

Approved

Date: Feb 27, 2001

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:39 a.m. on February 19, 2001 in Room 123-S of the Capitol.

All members were present except: Sen. Adkins (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

E. Dean Carlson, Secretary of Transportation

Others attending: see attached list

Minutes of the February 15th meeting were approved on a motion by Senator Schmidt, seconded by Senator Haley. Carried.

SB 27--Corrections; re: transfer of offenders

Following review of SB 27, the Chair offered an amendment which would add "a correctional institution designated by the DOC" striking specific locations cited in the bill. Also, wherever the word "institution" appears in the bill, it should be replaced with the word "facility." Senator Donovan seconded. Carried. Senator O'Connor offered another amendment which was recommended by the DOC, Senator Oleen seconded. Carried. Senator Oleen moved to pass the bill out favorably as amended, Senator O'Connor seconded. Carried.

SB 30--wills, trusts and other instruments; re: invalidity of certain provisions, exceptions

The Chair reviewed SB 30 and Committee discussed two amendments which had been offered. Following discussion Senator Goodwin moved to amend the bill to delete New Section 2 on pg 1 and on pg 1 line 26 strike the word "and" and add the word "or", Senator Schmidt seconded. Carried. Senator Donovan moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

SB 36--agriculture; re: destruction of field crops; damages

Senator Schmidt reviewed SB 36 and distributed a copy of a proposed substitute bill for SB 36 which he explained would amend existing law relating to animals and destruction of field crops rather than creating a new law as in SB 36. Following discussion Senator Schmidt moved to amend SB 36 by substituting **Substitute for SB 36**, Senator Umbarger seconded. Carried. Senator Schmidt moved to pass the bill out favorably as amended, Senator Umbarger seconded. Carried.

SB 75--joint committee on state-tribal relations

The Chair reviewed SB 75. Following discussion Senator Oleen made a conceptual amendment to insert in SB 75 the phrase... "ranking minority member of whichever chamber chairs the joint committee," Senator Goodwin seconded. Carried. Senator Goodwin moved to pass the bill out favorably as amended, Senator Umbarger seconded. Carried.

SB 76--agreements between the state and Native American Indian tribes

Committee discussed **SB 76** and there was consensus to address the bill at tomorrow's meeting.

SB 95—enacting the interstate compact for adult offenders supervision

Senator Goodwin reviewed **SB 95** and Committee discussed pertinent issues in the bill relating to joining the compact. Senator Goodwin moved to pass the bill, Senator Vratil seconded. Motion failed.

SB 172—regulating traffic; child passenger safety seats and safety belts

The Chair reviewed **SB 172**. Following discussion Senator Oleen moved to: delete Section 4 of the bill; retain the provisions in the bill pertinent to children under the age of 14 years; delete the provision in the bill making failure by adults to wear a seat belt a primary offense; and increase the fine for violating the seat belt law from \$10 to \$25, Senator Schmidt seconded Carried. Senator Oleen moved to pass the bill out as amended, Senator Donovan seconded. Carried.

SB 67— re: DUI; concerning penalties

Secretary of Transportation Carlson very briefly described serious funding considerations attached to the Committee's decision to remove the .02 requirement from **SB 67** when it was amended and passed out of Committee on February 13th. (attachment 1)

The meeting adjourned at 10:32 a.m. The next meeting is February 20, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-19-01

NAME	REPRESENTING
KETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Nancy Lindberg	AG
KEVIN GRAHAM	AG
Jean Bann	KA Defense Counsel
Nancy Bogina	KDOT
Dean Carlson	KDOT
Sheila S. Walker	KDOR - DMV
Rodney M. Spanell	Judicial Council
Ron Hein	Hein + Weir, Ch + S
Dag Wareham	KFCA/KGFA
Gron Bechard	KDMA
Michael White	Kearney Law Office
Joe Lieber	KS Co-op Council
SUE PETERSON	K-STATE
Tim Madden	Ks Dept of Corrections
Julie Numrick	Federico Consulting
Jamie Betz	Leadership Stevens County
ANDREW FISS	Leadership Stevens County
ASHLEY FISS	LEADERSHIP STEVENS CO.

