

Approved 5-4-90  
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

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

11:00 a.m./~~p.m.~~ on April 28, 1990 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mary Torrence, Revisor of Statutes Office  
Mary Galligan, Legislative Research  
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Rep. David Miller

SPECIAL MEETING AT THE RAIL, 4-25-90

A committee request was made for introduction of a bill concerning appointment of the director of property valuation. (Attachment 1)

A motion was made by Senator Morris and seconded by Senator Yost to introduce the bill. The motion carried.

A request was made by the Department of Revenue and the Revisor's Office to introduce a bill concerning the warning that a law officer must give a driver who would refuse a breath test regarding length of suspension of the driver's license. (Attachment 2)

A motion was made by Senator Yost and seconded by Senator Morris to introduce the bill. The motion carried.

REGULAR MEETING, 4-28-90

The minutes of the April 5, 6, 7, and 25 meetings were approved.

Hearing on: HCR 5036 - Urging the United States Congress to support an amendment to the United States Constitution that would prohibit the desecration of the American flag

Rep. David Miller said many people feel the Supreme Court's 5-4 decision striking down a Texas law on desecration was wrong. Many legislators feel it is important to have legislation indicating a strong interest in an amendment to the U.S. Constitution and to ask that copies be delivered to the Kansas Congressional delegation. There was discussion as to distinguishing between desecration and the burning of an old or torn flag. Rep. Miller said the flag desecration resolution passed by Congress dealt with what would constitute desecration. The committee was reminded that this would be merely a letter to Congress urging them to adopt an amendment.

A motion was made by Senator Anderson and seconded by Senator Strick to amend the bill to also address burning of the cross or other religious symbols. The motion carried.

A motion was made by Senator Strick and seconded by Senator Anderson to recommend the resolution favorably as amended. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs,  
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on April 28, 1990.

A motion was made by Senator Yost and seconded by Senator Anderson to introduce a bill which would make it a Class E felony to burn the cross and other religious symbols. The motion carried.

The meeting was adjourned at 11:30 a.m.

SENATE BILL NO. 802

By Committee on Federal and State Affairs

AN ACT concerning appointment of the director of property valuation; amending K.S.A. 75-5105 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-5105 is hereby amended to read as follows: 75-5105. There is hereby established, within and as a part of the department of revenue, a division of property valuation, the head of which shall be the director of property valuation. Under the supervision of the secretary of revenue, the director of property valuation shall administer the division of property valuation. The secretary of revenue shall appoint the director of property valuation, and subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. The director shall serve at the pleasure of the secretary of revenue. The director of property valuation shall be in the unclassified service and shall receive an annual salary fixed by the secretary of revenue and approved by the governor.

Sec. 2. K.S.A. 75-5105 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Senate F&SA  
4-25-90  
Att. 1

SENATE BILL NO. \_\_\_\_\_

By Committee on Federal and State Affairs

AN ACT concerning certain alcohol and drug-related offenses; relating to suspension and revocation of drivers' licenses; amending K.S.A. 1989 Supp. 8-1001, 8-1014, as amended by section 2 of 1990 Substitute for House Bill No. 2292, and 8-1567, as amended by section 6 of 1990 House Bill No. 2658 and repealing the existing sections; also repealing K.S.A. 1988 Supp. 8-1014, as amended by section 4 of 1990 House Bill No. 2658, and 8-1567, as amended by section 4 of 1990 Substitute for House Bill No. 2292.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1989 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a motor vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) 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, or both, and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a motor vehicle while under the

influence of alcohol or drugs, or both, in violation of a state statute or a city ordinance; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law

enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) (1) Before a test or tests are administered under this section, the person shall be given oral and written notice that: (A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both; (B) the opportunity to consent to or refuse a test is not a constitutional right; (C) there is no constitutional right to consult with an attorney regarding whether to submit to testing; (D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for at least ~~180~~-days one year; (E) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .10 or greater, the person's driving privileges will be suspended for at least 30 days; (F) if the person refuses a test or the test results show an alcohol concentration of .10 or greater and if, within the past five years, the person has been convicted or granted diversion on a charge of driving under the influence of alcohol or drugs, or both, or a related offense or has refused or failed a test, the person's driving privileges will be suspended for at least one year; (G) refusal to submit to testing may be used against the person at any trial on a charge

