

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 4, 1987 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano,
Langworthy, Parrish, Steineger, Talkington,
and Winter.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Gene Johnson, Kansas Community Alcohol Safety Action Project Coord. Assoc.
Elizabeth Taylor, Kansas Association of Alcohol Drug Program Directors
Ruth Meserve, Kansas Coalition for Drug-Free Driving
Dr. James McHenry, SRS Alcohol and Drug Abuse Services
Sergeant Bob Giffin, Kansas Highway Patrol
Jim Clark, Kansas County and District Attorneys Association
John Smith, Division of Vehicles

Senate Bill 261 - Penalties for transporting open container of
alcohol or beer.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinator's Association, appeared in support of the bill. He testified, under this bill the district attorney, county attorney or city attorney can offer diversion to the first time offender, provided the offender agrees to successfully complete an Alcohol and Drug Safety Action Program certified pursuant to K.S.A. 8-1008 and pay an assessment fee not to exceed one hundred dollars. The bill also gives the prosecuting attorney the privilege of restricting the offenders drivers license for not less than 90 days nor more than one year. A copy of his testimony is attached (See Attachment I). Mr. Johnson reported in 1986 there were 3,288 offenses in the State of Kansas, of those 3,288, 214 had their licenses suspended, 1,962 had licenses restricted, and 1,112 no action was taken by the court. A committee member inquired how can a person eliminate the need for the driver to go through the process? Mr. Johnson replied, if he takes the breath test, that person will not be charged. They want to protect the designated driver.

Ruth Meserve, Kansas Coalition For Drug-Free Driving, testified the coalition feels that the law reasonably provides the three things that are necessary to prevent violations of the law. Those three are firm and appropriate punishment, education and evaluation. A copy of her testimony is attached (See Attachment II).

Elizabeth Taylor, Kansas Association of Alcohol Drug Program Directors, testified her association wishes to go on record in support of the bill. The changes that are proposed in the bill have been around a long time and she urged the committee to pass the bill, and the bill will go to the House where it passed last year.

Dr. James McHenry, SRS Alcohol and Drug Abuse Services, appeared in support of the bill. He testified we are particularly interested in the requirement of participation in an alcohol safety action program

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on March 4, 1987

Senate Bill 261 continued

by persons arrested under this bill. Persons found driving while consuming alcoholic beverages may be at a critical period in their drinking history. Early assessment, education, intervention, and treatment can greatly reduce the long term negative effects of problem drinking and alcoholism. The individual, their family, and society suffers if intervention does not come before more serious conflicts with the law and other adverse effects of alcoholism begin to surface. A copy of his testimony is attached (See Attachment III). Dr. McHenry said with the law on the books, it may have a desirable effect. Dr. McHenry will provide the chairman a list of alcohol safety action programs available over the state.

Sergeant Bob Giffin, Kansas Highway Patrol, testified the Patrol has some definite concerns about some of the amendments proposed in the bill that appear to weaken the current statutes. He stated the Patrol is not opposed to the basic concept of this bill, which appears to educate first time offenders through use of the alcohol safety action project. We are, however, seriously concerned about those provisions of the bill discussed in this testimony which appear to significantly weaken existing statutes that we feel are working well for law enforcement. A copy of his testimony is attached (See Attachment IV). Committee discussion was held on the bill. Sergeant Giffen pointed out in subsection (h), it lacks specific direction. He said they have a lot of questions that need to be answered in that area. The chairman asked staff to work with Sergeant Giffin on their proposed amendments.

Jim Clark, Kansas County and District Attorneys Association, stated he agrees with the law enforcement that the officer have the discretion. There is a problem in keeping the record of diversion agreement. There is a question in the defense area; the difference is the statutory presumption of .10 is allowed for a conviction of an offense. Mr. Clark testified the association's only concern with the bill is it takes a step backward in the area of requiring diversion. He suggested "shall" be changed to "may" in two places in the bill.

John Smith, Division of Vehicles, proposed changing the language in line 578 of the bill that the report sent to Division of Vehicles is a form approved by the Division. They support notifying another state of a DUI or open container conviction, and furnish the information to a court but not to furnish the information to everybody, and not for insurance purposes.

