

HOUSE BILL No. 2218

By Committee on Corrections and Juvenile Justice

2-5

1 AN ACT concerning driving under the influence of alcohol or drugs;
2 relating to tests; implied consent; administrative hearings; amending
3 K.S.A. 8-1567a and K.S.A. 2012 Supp. 8-1001 and 8-1020 and
4 repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 8-1001 is hereby amended to read as
8 follows: 8-1001. (a) Any person who operates or attempts to operate a
9 vehicle within this state is deemed to have given consent, subject to the
10 provisions of this ~~act~~ *article*, to submit to one or more tests of the person's
11 blood, breath, urine or other bodily substance to determine the presence of
12 alcohol or drugs. The testing deemed consented to herein shall include all
13 quantitative and qualitative tests for alcohol and drugs. A person who is
14 dead or unconscious shall be deemed not to have withdrawn the person's
15 consent to such test or tests, which shall be administered in the manner
16 provided by this section.

17 (b) A law enforcement officer shall request a person to submit to a
18 test or tests deemed consented to under subsection (a): (1) If, *at the time of*
19 *the request*, the officer has reasonable grounds to believe the person was
20 operating or attempting to operate a vehicle while under the influence of
21 alcohol or drugs, or both, or to believe that the person was driving a
22 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
23 thereto, while having alcohol or other drugs in such person's system, or
24 was under the age of 21 years *and was operating or attempting to operate*
25 *a vehicle* while having alcohol or other drugs in such person's system; and
26 one of the following conditions exists: (A) The person has been arrested or
27 otherwise taken into custody for any ~~offense involving operation or~~
28 ~~attempted operation of a vehicle while under the influence of alcohol or~~
29 ~~drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments~~
30 ~~thereto, or involving driving a commercial motor vehicle, as defined in~~
31 ~~K.S.A. 8-2,128, and amendments thereto, while having alcohol or other~~
32 ~~drugs in such person's system, in violation of a state statute or a city~~
33 ~~ordinance violation of any state statute, county resolution or city~~
34 *ordinance*; or (B) the person has been involved in a vehicle accident or
35 collision resulting in property damage or personal injury other than serious
36 injury; or (2) if the person was operating or attempting to operate a vehicle

1 and such vehicle has been involved in an accident or collision resulting in
2 serious injury or death of any person and the operator could be cited for
3 any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto.
4 The traffic offense violation shall constitute probable cause for purposes of
5 paragraph (2). The test or tests under paragraph (2) shall not be required if
6 a law enforcement officer has reasonable grounds to believe the actions of
7 the operator did not contribute to the accident or collision. The law
8 enforcement officer directing administration of the test or tests may act on
9 personal knowledge or on the basis of the collective information available
10 to law enforcement officers involved in the accident investigation or arrest.

11 (c) If a law enforcement officer requests a person to submit to a test
12 of blood under this section, the withdrawal of blood at the direction of the
13 officer may be performed only by: (1) A person licensed to practice
14 medicine and surgery, licensed as a physician's assistant, or a person acting
15 under the direction of any such licensed person; (2) a registered nurse or a
16 licensed practical nurse; (3) any qualified medical technician, including,
17 but not limited to, an emergency medical technician-intermediate, mobile
18 intensive care technician, an emergency medical technician-intermediate
19 defibrillator, an advanced emergency medical technician or a paramedic,
20 as those terms are defined in K.S.A. 65-6112, and amendments thereto,
21 authorized by medical protocol; or (4) a phlebotomist.

22 (d) A law enforcement officer may direct a medical professional
23 described in this section to draw a sample of blood from a person:

24 (1) If the person has given consent and meets the requirements of
25 subsection (b);

26 (2) if medically unable to consent, if the person meets the
27 requirements of paragraph (2) of subsection (b); or

28 (3) if the person refuses to submit to and complete a test, if the person
29 meets the requirements of paragraph (2) of subsection (b).

30 (e) When so directed by a law enforcement officer through a written
31 statement, the medical professional shall withdraw the sample as soon as
32 practical and shall deliver the sample to the law enforcement officer or
33 another law enforcement officer as directed by the requesting law
34 enforcement officer as soon as practical, provided the collection of the
35 sample does not jeopardize the person's life, cause serious injury to the
36 person or seriously impede the person's medical assessment, care or
37 treatment. The medical professional authorized herein to withdraw the
38 blood and the medical care facility where the blood is drawn may act on
39 good faith that the requirements have been met for directing the
40 withdrawing of blood once presented with the written statement provided
41 for under this subsection. The medical professional shall not require the
42 person to sign any additional consent or waiver form. In such a case, the
43 person authorized to withdraw blood and the medical care facility shall not

1 be liable in any action alleging lack of consent or lack of informed
2 consent.

