

# INTERIM JOINT COMMITTEE ON TRANSPORTATION

## Minutes of the 4th Meeting of the 2019 Interim

September 30, 2019

### Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Transportation was held on Monday, September 30, 2019, at 3:00 PM, in Room 149 of the Capitol Annex. Representative Ken Upchurch, Chair, called the meeting to order, and the secretary called the roll. The minutes from the Committee's September 09, 2019 meeting were approved.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Ralph Alvarado, Jared Carpenter, Perry B. Clark, C.B. Embry Jr., Jimmy Higdon, Paul Hornback, Stephen Meredith, Albert Robinson, Brandon Smith, and Mike Wilson; Representatives Terri Branham Clark, Randy Bridges, Chris Fugate, Al Gentry, Robert Goforth, David Hale, Chris Harris, Thomas Huff, Derek Lewis, Savannah Maddox, Bobby McCool, Rick Rand, Maria Sorolis, Cherlynn Stevenson, Jim Stewart III, Walker Thomas, and Tommy Turner.

Guests: Representative James Tipton; Representative Steve Sheldon; Jennifer Smith, CEO, Stopdistractions.org; Carl Breeding, American Property and Casualty Insurers Association; David Sandford, Goss Samford, PLLC; Brian Clark, Executive Director, KPMA; Mike Hardy, Owner, Hardy Oil, Board of Directors, KPMA; Representative Kim Moser; Jason Siwula, Assistant State Highway Engineer, Kentucky Department of Highway Safety, KYTC; and Dr. Chip Richardson, Ophthalmologist

LRC Staff: John Snyder, Brandon White, Dana Fugazzi, and Christina Williams

### **Discussion of the 2020 Regular Session BR 166: An act relating to operating a motor vehicle**

Representative James Tipton, and Representative Steve Sheldon, gave a brief explanation of BR 166, which would ban the use of hand held cell phones while driving. Under this measure, a motorist could still use GPS and make and take calls hands-free. If the phone is in the motorist's hand, then they would be in violation.

He stated due to an increase in motor vehicle accidents occurring due to distracted driving through the use of a cell phone, this bill is needed. Jennifer Smith, CEO, Stopdistractions.org, gave a brief presentation in favor of the proposed bill. Distracted

driving results in higher fatality rates for motorists. As of September 24, 2019, there have been 554 fatalities on Kentucky's roadways this year.

Also, distracted driving related to smartphone usage has driven car insurance rates higher. Insurers increasingly blame distracted drivers as costs related to crashes outpace premium increases. Since 2011, the average insurance premium has jumped 16% to \$926. Insurance companies say the sharp spike is partly caused by more drivers distracted on their smartphones and subsequently getting into crashes. In a recent study, it was found that driver cellphone interactions have increased 57% since 2014.

Ms. Smith stated a poll was taken in Tennessee asking if the residents would support or oppose enacting a "hands-free" law that would prohibit holding a phone to talk or text while driving. The statewide results were that 91% would support such a law, 6% would oppose it, and 3% were undecided. Ms. Smith stated there are currently 20 states that ban hand held cell phone use for all drivers.

Ms. Smith stated in July of 2018, Georgia passed a hands-free law. Since the passage, traffic fatalities are down 3.4% from 2017 to 2018. Phone use while driving has dropped 22% in the first month. There was also a 15% reduction in commercial motor vehicle fatalities over 2017. In 12 states traffic fatalities decreased 16% within two years of passing handheld bans.

Ms. Smith clarified that in the proposed legislation, the use of GPS is allowed while driving. However, a motorist cannot watch, record, broadcast, or engage in video chat. She added that the proposed legislation does not cost constituents any additional money, adding that any smartphone can work with voice activation for free. She stated currently, over 90% of the population owns a smart phone. If a cell phone mount is needed, they can be found online for approximately \$5.00 or less.

Law enforcement has training developed on how to enforce these laws, and it is offered by the National Highway Traffic Safety Administration (NHTSA) and United States Department of Transportation (USDOT) traffic safety services. Existing texting laws are unenforceable and obsolete, as it is too difficult to see what the driver is doing on their phone. States with stricter distracted driving laws see an 11% lower rate of fatal crashes for motorcyclists. Six in 10 parents or guardians admit to personally using a mobile device to check an application, text, or make a call while driving. Motorists with smart phones use held-held devices in 88 out of every 100 trips. Zendrive estimates there are approximately 600 million trips involving distracted driving in the U.S. each day. Approximately 80% of teens considered smartphone application use while driving as "not distracting." Distracted driving has occurred during 52% of trips that resulted in a crash. Almost ¼ of the drivers were using a phone within one minute before a crash which could include the moment the collision occurred. Ms. Smith also stated that like drunk driving, texting in the driver's seat endangers everyone on or newer the road, not just the texter.

