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Testimony for the Kansas House of Representatives Corrections and Juvenile  
Justice Committee

Presented February 2, 2012, in Support of House Bill 2506

I would like to thank the committee for allowing me to testify in support of House Bill 2506. House Bill 2506 amends K.S.A. 8-235, 8-286, 8-287 and 8-288. The effect of this legislation would be to allow those declared to be habitual violators by the Kansas Department of Revenue to obtain, Class C moped-only, licenses. In 2005 this act was filed as SB 76, it passed the Senate but was used as a vehicle for a gut and go at the end of the 2006 session. Filed in 2007 as Senate Bill 6, it passed the Senate floor vote again.

As Senate Bill 34 the language in HB2506 was passed by the Senate on February 15, 2011 by a vote of 34 to 4. SB34 was again used as a vehicle for unrelated legislation to be presented to the Kansas Senate at the end of the 2011 session.

The Kansas Department of Revenue may declare an individual to be a habitual violator upon the conviction of three serious traffic misdemeanors in any five-year period. The revocation of a habitual violator's driver's license upon three convictions is for a minimum of three years. Conviction of operating a motor vehicle after being declared a habitual violator is a Class A misdemeanor subject to

a penalty of up to one year in custody and a \$2,500 fine. Under current Kansas law individuals whose drivers' licenses have been suspended for other reasons, such as failing to pay a traffic ticket or failing a breath alcohol test, may receive a moped only license from the Kansas Department of Revenue, however habitual violators may not. In 2007, approximately 5500 drivers were declared to be habitual violators in Kansas. Offenses that can trigger the declaration of someone being a habitual violator include: no proof of insurance, driving while suspended, vehicular homicide, hit and run, commission of a felony with a motor vehicle, fraud in application of title or driver's license and driving under the influence.

The only opponent to the bill last year decried the option of lawful transportation to probation and substance abuse treatment for certain offenders such as those convicted of the fraud provisions. While the opponents point is well taken, the number of convictions for such perjury violations are probably able to be counted annually on one hand statewide. In 25 years of law practice and 3 years as Sedgwick County Judge working on over 110,000 cases, I am unaware of any such convictions. I believe an inquiry of the Department of Revenue would provide accurate information. There is no doubt that the vast majority of individuals declared to be habitual violators are for convictions of DUI, DWS and insurance violations. Should the committee be uncomfortable with the broader effect of the current draft, limiting language can be amended into the bill.

Mopeds are vehicles defined in Kansas statutes as having less than three and half brake horsepower and a maximum speed of 30 miles per hour. Kansas citizens who have run afoul of the law must still continue with their lives. I am sure no one on this committee nor I wish to ease the legal penalty imposed upon drunk drivers and other violators. I am also sure that none of us want to impede their recovery and reformation. The reality of the situation individuals are confronted with is difficult to say the least. With little or no public transportation in the vast majority of the

State of Kansas, those declared to be habitual violators who must go to work, attend school, substance abuse treatment and complete the tasks of their lives and probation are faced with an impossible choice. They must decide whether they should violate the law and risk a year in jail or lose their jobs. They must decide whether to take the children to the doctor in a medical emergency and risk a \$2,500 fine or wait until the taxi arrives. While there are electric alternatives, they are not workable in many situations. They are very expensive compared to the moped alternative.

Individuals who have been placed on probation for convictions for crimes such as driving under the influence are required as a condition of their probation to attend probation meetings, outpatient substance abuse counseling and Alcoholics Anonymous meetings. They must get there somehow. Too many Kansas citizens faced with this choice make the wrong decision. This bill gives them a real choice.

Mopeds are of such low mass and low velocity they present no threat to public safety and allows those declared to be habitual violators the opportunity to support their families and get the help they need to deal with their issues. I ask that once again the Committee recommends Senate Bill 34 favorably for passage.

#### **Request to Amend HB2506**

While in the Capitol last week I was reminded that a statute that was enacted in 2009 amending KSA 8-2110 in what was once in SB158 had sunset on January 1, 2012. That provision was codified as KSA 8-2110 (b), (2), (A) and (B). It permitted eligible individuals to enter into an agreement with the Division of Motor Vehicles. In return for a \$25.00 fee the driver is issued a restricted license to operate a motor vehicle while their licenses are suspended, revoked, or canceled for

failing to pay a traffic citation or to set that same citation for court. Under current law, the restrictions on the drivers' licenses are required to be printed conspicuously on the face of those licenses. Under KSA 8-2110, each driver has 1 year to complete all cases and payments. Upon compliance with the terms of the payment agreement, the driver's privilege to operate a motor vehicle in the State of Kansas is reinstated without restriction.

The genesis of Senate Bill 158, which amended K.S.A. 8-2110, came from the 3R Commission. One of the commission's tasks was to determine ways in which individuals in pre-release programs and post-release supervision programs such as the Department of Correction's (K.D.O.C.) Work Release Program could obtain driving privileges while they are still under K.D.O.C. supervision. The predicament many offenders found themselves in was that they do not simply get into trouble in one jurisdiction, but in many instances got into trouble in multiple jurisdictions. While they are placed into custody of the K. D. O. C. for felony convictions, misdemeanor traffic cases and traffic infractions do not get resolved. While they are in K. D. O. C. 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 being placed in alternative custodial programs, such as work release, they were able to obtain a driver's license until their pending traffic cases are resolved and all fines, court costs, and reinstatement fees are paid in full after enactment of the bill. Without the ability to get to and from the work release facility to their place of employment, they were unable to obtain the funds necessary to pay the traffic case(s) prior to enactment.

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. If a driver is licensed to operate a motor vehicle they are more likely to maintain liability insurance.

Re-enactment of KSA 8-2110 would also gives Kansans the opportunity to dispute a citation when a failure to comply has occurred. The common fact pattern this is also 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. Few courts in Kansas recognize that entry of a not guilty plea and requesting a trial could be interpreted as complying with the terms of the citation. 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. This legislation was modified from the original 3R's version to account for that circumstance. It has evolved and been improved in the process which has brought it to your committee. I am requesting that the committee amend HB2506 and recommend it favorably for passage to the Kansas House or Representatives.

Respectfully submitted,

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