

Driving Under the Influence; House Sub. for SB 374

House Sub. for SB 374 amends law concerning driving under the influence of alcohol, drugs, or both (DUI). Specifically, the bill amends statutes governing the crimes of operating or attempting to operate a commercial motor vehicle under the influence (commercial DUI); implied consent; and tests of blood, breath, urine, or other bodily substance. The bill also repeals the crime of test refusal.

Legislative Intent

The bill states the Legislature's intent with regard to comparability of an out-of-jurisdiction offense to a Kansas offense shall be liberally construed to allow comparable offenses, regardless of whether the elements are identical to or narrower than the corresponding Kansas offense, for the purposes of determining a person's criminal history and that the Legislature intends to include, but does not limit such offenses to, convictions under specified statutes in Missouri, Oklahoma, Colorado, and Nebraska, as well as a Wichita municipal ordinance.

Commercial DUI

The bill amends language in the commercial DUI implied consent statute to state a person who drives a commercial motor vehicle "consents" to take a test or tests of that person's blood, breath, urine, or other bodily substance. Prior law stated a person is "deemed to have given consent" to tests of blood, breath, or urine. The bill amends the commercial DUI statute to provide a person commits the crime if the person commits an offense "otherwise comparable" to DUI, as defined in Kansas law.

Commercial DUI and DUI Changes

The bill amends provisions in the commercial DUI and DUI statutes concerning supervision upon release from imprisonment to provide an offender for whom a warrant has been issued by the court alleging a violation of such supervision is considered a fugitive from justice if it is found the warrant cannot be served. If it is found the offender has violated the provisions of this supervision, the court determines whether the time from the issuing of the warrant to the date of the court's determination of an alleged violation, or any part of it, is to be counted as time served on supervision. Further, the bill allows the term of supervision to be extended at the court's discretion beyond one year. Any violation of the conditions of such extended term of supervision may subject such person to the revocation of supervision and imprisonment in jail of up to the remainder of the original sentence, not the term of the extended supervision.

Within both statutes, the bill amends the one-month imprisonment enhancement for convicted persons who had one or more children under the age of 14 in the vehicle at the time of the offense. The bill specifies the enhancement applies to "any person 18 years of age or older" when one or more children under the age of 18 are in the vehicle at the time of the offense.

In subsections within those statutes stating the fact a person is or has been entitled to lawful use of a drug is not a defense, the bill replaces a reference to a DUI “involving drugs” with references to the subsections in the DUI statute that apply to drugs or a combination of drugs and alcohol.

The bill removes a requirement for the court to electronically report every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of commercial DUI to the Division of Vehicles. Under continuing law, diversions are not available for commercial DUI.

The bill amends the definition of “conviction” in these statutes to:

- Replace the phrase “a violation of a crime” with “an offense”;
- Replace the term “state” with “jurisdiction” and remove a provision specific to acts committed on a military reservation; and
- Replace the phrase “a crime” with the phrase “an offense that is comparable to the offense” described in the statute.

The bill provides, for the purposes of determining whether an offense is comparable, the following shall be considered:

- The name of the out-of-jurisdiction offense;
- The elements of the out-of-jurisdiction offense; and
- Whether the out-of-jurisdiction offense prohibits conduct similar to the conduct prohibited by the closest approximate Kansas offense.

In the DUI statute, the bill requires the court to electronically report any finding regarding the alcohol concentration in the offender’s blood or breath.

DUI Implied Consent

The bill amends language in the DUI implied consent statute to state a person who operates or attempts to operate a vehicle “may be requested” to submit to one or more tests of the person’s blood, breath, urine, or other bodily substance. The bill removes language stating a dead or unconscious person shall be deemed not to have withdrawn consent. The bill adds language requiring the test to be administered at the direction of a law enforcement officer, and the law enforcement officer determines which type of test is to be conducted or requested. This replaces language requiring a law enforcement officer to request the person to submit to testing after providing required notice (described below) and to select the test or tests to be completed.

The bill removes language requiring law enforcement to request a person to submit to a test deemed consented to if at the time of the request the officer has reasonable grounds to believe the person was DUI. Instead, the bill adds language stating one or more tests may be

required of a person when, at the time of the request, a law enforcement officer has probable cause to believe the person has committed the crime of DUI. The bill also replaces “reasonable grounds” with “probable cause” elsewhere in the bill to reflect this change in the required standard.

The bill also amends law to allow a test when a person has been involved in a motor vehicle accident or collision resulting in personal injury or death. This new language replaces provisions that distinguish between personal injury and serious injury or death when the operator may be cited for any traffic offense. The bill removes a definition for “serious injury” and other references to these provisions to reflect this change.

