

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Nancey Harrington at 10:45 a.m. on February 5, 2003 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Russell Mills, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor
Nikki Kraus, Committee Secretary

Conferees appearing before the committee: Amy Campbell, The Kansas Assoc. of Beverage Retailers

Others attending: Please see attached.

Ms. Campbell asked for the introduction of two bills by the committee, one dealing with the recodification act, and the other dealing with state license issues. (Attachment 1)

Following discussion, Ms. Campbell stated that the issue of recodification is not necessarily about uniformity.

Ms. Kiernan stated that it would impact that issue because it would impact their home rule.

Chairperson Harrington stated that the committee needed to look at the Liquor Control Act.

Senator Vratil stated that he would like to share with the committee that he worked extensively with the 1999 recodification and that the controversy was totally about home rule powers; he stated that no one has come up with a satisfactory answer.

The committee discussed whether any action might impact the current Kansas court case concerning the city of Wichita and Biggs.

Chairperson asked the committee what its pleasure was.

Senator Barnett stated that he did not know. Senator Vratil suggested an interim study of the issue so as to avoid influencing the court.

Ms. Campbell stated that her members were extremely concerned about court cases and that they did not know which rules to follow. She stated that they wanted recodification to be discussed because they want to know what is in the law and why, etc., and, regardless of the court decision, they would still pursue it. She then asked the committee for the introduction of her second bill dealing with state licensure.

Senator Brungardt made a motion to introduce a bill dealing with state licensure. Senator O'Connor seconded the motion. The bill was introduced.

Chairperson Harrington directed the committee's attention to possible action on:

SB 33—An act concerning driving under the influence of alcohol or drugs; relating to the penalties therefore.

Ms. Kiernan presented the committee with an amended version of the bill to meet the concerns addressed by Tuck Duncan in regard to the impoundment of vehicles. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:45 a.m. on February 5, 2003 in Room 245-N of the Capitol.

The committee discussed the language of the bill in detail.

Senator Barnett made a motion to amend SB 33 to change p. 4-5 second section to strike the comma and enter the word "or" after the word school; strike the entirety of clause 3 in the second paragraph on p. 4. Senator Vratil seconded the motion to amend. The motion to amend SB 33 passed.

Senator Barnett made a motion to recommend SB 33 favorable for passage to the entire Senate. Senator Vratil seconded the motion. The motion passed.

Chairperson Harrington assigned the bill to Senator Barnett to carry on the floor.

Senator Vratil asked the committee for the introduction of a bill to require a board of education to charge tuition equal to average operating cost per pupil for Missouri students attending Kansas schools. Senator Barnett seconded the motion to introduce. The bill was introduced.

Chairperson Harrington thanked Mr. and Mrs. Beaver for attending the meeting to see through SB 33.

The meeting adjourned at 11:27 a.m.



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February 5, 2003

Senate Federal and State Affairs Committee Senator Nancy Harrington, Chair

On behalf of the members of the Kansas Association of Beverage Retailers, I request the drafting and introduction of two bills:

1. RECODIFICATION

In 1996, a task force was formed by the Division of ABC to research and develop language to clean up outdated/unenforceable language of the Liquor Control Act. Please re-introduce the recodification bill.

2. STATE LICENSE ISSUE

This bill will require a State issued license for all off premise beverage alcohol sales: Every off premise retailer selling liquor, wine, beer, and cereal malt beverage products would meet the requirements for licensing enforced by the Division of ABC.

Senate Fed & State
Date: 02 / 05 / 2003
Attachment # 1

SENATE BILL No. 33

By Committee on Federal and State Affairs

1-21

9 AN ACT concerning driving under the influence of alcohol or drugs;
10 relating to penalties therefor; amending K.S.A. 2002 Supp. 8-1567 and
11 repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2002 Supp. 8-1567 is hereby amended to read as
15 follows: 8-1567. (a) No person shall operate or attempt to operate any
16 vehicle within this state while:

17 (1) The alcohol concentration in the person's blood or breath as
18 shown by any competent evidence, including other competent evidence,
19 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
20 ments thereto, is .08 or more;

21 (2) the alcohol concentration in the person's blood or breath, as meas-
22 ured within two hours of the time of operating or attempting to operate
23 a vehicle, is .08 or more;

24 (3) under the influence of alcohol to a degree that renders the person
25 incapable of safely driving a vehicle;

26 (4) under the influence of any drug or combination of drugs to a
27 degree that renders the person incapable of safely driving a vehicle; or

28 (5) under the influence of a combination of alcohol and any drug or
29 drugs to a degree that renders the person incapable of safely driving a
30 vehicle.