In conclusion, Ms. Smith reiterated some key points of support for the proposed legislation. Current laws are unenforceable, which results in a need for expanding language, as people do not just text anymore. There is no organized or individual opposition, and that there is overwhelming public support. There are also broad amounts of coalitions that are pushing this type of legislation. Data on reductions in crashes, fatalities, insurance rates, and use shows that the law will work.

Carl Breeding. American Property and Casualty Insurers Association, also gave a brief presentation supporting BR 166. Over the course of several decades, auto accident rates had been slowly but steadily declining, offsetting slightly increased accident severity, and that has helped to keep car insurance rates relatively stable. But starting in 2013, there was a sharp increase in accidents, with the roads becoming increasingly dangerous, which is believed to be in large part because of distracted driving. Auto accident deaths have increased nearly 14% from 2013 to 2017, the biggest increase in over a half of a century. In 2017 1.8 million people were significantly injured on the roads, an 11% increase since 2013. Meanwhile, automobile insurance loss costs have increased as the cost of repairing damaged cars, and injured people – have continued to increase. According to the NHTSA, 5,977 pedestrians were killed in motor vehicle crashes in the United States in 2017. Pedestrian deaths accounted for 16% of all traffic fatalities in 2017. Although bicyclists' deaths have decreased 23% since 1975, they have increased 25% since reaching their lowest point in 2010, suggesting our at-risk population is not just distracted drivers but also the pedestrians and bicyclists with whom they share the road.

One of the Insurtech companies that has shared their data and analysis with the American Property Casualty Insurance Association (APCIA), True Motion, found that 92% of drivers interact with their devices in some way while driving; 71% for text messages; their list of the top 10 apps used while driving includes Google Chrome, YouTube and Netflix. True motion also found that drivers were being distracted by their smartphones roughly 20% of their driving time, with their corresponding accident risk increased by 2-20 times.

Mr. Breeding stated that smartphone ownership has more than doubled over the past 8 years, and it is not surprising that the percentage of accidents involving phone distractions have increased. According to a NHTSA study released this summer, having a strong set of distracted driving laws is key to prevent distracted driving. Many state laws only cover cell phone voice call usage, not modern smartphone use as we know it today. States have started to update their laws, for example this year Washington changed its laws to prohibit use of streaming video and social media while driving. Penalties for distracted driving need to be sufficient to change behaviors. Having the right laws is important, but enforcing those laws is essential and enforcement of distracted driving laws is a challenge, since it can be difficult to prove without a major crash where a smartphone has been impounded. In

conclusion, Mr. Breeding stated that tackling distracted driving is no easy task, but APCIA believes it's a task that we must take on, and we must take on together.

Lieutenant Arnold Rivera, Louisville Metro Police Department, Traffic Unit, also spoke in favor of BR 166, reiterating statements that Ms. Smith and Mr. Breeding both mentioned.

In response to a question asked by Representative Jim Stewart, Ms. Smith stated she does also believe that having an animal in the vehicle can also be a distraction, however, cellphone use is the most prevalent form of distracted driving.

In response to a question from Representative Maria Sorolis, Ms. Smith stated the proposed legislation would be for holding a device, and there would be no penalty for listening to the device.

In response to a question asked by Chairman Ken Upchurch, Representative Tipton stated the first offense would call for a fine of \$100, and the second offense would be \$200.

In response to a question asked by Senator Stephen Meredith, Mr. Breeding stated he is unaware of insurance companies proposing penalties for distracted driving offenses.

In response to a question asked by Representative Walker Thomas concerning points being taken off of a person's license if they are cited for the offense, Representative Tipton stated that is not in the current version of the proposed legislation, but he would be open to discussing that possibility.

Senator Albert Robinson cautioned that it was important not to cut off all cell phone usage, but he does support the hands free legislation.

