

SESSION OF 2010

**THIRD CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 368**

As Agreed to May 8, 2010

**Brief\***

SB 368 would amend the effective date of the criminal penalty provisions regarding third and fourth or subsequent convictions for driving under the influence (DUI) that were enacted with the passage of 2009 HB 2096 from July 1, 2010 to July 1, 2011.

Further, the bill would amend the administrative penalty provisions for a second alcohol or drug-related conviction to require a one-year suspension of the person's driving privileges, which may be modified after a 45-day hard suspension and application to the Kansas Division of Motor Vehicles. A person's driving privileges would be restricted for the remainder of 1 year to driving only a motor vehicle equipped with an ignition interlock device, and restricted to driving to and from work, school, treatment, or to the ignition interlock provider. The person's driving privileges would be further restricted for an additional year to driving only a motor vehicle equipped with an ignition interlock device.

Administrative penalties for a third and fourth or subsequent alcohol or drug-related conviction would be as provided under current law. Administrative penalties for test failure or test refusal would be as provided under current law.

The bill would be effective upon publication in the *Kansas Register*.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

### **Third Conference Committee Action**

The Conference Committee agreed to remove all of the House and Senate amendments to the bill. The Conference Committee agreed to the following change:

- A second alcohol or drug-related conviction to require a one-year suspension of the person's driving privileges, which may be modified after a 45-day hard suspension and application to the Kansas Division of Motor Vehicles. A person's driving privileges would be restricted for the remainder of 1 year to driving only a motor vehicle equipped with an ignition interlock device, and restricted to driving to and from work, school, treatment, or to the ignition interlock provider. The person's driving privileges would be further restricted for an additional year to driving only a motor vehicle equipped with an ignition interlock device.

### **Background**

The Kansas DUI Commission requested the bill introduction to extend the effective date of the penalty provisions regarding third and fourth or subsequent convictions for driving under the influence that were enacted with the passage of 2009 HB 2096. Currently, the penalty provisions are scheduled to become effective on July 1, 2010. The Commission requested another year to further study the DUI penalties so that the recommendation by the Commission on DUI changes would be comprehensive.

There were no proponents or opponents of the bill, as introduced, who presented testimony in the Senate Committee hearing.

The Senate Committee of the Whole amended the bill to delete the requirement that proof of installation of an ignition interlock device be given to or received by the Kansas Department of Revenue, Division of Motor Vehicles.

The proponent of the bill appearing in the House Committee was Senator Mary Pilcher-Cook. The opponents of the bill were representatives of the Kansas Department of Transportation, the Attorney General, Mothers Against Drunk Driving, the Kansas Interlock Association, and the Kansas Association of Chiefs of Police. A representative of Guardian Interlock Systems also submitted written testimony in opposition of the bill. The opponents were concerned primarily with the Senate Committee of the Whole's amendment that would have deleted the requirement that a person show proof of installation of an interlock device to the Division of Motor Vehicles.

The House Committee amended the bill by striking the Senate Committee of the Whole amendment, and revising the penalty provisions for failure of a test or having an alcohol or drug-related conviction so that on a first occurrence, after a 30-day suspension, a person's driving privileges would be restricted for one year to driving only a motor vehicle equipped with an ignition interlock device.

The House Committee of Whole amended SB 368 by:

- Adding KSA 8-259, 8-1001, and 8-1015 to the bill title and to the provision listing bills to be repealed;
- Striking KSA 8-1014(a), the current provision governing penalties for refusal of a test, instead providing that the penalties would be the same as those for failure of a test or an alcohol or drug-related conviction;
- Renumbering those sections affected by the deletion of subsection (a), and making clarifying amendments for statutory references to those affected subsections;
- For a second refusal of a test, failure of a test, and an

alcohol or drug-related conviction, changing from 1 year to 45 days the amount of time a person's driving privileges are suspended, and from 1 year to 2 years, the amount of time a person's driving privileges are restricted to driving only a motor vehicle equipped with an ignition interlock device;

- Creating the following penalties for a third and fourth refusal of a test, failure of a test, and an alcohol or drug-related conviction:
  - For a third occurrence, suspension for 45 days and a 3-year restriction of driving only a motor vehicle equipped with an ignition interlock device; and
  - For a fourth occurrence, suspension for 45 days and a 4-year restriction of driving only a motor vehicle equipped with an ignition interlock device;
- For refusal of a test, requiring that the division follow the procedures set out in KSA 8-1002;
- Modifying the information that must be provided by law enforcement before a person's blood, breath, urine, or other bodily substance is tested for the presence of alcohol or drugs to reflect the changes to the law made by this bill; and
- Allowing the new penalties to apply retroactively.

The First Conference Committee removed all Senate and House amendments to return the bill to its original form, as introduced. The House Committee of the Whole rejected the First Conference Committee Report. A second conference committee was requested.

The Second Conference Committee removed all of the Senate and House amendments except for the amendment made in the House Committee on Corrections to require, upon

a first occurrence for failure of a breathalyzer test or a first conviction of a DUI, a 30-day suspension and then driving privileges for the person would be restricted for one year to driving only a motor vehicle equipped with an ignition interlock device. The House Committee of the Whole adopted the Conference Committee Report but it was rejected by the Senate Committee of the Whole. A third conference committee was requested.

The fiscal note for SB 368, as introduced, may no longer be accurate because of the amendments passed in the House Committee on Judiciary and the House Committee of the Whole. Originally, however, the fiscal note indicated that enactment of the bill would have a negligible fiscal effect on state agencies and would have no effect on the state prison population, although, it is likely that counties would incur additional jail costs as a result of increased sentences for fourth or subsequent DUI convictions. A request for information was sent to the Kansas Association of Counties; however, the Association had not provided a response at the time this fiscal note was prepared. Any fiscal effect associated with SB 368 is not reflected in The FY 2011 Governor's Budget Report.

penalty provisions, convictions, DUI Commission