

SUPPLEMENTAL NOTE ON SENATE BILL NO. 368

As Amended by House Committee of the Whole

Brief*

SB 368 would amend 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 to July 1, 2011.

Further, the bill would make refusal of a test subject to the same penalties as failure of a test and an alcohol or drug-related conviction and would modify the penalties for all three. As amended, the penalties are as follows:

- For a first occurrence, suspension for 30 days and a 1-year restriction of driving only a motor vehicle equipped with an ignition interlock device;
- For a second occurrence, suspension for 45 days and a 2-year restriction of driving only a motor vehicle equipped with an ignition interlock device;
- 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.

*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>

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

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 primarily concerned 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 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.