### **Industry Update from the Kentucky Petroleum Marketers Association (KPMA)**

Brian Clark, Executive Director, KPMA, updated the Committee on the petroleum industry. Mr. Clark stated the petroleum industry has an economic impact of \$3.7 billion to Kentucky. In Kentucky, there are \$618 million in Kentucky wages and over 33,000 jobs directly or indirectly from the petroleum industry. The industry collects and remits over \$750 million in gas tax revenue to the Commonwealth. Since their last update to the Committee, both federal and state underground storage tank regulations were updated and the association has been working hard to educate the members to ensure compliance.

Mr. Clark updated the Committee on the Petroleum Storage Tank Environmental Assistance Fund (PSTEAF.) He stated petroleum underground storage tanks (USTs) exist in every county and every legislative district in Kentucky. Kentucky has approximately 10,400 active USTs in the ground. Approximately 80% of these active tanks are more than

15 years old. Because all tanks age and some will fail, there will always be a need for the PSTEAF program to assure remediation of petroleum UST leaks. Without PSTEAF, businesses across Kentucky would be at risk, resulting in revenue loss for the Commonwealth from the taxes these businesses pay and collect. Without PSTEAF, Kentucky's communities would suffer harmful environmental impacts, and the state, counties and municipalities could face crippling financial liability. Mr. Clark stated the essential need for PSTEAF has not changed since its inception in 1990 and should continue for the foreseeable future without alteration, except to extend or even remove the deadline dates. A map was also provided that showcased where each of the underground storage tanks were in Kentucky. Another chart was provided showcasing the aging infrastructure of the petroleum underground storage tanks in Kentucky.

Mr. Clark also updated the Committee on the evaporation and collection allowance. Kentucky fuel marketers are required by state law to remit the motor fuels tax (gas tax) based upon the volume of fuel purchased from the supplier. Marketers must then assume the cost, and the risk, of attempting to recoup the tax from the consumer when the fuel is sold at retail (KRS 138.220 and KRS 138.240). A 2.25% allowance, set forth in KRS 138.270(1)(b), exists to cover the difference in the amount of fuel taxes remitted to the state by marketers and the amount they may ultimately recover from consumers. This difference arises from the natural evaporation, shrinkage, unaccountable losses, collection costs, and handling and reporting of the gas tax. That collection and evaporation allowance is a line item deduction that offsets the portion of the motor fuels tax Kentucky marketers are obligated to pay but are not able to collect from the consumer, as well as specific costs incurred performing the tax collection function. Adjustments to the motor fuels tax have direct impacts on marketers. As the gas tax increases, costs to marketers increase (collection, surety expense, etc.). Mr. Clark stated this allowance is necessary and good for taxpayers as a whole. Mr. Clark asked that the 2.25% allowance be preserved.

Mike Hardy, Owner, Hardy Oil, Board Member of KPMA, addressed the Committee and stated that the loss of any PSTEAF or evaporation and collection allowance funds would be devastating to his business as well as any businesses like his. Without these funds, "mom and pop" operations across the state would likely close. He added that Hardy oil alone has lost tens of thousands of dollars in collections. The surety bond alone has cost his company approximately \$100,000 annually.

Mr. Jordan Harris, Pegasus Institute, further explained the motor fuels evaporation and collection allowance. Tax expenditures, often appropriately besmirched as "tax loopholes," should be routinely examined for their effectiveness with three questions in mind: 1.) Is this expenditure a good deal for taxpayers as a whole?, 2.) Is this expenditure accomplishing its intended purpose?, and 3.) Should the policy be altered to better achieve its intended purpose? For at least two years in earnest, the General Assembly has been examining tax expenditures in an effort to broaden the tax base and create a more effective structure. His briefing provided an overview of the evaporation and collection allowance, which was a tax expenditure on the books since 1936, which not only upholds the three

criteria listed above, but because of its age and effectiveness, should be a benchmark in evaluating expenditures currently on the books in Kentucky. Decreasing the allowance, which has remained unchanged for more than seven decades, despite increases in cost to retailers and markets, would be devastating to one of Kentucky's largest industries and have a negative economic impact in every community in the Commonwealth.

