

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on February 17, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Oleen (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor of Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:  
Sheila Walker, Director of the Division of Vehicles

Others attending: see attached list

**SB 184 - Requires the posting of a person's name on a website when the person's driver's license has been revoked**

Chairman Vratil opened the hearing on **SB 184**. Conferee Walker testified as neutral on the bill. She stated whether to post on the internet problem drivers' names and addresses on the Kansas Department of Revenue, Division of Vehicles' website, is a policy decision for the Legislature to make. She said drivers convicted of violations under K.S.A. 8-252 through 8-255 (lines 23-27) in the proposed bill may not be "the worst of the worst" but under this bill would have their names and addresses displayed on the website while names of habitual violators (under 8-285) and drivers convicted of DUI (8-1567) would not be displayed. She also pointed out that the public display of drivers' names and addresses may violate the federal Drivers' Privacy Protection Act. Ms. Walker added that the change is expected to increase her division's workload due to handling increased number of calls, but the Division had been instructed not to ask for an additional position given the current budget situation. (Attachment 1)

Having no other conferees appearing before the Committee, the Chairman closed the hearing on **SB 184**.

**Final Action on:**

**SB 25 - Sport shooting ranges; local regulation**

Chairman Vratil reviewed **SB 25**, and referred to Senator Emler's written testimony. In his testimony, Senator Emler explained the reason he introduced this bill was to clarify the intent of the Senate amendment to HB 2599 in the 2001 legislative session regarding the grandfather clause for sport shooting ranges already in existence and in compliance with local regulations.

Senator Allen questioned the mandatory compensation provision on page 3, lines 8 through 12, and asked who would determine the value of the real estate and economic loss. Senator Allen made a motion to amend by removing the mandatory compensation provision on lines 8 through 12 from SB 25, seconded by Senator Goodwin. Brief discussion followed. The Chair called for a vote on the motion, and the motion to amend failed.

Further discussion followed, and the Chair directed the Committee's attention to the balloon revision of the bill offered by Senator Emler at the time of the hearing. (Attachment 2) Chairman Vratil explained the suggested amendments on pages 2 and 3. Senator Goodwin moved to adopt the amendments presented by Senator Emler, and seconded by Senator O'Connor. After brief discussion and clarification of the amendments, the Chairman called for a vote to amend **SB 25**. The motion carried.

Senator O'Connor made a motion to pass SB 25 favorably as amended, seconded by Senator Goodwin, and the motion carried. Senator Pugh requested his no vote be recorded.

**SB 27 - Relating to alcohol and drug safety action education program requirements**

Chairman Vratil reviewed **SB 27**, and directed the Committee's attention to the proposed amendment requested by Dan Hermes. The Chair explained that the amendment came about because at the time of the hearing on this bill there was concern expressed regarding the fiscal note of approximately \$74,000 for SRS to certify drug and alcohol safety education programs. He said the amendment would allow SRS to

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 17, 2003 in Room 123-S of the Capitol.

impose a surcharge to cover the expenses in certifying those programs so that there would be a neutral fiscal note. (Attachment 3)

After brief discussion, Senator Donovan moved to amend the bill as recommended by Mr. Hermes, seconded by Senator Umbarger, and the motion carried to amend.

Senator Goodwin made a motion to recommend the bill favorably as amended, seconded by Senator Allen, and the motion carried.

**SB 54 - Creating the crime of negligent homicide**

Chairman Vratil reviewed **SB 54**. Senator Schmidt stated that he had researched the laws of states which currently have negligent homicide laws. These include: Connecticut, Texas, Alaska, Montana, Louisiana, New Hampshire, Tennessee, Alabama, and North Dakota which have similar language as that contained in the proposed bill. He added that the same concept and similar language exists in the Uniform Code of Military Justice.

The Chair pointed out to the Committee that **SB 54** had a fiscal note on of \$108,000 that comes from the Board of Indigents' Defense Services due to the Board's estimate there would be 12-15 cases per year requiring the appointment of counsel for indigent defendants. There is also a bed space impact from the Kansas Sentencing Commission of one additional bed per year. (Attachment 4)

Chairman Vratil explained the amendment that was submitted by the Christian Science Committee on Publication for Kansas which would add a new subsection (d) to indicate that providing spiritual treatment through prayer alone, in lieu of medical treatment, does not constitute criminal negligence as defined in subsection (c). Committee discussion followed with Senator Schmidt commenting that the Christian Science language was not provided in any of the other states who had a negligent homicide law.

