

Approved 2/25/88  
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at  
Chairperson

9:00 a.m./~~p.m.~~ on February 24, 1988 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

John Smith, Department of Revenue  
Grant Brooks, Department of Revenue Legal Services  
Mary Turkington, Kansas Motor Carriers Association  
Paul Fleenor, Kansas Farm Bureau

Hearing on S.B. 638 - Relating to commercial motor vehicle safety.

John Smith, Department of Revenue, said the most efficient method to comply with the new federal act is to incorporate all applicable provisions into the Kansas Drivers License Act. He said the attorney for the Department would explain the bill.

Grant Brooks, Department of Revenue Legal Services, went through each section of the bill and explained the changes. He submitted Tentative Changes in the Kansas Drivers License Act to Comply with the Commercial Motor Vehicle Safety Act of 1986. A copy is attached. (Attachment 1). He also submitted a Statement of Policy Issues Contained in S.B. 638. A copy is attached. (Attachment 2).

The committee had several questions about definitions such as "interstate commerce", "commercial vehicle" and "resident". There were also concerns about DUI convictions. The Chairman asked Mr. Smith what kind of legislation had to be finished before the legislature returned next year. Mr. Smith said we could probably get by this year without anything.

Mary Turkington, Kansas Motor Carriers Association, said they support this effort to improve the system for licensing commercial drivers. She said since the final rules were not yet published they are concerned that they may not agree with some of the definitions. Since the rules will not be published until July 18, 1988 the Association feels there will be adequate time to address the issues more fully in the 1989 session. A copy of her statement is attached. (Attachment 3).

Paul Fleenor, Kansas Farm Bureau, said they are in support of much of what is proposed but they are concerned that many farm vehicles will be regarded as commercial, over-the-road vehicles. There is currently an attempt by Congress to have legislation introduced to handle this. The Secretary of Transportation may exempt farm trucks but until the final regulations are put forth, they feel it is premature for Kansas to be enacting legislation such as S.B. 638. A copy of his statement is attached. (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254E, Statehouse, at 9:00 a.m./p.m. on February 24, 1988

A motion was made by Sen. Bond and was seconded by Sen. Norvell to approve the Minutes of February 16, 17, and 18, 1988. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: 2/24

ROOM: 254-E

GUEST REGISTER  
SENATE  
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
Tom Whitaker	Ks Motor Carriers Assn.	Topeka
Mary E. Turckington	Kansas Motor Carriers Assn.	Topeka
Larry Ninton	SRS/ADAS	Topeka
Jeanne Kutzley	AG	Topeka
Lee Eisenhower	Ks. LP Gas Assn.	'
PAUL N. MATTHEWS	HIGHWAY USERS FEDERATION	OKLA CITY, OK
Judith Wainwright	Manhattan Cofc	Manhattan
FRANK EATON	SE KS CITIES COALITION	Manhattan
Lt. Gill Jacobs	KHP	TOPEKA
Cop. Paul Wade	KHP	TOPEKA
Paul E. Fleener	Kansas Farm Bureau	Manhattan
Paul Harts	Supreme Court	Topeka
Pat Weichman	KADRA	Topeka
TOM SKINNER	DMV	Topeka
Grant Brooks	KDOR legal services	Topeka
PAT BARNES	Ks. Motor Car Dealers Assoc.	Topeka

Tentative Changes in the Kansas  
Drivers License Act to Comply  
With the Commercial Motor  
Vehicle Safety Act of 1986

The purpose of this new legislation will be to help reduce or prevent truck and bus accidents, fatalities and injuries by requiring drivers to have a single commercial motor vehicle license; to establish licensing requirements and to disqualify drivers who operate commercial motor vehicles in an unsafe manner.

The new legislation will apply to every person who operates a commercial motor vehicle in interstate, foreign or intrastate commerce and to all employees of such persons.

The most efficient method of complying with the new act is to incorporate all applicable provisions into the Kansas Drivers License Act. However, there will be a need to modify specific Kansas statutes and to create additional statutes.

