

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 8:30 a.m. on March 10, 2011, in Room 152-S of the Capitol.

All members were present except:

Senator Les Donovan-excused
Senator Anthony Hensley-excused

Committee staff present:

Daniel Yoza, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Toni Beck, Committee Assistant

Conferees appearing before the Committee:

John Faber, Lobbyist, ABATE
Donald Boose, ABATE
Tony McClelland, ABATE
Tim Farr, ABATE
Richard Goering, ABATE, Written Only
Arthur Barnett, ABATE, Written Only
Lynn Auernheimer, ABATE, Written Only
Senator Marci Francisco, Written Only
Bill Lucero, Kaw Valley Bike Club
Alan Apel, Kaw Valley Bike Club
Larry Baer, Assistant General Counsel, KS League of Municipalities
Marcia Wright, Assistant City Attorney, Lenexa, Written Only

Others attending:

See attached list.

HB 2192 - Making seat belt regulations part of uniform act regulating traffic on highways

Chairman Umbarger opened the hearing on **HB2192**.

Daniel Yoza, Revisor, presenting a ballooned amendment for review by the Committee on this bill. An act concerning safety belts; regulating traffic on highways (the original contents of HB 2192) would be stricken from the bill. Bicycles and motorcycles would be allowed to turn on red traffic lights that fail to change to a green light was amended into the bill. It would also require a vehicle to pass a bicycle with a distance of three feet for safety clearance. ([Attachment 1](#))

John Faber testified in support of the bill, stating it would be the cheapest fix to the problem of motorcycles not tripping an automatic green light instead of KDOT asking the city to change all lights. ([Attachment 2](#)) Donald Boose testified in support of the bill, when encountering a left turn at the intersection after stopping. ([Attachment 3](#)) Tony McClelland testified in support of the bill, stating the bill is aimed at addressing a frustrating issue that plagues motorcyclists at traffic controlled lights. ([Attachment 4](#)) Tim Farr testified in support of the bill, stating a vehicle must pull up behind you to trip the sensor for a light to change to green. ([Attachment 5](#)) Richard Goering provided written testimony in support of the bill, stating it would be a common sense procedure to have a Dead Red Bill for passage on red after stopping. ([Attachment 6](#)) Arthur Barnett provided written testimony in support of the bill, stating motorcycles are unable to trip the sensor for the change from red to green lights. ([Attachment 7](#)) Lynn Auernheimer provided written testimony in support of the bill stating the frustration at red traffic signals. ([Attachment 8](#)) Senator Marci Francisco provided written testimony in support of the change in statute that motorcycles may proceed through the intersection on red. ([Attachment 9](#))

Bill Lucero provided testimony in support of the bill by introducing Alan Apel to detail Tim Roberts' tragic story. ([Attachment 10](#)) Alan Apel provided informational testimony for the change in statute of the bill in regards to the untimely death of a fellow cyclist that could have been avoided with a "three feet law." ([Attachment 11](#))

Larry Baer, League of Kansas Municipalities, testified in opposition to **HB2192** stating KSA 8-2203

CONTINUATION SHEET

The minutes of the Senate Transportation Committee at 8:30 a.m. on March 10, 2011, in Room 152-S of the Capitol.

would not have any court costs imposed. However, he does believe that cities should be able to exercise their home rule authority as local policy. The League also opposes the change made by the House regarding motorcycles at red lights. Attachment 12) Marcia Knight provided written testimony in opposition to the bill stating assessing court cost should be left to the discretion of local authorities. (Attachment 13)

Chairman Umbarger closed the hearing on **HB2192**.

Senator Petersen moved to add **HB 2174's** "three feet rule" inserted into **HB 2192**. Seconded by Senator Huntington. Motion passed.

Senator Schmidt moved to remove the original contents from **HB 2192**. Seconded by Senator Reitz. Motion passed.

A motion by Senator Schmidt, seconded by Senator Kultala, to recommend **HB 2192** favorably for passage as amended was made and withdrawn. Further discussion is expected on the bill.

HB 2044 - Amending the requirements for action and notification upon motor vehicle accident

Chairman opened discussion on **HB 2044**.

Daniel Yoza, Revisor, presented information amending KSA 8-1602, 8-1604, 8-1605, and 2010 SL Ch.136, Sec. 292 concerning required action and notification in a motor vehicle accident. The bill would amend the penalties for leaving the scene of an accident. (Attachment 14) Senator Kultala requested the language would read "up to" \$1,000 fine in an amendment.

