

Approved 3/28/88  
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 March 23, 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:

Rep. Mike O'Neal  
Galen Davis, Governor's Special Assistant on Drug Abuse  
Jim Keller, Department of Revenue  
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators  
Association  
Elizabeth Taylor, Alcohol and Drug Program Directors Association  
Trooper Terry Maple, Kansas Highway Patrol  
Rev. Richard Taylor, Kansans for Life at Its Best  
Bruce Beale, Kansas Alcohol Safety Action Project, Lawrence  
Brenda Braden, Attorney General's Office

Hearing on H.B. 2953 - Administrative license suspension for DUI,  
test refusal or test failure.

Rep. Mike O'Neal said this bill was a part of the package that had been recommended by the Governor and the Attorney General to crack down on drunk driving.

Galen Davis, Governor's Special Assistant on Drug Abuse, said the statistics in DUI arrests, the number of injuries and fatalities related to drunk driving indicate a need for more enforcement in this area. This bill would authorize the administrative suspension of a drivers license for failing or refusing an alcohol content test. It would also increase the length of time of suspensions. A copy of his statement is attached. (Attachment 1).

There were questions about what the justifications were for failing the test and could the tests be given to those not actually driving?

Jim Keller, Department of Revenue, said the test would be necessary only when it relates to a person's driving. An officer would have to stop the car for probable cause.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association, said they provide the evaluations and monitor the DUI offenders for all 31 judicial districts in the state. They support stiffer penalties. They did have some reservations about this bill. By removing the six month suspension, making it a 90 day suspension, the offender may take a gamble of refusing the breath test and taking a chance of winning his case in court where no breath test is available. They also have a problem with the language concerning a third time conviction. They feel that some of the offenders are rehabilitable and felt that sending offenders to a facility can best serve the offender. A copy of his statement detailing his concerns is attached. (Attachment 2).

Elizabeth Taylor, Alcohol and Drug Program Directors Association, said they support mandatory treatment programs and had the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on March 23, 1988.

same concerns as Mr. Johnson.

Trooper Terry Maple, Kansas Highway Patrol, said they support this bill. A copy of his statement is attached. (Attachment 3).

Rev. Richard Taylor, Kansans for Life at Its Best, said the National Commission Against Drunk Driving had published a list of 19 State Drunk Driving Countermeasures. Kansas is in the NO column for seven. His group had requested the Governor to help put Kansas in the YES column for all 19. The Governor had responded by announcing support for six out of the seven. Rev. Taylor said swiftness of punishment and license revocation are two very effective measures. A copy of his statement is attached. (Attachment 4).

Bruce Beale, Kansas Alcohol Safety Action Project, Lawrence, said they were concerned about raising the suspension on both the first and second offenses. They felt more should be done about prevention. Most offenders fear a license suspension and this would be better than a restricted license.

Brenda Braden, Attorney General's office, said they support this bill.

The chairman said it was his understanding that the bill had been poorly drafted and all people interested in this bill should get together and do some work on it.

Action on H.B. 2697 - Permanent registration for township vehicles.

A motion was made by Sen. Bond and was seconded by Sen. Hayden to recommend H.B. 2697 favorable for passage and recommend it be placed on the Consent Calendar. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: 3-23-88

ROOM: 254-E

GUEST REGISTER  
SENATE  
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
Jan Drax Dick TAYLOR	Life at the Best " "	Topeka " "
Frank Eaton	SE KS CITIES	MANHATTAN
Rich DAME	B. L. E.	HOISINGTON
Elizabeth Taylor	Alco & Drug Prog Div	Topeka
Helen Johnson	Ks. Comm. A.S.A.P. Coordinator	Topeka
JOHN D. PINEGAR	KBI	Topeka
Linda Hunt	DOA	"
Jim Keller	KDOR	Topeka
Bruce Beale	Ks. ASAP	Lawrence
Trenda Broden	AQ	Topeka
Nancy Lindberg	AG	Topeka
Justina DiBrun	Washburn University	Topeka
Tony Maple	KHP	Topeka
Lyn Johnson	KHP	Topeka
William Jers	University Daily Kansas	Lawrence
Robert R. White	Legis.	Topeka

