

SESSION OF 2019

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2104**

As Amended by House Committee on Judiciary

**Brief\***

HB 2104, as amended, would amend the statute governing tests related to driving under the influence (DUI), effective July 1, 2019, to amend the oral and written notice a law enforcement officer must provide when requesting a person take such a test. Specifically, the bill would clarify in such notice that refusal to submit to and complete the test or tests will result in suspension of the person's driving privileges for a period of one year and test failure will result in suspension of the person's driving privileges for a period of either 30 days or one year.

The bill also would amend the statute governing preliminary screening tests related to DUI to remove provisions stating a person operating or attempting to operate a vehicle in Kansas is deemed to have given consent to such tests, setting forth the required notice when a person is requested to take such test, and stating refusal to take and complete such test is a traffic infraction. This statute also would be amended to replace the word "saliva" with "oral fluid" and add a provision requiring any preliminary screening of a person's oral fluid be conducted in accordance with any rules and regulations approved pursuant to the authority granted to the Director of the Kansas Bureau of Investigation in a separate statute, which would also be amended to reflect the "oral fluid" phrasing and to ensure consistency in other statutory phrasing.

The bill would repeal the statute (and remove the associated fine from the uniform fine schedule) governing the

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\*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>

offense of refusing to submit to a test to determine the presence of alcohol or drugs. (*Note:* This statute was repealed by 2018 House Sub. for SB 374, but due to another enactment, was not fully repealed.)

The bill would be in effect upon publication in the *Kansas Register*.

### **Background**

The bill was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Kansas Judicial Council.

In the House Committee hearing, a representative of the Kansas Judicial Council testified in support of the bill, stating it contains the unanimous recommendations of the Council's DUI Advisory Committee. Although the Advisory Committee's work will continue, it recommended these amendments be made in the 2019 Legislative Session to make DUI consent advisories more accurate, remove unconstitutional portions of the preliminary testing and refusal statutes, and replace outdated terminology with the scientifically correct term. A representative of the League of Kansas Municipalities also testified in support of the bill. Written-only proponent testimony was submitted by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association and by the Mothers Against Drunk Driving National Board chairman.

No neutral or opponent testimony was provided.

The House Committee amended the bill to remove the fine associated with the offense of test refusal from the uniform fine schedule.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration, Department of Revenue, and Kansas Sentencing Commission indicate enactment of the bill, as introduced, would not have a fiscal effect on the agencies.