arising out of the operation or attempted operation of a motor vehicle while under the influence of alcohol or drugs, or both; (H) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a motor vehicle while under the influence of alcohol or drugs, or both; and (I) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities and physicians. After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a motor vehicle in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto. If the test results show a blood or breath alcohol concentration of .10 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002, and amendments thereto and K.S.A. ~~1988~~ 1989 Supp. 8-1014, and amendments thereto. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a motor vehicle while under the influence of alcohol or drugs, or both.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol

or drugs.

(3) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(g) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(h) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

Sec. 2. On and after January 1, 1991, K.S.A. 1989 Supp. 8-1014, as amended by section 2 of 1990 Substitute for House Bill No. 2292, is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (d) and K.S.A. 1989 Supp. 8-2,142, and amendments thereto, if a person refuses a test, the division ~~shall~~, pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the person's driving privileges for one year.

(b) Except as provided by subsection (d) and K.S.A. 1989 Supp. 8-2,142, and amendments thereto, if a person fails a test, the division ~~shall~~, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

(1) On the person's first occurrence, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges as provided by K.S.A. 1989 Supp. 8-1015, and amendments thereto, for an additional 60 days; and

(2) on the person's second or a subsequent occurrence, suspend the person's driving privileges for one year.

(c) Except as provided by subsection (d) and K.S.A. 1989 Supp. 8-2,142, and amendments thereto, if a person has an alcohol or drug-related conviction in this state, the division shall:

(1) On the person's first occurrence, suspend the person's driving privileges for 30 days or until the person has completed educational and treatment programs required by the court, whichever is longer, then restrict the person's driving privileges as provided by K.S.A. 1989 Supp. 8-1015, and



amendments thereto, for an additional 330 days; and

(2) on the person's second or a subsequent occurrence, suspend the person's driving privileges for one year or until the person has completed the treatment program required by the court, whichever is longer.

(d) Except as provided in K.S.A. 1989 Supp. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a), (b) or (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a), (b) or (c), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

If a person's driving privileges are subject to restriction pursuant to this section for a test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for 150 days of any period of suspension imposed for a test refusal arising from the same arrest.

(e) If the division has taken action under subsection (a) or (b) and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to subsection (k) of K.S.A. 8-1002, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (c).

(f) Upon ~~suspending, restricting or suspending~~ and restricting a person's driving privileges pursuant to this section, the division shall issue without charge a driver's

license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges and that a copy of the order imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the division shall forward a copy of the order to the motor vehicle administrator of the person's state of residence.

Sec. 3. On and after January 1, 1991, K.S.A. 1989 Supp. 8-1567, as amended by section 6 of 1990 House Bill No. 2658, 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 as shown by any 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, and amendments thereto;

(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, and amendments thereto;

(3) under the influence of alcohol;

(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

(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) Any person operating or attempting to operate a commercial motor vehicle who 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, and amendments thereto.

(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.

(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 (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.

(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 (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. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to confinement at the end of each day in the work release program.

(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.

(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.

(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.

(1) 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.

(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.

(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 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. 1989 Supp. 8-1014, and amendments thereto.

(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.

(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.

(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.

Sec. 4. K.S.A. 1989 Supp. 8-1001 is hereby repealed.

Sec. 5. On and after January 1, 1991, K.S.A. 1989 Supp. 8-1014, as amended by section 2 of 1990 Substitute for House Bill No. 2292, and 8-1567, as amended by section 6 of 1990 House Bill No. 2658, and K.S.A. 1988 Supp. 8-1014, as amended by section 4 of 1990 House Bill No. 2658, and 8-1567, as amended by section 4 of 1990 Substitute for House Bill No. 2292, are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.