3 (f) Such sample or samples shall be an independent sample and not
4 be a portion of a sample collected for medical purposes. The person
5 collecting the blood sample shall complete the collection portion of a
6 document provided by law enforcement.

7 (g) If a person must be restrained to collect the sample pursuant to
8 this section, law enforcement shall be responsible for applying any such
9 restraint utilizing acceptable law enforcement restraint practices. The
10 restraint shall be effective in controlling the person in a manner not to
11 jeopardize the person's safety or that of the medical professional or
12 attending medical or health care staff during the drawing of the sample and
13 without interfering with medical treatment.

14 (h) A law enforcement officer may request a urine sample upon
15 meeting the requirements of paragraph (1) of subsection (b) and shall
16 request a urine sample upon meeting the requirements of paragraph (2) of
17 subsection (b).

18 (i) If a law enforcement officer requests a person to submit to a test of
19 urine under this section, the collection of the urine sample shall be
20 supervised by: (1) A person licensed to practice medicine and surgery,
21 licensed as a physician's assistant, or a person acting under the direction of
22 any such licensed person; (2) a registered nurse or a licensed practical
23 nurse; or (3) a law enforcement officer of the same sex as the person being
24 tested. The collection of the urine sample shall be conducted out of the
25 view of any person other than the persons supervising the collection of the
26 sample and the person being tested, unless the right to privacy is waived
27 by the person being tested. When possible, the supervising person shall be
28 a law enforcement officer. The results of qualitative testing for drug
29 presence shall be admissible in evidence and questions of accuracy or
30 reliability shall go to the weight rather than the admissibility of the
31 evidence. If the person is medically unable to provide a urine sample in
32 such manner due to the injuries or treatment of the injuries, the same
33 authorization and procedure as used for the collection of blood in
34 subsections (d) and (e) shall apply to the collection of a urine sample.

35 (j) No law enforcement officer who is acting in accordance with this
36 section shall be liable in any civil or criminal proceeding involving the
37 action.

38 (k) Before a test or tests are administered under this section, the
39 person shall be given oral and written notice that:

40 (1) Kansas law requires the person to submit to and complete one or
41 more tests of breath, blood or urine to determine if the person is under the
42 influence of alcohol or drugs, or both;

43 (2) the opportunity to consent to or refuse a test is not a constitutional

1 right;

2 (3) there is no constitutional right to consult with an attorney
3 regarding whether to submit to testing;

4 (4) if the person refuses to submit to and complete any test of breath,
5 blood or urine hereafter requested by a law enforcement officer, the person
6 may be charged with a separate crime of refusing to submit to a test to
7 determine the presence of alcohol or drugs, which carries criminal
8 penalties that are greater than or equal to the criminal penalties for the
9 crime of driving under the influence, if such person has:

10 (A) Any prior test refusal as defined in K.S.A. 8-1013, and
11 amendments thereto, which occurred: (i) On or after July 1, 2001; and (ii)
12 when such person was 18 years of age or older; or

13 (B) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,
14 and amendments thereto, or a violation of an ordinance of any city or
15 resolution of any county which prohibits the acts that such section
16 prohibits, or entering into a diversion agreement in lieu of further criminal
17 proceedings on a complaint alleging any such violations, which occurred:
18 (i) On or after July 1, 2001; and (ii) when such person was 18 years of age
19 or older;

20 (5) if the person refuses to submit to and complete any test of breath,
21 blood or urine hereafter requested by a law enforcement officer, the
22 person's driving privileges will be suspended for one year for the first or
23 subsequent occurrence;

24 (6) if the person submits to and completes the test or tests and the test
25 results show:

26 (A) An alcohol concentration of .08 or greater, the person's driving
27 privileges will be suspended for 30 days for the first occurrence and one
28 year for the second or subsequent occurrence; or

29 (B) an alcohol concentration of .15 or greater, the person's driving
30 privileges will be suspended for one year for the first or subsequent
31 occurrence;

32 (7) refusal to submit to testing may be used against the person at any
33 trial on a charge arising out of the operation or attempted operation of a
34 vehicle while under the influence of alcohol or drugs, or both;

35 (8) the results of the testing may be used against the person at any
36 trial on a charge arising out of the operation or attempted operation of a
37 vehicle while under the influence of alcohol or drugs, or both; and

38 (9) after the completion of the testing, the person has the right to
39 consult with an attorney and may secure additional testing, which, if
40 desired, should be done as soon as possible and is customarily available
41 from medical care facilities willing to conduct such testing.