31 (b) No person shall operate or attempt to operate any vehicle within
state if the person is a habitual user of any narcotic, hypnotic, som-
nient or stimulating drug.

32 (c) If a person is charged with a violation of this section involving
33 drugs, the fact that the person is or has been entitled to use the drug
34 under the laws of this state shall not constitute a defense against the
35 charge.

36 (d) Upon a first conviction of a violation of this section, a person shall
37 be guilty of a class B, nonperson misdemeanor and sentenced to not less
38 than 48 consecutive hours nor more than six months' imprisonment, or
39 in the court's discretion 100 hours of public service, and fined not less
40 than \$500 nor more than \$1,000. The person convicted must serve at
41 least 48 consecutive hours' imprisonment or 100 hours of public service

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2 either before or as a condition of any grant of probation or suspension,
3 reduction of sentence or parole. In addition, the court shall enter an order
4 which requires that the person enroll in and successfully complete an
5 alcohol and drug safety action education program or treatment program
6 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
7 ucation and treatment programs.

8 (e) On a second conviction of a violation of this section, a person shall
9 be guilty of a class A, nonperson misdemeanor and sentenced to not less
10 than 90 days nor more than one year's imprisonment and fined not less
11 than \$1,000 nor more than \$1,500. The person convicted must serve at
12 least five consecutive days' imprisonment before the person is granted
13 probation, suspension or reduction of sentence or parole or is otherwise
14 released. The five days' imprisonment mandated by this subsection may
15 be served in a work release program only after such person has served
16 48 consecutive hours' imprisonment, provided such work release program
17 requires such person to return to confinement at the end of each day in
18 the work release program. The court may place the person convicted
19 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
20 ments thereto, to serve the remainder of the minimum sentence only
21 after such person has served 48 consecutive hours' imprisonment. As a
22 condition of any grant of probation, suspension of sentence or parole or
23 of any other release, the person shall be required to enter into and com-
24 plete a treatment program for alcohol and drug abuse as provided in
25 K.S.A. 8-1008, and amendments thereto.

26 (f) On the third conviction of a violation of this section, a person shall
27 be guilty of a nonperson felony and sentenced to not less than 90 days
28 nor more than one year's imprisonment and fined not less than \$1,500
29 nor more than \$2,500. The person convicted shall not be eligible for
30 release on probation, suspension or reduction of sentence or parole until
31 the person has served at least 90 days' imprisonment. The court may also
32 require as a condition of parole that such person enter into and complete
33 a treatment program for alcohol and drug abuse as provided by K.S.A. 8-
34 1008, and amendments thereto. The 90 days' imprisonment mandated by
35 this subsection may be served in a work release program only after such
36 person has served 48 consecutive hours' imprisonment, provided such
37 work release program requires such person to return to confinement at
38 the end of each day in the work release program. The court may place
39 the person convicted under a house arrest program pursuant to K.S.A.
40 21-4603b, and amendments thereto, to serve the remainder of the min-
imprisonment.

41 (g) On the fourth or subsequent conviction of a violation of this sec-
42 tion, a person shall be guilty of a nonperson felony and sentenced to not
43

