

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Les Donovan at 8:30 a.m. on February 7, 2001 in Room 245-N of the Capitol.

All members were present except: Senator Pugh

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Sheila Walker, DMV, KDOR
Michael Byington, Envision

Others attending: See attached list.

SB 55: Re drivers' licenses; concerning medical & vision requirements

Sheila Walker, Director of Vehicles, Kansas Department of Revenue appeared in support of **SB 55**. The purpose of this Bill is to more adequately define medical and vision standards required to hold a Kansas driver's license. Ms. Walker wishes to recognize new technology and a wide variety of vision-enhancing lenses now available to the visually impaired. The Bill also addresses medical requirements relating to neurological impairments (Attachment 1). She provided historical information regarding the current legislation dealing with these issues and advised this proposed legislation is a "clean up" measure.

Michael Byington, Director Envision Governmental Affairs Office, proposed additional "clean up" language be added to **SB 55**. This language relates to removing extra testing requirement when a license renewal applicant has an observed disability (Attachment 2).

Members questioned Mr. Byington re stages of deterioration, differentiation between birth defects, later life onsets of disabilities, etc. He advised that those who have been born with disabilities, as a rule receive more training in utilization of technology than those with late life onset and birth disabilities usually remain stable over longer periods of time. Staff Revisor advised language needs to be broadened if it is to be expanded to all disabilities.

The idea was expressed that it is the responsibility of this Committee to decide whether or not it is better for us as a state to eliminate the additional driver's test for the few who would be inconvenienced by it, and thus possibly grant licenses to people who should not be driving; or to err on the side of public safety and require such testing. We do not wish to add burdens to the disabled, but we must do all possible to provide for public safety. Ms. Walker agreed this is a public safety issue. She stated her Division follows ADA guidelines which they have relied on for some years that supports appropriate testing. By current statute, visual acuity must be at least 20/60 or better in one eye- with or without corrective lenses- anything worse automatically requires a driving test.

It was requested that Staff obtain some representative case law citations on this issue. It was also suggested that the Division of Vehicles should obtain the most recent ADA guidelines. Hearing closed on **SB 55**. It will be scheduled for possible final action at a later date.

Approval of minutes

Senator Salmans moved to approve minutes of the February 6, 2001 meeting. Senator Schodorf seconded the motion. Motion carried.

The meeting adjourned at 9:15 a.m.

The next meeting is scheduled for February 8, 2001.

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Division of Vehicles

TESTIMONY

TO: Senate Transportation Committee Chair, Les Donovan
Members of the Senate Transportation Committee

FROM: Sheila J. Walker, Director of Vehicles *Sheila J. Walker*

DATE: February 7, 2001

RE: Senate Bill 055

Chairman Donovan, members of the Committee, I am Sheila Walker, Director of the Kansas Division of Vehicles. I want to thank you for the opportunity to appear today in support of Senate Bill 055.

If passed, Senate Bill 055 will more adequately define the medical and vision standards required to hold a Kansas driver's license. The visual acuity standard will be defined as a reading obtained through the standard or conventional spectacle lenses, and the existing six month seizure free period will be coupled with a physician's verification that the condition is controlled.

VISION REQUIREMENTS

Our current vision statute (K.S.A. 8-295) was implemented in 1989. It fails to recognize the variety of vision-enhancing lenses now available to persons with visual needs. Therefore, when a person reports to a Driver's License Examination Station for vision testing, or when a vision specialist reports visual acuity readings to the Division, it becomes confusing as to which type of lens should be used to report the best corrected visual acuity.

In the year 2000, Kansas had 5,580 drivers (out of 1.9 million) who reported to the Division on an annual basis, due to a visual condition. Of those reporting, 5,133 (or 92%) were designated progressive impairments, such as cataracts or glaucoma, and 74 reported the use of special lenses.

The act of driving is accomplished mainly through the use of the standard or conventional lens. Therefore, the statute should reflect that fact. Our proposed change will reduce uncertainty for eye specialists, examiners, and driver's license applicants reporting to the Division.

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MEDICAL REQUIREMENTS

In the year 2000, Kansas had 1,591 drivers (again, out of 1.9 million) who reported to the Division on an annual basis, due to a medical condition. Of those reporting, 877 (or 55%) were designated neurological impairments, such as seizures or brain injuries.

Prior to 1992, Kansas law required that a person with a seizure disorder remain seizure free for one full year before driving privileges could be reinstated. In 1992, the law was changed to allow persons who experience seizures to obtain driving privileges once they had remained seizure free for six months, or if his or her physician stated the condition was controlled.

Current law conceivably allows a person who experiences a seizure today to drive tomorrow, as long as his or her physician states the condition is controlled.

Although the law also allows the Director of Vehicles to require appropriate testing and to apply needed restrictions, it currently does not technically restrict a person from driving with a known seizure disorder, as long as his or her physician will make a statement of control to the Division.

