

**REPORT OF THE JUDICIAL COUNCIL DUI ADVISORY COMMITTEE ON
IGNITION INTERLOCK AND MOTORIZED BICYCLE LICENSES**

January 23, 2020

The DUI Advisory Committee met throughout 2019 and plan to continue to meet through May 2020. Many of the Committee's 2019 meetings focused on the subject of ignition interlock. The Committee finalized its recommendations regarding affordability and compliance-based removal of ignition interlock devices and the availability of a driver's license for a motorized bicycle. The Committee requests the Judicial Council introduce a bill containing the attached statutory amendments in the 2020 legislative session.

Ignition Interlock

What is an ignition interlock device?

An ignition interlock device (IID) is a tool that separates drinking from driving and allows impaired driving offenders to maintain conditional driving privileges. The purpose of the IID is to prevent drivers, who have consumed alcohol, from operating a motor vehicle if their breath alcohol content exceeds a set point (typically 0.02). Drivers must provide a breath sample by blowing into the IID and if the driver's breath alcohol level is over the set point, the vehicle will not start. If the driver's breath alcohol level is below the set point, the vehicle will start; however, while the vehicle is in operation, the IID will prompt the driver to provide additional breath samples (rolling retest).

Current Law

If a law enforcement officer requests a driver take a breath, blood, urine or other bodily substance test to determine the presence of drugs or alcohol, and the driver refuses to submit to the test, the Kansas Department of Revenue's Division of Vehicles (the division) will take administrative action against the person's driving privileges. The division will suspend the person's driving privileges for one year. At the end of the suspension, the division then restricts the person's driving privileges for two to ten years depending on the driver's history of test refusal. During the restricted period, the driver may only drive a motor vehicle equipped with an IID.

A similar process applies when a driver fails a breath, blood, or bodily fluid test, or is convicted of an alcohol or drug-related conviction.¹ The driver is suspended for a period of time

¹ "Alcohol or drug-related conviction" is defined in K.S.A. 8-1013(b) as including any of the following: "(A) Conviction of vehicular battery or aggravated vehicular homicide, prior to their repeal, if the crime is committed while committing a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of

and then restricted to using an IID for another period. A chart from the division showing the timeframes for the suspension and restricted ignition interlock periods is on page 8. The required IID restricted period can range from 6 months to 10 years depending on the type of offense.²

Affordability

According to the division, about half of all Kansas drivers required to complete a period with an IID restricted license will successfully complete the IID program requirements and have their driver's license privileges reinstated. The other half of drivers will remain either suspended or restricted indefinitely. The Committee reviewed the compliance data for drivers whose licenses were suspended or restricted due to an alcohol or drug related offense in 2014. Forty-eight percent of the drivers failed to install the IID as required. Of the drivers who failed to install the IID, 75% received a subsequent driving offense, indicating that they were continuing to drive without the required IID. The division estimated that about half of the drivers who fail to complete the IID program do so because of the financial cost of the IID. Depending on the IID provider, the annual cost of an IID ranges from \$950 to \$1,215. The annual cost does not include any fees incurred due to non-compliance, including a lockout, tampering, or circumvention of the device.

K.S.A. 2019 Supp. 8-1016(a)(5) requires the division adopt rules and regulations requiring all IID providers operating in Kansas to provide a credit of at least 2% of the gross program revenues in the state as a credit for those who are required to have an IID and who are indigent as evidenced by qualification for the federal food stamp program. In 2018, there were eight IID providers operating IID programs in Kansas. Each provider sets its own fees and manages its own indigency program. In 2018, there were 10,206 IID devices in operation in Kansas. The eight IID providers reported that only 290 people participated in the provider's indigency programs. Each IID provider administered its indigency program differently. Some waived one-time fees (such as installation or removal fees) while others merely reduced the one-time fees. All providers reduced the monthly leasing and monitoring fee. None waived it completely. Therefore, even for

a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, conviction of a violation of aggravated battery as described in K.S.A. 21-5413(b)(3) or (b)(4), and amendments thereto, or conviction of a violation of involuntary manslaughter as described in K.S.A. 21-5405(a)(3) or (a)(5), and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a crime described in subsection (b)(1)(A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state."

