

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2377

As Amended by Senate Committee on Judiciary

Brief*

HB 2377, as amended, would create and amend law related to driving under the influence (DUI) and driving a commercial motor vehicle under the influence (commercial DUI).

Ignition Interlock

The bill would create and amend law related to ignition interlock devices (IID), restrictions, and costs.

Reinstatement of Driver's License (Section 1)

The bill would create law allowing a person whose license is restricted to operating only a vehicle with an IID and who meets the conditions detailed below to request reinstatement of the person's driver's license by submitting a request to the Division of Motor Vehicles (Division) in a form and manner prescribed by the Division. The Division would be required to approve such request if all of the following conditions are met:

- The person's IID restriction period has been extended at least five years, not including any period of incarceration, beyond the initial IID period required by law due to the person's failure to provide the Division with proof of completion of the IID program;

*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>

- During the person's IID restriction period and any extension, the person has not had an alcohol or drug-related conviction or occurrence and has not been convicted of an IID circumvention offense in Kansas or any other jurisdiction;
- During the person's IID restriction period and any extension, the person has not been convicted of transportation of liquor in opened containers, purchase or consumption of alcohol by a minor, any offense listed in the statute defining a "habitual violator," or two or more moving traffic violations committed on separate occasions; and the person's driving privileges have not been revoked, suspended, canceled, or withdrawn due to another action by the Division or a court; and
- At the time of submitting the request, the person does not have any pending charges or proceedings involving any of the above violations.

Ignition Interlock Device Program Completion (Section 5)

The bill would remove a 90-day waiting period to apply for IID and various restrictions on driving with an IID and add the following required conditions for a person to complete the ignition interlock device (IID) program:

- The person must have no more than one standard violation and no serious violation in the 90 consecutive days prior to application for reinstatement; and
- The application must occur upon or after expiration of the applicable ignition interlock period required by law.

The bill would define "standard violation" (which includes various breath alcohol concentration test failures or failure to execute or submit to retests), "serious violation" (tampering or

circumventing the IID or blowing a high breath alcohol concentration during a rolling retest), and other relevant terms.

Reduced Ignition Interlock Device Program Costs (Section 6)

In a statute governing approval and maintenance of ignition interlock devices, the bill would remove a provision requiring each ignition interlock manufacturer provide a credit of at least two percent of the gross program revenues in Kansas as a credit for persons qualified to obtain an IID who are indigent as evidenced by qualification and eligibility for the federal food stamp program, and would add the provisions detailed below regarding reduced ignition interlock device program costs (reduced costs).

Any person whose license is restricted to operating only a motor vehicle with an IID installed could request reduced costs by submitting a request to the Division in a form and manner prescribed by the Division. The Division would be required to review each request to determine whether the person is eligible for reduced costs. A person would be eligible for reduced costs if the person's annual household income is less than or equal to 150 percent of the federal poverty level (as defined by the bill); if the person is eligible for the food assistance, child care subsidy, or cash assistance program pursuant to KSA 39-709; or if the person is currently eligible for the Low Income Energy Assistance Program (LIEAP) as determined by the Department for Children and Families (DCF).

If the Division determines the person is eligible for reduced costs, the person would be responsible for paying 50 percent of the program costs, and the manufacturer would be directed to adjust its charges accordingly.

The bill also would amend this section to change the Secretary of Revenue's (Secretary) authority to adopt the relevant rules and regulations from permissive to mandatory

and require adoption prior to March 1, 2022, to provide the Secretary with authority to adopt rules and regulations regarding the requirements and guidelines for receiving reduced costs, and to reorganize some provisions within the section.

DUI Under the Age of 21; IID Restriction Period (Section 8)

The bill would amend the offense of DUI under the age of 21 to reduce the required IID restriction period for a first offense with a test result of 0.02 or greater but less than 0.08 from 330 to 180 days.

Commercial DUI

The bill would amend law regarding commercial DUI.

Charges and Penalties (Section 4)

The bill would clarify that continuing limits on plea bargains for commercial DUI shall not be construed to prohibit an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.

The bill would amend the penalties for a first conviction of commercial DUI to remove a minimum imprisonment or public service hours requirement.

The bill would amend the penalties for a second conviction of commercial DUI to reorganize and clarify minimum confinement requirements. A requirement that the offender serve at least 48 hours of imprisonment would be modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement. The bill would specify that an offender would receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the

section and would then receive day-for-day credit for any additional confinement imposed, unless otherwise ordered by the court.

The bill would increase the penalty for a third or subsequent conviction of commercial DUI from a non-grid, nonperson felony to a severity level 6 nonperson felony, and would reorganize and standardize minimum confinement requirements, setting the required minimum confinement as 30 days. The bill would specify that an offender would receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and would then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court. [Note: Assigning the offense a severity level places it on the sentencing guidelines grid and makes it subject to the incarceration periods and associated provisions of the sentencing guidelines.]

The bill would give a court discretion to waive any portion of a fine imposed for commercial DUI, except for \$250 required to be remitted to the State Treasurer and credited to the Community Correction Supervision Fund upon a showing the offender successfully completed court-ordered education or treatment.