Senator Schmidt made a motion to pass SB 54 favorably, seconded by Senator Umbarger. After considerable discussion with questions and concerns expressed by Committee members, Senator Schmidt made a substitute motion to take no action on this bill and request it be referred for interim study. The motion was by Senator Umbarger, and the motion carried.

The minutes of the February 5, 6 and 7 meetings were approved on a motion by Senator Donovan, seconded by Senator Goodwin, and the motion carried.

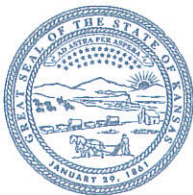
The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 18, 2003.

## SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon., Feb. 17, 2003

| NAME              | REPRESENTING        |
|-------------------|---------------------|
| Sandy Jaquet      | LKM                 |
| Debi Hatfield     | KDHE                |
| Melissa Wangemann | Sec of State        |
| Marilynn Fult     | KCS DV              |
| R.S. McKenna      | SRS                 |
| Cawlyn McMenamin  | Sen. Hill Intern    |
| Sheela Walker     | KDOR - Vehicles     |
| Harry Tiffany     | " "                 |
| Drane Albert      | "                   |
| Barb Tombs        | KSC                 |
| Bundarchman       | KSC                 |
| Rosna Roolin      | SRS/AAPS            |
| Amy Bertrand      | Judicial Brandt     |
| John D. Piregar   | Washburn University |
| Ron Seebert       | Hill Law Firm       |
| Phil Bradley      | KLBA                |
| Michael White     | KCDVA               |
|                   |                     |
|                   |                     |





# K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE  
DIVISION OF VEHICLES

KATHLEEN SEBELIUS, GOVERNOR

**TO:** Senator John Vratil  
Chairman of the Senate Judiciary Committee

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

**DATE:** February 19, 2003

**SUBJECT:** Senate Bill 184 – Posting Problem Drivers' Names on the Internet

Thank you for giving me the opportunity to provide written testimony on Senate Bill 184. As I indicated at Monday's hearing on the bill, we were preparing to testify at a Thursday hearing, and were caught off guard when the bill appeared on the calendar Monday morning.

As I told the committee at Monday's hearing, whether problem drivers' names and addresses should be displayed on the Kansas Department of Revenue, Division of Vehicles, website, is a policy decision for the Legislature to make. However, there are a couple issues for your consideration:

The bill states that the division shall create and maintain a website accessible to the public that contains the names, addresses, and effective dates of license revocation or suspension for persons who have had their driver's license suspended or revoked under K.S.A. 8-252 through 8-255 (Lines 23-27). According to these statutes, the drivers whose names and addresses would be displayed on our website would be:

- Residents who are suspended/revoked upon a conviction in another state (under 8-252);
- Those convicted of vehicular homicide, vehicular battery, failure to stop and render aid; reckless drivers; and those who commit a felony in the commission of which a motor vehicle is used (under 8-254);
- Those convicted of three or more moving violations; incompetent drivers; drivers with a disregard for safety; drivers convicted of another traffic violation while driving while suspended or revoked; and drivers suspended by military police (under 8-255).

K.S.A. 8-253 refers to the court's process for forwarding a driver's license to the Division, and is not an offense for which the Division suspends or revokes.

The drivers convicted of these violations may not even be what some consider to be "the worst of the worst." There are also habitual violators (under 8-285) and drivers convicted of DUI (8-1567 and 8-1567(a)) who names and addresses would not be displayed on the website.

The other issue I pointed out at Monday's hearing is that the public display of drivers' names and addresses may violate the federal Drivers' Privacy Protection Act (in which only certain entities are eligible to such personal information).

The Department's information systems staff indicates less than one month's worth of work to make the changes to our website. But our Driver Control Bureau is unable to quantify the number of increased calls we'd see as a result of this addition to our website. There is no doubt that the change is expected to increase our workload. While we have discussed the possibility of needing to ask for an additional FTE to cover the additional volume of calls, we have been instructed not to ask for additional FTE given the current budget situation we're in.

Again, this is a legislative policy decision. We leave it up to you on how effective this would be to improve public safety.

