

Approved

Date: 3/7/02

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:36 a.m. on March 6, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Senator Barbara Allen  
Senator Rip Gooch  
Charles Simmons, Secretary, Department of Corrections (DOC)  
Mike Murray, Sprint, Direct Marketing Association (DMA)

Others attending: see attached list

The minutes of the March 5<sup>th</sup>, 2002 meeting were approved on a motion by Senator O'Connor, seconded by Senator Adkins. Carried.

### **SB 559—concerning drivers licenses and other identification cards**

Senator Allen reviewed **SB 559** and the balloon amendments.(attachment 1) Following discussion Senator Adkins moved to amend the bill, Senator Schmidt seconded. Carried. Following further discussion Senator Adkins moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried with Senator Pugh requesting his nay vote be recorded.

### **SB 339—concerning persons in custody of DOC; re: early medical release**

Secretary Simmons presented a comparison of **SB 339** provisions with those of the DOC's alternative proposal.(attachment 2) Following discussion Senator Oleen moved to offer a substitute bill with the amendment proposed by the DOC, Senator O'Connor seconded. Carried. At the request of the Chair, Senator Gooch expressed his "misgivings about the way the bill will be moved forward." He stated that while he felt changes to the original bill were good, he believes the incarcerated person should be able to make application for a medical release.(no attachment) Following further discussion, Senator Haley moved to recommend the bill favorably for passage, Senator Goodwin seconded. Carried.

### **SB 296—consumer protection; concerning unsolicited consumer telephone calls**

### **SB 538—no-call database to prohibit unsolicited consumer telephone calls and prohibited acts related thereto**

Senator Adkins presented a review of **SB 296** and **SB 538** comparing the differences and similarities in each.(no attachment) Conferee Murray reviewed the DMA's amendments to **SB 296** which he stated addresses concerns expressed earlier by opponents of the bill.(attachment 3) Following discussion, Senator Donovan moved to amend **SB 296** as recommended by the DMA, Senator O'Connor seconded. Carried. Following further discussion, Senator Adkins moved to amend **SB 538** into **SB 296**, Senator Goodwin seconded. Carried on a vote of 5-4. Following further discussion, Senator Adkins moved to report **Sub for SB 296** out favorably for passage, Senator Goodwin seconded. Carried.

The meeting adjourned at 10:31 a.m. The next meeting is March 7, 2002.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-6-02

NAME	REPRESENTING
Jean Barber	KADC
Joe Herold	KSC
Marilyn Scafe	KPB
Paul J. M. S.	KSC
Jim Donnelly	Verizon Wireless
Diane Albert	KDOR - DMV
MicLele Gerber	St. John's High School - Beloit
Brady Colp	Farm Bureau Clay County
Jessica Smith	Farm Bureau
Penny LaFord	Farm Bureau
Mike Barry	Farm Bureau
Carol Cox	Ke. Dept on Aging
Connie Burns	Whitney B. Dameron, PA
Kathy Porter	Judicial Branch
Spiky Jacquist	LKM
Larry Olson	Ke Bankus A&M
Marlee Carpenter	KCEI
Tom DAY	KCC
Mike Taylor	City of Wichita

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-6-02

NAME	REPRESENTING
KETCH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Charles Simmons	Dept. of Corrections
GARY DAVENPORT	Ks MOTOR CARRIERS ASSN
Stew Kuchan	Dept of Revenue
Doug Smirn	Debut of Darr
Mathew Pflammen	Farm Bureau
Calvin Kypn	Farm Bureau Capital experience
Cayla Witt	Farm Bureau Capital Experience
JERRY M. LEONARD	FARM BUREAU CAPITAL EXPERIENCE
KIRA L. MOORE	FARM BUREAU
J Nicholas Sterner	Farm Bureau
Tracy L. Lawler	Farm Bureau
Hameda Hamletta	Jo. Co. Farm Bureau
John Moss	Jo Co. Farm Bureau
Connie Ulmer	SRS
Bud Burke	Prison Health Services
Lynara South	JJA
Ernie Poggie	AA R P
Elizabeth Schlicher	Federico Consulting



11/10/02  
1009/02  
1/11/03

**SENATE BILL No. 559**

By Committee on Judiciary

Proposed Amendments to SB No. 559

2-11

9 AN ACT concerning drivers licenses and other identification cards; re-  
10 lating to application requirements; fees; amending K.S.A. 8-240 and  
11 8-1324 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 8-240 is hereby amended to read as follows: 8-240.

