

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairman Derek Schmidt at 9:37 a.m. on February 10, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Dwayne Umbarger- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Whitney Damron, Kansas Bar Association
Judge Phil Journey
Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

The Chairman opened the hearing on **SB 156 - Close corporations; increasing the limit on the number of stockholders in a close corporation.** Jason Thompson, staff revisor, reviewed the bill.

Whitney Damron testified in support indicating the bill would coordinate the number of allowable members in a close corporation from 30 to 35 to conform with other Kansas statutes. (Attachment 1)

There being no other conferees, the hearing on **SB 156** was closed.

The Chairman opened the hearing on **SB 157 - Driver improvement clinics, fees, disposition thereof; correctional services special revenue fund.**

Judge Phil Journey appeared as a proponent stating the bill would authorize the Division of Vehicles under the Department of Revenue to establish driver improvement clinics throughout the state. Persons whose driving privileges are subject to suspension due to three or more moving violations within a 12 month period may retain their driving privileges by attending a driver improvement clinic. Fees for driver improvement clinics are not to exceed \$500 of which half would be credited to the Division of Motor Vehicles Operating Fund and the other half credited to the Department of Corrections for the sole purpose of providing substance abuse treatment in Kansas Correctional Facilities. (Attachment 2)

Written testimony in support of **SB 157** was submitted by:

Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 3)

There being no other conferees, the hearing on **SB 157** was closed.

The Vice-Chairman suggest the Committee return to consideration of **SB 156**. There was no objection.

Senator Bruce moved, Senator Donovan seconded, to recommend SB 156 favorably and place it on the Consent Calendar. Motion carried.

The Vice-Chairman opened the hearing on **SB 158 - Allowing offenders in violation of a traffic citation to be issued a restricted driver's license.**

Judge Phil Journey appeared in support stating the bill amends the current statute on failure to comply with a traffic citation to allow a restricted license to eligible drivers. The restricted license would have an application fee of \$25 and would be valid for up to one year or until compliance with the traffic citation. The

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:37 a.m. on February 10, 2009, in Room 545-N of the Capitol.

restrictions include:

- to and from work or school,
- in the course of employment,
- during a medical emergency, and
- to and from probation or parole meetings, drug or alcohol counseling or any place the driver is ordered to go by the Court. (Attachment 4)

Kathy Porter provided neutral testimony regarding the mechanics and the potential fiscal impact of the bill. Concerns raised included: a lack of specific language to indicate where the driver submits and pays the application fee, clarification stating the application fee is in addition to reinstatement fees, and clarification on the disbursement of collected fees. (Attachment 5)

There being no other conferees, the hearing on **SB 158** was closed.

The Vice-Chairman called for final action on **SB 15 - Court ordered custody to commissioner of juvenile justice**. Jason Thompson, staff revisor, reviewed the bill.

Following questions from the committee J. Russ Jennings, Commissioner, Juvenile Justice Authority, requested the bill be referred to an interim committee for further review.

Senator Donovan moved, Senator Schodorf seconded, to recommend the Chairman request an interim study on SB 15. Motion carried.

The Vice-Chairman called for final action on **SB 95 - Trafficking in contraband in a correctional institution or treatment care facility**. Senator Schmidt reviewed the bill.

Senator Owens assumed Chair of the meeting.

Senator Vratil moved, Senator Donovan seconded, to amend SB 95 on page 1, lines 28-29, by striking "Correctional institution does not include any parking lot open to the public" and on page 1, lines 34-35, striking "Care and treatment facility does not include any parking lot open to the public". Motion carried.

Senator Schmidt moved, Senator Schodorf seconded, to recommend SB 95 as amended, favorably for passage. Motion carried.