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SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-19-01

NAME	REPRESENTING
Shirley Esbaugh	Headship Stevens Co
Genie M. Schroeder	Stevens County Library Leadership Stevens County
Jan Brack	KSC
Paul Jones	KSC
Jeff Bottsberg	Kansas Skills Assn
ROBERT JOHNSON	TO. CO. SHERIFF
KEN MENEILL	ABATE OF KS INC.
Todd Gayer	Stevens Co. Leadership Hugoton, KS
Keith Rome	Leadership Stevens Co, Hugoton
Rosalie Thoralsburgh	KDOT
Terry Heidner	KDOT
Saya Scott	State Child Death Review Board
Carolyn Ward	AG
Trista Bendles	Governor's Office
JIM KEATING	KANS. SAFE Kids COAL.
Kathy Panta	Judicial Branch
LARRY E. BLUTHARDT	KS DE
Jane Brown	Stevens Co. Leadership - Hugoton
Danelle Groth	Student

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-19-01

NAME	REPRESENTING
Judy Lynch	Stevens County Leadership
Jack Rouden	" "
Tara M. Fowler	" " "
Wendee Benning	" "
Carol Johnson	" "
Mary Gold	" "

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION

E. Dean Carlson
Secretary of Transportation

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Ph. (785) 296-3461 FAX (785) 296-1095
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Bill Graves
Governor

February 16, 2001

The Honorable John Vratil, Chairman
Senate Judiciary Committee
State Capitol Building, Room 120 South
Topeka, Kansas 66612

Dear Mr. Chairman:

It is my understanding that during Thursday's committee meeting members of the committee expressed a desire to see the full text of Title 23, U.S.C. 161. We used information taken directly from this statute in our information regarding SB 67. I am enclosing the entire language of the section so that committee members can see for themselves the consequences of removing the .02 requirement.

Because of the serious funding considerations attached to this decision, I plan on attending Monday morning's committee meeting so that I can be available for any questions that you may have. I look forward working with the committee to maintain this much-needed legislation.

Sincerely,

A handwritten signature in blue ink that reads "E. Dean Carlson".

E. Dean Carlson
Secretary of Transportation

Enclosure

cc: Members of Senate Judiciary Committee

*En-Filed
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§ 1208.6 Procedures affecting States in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance, will be advised of the funds expected to be withheld under § 1208.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is in noncompliance with the National Minimum Drinking Age based on their preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

(c) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's final determination of compliance or non-compliance, will receive notice of the funds being withheld under § 1208.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

[63 FR 31322, Aug. 18, 1998. Redesignated at 60 FR 66076, Dec. 21, 1995]

PART 1210—OPERATION OF MOTOR VEHICLES BY INTOXICATED MINORS

- Sec.
- 1210.1 Scope.
- 1210.2 Purpose.
- 1210.3 Definitions.
- 1210.4 Adoption of zero tolerance law.
- 1210.5 Certification requirements.
- 1210.6 Period of availability of withheld funds.
- 1210.7 Apportionment of withheld funds after compliance.
- 1210.8 Period of availability of subsequently apportioned funds.
- 1210.9 Effect of noncompliance.
- 1210.10 Procedures affecting states in non-compliance.

AUTHORITY: 23 U.S.C. 161; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 61 FR 55217, Oct. 25, 1996, unless otherwise noted.

§ 1210.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 161, which encourages States to enact and enforce zero tolerance laws.

§ 1210.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the withholding of Federal-aid highway funds for noncompliance with 23 U.S.C. 161.

§ 1210.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *BAC* means either blood or breath alcohol concentration.

(c) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

§ 1210.4 Adoption of zero tolerance law.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 1999 if the State does not meet the requirements of this part on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 2000 and any subsequent fiscal year if the State does not meet the requirements of this part on that date.

