

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 4:51 p.m. on March 21, 2001 in Room 123-S of the Capitol.

All members were present except: Senator O'Connor (excused)

Committee staff present:

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

Conferees appearing before the committee:

Representative Robert Tomlinson
Representative Sue Storn

Others attending: see attached list

HB 2176—unlawful sexual relations

Representatives Tomlinson and Storm explained the purpose of a House amendment to **HB 2176**, a bill which would expand the crime of unlawful sexual relations to include SRS employees. The amendment includes teachers who engage in prohibited sexual activity with a 16 or 17 year old student enrolled in the school where the offender teaches. Representative Tomlinson indicated that the House amendment would cover all teachers and administrators who are certified and working in accredited schools. He stated the intention was to obtain authority to revoke the license of a teacher or administrator involved in prohibited sexual activity. Representative Storm presented a brief history of the bill. (no attachment) Lengthy discussion followed about possible floor amendments since this bill has passed out of Committee without the House amendment.

HB 2230—concerning suspension or restriction of driver's license

Research Staffperson, Mike Heim, presented an overview of **HB 2230**. He stated this bill "contains new legislation and amendments to driver's license related statutes involving driving and the use of alcohol as well as the major overhaul of the State's implied consent law." (attachment 1) Discussion followed. Since another piece of legislation, **SB 56** which passed the Senate, covers the provisions in Section I of this bill Senator Donovan moved to delete Section I and it's related technical provisions from HB 2230, Senator Pugh seconded. Carried. Committee discussed at length the administrative procedures in Section 2 of the bill with several members expressing concern regarding the lack of due process. Senator Donovan made a motion to limit the witnesses that could testify at the administrative hearing to the licensee and one competent witness who was present during the incident giving rise to the issuance of the citation and a law enforcement officer, Senator Umbarger seconded. Carried.

Committee discussed Sections 3,4,5, and 6 of the bill. Following discussion Senator Goodwin moved to delete Sections 4,5,and 6, Senator Gilstrap seconded. Carried.

The meeting adjourned at 5:53 p.m. The next scheduled meeting is March 22, 2001.

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MEMORANDUM

**To: Mr. Duane Goossen, Director
Division of Budget**

From: Kansas Department of Revenue

Date: 02/09/2001

**Subject: House Bill 2230
Introduced as a House Bill**

Brief of Bill

House Bill 2230, as introduced, contains new legislation and numerous amendments to driver's license related statutes involving driving and the use of alcohol as well as a major overhaul of the State's implied consent law. This bill contains a number of elements first introduced during the 2000 Legislative Session in Senate Bill 429 as well as amendments proposed in two KDOR sponsored bills, Senate Bill 56 and Senate Bill 67, also relating to driver's license issues.

Due to the complexity of this piece of legislation, please refer to the analysis contained in the "Legal Impact" section of this fiscal note for particulars.

The effective date of this bill would be upon publication in the Kansas Register.

Fiscal Impact

Passage of this bill is not expected to affect State highway revenues.

Administrative Impact

The Driver Control Bureau of the Division of Vehicles estimates that 1 additional Office Specialist (\$32,714) would be required if this bill is enacted. The new sanction specified in section 9, K.S.A. 8-1014(b)(2), requiring restriction to driving with an ignition interlock device on a person's second or subsequent occurrence after the one-year suspension would result in additional administrative work. There would be a one-time effort to create a new letter in the drivers' license system. Administratively, the Division would have to process and answer inquiries for an estimated 10,000-11,000 actions annually.

This one position will also require a total of fiscal year 2001 One-Time Operating Expense expenditures of \$5,500 and fiscal year 2001 Annual Other Operating Expenditures of \$820. Note: the One-Time expenses include PCs, Herman Miller workstations, chairs, electrical outlets, telephones and installation of cables. The annual expense includes the annual fees for a

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telephone line and data port connection.

Administrative Problems and Comments

Taxpayer/Customer Impact

Legal Impact

This bill is a major overhaul of the implied consent law and also contains amendments to other statutes involving driving and the use of alcohol. Legal challenges will undoubtedly result from the comprehensive changes in this bill. The bill also duplicates Senate Bill 56, which is legislation suggested by the Kansas Supreme Court in *State v. Bowie*.

New Section 1 of this bill includes some of the language in Senate Bill 56, which was drafted in response to the Kansas Supreme Court decision in *State v. Bowie*. Sec. 4 contains the amendment to K.S.A. 2000 Supp. 8-258, which is contained in Senate Bill 56. Sec. 5 contains the amendment to K.S.A. 2000 Supp. 8-262, which is contained in Senate Bill 56. Sec. 6 contains the amendment to K.S.A. 8-285, which is contained in Senate Bill 56. There is no impediment to the changes in these three changes, which are necessary in response to the Supreme Court's decision in *Bowie*, and were, in fact, suggested by the Court in its decision. The only difficulty with the inclusion of these provisions in this bill is the temptation to merely fold Senate Bill 56 into this bill. Sections 1, 4, 5 and 6 are necessary in response to the *Bowie* decision whether or not the other provisions in this bill are enacted. It would be preferable if the changes in those sections were dealt with separately in Senate Bill 56 rather than being included in this bill which involves several other matters. There is no overlap between sections 1, 4, 5 and 6 and the rest of this bill. Deferring consideration of these matters to Senate Bill 56 would expedite consideration of the needed legislative response to *Bowie* and prevent that consideration from being stalled or derailed by the legislature's consideration of the comprehensive changes in the implied consent law contained in this bill.

