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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 16, 2021
Subject: Bill Brief for HB 2377

HB 2377 revises the laws concerning driving under the influence, including authorizing reinstatement of a driver's license for certain persons with an ignition interlock device restriction, requiring persons with an ignition interlock device restriction to complete the ignition interlock device program before driving privileges are fully reinstated, providing for reduced ignition interlock device program costs for certain persons, and modifying the criminal penalties for driving a commercial motor vehicle under the influence and driving under the influence.

Section 1 creates a new section of law authorizing reinstatement of a driver's license for certain persons whose license is restricted to operating only a motor vehicle with an ignition interlock device (IID) installed. The division shall approve a request for reinstatement if the division determines the person's IID restriction period has been extended at least five years, not including any period of incarceration, beyond the initial IID restriction period required by law due to the person's failure to provide the division with proof of completion of the IID program, and the person has not had any occurrences or convictions listed in the statute during the IID restriction period and the extensions.

Section 2 amends K.S.A. 8-235, the statute requiring a valid driver's license to drive any motor vehicle in Kansas and providing exemptions. Current law in subsection (d) allows a person who has had their driving privileges suspended and meets certain criteria to receive a class C license for the operation of a motorized bicycle, which allows some first-time DUI offenders to receive such licenses. The bill removes this provision.

Section 3 amends K.S.A. 8-2,142 regarding disqualification from driving a commercial motor vehicle. Current law in subsection (c) provides that a person shall be disqualified for life upon the 2nd or subsequent occurrence of any offense, test refusal or test failure arising from two or more separate incidents. The bill limits this provision to incidents occurring on or after July 1,

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2003. Current law in subsection (d) allows the secretary of revenue to adopt rules and regulations establishing guidelines under which a disqualification for life may be reduced to a period of not less than 10 years. The bill replaces this provision with a statutory framework for restoration of a person's commercial driving privileges after such person has been disqualified for at least 10 years. The bill also adds a new paragraph in subsection (e) providing that a 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 is disqualified from driving a commercial motor vehicle for life, in accordance with federal regulations. Finally, the bill adds a new subsection (n) providing that if a person is disqualified for life and at least one of the disqualifying incidents occurred prior to July 1, 2003, the person may apply to the secretary of revenue for review of the incidents and modification of the disqualification.

Section 4 amends K.S.A. 8-2,144 regarding the crime of driving a commercial motor vehicle under the influence. The bill removes the requirement that a 1st time offender must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release and clarifies the rules regarding a 2nd time offender serving a mandatory 120 hours of confinement, including at least 48 hours imprisonment. The bill increases the penalty for a 3rd or subsequent offense from a nongrid nonperson felony to a severity level 6, person felony. The bill also provides in new subsection (f)(2) that a court may waive any portion of a fine imposed under this section, except the \$250 required to be remitted to the state treasurer and credited to the community corrections supervision fund, upon a showing that the person successfully completed court-ordered education or treatment. Finally, the bill amends subsection (l), which prohibits plea bargaining agreements, to provide that this subsection does not 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.

Section 5 amends K.S.A. 8-1015, part of the statutes governing administrative penalties on driving privileges for DUI-related offenses. The bill removes the waiting period required by current law before a person with suspended driving privileges may apply to the division of vehicles for a restricted license that allows driving only a motor vehicle equipped with an ignition interlock device (IID) and also removes the limitations on such restricted licenses in current law. Current law in subsection (d) requires a person who has an IID installed to complete the IID program and provide proof of completion to the division before the person's driving privileges are fully reinstated. The bill amends subsection (d) to create a compliance-based removal system, providing

that a person may only complete the IID program if the person has not more than three standard violations and no serious violation in the 90 consecutive days prior to application for reinstatement and the application occurs upon or after expiration of the applicable ignition interlock period required by law. The bill also defines “standard violation,” “serious violation,” and related terms on pages 18 and 19.

