



Samuel M. Williams, Secretary  
David Harper, Director

Jeff Colyer, Governor

## WRITTEN TESTIMONY

To: Chairman Rick Wilborn and Members of the Senate Judiciary Committee  
From: John Shultz, Attorney with the Kansas Department of Revenue  
Date: February 8, 2018  
Re: Testimony in Support of SB 297 (2018)

Good Afternoon Chairman and Members of the Committee:

My name is John Shultz and I represent the Kansas Department of Revenue. My primary responsibility with the Department is removing alcohol and drug impaired drivers from Kansas roads and highways. The Kansas Department of Revenue has proposed SB 297 to address recent Kansas Supreme Court precedent that complicated the State's framework for informing alcohol impaired drivers of their rights. SB 297 would amend K.S.A. 2016 Supp. 8-1001(k), to amend existing, required advisories that must be provided to a person who is arrested or in custody for driving under the influence of alcohol or drugs and asked to submit to an evidentiary chemical test. The form containing these statutory advisories is commonly referred to by law enforcement as a "DC-70" or the "implied consent advisory."

In 2016, the Kansas Supreme Court ruled that the State's criminal refusal statute<sup>1</sup> was not sufficiently tailored to serve the State's interests, and was facially unconstitutional.<sup>2</sup> At the same time, the Kansas Supreme Court ruled in a separate case that the implied consent advisories were coercive.<sup>3</sup> After these decisions the Attorney General's Office amended the advisory to remove the section threatening a person with a criminal charge for refusing to submit to testing pursuant to K.S.A. 8-1025. In addition, the portion of the DC-70 that informed a person, "The opportunity to consent to or refuse a test is not a constitutional right" was also removed due to the Supreme Court decisions.<sup>4</sup>

Although the DC-70 form was amended, the current version of K.S.A. 2016 Supp. 8-1001(k) still contains advisories that the Supreme Court held were unduly coercive and therefore determined to be unconstitutional. This bill amends the advisories to remove the problematic language currently contained in the statute and to remove any reference to K.S.A. 2016 Supp. 8-1025, which the Supreme Court held to be unconstitutional. This bill is necessary because licensees are challenging agency action to suspend a driver's license because officer's are not providing the advisories exactly as written in the statute.

Thank you for your consideration.

<sup>1</sup> K.S.A. 2016 Supp. 8-1025

<sup>2</sup> *State v. Ryce*, 303 Kan. 899, (2016)

<sup>3</sup> *State v. Nece*, 303 Kan. 888 (2016)

<sup>4</sup> Both *Ryce* and *Nece*, were affirmed by the Supreme Court on rehearing on June 30, 2017.