

Approved: March 24, 1992  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at  
9:30 a.m. on February 7, 1992 in room 514-S of the Capitol.

All members were present except:  
Senators Gaines and Morris who were excused.

Committee staff present:  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Chairman Winter called the meeting to order by presenting a bill introduction request concerning the visitation rights of biological grandparents of adopted children. (ATTACHMENT 1)

Senator Rock moved to introduce a bill to provide that visitation rights be denied to grandparents only if both biological parents' rights are severed. Senator Kerr seconded the motion. The motion carried.

Senator Kerr requested introduction of a bill to make penalties for pirating of video recordings the same as pirating of audio recording. Senator Kerr moved to introduce the bill as explained. Senator Moran seconded the motion. The motion carried.

Chairman Winter requested the Committee introduce four uniform commercial code bills: enacting the uniform transfer of litigation act, relating to negotiable instruments (lost, destroyed or stolen checks, enacting the uniform statutory rule against perpetuities, and enacting the uniform simultaneous death act. Senator Bond moved to introduce the four bills as requested. Senator Parrish seconded the motion. The motion carried.

Chairman Winter presented two requests from the Attorney General for introduction of bills: a technical, clean-up to the telemarketing fraud statute, and a "Son of Sam" to modify the Kansas provision of moneys payable to accused or convicted person for use in crime in publications, broadcast presentations or live entertainments. Senator Bond moved to introduce the two bills as requested. Senator Rock seconded the motion. The motion carried.

Senator Parrish requested introduction of a bill amending the landlord tenant act to clarify that a three-day eviction notice means 72 hours. Senator Parrish moved to introduce the bill as described. Senator Moran seconded the motion. The motion carried.

Chairman Winter turned the Committee attention to bills that had been heard by the Committee and were awaiting action.

SB 508 - court costs to support the law enforcement training center.

The Committee questioned how many other proposed legislative measures included amendments to court docket fees; if an attempt should be made for KLETC to reimburse the cities and counties that perform their own training, but without encouraging others to establish additional training facilities in order to receive those reimbursement funds. It was the consensus of the Committee to retain SB 508 in Committee at this time and ask staff to prepare a memorandum for the Committee's review of all measures that increase docket fees.

The Committee next turned to the measures addressing Driving Under the Influence of alcohol.

SB 124 - suspension and restriction of driver's license on conviction of DUI or refusal to take blood alcohol test.

SB 125 - lower blood alcohol levels for DUI convictions.

HB 2353 - blood alcohol content lowered to .08 for DUI.

Written material from the Kansas Department of Health and Environment discussing HB 2353, and from William W. Sneed for The State Farm Insurance Companies supporting SB 125 was distributed. (ATTACHMENTS 2 and 3)

It was the consensus of the Committee to use HB 2353 as the "DUI vehicle." Senator Kerr moved to amend HB 2353 to make a BAC of .08 a DUI rebuttable presumption, and leave a BAC of .10 per se DUI. Senator Yost seconded the motion. The motion carried with five voting in favor of the motion and three against.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 9:30 a.m. on February 7, 1992.

John Smith, Vehicles Administrator of the Kansas Department of Revenue Division of Vehicles, explained the current administrative process for DUI suspended drivers licenses. He requested the license sanction be made the same for both a BAC failure and a conviction. This action would add 270 days to the license suspension for a BAC failure. (ATTACHMENT 4)

Senator Rock moved to amend HB 2353 to adopt the reporting requirement from SB 124 that would make failure to complete programs cause to suspend the drivers license. Senator Petty seconded the motion. The motion carried.

Mr. Smith responded to the Committee's questions about the Department of Revenue's hearing officer staffing problems. He stated the current hearing officers are not working full time even though they are salaried at a full time wage. Mr. Smith added that his Division was satisfied with the current statutes on commercial drivers.

Senator Petty suggested a letter be written from the Chairman to the Secretary of Revenue pointing out the serious problem, especially noting that hearing officers need to work for the pay they are receiving or serious consideration should be given to relieving them of their duties for personnel who will perform properly for the salary. Senator Parrish seconded the suggestion. The Committee agreed.

Senator Kerr moved to amend HB 2353 for drivers under 18 years of age with a BAC of .02 or greater the administrative sanction would be a total suspension of their drivers license for six months. Senator Petty seconded the motion. The motion failed.

Senator Kerr moved to recommend HB 2353 favorable for passage as amended. Senator Oleen seconded the motion. The motion carried.

