

Driving Under the Influence; Operating an Aircraft Under the Influence; Diversions; Commercial Driver's Licenses; HB 2377

HB 2377 creates and amends law related to operating an aircraft under the influence, driving under the influence (DUI), diversions, and commercial driver's licenses.

Operating an Aircraft Under the Influence

The bill creates the crime of operating an aircraft under the influence, provides for testing related to the crime, and repeals previous statutes prohibiting the operation of aircraft under the influence of alcohol or drugs and providing for related testing.

Definition and Penalties

The bill defines "operating an aircraft under the influence" as operating or attempting to operate any aircraft within Kansas while:

- The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is 0.04 or more;
- The alcohol concentration in the person's blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;
- Under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;
- Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or
- Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.

The offense is a class A nonperson misdemeanor, unless it occurs while the person convicted is prohibited from operating an aircraft by a court order pursuant to the bill or because the person's pilot license is revoked or suspended by order of the Federal Aviation Administration for a prior alcohol or drug-related conviction, in which case it is a severity level 6 nonperson felony.

For misdemeanor offenses, the following provisions apply:

- On a first conviction, the person convicted shall be sentenced to no less than 48 consecutive hours nor more than 6 months' imprisonment or, in the court's discretion, 100 hours of public service, and fined not less than \$750; and

- On a second or subsequent conviction, the person convicted shall be sentenced to no less than 90 days nor more than 1 year's imprisonment and fined not less than \$1,250, and the following conditions would apply:
 - As a condition of any probation granted, the person shall be required to serve at least 120 hours of confinement, including at least 48 hours' imprisonment. The remainder may be served by a combination of imprisonment, work release (if the work release program requires the person to return to confinement at the end of each day), or a house arrest program;
 - The person will receive hour-for-hour credit for time served in work release or house arrest until the minimum 120 hours' confinement is met. If required to serve more than the minimum 120 hours' confinement, the person will receive day-for-day credit for time served once the minimum 120 hours' confinement is met, unless otherwise ordered by the court; and
 - When in work release, the person will only be given credit for time served in confinement at the end of and continuing to the beginning of the person's work day. When under house arrest, the person will be monitored by an electronic monitoring device verifying the person's location, and the person may only be given credit for the time served within the boundaries of the person's residence.

For felony offenses, the following provisions apply:

- As a condition of any probation granted, the person shall be required to serve at least 30 days of confinement, including at least 48 consecutive hours' imprisonment. The remainder may be served by a combination of imprisonment, work release (if the work release program requires the person to return to confinement at the end of each day), or a house arrest program;
- The person will receive hour-for-hour credit for time served in work release or house arrest for the first 240 hours of confinement so served and will then receive day-for-day credit for time so served, unless otherwise ordered by the court; and
- When in work release, the person will only be given credit for time served in confinement at the end of and continuing to the beginning of the person's work day. When under house arrest, the person will be monitored by an electronic monitoring device verifying the person's location, and the person may only be given credit for the time served within the boundaries of the person's residence.

As part of the judgment of conviction, the court must order the person convicted not to operate an aircraft for any purposes for six months from the date of final discharge from the county jail, or the date of payment or satisfaction of a fine, whichever is later, or one year from such date on a second conviction. If the court suspends the sentence and places the person on probation, the court must order as a condition of probation that the person not operate an

aircraft for any purpose for a period of 30 days from the date of the order on a first conviction or 60 days from the date of the order on a second conviction.

In determining the number of occurrences of the offense, a conviction will include entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of operating an aircraft under the influence, and it will be irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

If a person is charged with a violation of the offense involving drugs, the fact that the person is or has been entitled to use the drug under Kansas law shall not constitute a defense against the charge.

Related Testing Provisions

The bill authorizes a request to a person operating or attempting to operate an aircraft in Kansas to submit to one or more tests of the person's blood, breath, urine, or other bodily substance to determine the presence of alcohol or drugs, administered at the direction of a law enforcement officer. The procedural requirements and related provisions reflect previous law for such testing for the crimes being repealed by the bill or in the context of DUI offenses, except for certain oral and written notice requirements in the DUI procedure.

Similarly, the bill includes provisions allowing a law enforcement officer to request a person operating or attempting to operate an aircraft in Kansas to submit to a preliminary screening of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate an aircraft while under the influence of alcohol, drugs, or a combination of both. The procedural requirements and related provisions reflect continuing law for such preliminary screenings in the DUI context.

The bill adds references to the testing provisions for this crime to continuing references to DUI testing provisions in the following statutory locations:

- In the Kansas Code of Criminal Procedure, regarding admissibility in any hearing or trial;
- In the Kansas Rules of Evidence, regarding the physician-patient privilege;
- In a statute allowing the Secretary of Health and Environment to adopt rules and regulations regarding approved preliminary screening devices; and
- In a statute authorizing the Director of the Kansas Bureau of Investigation to adopt rules and regulations regarding a list of preliminary screening devices approved for testing of oral fluid.

DUI, Diversions, and Commercial Driver's Licenses

The bill creates and amends law related to DUI and driving a commercial motor vehicle under the influence (commercial DUI). The bill also makes additional amendments regarding diversions and commercial driver's licenses (CDLs).

