

PAUL W. BURMASTER P.A.
Attorney and Counselor at Law

**Santa Fe Law Building
8000 Foster
Overland Park, KS 66204
(913) 648-1464**

Fax (913) 648-7774

** Licensed in Kansas and Missouri*

To: Senate Judiciary Committee

From: Kansas Association of Criminal Defense Lawyers

Date: February 25, 2016

Subject: H.B. 2289 – Regarding Administrative Driver's License Hearings

Chairman King and Members of the Committee:

Thank you for giving me the time to address this Committee and testify regarding the importance of HB2289.

This bill seeks to address some errors in fundamental fairness in administrative license hearings in Kansas. As this Committee may know, these hearings recently came under fire by the Kansas Court of Appeals in *Manzano v. Kansas Department of Revenue*, 50 Kan.App.2d 263 (2014)(finding that the hearing was a "sham"). These hearings require that a driver must pay for his right to a hearing, but he is denied the police reports or even the ability to argue if his stop was unlawful. This bill seeks to correct these inequities.

The need for Police reports is obvious. The Driver must request and pay for his license hearing in order to fight the suspension of his license. And, the Driver bears the burden to show the suspension is unwarranted. He is allowed to access a copy of any video evidence for purposes of the hearing, but the statute does not *specifically* allow for the discovery of the police report. And, it is a routine practice in Leavenworth and Douglas counties, and probably others, to deny access to the reports for purposes of the license hearing until the

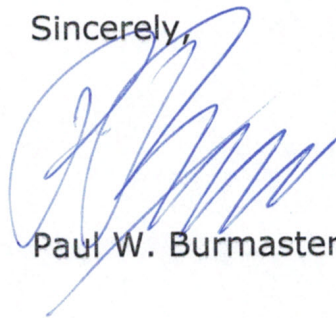
charges are filed -- which in these counties regularly takes over a year (well after the license hearing is over). This problem should be corrected so that drivers can see the reports and the evidence against them, and so that the hearing officers can make informed determinations in reaching their rulings.

The Driver should also be allowed to challenge the stop of his vehicle if it is unlawful. Under the current law, a police officer may stop a driver for any reason or no reason at all. In such a case, the driver can challenge the validity of the stop under the 4th Amendment *in criminal court, but not in the license hearing*. In 2008, in Martin v. KDOR, 285 Kan. 625, 176 P.3d 938, the Kansas Department of Revenue successfully argued that the basis for the stop was not an available issue specifically listed in the statute and accordingly the driver could not argue the stop -- *even if it was unconstitutional*. Thus, a police officer may stop a driver for any reason, or no reason, and the driver may lose their license for 3 years on a first offense (one year suspension and two more years with an interlock).

These omissions in the statute are likely accidental, but open the door for abuse of process. These omissions in the statute should be corrected. I ask that you support HB2289 for these reasons.

Thank you for your time and attention to my testimony.

Sincerely,



Paul W. Burmaster