42 (l) If a law enforcement officer has reasonable grounds to believe that
43 the person has been driving a commercial motor vehicle, as defined in

1 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
2 drugs in such person's system, the person shall also be provided the oral
3 and written notice pursuant to K.S.A. 8-2,145, and amendments thereto.
4 Any failure to give the notices required by K.S.A. 8-2,145, and
5 amendments thereto, shall not invalidate any action taken as a result of the
6 requirements of this section. If a law enforcement officer has reasonable
7 grounds to believe that the person has been ~~driving~~ *operating* or
8 attempting to ~~drive~~ *operate* a vehicle while having alcohol or other drugs
9 in such person's system and such person was under 21 years of age, the
10 person also shall be given the notices required by K.S.A. 8-1567a, and
11 amendments thereto. Any failure to give the notices required by K.S.A. 8-
12 1567a, and amendments thereto, shall not invalidate any action taken as a
13 result of the requirements of this section.

14 (m) After giving the foregoing information, a law enforcement officer
15 shall request the person to submit to testing. The selection of the test or
16 tests shall be made by the officer. If the test results show a blood or breath
17 alcohol concentration of .08 or greater, the person's driving privileges shall
18 be subject to suspension, or suspension and restriction, as provided in
19 K.S.A. 8-1002 and 8-1014, and amendments thereto.

20 (n) The person's refusal shall be admissible in evidence against the
21 person at any trial on a charge arising out of the alleged operation or
22 attempted operation of a vehicle while under the influence of alcohol or
23 drugs, or both. The person's refusal shall be admissible in evidence against
24 the person at any trial on a charge arising out of the alleged violation of
25 K.S.A. 2012 Supp. 8-1025, and amendments thereto.

26 (o) If a law enforcement officer had reasonable grounds to believe the
27 person had been driving a commercial motor vehicle, as defined in K.S.A.
28 8-2,128, and amendments thereto, and the test results show a blood or
29 breath alcohol concentration of .04 or greater, the person shall be
30 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
31 8-2,142, and amendments thereto. If a law enforcement officer had
32 reasonable grounds to believe the person had been driving a commercial
33 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and
34 the test results show a blood or breath alcohol concentration of .08 or
35 greater, or the person refuses a test, the person's driving privileges shall be
36 subject to suspension, or suspension and restriction, pursuant to this
37 section, in addition to being disqualified from driving a commercial motor
38 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

39 (p) An officer shall have probable cause to believe that the person
40 operated a vehicle while under the influence of alcohol or drugs, or both, if
41 the vehicle was operated by such person in such a manner as to have
42 caused the death of or serious injury to a person. In such event, such test or
43 tests may be made pursuant to a search warrant issued under the authority

1 of K.S.A. 22-2502, and amendments thereto, or without a search warrant
2 under the authority of K.S.A. 22-2501, and amendments thereto.

3 (q) Failure of a person to provide an adequate breath sample or
4 samples as directed shall constitute a refusal unless the person shows that
5 the failure was due to physical inability caused by a medical condition
6 unrelated to any ingested alcohol or drugs.

7 (r) It shall not be a defense that the person did not understand the
8 written or oral notice required by this section.

9 (s) No test results shall be suppressed because of technical
10 irregularities in the consent or notice required pursuant to this act.

11 (t) Nothing in this section shall be construed to limit the admissibility
12 at any trial of alcohol or drug concentration testing results obtained
13 pursuant to a search warrant.

14 (u) Upon the request of any person submitting to testing under this
15 section, a report of the results of the testing shall be made available to such
16 person.

17 (v) This act is remedial law and shall be liberally construed to
18 promote public health, safety and welfare.

19 (w) As used in this section, "serious injury" means a physical injury
20 to a person, as determined by law enforcement, which has the effect of,
21 prior to the request for testing:

22 (1) Disabling a person from the physical capacity to remove
23 themselves from the scene;

24 (2) renders a person unconscious;

25 (3) the immediate loss of or absence of the normal use of at least one
26 limb;

27 (4) an injury determined by a physician to require surgery; or

28 (5) otherwise indicates the person may die or be permanently disabled
29 by the injury.