Ignition Interlock

The bill creates and amends law related to ignition interlock devices (IIDs), restrictions, and costs.

Reinstatement of driver's license. The bill creates 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 Vehicles (Division), Kansas Department of Revenue (KDOR), in a form and manner prescribed by the Division. The Division must 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;
- 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.

Transfer of ignition interlock oversight. The bill transfers oversight of state certification of IID manufacturers and service providers from the KDOR to the Kansas Highway Patrol (KHP).

The bill transfers:

- Provisions regarding use of state moneys credited to the DUI-IID Designation Fund from a \$10 fee paid for a driver's license with ignition interlock designation) to fund administration and oversight of state-certified IID manufacturers and their service providers;

- Provisions regarding IID approval by the KHP; and
- Authority for adopting rules and regulations regarding approval of IIDs, calibration and maintenance of IIDs, ensuring each approved IID manufacturer provides a reasonable statewide service network for calibration and maintenance of the devices, and participant requirements for proper use and maintenance of IIDs to the superintendent of the KHP.

The bill deems current rules and regulations on this subject to be rules and regulations of the superintendent of the KHP.

Ignition interlock device program completion. The bill removes a 90-day waiting period to apply for IID and various restrictions on driving with an IID and adds the following required conditions for a person to complete the IID program:

- The person must have no more than two standard violations 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 defines “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. In a statute governing approval and maintenance of IIDs, the bill removes a provision requiring each IID manufacturer to 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 adds the provisions detailed below regarding reduced IID program costs (reduced costs).

Any person whose license is restricted to operating only a motor vehicle with an IID installed may request reduced costs by submitting a request to the Division in a form and manner prescribed by the Division. The Division must review each request to determine whether the person is eligible for reduced costs. A person will 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 must pay 50 percent of the program costs, and the manufacturer must adjust its charges accordingly.

The bill also amends this section to require the Secretary of Revenue (Secretary) to adopt rules and regulations regarding the requirements and guidelines for receiving reduced

costs prior to March 1, 2023. Additionally, the bill reorganizes some provisions within the section.

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

Commercial DUI; Commercial Driver's Licenses

The bill amends law regarding commercial DUI and CDLs.

Charges and penalties. The bill clarifies 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 amends the penalties for a first conviction of commercial DUI to remove a minimum imprisonment or public service hours requirement.

The bill amends 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 is modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and will then receive day-for-day credit for any additional confinement imposed, unless otherwise ordered by the court.

The bill increases 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 reorganizes and standardizes minimum confinement requirements, setting the required minimum confinement as 30 days. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and will 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 removes postrelease supervision provisions that could conflict with the general postrelease supervision conditions that will now apply to the offense as a severity level 6 nonperson felony.

The bill gives 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 and other CDL amendments. The bill amends 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 will allow the person to apply to the Secretary for review of the incidents and modification of the disqualification. The bill requires the Secretary to adopt rules and regulations prior to March 1, 2023, establishing guidelines, including conditions, to administer this provision.

The bill replaces 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 requires 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 may 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 requires the person to 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 requires the person to complete the written and driving skills examinations before a CDL is issued.

If the person is found ineligible, the Division must 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 will not be eligible to apply for restoration if the person receives another lifetime disqualification.

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

The bill requires the Secretary to adopt rules and regulations prior to March 1, 2023, necessary to administer the new procedure for restoration of commercial driving privileges.

The bill adds 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.

The bill increases the minimum disqualification period for operating a commercial motor vehicle in violation of an out-of-service order:

- From 90 days to 180 days for a first violation; and
- From one year to two years if the person has one prior violation in a separate incident within the ten years immediately preceding the current violation.

Motorized Bicycles

In the statute requiring drivers to have a valid driver's license, the bill removes a provision allowing the 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 removes a corresponding provision regarding the disposition of the application fee.

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

DUI Charges and Penalties

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

The bill amends 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 is modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and will then receive day-for-day credit for any additional confinement, unless otherwise ordered by the court.

The bill increases 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 accordingly removes 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 amends 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. Additionally, the bill removes the felony offense from postrelease supervision provisions that could conflict with the general postrelease supervision conditions that will now apply to the offense as a felony on the sentencing grid.

The bill amends 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 specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and will then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court.

The bill gives 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

The bill amends 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 Driver's License Act.]

These statutes also are 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 is amended to clarify an "alcohol related offense," as used in this statute, is a non-commercial DUI offense.

A statute prohibiting certain diversions for CDL holders is amended to prohibit a prosecuting attorney from masking or deferring imposition of judgment or allowing an individual to enter into a diversion that would prevent a commercial learner's permit or CDL holder's conviction from appearing on the Commercial Driver's License Information System (CDLIS) driver record of any violation of a state or local traffic control law that occurred in any type of motor vehicle, and this provision will apply regardless of whether the driver was convicted for an offense committed in the state where the driver is licensed or in any other state. The bill states this provision would not apply to parking, vehicle weight, or vehicle defect violations.

Sentencing Statute Amendments

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