² K.S.A. 8-1014.

those who qualified for the indigency program, the set annual cost of the IID ranged from \$494 to \$915.³

The Committee agreed the IID indigency program is essential to allowing all drivers required to use an IID to participate and complete the IID program. The Committee reviewed other states' IID indigency program structures and received input from the IID providers. The IID providers explained that in states with indigency programs where all IID related costs are waived, people are more likely to damage the IID. The Committee recommends a sliding scale of payment based on the IID user's household income. The Committee also recommends expanding who qualifies for the program to persons whose household income is up to 300% of the federal poverty level. The Committee recommends the following sliding scale.

Proposed IID Indigency Program Sliding Scale

Household Income	Percentage of Program Costs User Must Pay
Less than or equal to 300% but greater than 200% of the federal poverty level	90% of the program costs plus any additional costs due to non-compliance
Less than or equal to 200% but greater than 150% of the federal poverty level	75% of the program costs plus any additional costs due to non-compliance
Less than or equal to 150% but greater than 100% of the federal poverty level	50% of the program costs plus any additional costs due to non-compliance
Less than or equal to 100% of the federal poverty level	25% of the program costs plus any additional costs due to non-compliance
Persons eligible for the food assistance program pursuant to K.S.A. 39-709	25% of the program costs plus any additional costs due to non-compliance

Currently, the IID providers receive the IID indigency program application and determine whether an individual qualifies for the program. The Committee recommends the division, not the IID providers, determine eligibility for the program and the individual's household income for the purposes of the sliding scale. The Committee's recommended amendments to K.S.A. 2019 Supp. 8-1016 begin on page 15.

Compliance-Based Removal

Under the current statutes, a licensee who installs an IID in his or her vehicle and maintains the IID for the required timeframe may remove the IID and have unrestricted driving privileges at the end of the IID period. The IID may show that the licensee drank alcohol and then tried to start his car every day for the last month of the IID required period; however, as long as the IID has been installed for the required number of months, the licensee may have the device

³ All information regarding the 2018 IID usage and indigency programs provided by the Kansas Highway Patrol.

removed and unrestricted driving privileges restored. The Committee agreed that the IID program is to prevent people from driving while impaired, and to help drivers modify their behavior. Continuing to drink alcohol and then attempting to start a vehicle despite having and using the IID for months, demonstrates that the driver has not yet learned not to drink and drive.

The Committee recommends that Kansas adopt a compliance-based removal system. The Committee reviewed and discussed many different compliance-based removal models. It recommends that before the IID can be removed and the person's unrestricted driving privileges restored, the person must show that (1) he or she has had the IID installed for the required length of time, and (2) the driver has not had more than three standard violations and no serious violations in the 90 consecutive days prior to the driver's application for reinstatement of unrestricted driving privileges. Standard and serious violations are defined below.

At the end of the required IID period, the driver would request a certification from the IID provider certifying that the driver has not had more than three standard and no serious violations in the last 90 days. The driver would then provide the IID provider's certification to the division along with the driver's application for reinstatement of the person's driving privileges. This system would put the burden on the driver to show a successful completion of the program, rather than requiring the division to develop a program to continually monitor the driver's performance. This system also allows for the automatic extension of the driver's IID period without intervention by the division. Even if the driver's IID period is over, the IID restriction will remain on the driver's licenses until the driver can show a period of 90 days without more than three standard violations and no serious violations. The Committee's proposed amendments to K.S.A. 2019 Supp. 8-1015 begin on page 12.

The Committee recommends the following definitions.