Senator Schmidt moved to amend "up to" a \$1,000 fine for action and notification leaving an accident. Seconded by Senator Kultala. Motion passed.

Discussion continued in the Committee referencing page 1, line 27 for increase of the penalty fine. Level five is presumptive prison for discretion as opposed to level 6 as presumptive probation. Latitude should be allowed for a second driver that hit the same person, but leaving the scene of the accident would not relieve that person from responsibility to take action in assistance and reporting.

Senator Reitz made a motion to amend **HB2044** page 1, line 28 to a level 5 felony. Seconded by Senator Kultala. Motion passed.

Senator Schmidt made a motion to withdraw her previous motion on a fine of "up to" \$1,000. Seconded by Senator Kultala. Motion passed. Senator Schmidt requested a letter be drafted to tell the conferee about fines in current law and explain why a requested fine was not amended into the bill.

Daniel Yoza suggested a technical amendment with regard to page 5, lines 18-20: "or if the current crime of conviction was committed on or after July 1, 2011 and is a violation of KSA 8-1602 and amendments thereto."

Senator Schmidt made a motion to make the recommended technical amendment. Seconded by Senator Reitz. Motion passed.

Senator Reitz moved to recommend **HB 2044** as amended favorably for passage. Seconded by Senator Huntington. Motion carried.

The next meeting is scheduled for March 15, 2011.

The meeting was adjourned at 9:30 a.m.

SENATE TRANSPORTATION COMMITTEE

GUEST LIST

DATE: March 10
THURSDAY

NAME	REPRESENTING
Larry R Baer	LKM
Don Boose Sr.	ABATE of KS Inc
Vickie Boose	" " "
Tim Farn	ABATE of KS #4
TED HENRY	CS.
Zac Kohl	Federico Cons.
Brian R Thompson	ABATE
John M Faber	ABATE
Nathan Lindsey	Kearney & Associates
Dina Hodges	KDHE
Paul Casey	GBA
Tony McClelland	ABATE
John	
Bill Lucas	KVBC
Michelle Roberts	KVBC
Alan Apel	KVBC
Randy RASA	KANSAS CYCLIST, KAN BIKE WALK
Jerry Glidewell	KVBC
Jake Cloninger	Shadowing Sen. Bob Marshall
Hank Cloninger	Shadowing Sen. Bob Marshall

SENATE TRANSPORTATION COMMITTEE

GUEST LIST

DATE: 03/10/11

[illegible]

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2192

As Amended by Senate Committee on
Transportation

Brief*

HB 2192 would allow the driver of a motorcycle or the rider of a bicycle to proceed through a steady red signal, subject to other traffic rules governing right of way, if the red light has failed to change to green within a reasonable period of time because the signal has malfunctioned or has failed to detect the vehicle. The driver or rider must yield the right of way to any vehicle in the intersection or approaching so as to constitute an immediate hazard, to any pedestrian lawfully within an adjacent crosswalk, and to any other traffic lawfully using the intersection.

The bill also would require the driver of a vehicle overtaking a bicycle to pass that bicycle on the left no less than three feet away from the bicycle. It would allow the vehicle to pass a bicycle in a no-passing zone only when it is safe to do so.

Background

The original contents of HB 2192 would have moved the Safety Belt Use Act into the Uniform Act Regulating Traffic. Representatives Tom Burroughs, Rich Proehl, and Vince Wetta testified in support of the original bill, and Representative Gary Hayzlett submitted written testimony as a proponent. A representative of AAA Kansas presented neutral testimony. A representative of the League of Kansas Municipalities submitted testimony opposing the bill. Moving

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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the Safety Belt Use Act into the Uniform Act Regulating Traffic would make penalty provisions for seat belt violations uniform throughout Kansas. The fine is \$10, and no court costs would have been added.

The House Committee on Transportation amended the bill to insert contents of HB 2058 as introduced but amended to include bicycles. HB 2058 was proposed by ABATE of Kansas, and proponent testimony on that original bill was provided by six ABATE representatives. A representative of the United Transportation Union provided neutral testimony. A representative of the Kansas Association of Chiefs of Police and the Kansas Peace Officers Association provided opposition testimony.

The House Committee of the Whole amended the bill to clarify when a motorcycle driver or bicycle rider must yield the right of way before proceeding through an intersection.