Most important is revision of K.S.A. 8-234b, which provides the classes of drivers' licenses. A suggested "Commercial license" provision needs to be added. This will provide for a commercial license for operators of any class of vehicle that fits the commercial vehicle definition. Additionally, a commercial license endorsement will be necessary for an operator of certain types of commercial motor vehicles.

K.S.A. 8-252, which provides for a maximum suspension or revocation period of one year, for residents convicted in other states, need to be amended to include the longer suspension or revocation periods applicable to commercial drivers under the Commercial Motor Vehicle Safety Act.

K.S.A. 8-256 provides for a general one (1) year maximum period for suspension or revocation. This needs to be amended to reflect the longer suspension or revocation periods mandated by the new act.

The content of the drivers license card is established by K.S.A. 8-243. The new Federal act will mandate use of the social security number for the commercial drivers' license number. K.S.A. 8-243 needs to be amended to include this and any future requirements.

The Commercial Motor Vehicle Safety Act requires a state to issue commercial licenses only to commercial vehicle operators domiciled in that state. the definition of resident contained in K.S.A. 8-234a is inadequate. A proposed amendment will add an element of intent to adopt Kansas as a new residence. This will conform with appellate court opinions. Additionally, a list of factors used to determine residency needs to be added.

The act requires States to penalize persons who operate commercial vehicles without the appropriate license or endorsement. To comply, a new statute is needed that will suspend the driving privileges of any person convicted of driving a vehicle without the proper license or endorsement, for a period of not less than one year.

Commercial license suspension, pursuant to the new act, will occur only if the violation, upon which the suspension is based, was committed while operating a commercial vehicle. Consequently, any citation issued by a law enforcement officer needs to contain sufficient information about the vehicle so the court and subsequently, the Division of Vehicles can correctly record the conviction on an individuals commercial driver's license record.

K.S.A. 8-2106 lists the requirements for citation content. However, this statute lists no requirement that a citation must include a physical description of the vehicle. Therefore, an amendment should be added to include a description of the vehicle so a determination whether the vehicle was a commercial vehicle can be made. We suggest that the legislature mandate a uniform traffic citation to be used by all Kansas law enforcement personnel. Finally, the Kansas driving under the influence statute, K.S.A. 8-1567, directs the court to suspend the driving privileges of a person convicted under K.S.A. 8-1567 for a period of 21 days or until completion of a driver education program. However, the new Federal Act mandates at least one year driving suspension for an operator convicted of D.U.I. when operating a commercial vehicle.

The present suspension under K.S.A. 8-1567 is by the courts, while the suspension pursuant to the Commercial Motor Vehicle Safety Act will be pursuant to administrative authority. The Commercial Motor Vehicle Safety Act also requires suspension for "serious traffic offenses" these offenses have yet to be defined by Federal rules and regulations. This obvious disparity will cause confusion and inconsistent suspension periods.

A viable solution is to grant the Department of Revenue sole authority to suspend, cancel or revoke the driving privileges of any person convicted of offenses mandating suspension, cancellation or revocation. By replacing the courts with the Department of Revenue, the different suspension, revocation, or cancellation periods for commercial and non-commercial operators can be efficiently implemented. This would transfer the burden from the courts and place it with the licensing authority.

Additional due process safeguards will be implemented. A commercial motor vehicle operator will be given the opportunity for an administrative hearing, prior to the imposition of any suspension, revocation, or cancellation pursuant to the Commercial Motor Vehicle Safety Act of 1986.

In conclusion, to best comply with the Federal Law and any future amendments, a blanket incorporation of the new law into the Kansas Drivers License Act together with the granting of specific regulatory authority to the Secretary of Revenue, is recommended. However, a few statutes must be amended to reflect longer suspension periods and commercial license requirements. Additionally, new statutes must be adopted that provide penalties for persons who operate vehicles without the appropriate license or endorsement.

The Federal time table for enacting this legislation started on October 27, 1986 with the enactment of the Commercial Motor Vehicle Safety Act of 1986. This law is the foundation stone for the concept of one driver, one license. Effective July 1, 1987, no person who operates a Commercial Motor Vehicle shall have more than one (1) license.