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol  
Topeka 66612-1590  
(913) 296-3232

Mike Hayden Governor

Testimony Concerning HB2953  
Presented To  
The Senate Transportation and Utilities Committee  
March 23, 1988  
By  
Galen Davis  
Governor's Special Assistant on Drug Abuse

Mr. Chairman, members of the committee, I appreciate the opportunity to testify before you today in support of House Bill 2953. This bill focuses on the problems related to driving under the influence.

President Reagan has described drunk driving as "a national menace, a national tragedy and a national disgrace." In America, drunk drivers were responsible for about 1/2 of the 46,000 driving fatalities in 1986. According to the National Highway Traffic Safety Administration a person dies in this country in a DUI crash every 27 minutes. The number one killer of teenagers in this country is drinking, drug use and driving.

Kansas Department of Transportation and Kansas Bureau of Investigation statistics indicate that in 1986 there were 14,520 DUI arrests, 4234 injuries, and 224 fatalities related to drunk driving. Clearly, we have reason to further address this problem in Kansas.

Previous legislation, enforcement, educational programs, media attention, and increased citizen activism are helping with this problem. The bill before you today will strengthen our efforts to combat the reckless and inexcusable behavior of drunk driving.

ATT. 1  
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3/23/88

On Wednesday, January 6, Governor Hayden and Attorney General Stephen called for additional legislation to strengthen this state's laws against driving under the influence. In the Governor's Legislative Message on January 12, presented to the 1988 Legislature, Governor Hayden again requested your support for seven legislative measures to combat drunk and drugged driving. Several of these requested measures are before you today in HB2953. The ultimate goal of these measures is to protect the health and safety of Kansas citizens by reducing the incidence of drinking and driving, alcohol related crashes, injuries, and fatalities.

House Bill 2953 incorporates several of the leading methods for combatting drunken driving:

- \* First, it authorizes the administrative per se suspension of a drivers license for failing or refusing a blood alcohol content test. The bill provides for a hearing on this suspension upon request. Steve Balckstone of the National Transportation Safety Board has called this action the single most effective measure to combatting drunk driving. Currently 22 states have such a provision.
- \* Secondly, this bill would increase the length of drivers license suspensions in accordance with National Highway Traffic Safety Administration standards for effective DUI deterrence.

The measures found in this bill appear in the checklist of countermeasures of the National Commission on Drunk Driving, the incentive grant program of the National Highway Traffic Safety Administration, and is encouraged by the National Transportation Safety Board. Additionally, the passage of this bill has the potential of bringing an additional \$850,000 per year in traffic safety funds into our state. These funds could be used for alcohol and traffic safety education, training and enforcement. The ultimate benefit of this bill is two fold. It provides us with research-proven, effective, legal sanctions and additional funds to expand our educational and enforcement efforts to prevent and reduce drunk driving.

As you make your decision on this bill please consider the following:

- 1) extensive research shows that suspension of the drivers license is one of the most effective countermeasures against drinking and driving offenders;
- 2) driving in Kansas is a privilege not a right;
- 3) Kansas law requires submission to BAC tests;
- 4) there is no existing right to consult with an attorney regarding blood alcohol content testing;
- 5) a police officer must have reasonable grounds to believe a driver was DUI before stopping that driver;
- 6) this bill allows for a drivers license hearing upon request;
- 7) Two recent studies show that license suspension does not have a negative impact on employment stability of DUI offenders.

In Conclusion:

We appreciate the commitment of this committee to review and consider the passage of this proposed DUI legislation. We stand at a crossroads that could make Kansas one of the most progressive states in America in combatting drinking and driving. Let us commit that together we Kansans can truly make drunken driving morally, socially and legally unacceptable.

Thank you very much for the opportunity to appear before you.