"Standard violation" means any of the following, as reported by the approved service provider:

- (i) The driver has blown a BrAC fail when attempting an initial engine start-up breath test;
- (ii) the driver has blown a BrAC fail when attempting a required rolling retest;
- (iii) the driver fails to execute a valid rolling retest;
- (iv) the driver fails to submit to a requested rolling retest by turning the vehicle off to avoid submitting to the rolling retest; or
- (v) the driver has blown a high BrAC during an initial engine start-up breath test;

"Serious violation" means any of the following, as reported by the approved service provider:

- (i) Tampering with the ignition interlock device;
- (ii) circumventing the ignition interlock device; or
- (iii) the driver has blown a high BrAC during a rolling retest;

"BrAC" means the breath alcohol concentration expressed as weight divided by volume, based upon grams of alcohol per 210 liters of breath;

"BrAC fail" means the ignition interlock device registers a BrAC value equal to or greater than the alcohol setpoint, as defined in rules and regulations adopted by the secretary of revenue, when the intended driver conducts an initial test or retest;

"High BrAC" means a BrAC fail result that registers an alcohol setpoint of 0.08 or greater;

"Rolling retest" means a breath test that is required after the initial engine start-up breath test and while the engine is running.

The Committee discussed creating a system to allow a driver to request early release from the IID restrictions based on the driver's IID record without violations. The Committee especially liked this idea for first-time DUI offenders; however, first-time DUI offenders without any other alcohol related traffic offenses are only required to use the IID for six months. In order to qualify for certain federal grant funding, Kansas must require all DUI offenders to use the IID for at least six months;⁴ therefore, the first-time offender IID period could not be reduced without jeopardizing Kansas' federal grant funding.

Driver Under 21

The Committee identified an issue with how the current statutes treat drivers under 21 years old who drive with a blood or breath alcohol content (BAC) between 0.02 and 0.0799. If a driver's BAC is between 0.02 and 0.0799, the required ignition interlock period is 330 days. If the person's BAC is higher, 0.08 to 0.1499, the required ignition interlock period is only 180 days.⁵ If a person under 21 years old drinks and drives, the person will have a shorter ignition interlock period if the person is more intoxicated (BAC of 0.08 to 0.1499). The Committee unanimously agreed that the ignition interlock period for a driver under the age of 21 with a lower BAC (0.02-

⁴ See 23 CFR 1300.23(g)(1) and 23 USC 405(d)(6)(A).

⁵ K.S.A. 8-1567a.

0.0799) should not be greater than the ignition interlock period required if the driver’s BAC had been higher (0.08-0.1499).

Driver Under 21 – 1st Occurrence

	Current Statute	Proposal
<i>Test Result BAC .02-.0799</i>	30 Day Suspension 330 Days Interlock	30 Day Suspension 180 Days Interlock
<i>Test result BAC .08 to .1499 (without previous violations as listed in K.S.A. 8- 1015(b)(2))</i>	30 Day Suspension 180 days	No change

The Committee recommends the following amendment to K.S.A. 2019 Supp. 8-1567a(f):

“(f) If a person less than 21 years of age submits to a breath or blood alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, and produces a test result of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges shall be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional ~~330~~180 days, and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.”

Motorized Bicycle License

K.S.A. 2019 Supp. 8-235(d)(3) allows a first-time DUI offender the opportunity to receive a license to drive a motorized bicycle.⁶ According to the Kansas Department of Transportation, because first-time DUI offenders can receive this license, Kansas is ineligible to receive \$250,000 in federal funding for the KDOT State Highway Safety Office to support the state’s ignition interlock program. The Kansas Department of Revenue Division of Vehicles reports that there are only 29 motorized bicycle licenses currently issued in Kansas, which has over 2,300,00 active driver’s licenses and identification cards. The Committee recommends the deletion of K.S.A. 2019 Supp. 8-235(d)(3) and (e) to eliminate motorized bicycle licenses for first-time DUI offenders in order to allow the state to qualify for the additional federal funding. The Committee’s proposed amendments to K.S.A. 2019 Supp. 8-235 begin on page 9.

