

*As Amended by Senate Committee*

*As Amended by House Committee*

*Session of 2021*

**HOUSE BILL No. 2377**

By Committee on Judiciary

2-12

Proposed Amendments to HB 2377  
First-time offenders  
Senate Committee on Judiciary  
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Office of Revisor of Statutes

1 AN ACT concerning driving; relating to driving under the influence;  
2 authorizing reinstatement of a driver's license for certain persons with  
3 an ignition interlock device restriction; removing the motorized bicycle  
4 license option for persons whose driving privileges are suspended for a  
5 DUI-related offense; allowing certain persons disqualified from driving  
6 a commercial motor vehicle to have commercial driving privileges  
7 restored; modifying the criminal penalties for driving a commercial  
8 motor vehicle under the influence and driving under the influence,  
9 authorizing courts to waive certain fines and clarifying that amendment  
10 or dismissal of certain charges is permitted; allowing persons with  
11 suspended driving privileges to seek driving privileges restricted to  
12 driving only a motor vehicle equipped with an ignition interlock device  
13 earlier in the suspension period; requiring persons with an ignition  
14 interlock device restriction to complete the ignition interlock device  
15 program before driving privileges are fully reinstated; requiring the  
16 secretary of revenue to adopt certain rules and regulations related to  
17 ignition interlock devices; providing for reduced ignition interlock  
18 device program costs for certain persons; reducing the restricted driving  
19 privileges period for certain persons less than 21 years of age;  
20 clarifying that a city attorney or a county or district attorney shall not  
21 enter into a diversion agreement for certain traffic violations if the  
22 defendant is a commercial driver's license holder; amending K.S.A. 8-  
23 1016 and K.S.A. 2020 Supp. 8-235, 8-2,142, 8-2,144, 8-1015, 8-1567,  
24 8-1567a, 12-4415, **21-6604**, **21-6804** and 22-2908 and repealing the  
25 existing sections.  
26

modifying provisions regarding suspension or restriction  
of driving privileges for certain first-time offenders;

8-1014,

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

28 New Section 1. (a) Any person whose license is restricted to  
29 operating only a motor vehicle with an ignition interlock device installed  
30 and who meets the requirements of subsection (b) may request  
31 reinstatement of such person's driver's license by submitting a request to  
32 the division in a form and manner prescribed by the division.

33 (b) The division shall approve the request for reinstatement of the  
34 person's driver's license if the division determines all the following

1 (3) "conviction" includes:  
2 (A) Entering into a diversion agreement in lieu of further criminal  
3 proceedings on a complaint alleging a violation of a crime described in  
4 subsection (n)(2); and  
5 (B) conviction of a violation of an ordinance of a city in this state, a  
6 resolution of a county in this state or any law of another jurisdiction that  
7 would constitute an offense that is comparable to the offense described in  
8 subsection (n)(1) or (n)(2);  
9 (4) it is irrelevant whether an offense occurred before or after  
10 conviction for a previous offense; and  
11 (5) multiple convictions of any crime described in subsection (n)(1)  
12 or (n)(2) arising from the same arrest shall only be counted as one  
13 conviction.  
14 (o) For the purposes of determining whether an offense is  
15 comparable, the following shall be considered:  
16 (1) The name of the out-of-jurisdiction offense;  
17 (2) the elements of the out-of-jurisdiction offense; and  
18 (3) whether the out-of-jurisdiction offense prohibits similar conduct  
19 to the conduct prohibited by the closest approximate Kansas offense.  
20 (p) For the purpose of this section:  
21 (1) "Alcohol concentration" means the number of grams of alcohol  
22 per 100 milliliters of blood or per 210 liters of breath;  
23 (2) "imprisonment" ~~shall include~~ *includes* any restrained environment  
24 in which the court and law enforcement agency intend to retain custody  
25 and control of a defendant and such environment has been approved by the  
26 board of county commissioners or the governing body of a city; and  
27 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
28 2020 Supp. 21-5712, and amendments thereto.  
29 (q) On and after July 1, 2011, the amount of \$250 from each fine  
30 imposed pursuant to this section shall be remitted by the clerk of the  
31 district court to the state treasurer in accordance with the provisions of  
32 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
33 remittance, the state treasurer shall credit the entire amount to the  
34 community corrections supervision fund established by K.S.A. 75-52,113,  
35 and amendments thereto.  
36 ✓ Sec. 5. K.S.A. 2020 Supp. 8-1015 is hereby amended to read as  
37 follows: 8-1015. (a) (1) ~~Except as provided in subsection (a)(2); Whenever~~  
38 ~~a person's driving privileges have been suspended for one year as provided~~  
39 ~~in K.S.A. 8-1014(a), and amendments thereto, after 90 days of such~~  
40 ~~suspension, such person may apply to the division for such person's~~  
41 ~~driving privileges to be restricted for the remainder of the one-year~~  
42 ~~suspension period to driving only a motor vehicle equipped with an~~  
43 ~~ignition interlock device and only for the purposes of getting to and from:~~