Committee discussion was held concerning the juvenile code and how it interacts with the open container law and whether it is addressed in this bill. Mr. Smith explained the juvenile statutes are exempt from the traffic code.

The hearing on Senate Bill 261 was concluded.

Senate Bill 218 - Judge's consent for marriage license under the age of 16 years.

Senator Parrish moved to report the bill favorably. Senator Hoferer seconded the motion, and the motion carried.

Senate Bill 268 - Establishing an expiration date on marriage licenses.

Following committee discussion, Senator Talkington moved to amend the bill to change the effective date to January 1, 1989. Senator Hoferer seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 4, 1987.

Senate Bill 268 continued

Senator Langworthy moved to report the bill favorably as amended.
Senator Hoferer seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-4-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim McHenry	2700 W. 6th Topeka	SRS/ADAS
TERRY STEVENS	TOPEKA	TOPEKA P.D.
Bob Giffin	TOPEKA	TOPEKA HIGHWAY PATROL
Ruth Meserve	Prairie Village Ks	Ks Col. For Drug-Free Driving
Don Mohr	Topeka	League of Ks Municipalities
Janice McDonald	Topeka	MADDD
Julie Soza	Topeka	MADDD
John Thomas	Topeka	Kaiser Restaurant
Major Van Buren	"	OJA
Jim Clark	Topeka	KC DAA
Elizabeth C. Taylor	"	Drug Director Labo of Alcs/Drug
KEVIN B. WZCZYK JEFFE	Lawrence	Sen. Mulick
Kevin M. Hill	Topeka	
Frances O'Neill	Topeka	MADDD
NANCY M. WINTER	OTTAWA	HAK
Shala Bannister		Sen Burke
Ron Smith	Top	KBA
Joe Mack	Wichita	Don Ben
Robert Anderson	Topeka	SRS

Attach. V
Senate Judiciary
3-4-87

TESTIMONY ON SENATE BILL NO. 261
Before the Senate Judiciary Committee

Mr. Chairman, and members of the committee, my name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinator's Association. Our association is dedicated to the promotion of highway safety in the state of Kansas as it relates to responsible use of alcoholic beverages, and/or other drugs, while operating a motor vehicle. One of our objectives is to cooperate with all judicial administrations, in order to provide an efficient judicial process for the drinking/driving violator. Prior to the 1986 session, we were requested by a county attorney in the northwestern part of the state to support an open container law which would provide educational benefits for those who were found in violation of that statute. The bill was ultimately introduced in the house by then speaker of the house, the Honorable Mike Hayden. That bill passed the House of Representatives and was sent to the Senate where it finally died in the last days of the session.

During the interim, our organization, with the support of some legislators, decided to reevaluate the open container proposal and to rewrite it to answer to some of the critics of the provisions of that bill. Senate Bill No. 261 is a result of those efforts.

In the proposal, any offender who is transporting any alcoholic beverage in an open container is considered in violation of this proposed legislation. That violation would be classified as a Class C misdemeanor. Under the present law, a convicted offender of that violation could be fined up to \$500 and sentenced to a maximum of six (6) months in jail. In addition, the court must take action against that persons driving privileges and either suspend, or restrict, that persons privilege to operate a motor vehicle for three (3) months. Should an offender be convicted a second time, the court must suspend their driving privileges for a period of one (1) year. This is true for cereal malt beverages or, as provided in 41-804, transportation of liquor.

Under Senate Bill No. 261, the district attorney, county attorney or city attorney can offer diversion to the first time offender, provided the offender agrees to successfully complete an Alcohol and Drug Safety Action Program certified pursuant to KSA 8-1008 and pay an assessment fee not to exceed \$100. The proposed

*Attach. I
Senate Judiciary
3-4-87*

legislation also gives the prosecuting attorney the privilege of restricting the offenders drivers license for not less than 90 days nor more than one (1) year.