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2953  
Senate Transportation and Utilities Committee  
March 23, 1988 - 9:00 a.m.

Good morning Mr. Chairman and members of the Transportation and Utilities Committee. I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We, as an association, provide the evaluations and monitor the DUI offenders for all 31 judicial districts in the State of Kansas. During the fiscal year of 1987, we provided 8,875 evaluations. Since 1980, we as an organization have supported stiffer penalties for those people who choose to drink and drive. Our organization was instrumental in introducing a bill in the Kansas Senate in 1981, which was used as a springboard to develop stiffer penalties for those who drink and drive, which ultimately passed in 1982. Throughout the years, we have supported legislation which we feel will reduce the alcohol related crashes in our state. Our association informed the leadership of both the Senate and the House on January 14, 1988, that we would support the Department of Revenue's proposed legislation which would allow them to issue restricted driver licenses rather than the courts throughout the state. We, also, supported the concept that the arresting officer had the authority to pick up the license whenever the offender refused to take the chemical test, or if the offender had a breath test of above .10.

However, we have some negative feelings in certain other aspects of the proposed legislation. At this point in time, we do not feel that it is necessary to reduce the now present suspension of six months for refusal to take a chemical test. We have noted, that with the six month suspension, we found a dramatic decrease in breath test refusals in the State. This is helpful in the prosecuting of the DUI cases and certainly reduced the case load as far as trials are concerned when the defense counsel knew that his/her client's breath test was above .10. By removing the six month suspension, making it a 90 day suspension, the offender may take a gamble of refusing

ATT. 2  
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3/23/88

the breath test and taking a chance of winning his case in court where no breath test is available, knowing that his penalty, even if convicted, will only be 90 days. As the proposed legislation is written, we believe the 90 days for the breath test would probably run concurrently with the 60 days if the offender were convicted.

We also have some difficulty in the removal of the language concerning a third time conviction in a five year period under the present law. Under the present law, any offender who is convicted three times of a DUI in a five year period, has his/her drivers license revoked. Under this proposed legislation, his/her license would only be suspended. We feel that if a person is convicted three times, he/she should lose his/her privilege to drive and only could receive that privilege again after he/she has been revoked for a period of three years under the habitual violators statute.

Another point we are having some difficulty with, is the raising of the first time offender 21 day suspension to a 60 day suspension of all driving privileges. In 1985, this legislature rewrote the DUI law as far as suspension/restrictions are concerned. We are very comfortable with the 21 days suspension at this time. By making it a 60 day suspension, we may very well be in fact endangering someone's employment if they depend on their driving for their livelihood. In addition, we note that in the proposed legislation, there is no provision for the Alcohol Safety Action Projects to notify the Driver Control Bureau that the offender has completed an alcohol educational school or treatment. Under present law, one of the conditions of receiving a restricted driver's license is that the offender must complete an alcohol and drug education program, or a treatment program, or both, before he/she is eligible for any type of driving privileges. This has been omitted under the current language.

We also have difficulty in the suspension of all driving privileges for a period of one year under the second offense. When this law was drafted in 1982, the legislature considered three basic items. One, the first DUI possibly could be a judgment error in which the offender consumed too much alcohol and attempted to drive. Second, that if the offender is arrested and convicted twice in a five year period, he/she most definitely has a serious problem with alcohol



or other chemicals and needs professional help. Thirdly, if the offender is arrested three or more times in a five year period, he/she needs to pay the penalty for his/her criminal behavior and after paying a substantial penalty, professional help could be ordered by the court.