Insert Attachment A

And by renumbering sections accordingly

1 ~~Work, school or an alcohol treatment program; and the ignition interlock~~  
2 ~~provider for maintenance and downloading of data from the device.~~

3 ~~(2) Whenever a person's driving privileges have been suspended for~~  
4 ~~one year as provided in K.S.A. 8-1014(a)(1), and amendments thereto,~~  
5 ~~after 90 days of such suspension, such person may apply to the division for~~  
6 ~~such person's driving privileges to be restricted for the remainder of the~~  
7 ~~one-year suspension period to driving only a motor vehicle equipped with~~  
8 ~~an ignition interlock device and only. Under the circumstances provided~~  
9 ~~by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for~~  
10 ~~the purpose of getting to and from the ignition interlock provider for~~  
11 ~~maintenance and downloading of data from the device.~~

12 ~~(3) Except as provided in subsection (a)(4), whenever a person's~~  
13 ~~driving privileges have been suspended for one year as provided in K.S.A.~~  
14 ~~8-1014(b), and amendments thereto, after 45 days of such suspension, such~~  
15 ~~person may apply to the division for such person's driving privileges to be~~  
16 ~~restricted for the remainder of the one-year suspension period to driving~~  
17 ~~only a motor vehicle equipped with an ignition interlock device and only~~  
18 ~~for the purposes of getting to and from: Work, school or an alcohol~~  
19 ~~treatment program; and the ignition interlock provider for maintenance and~~  
20 ~~downloading of data from the device.~~

21 ~~(4) Whenever a person's driving privileges have been suspended for~~  
22 ~~one year as provided in K.S.A. 8-1014(b)(2)(A), and amendments thereto,~~  
23 ~~after 45 days of such suspension, such person may apply to the division for~~  
24 ~~such person's driving privileges to be restricted for the remainder of the~~  
25 ~~one-year suspension period to driving only a motor vehicle equipped with~~  
26 ~~an ignition interlock device and only. Under the circumstances provided~~  
27 ~~by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for~~  
28 ~~the purpose of getting to and from the ignition interlock provider for~~  
29 ~~maintenance and downloading of data from the device.~~

30 ~~(5)(2) The division shall assess an application fee of \$100 for a~~  
31 ~~person to apply to modify the suspension to restricted ignition interlock~~  
32 ~~status.~~

33 ~~(6)(3) The division shall approve the request for such restricted~~  
34 ~~license unless such person's driving privileges have been restricted,~~  
35 ~~suspended, revoked or disqualified pursuant to another action by the~~  
36 ~~division or a court. If the request is approved, upon receipt of proof of the~~  
37 ~~installation of such device, the division shall issue a copy of the order~~  
38 ~~imposing such restrictions on the person's driving privileges and such~~  
39 ~~order shall be carried by the person at any time the person is operating a~~  
40 ~~motor vehicle on the highways of this state. Except as provided in K.S.A.~~  
41 ~~8-1017, and amendments thereto, if such person is convicted of a violation~~  
42 ~~of the restrictions, such person's driving privileges shall be suspended for~~  
43 ~~an additional year, in addition to any term of suspension or restriction as~~

