee in the exercise of any governmental or discretionary function.

Sec. 2 (a) would need to be amended to restore it to its original language.

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Sec. 2 (a) would need to be amended to restore it to its original language.

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Sec. 2 (a) would need to be amended to restore it to its original language.

SUMMARY OF TESTIMONY

4/10/86
Attachment #3

Before the Senate Committee on Federal and State Affairs

House Bill 2752

Presented by the Kansas Highway Patrol

(Lieutenant William A. Jacobs)

April 10, 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.

4/10/86
Attachment #4

M E M O R A N D U M

TO: Harley T. Duncan
Secretary of Revenue

Re: House Bill No. 2752
Legal Ramification

FROM: William L. Edds
General Counsel

DATE: March 28, 1986

House Bill No. 2752, As Amended by House on Final Action: (1) approves the use of preliminary screening tests in Kansas; (2) clarifies certain wording problems that remained in last year's legislation; (3) addresses four recurring problematic issues that the Courts, the Department and law enforcement struggle with; and (4) proposes that signs be erected that inform the public that Kansas drunk driving laws are strictly enforced.

The Kansas Department of Revenue supports the legislation but recommends that the following four specific changes or sets of changes be made:

1. Page 1, line 39. Insert the following phrase after the word "test": "; however, failure to provide the notice shall not be an issue or a defense in any action." Delete: "After giving the foregoing information, a", add "The" to begin the sentence, and add "then" between "shall request" in line 40.
2. Page 1, line 45. Insert the following sentence after the sentence ending "thereto.": "A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test." Correspondingly, the new language at page 3, lines 89 to 92 should be stricken. The "(A)" and "(B)" on lines 95 and 99 revert to "(1)" and "(2)."
3. Page 1, line 47. Insert the words "the court or hearing officer" between the words "aid" and "in."
4. Page 4, line 157. After the word "test" insert the words "of breath, blood or urine hereafter".

As originally written, House Bill No. 2752 was based on the Nebraska preliminary screen test statute and included some language from the Minnesota implied consent law. The mix was unfortunate in combining very low showings for requiring a screening test (i.e. infraction, accident or alcohol in the body) with potentially onerous consequences for a refusal (i.e. requiring submission to implied consent testing with loss of license for refusal of that testing). The second change suggested herein and the changes that were made by House Committee remedy the wording problems that resulted from combining the two laws. The second change has also been specifically requested by the Department of Health and Environment.

The Bill also recommends that warnings be given. The Bill and its suggested warnings were supported by the Kansas Highway Patrol. The Patrol's support for requiring the warnings is puzzling since two years ago the Patrol vigorously lobbied against the Department's suggestion that the licensee be

warned of the 120 day license suspension resulting from an implied consent refusal. The Patrol is now recommending warnings where the consequence of refusal is simply a \$30.00 fine.

There are benefits that may result from requiring a warning concerning preliminary screening tests. However, the Department and prosecutors should not be forced to litigate another exclusionary rule where the consequence of a refusal is a minimal fine. The Department therefore strongly recommends that the first change suggested herein be adopted. It is based on language from the Illinois implied consent law that has been upheld by that state's appellate courts.

The third recommended change is to emphasize that the preliminary screening test evidence is for the court, not the jury, to consider. The addition of the words "of breath, blood or urine hereafter" in the last suggest change is intended to help avoid confusion on the part of the licensee that might result from having two types of tests being offered.

LEGAL SERVICES

By: Tom Hatten
Attorney

Approved: _____
General Counsel