New Section 2 replaces a portion of present K.S.A. 2000 Supp. 8-1002 to make substantial changes in the procedures used for administrative hearings held under the Kansas implied consent law, and also affects the procedures used in the judicial review of an order from an administrative hearing. The deletion of language in present K.S.A. 2000 Supp. 8-1002 is accomplished in Section 8. Some of the changes may present legal problems at some point.

a. Sec.2(d) gives the division of vehicles the discretion to set conduct and administrative hearing by telephone or video conference call. If this is not done by agreement, some sort of due process challenge may be claimed. With the availability of *de novo* review in district court it is unlikely that such a challenge would prevail, but some litigation may result from this provision. Similar hearings in some other states are conducted by telephone or video conference.

b. Sec.2(e) limits the extent of discovery prior to the administrative hearing. That paragraph also requires that the licensee be provided the documents described in that paragraph. Some sort of challenge may be made to this provision as well. Some other states have enacted similar provisions. Such provisions have been fairly recent and not much case law has resulted at this point.

c. Sec.2(f) allows licensees to obtain copies of video or audio tapes upon payment of "a reasonable fee. . . not to exceed \$25 per tape." A challenge to this provision would be doubtful.

d. Sec.2(g) limits the witnesses which can testify at the administrative hearing and also sets out a restriction upon examination of certifying officers. This provision could, in some circumstances, lead to a due process challenge.

e. Sec.2(h) sets out the issues to be addressed at hearings. The only changes from present law involve breath test failures. The wording is changed to reflect Kansas appellate decisions.

f. Sec.2(l) sets out limitations on evidence which can be considered at the administrative hearing. The main change from present law is that it allows the use of affidavits from other witnesses and the use of documents to show the evidence of a medical condition which prevents the completion of a test.

g. Sec.2(o) sets out rules affecting the filing of a petition for review in district court. The main change in procedure in this paragraph is that the temporary license is automatically extended upon service of a copy of the petition for review upon the Secretary of Revenue. Under present law, the licensee must file a motion with the court to be able to continue driving. In almost all cases, a stay is granted either with or without restrictions. The driving privileges automatically provided in Sec.2(o) can, however, be restricted or suspended as a result of some other action, pursuant to Sec.2(r) or by the court in the review action, pursuant to Sec.2(s), either by motion of a party, or on the court's own motion. The effect of this change is to allow what usually happens in most cases under present law to take place automatically, while still allowing an opportunity to restrict or suspend driving privileges where appropriate.

h. Sec.2(q) States the applicable burden of proof upon appeal to district court (which is not a change from present law) and also provides that evidentiary rules are to be applied to evidence submitted before the district court even if the same evidence had been admitted at the administrative hearing. This paragraph also applies the decision made by the Kansas Court of Appeals in *Zorn v. Kansas Dept. of Revenue*. Additional evidence on a preserved issue can be presented at the district court level.

i. Sec.2(t) merely incorporates Kansas case law which provides that a determination in an associated criminal matter does not have collateral estoppel effect upon an administrative proceeding or appeal therefrom.

j. Sec. 7 includes changes in the notice provisions in K.S.A. 2000 Supp. 8-1001(f) which reflect the changes made in New Section 2.

k. Sec. 8 amends K.S.A. 8-1002 to delete the provisions which were replaced by New Section 2.

l. Sec. 9 amends K.S.A. 2000 Supp. 8-1014 to eliminate the reference to diversion in K.S.A. 2000 Supp. 8-1014(c)(2), as does Senate Bill 67. Sec. 9 also adds a provision requiring that the person be restricted to only driving a vehicle with an ignition interlock device, after a test failure or alcohol or drug-related conviction which is a second or subsequent occurrence. There is a legal difficulty with this provision in that it provides no ending date for the ignition interlock restriction or any method to end an otherwise indefinite period of restriction.

m. Sec. 10 amends K.S.A. 2000 Supp. 8-1015 to eliminate the present ignition interlock provision in K.S.A. 2000 Supp. 8-1015(c) and replace it with a provision requiring a one-year ignition interlock restriction after the suspension required in K.S.A. 8-1014(b)(2). There is no legal problem with this change and it does, in fact replace a problematic provision with one which can be more easily administered.

n. Sec. 11 amends K.S.A. 2000 Supp. 8-1016 to add more specific language regarding KDOR's authority to regulate vendors of ignition interlock devices.

o. Sec. 12 amends K.S.A. 2000 Supp. 8-1567a. Under present law, the license suspension required under that statute is one year. This bill would amend K.S.A. 2000 Supp. 8-1567a to provide a license suspension of "at least 60 days but not more than one year. This open-ended suspension length provision could present some legal problems for the Department. Such a provision could lead to inconsistency in application of the suspension. Such inconsistency could then lead to claims based upon equal protection or arbitrariness. A provision requiring a certain period would be easier to administer and would eliminate this defect.

p. Sec. 13 amends K.S.A. 41-727 to allow a court to require the Division of Vehicles to suspend driving privileges of offenders under that statute for up to 30 days. Sec. 3 includes an amendment to K.S.A. 2000 Supp. 8-255 which states that the division is required to suspend driving privileges as the result of its receipt of an order under K.S.A. 41-727, as amended in Sec. 13. A legal difficulty may arise, however, in that the Division would have no discretion to act, when ordered to do so by a court, but an administrative hearing may still be requested as to the suspension action. Whether K.S.A. 8-255, as amended, would allow a hearing is unclear. Further clarification of whether a right to hearing on the suspension exists would be helpful.

Approved By:



Stephen S. Richards
Secretary of Revenue