Published in the June 1, 1987 Federal Register is The Regulation part of title 49 of the Code of Federal Regulations. This helped clarify the applicability and scope of the new commercial motor vehicle law.

On or before July 1, 1988 the F.H.W.A. must promulgate regulations for the uniform testing and licensing of commercial vehicle operations. These will be the standards Kansas will adopt through regulatory authority contained in the Kansas version of the Commercial Motor Vehicle Safety Act of 1986.

Finally, Kansas must comply with this new legislation by fiscal year 1992 or the state will lose 5% of Federal Highway funds for noncompliance. In subsequent years, the 5% penalty will be raised to 10%.

STATEMENT OF POLICY ISSUES CONTAINED  
IN SENATE BILL NO. 638

Section 1: The new definitions contained in this section express the policy to subject practically all operators of heavy transport vehicles to the provisions of this act. Thus, making uniform standards for testing, licensing, penalties, and record keeping.

Section 2: This section contains one main policy statement one driver, one license. This section prohibits any commercial motor vehicle operator from carrying more than one license.

Section 3: The policy considerations for adopting this provision are notification and disclosure. Commercial drivers must notify both the Division of Vehicles and their employers when convicted of a moving violation. Additionally, applicants for commercial driver positions must disclose to prospective employers ten (10) years of employment history. This will ensure an employer will have the resources available to make a fully informed decision on the applicant's driving skills.

Section 4: This expresses a policy issue of ensuring employers do not ignore license suspensions, and allow only validly licensed drivers to operate commercial vehicles.

Section 5: This provision establishes that only validly licensed drivers operate commercial vehicles.

Section 6: This section establishes the policy contained in the Commercial Motor Vehicle Safety Act of 1986 that there shall be a national uniform commercial driver's license, and the information contained on a commercial license shall be uniform.

Section 7: This section enacts the policy consideration that before and after a state issues a commercial driver's license, the state must check a national information system, or the state which issued the commercial license, for any driving record that may be contained in either source. This is to ensure the applicant is entitled to a Kansas issued commercial driver's license.

Section 8: This section continues the policy of having one national clearing house of information. Information that is kept current by provisions mandating prompt reporting of action taken on commercial driver's licenses.

Section 9: This provision enacts the policy consideration that states shall issue commercial licenses only to bona-fide residents of that state.

Section 10: This is a statement of the policy issue of mandating a state recognize, as valid, another state's commercial license issued in compliance with the Commercial Motor Vehicle Safety Act of 1986.



Section 11: This section is a penalty section. Any operator of any vehicle which does not have the proper license will lose driving privileges for all vehicles. This expresses a policy to ensure all operators obtain the correct license.

Section 12 through 18: These sections are the main penalty provisions of this new law. The policy considerations reflected in these sections stem from a desire to make commercial motor vehicle operators professionals. The penalties are particularly harsh. Disqualification for life is mandatory upon the second conviction of drunk driving, hit and run, or commission of a felony involving the use of a commercial vehicle. Life disqualification is mandatory for the use of a commercial vehicle in any felony drug crime.

Section 19: This is a waiver provision. This allows certain classes to be exempt from the commercial licensing requirements; only if exempted by the federal Secretary of Transportation.

Section 20: The decision to change the definition of "resident" was to make a more workable definition that reflects the case law established in Kansas. This was necessary as states can only issue commercial licenses to bona-fide residents.

Section 21: This section added the requirement of a commercial drivers license and types of endorsements for commercial licenses to the Kansas Driver's License Act.

Section 22: This deletion reflects the policy statement of one license; one driver.

Section 23: Language was changed in this section to correctly reflect administrative procedures.

Section 24: Language was changed in this section to correctly reflect administrative procedures.

Section 25: Changes in this section reflect concerns over testing locations for commercial vehicles. Additionally this section refers to amendments in K.S.A. 8-1324, which introduce strict requirements as to acceptable identification documents. This will reduce the chances of fictitious licenses being issued.

