

HOUSE BILL No. 2193

By Committee on Corrections and Juvenile Justice

2-1

**Proposed Amendments to HB 2193
For House Committee on Transportation
February 25, 2021
Prepared by: Office of Revisor of Statutes**

1 AN ACT concerning motor vehicles; relating to driving privileges;
2 revocation, suspension or restrictions thereof; fines and application
3 fees; amending K.S.A. 2020 Supp. 8-262 and 8-2110 and repealing the
4 existing sections; also repealing K.S.A. 2020 Supp. 8-2110b.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 8-262 is hereby amended to read as
8 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any
9 highway of this state at a time when such person's privilege so to do is
10 canceled, suspended or revoked or while such person's privilege to obtain
11 a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and
12 amendments thereto, shall be guilty of a class B nonperson misdemeanor
13 on the first conviction and a class A nonperson misdemeanor on the second
14 or subsequent conviction.

15 (2) No person shall be convicted under this section if such person was
16 entitled at the time of arrest under K.S.A. 8-257, and amendments thereto,
17 to the return of such person's driver's license.

18 (3) Except as otherwise provided by subsection (a)(4) or (c), every
19 person convicted under this section shall be sentenced to at least five days'
20 imprisonment and fined at least \$100 and upon a second conviction shall
21 not be eligible for parole until completion of five days' imprisonment.

22 (4) Except as otherwise provided by subsection (c), if a person:

23 (A) Is convicted of a violation of this section, committed while the
24 person's privilege to drive or privilege to obtain a driver's license was
25 suspended or revoked for a violation of K.S.A. 8-2,144 or 8-1567, and
26 amendments thereto, or any ordinance of any city or resolution of any
27 county or a law of another state, which ordinance or resolution or law
28 prohibits the acts prohibited by those statutes; and

29 (B) is or has been also convicted of a violation of K.S.A. 8-2,144 or
30 8-1567, and amendments thereto, or any ordinance of any city or
31 resolution of any county or law of another state, which ordinance or
32 resolution or law prohibits the acts prohibited by those statutes, committed
33 while the person's privilege to drive or privilege to obtain a driver's license
34 was so suspended or revoked, the person shall not be eligible for
35 suspension of sentence, probation or parole until the person has served at
36 least 90 days' imprisonment, and any fine imposed on such person shall be

1 in addition to such a term of imprisonment.

2 (b) (1) *Except as provided by paragraph (2), the division, upon*
3 *receiving a record of the conviction of any person under this section, or*
4 *any ordinance of any city or resolution of any county or a law of another*
5 *state which is in substantial conformity with this section, upon a charge of*
6 *driving a vehicle while the license of such person is revoked or suspended,*
7 *shall extend the period of such suspension or revocation for an additional*
8 *period of ~~90~~ 30 days.*

90

9 (2) *For any person found guilty of driving a vehicle while the license*
10 *of such person is suspended for violating K.S.A. 8-2110, and amendments*
11 *thereto, the suspension or revocation shall not be extended for any*
12 *additional time pursuant to paragraph (1).*

13 (c) (1) The person found guilty of a class A nonperson misdemeanor
14 on a third or subsequent conviction of this section shall be sentenced to not
15 less than 90 days' imprisonment and fined not less than \$1,500 if such
16 person's privilege to drive a motor vehicle is canceled, suspended or
17 revoked because such person:

18 (A) Refused to submit and complete any test of blood, breath or urine
19 requested by law enforcement excluding the preliminary screening test as
20 set forth in K.S.A. 8-1012, and amendments thereto;

21 (B) was convicted of violating the provisions of K.S.A. 40-3104, and
22 amendments thereto, relating to motor vehicle liability insurance coverage;

23 (C) was convicted of vehicular homicide, K.S.A. 21-3405, prior to its
24 repeal, or K.S.A. 2020 Supp. 21-5406, and amendments thereto,
25 involuntary manslaughter while driving under the influence of alcohol or
26 drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as
27 defined in K.S.A. 2020 Supp. 21-5405(a)(3) and (a)(5), and amendments
28 thereto, or any other murder or manslaughter crime resulting from the
29 operation of a motor vehicle; or

30 (D) was convicted of being a habitual violator, K.S.A. 8-287, and
31 amendments thereto.