1 less than 90 days nor more than one year's imprisonment and fined
2 \$2,500. The person convicted shall not be eligible for release on proba-
3 tion, suspension or reduction of sentence or parole until the person has
4 served at least 90 days' imprisonment. The 90 days' imprisonment man-
5 dated by this subsection may be served in a work release program only
6 after such person has served 72 consecutive hours' imprisonment, pro-
7 vided such work release program requires such person to return to con-
8 finement at the end of each day in the work release program. At the time
9 of the filing of the judgment form or journal entry as required by K.S.A.
10 21-4620 or 22-3426, and amendments thereto, the court shall cause a
11 certified copy to be sent to the officer having the offender in charge. The
12 law enforcement agency maintaining custody and control of a defendant
13 for imprisonment shall cause a certified copy of the judgment form or
14 journal entry to be sent to the secretary of corrections within three busi-
15 ness days of receipt of the judgment form or journal entry from the court
16 and notify the secretary of corrections when the term of imprisonment
17 expires and upon expiration of the term of imprisonment shall deliver the
18 defendant to a location designated by the secretary. After the term of
19 imprisonment imposed by the court, the person shall be placed in the
20 custody of the secretary of corrections for a mandatory one-year period
21 of postrelease supervision, which such period of postrelease supervision
22 shall not be reduced. During such postrelease supervision, the person
23 shall be required to participate in an inpatient or outpatient program for
24 alcohol and drug abuse, including, but not limited to, an approved after-
25 care plan or mental health counseling, as determined by the secretary
26 and satisfy conditions imposed by the Kansas parole board as provided
27 by K.S.A. 22-3717, and amendments thereto. Any violation of the condi-
28 tions of such postrelease supervision may subject such person to revo-
29 cation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and
30 amendments thereto and as otherwise provided by law.

31 (h) Any person convicted of violating this section or an ordinance
32 which prohibits the acts that this section prohibits who had a child under
33 the age of 14 years in the vehicle at the time of the offense shall have
34 such person's punishment enhanced by one month of imprisonment. This
35 imprisonment must be served consecutively to any other penalty imposed
36 for a violation of this section or an ordinance which prohibits the acts that
37 this section prohibits. During the service of the one month enhanced
38 penalty, the judge may order the person on house arrest, work release or
39 other conditional release.

40 (i) The court may establish the terms and time for payment of any
41 fines, fees, assessments and costs imposed pursuant to this section. Any
42 assessment and costs shall be required to be paid not later than 90 days
43 after imposed, and any remainder of the fine shall be paid prior to the

1 and release of the defendant by the court.

2 (j) In lieu of payment of a fine imposed pursuant to this section, the
3 court may order that the person perform community service specified by
4 the court. The person shall receive a credit on the fine imposed in an
5 amount equal to \$5 for each full hour spent by the person in the specified
6 community service. The community service ordered by the court shall be
7 required to be performed not later than one year after the fine is imposed
8 or by an earlier date specified by the court. If by the required date the
9 person performs an insufficient amount of community service to reduce
10 to zero the portion of the fine required to be paid by the person, the
11 remaining balance of the fine shall become due on that date.

12 (k) *In addition to any other penalty which may be imposed upon a*
13 *person convicted of a violation of this section, the court may order that*
14 *the convicted person's motor vehicle be impounded or immobilized and*
15 *that the convicted person pay all towing, impoundment and storage fees*
16 *or other immobilization costs.*

17 ~~(k)~~ (l) The court shall report every conviction of a violation of this
18 section and every diversion agreement entered into in lieu of further
19 criminal proceedings or a complaint alleging a violation of this section to
20 the division. Prior to sentencing under the provisions of this section, the
21 court shall request and shall receive from the division a record of all prior
22 convictions obtained against such person for any violations of any of the
23 motor vehicle laws of this state.

24 ~~(k)~~ (m) For the purpose of determining whether a conviction is a first,
25 second, third, fourth or subsequent conviction in sentencing under this
26 section:

27 (1) "Conviction" includes being convicted of a violation of this section
28 or entering into a diversion agreement in lieu of further criminal pro-
29 ceedings on a complaint alleging a violation of this section;

30 (2) "conviction" includes being convicted of a violation of a law of
31 another state or an ordinance of any city, or resolution of any county,
32 which prohibits the acts that this section prohibits or entering into a di-
33 version agreement in lieu of further criminal proceedings in a case alleg-
34 ing a violation of such law, ordinance or resolution;

35 (3) any convictions occurring during a person's lifetime shall be taken
36 into account when determining the sentence to be imposed for a first,
37 second, third, fourth or subsequent offender;

38 (4) it is irrelevant whether an offense occurred before or after con-
39 viction for a previous offense; and

40 (5) a person may enter into a diversion agreement in lieu of further
41 ninal proceedings for a violation of this section, and amendments
42 reto, or an ordinance which prohibits the acts of this section, and
43 amendments thereto, only once during the person's lifetime.