In the case of the designated driver program, the designated driver cannot be prosecuted for the offense of transporting an open container when they have voluntarily taken a blood or breath test and the results of the test do not show the presence of alcohol in that persons blood. In addition, this would protect that person who may, for some unknown reason, have an opened bottle of liquor that he was not completely aware of at the time of vehicle stop. This would place all responsibility on the offender rather than the actual operator of the vehicle, provided that operator is not consuming alcoholic beverages at the time.

We feel that this is an excellent opportunity for intervention by providing information and education for those people who have not been arrested for a D.U.I. This is an opportunity to provide education for those people who may think it is okay to have a few drinks while operating a motor vehicle, as long as they don't reach the legal intoxication level of .10.

We find that the offenders in our schools are more motivated to accept the educational aspects of drinking and driving than those who are just generally observers. The theory is, we may be informed that the stove is hot, however, we do not realize it until we touch it. We are more aware of that stove after receiving our first contact with it.

Our organization, at our quarterly meeting in Salina on February 26, 1987, indicated that this was the most important piece of legislation insofar as providing an intervention method in order to provide education for those people who are currently violating our laws in the state of Kansas. We urge this committee to take positive action on this legislation and move it out favorably for action by the full senate.

Thank You



Gene Johnson
Legislative Liaison, Kansas
Community Alcohol Safety
Action Project Coordinator's
Association

3-4-87

Kansas Coalition for Drug-Free Driving

P.O. Box 58093

Topeka, KS 66658

913-286-0555

COALITION SUPPORTS THE PROPOSED OPEN CONTAINER LAW

The Kansas Coalition for Drug-Free Driving is a statewide coalition of citizen groups strongly concerned about the drunk driving problem and its tragic consequences. The coalition is composed of Kansas chapters of MADD (Mothers Against Drunk Driving), Kansas chapters of RID (Remove Intoxicated Drivers), Kansas ASAP's, the Kansas PTA, Kansans for Highway Safety, and others.

The Coalition strongly supports the proposed open container law. There is a provision in this proposed law to protect those not drinking while driving. These people can take a BAC test and if they show no signs of drinking, they will be released. This provision deals with the possible arrest of innocent drivers.

For those who do drink out of an open container while driving, the legal response needs to be firm. Upon being convicted these people would have their license suspended for three months. In addition, there are reasonable provisions for diversion which could include the education of Alcohol Information School. The law also includes an evaluation of whether the person has an alcohol or drug problem that needs treating.

The Coalition feels that the law reasonably provides the three things that are necessary to prevent violations of the law. Those three are firm and appropriate punishment, education and evaluation.

*Attach. II.
Senate Judiciary
3-4-87*

Department of Social and Rehabilitation Services
Alcohol and Drug Abuse Services
Senate Bill 261

Penalties for Transporting Open Container of Alcohol or Beer

I. Title

An act concerning alcoholic beverages; relating to transportation in open containers and consumption while operating a motor vehicle; amending K.S.A. 12-4413 and 12-4417 and K.S.A. 1986 Supp. 8-2106, 8-2204, 12-4415, 12-4416, 22-2908 and 22-2909 and repealing the existing sections; also repealing K.S.A. 41-804, 41-2719 and 41-2720.

II. Purpose

The bill allows for a diversion agreement including required participation in an alcohol and drug safety action program and payment of a \$100 assessment. Defendant's may submit to a blood or breath alcohol concentration test for their defense.

III. Background

Persons arrested for driving with an open container may be at a critical point in their drinking career. Early assessment, education and intervention will help to prevent later Driving Under the Influence arrests and prolonged drinking problems.

IV. Effect of Passage

This bill reinforces the seriousness of drinking driving and provides for intervention and education for drinking drivers that may fall under the BAC .10 threshold of the driving under the influence statutes. The early intervention and education provided through alcohol safety action programs will help identify and treat problem drinkers and alcoholics.