⁶ Motorized bicycle is defined in K.S.A. 8-126.

COMMITTEE MEMBERSHIP

The members of the Judicial Council DUI Advisory Committee are:

Rep. Brad Ralph, Chair; Dodge City, Kansas
State Representative, 119th District and City Attorney for Dodge City

Gregory Benefiel; McPherson, Kansas
McPherson County Attorney

Aaron Breitenbach; Wichita, Kansas
Sedgwick County Assistant District Attorney

Hon. Cindi Cornwell; Overland Park, Kansas
Overland Park Municipal Court Judge

Prof. Jeffrey Jackson; Topeka, Kansas
Washburn University School of Law

Corey Kenney; Topeka, Kansas
Assistant Kansas Attorney General

Ed Klumpp; Tecumseh, Kansas
Retired Topeka Chief of Police

Chris Mann; Lenexa, Kansas
Mann Law Firm, Attorney and Member of the Kansas Sentencing Commission

Jay Norton; Overland Park, Kansas
Norton Hare Law Firm, Defense Attorney

Hon. William Ossmann; Topeka, Kansas
Shawnee County District Court Judge

Jeremiah Platt; Manhattan, Kansas
Clark & Platt Law Firm, Defense Attorney

John Rapp; Wichita, Kansas
Hinkle Law Firm, Defense Attorney

Ted Smith; Topeka, Kansas
Attorney for the Kansas Department of Revenue

Roger Struble; Salina, Kansas
Blackwell & Struble Law Firm, Defense Attorney

Kansas Department of Revenue
Alcohol Actions Chart

Alcohol Actions For Drivers Under 21					
Chemical Test Result	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .02-.0799 Driving Record Code (A61)	30 Day Suspension 330 Days Interlock No Exam	1 Year Suspension No Exam	1 Year Suspension No Exam	1 Year Suspension No Exam	1 Year Suspension No Exam

Alcohol Actions For Drivers Of All Ages - BAC .08 to .1499					
Chemical Test Failure	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (A98)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (A08)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Vehicle Battery - With DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .08 to .1499 Driving Record Code (RK2)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Alcohol Actions For Drivers Of All Ages - BAC .15 or Greater					
Chemical Test Failure	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (A90)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (A10)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Vehicle Battery - With DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
BAC .15 or Greater Driving Record Code (RK2)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Alcohol Actions For Drivers Of All Ages - Chemical Test Refusal (Administrative)					
Chemical Test Refusal	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
Administrative Driving Record Code (DI3)	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$900 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$1,200 Reinstatement Fee	1 Year Suspension 5 Year Interlock \$1,500 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$1,500 Reinstatement Fee

Alcohol Actions For CDL Drivers (Action is taken in addition to REGDL actions listed above)			
Administrative or Court Conviction for a Chemical Test Refusal or Failure	1st Occurrence	1st Occurrence (HazMat)	2nd Occurrence
	CDL Privileges are suspended for a period of 1 year	CDL Privileges are suspended for a period of 3 years	CDL Privileges are permanently revoked

A driver will only be eligible for a 6 month interlock restriction for first occurrence Chemical Test Failures, DUI Convictions, Vehicle Battery With DUI Convictions, and Chemical Test Refusal Convictions with a BAC of .08 to .1499 and if their driving record does not show any major convictions, prior suspensions, revocations, or cancellations, or a culmination of 3 moving violations on separate occasions within a 12 month period.



STATE OF KANSAS
DEPARTMENT OF REVENUE

(Rev 11/07/2018)

Proposed Statutory Amendments

K.S.A. 2019 Supp. 8-235

(a) No person, except those expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license. No person shall receive a driver's license unless and until such person surrenders or with the approval of the division, lists to the division all valid licenses in such person's possession issued to such person by any other jurisdiction. All surrendered licenses or the information listed on foreign licenses shall be returned by the division to the issuing department, together with information that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid license at any time.