15 (a) Every application for an instruction permit shall be made upon a form  
16 furnished by the division of vehicles and accompanied by a fee of ~~2~~ \$4  
17 for class A, B, C or M and ~~5~~ \$10 for all commercial classes. Every other  
18 application shall be made upon a form furnished by the division and  
19 accompanied by an examination fee of ~~3~~ \$6, unless a different fee is  
20 required by K.S.A. 8-241, and amendments thereto, and by the proper  
21 fee for the license for which the application is made. If the applicant is  
22 not required to take an examination the examination fee shall not be  
23 required. The examination shall consist of three tests, as follows: (1) Vi-  
24 sion; (2) written; and (3) driving. If the applicant fails the vision test, the  
25 applicant may have correction of vision made and take the vision test again  
26 without any additional fee. If an applicant fails the written test, the ap-  
27 plicant may take such test again upon the payment of an additional ex-  
28 amination fee of ~~1.50~~ \$3. If an applicant fails the driving test, the appli-  
29 cant may take such test again upon the payment of an additional  
30 examination fee of ~~1.50~~ \$3. If an applicant fails to pass all three of the  
31 tests within a period of six months from the date of original application  
32 and desires to take additional tests, the applicant shall file an application  
33 for reexamination upon a form furnished by the division, which shall be  
34 accompanied by a reexamination fee of ~~3~~ \$6, except that any applicant  
35 who fails to pass the written or driving portion of an examination four  
36 times within a six-month period, shall be required to wait a period of six  
37 months from the date of the last failed examination before additional  
38 examinations may be given. Upon the filing of such application and the  
39 payment of such reexamination fee, the applicant shall be entitled to  
40 reexamination in like manner and subject to the additional fees and time  
41 limitation as provided for examination on an original application. If the  
42 applicant passes the reexamination, the applicant shall be issued the clas-  
43 sified driver's license for which the applicant originally applied, which

1 license shall be issued to expire as if the applicant had passed the original  
2 examination.

and on and after July 1, 2003, a thumbprint or  
other biometric identifier,

3 (b) (1) For the purposes of obtaining any driver's license or *instruc-*  
4 *tion permit*, an applicant shall submit, with the application, proof of age  
5 or proof of identity, or both, as the division may require. *An applicant*  
6 *shall submit the applicant's social security number, which shall remain*  
7 *confidential and shall not be placed on the applicant's driver's license or*  
8 *instruction permit unless such applicant has waived confidentiality. Li-*  
9 *censes issued as a result of such application, at the applicant's option, may*  
10 *contain an identification number, which shall be the applicant's social*  
11 *security number. If the applicant does not have a social security number,*  
12 *the applicant shall submit a sworn statement, with the application, stating*  
13 *that the applicant does not have a social security number. If the applicant*  
14 *is applying for an instruction permit or driver's license and the applicant*  
15 *otherwise meets the requirements for such license, the applicant shall re-*  
16 *ceive a temporary license or instruction permit until the division verifies*  
17 *all facts relative to such applicant's right to receive an instruction permit*  
18 *or driver's license, including the age, identity, social security number and*  
19 *residency of the applicant.*

20 (2) An applicant who submits proof of age or of identity issued by an  
21 entity other than a state or the United States shall also submit such proof  
22 as the division may require that the applicant is lawfully present in the  
23 United States.

24 (3) The division shall not issue any driver's license to any person who  
25 is not lawfully present in the United States.

26 (4) The division shall not issue any driver's license to any person who  
27 is not a resident of the state of Kansas, except as provided in K.S.A. 8-  
28 2,148, and amendments thereto.

29 (5) The parent or guardian of an applicant under 16 years of age shall  
30 sign the application for any driver's license submitted by such applicant.

31 (c) Every application shall state the name, date of birth, sex and res-  
32 idence address of the applicant, and briefly describe the applicant, and  
33 shall state whether the applicant has ~~heretofore~~ been licensed as a driver  
34 *prior to such application*, and, if so, when and by what state or country;  
35 ~~and~~ *Such application shall state* whether any such license has ever been  
36 suspended or revoked, or whether an application has ever been refused,  
37 and, if so, the date of and reason for such suspension, revocation or re-  
38 fusals. In addition to the above criteria, applications for commercial driv-  
39 ers' licenses and instruction permits for commercial licenses must include  
40 the following: The applicant's social security number; the person's sig-  
41 nature; the person's color photograph; certifications, including those re-  
42 quired by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to  
43 release driving record information; and, any other information required

by the division.