In addition, physicians are not held liable for providing such information. K.S.A. 8-247 says "Any physician who makes such report shall not be liable for any damages which may be attributable to the issuance or renewal of a driver's license and subsequent operation of a motor vehicle by the licensee."

With two recent, highly-publicized fatality accidents related to persons experiencing medical problems while driving, it is important for the state to consider amending the law to provide for a more adequate level of safety. We recommend that applicants be both seizure free for six months and have a physician's written recommendation that the applicant's seizure condition is controlled.

We respectfully ask that you consider clarifying that the director or the medical advisory board may make an exception in cases where seizure disorders are *not* controlled (see attached balloon).

Thank you, again, for allowing me to appear in support of Senate Bill 055. The Division would appreciate favorable consideration by the committee.

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1 the completed examination to the division.

2 (4) The division shall determine whether the results of the written
3 examination and the eyesight reported are sufficient for renewal of the
4 license and, if the results of either or both of the examinations are insuf-
5 ficient, the division shall notify the applicant of such fact and return the
6 license fee. In determining the sufficiency of an applicant's eyesight, the
7 division may request an advisory opinion of the medical advisory board,
8 which is hereby authorized to render such opinions.

9 (5) An applicant who is denied a license under this subsection (e)
10 may reapply for renewal of such person's driver's license, except that if
11 such application is not made within 90 days of the date the division sent
12 notice to the applicant that the license would not be renewed, the appli-
13 cant shall proceed as if applying for an original driver's license. If the
14 applicant has been denied renewal of such person's driver's license be-
15 cause such applicant failed to pass the written examination, the applicant
16 shall pay an examination fee of \$1.50 to take the test again.

17 (6) When the division has good cause to believe that an applicant for
18 renewal of a driver's license is incompetent or otherwise not qualified to
19 operate a motor vehicle in accord with the public safety and welfare, the
20 division may require such applicant to submit to such additional exami-
21 nations as are necessary to determine that the applicant is qualified to
22 receive the license applied for. Subject to paragraph (7) of this subsection,
23 in so evaluating such qualifications, the division may request an advisory
24 opinion of the medical advisory board which is hereby authorized to ren-
25 der such opinions in addition to its duties prescribed by subsection (b) of
26 K.S.A. 8-255b, and amendments thereto. Any such applicant who is de-
27 nied the renewal of such a driver's license because of a mental or physical
28 disability shall be afforded a hearing in the manner prescribed by sub-
29 section (c) of K.S.A. 8-255, and amendments thereto.

30 (7) Seizure disorders which are controlled shall not be considered a
31 disability. In ~~appropriate cases to which this paragraph applies~~, the di-
32 rector or the medical advisory board may recommend that such person
33 be issued a driver's license to drive class C or M vehicles and restricted
34 to operating such vehicles as the division determines to be appropriate
35 to assure the safe operation of a motor vehicle by the licensee. Restricted
36 licenses issued pursuant to this paragraph shall be subject to suspension
37 or revocation. For the purpose of this paragraph, seizure disorders which
38 are controlled means that the licensee has not sustained a seizure involv-
39 ing a loss or alteration of consciousness in the waking state within six
40 months preceding the application or renewal of a driver's license or and
41 whenever a person licensed to practice medicine and surgery in this state
42 makes a written report to the division stating that the licensee's seizures
43 are controlled. *The report shall be based on an examination of the appli-*

[cases where such seizure disorders are not controlled]

Choices & resources for people who are blind or low vision



Envision®

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February 7, 2000

TO: Senate Transportation Committee

RE: Senate Bill 55

The language added to this bill is quite clearly a clean-up. It should have been there all along.

There is another item, however, which I believe also fits the category of "clean up." It can be handled by the following minor amendment.

In line 22 of page three the following shall be added after the word, "for."

"The observed existence of a disability or condition effecting eyesight shall not be considered good cause to believe that an applicant for renewal of a driver's license is incompetent or otherwise not qualified to operate a motor vehicle in accord with the public safety and welfare, provided that, the applicant provides a report by a physician licensed to practice medicine and surgery, or, in the case of eyesight, a licensed optometrist, documenting that the disabling condition or its functional limitations have not worsened or changed during the period sense the applicant's most recent renewal or issuance of a driver's license. The report shall be based on an examination of the applicant not more than three months prior to the date the report is submitted. Any physician who makes such a report shall not be liable for any damages which may be attributable to the issuance or renewal of a driver's license and

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subsequent operation of a motor vehicle by the licensee."