The bill removes “accident” from language allowing a law enforcement officer directing administration of a test to act on the basis of the collective information available to law enforcement officers involved in the investigation or arrest.

DUI Testing

Notice When Requesting a Test and Exceptions

The bill removes provisions governing the oral and written notice required to be given to a person when requesting a test or tests of blood, breath, urine, or other bodily substance. Instead, the bill adds two new subsections governing notice for tests of breath or other bodily substance other than blood or urine and for tests of blood and urine.

The notice for tests of breath or other bodily substance other than blood or urine states the following: there is no right to consult with an attorney regarding whether to submit to testing, but, after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing; if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person’s driving privileges will be suspended for a period of at least 30 days and up to a year; refusal to submit to testing may be used against the person at any trial or hearing on a charge arising out of DUI; and the results of the testing may be used against the person at any trial or hearing on a DUI charge.

The notice for tests of blood or urine states the following: if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person’s driving privileges will be suspended for a period of at least 30 days and up to a year; the results of the testing may be used against the person at any trial or hearing on a DUI charge; and after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing.

The bill states nothing in this section is to be construed to limit the right of a law enforcement officer to conduct any search of a person’s breath or other bodily substance, other than blood or urine, incident to a lawful arrest pursuant to the *U.S. Constitution*, with or without providing the person the notice outlined above for requesting a test of breath or other bodily substance, other than blood or urine, nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search. Additionally, the bill states nothing in this section is to be construed to limit the right of a law enforcement officer to conduct or obtain a blood or urine test of a person pursuant to a warrant under the Kansas

Code of Criminal Procedure, the *U.S. Constitution*, or a judicially recognized exception to the search warrant requirement, with or without providing the person the notice outlined above for requesting a test of blood or urine, nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search. Similarly, the bill states nothing in this section is to be construed to limit the admissibility at trial of test results obtained pursuant to a judicially recognized exception to the warrant requirement.

The bill amends a subsection stating no test results shall be suppressed because of technical irregularities in the consent or notice required. Instead, the bill states no test results shall be suppressed because of irregularities not affecting the substantial rights of the accused in the consent or notice authorized. The bill replaces notice “required” with notice “authorized” elsewhere in the bill consistent with this change.

The bill states failure to provide any or all notice is not an issue or defense in any action other than an administrative action regarding the subject’s driving privileges.

Collection of Test Samples

The bill revises law allowing a law enforcement officer to direct a medical professional to draw one or more samples of blood from a person to determine the blood’s alcohol or drug concentration under certain circumstances. Pursuant to the bill, an officer may direct such withdrawal if the person has given consent, with or without the notice outlined above, and the officer has the required probable cause; law enforcement has obtained a search warrant authorizing the collection of blood from the person; or the person refuses or is unable to consent to submit to and complete a test and another judicially recognized exception to the warrant requirement applies.

The bill amends law subsection outlining who may perform such withdrawal of blood to apply when a law enforcement officer “is authorized to collect one or more tests of blood,” rather than when an officer “requests a person to submit to a test.” The bill also clarifies language prohibiting a medical professional from requiring a person to sign any additional consent or waiver form to prohibit the medical professional from requiring the person “that is the subject of the test or tests to provide any additional consent or sign any waiver form.” The bill also removes in this subsection references to medical technicians no longer defined by statute.

Similarly, the bill amends law outlining who may collect urine samples to apply when a law enforcement officer “is authorized to collect one or more tests of urine,” rather than when an officer “requests a person to submit to a test.”

The bill clarifies test results are to be made available to any person submitting to testing “when available.” The bill also states any person who participates in good faith in the obtaining, withdrawal, collection, or testing of blood, breath, urine, or other bodily substance as authorized by law does not incur any civil, administrative, or criminal liability.

Immunity of Persons and Entities Involved in Testing

The bill adds paramedics to, and adds “advanced” to the term “emergency medical technicians” in, the list of persons and entities who have immunity for participating in good faith

in the obtaining, withdrawal, collection, or testing of blood, breath, urine, or other bodily substance under specified circumstances. The bill adds “as otherwise authorized by law” to the circumstances under which this immunity applies.

Repeal of the Crime of Test Refusal

The bill repeals the crime of test refusal, a class A nonperson misdemeanor, for which penalties include between 90 days and 1 year of imprisonment and a fine of between \$1,250 and \$1,750 for a first conviction. The bill also removes references to this statute throughout numerous statutes and makes other technical amendments to ensure statutory consistency.