Under the proposed legislation, a person who is convicted of his/her second DUI in a five year period, will have no driving privileges for a period of one year. He also must do 90 days in jail, of which the judge can forgive 85 days, if the offender completes an alcohol and drug treatment program. It is conceivable to see that the offender, if he/she has lost his driving privileges for a period of a year, may opt to do the 90 days in jail, rather than to seek rehabilitation because he/she can no longer operate a motor vehicle. Under the present law, the courts have the authority to withhold all driving privileges until the offender has satisfactorily completed an alcohol and drug treatment program. This allows the court to issue restricted driving privileges after 120 days, to enable the offender to seek further professional assistance, such as out-patient counseling after treatment and the attendance in Alcoholics Anonymous and Narcotics Anonymous. Removing his/her driving privileges for a year would tend to have a negative effect on the offender becoming involved in self help groups and other rehabilitation measures.

In 1985, this legislature recognized that some people tend to drive when their license has been suspended or revoked because of a DUI conviction. The penalties for those individuals who have been convicted of a DUI and have had their license suspended, was revised in K.S.A. 8-262. Under that section, if a person is apprehended while operating a vehicle when his/her license has been suspended for conviction of a DUI, he/she must serve a minimum of 90 days in jail before any suspension, probation or parole can be considered by the court. In addition, the court may impose a cash fine on the individual, determining whether it is a 1st, 2nd or 3rd conviction. It is our feeling that some people are rehabilitable and will not violate their restricted driver's license. They will comply with the law and continue their rehabilitation process during the period of probation or period of driver's license restrictions. For those people who continue to drive even after being convicted of a DUI, they will have to pay the penalty of at least 90 days in jail if they are apprehended.

In summary, our organization is basically an evaluation and rehabilitation unit and we probably are somewhat biased because we are dealing with the offender on a one to one basis. It is our job to determine whether the offender is rehabilitable and then make a proper referral to a facility that best serves that offender. We hope this committee appreciates our perspective as far as rehabilitation is concerned.

However, if this committee deems it necessary to strengthen the law in the manner suggested by this legislation, our organization will support such changes. Our primary purpose is to promote highway safety in the State of Kansas as it relates to the responsible use of alcoholic beverages and/or other drugs while operating a motor vehicle.

Thank you.

  
Gene Johnson  
Legislative Liaison

GJ/dls

SUMMARY OF TESTIMONY

Before the Senate Transportation and Utilities Committee

House Bill 2953

Presented by the Kansas Highway Patrol

(Trooper Terry L. Maple)

March 23, 1988

Appeared in Support of House Bill 2953

The Kansas Highway Patrol supports House Bill 2953 which would impose new penalties on persons who fail a blood, breath, urine or other alcohol concentration test and which would change current procedure for imposing license sanctions on those who refuse such tests.

Specifically, we feel that the personal service of a suspension notice, when possible, by the officer or a designee, would serve greatly to dispel any doubt concerning receipt of the notice by the affected party.

In summation, our agency feels that House Bill 2953, if enacted, would be a step forward in addressing this perpetual problem and would send a clear message to those who, by their own choice, elect to disregard the safety of others.

With this in mind, we respectfully request your favorable consideration of House Bill 2953.

ATT. 3  
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3/24/88

THE NATIONAL COMMISSION AGAINST DRUNK DRIVING in their 1987 Fall NEWSNOTES published a list of 19 State Drunk Driving Countermeasures. Kansas is in the NO column for seven.

Our Board of Directors meeting in Topeka on October 20, 1987, drafted a letter to Governor Hayden asking him to help put Kansas in the YES column for all 19. We said "thousands of concerned drinkers and non-drinkers will praise you for making these seven areas a part of your legislative agenda to help bring life at its best for all Kansans."

Attached is his letter of response dated October 30, 1987. On January 6, 1988, he announced his support for all but the Dram Shop statute. If all six countermeasures now being worked by the legislature are approved, Kansas could be the first state in the YES column on all but one!

We are thankful the Governor, most lawmakers, and public opinion are united in supporting DUI penalties so swift, sure, and severe that persons will choose not to drink before driving. Prevention, not punishment, is our goal.

*Respectfully yours  
Richard Taylor*

(Paragraphs from the Sixth SPECIAL REPORT TO THE U.S. CONGRESS ON ALCOHOL AND HEALTH from the Secretary of Health and Human Services, January 1987.)

