

REVISED
SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 453

As Amended by Senate Committee on Judiciary

Brief*

SB 453, as amended, would amend various administrative and criminal statutes related to driving under the influence (DUI) and serve as a follow-up bill to 2011 House Sub. for SB 6 ("SB 6").

KSA 8-241, regarding drivers license examination in certain circumstances, would be amended to clarify imposition of reinstatement fees upon the fourth or subsequent DUI offense and to remove a reinstatement provision that is obsolete due to the changes enacted by SB 6.

KSA 8-1008, regarding alcohol and drug evaluations, would be amended to establish a minimum fee of \$150 for the required alcohol and drug evaluation.

KSA 8-1014, governing the administrative penalties for test refusal or failure or an alcohol or drug-related conviction, would be amended to add an additional year of interlock restriction for a test refusal. Language referencing alcohol and drug safety actions programs would be updated to reflect the provider system established by SB 6. A new provision would require the Division of Vehicles to credit any suspension or revocation time greater than one year, which was served prior to the retroactive application of the changes in SB 6, to be credited toward the ignition interlock restriction period imposed under the provisions of SB 6, so long as the person did not drive during the applicable period and completes a form indicating this.

*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>

KSA 8-1015, regarding authorized restrictions of driving privileges for DUI-related reasons, would be amended to allow a person whose driving privileges have been suspended for first-time test refusal to apply for a restricted interlock license after 90 days, for the purposes of driving in those circumstances specified in KSA 8-292(a)(1) through (a) (4). For subsequent test refusal suspensions, a person would be permitted to apply for a restricted interlock license after 90 days for the purposes of getting to and from work, school, or an alcohol treatment program, and the ignition interlock provider for maintenance and data download.

Persons subject to first-time suspensions for high blood alcohol content conviction or test failure would be permitted to apply for a restricted interlock license after 45 days for the purposes of driving in those circumstances specified in KSA 8-292(a)(1) through (4).

A \$100 application fee for restricted ignition interlock licenses would be created, and the first \$100,000 generated from this fee each fiscal year would be directed to the Division of Vehicles, with the remainder directed to the Community Corrections Supervision Fund.

KSA 2011 Supp. 8-1020 would be amended with technical changes to reflect the hearing fee adopted in SB 6.

The DUI criminal statute, KSA 2011 Supp. 8-1567, would be amended to strike provisions regarding habitual users, impoundment, and revocation of license plates or temporary certifications. House arrest and work release provisions for third or subsequent convictions would be amended to increase the required minimum hours of confinement from 240 hours to 2,160 hours (90 days) to be consistent with the 90 days' imprisonment required elsewhere in this subsection.

The commercial DUI criminal statute, KSA 2011 Supp. 8-2,144, also would be amended to include the same

confinement hours increase for house arrest and work release for third or subsequent convictions.

The bill would clarify that \$250 from each fine imposed by a municipal court for a violation of a DUI or commercial DUI ordinance shall be directed to the Community Corrections Supervision Fund.

The bill would create the crime of refusing to submit to a test to determine the presence of alcohol or drugs. The penalty provisions, evaluation requirements, and procedural requirements for this crime would be the same as those for DUI, as amended by this bill.

In determining whether a test refusal conviction is a first, second, third, fourth, or subsequent conviction for sentencing under the new section, the following would count as a conviction in addition to any convictions under the new section itself: convictions for DUI on or after July 1, 2001; any lifetime convictions of commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide, or vehicular battery while DUI. "Convictions" would include conviction of violation of a city ordinance, county resolution, or law of another state; a diversion agreement; or punishment under the Uniform Code of Military Justice or Kansas Code of Military Justice. Convictions before the offender reached the age of 18 would not be included in this calculation. The bill would amend the DUI and commercial DUI statutes to incorporate comparable provisions requiring the consideration of convictions of related crimes, including the new crime of test refusal, in determining the number of the current conviction. However, the provisions in the DUI and commercial DUI statutes would not exclude convictions before the age of 18.

Background

2011 House Sub. for SB 6 made extensive revisions to Kansas DUI law, implementing many of the recommendations

of the Kansas DUI Commission. SB 453 was introduced by the Senate Committee on Federal and State Affairs as a follow-up bill to make policy adjustments and technical amendments related to the changes made in SB 6.

In the Senate Committee on Judiciary, Johnson County District Attorney Steve Howe and a representative of the Sunflower Alcohol Safety Action Project, Inc., testified in support of the bill. The Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Kansas Peace Officers Association submitted written testimony supporting the bill. A representative of the Kansas Community Corrections Association testified in opposition to the bill. A representative of the Office of Judicial Administration testified as a neutral party and submitted a proposed amendment. The City of Lenexa submitted a proposed amendment.

Subsequent to the hearing, the Kansas Association of Counties submitted written testimony supporting the amendment proposed by the Office of Judicial Administration. The Kansas Bureau of Investigation and Kansas Sheriffs' Association also submitted written testimony.

The Senate Committee amended the bill to: remove a provision requiring courts to pay the alcohol and drug evaluation fee for indigent defendants at the time of service; remove provisions reversing the \$250 fine increases for DUI and commercial DUI established by SB 6; remove a provision striking language directing the funds generated by these fee increases be directed to the Community Corrections Supervision Fund; clarify that municipal courts are to remit funds generated by the fee increases to the Community Corrections Supervision Fund; and add the section criminalizing test refusal. The Committee recommended the bill be passed as amended.

The Kansas Sentencing Commission submitted an assessment of the test refusal criminalization provision. There would be no impact on prison admissions or prison bed needs. The Commission estimated there would be an

additional 2,519 convictions, requiring 7,744 mandatory minimum jail days at an estimated cost of \$805,376 (\$104 per day).

The fiscal note on the bill, as introduced, indicates the Office of Judicial Administration estimates costs of \$267,750 if the courts were required to pay the alcohol and drug assessment cost for indigent defendants. This provision was removed by the Senate Committee.

The Department of Revenue estimates \$13,106 for FY 2012 would be required for database programming, to be paid from the Vehicle Operating Fund and the Department of Motor Vehicles Modernization Fund.

The Kansas Association of Counties and the Department of Corrections had not provided responses at the time the fiscal note was prepared. The fiscal note stated the Department of Corrections would presumably receive less revenue under the provision in the bill eliminating the direction of a portion of DUI fine proceeds into the Community Corrections Supervision Fund. This provision was removed by the Senate Committee.

There is no fiscal note available for the bill as amended.