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**MEMORANDUM**

To: Senate Committee on Judiciary  
From: Jason Thompson, Senior Assistant Revisor of Statutes  
Date: February 12, 2018  
Subject: Bill Brief for SB 374

SB 374 makes several amendments related to driving under the influence, including testing, administrative penalties, and criminal penalties.

New Section 1 (page 1) would replace a provision found in the current DUI-related crimes that states what prior crimes are taken into account when determining whether a conviction is a first, second, third, fourth, or subsequent conviction. The list includes prior convictions and diversions from cities and counties, specified Kansas offenses, and offenses from other jurisdictions.

Section 2 (page 3) amends K.S.A. 8-2,137, part of the Kansas uniform commercial drivers' license act. The amendments to this section illustrate a couple of recurring changes in the bill: the change from "is deemed to have given consent" to "consents"; and the addition of tests of a person's "other bodily substance" to the tests of blood, breath, or urine already specified.

Section 3 (page 4) amends K.S.A. 8-2,142 by replacing a reference to various other violations with a reference to offenses described in section 1.

Section 4 (page 7) amends K.S.A. 8-2,144, the crime of driving a commercial motor vehicle under the influence. The amendments to subsection (b)(2) on page 9 address supervision issues with offenders who are convicted of a nonperson felony for a third or subsequent conviction: warrants for violations of supervision; calculating time served on supervision; and extension of supervision beyond one year. Note on page 12 that a reference to various other violations is replaced with a reference to offenses described in section 1.

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Section 5 (page 13) amends K.S.A. 8-2,145 by adding a reference to a test failure on page 13. On page 14, the amendments to subsection (c)(4) provide for a test result from a person's blood or oral fluid that revealed a measurable amount of a controlled substance or its "pharmacologically active metabolite." A companion amendment is made to the notice of disqualification given to the person under subsection (f), requiring notice of the opportunity to establish the affirmative defense that the person lawfully ingested the controlled substance.

Section 6 (page 16) amends K.S.A. 8-1001, commonly known as the implied consent statute. Under current law in subsection (a), any person operating or attempting to operate a vehicle in Kansas is deemed to have given consent to certain tests to determine the presence of alcohol or drugs. New subsection (c) on page 17 provides the revised notice to be given when a test of breath or other bodily substance, other than blood or urine, is requested; and new subsection (d) provides the revised notice to be given when a test of blood or urine is requested. New subsection (e) on page 18 states that nothing in this section shall be construed to limit the right of a law enforcement officer to search a person's breath or other bodily substance, other than blood or urine, incident to a lawful arrest, with or without the advisories authorized in subsection (c); and new subsection (f) states the same for the right of a law enforcement officer to obtain a blood or urine test pursuant to a warrant or a judicially recognized exception to the search warrant requirement, with or without the advisories authorized in subsection (d). Subsection (r) on page 22 provides for limitations on suppression of test results, limits failure to give notices to an issue in administrative actions alone, and provides for amendment of the notices by the attorney general in response to court decisions.

Section 7 (page 23) amends K.S.A. 8-1002 regarding certifications of a measurable amount of a controlled substance or its pharmacologically active metabolite and the opportunity to establish the affirmative defense that the person lawfully ingested the controlled substance.

Section 8 (page 26) amends K.S.A. 8-1012 regarding preliminary screening tests.

Section 9 (page 27) amends K.S.A. 8-1013, the definitions section for article 10 of chapter 8. Test failure is amended to include a measurable amount of a controlled substance or its pharmacologically active metabolite, and "pharmacologically active metabolite" is defined in new subsection (k).

Section 10 (page 28) amends K.S.A. 8-1020 concerning administrative hearings. Provisions are added regarding controlled substances or a pharmacologically active metabolite and the associated affirmative defense of lawful ingestion.

Section 11 (page 34) amends K.S.A. 8-1024 to clarify that a test may be authorized by law other than K.S.A. 8-1001.

Section 12 (page 35) amends K.S.A. 8-1025, the crime of refusing to submit to a test. The bill amends the crime to “refusing to submit to a breath test to determine the presence of alcohol” and makes it unlawful to refuse “to submit to or complete a breath test, other than a preliminary screening as defined in K.S.A. 8-1012, and amendments thereto, to determine the presence of alcohol when lawfully requested or directed to submit to such testing by a law enforcement officer.” The penalties are also aligned with those provided in K.S.A. 8-1567.

Section 13 (page 43) amends K.S.A. 8-1567, the crime of driving under the influence. The bill adds a new subsection (a)(6) regarding controlled substances or a pharmacologically active metabolite and the associated affirmative defense of lawful ingestion. The amendments to subsection (b)(3) on page 47 address supervision issues with offenders who are convicted of third, or fourth or subsequent, conviction: warrants for violations of supervision; calculating time served on supervision; and extension of supervision beyond one year. Note on page 49 that a reference to various other violations is replaced with a reference to offenses described in section 1.

Section 14 (page 52) amends K.S.A. 65-1,107, a statute authorizing the secretary of health and environment to adopt certain rules and regulations related to breath testing. The change in subsection (e) clarifies that a test may be authorized by law other than K.S.A. 8-1001.

Finally, Section 15 (page 52) amends K.S.A. 75-712h, a statute authorizing the director of the KBI to adopt certain rules and regulations related to preliminary screening devices. The bill changes the term “saliva” to “oral fluid”, and clarifies that a test may be authorized by law other than K.S.A. 8-1001.