(b) Any person licensed under the motor vehicle drivers' license act may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any local authority. Nothing herein shall prevent cities from requiring licenses of persons who drive taxicabs or municipally franchised transit systems for hire upon city streets, to protect the public from drivers whose character or habits make them unfit to transport the public. If a license is denied, the applicant may appeal such decision to the district court of the county in which such city is located by filing within 14 days after such denial, a notice of appeal with the clerk of the district court and by filing a copy of such notice with the city clerk of the involved city. The city clerk shall certify a copy of such decision of the city governing body to the clerk of the district court and the matter shall be docketed as any other cause and the applicant shall be granted a trial of such person's character and habits. The matter shall be heard by the court de novo in accordance with the code of civil procedure. The cost of such appeal shall be assessed in such manner as the court may direct.

(c) Any person operating in this state a motor vehicle shall be the holder of a driver's license that is classified for the operation of such motor vehicle, and any person operating in this state a motorcycle that is registered in this state shall be the holder of a class M driver's license.

(d) No person shall drive any motorized bicycle upon a highway of this state unless such person: (1) Has a valid driver's license that entitles the licensee to drive a motor vehicle in any class or classes; (2) is at least 15 years of age and has passed the written and visual examinations required for obtaining a class C driver's license, in which case the division shall issue to such person a class C license, which shall clearly indicate that such license is valid only for the operation of motorized bicycles; ~~or (3) has had their driving privileges suspended, for a violation other than a violation of K.S.A. 8-2,144, and amendments thereto, or a second or subsequent violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto, and such person: (A) Has completed the mandatory period of suspension as provided in K.S.A. 8-1014, and amendments thereto; and (B)~~

~~has made application and submitted a \$40 nonrefundable application fee to the division for the issuance of a class C license for the operation of motorized bicycles, in accordance with paragraph (2), in which case the division shall issue to such person a class C license, which shall clearly indicate that such license is valid only for the operation of motorized bicycles; or (4)~~ has had their driving privileges revoked under K.S.A. 8-286, and amendments thereto, has not had a test refusal or test failure or alcohol or drug-related conviction, as those terms are defined in K.S.A. 8-1013, and amendments thereto, in the last five years, has not been convicted of a violation of K.S.A. 8-1568(b), and amendments thereto, in the last five years and has made application to the division for issuance of a class C license for the operation of motorized bicycles, in accordance with paragraph (2), in which case the division shall issue such person a class C license, which shall clearly indicate that such license is valid only for the operation of motorized bicycles. As used in this subsection, "motorized bicycle" shall have the meaning ascribed to it in K.S.A. 8-126, and amendments thereto.

~~(e) All moneys received under subsection (d) from the nonrefundable application fee shall be applied by the division of vehicles for the additional administrative costs to implement restricted driving privileges. The division shall remit all restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund.~~

~~(f)~~ Violation of this section shall constitute a class B misdemeanor.

K.S.A. 2019 Supp. 8-1015

(a) (1) Except as provided in subsection (a)(2), whenever a person's driving privileges have been suspended for one year as provided in K.S.A. 8-1014(a), and amendments thereto, after 90 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock device and only for the purposes of getting to and from: Work, school or an alcohol treatment program; and the ignition interlock provider for maintenance and downloading of data from the device.

(2) Whenever a person's driving privileges have been suspended for one year as provided in K.S.A. 8-1014(a)(1), and amendments thereto, after 90 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock device and only: Under the circumstances provided by K.S.A. 8-292(a)(1), (2),

(3) and (4), and amendments thereto; and for the purpose of getting to and from the ignition interlock provider for maintenance and downloading of data from the device.

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

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

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

(6) The division shall approve the request for such restricted license unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court. If the request is approved, upon receipt of proof of the installation of such device, the division shall issue a copy of the order imposing such restrictions on the person's driving privileges and such order shall be carried by the person at any time the person is operating a motor vehicle on the highways of this state. Except as provided in K.S.A. 8-1017, and amendments thereto, if such person is convicted of a violation of the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of suspension or restriction as provided in K.S.A. 8-1014(a) or (b), and amendments thereto.