30 Sec. 2. K.S.A. 2012 Supp. 8-1020 is hereby amended to read as
31 follows: 8-1020. (a) Any licensee served with an officer's certification and
32 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
33 may request an administrative hearing. Such request may be made either
34 by:

35 (1) Mailing a written request which is postmarked 14 days after
36 service of notice; or

37 (2) transmitting a written request by electronic facsimile which is
38 received by the division within 14 days after service of notice.

39 (b) If the licensee makes a timely request for an administrative
40 hearing and makes a timely payment of the required hearing fee, any
41 temporary license issued pursuant to K.S.A. 8-1002, and amendments
42 thereto, shall remain in effect until the 30th day after the effective date of
43 the decision made by the division.

1 (c) If the licensee fails to make a timely request for an administrative
2 hearing together with the required hearing fee, the licensee's driving
3 privileges shall be suspended or suspended and then restricted in
4 accordance with the notice of suspension served pursuant to K.S.A. 8-
5 1002, and amendments thereto.

6 (d) (1) Upon receipt of a timely request for a hearing together with
7 the required hearing fee, the division shall forthwith set the matter for
8 hearing before a representative of the director and provide notice of the
9 extension of temporary driving privileges. The hearing shall be held by
10 telephone conference call unless the hearing request includes a request that
11 the hearing be held in person before a representative of the director. The
12 officer's certification and notice of suspension shall inform the licensee of
13 the availability of a hearing before a representative of the director. Except
14 for a hearing conducted by telephone conference call, the hearing shall be
15 conducted in the county where the arrest occurred or a county adjacent
16 thereto.

17 (2) The division shall charge a fee of \$50 for a hearing, to be paid
18 within the time period for making a timely request for a hearing, whether
19 held by telephone or in person, to be applied by the division for
20 administrative costs to conduct the hearing. The division shall remit all
21 hearing fees to the state treasurer in accordance with the provisions of
22 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
23 remittance, the state treasurer shall deposit the entire amount in the state
24 treasury to the credit of the division of vehicles operating fund. The
25 hearing fee established in this section shall be the only fee collected or
26 moneys in the nature of a fee collected for such hearing. Such fee shall
27 only be established by an act of the legislature and no other authority is
28 established by law or otherwise to collect a fee.

29 (e) Except as provided in subsection (f), prehearing discovery shall be
30 limited to the following documents, which shall be provided to the
31 licensee or the licensee's attorney no later than seven days prior to the date
32 of hearing:

33 (1) The officer's certification and notice of suspension;

34 (2) in the case of a breath or blood test failure, copies of documents
35 indicating the result of any evidentiary breath or blood test administered at
36 the request of a law enforcement officer;

37 (3) in the case of a breath test failure, a copy of the affidavit showing
38 certification of the officer and the instrument; and

39 (4) in the case of a breath test failure, a copy of the Kansas
40 department of health and environment testing protocol checklist.

41 (f) At or prior to the time the notice of hearing is sent, the division
42 shall issue an order allowing the licensee or the licensee's attorney to
43 review any video or audio tape record made of the events upon which the

1 administrative action is based. Such review shall take place at a reasonable
2 time designated by the law enforcement agency and shall be made at the
3 location where the video or audio tape is kept. The licensee may obtain a
4 copy of any such video or audio tape upon request and upon payment of a
5 reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

6 (g) Witnesses at the hearing shall be limited to the licensee, to any
7 law enforcement officer who signed the certification form and to one other
8 witness who was present at the time of the issuance of the certification and
9 called by the licensee. The presence of the certifying officer or officers
10 shall not be required, unless requested by the licensee at the time of
11 making the request for the hearing. The examination of a law enforcement
12 officer shall be restricted to the factual circumstances relied upon in the
13 officer's certification.

14 (h) (1) If the officer certifies that the person refused the test, the scope
15 of the hearing shall be limited to whether:

16 (A) A law enforcement officer had reasonable grounds to believe the
17 person was operating or attempting to operate a vehicle while under the
18 influence of alcohol or drugs, or both, or had been driving a commercial
19 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
20 while having alcohol or other drugs in such person's system *or was under*
21 *the age of 21 years and was operating or attempting to operate a vehicle*
22 *while having alcohol or other drugs in such person's system;*

23 (B) the person was in custody or arrested ~~for an alcohol or drug~~
24 ~~related offense~~ or was involved in a vehicle accident or collision resulting
25 in property damage, personal injury or death;

26 (C) a law enforcement officer had presented the person with the oral
27 and written notice required by K.S.A. 8-1001, and amendments thereto;
28 and

29 (D) the person refused to submit to and complete a test as requested
30 by a law enforcement officer.

