

WHITNEY LAW OFFICE

109 E. Main, PO Box 208
Norton, KS 67654-0208
(785) 877-2661

Mark C. Whitney
Attorney at Law

Fax (785) 877-3868
e-mail mark@whitneylawoffice.com

To: House Judiciary Committee

From: Mark C. Whitney

Date: January 11, 2016

Subject: HB2289 - Testimony in Favor

Chairman Barker and Members of the Committee:

I am writing today in favor of HB2289. For context, I am a 1977 graduate of Washburn Law School and have been in private general practice for more than thirty years now, am a member of the Kansas Bar Association, the Kansas Association For Justice and the Kansas Association of Criminal Defense Attorneys. I believe in the U.S. Constitution, the Kansas Constitution and the doctrines of fundamental fairness and due process of law.

Why do I support HB2289? It is because I believe in the U.S. Constitution, the Kansas Constitution and the doctrines of fundamental fairness and due process of law.

I frequently meet with clients charged with a DUI. It is not entirely uncommon that the DUI charge is unfounded, that the client is truly innocent, that there is an obvious lack of evidence for the DUI charge, that the charge cannot be proved or that the evidence of the DUI will be suppressed for an unlawful stop in violation of the U.S. and Kansas Constitutions. In such cases, the prosecutor may decline to prosecute the DUI or the court may dismiss the case. The client is grateful. But then I have to tell the client the bad news.

The client will lose his or her driving privileges by administrative action of the Kansas Department of Revenue. Many of the clients cannot understand that. It is the first they have heard of such a thing. They say, "How can that happen? I was not driving drunk. That's not fair?" I have to tell them that the administrative action on the driver's license by the Department of Revenue is governed by rules different from the rules governing the criminal DUI charge. It is not fair. Kansas law says the legal action against the driving privileges is a civil administrative proceeding and not criminal - is remedial and not punitive. Constitutional protections, due process and fundamental

fairness, do not apply to the civil administrative proceeding against the driving privileges. (There is only one case that I am aware of, Manzano v. Kansas Department of Revenue, 50 Kan.App.2d 263 (2014), where the court found the administrative hearing was such a sham that Manzano's civil due process rights applied and were violated - only this one case and the conduct of the administrative hearing was absolutely egregious.)

Under the current law for the administrative hearing, the burden of proof is on the citizen licensee. He or she must challenge the administrative suspension and pay the Department of Revenue for the privilege of the challenge, but has no legal right to see a copy of the police report before the hearing in order to review it for accuracy and be able to challenge the conclusions of the officer. Under the current law for administrative suspensions, my clients have no legal right to argue that the stop of the vehicle was unlawful - that there was no reason for the stop or any justification for the stop by the officer. HB2289 will restore these rights of due process and fundamental fairness to the process.

Make no mistake. I am opposed to driving under the influence. If a person is truly driving under the influence, he or she should suffer a license suspension. But it is not uncommon for a person to lose their driving privileges administratively when not actually driving under the influence. There is no true legal recourse under the current law. And the consequences are, in many cases, much more than remedial - including loss of employment and income for the driver and his or her family, and loss of such benefits as medical insurance through the employer. Such consequences should not occur without due process of law and fundamental fairness.

I urge you to act favorably on HB2289 and take a step toward restoring constitutional rights, fundamental fairness and due process of law to the license suspension process in order to give Kansas citizens a fair administrative driver's license hearing.

Thank you for your time and your consideration of this matter.

Sincerely,



Mark C. Whitney
Attorney at Law
S. Ct. #9607

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