32 (2) The person convicted shall not be eligible for release on
33 probation, suspension or reduction of sentence or parole until the person
34 has served at least 90 days' imprisonment. The 90 days' imprisonment
35 mandated by this subsection may be served in a work release program only
36 after such person has served 48 consecutive hours' imprisonment, provided
37 such work release program requires such person to return to confinement
38 at the end of each day in the work release program. The court may place
39 the person convicted under a house arrest program pursuant to K.S.A.
40 2020 Supp. 21-6609, and amendments thereto, or any municipal ordinance
41 to serve the remainder of the minimum sentence only after such person has
42 served 48 consecutive hours' imprisonment.

43 (d) For the purposes of determining whether a conviction is a first,

1 second, third or subsequent conviction in sentencing under this section,
2 "conviction" includes a conviction of a violation of any ordinance of any
3 city or resolution of any county or a law of another state which is in
4 substantial conformity with this section.

5 Sec. 2. K.S.A. 2020 Supp. 8-2110 is hereby amended to read as
6 follows: 8-2110. (a) Failure to comply with a traffic citation means failure
7 either to: (1) Appear before any district or municipal court in response to a
8 traffic citation and pay in full any fine and court costs imposed; or (2)
9 otherwise comply with a traffic citation as provided in K.S.A. 8-2118, and
10 amendments thereto. Failure to comply with a traffic citation is a
11 misdemeanor, regardless of the disposition of the charge for which such
12 citation was originally issued.

13 (b) (1) In addition to penalties of law applicable under subsection (a),
14 when a person fails to comply with a traffic citation, except for illegal
15 parking, standing or stopping, the district or municipal court in which the
16 person should have complied with the citation shall mail notice to the
17 person that if the person does not appear in district or municipal court or
18 pay all fines, court costs and any penalties within 30 days from the date of
19 mailing notice, the division of vehicles will be notified to suspend the
20 person's driving privileges. The district or municipal court may charge an
21 additional fee of \$5 for mailing such notice. Upon the person's failure to
22 comply within such 30 days of mailing notice, the district or municipal
23 court shall electronically notify the division of vehicles. Upon receipt of a
24 report of a failure to comply with a traffic citation under this subsection,
25 pursuant to K.S.A. 8-255, and amendments thereto, the division of
26 vehicles shall notify the violator and suspend the license of the violator
27 until satisfactory evidence of compliance with the terms of the traffic
28 citation has been furnished to the informing court. When the court
29 determines the person has complied with the terms of the traffic citation,
30 the court shall immediately electronically notify the division of vehicles of
31 such compliance. Upon receipt of notification of such compliance from the
32 informing court, the division of vehicles shall terminate the suspension or
33 suspension action.

34 (2) (A) In lieu of suspension under paragraph (1), the driver may
35 submit to the division of vehicles a written request for restricted driving
36 privileges, with a non-refundable \$25 application fee, to be applied by the
37 division of vehicles for additional administrative costs to implement
38 restricted driving privileges. The division shall remit all restricted driving
39 privilege application fees to the state treasurer in accordance with the
40 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
41 each such remittance, the state treasurer shall deposit the entire amount in
42 the state treasury to the credit of the division of vehicles operating fund.
43 No application fee shall be collected in connection with such written

or enter a plea with the clerk of the court prior to their assigned court date and if pleading guilty,

in accordance with the amount and payment plan agreed upon by the court

enter a plea with the court

1 request.

2 (B) A person whose driver's license has expired during the period
 3 when such person's driver's license has been suspended for failure to pay
 4 fines for traffic citations, the driver may submit to the division of vehicles
 5 a written request for restricted driving privileges, with a non-refundable
 6 \$25 application fee, to be applied by the division of vehicles for additional
 7 administrative costs to implement restricted driving privileges. The
 8 division shall remit all restricted driving privilege application fees to the
 9 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
 10 amendments thereto. Upon receipt of each such remittance, the state
 11 treasurer shall deposit the entire amount in the state treasury to the credit
 12 of the division of vehicles operating fund. ~~An individual shall not qualify
 13 for restricted driving privileges pursuant to this section unless the
 14 following conditions are met: (i) The suspended license that expired was
 15 issued by the division of vehicles; (ii) the suspended license resulted from
 16 the individual's failure to comply with a traffic citation pursuant to
 17 subsection (b)(1); (iii) the traffic citation that resulted in the failure to
 18 comply pursuant to subsection (b)(1) was issued in this state; and (iv) the
 19 individual has not previously received a stayed suspension as a result of a
 20 driving while suspended conviction. No application fee shall be collected
 21 in connection with such written request.~~

or failure to appear in court or contact the court to enter a plea prior to their court date

