

Driving Under the Influence; House Sub. for SB 60

House Sub. for SB 60 amends various administrative and criminal statutes related to driving under the influence (DUI) and allows the issuance of a class C license for the operation of a motorized bicycle to certain persons with suspended or revoked drivers' licenses. The bill serves as a follow-up to 2011 House Sub. for SB 6 (SB 6), which made extensive revisions to Kansas DUI law.

First, the bill clarifies 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.

Next, the bill creates the crime of refusing to submit to a test to determine the presence of alcohol or drugs. Under this section, it is a crime to refuse to submit to or complete such a test if a person has a prior test refusal or a prior conviction for DUI or commercial DUI, any of which occurred (1) on or after July 1, 2001, and (2) when such person was at least 18 years of age. Thus, a first-time test refusal does not constitute criminal conduct unless a person has a previous DUI or commercial DUI conviction as specified in the section. The penalties for a first conviction of test refusal are the same as the penalties for a second DUI, the penalties for a second test refusal conviction are the same as the penalties for a third DUI, and the penalties for a third or subsequent test refusal conviction are the same as the penalties for a fourth or subsequent DUI conviction. The evaluation and procedural requirements for this crime are the same as those for DUI, as amended by this bill. The implied consent statute is amended to include information regarding the test refusal crime in the oral and written notice given to persons subject to testing.

In determining whether a test refusal conviction is a first, second, third, or subsequent conviction for sentencing under the new section, the following counts as a conviction, in addition to any convictions under the new section itself: convictions for DUI on or after July 1, 2001, and any lifetime convictions of commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide, or vehicular battery while DUI. "Convictions" 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 will not be included in this calculation. The bill clarifies that a previous DUI or commercial DUI conviction used to trigger the test refusal criminal provision shall not also be used for sentencing purposes.

The bill amends 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 do not exclude convictions before the age of 18.

The bill allows 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 may obtain a class C license valid only for operating a motorized bicycle, 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 8-241, regarding drivers' license examination in certain circumstances, is 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, is amended to establish a minimum fee of \$150 for the required alcohol and drug evaluation. Evaluation providers are required to agree to evaluate indigent defendants at no up-front cost and have the evaluation fee be assessed to the defendant as part of the judgment. The implementation of a provision requiring the use of a standardized substance use evaluation approved by the Secretary of Social and Rehabilitation Services is delayed until July 1, 2013. A grandfather clause is added to allow persons who, on or before July 1, 2012, were taking action to become a provider in accordance with the requirements of this section to continue to perform services described in the section until July 1, 2014. This section, as well as the test refusal, DUI, and commercial DUI sections, are amended so that evaluations pursuant to this section would not be required for third and subsequent refusal or commercial DUI convictions or for third or fourth and subsequent DUI convictions.

KSA 8-1014, governing the administrative penalties for test refusal or failure or an alcohol or drug-related conviction, is 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 is made the same as for any other offender. Language referencing alcohol and drug safety actions programs is updated to reflect the provider system established by SB 6. A new provision requires the Division of Vehicles, Kansas Department of Revenue, 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, is 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 (4). For subsequent test refusal suspensions, a person will 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 are 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 is created, and the first \$100,000 generated from this fee each fiscal year will be directed to the Division of Vehicles, Kansas Department of Revenue, with the remainder directed to the Community Corrections Supervision Fund.

Persons subject to first-time suspensions for test refusal, high blood alcohol content conviction, or test failure are permitted to operate an employer's vehicle without an ignition interlock device installed during normal business activities.

The DUI criminal statute, KSA 2011 Supp. 8-1567, is 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 are

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, is amended to include the same confinement hours increase for house arrest and work release for third or subsequent convictions as in the DUI statute. Additionally, the commercial DUI statute is amended to include supervision, risk assessment, and multidisciplinary services requirements for third and subsequent commercial DUI convictions that would be identical to the requirements for third and subsequent DUI or test refusal convictions.

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