Section 26: Changes in this section reflect policy issues of suspending Kansas drivers licenses when similar action is taken on a licensee's driving privileges in another state.

Section 27: Changes in this section are to comply with the content requirements for commercial drivers licenses contained in the Commercial Motor Vehicle Safety Act.

Section 28: Changes in this section reflect policy considerations of ensuring that applicant's for Kansas I.D. cards and driver's licenses produce documents that allow for a correct and consistent identification of

applicants.

Section 29: Language changes reflect correct administrative procedures.

Section 30: Changes in this section reflect compliance with the requirements contained in the Commercial Motor Vehicle Safety Act. States must forward on convictions within ten (10) days.

Section 31: Changes in this provisions reflect the policy statement that suspensions for commercial drivers should be longer and act as a deterence.

Section 32: Changes in this section were necessary for the Division of Vehicles to take action on a commercial driver's license. All penalty provisions for commercial drivers apply only if the offense occurred in a commercial vehicle. The court must indicate on any abstract of conviction whether such traffic violation occurred in a commercial vehicle.

Section 33: Changes in this section reflect a policy statement of removing the courts from licensing suspension. This stems from the confusing array of suspension periods the Commercial Motor Vehicle Safety Act now places before a Court. It was decided to ease this burden on the Court, and to place the authority to suspend in the agency best suited to handle the increasingly complex penalty provisions of the Kansas Drivers License Act.

Section 34: Changes in this section reflect policy consideration of organizing administrative procedures regarding license suspension hearings. Additionally, penalty provisions were structured to clarify administrative procedures and to allow for the commercial license penalty provisions.

Section 35: Changes were made to reflect the longer periods of suspension for violations of the commercial license provisions.

Section 36: Changes were made to clarify the intent of this statute. When a license is revoked, an applicant must wait an additional six (6) months after the period of revocation before reapplying for a drivers license.

Section 37: Changes were made to remove court discretion in granting driving restrictions.

Section 38: Changes were made to remove the court from granting driving privileges. (See policy statement on Section 33).

Section 39: Changes in this section reflect policy considerations of ensuring applicant's for Kansas I.D. cards produce correct and verifiable documents that allow for a correct and consistent identification of applicants.

Section 40: Same policy considerations as in section 39.

Section 41: Changes in this section were made to accommodate suspension of driving privileges pursuant to the Commercial Motor Vehicle Safety Act of 1986. See also policy statement of section 33.

Section 42: Changes in this section were made to ensure correct law enforcement reporting of violations of the Commercial Licensing provisions of the Kansas Drivers License Act.

Section 43: Changes in this section were made to ensure correct court reporting of violations of the commercial license provisions of the Kansas Drivers License Act.

Section 44 and 45: The changes in these sections reflect the policy of removing the court and District Attorney and City prosecutors from license suspension and return the authority to suspend, cancel or revoke, solely to the Department. The policy consideration stems from the confusing array of suspension periods the Commercial Motor Vehicle Safety Act now places before a Court and prosecuting attorneys. It was decided to east this burden on the Court, and to place the authority to suspend in the agency best suited to handle the increasingly complex penalty provisions of the Kansas Drivers License Act.

Section 46 and 47: The changes in these sections reflect the policy statements for sections 44 and 45.

Submitted by Grant L. C. Brooks, Attorney,  
Kansas Department of Revenue

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

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Concerning Senate Bill 638  
and the testing and licensing  
standards for a Commercial  
Driver's License.

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Presented to the Senate Transportation &  
Utilities Committee, Senator Bill Morris,  
Chairman; Statehouse, Topeka, Wednesday,  
February 24, 1988

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I am here this morning along with our Governmental Relations Director Tom Whitaker, representing our member-firms and the highway transportation industry to review with you the status of a rulemaking by the Federal Highway Administration, Department of Transportation, relating to the commercial driver testing and licensing standards addressed in Senate Bill 683.

KMCA strongly supports a unified effort by the federal government, the states and the industry to improve the system for licensing commercial drivers and for monitoring the driving records of such drivers.