(d) When an application is received from a person previously licensed in another jurisdiction, the division shall request a copy of the driver's record from the other jurisdiction. When received, the driver's record shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(e) When the division receives a request for a driver's record from another licensing jurisdiction the record shall be forwarded without charge.

(f) A fee shall be charged as follows:

(1) For a class C driver's license issued to a person at least 21 years of age, but less than 65 years of age, ~~\$12~~ \$24;

(2) for a class C driver's license issued to a person less than 21 years of age or 65 years of age or older, or a farm permit, ~~\$8~~ \$16;

(3) for a class M driver's license issued to a person at least 21 years of age, but less than 65 years of age, ~~\$6.50~~ \$13;

(4) for a class M driver's license issued to a person less than 21 years of age or 65 years of age or older, ~~\$5~~ \$10;

(5) for a class A or B driver's license issued to a person who is at least 21 years of age, but less than 65 years of age, ~~\$18~~ \$36;

(6) for a class A or B driver's license issued to a person less than 21 years of age or 65 years of age or older, ~~\$12~~ \$24; or

(7) for any class of commercial driver's license, ~~\$14~~ \$28.

A fee of ~~\$10~~ \$20 shall be charged for each commercial driver's license endorsement, except air brake endorsements which shall have no charge.

If one fails to make an original application or renewal application for a driver's license within the time required by law, or fails to make application within 60 days after becoming a resident of Kansas, a penalty of ~~\$1~~ \$2 shall be added to the fee charged for the driver's license.

Sec. 2. K.S.A. 8-1324 is hereby amended to read as follows: 8-1324.

(a) Any resident may make application to the division of vehicles and be issued one identification card, certified by the registrant and attested by the division as to true name, correct age, photograph and other identifying data as the division may require. ~~Every application for an identification card shall be signed and verified by the applicant and shall contain such bona fide documentary evidence of the age and identity of such applicant as the division may require.~~

(b) An applicant who submits documentary evidence under subsection (a), issued by an entity other than a state or the United States shall also submit such proof as the division may require that the applicant is lawfully present in the United States. *For the purposes of obtaining any identification card, an applicant shall submit, with the application, proof*

(g) Any person who possesses an identification card as provided in K.S.A. 8-1324, and amendments thereto, shall surrender such identification card to the division upon being issued a valid Kansas driver's license or upon reinstatement and return of a valid Kansas driver's license.

who does not hold a current valid Kansas driver's license

of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number, which shall remain confidential and shall not be placed on the applicant's identification card unless such applicant has waived confidentiality. Identification cards issued as a result of such application, at the applicant's option may contain an identification number, which shall be the applicant's social security number. If the applicant does not have a social security number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number. If the applicant is applying for an identification card and the applicant otherwise meets the requirements for such card, the applicant shall receive a temporary identification card until the division verifies all facts relative to such applicant's right to receive an identification card, including the age, identity, social security number and residency of the applicant.

(c) The division shall not issue an identification card to any person who is not lawfully present in the United States.

(d) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(e) The division shall require payment of a fee of ~~\$\$~~ \$16 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of ~~only~~ \$4 \$8.

(f) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

- (1) The person owns, leases or rents a place of domicile in this state;
- (2) the person engages in a trade, business or profession in this state;
- (3) the person is registered to vote in this state;
- (4) the person enrolls the person's child in a school in this state; or
- (5) the person registers the person's motor vehicle in this state.

Sec. 3. K.S.A. 8-240 and 8-1324 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

and on and after July 1, 2003, a thumbprint or other biometric identifier,

nor to any person who holds a current valid Kansas driver's license unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto



STATE OF KANSAS




DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
*Landon State Office Building*  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(785) 296-3317

Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

To: Senate Judiciary Committee

From: Charles E. Simmons, Secretary 

Subject: SB 339 – Alternative Proposal

Date: March 6, 2002

SB 339 is a carry-over bill from the 2001 session which would establish a mechanism for release of certain offenders who have serious medical conditions. The Department of Corrections has drafted an alternative proposal addressing this issue, a copy of which is attached. Also attached is a summary which compares SB 339 provisions with those of the department's alternative proposal.

