

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2617**

As Agreed to May 1, 2008

Brief*

HB 2617, would amend the implied consent law, the law regarding forensic examinations and testing, information, immunity, and costs. The bill also contains a conflict resolution.

Implied Consent

The bill would require a law enforcement officer to request a person to submit to a test for alcohol or drugs, or both, when the law enforcement officer has probable cause to believe:

- The person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs; or
- The person was driving a commercial motor vehicle while having alcohol or other drugs in such person's system; or
- The person was under the age of 21 years while having alcohol or other drugs in such person's system; and
 - The person was operating or attempting to operate the vehicle under the influence of alcohol or drugs, or both, and was involved in a vehicle accident or collision resulting in serious injury or death and such person could be cited for any traffic offense, however:

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- The test would not be required if the law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision.

The bill would provide that the issuance of a traffic citation would constitute probable cause for a request for testing.

The bill would authorize a law enforcement officer to direct a medical professional, including a licensed physician's assistant, to draw a blood sample if the person has given consent; or if medically unable to consent or refuses to consent, when the person was operating or attempting to operate the vehicle while under the influence of alcohol or drugs, or both, and was involved in a vehicle accident or collision resulting in the immediate or likely death of any person and such person could be cited for any traffic offense.

When directed by a law enforcement officer, the medical professional would be required to withdraw the sample as soon as practical as long as the collection of the sample does not jeopardize the person's medical health assessment, care or treatment. The sample would be independent of the sample collected for medical purposes. Further, the medical professional and the medical care facility where the blood is drawn would be acting on good faith that the prerequisites have been met by the law enforcement officer when the officer directs the blood draw.

If a person needs to be restrained to collect the sample, law enforcement would be responsible for applying any such restraint.

A law enforcement officer would be authorized to request a urine test if the law enforcement officer has reasonable grounds to believe:

- The person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs; or

- The person was driving a commercial motor vehicle while having alcohol or other drugs in such person's system; or
- The person was under the age of 21 years while having alcohol or other drugs in such person's system.

A law enforcement officer would be required to request a urine test if the person was operating or attempting to operate the vehicle under the influence of alcohol or drugs, or both, and was involved in a vehicle accident or collision resulting in serious injury or death of any person and such person could be cited for any traffic offense unless the law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. If the person is medically unable to provide a urine sample, the law enforcement officer is authorized to direct a medical professional to draw the urine sample from the person as soon as practical as long as the collection of the sample does not jeopardize the person's medical health assessment, care or treatment.

Serious injury is defined as a physical injury to a person, as determined by law enforcement, which has the effect of, prior to the request for testing:

- Disabling a person from the physical capacity to remove themselves from the scene;
- Rendering a person unconscious;
- Suffering the immediate loss or absence of the normal use of at least one limb;
- Determining, by a physician, of the need for surgery; and
- Indicating the person may die or be permanently disabled.

After the testing pursuant to the implied consent statute, the person may request additional testing from medical care facilities willing to conduct such testing.

Information

Information such as the results of such testing, the person's name, the location of the test or procedure, names of all health care providers and personnel who participated in the procedure or test, or date and time of the test or procedure would not be considered any type of protected health information. Such information would be required to be provided to the requesting law enforcement officer or designee. Additionally, the collection and delivery of the sample and required information to the law enforcement officer would not be subject to physician-patient privilege or any other law prohibiting the transfer, release or disclosure of the sample or required information.

Costs

Costs assessed under the bill would be charged to and paid by the county where the alleged offense was committed. The court would be authorized to charge the defendant, as court costs, the costs assessed pursuant to the bill.

Immunity

Immunity would be provided to medical facilities and institutions and medical personnel who participate in good faith in the obtaining, withdrawal, collection, or testing of blood, breath, urine, or other bodily substance at the direction of a law enforcement officer, regardless of whether or not the patient resisted or objected to the administration of the procedure or test.

Other amendments are technical and clarifying in nature.

Conference Committee Action

The Conference Committee agreed to the following:

- Reinsert and define serious injury;
- Allow a blood draw that is authorized by medical protocol;
- Authorize court costs to be assessed against the defendant; and
- Delete DUI and substance abuse provisions regarding penalties for third, fourth, fifth, and subsequent convictions.

Background

The original HB 2617 was recommended by the 2007 Interim Special Committee on Judiciary.

Representative Kenny Wilk appeared in support of the original bill. Representative Wilk introduced his constituents, Denise and Dennis Bixby, whose daughter, Amanda, had been killed by another driver. The Bixbys spoke in favor of the bill. Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers' Association, also testified in support of the measure. Written support of the bill was received from Pete Boydek, Chief of Traffic Safety, Kansas Department of Transportation. There was no testimony in opposition to the bill.

The House Committee amended the bill by inserting the following provisions:

- Forced withdrawals;
- HIPPA provisions;
- Immunity provisions; and
- Definition of serious injury.

Representative Kenny Wilk and Senator Roger Pine appeared in support of the bill as amended by the House Committee. Other proponents of the bill as amended by the House Committee were Denise and Dennis Bixby; Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers' Association; and Karen Whitman, Kansas County and District Attorney's Association. Written testimony in support of

the bill was received from Pete Boydek, Chief of Traffic Safety, Kansas Department of Transportation; and Steve Opat, Geary County Attorney. Chad Austin, Kansas Hospital Association provided neutral written testimony. There was no testimony in opposition to the bill.

The Senate Committee on Judiciary, pursuant to recommendations of a subcommittee convened to study this bill, amended the bill to:

- Delete the provisions regarding “serious bodily injury”;
- Provide that when the person was operating or attempting to operate the vehicle under the influence of alcohol or drugs, or both, and was involved in a vehicle accident or collision resulting in the immediate or likely death of any person, and such person could be cited for any traffic offense, the person would be requested to submit to testing;
- Provide that when a person is medically unable to consent or refuses consent, the person would be requested to submit to testing if the person was operating or attempting to operate the vehicle under the influence of alcohol or drugs, or both, and was involved in a vehicle accident or collision resulting in the immediate or likely death of any person, and such person could be cited for any traffic offense;
- Delete the HIPPA provisions inserted by the House Committee;
- Clarify that information such as the results of such testing, the person’s name, the location of the test or procedure, names of all health care providers and personnel who participated in the procedure or test, date and time of the test or procedure would not be considered any type of protected health information; and

- Add the provisions regarding DUI penalties to provide for treatment at a state substance abuse facility established by the Kansas Department of Corrections.

The fiscal note, on the original bill, indicated the Kansas Highway Patrol estimated no fiscal effect on the agency. The Kansas Department of Revenue estimated the enactment of the original bill would not affect state highway revenues nor internal workload requirements. Any fiscal effect of the original bill on cities and counties could not be estimated.

A revised fiscal note on the amendments by the Senate Committee was not available at the time the bill was passed by the Senate Committee.

Implied Consent