Section 6 amends K.S.A. 8-1016, the statute authorizing the secretary of revenue to adopt rules and regulations related to administration and oversight of the IID program and IID manufacturers and service providers. Subsections (a)(4) and (a)(5) are relocated from current law in the section and subsection (a)(6) addresses new requirements and guidelines for receiving reduced IID program costs from the division of vehicles. New subsection (e) provides that any person required to have an IID installed may request reduced IID program costs by submitting a request to the division. A person shall be eligible for reduced costs if the person’s annual household income is less than or equal to 300% of the federal poverty level, the person is enrolled in the food assistance, child care subsidy or cash assistance program pursuant to K.S.A. 39-709, or the person is currently eligible for the low income energy assistance program as determined by the department for children and families. If the division determines that the person is eligible for reduced costs, the person will be responsible for paying only the amount specified in the statute on pages 21 and 22 and the manufacturer providing the person’s device is required to adjust the manufacturer’s charge for services accordingly.

Section 7 amends K.S.A. 8-1567 regarding the crime of driving under the influence. The bill removes the requirement that a 1st time offender must serve at least 48 consecutive hours’ imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release and clarifies the rules regarding a 2nd time offender serving a mandatory 120 hours of confinement, including at least 48 hours imprisonment. For a 3rd time offender without a prior conviction within the preceding 10 years, the bill requires the offender to serve at least 30 days of confinement and after at least 48 consecutive hours imprisonment the remainder of the period may be served by a combination of imprisonment, work release, or house arrest. The bill increases the penalty for a 3rd or subsequent offense if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration, from a nongrid nonperson felony to a severity level 6, person felony. The bill also increases the penalty for a 4th or subsequent offense from a nongrid nonperson felony to a severity level 6, person felony. Finally, the bill makes the same amendments to this

statute that are made in the commercial DUI statute (Section 4) related to waiving fees and plea bargaining agreements.

Section 8 amends K.S.A. 8-1567a, the statute concerning driving under the influence of alcohol or drugs by any person less than 21 years of age. The only substantive change is in subsection (f), which addresses the administrative penalties when such a person submits to a breath or blood alcohol test and produces a test result of 0.02 or greater, but less than 0.08. The bill provides that, on the person's first occurrence, the person's driving privileges will be restricted as provided by K.S.A. 8-1015 for 180 days, rather than 330 days as required by current law. This change would make the law consistent with the administrative penalties for a first occurrence if the person under 21 has a test result of 0.08 to 0.1499 (see K.S.A. 8-1015(b)(1) on page 17).

Section 9 amends K.S.A. 12-4415 related to diversion agreements granted by a city attorney. The bill clarifies that the provisions of subsection (b) prohibiting a city attorney from entering into a diversion agreement on a complaint alleging an alcohol related offense only includes a violation of K.S.A. 8-1567 or violation of an ordinance of a city that prohibits the same conduct. The provision prohibiting such a diversion when such offense resulted in personal injury or death is changed to apply only when such offense resulted in personal injury "to another person" or death. The bill also adds a new subsection (c) to provide that a city attorney shall not enter into a diversion agreement on a complaint or traffic citation alleging a violation of an ordinance of any city or resolution of any county that prohibits the acts prohibited under chapter 8 of the Kansas Statutes Annotated if the defendant was a commercial driver's license holder at the time the violation was committed or at any subsequent time prior to being considered for diversion.

Section 10 amends K.S.A. 22-2908 related to diversion agreements granted by a county or district attorney. Current law in subsection (b) provides that a county or district attorney shall not enter into a diversion agreement on a complaint if the complaint alleges that the defendant committed a violation of K.S.A. 8-1567 and the defendant was involved in a motor vehicle accident or collision resulting in personal injury or death. This provision is amended to apply only when such offense resulted in personal injury "to another person" or death. The bill also adds to subsection (b) that a county or district attorney shall not enter into a diversion agreement on a complaint if the complaint alleges that the defendant committed a violation under chapter 8 of the Kansas Statutes Annotated and the defendant was a commercial driver's license holder at the time the violation was committed or at any subsequent time prior to being considered for diversion.