Attachments

*stud  
3/6/02  
att 2*

## Comparison of SB 339 to the Alternative Proposal Suggested by KDOC

### SB 339

- Provides for early medical release of certain offenders convicted of nonperson felony and misdemeanor crimes.
- Inmate applications may be submitted to the Parole Board (KPB) by either the inmate or the Secretary of Corrections. Offenders on postrelease supervision may make similar application to the sentencing court.
- Application may be approved only if the KPB or sentencing court finds that the offender:
  - is suffering from a terminal disease or condition;
  - will probably not live to serve the entire sentence imposed;
  - because of the disease or condition, will not pose a threat of harm to the public;
  - will not violate any law or condition imposed.
- Applications approved by the KPB or sentencing court are forwarded to the Governor, who has 14 days to disapprove the release.
- Public notice must be given through publication in official paper in the county of conviction.
- Written notice must be given to victim(s), prosecutor, sentencing judge.
- No action granting the release can take place until 30 days after written notice requirements are met.

*SB 339 contains no authority to establish conditions of release or to revoke release status if circumstances change. Nor does SB 339 provide for supervision by KDOC.*

### Alternative Proposal

- Provides for release of inmates determined to be functionally incapacitated. (*Not restricted by offense; applies only to KDOC inmates.*)
- Application for release to be submitted by the Secretary of Corrections to the Parole Board (KPB).
- KPB may approve the application only if it determines that the offender is functionally incapacitated, precluding the offender from posing a threat to the public. A hearing may be held if the Board deems it necessary.
- KPB must consider:
  - the person's current condition, and whether the condition is terminal.
  - the person's age & personal history.
  - the person's criminal history.
  - length of sentence & time served.
  - nature & circumstances of current offense.
  - risk to the community if released.
  - if appropriate release plan exists.
- Release is conditional, and subject to conditions set by the Board.
- Release may not be granted until 30 days after written notice to the victim(s), prosecutor, and sentencing judge. If the victim address is unknown, action cannot be taken until 30 days after publication in the official newspaper in the county of conviction.
- Offender is subject to revocation if: functional incapacity significantly diminishes; the offender violates release conditions; or, the KPB concludes that the offender is a threat to public safety.
- Offender shall be under KDOC supervision. KDOC may initiate revocation proceedings.
- KPB decisions regarding functional incapacitation are final, and not subject to review by any administrative agency or court.
- Time served on functional incapacitation release status shall be credited towards service of the offender's sentence.

Senate Bill No. 339: AN ACT concerning persons in the custody of the secretary of corrections; relating to early release of the functionally incapacitated.

*Be it enacted by the legislature of the State of Kansas:*

Section 1. (a)

- (1) Upon application of the secretary of corrections, the Kansas parole board may grant release to any person deemed to be functionally incapacitated, upon such terms and conditions as prescribed in the order granting such release.
- (2) The Kansas parole board shall adopt rules and regulations governing the procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to be functionally incapacitated. Rules and regulations adopted by the Kansas parole board shall include criteria and guidelines for determining whether the functional incapacitation precludes the person from posing a threat to the public.
- (3) Subject to the provisions of subsections (4) and (5), a functional incapacitation release shall not be granted until at least 30 days after written notice of the application has been given to: (A) the prosecuting attorney and the judge of the court in which the person was convicted; and (B) any victim of the person's crime or the victim's family. Notice of such application shall be given by the secretary of corrections to the victim who is alive and whose address is known to the secretary of corrections, or if the victim is deceased, to the victim's family if the family's address is known to the secretary of corrections. Subject to the provisions of subsection (4), if there is no known address for the victim, if alive, or the victim's family, if deceased, the board shall not grant or deny such application until at least 30 days after notification is given by publication in the county of conviction. Publication costs shall be paid by the Department of Corrections.
- (4) All applications for functional incapacitation release shall be referred to the board. The board shall examine each case and may approve such application and grant a release. An application for release shall not be approved unless the board determines that the person is functionally incapacitated and does not represent a future risk to public safety. The board shall determine whether a hearing is necessary on the application. The board may request additional information or evidence it deems necessary from a medical or mental health practitioner.
- (5) The board shall establish any conditions related to the release of the person. The release shall be conditional, and be subject to revocation pursuant to K.S.A. 75-5217 if the person's functional incapacity significantly diminishes, if the person fails to comply with any condition of release, or if the board

otherwise concludes that the person presents a threat or risk to public safety. The person shall remain on release supervision until the release is revoked, expiration of the maximum sentence, or discharged by the board. Subject to the provisions of K.S.A. 75-5217(f), the person shall receive credit for the time during which the person is on functional incapacitation release supervision towards service of the prison and postrelease supervision obligations of determinate sentences or indeterminate and off-grid sentences.