(b)(1) Except as provided in subsection (b)(2), when a person has completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the person's driving privileges for 180 days to driving only a motor vehicle equipped with an ignition interlock device.

(2) When a person has completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device if the records maintained by the division indicate that such person has previously: (A) Been convicted of a violation of K.S.A. 8-1599, and amendments thereto; (B) been convicted of a violation of K.S.A. 41-727, and amendments thereto; (C) been convicted of any violations listed in K.S.A. 8-285(a), and amendments thereto; (D) been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period; or (E) had such person's driving privileges revoked, suspended, canceled or withdrawn.

(c) Except as provided in subsection (b), when a person has completed the suspension pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, the division shall restrict the person's driving privileges pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock device. Upon restricting a person's driving privileges pursuant to this subsection, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state. (d)(1) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the division and maintained at the person's expense. Proof of the installation of such ignition interlock device, for the entire period required by the applicable law, shall be provided to the division before the person's driving privileges are fully reinstated.

(d)(1) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the division and maintained at the person's expense. Proof of the installation of such ignition interlock device, for the entire period required by the applicable law, shall be provided to the division before the person's driving privileges are fully reinstated.

(2) Every person who has an ignition interlock device installed as required by law shall be required to complete the ignition interlock device program pursuant to [this section and rules and regulations adopted by the secretary of revenue](#) ~~and proof of completion shall be provided to the division by~~ [A person may only complete the ignition interlock device program if the person has no more than three standard violations and no serious violation in the 90 consecutive days prior to application for reinstatement and the application occurs upon or after expiration of the applicable ignition interlock period required by law.](#) The approved service provider [shall provide proof of completion to the division](#) before the person's driving privileges are fully reinstated.

(3) As used in this subsection:

(A) "Standard violation" means any of the following, as reported by the approved service provider:

(i) The driver has blown a BrAC fail when attempting an initial engine start-up breath test;

(ii) the driver has blown a BrAC fail when attempting a required rolling retest;

(iii) the driver fails to execute a valid rolling retest;

(iv) the driver fails to submit to a requested rolling retest by turning the vehicle off to avoid submitting to the rolling retest; or

(v) the driver has blown a high BrAC during an initial engine start-up breath test;

(B) "serious violation" means any of the following, as reported by the approved service provider:

(i) Tampering with the ignition interlock device;

(ii) circumventing the ignition interlock device; or

(iii) the driver has blown a high BrAC during a rolling retest;

(C) "BrAC" means the breath alcohol concentration expressed as weight divided by volume, based upon grams of alcohol per 210 liters of breath;

(D) "BrAC fail" means the ignition interlock device registers a BrAC value equal to or greater than the alcohol setpoint, as defined in rules and regulations adopted by the secretary of revenue, when the intended driver conducts an initial test or retest;

(E) "high BrAC" means a BrAC fail result that registers an alcohol setpoint of 0.08 or greater; and

(F) "rolling retest" means a breath test that is required after the initial engine start-up breath test and while the engine is running.

(e) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year suspension period as provided in subsection (a)(1) or (a)(3).

(f) Upon expiration of the ~~period of time for which restrictions are imposed pursuant to this section~~ applicable ignition interlock period required by law and completion of the ignition interlock device program as described in subsection (e), the licensee may apply to the division for the return of any license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been suspended or revoked prior to expiration.

(g) Any person who has had the person's driving privileges suspended, restricted or revoked pursuant to K.S.A. 8-1014(a), (b) or (c), prior to the amendments by 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 apply to the division to have the suspension, restriction or revocation penalties modified in conformity with the provisions of K.S.A. 8-1014(a), (b) or (c), and amendments thereto. The division shall assess an application fee of \$100 for a person to apply to modify the suspension, restriction or revocation penalties previously issued. The division shall modify the suspension, restriction or revocation penalties, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.