## SENATE BILL No. 25

By Senator Emler

1-16

Senator Emler's  
Balloon Amendment

9 AN ACT concerning sport shooting ranges; relating to the regulation  
10 thereof; amending K.S.A. 2002 Supp. 58-3222, 58-3223 and 58-3224  
11 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 2002 Supp. 58-3222 is hereby amended to read as  
15 follows: 58-3222. (a) ~~Notwithstanding any other provisions of law, and in~~  
16 ~~addition to other protections provided in this act,~~ A person who owns,  
17 operates, manages or uses a sport shooting range that conforms to gen-  
18 erally accepted operation practices in the state is not subject to civil lia-  
19 bility or criminal prosecution in any matter relating to noise or noise  
20 pollution resulting from the operation or use of the range if the range is  
21 in compliance with any noise control laws or ordinances or resolutions  
22 that applied to the range and its operation at the time of construction and  
23 initial operation of the range.

24 (b) ~~In addition to any civil protection provided by the act,~~ A person  
25 who owns, operates, manages or uses a sport shooting range that conforms  
26 to generally accepted operation practices is not subject to an action for  
27 nuisance, and a court of the state shall not enjoin or restrain the use or  
28 operation of a range on the basis of noise or noise pollution, if the range  
29 is in compliance with any noise control laws or ordinances or resolutions  
30 that applied to the range and its operation at the time of construction or  
31 initial operation of the range.

32 (c) Rules or regulations adopted by any state department or agency  
33 for limiting levels of noise in terms of decibel level which may occur in  
34 the outdoor atmosphere do not apply to a sport shooting range immune  
35 from liability under this act. ~~However,~~ This subsection ~~does not constrict~~  
36 *shall not be construed to restrict* the application of any provision of gen-  
37 erally accepted operation practices.

38 (d) A person who acquires title to real property adversely affected by  
39 the use of property with a permanently located and improved sport shoot-  
40 ing range constructed and initially operated prior to the time the person  
41 acquires title shall not maintain a nuisance action on the basis of noise or  
42 noise pollution or based upon known or inherent dangers against the  
43 person who owns, operates or uses the range to restrain, enjoin, or impede

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the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range.

3 Sec. 2. K.S.A. 2002 Supp. 58-3223 is hereby amended to read as  
4 follows: 58-3223. (a) A sport shooting range that is *constructed and* op-  
5 ~~erated and is not in violation of in compliance with~~ state law at the time  
6 of the enactment of an ordinance or resolution shall be permitted to  
7 continue in operation even if the *construction and* operation of the sport  
8 shooting range ~~at a later date does not conform to the new ordinance or~~  
9 ~~resolution or amendment to an existing ordinance or resolution does not~~  
10 ~~comply with an ordinance or resolution which is enacted or amended after~~  
11 ~~the date on which construction or operation of the range commenced.~~

12 (b) ~~If a sport shooting range that is was in existence as of the effective~~  
13 ~~date of this act and operates and operating on July 1, 2001, and if such~~  
14 ~~range is in compliance with generally accepted operation practices, even~~  
15 ~~if not in compliance with an and any ordinance or resolution of a local~~  
16 ~~unit of government, in effect at the time of construction or initial operation~~  
17 ~~of the range, such range shall be permitted to do all of the following within~~  
18 ~~its preexisting geographic boundaries if in compliance with generally ac-~~  
19 ~~cepted operation practices:~~

was in compliance with

- 20 (1) Repair, remodel or reinforce any improvement or facilities or
- 21 building or structure as may be necessary in the interest of public safety
- 22 or to secure the continued use of the building or improvement;
- 23 (2) reconstruct, repair, rebuild or resume the use of a facility or build-
- 24 ing damaged by fire, collapse, explosion, act of God or act of war occurring
- 25 after the effective date of this act. The reconstruction, repair or restora-
- 26 tion shall be completed within one year following the date of the damage
- 27 or settlement of any property damage claim. If reconstruction, repair or
- 28 restoration is not completed within one year as provided in this subsection,
- 29 such reconstruction, repair or restoration may be terminated in the
- 30 discretion of the local unit of government; or
- 31 (3) do anything authorized under generally accepted operation prac-
- 32 tices, including, but not limited to:
- 33 (A) Expand or enhance its membership or opportunities for public
- 34 participation; and
- 35 (B) reasonably expand or increase facilities or activities.

36 Sec. 3. K.S.A. 2002 Supp. 58-3224 is hereby amended to read as  
37 follows: 58-3224. (a) Except as otherwise provided, the provisions of this  
38 act shall not prohibit a local unit of government from regulating the lo-  
39 cation and construction of a sport shooting range.

40 (b) No person or governmental entity may take title to property which  
41 has a permanently located and improved sport shooting range, by con-  
42 ~~veyance, eminent domain or similar process when the proposed use of~~  
43 ~~the property would be for shooting related activities or recreational~~

1 ivities or for private or commercial development. However, this pro-  
2 .on does not limit governmental exercise of eminent domain or ease-  
3 ment necessary for infrastructure additions or improvements, such as  
4 highways, waterways or utilities.