(c) A State meets the requirements of this section if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a BAC of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol. The law must:

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§ 1210.5

- (1) Apply to all individuals under the age of 21;
- (2) Set a BAC of not higher than 0.02 percent as the legal limit;
- (3) Make operating a motor vehicle by an individual under age 21 above the legal limit a per se offense;
- (4) Provide for primary enforcement; and
- (5) Provide that license suspensions or revocations are authorized for any violation of the State zero tolerance law.

§ 1210.5 Certification requirements.

(a) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, to avoid the withholding of funds in any fiscal year, beginning with FY 1999, the State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets the requirements of 23 U.S.C. 161, and this part.

(b) The certification shall contain:

(1) A copy of the State zero tolerance law, regulation, or binding policy directive implementing or interpreting such law or regulation, that conforms to 23 U.S.C. 161 and § 1210.4(c); and

(2) A statement by an appropriate State official, that the State has enacted and is enforcing a conforming zero tolerance law. The certifying statement shall be worded as follows:

I, (Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a zero tolerance law that conforms to the requirements of 23 U.S.C. 161 and 23 CFR 1210.4(c).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications he or she receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the

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State's zero tolerance legislation changes.

§ 1210.6 Period of availability of withheld funds.

(a) Funds withheld under § 1210.4 from apportionment to any State on or before September 30, 2000, will remain available for apportionment until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1210.4 from apportionment to any State after September 30, 2000 will not be available for apportionment to the State.

§ 1210.7 Apportionment of withheld funds after compliance.

Funds withheld from a State from apportionment under § 1210.4, which remain available for apportionment under § 1210.6(a), will be made available to the State if it conforms to the requirements of §§ 1210.4 and 1210.5 before the last day of the period of availability as defined in § 1210.6(a).

§ 1210.8 Period of availability of subsequently apportioned funds.

Funds apportioned pursuant to § 1210.7 will remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are apportioned.

§ 1210.9 Effect of noncompliance.

If a State has not met the requirements of 23 U.S.C. 161 and this part at the end of the period for which funds withheld under § 1210.4 are available for apportionment to a State under § 1210.6, then such funds shall lapse.

§ 1210.10 Procedures affecting states in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's preliminary review of its law, will be advised of the funds expected to be withheld under § 1210.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance

with 23 U.S.C. 161 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1210.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

PART 1215—USE OF SAFETY BELTS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES

Sec.	
1215.1	Scope.
1215.2	Purpose.
1215.3	Definitions.
1215.4	Compliance criteria.
1215.5	Exemptions.
1215.6	Review and notification of compliance status.
1215.7	Transfer of funds.
1215.8	Use of transferred funds.

AUTHORITY: 23 U.S.C. 153; Secs. 205(e) and 355, Pub. L. 104-59; delegations of authority at 49 CFR 1.49 and 1.50.

SOURCE: 58 FR 44759, Aug. 25, 1993, unless otherwise noted.

§ 1215.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 153, as amended, and Section 355 of the National Highway System Designation Act of 1995, for determining compliance with the requirement that States not having safety belt use laws be subject to a transfer of Federal-aid highway apportionments under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the highway safety program apportionment under 23 U.S.C. 402.

[61 FR 28749, June 6, 1996]

§ 1215.2 Purpose.

This part clarifies the provisions which a State must incorporate into

its safety belt law to prevent the transfer of a portion of its Federal-aid highway funds to the section 402 highway safety program apportionment, describes notification and transfer procedures, establishes parameters for the use of transferred funds, and provides alternate compliance criteria for New Hampshire and Maine.

[61 FR 28749, June 6, 1996]

§ 1215.3 Definitions.

As used in this part:

FHWA means the Federal Highway Administration.

Motor vehicle means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

NHTSA means the National Highway Traffic Safety Administration.

Passenger vehicle means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

Safety belt means, with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

Secretary means the Secretary of Transportation.

[58 FR 44759, Aug. 25, 1993, as amended at 61 FR 28749, June 6, 1996]

§ 1215.4 Compliance criteria.

(a) Except as provided in paragraphs (c) or (d) of this section, in order to avoid the transfer or reservation (as applicable) specified in § 1215.7, a State must have and continue in effect at all times during the fiscal year a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child