The court shall not order the impoundment or immobilization of a
motor vehicle owned or driven by a person convicted of a violation of this section if:

(1) the motor vehicle had been stolen or converted at the time it was being
driven in violation of this section;

(2) the owner of the motor vehicle did not know and could not have been
expected to know, that the person convicted of violating this section was driving
such vehicle in violation of this section; or

(3) the owner of the motor vehicle took all reasonable steps to stop the person
convicted of violating this section from driving such vehicle.

Prior to ordering the impoundment or immobilization of a motor vehicle
owned or driven by a person convicted of a violation of this section, the court
shall consider, but not be limited to, the following:

(1) Whether the impoundment of the motor vehicle would result in a loss of
employment by the convicted person or a member of such person's family;

(2) whether the ability of the convicted person or a member of such person's
family to attend school, obtain medical care would be impaired; and

(3) whether the convicted person would be able to pay the impoundment,
immobilization or other fees.

Any personal property in a vehicle impounded pursuant to this subsection
may retrieve such property prior to or during the period of such impoundment.

~~(m)~~ (n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

~~(n)~~ (o) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, ~~but~~ *Except as specifically provided by this subsection*, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

~~In addition,~~ Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. *Any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle be impounded or immobilized and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.*

~~(o)~~ (p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

~~(p)~~ (q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

~~(q)~~ (r) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

~~(r)~~ (s) For the purpose of this section: (1) "Alcohol concentration"

The court shall not order the impoundment or immobilization of a motor vehicle owned or driven by a person convicted of a violation of this section if:

- (1) the motor vehicle had been stolen or converted at the time it was being driven in violation of this section;
- (2) the owner of the motor vehicle did not know and could not have been expected to know, that the person convicted of violating this section was driving such vehicle in violation of this section; or
- (3) the owner of the motor vehicle took all reasonable steps to stop the person convicted of violating this section from driving such vehicle.

Prior to ordering the impoundment or immobilization of a motor vehicle owned or driven by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

- (1) Whether the impoundment of the motor vehicle would result in a loss of employment by the convicted person or a member of such person's family;
- (2) whether the ability of the convicted person or a member of such person's family to attend school, obtain medical care would be impaired; and
- (3) whether the convicted person would be able to pay the impoundment, immobilization or other fees.

Any personal property in a vehicle impounded pursuant to this subsection may retrieve such property prior to or during the period of such impoundment.

1 means the number of grams of alcohol per 100 milliliters of blood or per
2 210 liters of breath.

3 (2) "Imprisonment" shall include any restrained environment in
4 which the court and law enforcement agency intend to retain custody and
5 control of a defendant and such environment has been approved by the
6 board of county commissioners or the governing body of a city.

7 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
8 4165, and amendments thereto.

9 ~~(s)~~ (t) The amount of the increase in fines as specified in this section
10 shall be remitted by the clerk of the district court to the state treasurer
11 in accordance with the provisions of K.S.A. 75-4215, and amendments
12 thereto. Upon receipt of remittance of the increase provided in this act,
13 the state treasurer shall deposit the entire amount in the state treasury
14 and the state treasurer shall credit 50% to the community alcoholism and
15 intoxication programs fund and 50% to the department of corrections
16 alcohol and drug abuse treatment fund, which is hereby created in the
17 state treasury.

18 New Sec. 2. (a) If the owner of a motor vehicle which has been
19 impounded pursuant to K.S.A. 8-1567, and amendments thereto, refuses
20 to pay any towing, impoundment, storage or other fees relating to the
21 impoundment or immobilization of such vehicle or fails to take possession
22 of such vehicle within 30 days following the date of the expiration of the
23 impoundment period, such vehicle shall be deemed abandoned and the
24 vehicle may be disposed of by the person having possession of such ve-
25 hicle. If the person having possession of such vehicle is a public agency,
26 disposition of such vehicle shall be in compliance with the procedures for
27 notice and public auction provided by paragraph (2) of subsection (a) of
28 K.S.A. 8-1102, and amendments thereto. If the person having possession
29 of such vehicle is not a public agency, disposition of such vehicle shall be
30 in compliance with K.S.A. 8-1103 through 8-1108, and amendments
31 thereto.

32 Sec. 3. K.S.A. 2002 Supp. 8-1567 is hereby repealed.

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