

Approved October 8, 1990
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

7:10 a.m./~~p.m.~~ on March 2, 1990 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

None

The meeting was called to order by Chairman Crowell and the first order of business was HB-2598 concerning the registration of motor vehicles including residency, refunds and fines.

Representative Shore gave the subcommittee report on HB-2598.

Bruce Kinzie briefed the Committee on HB-2598.

A motion was made by Representative Shore that the subcommittee report be adopted, amending HB-2598 in Line 33 on page 1 to read "90 days" instead of "30 days" and change the word "residence" to "domicile" in line 39, page 1. The motion was seconded by Representative Lawrence. Motion carried.

A motion was made by Representative Shore that HB-2598 be recommended as amended favorable for passage. The motion was seconded by Representative Lacey. Motion carried.

The next bill taken up was HB-2658 concerning revocation or suspension of drivers' licenses as a result of DUI.

Bruce Kinzie briefed the Committee concerning a technical amendment on HB-2658. (See Attachment 1)

A motion was made by Representative Empson that the technical amendment be adopted. The motion was seconded by Representative Everhart. Motion carried.

A motion was made by Representative Empson that HB-2658 be recommended favorable as amended for passage. The motion was seconded by Representative Lacey.

A substitute motion was made by Representative Lucas that the blood alcohol content be changed to read .05 for individual passenger vehicles and .02 for commercial drivers. The substitute motion was seconded by Representative Smith.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 526S, Statehouse, at 7:10 a.m./~~p.m.~~ on March 2, 1990

Further Committee discussion on HB-2658 was held

Mr. John Smith, Kansas Department of Revenue, said that .04 is the lowest reading which can be done accurately.

Representative Lucas requested that his substitute motion be withdrawn with permission of his second.

The substitute motion was withdrawn.

On the bill as amended, the motion to recommend HB-2658 as amended favorable for passage, carried.

The next bill taken up was HB-2863 concerning rural business and farm and ranch directional signs.

A motion was made by Representative Smith that HB-2863 be recommended favorable for passage. The motion was seconded by Representative Lucas. Motion carried.

The next bill taken up was HB-2865 providing certain waivers concerning the qualifications of school bus drivers.

A motion was made by Representative Smith that HB-2865 be recommended favorable for passage. The motion was seconded by Representative Lucas. Motion carried.

The next bill taken up was HB-2947 concerning use of sales tax and revenue bonds for the city or county portion of highway construction projects identified as system enhancements.

A motion was made by Representative Shore that HB-2947 be amended to make the tax sunset when the bonds are paid off. The motion was seconded by Representative Fry. Motion carried.

Further discussion on HB-2947 ensued. Chairman Crowell appointed a subcommittee to further study HB-2947 consisting of Representative Empson, chairperson, and Representatives Guldner and Dean.

The next bill taken up was HB-3008 concerning the Kansas Elderly and Handicapped Coordinated Public Transportation Assistance Act.

A motion was made by Representative Wilbert that HB-3008 be tabled. The motion was seconded by Representative Shore. Motion carried.

Chairman Crowell announced the Transportation Committee would meet at 12:00 noon on Monday, March 5, 1990, in Room 526-S.

The meeting was adjourned at 8:00 a.m.



Rex Crowell, Chairman

PROPOSED AMENDMENT FOR H.B. NO. 2658

Sec. 6. K.S.A. 1989 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) ~~The alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vehicle~~ as shown by an competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .10 or more, except that an alcohol concentration of .04 or more, shall be used for persons operating or attempting to operate commercial motor vehicles, as defined in K.S.A. 1989 Supp. 8-2,128;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .10 or more, except that an alcohol concentration of .04 or more, shall be used for persons operating or attempting to operate commercial motor vehicles, as defined in K.S.A. 1989 Supp. 8-2,128;

~~(2)~~ (3) under the influence of alcohol;

~~(3)~~ (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

~~(4)~~ (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) If a commercial driver refuses testing or submits to a test which discloses an alcohol concentration of .04, or more, the law enforcement officer shall submit a sworn report to the secretary certifying that the test was requested pursuant to subsection (a) and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of .04, or more.

(e) Upon receipt of the sworn report of the law enforcement officer submitted under subsection (d), the secretary shall disqualify the driver from driving a commercial motor vehicle under K.S.A. 1989 Supp. 8-2,142.

~~(d)~~ (f) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours' nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs.

~~(e)~~ (g) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. Except as provided in subsection ~~(g)~~ (i), the person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto.

~~(f)~~ (h) On the third or a subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection ~~(g)~~ (i), the person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008 and amendments thereto.

~~(g)~~ (i) On a second or subsequent conviction of a violation of this section, the court may place the person convicted under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

~~(h)~~ (j) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

~~(i)~~ (k) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

~~(j)~~ (l) The court shall report every conviction of a violation of this section and every diversion agreement entered

into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(k) (m) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(l) (n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the court division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. ~~1988~~ 1989 Supp. 8-1014, and amendments thereto.

(m) (o) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county

from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance or resolution exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(n) (p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(o) (q) The alternatives set out in subsections (a)(1) and (2) may be pleaded in the alternative, and the state, city or county may, but shall not be required to, elect one of the two prior to submission of the case to the fact finder.

(r) For the purpose of this section, "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.