Strike

An individual shall not qualify for restricted driving privileges pursuant to subsections (b)(2)(A) or (b)(2)(B) unless the following conditions are met: (i) The suspended license was issued by the division of vehicles; (ii) the suspended license resulted from the individual's failure to comply with a traffic citation pursuant to subsection (b)(1) and there is no other basis for the license suspension or cancellation except for violations of this section; and (iii) the traffic citation that resulted in the failure to comply pursuant to subsection (b)(1) was issued in this state.

(D)

22 (C) Upon review and approval of the driver's eligibility, the driving
 23 privileges will be restricted by the division of vehicles for a period up to
 24 one year or until the terms of the traffic citation have been complied with
 25 and the court shall immediately electronically notify the division of
 26 vehicles of such compliance. If the driver fails to comply with the traffic
 27 citation within the one year restricted period, the driving privileges will be
 28 suspended by the division of vehicles until the court determines the person
 29 has complied with the terms of the traffic citation and the court shall
 30 immediately electronically notify the division of vehicles of such
 31 compliance. Upon receipt of notification of such compliance from the
 32 informing court, the division of vehicles shall terminate the suspension
 33 action. When restricted driving privileges are approved pursuant to this
 34 section, the person's driving privileges shall be restricted to driving only
 35 under the following circumstances: (i) In going to or returning from the
 36 person's place of employment or schooling; (ii) in the course of the
 37 person's employment; (iii) in going to or returning from an appointment
 38 with a health care provider or during a medical emergency; and (iv) in
 39 going to and returning from probation or parole meetings, drug or alcohol
 40 counseling or any place the person is required to go by a court.

41 (c)(1) Prior to July 1, 2018, except as provided in subsection (d),
 42 when the district or municipal court notifies the division of vehicles of a
 43 failure to comply with a traffic citation pursuant to subsection (b), the

1 court shall assess a reinstatement fee of \$59 for each charge on which the
2 person failed to make satisfaction regardless of the disposition of the
3 charge for which such citation was originally issued and regardless of any
4 application for restricted driving privileges. Such reinstatement fee shall
5 be in addition to any fine, restricted driving privilege application fee,
6 district or municipal court costs and other penalties. The court shall remit
7 all reinstatement fees to the state treasurer in accordance with the
8 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
9 each such remittance, the state treasurer shall deposit the entire amount in
10 the state treasury and shall credit 42.37% of such moneys to the division of
11 vehicles operating fund, 31.78% to the community alcoholism and
12 intoxication programs fund created by K.S.A. 41-1126, and amendments
13 thereto, 10.59% to the juvenile alternatives to detention fund created by
14 K.S.A. 79-4803, and amendments thereto, and 15.26% to the judicial
15 branch nonjudicial salary adjustment fund created by K.S.A. 2020 Supp.
16 20-1a15, and amendments thereto.

17 (2) ~~On and after July 1, 2018~~, Except as provided in subsection (d),
18 when the district or municipal court notifies the division of vehicles of a
19 failure to comply with a traffic citation pursuant to subsection (b), the
20 court shall assess a reinstatement fee of \$100 for each charge on which the
21 person failed to make satisfaction regardless of the disposition of the
22 charge for which such citation was originally issued and regardless of any
23 application for restricted driving privileges *for each case*. Such
24 reinstatement fee shall be in addition to any fine, ~~restricted driving~~
25 ~~privilege application fee~~, district or municipal court costs and other
26 penalties *and shall only be collected after a person has been determined to*
27 *be eligible for reinstatement*. The court shall remit all reinstatement fees to
28 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
29 and amendments thereto. Upon receipt of each such remittance, the state
30 treasurer shall deposit the entire amount in the state treasury and shall
31 credit the first \$15 of such reinstatement fee to the judicial branch
32 nonjudicial salary adjustment fund and of the remaining amount, 29.41%
33 of such moneys to the division of vehicles operating fund, 22.06% to the
34 community alcoholism and intoxication programs fund created by K.S.A.
35 41-1126, and amendments thereto, 7.36% to the juvenile alternatives to
36 detention fund created by K.S.A. 79-4803, and amendments thereto, and
37 41.17% to the judicial branch nonjudicial salary adjustment fund created
38 by K.S.A. 2020 Supp. 20-1a15, and amendments thereto.