The Senate Committee on Transportation amended the bill to remove the original contents of HB 2192; add the contents of HB 2174, regarding vehicles passing bicycles; and change the effective date to publication in the statute book. The Senate Committee on Transportation received proponent testimony from several representatives of ABATE regarding the "dead red" portions of the bill (portions originally in HB 2058); proponent testimony from Senator Francisco and from representatives of the Kaw Valley Bicycle Club on the portion of the bill dealing with vehicles passing bicycles (from HB 2174); and opponent testimony on the original contents of HB 2192 (regarding seat belts) from a representative of the League of Kansas Municipalities and a representative of the City of Lenexa.

A fiscal note prepared by the Division of the Budget on HB 2058 as introduced states the portion of the bill allowing a motorcycle to proceed through a red light would have no effect on state budgets and was not expected to have an effect on any local budget. According to the fiscal note for HB 2174, regarding overtaking and passing of bicycles, that

portion of the bill would have no fiscal effect on the Kansas Department of Transportation.

3-2192

**ABATE
John Faber
Testimony
Senate Transportation Committee
HB 2192**

Thank you Chairman Umbarger, Vice-chair Marshall, Ranking Member Kultala and members of the committee. I am John Faber here today to represent ABATE of Kansas.

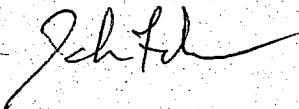
We have attempted to address what we refer to as a "dead red" light in HB 2192. It's by far the cheapest fix to the problem of motorcycles not tripping an automatic green light, leaving the motorcyclist to seek another way to get around this problem. It would take many hundreds of thousands of dollars to ask KDOT and each individual city to repair the problem. This simply makes it possible for a motorcyclist to use the stop light as a stop sign and proceed with caution when it is safe to do so.

This proposed legislation does not cause concern for the safety of any other person than the motorcyclist. Motorcyclists are very cognizant of their safety and using this as a remedy is just good common sense. No motorcyclist will turn into oncoming traffic because doing so would be a threat to his or her life and everyone that rides a motorcycle has to have the attitude that his safety depends on his or her ability to use defensive driving techniques at all times.

Its a common sense fix to a problem that we think is reasonable and in fact has been done in several other states without causing any problems.

Mr. Chairman, and members of the committee, thank you for your time and I will stand for questions at this time.

John Faber



ABATE

TESTIMONY

By
Donald R. Boose, Jr.
ABATE of Kansas, Inc.

Before the Senate Transportation Committee
The Honorable Dwayne Umbarger, Chairman
Thursday, March 10, 2011 – Statehouse, Topeka, Kansas

H.B. 2192
Dead Red Bill

Good morning. I am Donald R. Boose, Jr., and I am a member of ABATE of Kansas.

I have been riding a motorcycle for many, many years and one of the most frustrating things I encounter while riding is stopping in a left-turn lane at an intersection that is controlled by a traffic signal with sensors. Many times the sensors fail to detect motorcycles and leave the rider sitting through several cycles until a car or another heavier vehicle pulls up behind them causing the light to cycle properly for the left-turn lane.

Being able to turn left at a red light, after waiting a reasonable period and after being sure it is safe to proceed, is a sensible solution to the problem. The motorcyclist will be responsible for making sure it is safe to proceed. If it is not, the rider will have to face the consequences of getting a ticket and probably damaging the motorcycle as well as physical injury to the rider and possibly damaging another vehicle. Because I know what my responsibilities will be if this bill becomes law, I will be responsible and take the time needed to proceed carefully and lawfully. I know my fellow ABATE members will be careful, too.

Most of us who enjoy motorcycles are responsible and we do take extra care because we know we are more difficult to see. But not everyone who rides a motorcycle rides just for fun. For some, a motorcycle is the only means of transportation and having to wait several cycles for a traffic signal to turn green can take up valuable time. Everyone's time is just as valuable as the next person's.

Passing this bill will reduce frustration, improve traffic flow and help make motoring, whether in a car or on a motorcycle, more enjoyable and safe for everyone.

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TESTIMONY
By
Tony McClelland
ABATE of Kansas, Inc.

Before the Senate Transportation Committee
The Honorable Dwayne Umbarger, Chairman
Thursday, March 10, 2011 – Statehouse, Topeka, Kansas

H.B. 2192
Dead Red Bill

Mr. Chairman and members of the Committee:

I am asking for your support of H.B. 2192. This bill is aimed at addressing a very common and frustrating issue that plagues motorcyclists throughout our state, i.e., the traffic control lights that do not detect motorcycles.