The next meeting is scheduled for February 11, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-10-09

NAME	REPRESENTING
Ed Klumpp	KACP KPOA
Tim Madden	KDOR
SEAN MILKE	CAPITOL STRATEGIES
Ress Jennings	NA
Robin Clemits	Child Welfare Cos.
Richard Samowiego	Kerny & Assoc.
Nancy Zogelman	Polsinelli
Kathy Porter	Judicial Branch
Joe Molina	KS Bar Assoc.
Marcy Balston	KDOR
Carmen Acerra	KDOR
Whitney Damron	KS Bar Assn
Patil Woods	GRS



TESTIMONY

**TO: The Honorable Thomas C. "Tim" Owens, Chair
And Members of the Senate Committee on Judiciary**

**FROM: Whitney Damron
On Behalf of the Kansas Bar Association**

RE: SB 156 - An Act concerning corporations; relating to close corporations.

DATE: February 10, 2009

Good morning Chairman Owens and Members of the Senate Committee on Judiciary.

I am Whitney Damron and I appear before you today on behalf of the Kansas Bar Association in support of SB 156, which increases the allowable numbers of members of a close corporation in K.S.A. 17-7207(b) from 30 to 35.

This matter was brought to our attention from the Corporation, Banking and Business Law section of the KBA.

Several years ago the Legislature adopted changes to our corporate code and this section was inadvertently overlooked during the drafting process. For example, the change was made in K.S.A. 17-7202(a), but the change was not carried forward to 17-7207(b). This amendment will coordinate the number of allowable members in a close corporation to other Kansas statutes and the U.S. Securities Act of 1933.

Attached to my remarks are copies of both of the above-referenced statutes.

On behalf of the Kansas Bar Association, I thank you for your consideration of this legislation and respectfully request your support for SB 156.

WBD

Attachments.

Kansas Legislature

Home > Statutes > Statute

Previous

Next

17-7202

**Chapter 17.--CORPORATIONS
Article 72.--CLOSE CORPORATIONS**

17-7202. Close corporation defined; contents of articles of incorporation; effect of joint held stock. (a) A close corporation is a corporation organized under this act whose articles of incorporation contain the provisions required by K.S.A. 17-6002, and amendments thereto, and, in addition, provide that:

(1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding 35; and



(2) All of the issued stock of all classes shall be subject to one or more of the restrictions on transfer permitted by K.S.A. 17-6426, and amendments thereto; and

(3) The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States securities act of 1933, as it may be amended from time to time.

(b) The articles of incorporation of a close corporation may set forth the qualifications of stockholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class, or both.

(c) For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entireties shall be treated as held by one stockholder.

History: L. 1972, ch. 52, § 126; L. 2004, ch. 143, § 77; Jan. 1, 2005.

1-2

Kansas Legislature

Home > Statutes > Statute

Previous

Next

17-7207**Chapter 17.--CORPORATIONS
Article 72.--CLOSE CORPORATIONS**

17-7207. Issuance or transfer of stock of close corporation in breach of restrictions or conditions thereon; effect; conclusive presumptions; transfer defined; applicability and effect of section. (a) If stock of a close corporation is issued or transferred to any person who is not entitled under any provision of the articles of incorporation permitted by subsection (b) of K.S.A. 17-7202 to be a holder of record of stock of such corporation, and if the certificate for such stock conspicuously notes the qualifications of the persons entitled to be holders of record thereof, such person is conclusively presumed to have notice of the fact of his ineligibility to be a stockholder.

→ (b) If the articles of incorporation of a close corporation state the number of persons, not in excess of thirty (30), who are entitled to be holders of record of its stock, and if the certificate for such stock conspicuously states such number, and if the issuance or transfer of stock to any person would cause the stock to be held by more than such number of persons, the person to whom such stock is issued or transferred is conclusively presumed to have notice of this fact.

(c) If a stock certificate of any close corporation conspicuously notes the fact of a restriction on transfer of stock of the corporation, and the restriction is one which is permitted by K.S.A. 17-6426, the transferee of the stock is conclusively presumed to have notice of the fact that he has acquired stock in violation of the restriction, if such acquisition violates the restriction.

(d) Whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this section to have, notice either (1) that he is a person not eligible to be a holder of stock of the corporation, or (2) that transfer of stock to him would cause the stock of the corporation to be held by more than the number of persons permitted by its articles of incorporation to hold stock of the corporation, or (3) that the transfer of stock is in violation of a restriction on transfer of stock, the corporation, at its option, may refuse to register transfer of the stock into the name of the transferee.