#### *Swiftness of Punishment*

License revocation, when tied to an administrative rather than criminal hearing, is designed to make punishment swift and certain, the key variables in the deterrence approach. Administrative license revocation was enacted first in Minnesota and subsequently in several other States. Under typical legislation, the driver's license is collected from an offender by an officer at the time of arrest if the offender refuses to submit to a test of blood alcohol content or if the test shows a BAC of 0.10 percent or more (Waller 1985). The motorist is issued a temporary permit valid for a few days and may request judicial review but only after the revocation has gone into effect.

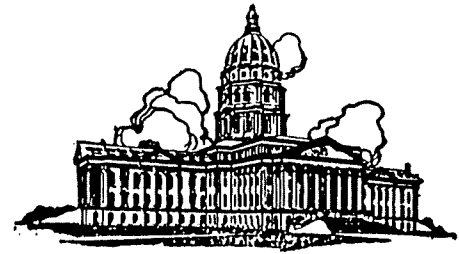
#### *Education and Rehabilitation of Drinking Drivers*

Research has found that educational or rehabilitative programs may have marginal positive impact on DWI recidivism, compared with no intervention or sanctions at all (Hagen 1985), but that license revocation is a more effective countermeasure for reducing driving by impaired drivers (Waller 1985). Drivers convicted of alcohol-related offenses have fewer crashes after having their licenses suspended or revoked than after being sent through rehabilitation programs (Haddon and Blumenthal 1984).

# KANSANS FOR LIFE AT ITS BEST!

Rev. Richard Taylor, Box 888, Topeka, Kansas 66601

Phone (913) 235-1866 Office 1273 Harrison  
(3 Blocks South of Statehouse)



October 20, 1987

*A Proud Land*

Governor Mike Hayden  
The Statehouse  
Topeka, Kansas 66603

Dear Governor Hayden,

We know the affairs of state rest heavy on your shoulders. We are numbered with the thousands of Kansans who pray that you will have the wisdom and strength to do what is best for the heart-state of America.

We regret adding another letter to your heavy load of mail. But highway safety is a very important issue. The enclosed letters indicate our goal when the legislature meets in January.

We are asking every automobile insurance agent in Kansas, every group concerned for highway safety, the Kansas Highway Patrol, and thousands of concerned citizens to support this effort to place Kansas in the YES column of all 19 areas on the CHECKLIST OF STATE DRUNK DRIVING COUNTERMEASURES as adopted by the NATIONAL COMMISSION AGAINST DRUNK DRIVING.

Lawmakers who voted to promote the sale of our most abused drug by the drink in public places said they would give full support to laws that would encourage persons not to drink before driving. These seven areas of legislation will give them an opportunity to prove their sincerity.

Will you help us in the seven areas where Kansas falls short in state drunk driving countermeasures? Will you join this GLADD campaign, a campaign for Good Laws Against Drinking Drivers? Dealers in this deadly drug will oppose these countermeasures, but thousands of concerned drinkers and non drinkers will praise you for making these seven areas a part of your legislative agenda to help bring life at its best for all Kansans.

Respectfully yours,

A handwritten signature in black ink that reads "Charles W. Wright".

Charles W. Wright  
Chairman of the Board

A handwritten signature in black ink that reads "Richard Taylor, Jr.".

Richard E. Taylor, Jr.  
President

(This letter was adopted at the Fall Meeting, Board of Directors, KANSANS FOR LIFE AT ITS BEST, Grace United Methodist Church, Topeka, Kansas.)

"Of our political revolution of 1776 we are all justly proud," said Abraham Lincoln on Washington's birthday in 1842. He went on to say "how proud the title of that land" where persons declare their freedom from alcoholic beverages because they "shall find a stronger bondage broken, a vile slavery manumitted, a greater tyrant deposed. . . perfect liberty!" With per-person consumption at nearly half the national average, thousands of Kansans enjoy that perfect liberty. Concerned users and non-users are united in this R-E-A-L effort to prevent alcoholism, highway tragedy, and other suffering caused by our most abused recreational drug.