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Our basic philosophy is that the licensing system must assure that unqualified persons cannot obtain a commercial driver license, and that unsafe commercial drivers who are engaging in unsafe driving practices can be identified through their license record and have their driving privilege suspended or revoked.

We believe that every effort should be made to minimize the imposition of unnecessary burdens on licensing agencies and persons seeking to be licensed. To that end, we support provisions which will "grandfather" qualified persons currently employed as commercial drivers so that they do not have to undergo skill tests for license renewal. We also support testing by qualified third parties. We support additional licensing procedures, such as the use of unique identifiers, that are essential to assure the integrity of the licensing program and to achieve the program objectives.

American Trucking Associations, through its industry safety groups, has responded in detail to the federal proposed rulemaking. It is our understanding that FHWA is required to have its final rules published by July 15, 1988.

This rulemaking obviously addresses several major areas. It will not be clear until these final rules are published the specific vehicle groups for which different classes of licenses would be issued. The language on page 2 of Senate Bill 638 from lines 48 through 72 does not agree with the current definition of a commercial motor vehicle as published in 49CFR, part 383.5.

A uniform definition of a "commercial motor vehicle" is critical to the guidelines which will govern a commercial driver's license program.

We also call your attention to the definition of a "Serious traffic violation" as set forth in Section (i) on page three of the proposed bill.

Currently, the federal regulations state:

"Serious Traffic Violation" means conviction, when operating a commercial motor vehicle, of:

- (a) Excessive speeding;
- (b) Reckless driving, as defined under State or local law; or
- (c) A violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) and arising in connection with a fatal accident. (Serious traffic violations exclude vehicle weight and vehicle defect violations).

We do not believe that the language proposed in Senate Bill 638 is specific enough to define properly a serious traffic violation.

We also have some problems with Section 7 on page 4, with respect to the issuance of a commercial driver's license. Some provision should be considered for a temporary license if the issuance is to be delayed for some length of time.

Implementation of an appropriate procedure to check driving records with other states should not place an intolerable burden on the licensing agencies but should recognize that the information system will not be available in the early stages of this program.

The rulemaking addresses this requirement. Uniformity among the states is important in the handling of these issuance procedures.

Section 11 of the proposed legislation calls for the suspension of the driving privileges of any person convicted of driving a vehicle without the proper license or endorsement for a period of not less than one year.

This provision would become effective July 1, 1988, and does not take into consideration any transition period for compliance and enforcement of the commercial driver's license requirements. We believe this provision is not only premature but is much too harsh for the implementation of the commercial driver's license act.

There are other sections of the bill on which we might comment. We would be pleased to work further with the Department, with this committee and with any other interested enforcement or regulatory group to develop a workable, effective proposal which would embrace the guidelines FHWA must publish by July 15, 1988. As we understand the time table for implementation of the commercial driver's license program, there will be adequate time to address this issue more fully in the 1989 session of the Legislature.

Our industry strongly supports the concept and we wish to bring to this issue the best information and guidance we possibly can provide.

We wish to thank the Chairman and members of this committee along with the representatives of state government who have worked on this proposal. We do ask that you give this issue more study and that you defer to the current rulemaking now underway before adopting policy in this critical area.

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# PUBLIC POLICY STATEMENT

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

RE: S.B. 638 - A Measure Design to Bring Kansas Into  
Compliance With The Federal Commercial Motor Vehicle Safety Act  
(Public Law 99-570)

February 24, 1988  
Topeka, Kansas

Presented by:  
Paul E. Fleener, Director  
Public Affairs Division  
Kansas Farm Bureau

**Mr. Chairman and Members of the Committee:**

My name is Paul E. Fleener. I am Director of Public Affairs Division for Kansas Farm Bureau. We appreciate the opportunity to make comments to you today concerning S.B. 638, the comprehensive legislation developed to bring Kansas into compliance with the federal legislation on commercial motor vehicle safety. To the extent one is able to suggest agreement, or be a proponent of a federal mandated program, we appear in support of **much of what is proposed**, and **apparently** required by the federal legislation to bring about greater safety on the highways.