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

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(a) The secretary of revenue ~~may~~shall adopt rules and regulations for:

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

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

(3) ensuring that each manufacturer ~~approved~~ provides a reasonable statewide service network where such devices may be obtained, repaired, replaced or serviced and such service network can be accessed 24 hours per day through a toll-free phone service;

(4) the requirements for proper use and maintenance of a certified ignition interlock device by a person during any time period the person's license is restricted by the division to only operating a motor vehicle with an ignition interlock device installed;

(5) the reporting requirements for the manufacturer to the division relating to a person's proper use and maintenance of a certified ignition interlock device; and

(6) the requirements and guidelines for receiving reduced ignition interlock device program costs pursuant to subsection (e).

(b) In adopting rules and regulations for approval of ignition interlock devices under this section, the secretary of revenue shall require that the manufacturer or the manufacturer's representatives calibrate and maintain the devices at intervals not to exceed 60 days. Calibration and maintenance shall include, but not be limited to: Physical inspection of the device, the vehicle and wiring of the device to the vehicle for signs of tampering; calibration of the device and downloading of all data contained within the device's memory; and reporting of any violation or noncompliance to the division.

~~(4) The division shall adopt by rules and regulations participant requirements for proper use and maintenance of a certified ignition interlock device during any time period the person's license is restricted by the division to only operating a motor vehicle with an ignition interlock device installed and by rules and regulations the reporting requirements of the approved manufacturer to the division relating to the person's proper use and maintenance of a certified ignition interlock device.~~

~~(5) The division shall require that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program.~~

~~(b)~~(c)(1) If the division approves an ignition interlock device in accordance with rules and regulations adopted under this section, the division shall give written notice of the approval to the manufacturer of the device. Such notice shall be admissible in any civil or criminal proceeding in this state.

~~(e)~~(2) The manufacturer of an ignition interlock device shall reimburse the division for any cost incurred in approving or disapproving such device under this section.

(d) Neither the state nor any agency, officer or employee thereof shall be liable in any civil or criminal proceeding arising out of the use of an ignition interlock device approved under this section.

(e) (1) Any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may request reduced ignition interlock device program costs by submitting a request to the division, in a form and manner prescribed by the division. The division shall review each request submitted pursuant to this subsection to determine whether the person is eligible for reduced ignition interlock device program costs. A person shall be eligible for reduced ignition interlock device program costs if the person's annual household

income is less than or equal to 300% of the federal poverty level or the person is eligible for the food assistance program pursuant to K.S.A. 39-709, and amendments thereto.

(2) If the division determines that the person is eligible for reduced ignition interlock device program costs, the person shall be responsible for paying the following amounts and the manufacturer providing the person's device shall adjust the manufacturer's charge for services accordingly:

(A) For a person whose household income is less than or equal to 300% but greater than 200% of the federal poverty level, 90% of the program costs plus any additional costs due to non-compliance;

(B) for a person whose household income is less than or equal to 200% but greater than 150% of the federal poverty level, 75% of the program costs plus any additional costs due to non-compliance;

(C) for a person whose household income is greater than less than or equal to 150% but greater than 100% of the federal poverty level, 50% of the program costs plus any additional costs due to non-compliance;

(D) for a person whose household income is less than or equal to 100% of the federal poverty level, 25% of the program costs plus any additional costs due to non-compliance; and

(E) for a person who is eligible for the food assistance program pursuant to K.S.A. 39-709, and amendments thereto, 25% of the program costs plus any additional costs due to non-compliance.

(4) As used in this subsection, "federal poverty level" means the most recent poverty income guidelines published in the calendar year by the United States department of health and human services.

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(f) If a person less than 21 years of age submits to a breath or blood alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, and produces a test result of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges shall be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional ~~330~~180 days, and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.