1 provided in K.S.A. 8-1014(a) or (b), and amendments thereto.  
 2 (b) (1) Except as provided in subsection (b)(2), when a person has  
 3 completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and  
 4 amendments thereto, the division shall restrict the person's driving  
 5 privileges for 180 days to driving only a motor vehicle equipped with an  
 6 ignition interlock device.  
 7 (2) When a person has completed the suspension pursuant to K.S.A.  
 8 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the  
 9 person's driving privileges for one year to driving only a motor vehicle  
 10 equipped with an ignition interlock device if the records maintained by the  
 11 division indicate that such person has previously:  
 12 (A) Been convicted of a violation of K.S.A. 8-1599, and amendments  
 13 thereto;  
 14 (B) been convicted of a violation of K.S.A. 41-727, and amendments  
 15 thereto;  
 16 (C) been convicted of any violations listed in K.S.A. 8-285(a), and  
 17 amendments thereto;  
 18 (D) been convicted of three or more moving traffic violations  
 19 committed on separate occasions within a 12-month period; or  
 20 (E) had such person's driving privileges revoked, suspended, canceled  
 21 or withdrawn.  
 22 (c) Except as provided in subsection (b), when a person has  
 23 completed the suspension pursuant to K.S.A. 8-1014(a) or (b), and  
 24 amendments thereto, the division shall restrict the person's driving  
 25 privileges pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, to  
 26 driving only a motor vehicle equipped with an ignition interlock device.  
 27 Upon restricting a person's driving privileges pursuant to this subsection,  
 28 the division shall issue a copy of the order imposing the restrictions which  
 29 is required to be carried by the person at any time the person is operating a  
 30 motor vehicle on the highways of this state.  
 31 (d) (1) Whenever an ignition interlock device is required by law, such  
 32 ignition interlock device shall be approved by the division and maintained  
 33 at the person's expense. Proof of the installation of such ignition interlock  
 34 device, for the entire period required by the applicable law, shall be  
 35 provided to the division before the person's driving privileges are fully  
 36 reinstated.  
 37 (2) Every person who has an ignition interlock device installed as  
 38 required by law shall be required to complete the ignition interlock device  
 39 program pursuant to *this section and* rules and regulations adopted by the  
 40 secretary of revenue ~~and proof of completion shall be provided to the~~  
 41 ~~division by.~~ *A person may only complete the ignition interlock device*  
 42 *program if the person has not more than ~~three standard violations~~ **one***  
 43 ***standard violation** and no serious violation in the 90 consecutive days*

either:  
 (A) Continue such suspension for 180 days and, upon  
 completion of such suspension, reinstate the person's driving  
 privileges, unless the person's driving privileges have been  
 restricted, suspended, revoked or disqualified pursuant to  
 another action by the division or a court; or  
 (B) if the person applies to the division,