(e) The provisions of subsection (d) shall not be applicable if the transfer of stock, even though otherwise contrary to subsection (a), (b) or (c), has been consented to by all the stockholders of the close corporation, or if the close corporation has amended its articles of incorporation in accordance with K.S.A. 17-7206.

(f) The term "transfer," as used in this section, is not limited to a transfer for value.

(g) The provisions of this section do not impair in any way any rights of a transferee regarding any right to rescind the transaction or to recover under any applicable warranty, express or implied.

History: L. 1972, ch. 52, § 131; July 1.

1-3



Phillip B. Journey

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Testimony in Support of Senate Bill 157 Before the Kansas Senate Judiciary Committee February 10th, 2009

Mr. Chairman and members of the Committee, it is my privilege to come before you today in support of Senate Bill 157. Senate Bill 157 is a bill that amends two existing statutes in the 2008 Supplement to the Kansas Statutes Annotated 8-255 & 8-267.

It is important to note that the bill does not affect individuals who have commercial driver's licenses under 8-2, 125 et seq., so that we maintain our compliance with federal rules and statutory mandates regarding these commercial driver's licenses. For noncommercial drivers, this bill offers an opportunity for Kansas drivers to improve their driving habits through the provision of driver improvement clinics to be paid for at their cost. The clinic costs would require a payment of a fee of up to \$500.00 in Section Two.

The carrot at the end of the improvement clinic is that they would be able to keep their driver's license. It's important to note that no serious traffic offense such as driving while suspended, DUI, no proof of insurance, or other misdemeanor provisions would be allowed under this section. Only minor traffic infractions such as speeding and running a stop sign would be eligible. Section Two of the bill also authorizes the Secretary of Revenue to adopt rules and regulations necessary to implement this proposed statute.

Section Three provides for the distribution of funds to a correctional services special revenue fund to be used by the Department of Corrections for funding community corrections. Considering the current cuts in Labette and drug treatment services, there is a strong public policy need for improvement in monitoring offenders who are placed on community corrections. Community corrections is a more intensive supervision program than standard court probation. Community corrections includes those on pre-trial services pending trial saving significant jail space for violent offenders in a pre-trial situation, and monitoring those individuals. This legislation, for example, could be used by Department of Corrections to pay for more intensive supervision officers, house arrest, telephonic interface monitors, and GPS locators for sexual offenders.

Section Two of the bill amends 8-255 of the Kansas Statutes Annotated and updates the current situation in statute where, under current law, an individual whose license is to be

Senate Judiciary

2-10-09

Attachment 2

suspended is given the opportunity to attend a class so that they may be able to keep their driving privileges for a probationary period. The problem with current statute is that the nominal cost of \$15 does not pay the actual expense for the driver improvement clinic nor does it pay for the out-of-pocket expense to the state of Kansas for administrative action and employee time in applying the provisions of the current program to the driver's record and that monitoring. The Kansas Division of Vehicles operating fund receives up to \$150 of the \$500 paid by the individual and up to \$250 is credited to the correctional services special revenue fund.

I sincerely appreciate the Committee's time and attention in this matter, and believe that it has the potential to raise significant funds for these worthy programs which are always in need of supplemental appropriation. I believe that this legislation offers an opportunity for the Kansas Legislature to not only benefit each of our constituents who have had minor traffic infractions with the ability to keep their driver's license but also improve the quality of driving in the state of Kansas along with funding programs which will substantially enhance public safety in the state of Kansas. Once again, thank you for your attention.

Respectfully submitted,

Phillip B. Journey

Testimony on SB 157
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 10, 2009

The Department of Corrections supports SB 157. The department finds two aspects SB 157 to be attractive public policy features. First, SB 157 would provide a revenue stream for community corrections funding since 50% of the fee charged for participation in a driver improvement clinic would be dedicated to the correctional services special revenue fund. Secondly, SB 157 would provide a mechanism for released offenders whose driver's license has been suspended to regain their license by attending a driver improvement clinic.