Mr. Harris reviewed four steps of the evaporation and collection allowance. Step one is that refiners supply motor fuels at the terminal. The second step is that marketers purchase motor fuels from refiners at the terminal and pay the entire tax to the state based on these purchases. Marketers then transport the product to individual retailers and commercial end users. During this period evaporation and shrinkage occurs. Lastly, the consumer pays the motor fuel tax at the current rate. However, the marketers do not recoup all the tax liability they have incurred. Mr. Harris stated that allowances similar in nature exist for most states. When compared with neighboring states and regional distributor states the average of 2.24% nearly mirrors Kentucky's 2.25%. There is a far reaching recognition that the process described above, while imperfect, is an effective structure for a state to collect taxes.

In conclusion, he stated there is little doubt that the allowance is good for taxpayers as a whole. There is reasonable argument that the percentage allowance should increase but there is no reasonable argument that it should decrease. Lowering the percentage would have a negative economic impact, cost the commonwealth valuable jobs, many of which are in economically distressed areas, and ultimately risk losing revenue for the state in the long term.

Senator Jimmy Higdon reminded the Committee about credit card fees that are assessed when a consumer purchases gasoline. He stated that retailers need to be reimbursed for the cost of those fees.

In response to a question asked by Representative Al Gentry concerning PSTEAF funds, Mr. Clark stated funds have been swept from it before, by the General Assembly.

Representative Gentry stated there have been a lot of new tanks put in because of environmental regulations, which also means there are a lot left that are very old. Because of that, Kentucky was not accessing a lot of funds that were available to be utilized. He added that now, there is a great need to move forward and those funds need to be used for those reasons.

Mr. Goss stated that the PSTEAF fund have been swept by the General Assembly on a regular basis, since the Governor Patton administration, but it has never been on a permanent basis and never to a dedicated point of funding.

In response to a question asked by Chairman Upchurch regarding a spill, Mr. Clark stated that federal funding per incident is \$1 million, per tank.

In response to a question asked by Representative Randy Bridges regarding bonding requirements, Mr. Clark stated that as collectors of the tax, petroleum marketers must post surety bonds equal to three months of receipts, or \$5,000 dollars, whichever is greater. He went on to say that while such a bond might have made sense when the statute was written, the streamlined system for reporting and remission of taxes may open a window for the bonding amount to be lowered. Currently the cycle takes from 25 to 45 days.

### **Presentation requiring vision testing for Operator's License; 2020 Regular Session BR 311**

Representative Kim Moser gave a brief overview of BR 311 proposed for the 2020 Regular Session. The bill addresses the issue of lack of vision screening for driver's license renewals. Currently the only time an individual is tested for vision is when receiving an initial driver's license. Kentucky is one of eight states remaining that do not revisit vision testing. The proposed legislation is not age discriminatory due to the requirement of vision retesting at any age upon driver's license renewal. Jason Siwula, Assistant State Highway Engineer, Kentucky Department of Highway Safety, KYTC, and Dr. Chip Richardson, Ophthalmologist, both spoke in favor of the measure. A letter of support was also distributed to members from the American Automobile Association. Dr. Richardson stated you must perform at a 20/60 vision or better in order to obtain a Kentucky Driver's license. He added there is no downside to continue proper vision screening. There have been issues with state clerks being unable to keep up with vision screening, and that vision screening can take place in the clerk's office, KSP, or any Ophthalmologist office. Also able to do the vision screen tests are AAA offices, as well as physician's offices.

Some Committee members had questions concerning the Real ID act and how Representative Moser's proposed bill relates to it. Chairman Upchurch stated that the Real ID act is scheduled to be discussed at the November meeting.

In response to a question asked by Senator Jimmy Higdon, Representative Moser stated Kentucky State Police can still give vision screening tests as that has not changed. She added an Ophthalmologist is also able to give the test and provide the proper paperwork needed.

In response to a question asked by Senator Ralph Alvarado, Dr. Richardson said it is recommended that citizens under the age of 40 get their eyes examined every two years, those over 40 should get them examined annually.

### **Discussion on of the 2020 Regular Session BR 136: an act relating to school bus safety and making an appropriation therefor**

Representative Robert Goforth gave a brief overview of BR 136 proposed for the 2020 Regular Session relating to adding stop-arm cameras on school buses. Representative Goforth stated a stop-arm camera is a device installed on the exterior of a school bus for the purpose of capturing recorded images of motor vehicles passing the school bus from any direction when the bus is stopped with the stop arm fully extended and signal lights activated.