Mr. Chairman, this legislation came about because of the growing importance of over-the-road vehicle transportation of goods and services for the consuming public in this nation. It was designed for assuring licensing procedures for **COMMERCIAL** drivers, those who operate those over-the-road ... many thousands of miles per year of driving ... commercial trucks. It is legislation designed to have the Nation on one standard for operators of such commercial, over-the-road vehicles.

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Now, unfortunately, it has been construed in the minds of some that this legislation ... I am speaking of the federal legislation ... applies to farm trucks and the operators of those farm-tagged vehicles. Mr. Chairman, nothing has created such a furor in recent years as the thought that this law, PL 99-570, and the regulations promulgated pursuant thereto should by any stretch of the imagination apply to farm trucks. We are this very day working to get an understanding from the Secretary of the U.S. Department of Transportation that this law does not apply. In fact, Mr. Chairman, under PL 99-570, the Secretary has the discretionary authority to exempt from coverage of the law and regulations pertaining to the law, a class of drivers.

The Senate ... the Kansas Senate ... sent a resolution recently to the Kansas Congressional Delegation and the U.S. DOT stressing and urging that the state be granted authority to regulate as it sees fit, the drivers of various categories of motor vehicles. We have been given to understand that it is not within the scope of PL 99-570 for the Secretary to grant a state by state differentiation in licensing procedures for commercial motor vehicle drivers. **It is ...** repeat, it is permissible for the Secretary to exempt farm trucks or another category of trucks if in the judgement of the Secretary that is in keeping with the standards across the country and the desires of the people in the United States. We believe, though we do not know today, the Secretary of DOT will grant an exemption for farm-tagged vehicles.

We indicate our believe that the Secretary will grant the exemption we desire, an exemption not contained in S.B. 638. But to make it abundantly clear to the Secretary that such exemption

should be provided, our friends in the Kansas Congressional Delegation have introduced legislation to make it clear where the exemption should exist. Such yesterday, Tuesday, February 23, 1988, Congressman Jim Slattery (D. 2nd Dist, Kansas), Congressman Pat Roberts (R. 1st Dist, Kansas), Congressman Bob Whittaker (R. 5th Dist, Kansas) and 22 of their colleagues in the House of Representatives introduced a bill to provide an agricultural exemption. The thrust of their legislation is this: PL 99-570, and regulations promulgated pursuant thereto **shall not** apply to vehicles registered for farm use and driven less than 15,000 miles per year. Additionally, their legislation provides an exemption for drivers of volunteer firefighter equipment.

Mr. Chairman, we suggest that S.B. 638 maybe at least one year premature. First, we do not know what the Secretary is going to do about the exemption for farm trucks. We do not know what the Secretary is going to do concerning an exemption for operators of volunteer firefighter equipment. The final regulations have not been promulgated. Preliminary proposed rules were put forth in the Federal Register on Friday, December 11, 1987. A two month comment period was given during which time anyone could make known their views on the proposed regulations. **Thousands** upon thousands of letters have gone into DOT, to the Federal Highway Administration within DOT, urging, requesting, demanding an exemption for farm trucks. The comment period ended only on February 11, 1988. U.S. DOT has not had time to review all of the comments received. We think it is premature for Kansas to be enacting legislation such as S.B. 638.

We do realize, Mr. Chairman, and the Members of the

Committee, there are some deadlines set forth in the federal legislation which relate to steps that must be taken for developing standards for **truly** commercial truck operators. There is no penalty to the state for not developing qualifications for drivers licenses until September, 1992. At that point in time, the U.S. Secretary of Transportation shall (not may), withhold up to 5% of the apportionment due to a state that is not at that point in time developed its licensing procedures and agreed to cooperate in the national standards on commercial drivers license structure. One year following the withholding is to be 10%. That leaves Kansas four Legislative Sessions in which to consider adoption of commercial drivers license procedures to be in compliance with the federal law. We urge you to give sufficient time for this legislation and the regulations adopted pursuant thereto for us to all know the rules we are operating under and those to whom the rules apply.

Thank you for the opportunity to appear on this legislation. We would be pleased to respond to any questions.