There are a lot of traffic lights that are controlled by weight sensors or magnets, both being located under the road surface. Most of today's motorcycles are made with fiberglass or plastic chassis and aluminum engine blocks, which often render them undetectable by these types of sensors. If you are in the left lane or the left-turn lane, you now face a legal issue. You can see the signal cycling through for the cross traffic even when there is none and other times the lights just won't do anything until a vehicle shows up behind you or from the opposite direction. If you are in the left-turn lane, this still may not help. But by law, you cannot proceed safely without the risk of receiving a ticket for disobeying a red light.

In my opinion it would be financially unreasonable to have these lights repaired to detect "all" motor vehicles. This problem has become all too common and I believe that H.B. 2192 addresses this issue in a fair and financially reasonable fashion on the government's side. I also believe that this measure would not be abused by people.

In closing, I again ask you for your support of H.B. 2192 and also I want to thank you for your time and consideration on this issue.

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TESTIMONY

By
Tim Farr
ABATE of Kansas, Inc.

Before the Senate Transportation Committee
The Honorable Dwayne Umbarger, Chairman
Thursday, March 10, 2011 – Statehouse, Topeka, Kansas

H.B. 2192
Dead Red Bill

Good morning. My name is Tim Farr. I am the ABATE of Kansas District 4 Representative. I represent Osage, Shawnee, Jefferson and Brown counties of Kansas.

When an automobile comes to a stop in a left-turn lane, it stops and the light turns green for it at the appropriate time, allowing it to proceed. However, on a motorcycle, you enter the left-turn lane and hope it works as it is designed to do. In many cases, you enter the left-turn lane and wait for a number cycles for the light to turn green, and if it doesn't, you wait.

You try the old trick of revving your motor, hoping the vibrations will trip the sensors. Many think you are just making noise for no reason. You can also roll your motorcycle back forth two or three times in the lane or turn off and restart your motorcycle, hoping to trip the sensor while sitting directly on it. Sometimes these tricks work. In most cases, they don't. You end up waiting for a car or larger vehicle to pull in behind you and trip the sensor.

Late at night or during a lull in traffic, you sit and wait for vehicles to pull in behind you to trip the sensor. The other choice is to run the red light. This law will allow a motorcycle to proceed in a safe and timely manner.

I can only speak about the intersections I use, but it is a problem across the state. Weather, rain, cold, size and weight of vehicles all affect the light system. Some lights will fail one day and work perfectly the next.

I thank you for the time here today to speak on this subject and I hope you share the concerns of the motorcyclist and ABATE for their safety and welfare.

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TESTIMONY

By
Richard Goering
ABATE of Kansas, Inc.

Before the Senate Transportation Committee
The Honorable Dwayne Umbarger, Chairman
Thursday, March 10, 2011 – Statehouse, Topeka, Kansas

H.B. 2192
Dead Red Bill

I want to express my support for H.B. 2058. As I understand the issue, this would provide the opportunity for motorcycle operators to proceed through a red light, providing they have waited one full cycle to determine that the sensors in the roadway have failed to detect them. This, to me, seems to be a good, common-sense procedure to eliminate those instances where the motorcycle has failed to trip the light for whatever reason. It certainly seems to be the most cost-effective option rather than the expensive upgrading of traffic control systems.

I, for one, am uneasy sitting at an extended red light due to the danger of possibly being struck from behind because of an inattentive driver, given our reduced visibility. Also, many motorcycles are air-cooled and extended idling during the summer can be detrimental to a motorcycle's engine.

I believe there is little chance of this being abused because our lack of crash protection forces us to be extra vigilant of our surroundings and decisions. An improper choice by us regarding right-of-way or risk can certainly have dire consequences, which is why I am confident this bill could provide many upsides, with few, if any, negative consequences.

Thank you for your time and attention to this matter.

TESTIMONY

By
Arthur Barnett
ABATE of Kansas, Inc.

Before the Senate Transportation Committee
The Honorable Dwayne Umbarger, Chairman
Thursday, March 10, 2011 – Statehouse, Topeka, Kansas

H.B. 2192
Dead Red Bill

I would like to encourage your support of the “dead red” bill. I have encountered several traffic signals that will not pick up motorcycles because of size or weight. Safely proceeding after a reasonable time through a red light that won’t change is no more unsafe than what is done at a stop sign or flashing red light. Please encourage passage of this bill.

Thank you.

TESTIMONY

By
Lynn Auernheimer
ABATE of Kansas, Inc.

Before the Senate Transportation Committee
The Honorable Dwayne Umbarger, Chairman
Thursday, March 10, 2011 – Statehouse, Topeka, Kansas

H.B. 2192
Dead Red Bill

I believe this bill is a safety factor for motorcyclists as well as automobiles, as it will keep people from becoming angry and frustrated at traffic signals.