Lifetime Disqualification (Section 3)

The bill would amend the statute governing disqualification from driving a commercial motor vehicle to specify that a continuing provision for lifetime disqualification upon a second or subsequent occurrence of certain specific offenses, test refusals, or test failures (second offense lifetime disqualification) applies to occurrences arising from two or more separate incidents occurring on or after July 1, 2003. If a person is disqualified for life under this provision, and at least one of the disqualifying incidents occurred prior to July 1, 2003, the bill would allow the person to apply to the Secretary for review of the incidents and modification of the

disqualification. The bill would require the Secretary to adopt rules and regulations prior to March 1, 2022, establishing guidelines, including conditions, to administer this provision.

The bill would replace a provision allowing the Secretary to adopt rules and regulations establishing guidelines under which a second offense lifetime disqualification may be reduced to a period of not less than ten years with a provision requiring any person with a second offense lifetime disqualification who seeks to have commercial driving privileges restored after ten years of disqualification to apply in writing to the Division. The bill would require the Division to restore the person's commercial driving privileges if the Division determines:

- None of the occurrences leading to lifetime disqualification included DUI or commercial DUI;
- The person has not had an occurrence of certain specific offenses, test refusal, or test failure during the 10-year period preceding application;
- The person has had no alcohol or drug related convictions during the 10-year period preceding the application;
- The person has no pending alcohol or drug related criminal charges;
- The person has had no convictions for violations that occurred while operating a commercial motor vehicle during the 10-year period preceding application;
- The person has successfully completed an alcohol or drug treatment or comparable program that meets or exceeds the minimum standards approved by the Kansas Department for Aging and Disability Services if any of the disqualifying offenses were drug or alcohol related;

- The person is no longer a threat to the public safety of Kansas. The Division could request, and the person would be required to provide, any additional information or documentation the Division deems necessary to determine the person's fitness for relicensure;
- The person is otherwise eligible for licensure; and
- The person has not previously been restored to commercial motor vehicle privileges following a prior 10-year minimum disqualification.

The bill would require the person provide a copy of the person's closed criminal history from any jurisdiction to the Division, for purposes of verifying the prior 10-year alcohol and drug history.

If the Division finds the person is eligible for restoration to commercial driving status, the bill would require the person complete the written and driving skills examinations before a commercial driver license is issued.

If the person is found ineligible, the Division would be required to notify the person of such findings by certified mail and continue the denial of commercial driving privilege until such ineligibility has been disproven to the Division's satisfaction.

Any person who previously had commercial motor vehicle privileges restored pursuant to the statute would not be eligible to apply for restoration if the person receives another lifetime disqualification.

Any person aggrieved by the decision of the Division could appeal for review in accordance with the Kansas Judicial Review Act.

The bill would require the Secretary to adopt rules and regulations prior to March 1, 2022, necessary to administer

the new procedure for restoration of commercial driving privileges.

The bill would add a separate lifetime disqualification provision for any person who uses a commercial motor vehicle in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined in the provision.

Motorized Bicycles (Section 2)

In the statute requiring drivers to have a valid driver's license, the bill would remove a provision allowing the Division of Vehicles (Division) to issue a class C license valid only for the operation of motorized bicycles to persons who have had their driving privileges suspended for an offense other than commercial DUI or a second or subsequent DUI, complete a mandatory suspension period for DUI-related offenses, and submit an application and \$40 nonrefundable application fee. The bill would remove a corresponding provision regarding the disposition of the application fee.

The bill would specify the continuing penalty of a class B misdemeanor for violations of the section is a nonperson misdemeanor.

DUI Charges and Penalties (Section 7)

The bill would clarify that continuing limits on plea bargains for DUI shall not be construed to prohibit an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.

The bill would amend the penalties for a first conviction of DUI to remove a minimum imprisonment or public service hours requirement.

The bill would amend the penalties for a second conviction of DUI to reorganize and clarify minimum confinement requirements. A requirement that the offender serve at least 48 hours of imprisonment would be modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement. The bill would specify that an offender would receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and would then receive day-for-day credit for any additional confinement, unless otherwise ordered by the court.

The bill would increase the penalty for a third conviction if the person has a prior conviction within the preceding 10 years (not including any period of incarceration) or a fourth or subsequent conviction of DUI from a non-grid, nonperson felony to a severity level 6 nonperson felony, and would accordingly remove specific imprisonment and fine requirements. [Note: Assigning the offense a severity level places it on the sentencing guidelines grid and makes it subject to the incarceration periods and associated provisions of the sentencing guidelines.] The bill also would amend provisions regarding imprisonment at a state facility for the felony offense and related responsibilities of a sheriff to reflect the amendment making the penalty a sentencing guidelines offense, rather than a non-grid felony.

The bill would also amend the penalties for a third conviction of DUI, a third conviction of DUI with a prior conviction within the preceding 10 years, and a fourth or subsequent conviction to reorganize and standardize minimum confinement requirements, setting the required minimum confinement as 30 days. The bill would specify that an offender would receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and would then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court.