1 *prior to application for reinstatement and the application occurs upon or*  
 2 *after expiration of the applicable ignition interlock period required by law.*  
 3 *The approved service provider shall provide proof of completion to the*  
 4 *division before the person's driving privileges are fully reinstated.*  
 5 *(3) As used in this subsection:*  
 6 *(A) "Standard violation" means any of the following, as reported by*  
 7 *the approved service provider:*  
 8 *(i) The driver has blown a BrAC fail when attempting an initial*  
 9 *engine start-up breath test;*  
 10 *(ii) the driver has blown a BrAC fail when attempting a required*  
 11 *rolling retest;*  
 12 *(iii) the driver fails to execute a valid rolling retest;*  
 13 *(iv) the driver fails to submit to a requested rolling retest by turning*  
 14 *the vehicle off to avoid submitting to the rolling retest; or*  
 15 *(v) the driver has blown a high BrAC during an initial engine start-*  
 16 *up breath test;*  
 17 *(B) "serious violation" means any of the following, as reported by the*  
 18 *approved service provider:*  
 19 *(i) Tampering with the ignition interlock device;*  
 20 *(ii) circumventing the ignition interlock device; or*  
 21 *(iii) the driver has blown a high BrAC during a rolling retest;*  
 22 *(C) "BrAC" means the breath alcohol concentration expressed as*  
 23 *weight divided by volume, based upon grams of alcohol per 210 liters of*  
 24 *breath;*  
 25 *(D) "BrAC fail" means the ignition interlock device registers a BrAC*  
 26 *value equal to or greater than the alcohol setpoint, as defined in rules and*  
 27 *regulations adopted by the secretary of revenue, when the intended driver*  
 28 *conducts an initial test or retest;*  
 29 *(E) "high BrAC" means a BrAC fail result that registers an alcohol*  
 30 *setpoint of 0.08 or greater; and*  
 31 *(F) "rolling retest" means a breath test that is required after the*  
 32 *initial engine start-up breath test and while the engine is running.*  
 33 *(e) Except as provided further, any person whose license is restricted*  
 34 *to operating only a motor vehicle with an ignition interlock device*  
 35 *installed may operate an employer's vehicle without an ignition interlock*  
 36 *device installed during normal business activities, provided that the person*  
 37 *does not partly or entirely own or control the employer's vehicle or*  
 38 *business. The provisions of this subsection shall not apply to any person*  
 39 *whose driving privileges have been restricted for the remainder of the one-*  
 40 *year suspension period as provided in subsection (a)(1) or (a)(3).*  
 41 *(f) Upon expiration of the ~~period of time for which restrictions are~~*  
 42 *~~imposed pursuant to this section~~ applicable ignition interlock period*  
 43 *required by law and completion of the ignition interlock device program*

1 *as described in subsection (d)*, the licensee may apply to the division for  
2 the return of any license previously surrendered by the licensee. If the  
3 license has expired, the person may apply to the division for a new license,  
4 which shall be issued by the division upon payment of the proper fee and  
5 satisfaction of the other conditions established by law, unless the person's  
6 driving privileges have been suspended or revoked prior to expiration.

7 (g) Any person who has had the person's driving privileges  
8 suspended, restricted or revoked pursuant to K.S.A. 8-1014(a), (b) or (c),  
9 prior to the amendments by section 16 of chapter 172 of the 2012 Session  
10 Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of  
11 Kansas, may apply to the division to have the suspension, restriction or  
12 revocation penalties modified in conformity with the provisions of K.S.A.  
13 8-1014(a), (b) or (c), and amendments thereto. The division shall assess an  
14 application fee of \$100 for a person to apply to modify the suspension,  
15 restriction or revocation penalties previously issued. The division shall  
16 modify the suspension, restriction or revocation penalties, unless such  
17 person's driving privileges have been restricted, suspended, revoked or  
18 disqualified pursuant to another action by the division or a court.

19 (h) The division shall remit all application fees collected pursuant to  
20 subsections (a) and (g) to the state treasurer in accordance with the  
21 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
22 each such remittance, the state treasurer shall deposit the entire amount in  
23 the state treasury and shall credit such moneys to the division of vehicles  
24 operating fund until an aggregate amount of \$100,000 is credited to the  
25 division of vehicles operating fund each fiscal year. On and after an  
26 aggregate amount of \$100,000 is credited to such fund each fiscal year, the  
27 entire amount of such remittance shall be credited to the community  
28 corrections supervision fund created by K.S.A. 75-52,113, and  
29 amendments thereto. The application fee established in this section shall  
30 be the only fee collected or moneys in the nature of a fee collected for such  
31 application. Such fee shall only be established by an act of the legislature  
32 and no other authority is established by law or otherwise to collect a fee.