Thank you.

STATE OF KANSAS

MARCI FRANCISCO
SENATOR, 2ND DISTRICT

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TOPEKA

SENATE CHAMBER

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AGRICULTURE

NATURAL RESOURCES

MEMBER

UTILITIES

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ENERGY & ENVIRONMENTAL POLICY

INFORMATION TECHNOLOGY

LEGISLATIVE EDUCATIONAL PLANNING

STATE BUILDING CONSTRUCTION

Senate Committee on Transportation
HB 2192
March 10, 2011

Chairman Umbarger and Members of the Committee:

I am writing you today to support the amendment to K.S.A. 8-1508 added to this bill in the House that would allow a driver of a motorcycle or person riding a bicycle to proceed through a steady red signal, subject to other traffic rules governing the right of way, if the red light has failed to change to green within a reasonable period of time.

I (along with many of my constituents) am among those bicycle riders who have waited at an intersection for a vehicle to arrive to trigger the signal change.

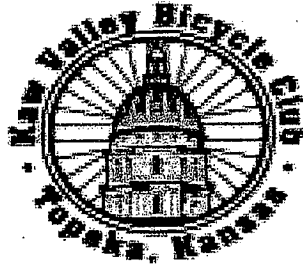
This change in statute would provide for the efficiencies gained by having traffic signals that can detect most traffic to not stop those who are also being efficient by riding their bikes or driving motorcycles.

Thank you for your consideration of this change.

marci francisco
Senator Marci Francisco

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Testimony in support of Amending HB 2192
as passed by the House with HB 2174
Senate Transportation Committee
10 March 2011

Mr. Chairman and Members of the Committee,

This morning I am here to ask with my friend and fellow cyclist, Alan Apel, your support to include HB 2174 as an amendment to HB 2192. Before turning the podium over to him, I have the somber honor of introducing you members to Michelle Roberts, daughter of Tim Roberts, who was struck and killed by an inattentive motorist while Tim was riding on SW 53rd St outside Topeka September 12th this past year.

Tim was an avid cyclist who enjoyed riding recreationally. Survivors other than Michelle include Tim's wife, Marissa, a paraprofessional at Farley Elementary School and Michelle's 3 sisters, two of whom reside with Marissa at home. Although Kaw Valley Bike Club has been discussing the enactment of a "three feet" law for several years, Tim's unfortunate death has been the catalyst for our Club to join with other cyclists throughout the state to request the passing of this statute.

At this time let me introduce to you Alan Apel.



Testimony in support of Amending HB 2192
as passed by the House with HB 2174
Senate Transportation Committee
10 March 2011

Mr. Chairman and Members of the Committee,

As Bill told you, I am Alan Apel, Treasurer of the Kaw Valley Bike Club and registered League Cycling Instructor. Bicyclists ride for numerous reasons in Kansas—for health, recreation, travel and livable communities. For these reasons, bicycling in the state is increasing. As a result we need to educate the public how best to share the road and reduce the chance for serious injury. But, unfortunately, the existing law is vague —only requiring motorists to pass “at a safe distance to the left thereof.” Thus, a statute is needed that would require motorized vehicles must provide at least 3 feet of clearance when passing a bicycle.

Such a law's existence would...

- strengthen the existing Rules of the Road by offering an objective measure of a safe passing distance.
- uphold the rights and responsibilities of bicyclists and motorists by encouraging operator education.
- support the legal concept of bicycles as vehicles.
- move the state higher in national rankings as a bicycle-friendly state by supporting a message to safely share the road, as reinforced through a 3-foot law.

Since 1973, 16 states have enacted 3 foot clearance laws. Another 13 states are considering enacting similar statutes. The main purpose of the three-foot passing legislation is to educate the public about how far is a safe distance to pass bicyclists and pedestrians. Many motorists believe just avoiding contact with a bicyclist or pedestrians is all that is required. Most motorists are often unaware of the danger of passing a cyclist too closely. It can result in hitting the cyclist or startling the cyclist, leading to a crash from the cyclist's reflexive action.

State patrol officials in several of the affected 16 states emphasize that the law is used more as an education tool to provide safe practices than as an enforcement tool to punish law breakers. It gives officers, government officials, and civic groups the opportunity to inform drivers what a safe minimum distance is by use of a common measure (3 feet or one yard) that can be easily remembered.

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Current statutes uses "safe distance" without any numeric definition. The undefined standard in the current law does not provide an effective tool for law enforcement or state and local government to educate the public.