5 (c) *The governing body of any local unit of government may enact*  
6 *and enforce an ordinance or resolution which provides for the gradual*  
7 ~~*elimination of sport shooting ranges which constitute nonconforming uses.*~~  
8 *If a sport shooting range is closed or eliminated pursuant to this subsec-*  
9 *tion, the owner of such range shall be paid compensation for the value of*  
10 *the real estate on which the range is located, any improvements located*  
11 *on such range and for any economic loss resulting from the closing or*  
12 *elimination thereof.*

13 Sec. 4. K.S.A. 2002 Supp. 58-3222, 58-3223 and 58-3224 are hereby  
14 repealed.

15 Sec. 5. This act shall take effect and be in force from and after its  
16 publication in the Kansas register.

elimination of a sport shooting range which does not comply  
with the provisions of section 2, and amendments thereto

2-3



Proposed Amendment to 2003 Senate Bill No. 27:

On Page 2, Line 8 after the period by inserting:

The secretary of social and rehabilitation services is authorized to require a surcharge on all alcohol and drug safety action education programs required under this act. The cost of such surcharge shall be paid by the person completing the program and shall be collected by the approved program provider and remitted to the state treasury for deposit in the other fees fund of the department of social and rehabilitation services on a quarterly basis. Such surcharge shall be set at level to equal the cost to administer the approval process.

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a

PUBLIC SOLUTIONS

**DAN HERMES**

Management Consultant and Lobbyist

2512 SW Osborn Road  
Topeka, Kansas 66614  
hermes4@mindspring.com

Phone: 785.271.0433

Cellular: 785.221.7419

Sen. URBAN -

The proposed language we discussed.  
If staff can let me know when you  
have time to take action, I will be there.

Dan

Senate Judiciary

2-17-03

Attachment 3-1

# KANSAS

DIVISION OF THE BUDGET  
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

February 5, 2003

The Honorable John Vratil, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 255-E  
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 54 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 54 is respectfully submitted to your committee.

SB 54 would create a new crime of negligent homicide that would be a severity level 7, person felony. The creation of this crime is defined as "the failure to perceive a substantial and unjustifiable risk that an act or omission may cause or contribute to the injury or death of a human being. The risk shall be of such nature and degree that the failure to perceive such risk constitutes a gross deviation from the standards of care that a reasonable person would observe in the situation."

| Estimated State Fiscal Effect |                |                      |                |                      |
|-------------------------------|----------------|----------------------|----------------|----------------------|
|                               | FY 2003<br>SGF | FY 2003<br>All Funds | FY 2004<br>SGF | FY 2004<br>All Funds |
| Revenue                       | --             | --                   | --             | --                   |
| Expenditure                   | --             | --                   | \$108,000      | \$108,000            |
| FTE Pos.                      | --             | --                   | --             | --                   |

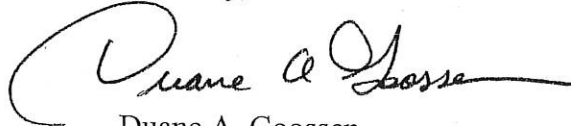
According to the Department of Corrections, the Sentencing Commission, and the Attorney General, SB 54 would have a minimal fiscal effect on their operations. The Sentencing Commission estimates that the bill would result in approximately one additional prison admission every other year which would be an additional cost to the Department of Corrections.

The Honorable John Vratil, Chairperson  
February 5, 2003  
Page 2—54fn

The Sentencing Commission further reports that the bill would require it to modify its statewide sentencing database and process additional forms that would be submitted to them. The Attorney General states that the bill could result in some additional cases being filed by its Criminal Division.

The Board of Indigents' Defense (BIDS) reports that the bill could result in additional expenditures of \$108,000 from the State General Fund. BIDS estimates that the bill could result in an additional 12 to 15 cases per year at an estimated cost of \$9,000 per case for legal services and expert witness fees. Any additional costs that result from the passage of this bill are not reported in the *FY 2004 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane A. Goossen". The signature is fluid and cursive, with a large initial "D" and "G".

Duane A. Goossen  
Director of the Budget

cc: Jerry Sloan/Amy Hyten, Judiciary  
Derrick Sontag, Attorney General's Office  
Patricia Scalia, BIDS  
Jan Johnson, DOC  
Barbara Tombs, Sentencing Commission