

To: Senate Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: February 12, 2018

RE: Neutral testimony on SB 297

I want to thank Chairman Wilborn and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide neutral testimony SB 297.

SB 297 attempts to fix an important Constitution issue with the State's current implied consent law. Implied consent, as established in [K.S.A. 8-1001\(a\)](#), means individuals who drive a vehicle in Kansas agree they will submit to testing, whether by breath, blood, urine or other bodily substance, to detect whether drugs or alcohol are in their system. In 2012, the Kansas Legislature amended [K.S.A. 8-1001](#) and K.S.A. 8-1025 to allow the state to impose criminal charges on individuals who refuse to submit to blood alcohol testing. Prior to 2012, those who refused testing faced civil penalties which included fines and suspension of driver's licenses. Criminal charges were added when legislators were provided testimony indicating the risk of fines and suspension was not proving to be enough of an incentive to get drivers' full cooperation¹. The Kansas Supreme Court has opined that K.S.A. 8-1025 violates the Fourteenth Amendment's due process clause by criminalizing the act of withdrawing consent of a search.² The court held consent is revocable and that charging an individual with criminal penalties for revoking his consent violated both the Kansas and United States Constitutions.³ SB 297 appears to cure the constitutionality defects in the current statute; however, the League questions the necessity of requiring oral and written notice by law enforcement stating what courts have found is constitutionally allowed without notice.

¹ Minutes of Senate Judiciary Committee, January 26, 2011.

² *State v. Ryce*, 303 Kan. 899, 957, 964. 368 P.3d 342, 376 (2016).

³ *Id.* at 963-964, 380-381.