Before I explain the reasons this amendment is needed, please allow me to take a point of personal privilege to say that I am not requesting this legislative change for personal reasons. Yes, I am a person who has a disability which affects my vision, and in a few limited and familiar areas, I do legally drive. I use very specialized and advanced adaptive equipment to do so. This was carefully prescribed by a low vision specialist in the field of optometry, and I took extended and specialized training to learn to effectively use the equipment. I am sure my driving skills have been tested, evaluated and analyzed more extensively and frequently than any of yours. This is because, over the past few renewals, every time I show up to renew my license, the examiner takes a look at my funny looking glasses, and decides there is good cause for additional testing. I thus get the pleasure of taking a behind the wheel test as well as the standard prescribed renewal tests. I get to do this even though my eye condition is a birth defect, and has not appreciably changed in 43 years. I am now 46 and my last eye surgery was at the age of three. The acuity and equipment I use in driving has not appreciably changed subsequent to my original licensure in 1972. I thus now have 28 years of driving experience with this equipment, and yet, an examiner takes a look at me, decides I look funny, and I get the joy of the additional testing.

Now I said that this legislative change was not being requested by me personally, and that is quite true. Even though taking the additional behind the wheel testing is a stressful experience and ranks right up there with root canals on the scale of great experiences, it quite frankly is not as stressful as explaining all of this to all of you. If I were the only one in the State to be experiencing this type of unfair and un-necessary testing, I would probably just go ahead and do it without complaint. After all, I have always managed to pass the thing, so it is easier to just take it again than rock the boat. Unfortunately, I am not the only one who experiences extra and unnecessary testing simply because I have a disability. In the past year I have received complaints from three other drivers who have exactly the same situation as I do. They use specialized equipment to drive. They have experienced no change or worsening in their disability or functional limitations, or in the equipment they use to drive subsequent to their last renewal, but nonetheless, just because they do not quite look like everybody else when they walk into the renewal station, they get the pleasure of the additional testing. These other people with disabilities who

have contacted me are not as willing to just accept extra testing and experience the discrimination without complaining as I am. They do not believe that there is good cause to test them.

I believe that they are correct in this view, and what is more, I absolutely know that the law was already changed once in an attempt to stop this practice. This is why I refer to my proposed amendment as "clean up legislation." The effort and intent was already made to correct the problem. It just has not been understood and thus has not been successful. Back in the mid 1980s, then Representative Vic Miller introduced changes to these same statutes because a number of his constituents who had disabilities had contacted him with the same complaint. "They always make me take a behind the wheel test when I renew my driver's license even though my disability has not changed, my driving record is not bad, and there is no good reason why they should feel my driving capability has changed sense the last time I renewed my license." At the time Representative Miller receive these complaints, the wording in the statutes was to the effect that "When it appears to an examiner that the person should take additional testing, or when the division has good cause to believe that an applicant"

Representative Miller's legislation, which was overwhelmingly adopted by both houses and signed by the governor, simply removed the part about "when it appears to the examiner." He left the good cause part in because he believed that a disability which has not changed subsequent to the last renewal or issuance of a driver's license would not constitute good cause for additional testing.

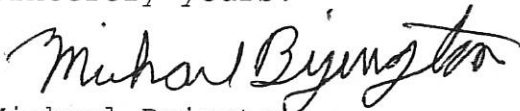
My amendment, though requiring possibly one additional piece of documentation to be brought from the physician or medical professional, would once and for all insure implementation of the intent of Representative Miller's legislation adopted nearly 15 years ago. It is perhaps not the most Earth shattering thing you will do this session, but it is high time to get it done.

There is, however, another compelling reason that action on this issue needs to be taken, a reason which was not present back when the Miller legislation was adopted. The current practices of the State of Kansas violate provisions in Title II of the American's with Disabilities Act. These provisions establish that it is unlawful to subject a disabled person to a higher or more rigorous level of testing for a license or qualification than is applied to non-disabled persons seeking the same license or qualification. To

make someone take additional testing as compared to other applicants simply because they appear to have, or are documented to have, a disability quite clearly is a violation of this federal statute. I once discussed this issue with Kansas Department of Revenue officials, and I was told that if I did not like the way they were doing business, I could file the complaint and they would see me in court. (I think this happened before the emergence of the kinder, gentler, more customer oriented Department of Revenue which the press tells us we have today.) Needless to say, as I personally have felt it is just easier to take the extra testing than to mess with the slow and cumbersome ADA complaint process, I dropped the issue and did not file the complaint. One of these days, however, one of those other steamed up disabled drivers, who so far have just been complaining to Michael Byington, are going to get out that paperwork that Byington character gave them and file the dadblasted complaint. When this happens, after considerable time and inconvenience, and based on current case law, I predict the State of Kansas would lose. It would make more sense just to go ahead and fix the State law as Representative Miller intended so long ago and save everyone the time trouble and inconvenience.

Thanks for listening. If you have questions please contact me. My contact information is at the top of this letterhead.

Sincerely yours:



Michael Byington
Director of Governmental Affairs/