It was the Committee consensus that all the substantive changes would be included in the amended version of HB 2353. Therefore, SB 124 and SB 125 were no longer needed.

Senator Kerr moved to recommend SB 124 and SB 125 Be Not Passed as an administrative matter. Senator Rock seconded the motion. The motion carried.

SB 476 - traffic offense; juveniles prosecuted as adults, commitment to detention centers. Re Proposal No. 12.

The Committee discussed the current situation where juveniles with drivers licenses are basically treated as adults in all traffic matters with the exception that they can not be incarcerated. It was pointed out the key to SB 476 was availability of juvenile detention centers.

Staff reported he had contacted a juvenile prosecutor for advise in identifying the areas where juveniles are treated as adults. He suggested a possible balloon to address the mandatory jail sentences only, omitting the optional jail time situations.

Chairman Winter suggested the Committee delay action on SB 476 until the situations were identified so the Committee could discuss whether to keep the mandatory situations.

The meeting was adjourned at 10:55 a.m.

I am writing on behalf of a young Wichita couple who need help that only the Kansas State Legislature can give them.

Scott & Kim Spunaugle adopted a child, Jessica Urquieta, that had been listed as "abandoned" by the welfare department when the father killed the mother & then committed suicide. The adoption was final September 8, 1989. The biological mother of the child was the sister of Kim Spunaugle. The Spunaugles expected to raise this child as their own and treat her no differently than their biological children.

Under K.S.A. 38-129 (visitation statute) the biological paternal grandmother has obtained visitation rights through the Court of Appeals, although she has had no contact with the child and the child does not know her. The Spunaugles asked the Kansas Supreme Court to review the case but were denied.

This is a landmark case that will change the outlook of every couple contemplating adoption in Kansas. It will open the door to every biological parent and grandparent to get visitation rights in a third party adoption.

This statute needs to be amended to clearly exclude third party adoption cases and to help these people it needs to be retroactive.

Can you help?

Sincerely,

*Marilyn J. Martin*

**38-129. Visitation rights of grandparents of unmarried minor, when.** If either the father or mother of an unmarried minor child is deceased, the parents of such deceased person may be granted reasonable visitation rights to the minor child during its minority by the district court upon a finding that such visitation rights would be in the best interests of the minor child.

**History:** L. 1971, ch. 149, § 1; July 1. Law Review and Bar Journal References: Cited in survey of family law, Merlin Wheeler, 15 W.L.J. 366, 367 (1976).

**CASE ANNOTATIONS**

1. Paternal grandmother with visitation rights not entitled to notice of adoption; court without power to grant right. *Browning v. Tarwater*, 215 K. 501, 502, 503, 504, 506, 507, 508, 524 P.2d 1135.

*Senate Judiciary Committee*  
*February 7, 1992*  
*Attachment 1*

Written Testimony presented to  
Senate Judiciary Committee

by

The Kansas Department of Health and Environment

House Bill 2353

By statute, the KDHE has the responsibility of administering the statewide breath alcohol program. The program, in its present form, has been operational since 1973. In the past three years, with the aid of a federal alcohol traffic safety grant, an additional 55 breath alcohol instruments have been purchased; 50 have been placed throughout the state; and five instruments are used as backup. The breath test program is well established and widely accepted throughout the judicial system.

We recognize that the consumption of alcohol impairs one's ability to maintain judgement and response time which is critical in the operation of a motor vehicle. National studies have shown that a person is about six to seven times more likely to be involved in an accident with an alcohol content of .10 than a person with no alcohol; a person with an alcohol concentration of 0.08 is about four times more likely to be involved in an accident. Five states, California, Maine, Oregon, Utah, and Vermont currently have a "per se" level of 0.08. Several other states have plans to introduce similar legislation. I have attached to the testimony some information relating to consumption and relative alcohol concentrations.

There are two recommendations that we offer to this bill:

- 1) Sec. 4 (f) defines "Legal Limit" as an alcohol concentration of 0.10, except that, for a person operating or attempting to operate a commercial motor vehicle, "legal limit" means an alcohol concentration of 0.04. Furthermore, we recommend that "legal limit" be defined as an alcohol concentration less than .08 and less than .04. It should be clearly understood that the current language will not result in enforcement of a per se level of 0.10 and 0.04. To establish a per se level of 0.10 and 0.04, the legal limit should be defined as an alcohol concentration less than 0.10 and less than 0.04.