Rehabilitation — Help alcohol-dependent persons adjust to life without the drug.

Education — Inform children, youth & adults of effect of alcohol on mind & body.

Amount — Encourage persons to be non-users and encourage users to use less.

Law — Pass and enforce laws that reduce consumption and suffering.

STATE OF KANSAS



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OFFICE OF THE GOVERNOR

State Capitol  
Topeka 66612-1590  
(913) 296-3232

Mike Hayden *Governor*

October 30, 1987

Rev. Richard Taylor  
Box 888  
Topeka, KS 66601

Dear Reverend Taylor:

I appreciate your recent letter calling to my attention the National Commission Against Drunk Driving checklist of state drunk driving countermeasures. I am sure you know that I continue to be concerned about substance abuse issues which most definitely includes drunk driving.

I have asked Galen Davis my Special Assistant on Drug Abuse, to review the seven areas of the checklist that are not covered by Kansas statutes. Galen will be working with D.E. Robinson, Traffic Safety Director for the Kansas Department of Transportation and Nancy Lindburg of the Attorney General's Office to evaluate the need for additional drunk driving legislation and to make suggestions for introducing appropriate new legislation.

Thank you for providing me the information. Your work to curb drunk driving and related tragedies is appreciated. Together, we must all work to prevent and reduce alcohol and other drug abuse.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Hayden".

MIKE HAYDEN  
Governor

MH:GD:np

# Temperance group will press anti-drunken driving legislation

TOPEKA (AP) — The state's temperance organization announced Wednesday that it plans to push for a package of legislation designed to strengthen the state's laws against drunken driving.

The group, Kansans for Life at Its Best, has started a "Good Laws Against Drinking Drivers" campaign, aimed at gaining the 1988 Legislature's approval of seven measures after it convenes in January. The group sent a letter to Gov. Mike Hayden on Tuesday, asking for his support.

"We are numbered with the thousands of Kansans who pray that you will have the wisdom and the strength to do what is best for the heart-state of America," the letter said. "We are asking every automobile insurance agent in Kansas, every group concerned for highway safety, the Kansas Highway Patrol, and thousands of concerned citizens to support this effort."

THE REV. Richard Taylor, president of the group, said it wants to make the state's highways safer by reducing the amount of drunken drivers on the roads. His group also led the opposition last year to an amendment to the Kansas Constitution that would allow the sale of liquor by the drink in public restaurants, citing some of the same concerns.



Rev. Taylor

"The law must be so swift, so sure and so severe that the drinker will say, 'Tonight, I'm going to drive home. I can't drink,'" Taylor said. "That's the only way to stop drinking drivers."

Kathy Peterson, Hayden's press secretary, said the governor had received the group's letter and is having his staff study its recommendations.

TAYLOR SAID the proposals his group has are in effect in other states, according to statistics compiled by the National Commission Against Drunk Driving. The Kansas group's proposed legislative package contains laws that would:

— Automatically suspend the driver's license of a person who refused to take a blood-alcohol test or had failed such a test, without a court hearing. Twenty-two states currently have such a law.

— Make liquor store owners and tavern and club owners liable for damages in an accident involving a drunken driver if they sold alcohol to him while he was intoxicated. Nineteen states have such a "dram shop statute."

— Require drunken drivers involved in accidents pay restitution to their victims, either directly or through a special state fund. Only eight states do not currently have such a law.

— Mandate that courts tell juries they should consider the impact of a drunken driver's actions on a victim in a civil or criminal trial. Fifteen states have such laws.

— Making vehicular homicide or causing the death of another person while driving under the influence a felony. Twenty-seven states have such a law.

— Suspend or revoke for 90 days the license of a person convicted of driving under the influence for the first time. Thirteen states have such a law.

— Withdraw a provisional license of a young person who failed or refused to take a blood-alcohol test. Twenty states currently have such a law.