Representative Goforth stated that in a 2018 survey by the National Association of State Directors of Pupil Transportation Services reports the prevalence of illegal school bus passing in 38 states including Kentucky. The 2,667 participating Kentucky school bus operators reported on April 25<sup>th</sup> 2018 there were 728 illegal passes. Those 728 illegal observed passes were on 27% of 2,667 buses with a total inventory of 9,854 buses in Kentucky. If all buses participated, it is expected to see 2,689 illegal passes on the survey date. If there are 180 school days, there could be 484,020 illegal passes annually.

Representative Goforth stated that the proposed changes in the bill include adding a civil penalty option, as well as increasing the penalty fines. The first offense would now be \$200, the second offense \$500 within three years. A civil penalty must be issued within 30 days of the first offense, and a civil penalty must be paid within 30 days of the offense and failure to pay results in immediate suspension of vehicle registration.

Representative Goforth stated that the intention is to install stop-arm cameras by August 1, 2023. A district may contract with a third party, and create procedures for submitting and processing. There will be a 90 day emergency window, and also exceptions and extensions will be allowed.

Representative Goforth stated the cost of installing these arms will vary depending on district size and purchases. A single stop-arm camera system could be as much as \$1,200, however integrating a stop-arm camera into the current system may only cost \$300 to \$500.

Representative Goforth added that projections suggest stop-arm cameras could generate as much as \$96,804,000 annually. He added that 80% of those funds collected shall be immediately forwarded to the school district in which the violation occurred for the purchase or lease, installation, operation, and maintenance of the school stop-arm cameras. He stated many third party contractors will lease equipment to the districts for a percentage of the citation, capped at 80% or \$160. 10 percent is forwarded to the Kentucky Department of Education for inspection cost and promotion of school safety. 10 percent is then transferred to the Kentucky Transportation Cabinet. Representative Goforth added that there are currently 12 counties that already have stop-arm cameras installed on buses in their fleet.



## **LRC Staff Presentation on the effect of overweight trucks on highway infrastructure**

Brandon White, Senior Legislative Analyst, LRC Transportation Committee, gave a brief presentation on overweight trucks on highway infrastructure. In the 2017 Regular Session, the General Assembly passed HB 184. The bill also tasked the Interm Joint Committee on Transportation of the Legislative Research Commission to conduct a review of the effect that all overweight and over dimensional vehicles have on the Commonwealth's roadways and railroad infrastructure. During negotiations regarding 2017 HB 184, this study was added as an incentive for support of the measure. The Commissioner of Vehicle Regulation at the time assured the legislators and staff involved in the discussion that the Cabinet would keep the necessary data needed to complete the study. However, that individual left the position just after the session, and subsequently, the data was not collected.

Despite best efforts by staff, there simply was not enough data provided to make a determination regarding any aspect of the study. In the 2019 Regular Session, the General Assembly passed House Bill 352. The measure allowed the transport of unrefined petroleum to operate at a gross weight not to exceed 120,000 pounds. The bill included a section that created a moratorium on new overweight or over dimensional permits or tolerances for motor carriers. If the General Assembly does not withstand 2019 HB 352, the moratorium on overweight vehicles will remain and no other commodities will be allowed to run at weights up to the 120,000 pound threshold.

If the IJC on Transportation or the General Assembly still seeks to add any overweight/over dimensional issues, included the issues that the study directed by HB 184 sought to determine, staff recommended the use of the Kentucky Transportation Center. The Kentucky Transportation Center is a leader at the state and national levels in multidisciplinary transportation research and is well equipped with the staff and resources to study any transportation related issues that the General Assembly deems necessary. Staff has contacted the Kentucky Transportation Center and they have confirmed that the study is something they can do and is in the purview of their organizational vision.

### **Consideration of deferred regulation with amendment 601 KARA 09:130**

There were no objections raised to the amendment of the regulation. The KYTC proposed an amendment to the regulation that was deferred at the Committee's September 9, 2019 meeting. The amendment made an exception to the prohibition on issuing titles to non-residents, to clarify that the prohibition does not apply to such transactions allowed by statute in limited instances. A motion was made by Co-Chair Ernie Harris to adopt the amendment. The motion was seconded by Representative Derek Lewis, and was adopted by voice vote.

### **Correspondence and future meetings**

A handout from KYTC was given to the Committee that provided research on background checks for TNC drivers and fees for TNCs in other states (which was a response from the September 9, 2019 meeting.)

The next meeting was announced to be on November 18, 2019. With no further business to come before the Committee, the meeting was adjourned at 4:38 P.M.