

15 March 2017  
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Kansas House of Representatives  
Transportation Committee

RE: Senate Bill 144

Honorable Ladies and Gentlemen of the committee:

As an Amateur Radio Operator in the Extra class, callsign KCORRS, I strenuously oppose Senate Bill 144 as passed by the Senate for the following reasons:

- 1) The bill is unconstitutionally vague, and will be unenforceable at law.
- 2) The bill will be void under the overbreadth doctrine, among several reasons: for criminalizing freedom of expression.
- 3) The fact that we now have constitution free zones at US airports served by scheduled air carriers does not justify the creation of constitution-free zones near schools or road construction sites.
- 4) The bill is largely redundant, and merely "piles-on", in as much as texting by cell phone while driving is already illegal in Kansas, under 8-15,111. One cannot legislate human behavior, certainly not by passing more redundant laws.
- 5) The writers of this bill exhibit either a total ignorance of, or a total contempt of the amateur radio service. Neither is justifiable.
- 6) The bill seeks to solve a problem that does not exist, by criminalizing a normal peaceful behavior.

Re #1: I have written to my State Senator to ask what 8-15,111 really means. Her response was to ignore me. I hold a bachelor's degree, and I have a small amount of post secondary education in the law. I have studied this law for hours, and I still do not understand it. Does it prohibit the automatic transmission of an automatic packet reporting system message simply because the device that automatically transmits said message is installed in a vehicle and requires that the operator key the microphone to transmit voice? Do you even understand my question? Does the average law enforcement officer know? Does your average law enforcement have any idea how to know if my installed radio transmitted an APRS message automatically? No one must risk criminal prosecution merely because he or she cannot reasonably understand what conduct is prohibited under the law.

Remedy for #1: Kill SB-144 in its entirety and amend 8-15,111 to use the model-law definition of “wireless communication device” provided by the Amateur Radio Relay League: “‘Cellular Telephone (or Mobile Communications/Electronic Device)’ as used herein means hand held or portable electronic equipment capable of providing full duplex, wireless voice or data communications via the public switched telephone network between two or more people. Also included are devices for text messaging or paging, personal digital assistants, laptop computers, equipment capable of playing video games or video disks, or equipment on which digital photographs are taken or displayed.”

Re #2: Did you specifically seek to outlaw the use of amateur radio by drivers? Such radio operators already need a license to operate such devices, and said license is issued by the US government, specifically the Federal Communications Commission. The exam to qualify for said license is significantly more involved than the license required for a business to equip employees with radios for dispatch and other purposes. This bill seeks to deny permissions already granted by a higher authority (specifically the FCC). It is an unreasonable burden on a driver to somehow prevent people from transmitting such text messages. It is another matter for the driver to divert attention from driving to read such a text message, but the exception in 8-15,111 for “an emergency, traffic or weather alert message” would require the driver to know the content of the text message prior to reading it, in order to comply with the law. Again, this is absurdly overbroad. Limits to free speech may apply in situations involving national security, but nothing in Kansas transportation law requires limits on constitutionally protected rights, including freedom of speech.

Remedy for #2: Amend 8-15,111 to use the model-law definition of “wireless communication device” provided by the Amateur Radio Relay League and/or the exclusion for two-way simplex radio proposed by the ARRL : “A mobile (electronic/communication) device does not include audio equipment or any equipment installed in the vehicle to provide navigation or emergency information to the driver, or video entertainment exclusively to passengers in the back seat. Nor does it include two-way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission in the Amateur Radio Service.”.

Re #3: I quote Arizona Senator Barry M Goldwater, who said **“Those who seek absolute power, even though they seek it to do what they regard as good, are simply demanding the right to enforce their own version of heaven on earth. And let me remind you, they are the very ones who always create the most hellish tyrannies. Absolute power does corrupt, and those who seek it must be suspect and must be opposed.** Their mistaken course stems from false notions of equality, ladies and gentlemen. **Equality, rightly understood, as our founding fathers understood it, leads to liberty and to the emancipation of creative differences. Wrongly understood, as it has been so tragically in our time, it leads first to conformity and then to despotism.”**

Remedy for #3: Kill the bill in its entirety, and amend 8-15,111 to use the model-law definition of “wireless communication device” provided by the Amateur Radio Relay League and/or the exclusion for two-way simplex radio proposed by the ARRL.

Re #4: Criminals do not obey laws. Passing more laws will not change that simple fact.

Remedy for #4: Kill SB-144 and instead enforce existing laws.

Re #5: I refer you to the ARRL Mobile Amateur Radio Policy Statement available online at <https://www.arrl.org/files/file/MobileAmateurRadioPolicyStatement.pdf> . Specifically: “In the course of preparing for and conducting emergency, disaster and other public service communications, Amateur Radio operators routinely equip their motor vehicles with two-way radios, operated most often with hand-held microphones. The radios are typically installed in the vehicles and utilize fixed mounted speakers. Unlike cellular telephones, the speakers are not held to the face; the radios remain in the receive mode most of the time; transmissions typically are brief and infrequent. The microphone is held only when a transmission is being made or is imminent, and otherwise is stowed in a position where the operator can reach it without removing his or her eyes from the road. Amateur operators often conduct mobile communications as participants in networks of stations, controlled often by a fixed station, not unlike commercial dispatch mobile radio systems. Radio amateurs have regularly used mobile two-way radio systems for the past 70 years. The ARRL is aware of no evidence that such operation contributes to driver inattention. Quite the contrary: radio amateurs are public service-minded individuals who utilize their radio-equipped motor vehicles to assist others, and they are focused on driving in the execution of that function.” AND... “Two-way radio use is dissimilar from full-duplex cellular telephone communications because the operator spends little time actually transmitting; the time spent listening is more similar to, and arguably less distracting than, listening to a broadcast radio, CD or MP3 player. There are no distinctions to be made between or among Amateur Radio, public safety land mobile radio, private land mobile radio, or citizen’s radio in terms of driver distraction. All are distinguishable from mobile cellular telephone communications in this respect. Nevertheless, ARRL encourages licensees to conduct Amateur communications from motor vehicles in a manner that does not detract from the safe and attentive operation of a motor vehicle at all times.”

Remedy for #5: Amend 8-15,111 to use the model-law definition of “wireless communication device” provided by the Amateur Radio Relay League and/or the exclusion for two-way simplex radio proposed by the ARRL.

RE #6: It is unreasonable to place the burden of proof on the citizenry who oppose this legislation to prove that there is no problem to be solved by it. Logically, the inability, or disinclination, to disprove a claim does not render that claim valid, nor give it any credence whatsoever. While evidence may exist to show that there is a problem that would justify SB-144, I have been unable to find it. Given the apparent lack of evidence, passing this bill might well indicate that the legislature is only seeking revenue enhancement.

Remedy to #6: Kill the bill in its entirety, and amend 8-15,111 to use the model-law definition of “wireless communication device” provided by the Amateur Radio Relay League and/or the exclusion for two-way simplex radio proposed by the ARRL.

Respectfully submitted,

Bruce N. Liddel