V. SRS Recommendations

Support the passage of SB 261 relating to transportation and consumption of open containers of alcoholic beverages while operating a motor vehicle.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
March 4, 1987

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Senate Jud.
3-4-87



STATE OF KANSAS

MIKE HAYDEN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ALCOHOL AND DRUG ABUSE SERVICES

2700 WEST 6TH STREET
TOPEKA, KANSAS 66606
(913) 296-3925
KANS-A-N 561-3925

Testimony for Legislation Prohibiting and Providing Penalties for the Transportation and Consumption of Alcoholic Beverages While Operating a Motor Vehicle

March 4, 1987

Social and Rehabilitation Services, Alcohol and Drug Abuse Services supports the provisions of Senate Bill 261. We are particularly interested in the requirement of participation in an alcohol safety action program by persons arrested under this bill. Persons found driving while consuming alcoholic beverages may be at a critical period in their drinking history. Early assessment, education, intervention, and treatment can greatly reduce the long term negative effects of problem drinking and alcoholism. The individual, their family, and society suffers if intervention does not come before more serious conflicts with the law and other adverse effects of alcoholism begin to surface.

Many persons arrested for open container violations may not meet the legal definitions of driving under the influence. However, research presented at an International Symposium on Alcohol, Drugs and Driving at Los Angeles in January 1985, demonstrates driving performance deteriorates beginning at a BAC of 0.015%. Half of alcohol-involved accidents occur at BACs less than 0.10%. The intervention provided by this bill can reinforce the seriousness of drinking and driving and prevent accidents and injuries.

We urge your favorable consideration of Senate Bill 261.

A-III

SUMMARY OF TESTIMONY

Before the Senate Judiciary Committee

Senate Bill 261

Presented by the Kansas Highway Patrol

(Sergeant Bob Giffin)

March 4, 1987

In recent years the Kansas legislature has taken a definite and necessary stand against mixing alcohol with driving. This has been accomplished through the enactment of stricter D.W.I. laws including open container statutes. In 1985 the Patrol alone issued 1,684 traffic citations for open container violations and, for the first 11 months of 1986, issued 1,988 citations. The accessibility of alcohol on our state's highways continues to be a problem and in fact an escalating one. With this in mind, the Patrol has some definite concerns about some of the amendments proposed in Senate Bill 261 that appear to weaken the current statutes.

Initially, the language of this bill leaves us somewhat confused as to what the legislature's position would be on this subject. Specifically, New Section 1 states that "no person shall transport in any motor vehicle upon a highway or street any alcoholic beverage unless. . ." and then later on Line #0088 states that it shall be a defense to a prosecution if the defendant had a .00 alcohol concentration. On one hand the bill says "no you can't" but then turns around and says "yes you can".

Line #0047 reduces the drivers license suspension time on a second conviction from one year to six months. Additionally, Line #0473 says the county attorney shall offer diversion on a first offense. The Patrol feels this should be left optional at the discretion of the county attorney. Will a first offense diversion agreement for an open container violation appear on a drivers license record as a conviction? If it does not, when does the diversion revolving door stop?

This bill also apparently contains a provision, on Line #0088, for a blood or breath alcohol test for use as a defense to prosecution. Who would administer the test? At the present time, under K.S.A. 8-1001(b), "a law enforcement officer shall request a person to submit to a test. . . if the officer has reasonable grounds to believe the person was operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs. . .". If the suspicion of D.W.I. is absent, the officer has no legal basis to request a test. Could this same subsection be used for the prosecution? In addition to the aforementioned problems, this area of the bill would carry with it a fiscal note for the Patrol. Based on the number of arrests for open containers made by the Patrol during the first 11 months of 1986 (1,988), if each defendant were to receive a breath test @ \$7.15 per test, it would cost the Patrol an additional \$14,214. This figure does not include tests which the Patrol would analyze for local law enforcement agencies.

*Attach. IV
Senate Judiciary
3-4-87*

The last concern the Patrol has with Senate Bill 261 appears on Line #0126. While we realize this bill is repealing the present open container statute numbers which are struck on Line #0126, does this mean that an officer will no longer be allowed to issue a traffic citation for an open container violation? If it does, the Patrol is strongly opposed to this section of the bill based upon the frequency with which we deal with these statutes.

In closing, the Patrol is not opposed to the basic concept of this bill, which appears to educate first time offenders through use of the alcohol safety action project. We are however, seriously concerned about those provisions of the bill discussed in this testimony which appear to significantly weaken existing statutes that we feel are working well for law enforcement.