

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2289**

As Amended by Senate Committee on Judiciary

**Brief\***

Sub. for HB 2289 would amend the law concerning a driver's license suspension due to test refusal or test failure. Specifically, the bill would require a law enforcement officer's certification and notice of suspension to inform the person that constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing.

At or prior to the time notice of an administrative hearing is sent, the bill would require the Division of Vehicles to issue an order allowing the licensee to review any law enforcement report at the location where it is kept at a reasonable time designated by the law enforcement agency. Copies of the report could be obtained at a cost of \$0.25 per page. Such review and copying already is allowed for video and audio tape.

If a licensee appeals a suspension or restriction of his or her license, notwithstanding a statutory provision limiting issues that may be raised before the court if not raised before the agency, the bill would allow the court to consider and determine constitutional issues, including, but not limited to, the lawfulness of the law enforcement encounter, even if such issue was not raised before the agency. Similarly, even if such issue was not raised before the agency, the bill would require the court to consider and determine such issues, if such issue is raised by the petitioner in the petition for review.

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\*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>

## **Background**

The bill was introduced by the House Committee on Judiciary at the request of Representative Davis. In the Committee, numerous attorneys offered testimony in support of the bill. Representatives of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, Kansas Sheriffs' Association, League of Kansas Municipalities, and Mothers Against Drunk Driving testified as opponents of the bill.

The House Committee on Judiciary adopted a substitute bill based on amendments proposed by the Judicial Council and conferee testimony. The substitute bill removed language from the bill, as introduced, requiring certification that prior to stopping a vehicle, a law enforcement officer had reasonable grounds to suspect the person was committing or had committed a crime or traffic infraction or was involved in an accident resulting in property damage or injury. Instead, the substitute bill would require the test refusal or failure occurred pursuant to a lawful encounter by law enforcement. The substitute bill also removes language from the bill as introduced, expanding the scope of testimony in administrative hearings to include the "reasonable grounds" certification and replaces it with a provision requiring a determination of lawfulness of the encounter in an appeal of a suspension or revocation. Further, the substitute changes "police report" to "law enforcement report" and adds clarifying language about when constitutional issues would be considered.

In the Senate Committee on Judiciary, numerous attorneys and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association offered testimony in support of the bill. Representatives of the Kansas Department of Revenue and Mothers Against Drunk Driving testified as opponents of the bill. Representatives of the Kansas Department of Health and Environment and the League of Kansas Municipalities offered neutral testimony.

The Senate Committee agreed to strike the requirements for law enforcement certification of a test refusal or test failure to include certification that the test refusal or failure occurred pursuant to a lawful encounter by law enforcement; revise the information required in the law enforcement officer's certification and notice of suspension; add language concerning the court's consideration of constitutional issues if a licensee appeals a suspension or restriction of his or her license; and strike language specifying that to affirm the agency's decision, the court's finding that the grounds for the agency actions have been met must include any constitutional issues raised by the petitioner.

According to the fiscal note prepared by the Division of the Budget, the bill, as introduced, would have no fiscal effect on the Judicial Branch or the Department of Revenue. No fiscal note was available for the substitute bill when recommended by the Senate Committee.