No expectation exists that police will have to use some sort of special distance-measuring equipment to see if the motorist is within 36 inches. The point, instead, is to communicate that the motorist needs to pass a cyclist safely, and a minimum 3 feet would better define a "safe pass." This benefits police officers by providing a simple standard they can explain.

Use of numeric distances to educate the public is not uncommon in traffic laws. For example, "signals must be given at least 100 feet before making the actual move to turn."

In order to give a bicyclist 3 feet of passing clearance, a motorist may have to move into another lane or cross the center line (when legal). But, whether it be a bicycle, farm tractor or other vehicle, motorists may, as per the law, cross the center line to overtake another vehicle, where it's legal and safe (Chapter 8, Article 15, Statute 8-1514).

It should be noted, that the current bicycle positioning law (Chapter 8, Article 15, Statute 8-1590) allows a bicycle to move from the right hand curb or edge of a the roadway for a number of reasons — including when riding in "a lane that is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane."

Therefore, when a lane becomes too narrow for both a bicycle and car to be in the same lane, a bicyclist, for safety reasons, can move into the lane. Then, the motor vehicle must utilize part or all of another lane.

The Kaw Valley Bicycle Club, KanBikeWalk, and other bicycle clubs agrees with Kansas Law that bicycles are vehicles and should act and be treated as such on the roadway, and that drivers should pass at a safe distance. However, given the frequency and high consequences of motorists failing to pass at a safe distance, the coalition agrees with Kansas cyclists—and 16 other states—that additional guidance within the law is necessary. Adoption of HB 2174 into HB 2192 can provide this to motorists and cyclists in Kansas.

Respectfully submitted,

Alan Apel
Treasurer, Kaw Valley Bike Club
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opponents

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Date: March 10, 2011

To: Senate Committee on Transportation

From: Larry R. Baer
Assistant General Counsel

Re: HB 2192
Testimony in Opposition

Thank you for allowing me to appear before you today and present testimony in opposition to HB 2192 on behalf of the League of Kansas Municipalities and its member cities.

HB 2192, as amended by the House, would permit persons operating motorcycles or bicycles to proceed through a red light (subject to the rules of the road) when the signal fails to turn green because the light was not "triggered" by the motorcycle or bicycle. HB 2192 would also amend the mandatory seat belt law into the uniform act regulating traffic. The bill would also clarify that when charged, a violation of K.S.A. 2208 would not have any court costs imposed. Finally, HB 2192 would preempt cities from taking any action to adopt any local regulation that would act in addition to, as a supplement to or be in conflict with the language contained in K.S.A. 8-2204.

The League of Kansas Municipalities has never taken a position on "primary seat belt" usage. And, we do not stand in opposition to such at this time. Rather, we stand in opposition of the mandate preempting a city's ability to determine what constitutes an offense and what type of penalties should be imposed when a violation occurs. For many years, prior to the adoption of the current seat belt law, cities enforced seat belt laws and imposed fines in accordance with state law and imposed court costs in accordance with local provisions. We would submit to you that those cities that chose to not follow the changes in the seat belt law occurring last year regarding fines and costs did so not out of spite or malice but, rather, to continue to enforce and penalize consistent with their prior provisions.

The League has no issues with the State setting fines and limitations or restrictions on court costs on offenses when charged as state violations. However, we do believe that cities should be able to exercise their home rule authority and determine, as a matter of local policy, what is appropriate for fines and court costs on violations committed and prosecuted within their corporate limits. The League also opposes the change made by the House regarding motorcycles at red lights.

For this reason, the League of Municipalities opposes HB 2192. Thank you.

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WRITTEN TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2192

To: The Honorable Dwayne Umbarger, Chairperson
Members of the Senate Committee on Transportation

From: Marcia L. Knight, Assistant City Attorney

Date: March 7, 2011

RE: House Bill 2192 – Seat Belts

Thank you for the opportunity to submit written testimony regarding HB 2192. The City of Lenexa has concerns with Section 4 of HB 2192, which limits seat belt fines to \$5 until June 30, 2011 and to \$10 from and after July 1, 2011, and prohibits the imposition of court costs. Additionally, Section 4 includes language prohibiting any local authority from enacting any law in conflict with, in addition to, or supplemental to it.

The City opposes Section 4 of HB 2192 for the following reasons.

- **Assessing court costs should be left to the discretion of local authorities.**

Court costs in Lenexa are \$35. These costs were established in an effort to partially offset the day to day costs and expenditures of processing tickets and running the court. A seat belt ticket takes as much time to import, process and handle as a speeding ticket or any other ticket. In fact, the additional burden of separating seat belt citations from all other citations to ensure no court costs are collected only increases the administrative time and expense it takes to process seat belt offenses.

