

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 104**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

House Sub. for SB 104 would amend various administrative and criminal statutes related to driving under the influence (DUI) and allow the issuance of class C licenses for the operation of a motorized bicycle to certain persons with suspended or revoked drivers licenses.

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imposition of reinstatement fees upon the fourth or subsequent DUI offense and to remove a reinstatement provision that is obsolete due to the changes enacted by SB 6.

The bill would allow a person to obtain a class C license for the operation of a motorized bicycle if such person's driving privileges have been suspended for a first time DUI conviction. Further, a person whose license has been revoked for being a habitual violator could obtain a class C license, so long as in the last five years the person has not had a test refusal; test failure; "alcohol or drug related conviction," as defined in Kansas law; or conviction for fleeing or eluding a police officer.

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. Evaluation providers would be required to agree to evaluate indigent defendants at

*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>

no up-front cost and have the evaluation fee be assessed as a court cost.

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. The administrative penalty for the first test failure or DUI-related conviction by a person less than 21 years of age would be made the same as for any other offender. Language referencing alcohol and drug safety actions programs would be updated to reflect the provide system established by SB 6. A new provision would require the Division of Vehicles to credit any suspension or revocation time greater than a 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.

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 requirement 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 clarify that the Kansas Bureau of Investigation is authorized, rather than required, to adopt rules and regulations related to the approval of saliva testing devices.

Finally, 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.

Background

SB 104 was introduced in 2011 as a bill updating references in the Kansas Tort Claims Act to certain Kansas Dental Board regulations. The 2011 Senate Judiciary Committee made no changes to the bill and recommended it be passed.

The 2012 House Committee on Corrections and Juvenile Justice recommended a substitute bill be passed replacing the text of SB 104 with the text of SB 453, with certain modifications.

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

The House Committee heard testimony from the following conferees regarding DUI-related issues: representatives of the Attorney General's Office, the Kansas County and District Attorney's Association, the Kansas Community Corrections Association, and the Sunflower Alcohol Safety Actions Project, Inc. The Kansas Bureau of Investigation, Division of Vehicles of the Kansas Department of Revenue, Kansas Sheriffs' Association, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Association of Counties submitted written testimony.

The House Committee modified the text of SB 453 before inserting it into House Sub. for SB 104 by: removing provisions that would have reversed fine increases established in SB 6 for DUI and commercial DUI; retaining a provision directing the proceeds from these fine increases into the Community Corrections Supervision Fund; requiring assessment providers to agree to evaluate indigent

defendants at no up-front cost; adding motorized bicycle licensing provisions from HB 2506; adding a section criminalizing test refusal; equalizing the administrative penalties for first-time offenders, regardless of age; requiring \$250 from each municipal court fine be directed to the Community Corrections Supervision Fund; and adding a provision modifying saliva test device approval.

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 2519 convictions, requiring 7744 mandatory minimum jail days at an estimated cost of \$805,376 (\$104/day).

The fiscal note on SB 453, 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 House 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 DMV 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 House Committee.

There is no fiscal note available for the substitute bill.