Since, both the department and community corrections agencies provide community services and supervision to offenders in the community, funds deposited in the correctional services special revenues fund would be available to both the department and community corrections agencies. If the intent of SB 157 is to limit those funds solely to community corrections agencies established pursuant to the Community Corrections Act, SB 157 should be amended to reflect that intent.

The department does not know the number of its offenders on release supervision or who are preparing for reentry into the community that have had their driver's license suspended due to having had three or more moving violations within a 12 month period. The department is also unable to project the amount of funding the Community Corrections Special Revenue fund would receive pursuant to SB 157.

The department urges favorable consideration of SB 157.



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**Testimony Before the
Kansas State Senate Judiciary Committee
in Support of Senate Bill 158
on Tuesday, February 10th, 2009**

Mr. Chairman, members of the Committee thank you very much for the opportunity to have a hearing and testify in support of Senate Bill 158.

Senate Bill 158 permits a driver to enter into a contract with the Division of Motor Vehicles to issue restricted licenses for the operation of a motor vehicle to individuals whose license has been suspended, revoked, or canceled for failing to pay a traffic citation or their failure to set that same citation for court if certain requirements are met.

In current law, the restrictions on the driver's license are required to be printed conspicuously on the face of the operator's license. Under the bill, the driver has 1 year to complete all cases and payments. Upon compliance with the terms of the payment agreement, their privilege to operate a motor vehicle in the State of Kansas is reinstated without restriction.

In reviewing the Kansas Division of Budget report regarding 2008 session Senate Bill 591 from which this SB 158 came, I must admit I was disturbed by the 2008 fiscal note of \$128,000 SGF funding for reprogramming the computer currently used for the driver's license system and \$85,000 for the photo fee fund. The simplification of 2008 SB 591 to 2009 SB 158 should reduce costs. The fees for re-issuance of the restricted driver's licenses should generate sufficient funds to cover much of the cost. Current funding for enhancements of the driver's license computer system occurs through registration fees for vehicles. Should the Committee desire to reduce this fiscal impact with the contract for the Department of Revenue's new system about to be bid it is important that this proceed as soon as possible.

Senate Judiciary

2-10-09

Attachment 4

The genesis of the legislation that amends K.S.A. 8-2110 came from the 3R Commission. One of the 3R's tasks was to determine ways in which individuals during pre-release programs and under post-release supervision programs such as participating in the Department of Correction's Work Release Programs could obtain driving privileges while they were under DOC supervision. The predicament many offenders find themselves in is that they do not simply get into trouble in one jurisdiction, but in many instances get into trouble in multiple jurisdictions. While they are placed into custody of the Department of Corrections for felony convictions, misdemeanor traffic cases and traffic infractions do not get resolved. While they are in DOC custody they are not able to inform the Department of Revenue of their new place of residence. Their licenses are suspended for their failure to appear on pending citations that they may have received immediately prior to their placement in custody. Upon release, they are unable to obtain a driver's license while they are in these pre-release programs such as work release until the pending cases are resolved and all fines, court costs, and reinstatement fees are paid in full. Without the ability to get from the work release facility to their place of employment, they are unable to obtain the funds necessary to pay the citation.

I believe that the cost of reprogramming the computer system would be offset by reduced incarceration costs for individuals who have failed to comply with their post-release requirements as they would be able to succeed during that post-release period in rebuilding their lives.

We could also offset a considerable amount of the expense by the \$25.00 contract administration fee and perhaps by increasing reinstatement fees nominally. For example, an additional \$10 per reinstatement to help pay for these modifications in the program. Savings that can not be quantified would most certainly occur in the reduction of new crimes that would have been committed should these individuals fail to complete the rehabilitation process of these pre-release programs.

Further enhancement of state revenue would accrue, though unquantifiable:

- By fines and court costs being collected that would otherwise have gone uncollected.
- By sustained or increased collections of income and sales taxes as individuals are able to maintain their economic viability in this difficult economy.
- By reduction of social service costs and reduction of criminal justice activity as these individuals are in compliance with the law.

Not only will the state of Kansas receive these financial benefits but so will Kansas Municipalities.

