

Corrected
SESSION OF 2007

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 35**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 35 would amend the law regarding driving under the influence of alcohol or drugs (DUI) to do the following:

- Require that for an alcohol concentration of .15 or greater the driver's license would be suspended for one year;
- Require that for an alcohol concentration of .08 or greater the driver's license would be suspended one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;
- Require that for an alcohol concentration or .08 or more, for anyone under 21 years of age, would result in a suspended license for one year. On a fifth or subsequent occurrence, a drivers license would be permanently revoked;
- Require that for a first DUI test refusal, at the end of a year of suspension a driver's license would be restricted for a year to driving a motor vehicle with an ignition interlock device;
- Require that for a test failure with a blood alcohol concentration of .15 or greater on a first occurrence, a driver's license would be suspended for one year and then

*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>

restricted for one year to driving with an ignition interlock device. Proof of installation would be required;

- On a second occurrence, suspension would be one year followed by restriction for two years to driving with an ignition interlock device.
- On a third occurrence, suspension would be one year followed by restriction for three years to driving with an ignition interlock device.
- On a fourth occurrence, suspension would be one year followed by four years to driving with an ignition interlock device.
- On a fifth or subsequent occurrence, permanent revocation of a driver's license would occur.
- Require that, for a person under 21, a blood concentration of .15 or greater, on a first occurrence, suspend a driver's license for one year followed by restriction for one year to driving with an ignition interlock device. For second and subsequent occurrences, the penalties would be the same as outlined above;
- Require that, upon a first conviction for a test refusal or blood concentration of .15 or greater, imprisonment of at least 96 consecutive hours up to one year's imprisonment or, in the court's discretion 200 hours of public service, and fined at least \$1,000 and up to \$2,000. The 96 consecutive hours of imprisonment or 200 hours of public service would have to be served before or as a condition of any grant of probation or suspension, reduction of sentence or parole;
- Require that, upon a second conviction, for a test refusal or blood concentration of .15 or more, imprisonment of at least 180 days up to two year's imprisonment and a fine of at least \$2,000 and up to \$3,000. At least 10 consecutive days imprisonment must be served before probation,

suspension or reduction of sentence or parole could be granted. The required 10 days could be served in a work release program, or placement under a house arrest program, only after service of 96 consecutive hours imprisonment. Any work release program would require the person to return to confinement at the end of each day.

- Require that, upon a third conviction, for a test refusal or blood concentration of 0.15 or more, imprisonment of at least 180 days up to two years, and a fine of not less than \$3,000 up to \$5,000. Probation, suspension, or reduction of sentence or parole would not be available until the person has served at least 180 days imprisonment which could be served in a work release program only after service of 96 consecutive hours of imprisonment and the work release program requires the person to return to confinement at the end of each day in the work release program. A house arrest program would also be available after service of 96 consecutive hours imprisonment. The court would require as a condition of parole, that the person enter and complete a drug and alcohol abuse treatment program.
- Require that, for a fourth or subsequent conviction for test refusal or blood concentration of 0.15 or higher, imprisonment of at least 180 days up to two years, and a fine of \$5,000. The person convicted would not be eligible for probation, suspension, or reduction in sentence or parole until the person has served at least 180 days imprisonment, with a work release program after 144 consecutive hours of imprisonment. The work release program would require a person to return to confinement at the end of each day in work release.
- Require that a DUI conviction, that involves one or more children under 14 in the vehicle, would mandate increased imprisonment by one month for each child in the vehicle. This imprisonment would be served consecutively to any other minimum mandatory penalty. Any enhanced penalty

imposed could not exceed the maximum sentence allowable.

- Require that, in addition to any other penalty, upon a second or subsequent conviction, the court would order that each motor vehicle owned or leased by the convicted person would have to be equipped with an ignition interlock device or impounded or immobilized for a period of two years. All costs associated with the installation, maintenance, and removal of the ignition interlock device and all towing, impoundment, and storage fees or other immobilization costs would be paid by the convicted person.
- Require hearings to be held by telephone conference call unless a request is made that the hearing be held in person.
- Provide for funding to the newly created Department of Health and Environment Driving Under the Influence Expense Fund and County Jail Cost Assistance Fund.
- In addition, the bill would clarify how time would be computed to determine if a request for an administrative hearing under the implied consent advisory law is timely filed with the Kansas Department of Revenue.

Background

The substitute bill incorporates the original SB 35 and HB 2012 which was the subject of an interim study by the 2006 Special Committee on Judiciary entitled "Enhanced Penalties for Driving Under the Influence of Alcohol or Drugs." HB 2012 was recommended by the Special Committee.

The fiscal note for SB 35 indicates no fiscal effect.

The fiscal note for HB 2012 states that the Office of Judicial Administration indicates that this bill would provide

additional revenue to the state because of the increased fines, and it would likely increase the number of cases brought before the courts because of the enhanced penalties for individuals convicted of a DUI offense with a BAC of 0.15 or greater. Because HB 2012 has the potential for increasing litigation in the courts, the agency indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Kansas Sentencing Commission indicates that the enactment of HB 2012 would not effect its operations. The agency also indicates that prison admissions would remain the same if HB 2012 were enacted, but county jail admissions and population levels could be affected by this legislation. A request for fiscal information was sent to the Kansas Association of Counties, but a response has not yet been received.

The Department of Revenue indicates that passage of HB 2012 would require additional expenditures of \$35,000 to revise the chemical test, the advisory and administrative hearing orders, the abstract of conviction, and the traffic code sheet forms. The agency also states that this bill would require modifications to the driver's license system. The required programming for this bill by itself (approximately five weeks of application developer time) would be performed by existing staff of the Department of Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the Department's current budget may be required. Any fiscal effect associated with HB 2012 is not reflected in *The FY 2008 Governor's Budget Report*.