The bill would give a court discretion to waive any portion of a fine imposed for DUI, except for \$250 required to be remitted to the state treasurer and credited to the Community Correction Supervision Fund upon a showing the offender successfully completed court-ordered education or treatment.

Diversion (Sections 9 and 12)

The bill would amend statutes governing consideration of diversion by city attorneys and county or district attorneys to specify a diversion agreement shall not be entered into on a complaint or traffic citation alleging a violation of the statutes governing automobiles and other vehicles (or of ordinances prohibiting the same acts), if the defendant was a commercial driver's license holder at the time of the violation or at any subsequent time prior to being considered for diversion. [Note: This reflects a similar provision currently in the Kansas Uniform Commercial Drivers' License Act.]

These statutes also would be amended to allow diversion for an alleged alcohol related offense involving a motor vehicle accident or collision that resulted in personal injury only to the defendant.

The city attorney diversion statute would be amended to clarify an "alcohol related offense," as used in this statute, is a non-commercial DUI offense.

Sentencing Statute Amendments

The bill would amend sentencing statutes in the Kansas Criminal Code to reflect the sentencing changes made in the DUI statutes.

Technical Amendments

The bill would make technical amendments throughout to ensure consistency in statutory references and phrasing.

Background

The bill was introduced by the House Committee on Judiciary at the request of Representative Ralph.

House Committee on Judiciary

In the House Committee hearing on February 16, 2021, representatives of the Kansas Judicial Council testified as **proponents** of the bill, stating it contained recommendations from the study by the Judicial Council's DUI Advisory Committee, originally requested by Representative Finch in May 2018. A representative of the Coalition of Ignition Interlock Manufacturers also testified as a **proponent**, with suggested amendments regarding the IID program sliding cost scale.

A representative of the Kansas Association of Criminal Defense Lawyers provided written-only neutral testimony.

On February 24, 2021, the House Committee amended the bill to add a deadline date of March 1, 2022, for adoption of the rules and regulations required by the bill.

Senate Committee on Judiciary

In the Senate Committee hearing on March 24, 2021, the same **proponents** testified as in the House Committee hearing. A representative of the Kansas Department of Transportation (KDOT) testified as an **opponent**, requesting an amendment regarding minimum sentences required by federal regulations.

On March 29, 2021, the Senate Committee amended the bill to:

- Adjust the IID program sliding cost scale (based upon the suggestion of the Coalition of Ignition Interlock Manufacturers);
- Reduce the number of standard violations allowed for completion of the IID program from three to one;
- Add language regarding required conditions and minimum sentences for the on-grid felonies (based on the the suggestion of KDOT); and
- Amend sentencing statutes to reflect the sentencing changes made in the DUI statutes.

Fiscal Information

According to the revised fiscal note issued by the Division of the Budget on the bill following House Committee action, the Kansas Sentencing Commission (Commission) estimates enactment of the bill would result in an increase of 193 adult prison beds needed by the end of FY 2022 and an increase of 211 beds needed by the end of FY 2028. The current estimated available bed capacity is 9,420 for males and 948 for females. Based upon the Commission's most recent ten-year prison population projections, it is estimated the year-end population for available male capacity will be under capacity by 1,287 inmates in FY 2021 and 1,241 inmates in FY 2022.

The Department of Corrections indicates an increase in prison population would have a detrimental effect on its ability to provide for social distancing in the population, which could contribute to spread of COVID-19 among residents and staff in facilities and residents released into the community.

The Office of Judicial Administration indicates enactment of the bill would have a minimal fiscal effect that could be handled within existing resources.

KDOT indicates enactment of the bill would cause the State to be in noncompliance with federal regulations regarding minimum penalties for repeat DUI offenses, requiring 2.5 percent, or \$8.6 million of the State's core highway construction funds for the National Highway Performance Program and the Surface Transportation Program be transferred to traffic safety programs as long as the State is out of compliance, reducing expenditures by \$8.6 million from the State Highway Fund beginning in FY 2022, and increasing expenditures by \$8.6 million from the Other Federal Grants Fund beginning in FY 2022. KDOT also indicates enactment of the bill would require an IID for all DUI offenders, making the State eligible for an estimated \$250,000 in funding from the National Highway Traffic Safety Administration. The total fiscal effect on KDOT would be net increased expenditures of \$250,000 from federal funds in FY 2022.

The Department of Revenue (KDOR) indicates it would require a total of \$9,979 from the State General Fund in FY 2022 to implement the bill and to modify the Driver Solutions IT system. If the combined effect of implementing this bill and other enacted legislation exceeds KDOR's resources, additional expenditures for outside contract programmer/lt services may be required. KDOR also indicates enactment of the bill would reduce revenues by eliminating a \$40 application fee, which generated \$3,480 in calendar year 2020 to the Division of Vehicles Operating Fund.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Driving under the influence; ignition interlock devices; criminal penalties; driving restrictions