31 (2) If the officer certifies that the person failed a breath test, the scope
32 of the hearing shall be limited to whether:

33 (A) A law enforcement officer had reasonable grounds to believe the
34 person was operating a vehicle while under the influence of alcohol or
35 drugs, or both, or had been driving a commercial motor vehicle, as defined
36 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
37 drugs in such person's system *or was under the age of 21 years and was*
38 *operating or attempting to operate a vehicle while having alcohol or other*
39 *drugs in such person's system;*

40 (B) the person was in custody or arrested ~~for an alcohol or drug~~
41 ~~related offense~~ or was involved in a vehicle accident or collision resulting
42 in property damage, personal injury or death;

43 (C) a law enforcement officer had presented the person with the oral

1 and written notice required by K.S.A. 8-1001, and amendments thereto;

2 (D) the testing equipment used was certified by the Kansas
3 department of health and environment;

4 (E) the person who operated the testing equipment was certified by
5 the Kansas department of health and environment;

6 (F) the testing procedures used substantially complied with the
7 procedures set out by the Kansas department of health and environment;

8 (G) the test result determined that the person had an alcohol
9 concentration of .08 or greater in such person's breath; and

10 (H) the person was operating or attempting to operate a vehicle.

11 (3) If the officer certifies that the person failed a blood test, the scope
12 of the hearing shall be limited to whether:

13 (A) A law enforcement officer had reasonable grounds to believe the
14 person was operating a vehicle while under the influence of alcohol or
15 drugs, or both, or had been driving a commercial motor vehicle, as defined
16 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
17 drugs in such person's system *or was under the age of 21 years and was*
18 *operating or attempting to operate a vehicle while having alcohol or other*
19 *drugs in such person's system;*

20 (B) the person was in custody or arrested ~~for an alcohol or drug~~
21 ~~related offense~~ or was involved in a vehicle accident or collision resulting
22 in property damage, personal injury or death;

23 (C) a law enforcement officer had presented the person with the oral
24 and written notice required by K.S.A. 8-1001, and amendments thereto;

25 (D) the testing equipment used was reliable;

26 (E) the person who operated the testing equipment was qualified;

27 (F) the testing procedures used were reliable;

28 (G) the test result determined that the person had an alcohol
29 concentration of .08 or greater in such person's blood; and

30 (H) the person was operating or attempting to operate a vehicle.

31 (i) At a hearing pursuant to this section, or upon court review of an
32 order entered at such a hearing, an affidavit of the custodian of records at
33 the Kansas department of health and environment stating that the breath
34 testing device was certified and the operator of such device was certified
35 on the date of the test shall be admissible into evidence in the same
36 manner and with the same force and effect as if the certifying officer or
37 employee of the Kansas department of health and environment had
38 testified in person. A certified operator of a breath testing device shall be
39 competent to testify regarding the proper procedures to be used in
40 conducting the test.

41 (j) At a hearing pursuant to this section, or upon court review of an
42 order entered at such a hearing, in which the report of blood test results
43 have been prepared by the Kansas bureau of investigation or other forensic

1 laboratory of a state or local law enforcement agency are to be introduced
2 as evidence, the report, or a copy of the report, of the findings of the
3 forensic examiner shall be admissible into evidence in the same manner
4 and with the same force and effect as if the forensic examiner who
5 performed such examination, analysis, comparison or identification and
6 prepared the report thereon had testified in person.

7 (k) At the hearing, the licensee has the burden of proof by a
8 preponderance of the evidence to show that the facts set out in the officer's
9 certification are false or insufficient and that the order suspending or
10 suspending and restricting the licensee's driving privileges should be
11 dismissed.

12 (l) Evidence at the hearing shall be limited to the following:

13 (1) The documents set out in subsection (e);

14 (2) the testimony of the licensee;

15 (3) the testimony of any certifying officer;

16 (4) the testimony of any witness present at the time of the issuance of
17 the certification and called by the licensee;

18 (5) any affidavits submitted from other witnesses;

19 (6) any documents submitted by the licensee to show the existence of
20 a medical condition, as described in K.S.A. 8-1001, and amendments
21 thereto; and

22 (7) any video or audio tape record of the events upon which the
23 administrative action is based.