- (6) The secretary of corrections shall cause the person to be supervised upon release, and shall have the authority to initiate revocation of the person at any time for the reasons indicated in subsection (5).
- (7) The decision of the board on the application or any revocation shall be final and not subject to review by any administrative agency or court.
- (8) In determining whether a person is functionally incapacitated, the board shall consider:
  - A. The person's current condition as confirmed by medical or mental health care providers, including whether the condition is terminal;
  - B. The person's age and personal history;
  - C. The person's criminal history;
  - D. The person's length of sentence and time he or she has served;
  - E. The nature and circumstances of the current offense;
  - F. The risk or threat to the community if released;
  - G. Whether an appropriate release plan has been established; and,
  - H. Any other factors deemed relevant by the board.

- (b) Nothing in this section shall be construed to limit or preclude submission of an application for pardon or commutation of sentence pursuant to K.S.A. 22-3701, and amendments thereto.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

ENR  
2009-0  
2555

# Industry Amendments

## SENATE BILL No. 296

By Committee on Judiciary

2-8

AN ACT relating to consumer protection; concerning unsolicited consumer telephone calls.

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

Section 1. (a) Prior to making unsolicited consumer telephone calls in this state and quarterly thereafter, a telephone solicitor shall consult the national do-not call list maintained by the telephone preference service of the direct marketing association, and delete from such telephone solicitor's calling list all state residents who have registered with such service. The direct marketing association shall offer to consumers at least one method of registration at no cost and such registration shall be for a period of five years. Consumers desiring to register for such service may contact the direct marketing association or the attorney general. Membership to the direct marketing association shall not be a requirement for telephone solicitors to obtain the telephone preference service list and telephone solicitors shall have access to the list on terms approved by the attorney general. The direct marketing association shall make available the national do not call list to the attorney general in a form prescribed by the attorney general and all quarterly updates of the telephone preference service list at no cost. The attorney general may inform Kansas consumers whether a consumer's name appears on the current list and may register Kansans for inclusion on the list and forward such registrations to the direct marketing association.

The attorney general may compile a list of telephone numbers from consumers desiring to register for such service. The attorney general shall forward the list to the Direct Marketing Association in electronic format no less than 15 days prior to the date of the next quarterly update. No registration fee shall be imposed on the attorney general for submission of such list to the Direct Marketing Association.

(b) Telephone solicitors shall have a period of not more than 60 days from the time of receipt of the current quarterly update to remove a consumer's telephone number from the telephone solicitors' calling lists.

(c) ~~No~~ No telephone solicitor may make or cause to be made any unsolicited consumer telephone calls to any consumer if the consumer's ~~name~~ and telephone number or numbers appear in the current quarterly list of consumers registered with the telephone preference service maintained by the direct marketing association. A telephone solicitor shall not use the telephone preference service list for any other purpose than to remove consumers' ~~names and~~ telephone numbers from calling lists.

telephone number

(d) ~~A~~ A telephone solicitor shall be liable for violations of subsection (b) if such telephone solicitor makes or causes to be made an unsolicited telephone call to a state resident whose ~~name~~ appears on the telephone preference service current quarterly list or uses the list for any unauthorized purpose.

2 e) ~~ed~~ As used in this section, "telephone solicitor" and "unsolicited con-  
3 sumer telephone calls" shall mean the same as provided in K.S.A. 50 670,  
4 and amendments thereto.

5 (g) ~~ed~~ Any violation of this section is an unconscionable act or practice  
6 under the Kansas consumer protection act.

7 (h) ~~ed~~ The attorney general may promulgate rules and regulations to  
8 carry out the provisions of this section.

9 (i) ~~ed~~ The provisions of this section shall be a part of and supplemental  
10 to the Kansas consumer protection act.

11 Sec. 2. This act shall take effect and be in force from and after its  
12 publication in the statute book.

(f) It is an affirmative defense that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the law. A telephone solicitor shall not be held liable for violating this Act if they can demonstrate, by clear and convincing evidence, that: 1) they have obtained a copy of the updated do not call list and have established and implemented written policies and procedures related to the requirements of these regulations; 2) they have trained their personnel in the requirements of these regulations; 3) they maintain records demonstrating compliance with the regulations; and 4) any subsequent unsolicited telemarketing sales call is the result of an error.

New Section 2. No later than December 31, 2002 the state attorney general shall convene a meeting or meetings with consumer groups to collectively develop a method or methods to notify the consumer groups' membership and educate and promote to Kansas consumers generally the availability of the Direct Marketing Association's Telephone Preference Service, and of a telephone solicitor's obligations under this Act.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42