Recognizing that not all court costs are the same, perhaps in lieu of prohibiting court costs altogether, the bill could impose a maximum penalty, which may include costs, that may be imposed by local authorities for seat belt violations. That way it would be left to the individual jurisdictions to devise a fine and cost system that works best for them, while still ensuring excessive penalties are not imposed for seat belt offenses.

- **The language making this law uniform throughout the state is too broad.**

While the City of Lenexa maintains its position that Home Rule authority granted to cities through Article 12, Section 5 of the constitution is favored and should be upheld, we understand that there are areas of the law where the legislature desires uniformity across the state. This objective can be met by prohibiting any law "in conflict" with the state law. The proposed language, however, takes this purpose too far by prohibiting laws that are "in addition to" and "supplemental to" the provisions of Section 4. We fear this broad language could be read to prohibit cities from enacting seat belt laws at all.

Obviously this could have a tremendous impact state wide as the majority of seat belt violations are written by local law enforcement.

- **Low fines for seat belt violations are ineffective.**

The adoption of a primary seat belt law would seem to indicate that seat belt usage is a priority in Kansas. Further, KDOT's 2010 annual report to the National Highway Traffic Safety Association (NHTSA) and the Federal Highway Association (FHWA) indicates that over \$1.5 million dollars were spent toward occupant protection programs and media promotions, such as STEP grants, the "Seatbelts Are For Everyone" (SAFE) program and the "Click it or Ticket" campaign.¹ Yet, at \$5 Kansas has the lowest adult seat belt fine² in the country, and will join only five other states when the fine becomes \$10.³ These fines do not send a message that seat belt usage is important.

The City of Lenexa believes that increasing the fine will increase compliance. In fact, according to a 2010 NHTSA study, increasing a State's fine amount from \$25 (current median) to \$60 would increase seat belt use by nearly 4 percent. Alternatively, increasing the fine amount from \$25 to \$100 could result in nearly a 7 percent increase.⁴

Cities across Kansas already set their own fine amounts for all other traffic offenses. We urge you to consider allowing cities to set the appropriate fine for a seat belt offense, which also will meet our joint objective of increased compliance with the law.

- **The effective date does not provide adequate notice.**

The City also would note that this bill is made effective upon publication in the Kansas Register. Bills made effective upon publication in the Register give little to no notice to those affected. Many cities, Lenexa included, have fine amounts pre-printed on tickets, pre-programmed into software applications, and listed on fine schedules and websites. If this bill is recommended for passage, please consider making it effective upon publication in the statute book (July 1, 2011) to allow cities adequate time to implement any necessary changes.

The City of Lenexa urges you to consider these points and remove or revise Section 4 of HB 2192 accordingly. If you need any additional information, please do not hesitate to contact me at 913/477-7615 or by e-mail at mknight@ci.lenexa.ks.us. Thank you for your consideration.

¹ Pete Bodyk, Kansas Dep't of Transportation, State of Kansas Annual Report FFY 2010, pp. 14-18, <http://www.ksdot.org:9080/burTrafficSaf/reports/AnnRep2010.pdf>.

² Seat belt violations for all persons under 18 are \$60. K.S.A. 8-2504 and 8-1345.

³ Brad Cooper, *Kansas lawmakers don't like cities raising seat-belt fines*, Kansas City Star, Feb. 19, 2011). (See ghsa.org for a complete list of fine amounts per state.)

⁴ For a copy of the full report, go to: www.nhtsa.gov/staticfiles/nti/occupant_protection/pdf/811413.pdf.

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2044

As Amended by Senate Committee on
Transportation

Brief*

HB 2044 would amend KSA 8-1602, 8-1604, 8-1605, and 2010 SL Ch. 136, Sec. 292 concerning required action and notification in a motor vehicle accident. First, the bill would add accidents resulting in damage to an attended vehicle or property to the list of vehicle accidents requiring a person to immediately stop and remain at the scene of the accident until all the requirements imposed by these statutes are fulfilled. Further, the bill would amend the penalties for leaving the scene of an accident as follows:

- For property damages of less than \$1,000, a first conviction would be a class C misdemeanor, a second committed within one year of the first would be a class B misdemeanor, and a third or subsequent committed within one year of the second would be a class A misdemeanor;
- Injury to a person or property damage of \$1,000 or more would be a class A misdemeanor;
- Great bodily harm to a person would be a severity level 8 misdemeanor (from level 10); and
- Death of a person would be a severity level 5 felony (from level 9).