Senate Bill 158 also gives Kansans the opportunity to dispute a citation when a failure to comply has occurred. The fact pattern this is intended to address is when someone's identity has been stolen and a third person has received a citation in the name of the Kansas driver. The Kansas driver does not receive a copy of the citation as they were not the person issued the citation. Their licenses are suspended, and so they are forced to pay the citation and have it affect their driving record even when they did not commit the driving infraction, or they are required to take their case to trial and have their license suspended while waiting for that trial. This legislation was modified from the original 3R's version to account for that circumstance. An individual may have the opportunity to prove their innocence, and while their case is pending still be able to operate a motor vehicle to and from their place of employment.

Respectfully submitted,

Phillip B. Journey



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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Topeka, Kansas 66612-1507

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Senate Judiciary Committee
Tuesday, February 10, 2009

Kathy Porter

Neutral Testimony on the Mechanics and Fiscal Impact of Senate Bill No. 158

Thank you for the opportunity to appear before you today and offer neutral testimony regarding the mechanics and the potential fiscal impact of Senate Bill No. 158. This bill would amend K.S.A. 8-2110(b) to create a new status and a new procedure that could be used by drivers whose license has been suspended for not appearing in the appropriate district or municipal court or for not paying all fines, court costs and penalties imposed with the traffic citation. Under this bill, those drivers would be allowed to submit a written request, along with a \$25 application fee, for restricted driving privileges in lieu of the suspension.

One concern with this bill is that there is not specific language to indicate where the driver would submit the written request and \$25 application fee. Our position is that the written request and application fee should be submitted and collected by the Division of Vehicles. K.S.A. 8-2110(b) currently states, "[U]pon receipt of a report of a failure to comply with a traffic citation under this subsection [from the district or municipal court], pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the informing court." In other words, it is the court that informs the Division of Vehicles of the failure to comply, but the Division of Vehicles is the licensing authority that actually suspends the license and, therefore, should be the authority to receive the written request and application fee for a restricted license in lieu of suspension.

The bill is also somewhat vague in relation to the driver's traffic citation case. In particular, we are concerned with the driver's license reinstatement fee of \$59 that would be pending in the court once the court notifies the Division of Vehicles of the failure to comply with the traffic citation. We would ask that the reinstatement fee remain owing and that it be collected, even if the driver is approved for a restricted license. This would not impact any processes currently performed by the court, nor would it require any additional notifications between the court and Division of Vehicles.

However, if the reinstatement fee would not be collected due to the restricted license, unless the Division of Vehicles notifies the court of the change in the license status, the court would not have any means of knowing this contract (the restricted driving privileges status) was entered into between the driver and Division of Vehicles. The Division of Vehicles does not currently update the Kansas courts on the status of a driver's license, and we would not suggest

that practice be altered for this process. In fact, in those instances in which a court imposes restrictions on a driver's license, that information is submitted to the Division of Vehicles and the court does not monitor the status of the driver's license at any point in time. We would strongly ask this practice not change.

If the intent of the bill is to have the Division of Vehicles be the agency responsible for receiving the written request and application fee from the driver, we would not oppose this bill. However, we would respectfully request that language be inserted into SB 158 that would clarify the written request and application fee to be submitted to the Division of Vehicles.

If the intent of this bill is to have the written request and application fee submitted to the district or municipal courts rather than the Division of Vehicles, I would offer the following opposition with this proposed language:

1. FullCourt, the district court case management software, would need additional programming to allow this proposed alternative to automatically be tracked and monitored by the program, rather than manually by court personnel. At the present time, each step for all suspensions, including the statutorily required 30-day notices, is maintained by an automatic tickler process performed by FullCourt. This new programming to FullCourt would cost the State of Kansas an estimated \$25,000.

2. There would be additional court time involved as judges would have to conduct an additional hearing to approve the written request for a restricted license and there would be additional court staff time involved in handling the request and appropriate notification to the Division of Vehicles, as well as the time spent in receipting and disbursing the application fee.

3. The bill does not mention of how this fee is to be disbursed.