39 (d) The district court or municipal court shall waive the reinstatement
40 fee provided for in subsection (c), if the failure to comply with a traffic
41 citation was the result of such person enlisting in or being drafted into the
42 armed services of the United States, being called into service as a member
43 of a reserve component of the military service of the United States, or

1 volunteering for such active duty, or being called into service as a member
2 of the state of Kansas national guard, or volunteering for such active duty,
3 and being absent from Kansas because of such military service.

4 (e) A person who is assessed a reinstatement fee pursuant to
5 subsection (c) may petition the court that assessed the fee at any time to
6 waive payment of the fee, any additional charge imposed pursuant to
7 subsection (f), or any portion thereof. If it appears to the satisfaction of the
8 court that payment of the amount due will impose manifest hardship on the
9 person or the person's immediate family, the court may waive payment of
10 all or part of the amount due or modify the method of payment.

11 (f) Except as provided further, the reinstatement fee established in
12 this section shall be the only fee collected or moneys in the nature of a fee
13 collected for such reinstatement. Such fee shall only be established by an
14 act of the legislature and no other authority is established by law or
15 otherwise to collect a fee. ~~On and after July 1, 2017, through June 30,~~
16 ~~2019~~ *On and after July 1, 2019, through June 30, 2025*, the supreme court
17 may impose an additional charge, not to exceed \$22 per reinstatement fee,
18 to fund the costs of non-judicial personnel.

19 Sec. 3. K.S.A. 2020 Supp. 8-262, 8-2110 and 8-2110b are hereby
20 repealed.

21 Sec. 4. This act shall take effect and be in force from and after its
22 publication in the statute book.

Insert Sections 3 and 4 attached

And renumber sections and adjust title and repealer accordingly

New Section 3:

(a) Any person who is financially unable to pay either the full amount of their original traffic fine or fines and court costs or a monthly payment from an approved hardship payment plan, as described in this section, may contact the court of jurisdiction to request a hardship waiver to offset part or all of the balance owed. The waiver shall include options for monthly installment payments and credits, or both, earned by the defendant doing community service and attending court approved classes, or both.

(1) A monthly payment amount must be calculated based upon all fines and fees and all anticipated costs owed within that jurisdiction and must correspond to the person's ability to pay. The monthly payment plan amount must be the greater of \$10 or two percent of the person's annual net income, as of their most recent tax return, divided by 12.

(b) A single page, uniform hardship waiver application form shall be made available to download from the department of revenue website in addition to being provided in each jurisdiction's clerk of court office for defendants to sign and submit to the court. If the court denies an economic hardship petition, a written explanation shall be provided to the defendant stating the reason or reasons for the denial.

(c) Under the terms of the original traffic fine or fines and court costs payment agreement made with the court, the municipal or judicial district court shall order:

(1) The recall of any warrants directly related to the suspension of the person's driver's license;

(2) the waiver of any reinstatement and collection fees directly related to the suspension;

(3) the expungement of any previous driving on suspended convictions due to nonpayment of traffic fines and court costs, or both, or failure to appear; and

(4) the court may also order that a defendant who enters into a payment agreement shall receive credit against remaining traffic fines and court costs owed by performing community service and attending classes, or both, including online courses, aimed at defensive and safe driving techniques or a state approved traffic school program. The court shall approve any classes and community service before the person will receive credit towards their original traffic fines or court costs. Once approved, the person shall receive a credit toward the balance owed in an amount equal to \$15 for each hour spent by the person doing community service and \$15 for each hour spent attending classes.

(d) After a hardship payment plan has been approved by the court, the court shall order the division of vehicles to reinstate the driver's driving privileges without restriction

(1) After a person has their driving privileges reinstated by agreeing to an approved hardship payment plan, that person's driver's license shall not be suspended due to nonpayment until they have failed to pay for 90 consecutive days.

(e) Any violation of law by the person holding a restricted license that would result in the suspension or revocation of a driver license shall result in the revocation of the restricted license.

(f) As soon as the original traffic fine or fines and court costs have been paid as agreed by the defendant, the district or municipal court shall electronically order the division of vehicles to immediately remove the restrictions on the defendant's driver's license and mail written notification to the defendant that their Kansas driver's privileges and license have been reinstated.