33 Sec. 6. K.S.A. 8-1016 is hereby amended to read as follows: 8-1016.

34 (a) The secretary of revenue ~~may~~ shall adopt rules and regulations **prior to**  
35 **March 1, 2022**, for:

36 (1) The approval by the division of models and classes of ignition  
37 interlock devices suitable for use by persons whose driving privileges have  
38 been restricted to driving a vehicle equipped with such a device;

39 (2) the calibration and maintenance of such devices, which shall be  
40 the responsibility of the manufacturer; ~~and~~

41 (3) ensuring that each manufacturer ~~approved~~ provides a reasonable  
42 statewide service network where such devices may be obtained, repaired,  
43 replaced or serviced and such service network can be accessed 24 hours

1 (d) As used in this section, "major depressive disorder,"  
2 "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury"  
3 shall mean the same as such terms are defined in K.S.A. 2020 Supp. 21-  
4 6630, and amendments thereto.

5 Sec. ~~11~~ **13**. K.S.A. 8-1016 and K.S.A. 2020 Supp. 8-235, 8-2,142, 8-  
6 2,144, 8-1015, 8-1567, 8-1567a, 12-4415, **21-6604, 21-6804** and 22-2908  
7 are hereby repealed.

8-1014,

8 Sec. ~~12~~ **14**. This act shall take effect and be in force from and after  
9 its publication in the statute book.

Sec. 5. K.S.A. 2021 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

- (1) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;
- (2) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;
- (3) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device;
- (4) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for five years to driving only a motor vehicle equipped with an ignition interlock device; and
- (5) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.

(b) (1) Except as provided by subsections (b)(2) and (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:

- (A) On the person's first occurrence, suspend the person's driving privileges for 30 days and at the end of the suspension, restrict the person's driving privileges or continue the suspension as provided by K.S.A. 8-1015(b), and amendments thereto;
- (B) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;
- (C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;
- (D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device; and
- (E) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.

(2) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state and the person's blood or breath alcohol concentration is 0.15 or greater, the division shall:

- (A) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;
- (B) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;
- (C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;
- (D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and
- (E) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.



- (3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device for 10 years under this section, such person may petition any district court for relief from such restriction after five years of such restriction have been served. The court shall consider, but not be limited to, whether: (A) Such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court; and (B) such person proves installation, maintenance and use of an ignition interlock device approved by the division throughout the five-year period. If the court finds that the person's driving privileges should be restored, then the court shall electronically report such order to the division. The division, upon receiving such order, shall restore such person's driving privileges, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.
- (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction in this state, penalties shall be imposed pursuant to subsection (b).
- (d) Whenever the division is notified by a provider, as defined in K.S.A. 8-1008, and amendments thereto, or a court that the person has failed to follow any recommendation made by the provider or otherwise ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such recommendation.
- (e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a) or (b), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a) or (b), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act. If a person's driving privileges are subject to restriction pursuant to this section for a test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for any period of suspension imposed for a test refusal arising from the same arrest.
- (f) If the division has taken action under subsection (a) for a test refusal or under subsection (b) for a test failure and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to K.S.A. 8-1020, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (b) for an alcohol or drug-related conviction.
- (g) The provisions of subsections (a), (b) and (c), as amended by ~~this act~~ section 16 of chapter 172 of the 2012 Session Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of Kansas, may be applied retroactively only if requested by a person who has had such person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) prior to such amendment. Such person may apply to the division to have the penalties applied retroactively, as provided under K.S.A. 8-1015(g), and amendments thereto.
- (h) When modifying penalties pursuant to subsection (g), the division shall credit any suspension or revocation time in excess of one year which was imposed and served prior to retroactive application of the provisions of subsections (a), (b) and (c), as amended by ~~this act~~ section 16 of chapter 172 of the 2012 Session Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of Kansas, toward the required ignition interlock restriction period imposed pursuant to the retroactive application of such provisions if: (1) The person's driving record indicates no driving by the person during the applicable suspension or revocation period; and (2) the person completes a form prescribed by the division indicating that the person did not drive during the applicable suspension or revocation period.
- (i) As used in this section, "suspension" includes any period of suspension and any period of restriction as provided in K.S.A. 8-1015(a), and amendments thereto.