*Senate Judiciary Committee*

*February 7, 1992*

*Attachment 2*

Written Testimony - HB 2353

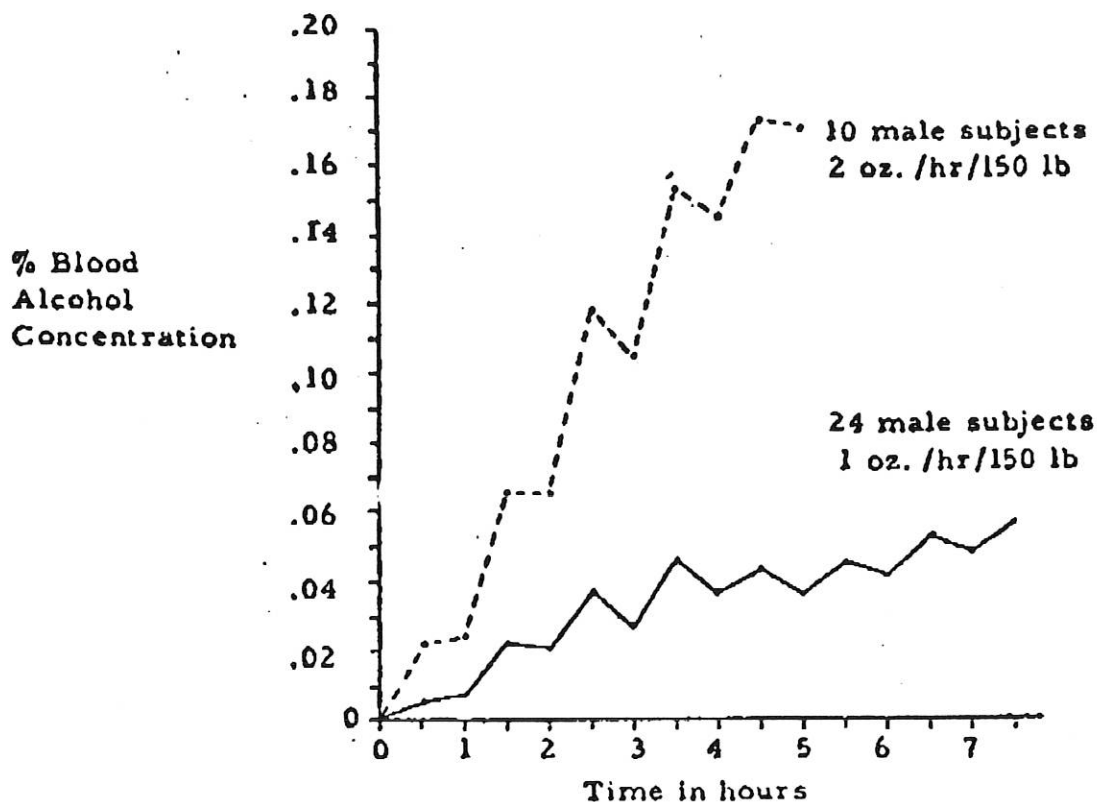
Page Two

- 2) On page 8, line 38, a reference is made to "secretary." Since "secretary" is not defined, we suggest that this be clarified as the "secretary of the department of revenue." "Secretary" also appears on line 9, line 1.

Testimony presented by: Theresa L. Hodges, M.A.,M(ASCP)  
Senior Public Health Laboratory Scientist  
Kansas Health and Environmental Laboratory  
January 29, 1992

FIGURE 2

The BAC curve when drinks are consumed successively over time



Mean blood alcohol levels in male subjects consuming 1 or 2 ounces of 100-proof whiskey per hour per 150 pounds of body weight. First drink at time 0 with 1 drink each hour thereafter. Adapted from a figure in Forney, R. N. and Hughes, F. W. Combined effects of alcohol and other drugs. Springfield, Illinois: Charles C. Thomas, 1968, p. 16. (Originally printed in Clin. Pharmacol. Ther., 4:619, 621, 1963.)

2-7-92

**GEHRT & ROBERTS, CHARTERED**

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February 4, 1992

The Honorable Wint Winter, Jr.  
Senator, Second District  
State Capitol Building  
Room 120-S  
Topeka, Kansas 66612

RE: Senate Bill 125

Dear Senator Winter:

Please be advised that I represent The State Farm Insurance Companies ("State Farm") and act as their legislative counsel. In that capacity, please be advised my client wishes to inform you and your Committee on Judiciary of its support of S.B. 125. Specifically, my client is in support of reducing the legal alcohol concentration from .10 to .08.