(g) The provisions of this section shall not apply to:

(1) Non-traffic warrants; or

(2) persons whose driver's license has been suspended or revoked under the provisions of K.S.A. 8-2,144, 8-1567, 8-1567a, and amendments thereto, or K.S.A. 2020 Supp. 8-1025, and amendments thereto.

Section 4

8-2106. Traffic citation; procedure. (a) A law enforcement officer may prepare and deliver to a person a written traffic citation on a form approved by the division of motor vehicles, if the law enforcement officer stops the person for a violation of:

- (1) The uniform act regulating traffic on highways, which violation is a misdemeanor or a traffic infraction;
- (2) K.S.A. 8-262, 8-287, 8-2,144, 8-1599, 40-3104, 40-3106, 41-715, 41-724, 41-727, 47-607, 66-1,111, 66-1,129, 66-1,139, 66-1,140, 66-273, 66-1314, 66-1324, 66-1330, 66-1331, 66-1332, 68-2104, 68-2106 or subsection (b) of K.S.A. 79-34,122, or K.S.A. 2020 Supp. subsection (a) of 21-5607, 21-5810, 21-5815, 21-5816, subsection (a) of 21-5817 or 21-6203, and amendments thereto;
- (3) K.S.A. 31-155, and amendments thereto, involving transportation of bottle rockets;
- (4) K.S.A. 66-1314 or 66-1328, and amendments thereto, and any rules and regulations adopted pursuant thereto;
- (5) any rules and regulations adopted pursuant to K.S.A. 2-1212, 68-2001 or 31-146, and amendments thereto;
- (6) any rules and regulations adopted pursuant to K.S.A. 31-133, and amendments, thereto relating to transportation of materials or fuel; or
- (7) K.S.A. 8-1343 through 8-1347, and amendments thereto, relating to the child passenger safety act; or
- (8) K.S.A. 8-2501 through 8-2507, and amendments thereto, relating to the safety belt use act.

(b) The citation shall contain a notice to appear in court, the name and address of the person, the type of vehicle the person was driving, whether hazardous materials were being transported, whether an accident occurred, the state registration number of the person's vehicle, if any, a statement whether the vehicle is a commercial vehicle, whether the person is licensed to drive a commercial motor vehicle, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer, and any other pertinent information.

the phone number and email address of the clerk of the court of jurisdiction,

(c) The time specified in the notice to appear shall be at least five days after the alleged violation unless the person charged with the violation demands an earlier hearing.

(d) The place specified in the notice to appear shall be before a judge of the district court within the county in which the offense is alleged to have been committed.

municipal or

(e) Except in the circumstances to which subsection (a) of K.S.A. 8-2104, and amendments thereto, apply, in the discretion of the law enforcement officer, a person charged with a misdemeanor may give written promise to appear in court by signing at least one copy of the written citation prepared by the law enforcement officer, in which event the law enforcement officer shall deliver a copy of the citation to the person and shall not take the person into physical custody.

either

or be given the phone or email of the clerk of the court to enter a plea prior to the court date and

(f) When a person is charged with a traffic infraction, the notice to appear shall provide a place where the person may make a written entry of appearance, waive the right to a trial and plead guilty or no contest. Such notice to appear shall contain a provision that the person's failure to either pay such fine and court costs or appear at the specified time may result in suspension of the person's drivers' license as provided in K.S.A. 8-2110, and amendments thereto. The notice to appear shall provide a space where the law enforcement officer shall enter the appropriate fine specified in the

enter a plea with the clerk of the court prior to the specified time and if pleading guilty, make payments as agreed to with the court,

in court

uniform fine schedule contained in K.S.A. 8-2118, and amendments thereto, for the violation charged and court costs in the amount provided by law. If the notice to appear does not do so, the law enforcement officer shall provide a person charged with a traffic infraction a form explaining the person's right to appear and right to a trial and the person's right to pay the appropriate fine and court costs prior to the appearance date. The law enforcement officer shall provide the person with the address of the court to which the written entry of appearance, waiver of trial, plea of guilty or no contest and payment of fine and court costs shall be mailed.

(g) Any officer violating any of the provisions of subsection (f) is guilty of misconduct in office and shall be subject to removal from office.

contact the clerk of the district or municipal court of jurisdiction to enter a plea prior to the date to

negotiate with the court a plan to pay the fine or fines stated on the traffic citation and court costs or

phone number and email address of the clerk of the court and the