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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The bill also would require that, as provided for in KSA 8-15,107, a driver in an accident involving no death, apparent injury, or hazardous materials must make every reasonable effort to remove the vehicle from the road when it obstructs the regular flow of traffic if it can be done safely, without towing, and without causing further damage to the vehicle or roadway.

Next, the bill would clarify that "insofar as possible," a driver in an accident resulting in injury, death, or damage to an attended vehicle must make efforts immediately to determine whether any person involved in the accident was injured or killed and render reasonable assistance to an injured person.

Further, when a police officer is not present, the driver of a vehicle involved in the accident or an occupant 18 years or older must report the accident by the quickest available means of communication to the nearest police office if there is property damage of \$1,000 or more or any person involved in the accident is injured or killed. Pursuant to the bill, the driver or an occupant 18 years or older also must report the accident to the police if an injured person, the driver or occupant of the other car, or a person attending a vehicle or other property damaged in the accident is not present or in a condition to receive the required information.

Additionally, in an accident with an unattended vehicle, the bill would require the driver to stop immediately if there is damage to any vehicle or property and locate the owner to provide the owner with the required information, or leave a securely attached and conspicuously located writing with the required information. A first conviction for failure to do so would be a class C misdemeanor, a second committed within one year of the first would be a class B misdemeanor, and a third or subsequent committed within one year of the second would be a class A misdemeanor.

The bill also would provide that if a person is convicted for leaving the scene of an accident on or after July 1, 2011,

each prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication for DUI will be counted as one person felony for criminal history purposes. Similarly, if a person is convicted of leaving the scene of an accident resulting in injury, great bodily harm, or death, the bill would provide that a prior conviction for the following statutory crimes convicted after July 1, 2011 would count as a person felony for criminal history purposes:

- 8-235, driving a vehicle without a license;
- 8-262, driving while license is canceled, suspended, or revoked;
- 8-287, driving while one's privileges are revoked for being a "habitual violator";
- 8-291, violating restrictions on driver's license or permit;
- 8-1566, reckless driving;
- 8-1567, driving under the influence of alcohol or drugs;
- 8-1568, fleeing or attempting to elude a police officer;
- 8-1602, leaving the scene of an accident resulting in injury, great bodily harm, or death;
- 8-1605, failing to contact the owner of a vehicle following an accident causing damage to unattended property;
- 40-3104, failing to obtain motor vehicle liability insurance coverage;
- 2010 Session Laws Ch 136, Sec. 40(a)(3), involuntary manslaughter committed while DUI; and
- 2010 Session Laws Ch 136, Sec. 41, vehicular homicide.

2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code and will go into effect July 1, 2011.

Finally, the bill would make some technical amendments.

Background

In the House Committee on Corrections and Juvenile Justice, Representative Paul Davis and representatives of the Douglas County District Attorney's Office and the Attorney General's Office, in addition to local citizens, appeared in support of HB 2044. A representative of the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officer's Association also provided written testimony in support of the bill.

The Committee amended the bill by making technical changes; changing failure to remain at the scene of an accident resulting in death to a severity level 6 person felony; requiring that a driver immediately make efforts to determine whether a person involved in an accident is injured or killed; requiring notification to law enforcement in certain cases; and adding DUI and failing to contact the owner of a vehicle following an accident causing damage to unattended property to the list of crimes treated as person felonies for criminal history purposes.

The Senate Committee on Transportation amended the bill so that failure to remain at the scene of an accident resulting in death would be a severity level 5 person felony, as in the original bill. It also made a technical amendment.

The fiscal note for HB 2044 as introduced indicates that the bill likely would increase litigation in the courts, but the Office of Judicial Administration states such costs likely would be accommodated within existing resources.

The Kansas Sentencing Commission estimates an

increase in annual convictions pursuant to HB 2044 as introduced of 3 prison beds in FY 2012 and 16 beds in FY 2021. As the number of male inmates already exceeds capacity, the bed impact of this bill in addition to the impact of other possible legislation is likely to require additional expenditures. *The FY 2012 Governor's Budget Report* includes \$2.5 million for contract prison beds and if construction is necessary, the Department of Corrections has identified 2 expansion projects: 2 high medium housing units at El Dorado Correctional Facility, with 512 beds and a cost of \$22.7 million for construction and \$9.3 million for operation, and 1 minimum security housing unit at Ellsworth Correctional Facility, with 100 beds and a cost of \$5.9 million for construction and \$1.8 million for operation.