Automobile insurers have been aware for many years of the serious nature of the impaired driver problem. However, it has taken concerted action by private groups and allied law enforcement officials to address this serious national issue. In general, my client supports legislative proposals designed to reduce the number of drunk and drug-using motorists on the public highways. In those states that have reduced the legal alcohol concentration from .10 to .08, the statistics demonstrate a marked reduction in injury crashes and fatal crashes. Attached to my letter are several charts prepared by the California Office of Traffic and Safety from figures that they obtained from the California Highway Patrol. It is our hope that these statistics will be of some value to you and your Committee as you discuss this important issue.

It goes without saying that with a reduction in these types of accidents, society as a whole benefits. The number of deaths and collisions that can be curtailed through this type of legislation can reduce the total amount of losses incurred in automobile accidents. With these types of reductions not only are you saving lives, but ultimately you can affirmatively take some action that can help slow down the ever-increasing insurance costs associated with these losses.

*Senate Judiciary Committee*  
*February 7, 1992*  
*Attachment 3*

The Honorable Wint Winter, Jr.  
February 4, 1992  
page two

I appreciate the opportunity to present this testimony to you, and if you or any members of your Committee have any questions or need additional information, please feel free to contact me.

Very truly yours,

GEHRT & ROBERTS, CHARTERED



William W. Sneed

WWS:kjb  
encs.



STATE OF KANSAS

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Department of Revenue  
*Division of Vehicles*  
*Driver License Examining/Control*

**SUBJECT:                    REDUCING TIME FROM ARREST  
   TO SUSPENSION FOR CHEMICAL TEST**

The following statutory amendments would enhance the division's ability to reduce the time from arrest to suspension for chemical test refusals or failures to 30 days in order for the state to qualify for additional federal funds without added costs to the state.

1.     K.S.A. 8-1002(d)(3).    Reduce from 20 to 15 days the effective date of suspension if no hearing is requested.
  
2.     K.S.A. 8-1002(e).        Reduce from 5 to 3 days the law enforcement agency has to mail the certification test to the division.  
         Allow service by any police officer of the agency.
  
3.     K.S.A. 8-1002(g).        Reduce from 10 to 5 and from 13 to 8 the number of days the person has to request a hearing.  
         Provide for a 30 day extension of driving privileges while the person is awaiting a hearing.
  
4.     K.S.A. 8-1002(k).        Reduce from 30 to 25 days the time in which the division is required to hold a hearing.

This time could be further reduced and additional hearings absorbed if the alcohol level is reduced from .10 to .08 if the hearing officers in the Kansas City and Wichita Areas held hearings full time. This would involve an additional cost to the state as their salaries would be raised from 75% to 100% of the basic salary for Attorney B job classification.

Presently the attorney in the Kansas City Area is an Attorney B with a beginning salary range of \$32,340. The authorized position in the Wichita Area is an Attorney A with a beginning salary range of \$29,328. These attorneys hold hearings seven to eight days per month.

The additional cost to the state to raise the rating of the Wichita position from an Attorney A to an Attorney B would be approximately \$3,000. There would be some increase in travel and per diem as these officers hear cases in Southeast and Southwest Kansas when required which would be twice a month depending on the number of hearings scheduled.

The cost in salaries would be higher if salaries had to be raised to attract full time hearing officers.

*Senate Judiciary Committee*  
*February 7, 1992*  
*Attachment 4*

# of Agencies Reporting By Quarter	Number of Certified Operators	Number Tested	Number of Operators Testing	Number Attempted	Number Refusals	Number Per Number Per Operator
175 1st. qtr.	1824	4118	776	115	550	5.3
164 2nd. qtr.	1991	4665	939	123	349	5.0
210 3rd. qtr.	2220	4716	1052	124	555	4.5
215 4th. qtr.	2130	4440	982	172	707	4.5
Total		17939		534	2161	

Total Number Tested 17939  
 Total Attempted 534  
 Total Refusals 2161  
 Total : 20634

SUBJECTS - PERCENT BLOOD ALCOHOL  
1990 TOTALS

Reason for Administration of Test	.00	.05	.08	.10	.15	.20	.25	.30
Accident	.04	.07	.09	.14	.19	.24	.29	
Fatalities	63	48	81	465	519	322	101	38
Erratic Driving	3	1	1	3	2	3	0	0
Miscellaneous	262	237	603	3382	3523	1593	409	101
1990 Totals	427	229	349	1890	1851	978	338	87
Percentages	755	515	1034	5740	5895	2896	848	226
	4.2	2.9	5.8	32.0	32.9	16.1	4.7	1.3