24 (m) After the hearing, the representative of the director shall enter an
25 order affirming the order of suspension or suspension and restriction of
26 driving privileges or for good cause appearing therefor, dismiss the
27 administrative action. If the representative of the director enters an order
28 affirming the order of suspension or suspension and restriction of driving
29 privileges, the suspension or suspension and restriction shall begin on the
30 30th day after the effective date of the order of suspension or suspension
31 and restriction. If the person whose privileges are suspended is a
32 nonresident licensee, the license of the person shall be forwarded to the
33 appropriate licensing authority in the person's state of residence if the
34 result at the hearing is adverse to such person or if no timely request for a
35 hearing is received.

36 (n) The representative of the director may issue an order at the close
37 of the hearing or may take the matter under advisement and issue a hearing
38 order at a later date. If the order is made at the close of the hearing, the
39 licensee or the licensee's attorney shall be served with a copy of the order
40 by the representative of the director. If the matter is taken under
41 advisement or if the hearing was by telephone conference call, the licensee
42 and any attorney who appeared at the administrative hearing upon behalf
43 of the licensee each shall be served with a copy of the hearing order by

1 mail. Any law enforcement officer who appeared at the hearing also may
2 be mailed a copy of the hearing order. The effective date of the hearing
3 order shall be the date upon which the hearing order is served, whether
4 served in person or by mail.

5 (o) The licensee may file a petition for review of the hearing order
6 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition
7 for review, the licensee shall serve the secretary of revenue with a copy of
8 the petition and summons. Upon receipt of a copy of the petition for
9 review by the secretary, the temporary license issued pursuant to
10 subsection (b) shall be extended until the decision on the petition for
11 review is final.

12 (p) Such review shall be in accordance with this section and the
13 Kansas judicial review act. To the extent that this section and any other
14 provision of law conflicts, this section shall prevail. The petition for
15 review shall be filed within 14 days after the effective date of the order.
16 Venue of the action for review is the county where the person was arrested
17 or the accident occurred, or, if the hearing was not conducted by telephone
18 conference call, the county where the administrative proceeding was held.
19 The action for review shall be by trial de novo to the court and the
20 evidentiary restrictions of subsection (l) shall not apply to the trial de
21 novo. The court shall take testimony, examine the facts of the case and
22 determine whether the petitioner is entitled to driving privileges or
23 whether the petitioner's driving privileges are subject to suspension or
24 suspension and restriction under the provisions of this act. If the court
25 finds that the grounds for action by the agency have been met, the court
26 shall affirm the agency action.

27 (q) Upon review, the licensee shall have the burden to show that the
28 decision of the agency should be set aside.

29 (r) Notwithstanding the requirement to issue a temporary license in
30 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
31 the temporary license in this section, any such temporary driving
32 privileges are subject to restriction, suspension, revocation or cancellation
33 as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

34 (s) Upon motion by a party, or on the court's own motion, the court
35 may enter an order restricting the driving privileges allowed by the
36 temporary license provided for in K.S.A. 8-1002, and amendments thereto,
37 and in this section. The temporary license also shall be subject to
38 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-
39 1014, and amendments thereto, or for other cause.

40 (t) The facts found by the hearing officer or by the district court upon
41 a petition for review shall be independent of the determination of the same
42 or similar facts in the adjudication of any criminal charges arising out of
43 the same occurrence. The disposition of those criminal charges shall not

1 affect the suspension or suspension and restriction to be imposed under
2 this section.

3 (u) All notices affirming or canceling a suspension under this section,
4 all notices of a hearing held under this section and all issuances of
5 temporary driving privileges pursuant to this section shall be sent by first-
6 class mail and a United States post office certificate of mailing shall be
7 obtained therefor. All notices so mailed shall be deemed received three
8 days after mailing, except that this provision shall not apply to any
9 licensee where such application would result in a manifest injustice.

10 (v) The provisions of K.S.A. 60-206, and amendments thereto,
11 regarding the computation of time shall be applicable in determining the
12 time for requesting an administrative hearing as set out in subsection (a)
13 and to the time for filing a petition for review pursuant to subsection (o)
14 and K.S.A. 8-259, and amendments thereto.

15 Sec. 3. K.S.A. 8-1567a is hereby amended to read as follows: 8-
16 1567a. (a) It shall be unlawful for any person less than 21 years of age to
17 operate or attempt to operate a vehicle in this state with a breath or blood
18 alcohol content of .02 or greater.

19 (b) Whenever a law enforcement officer determines that a breath or
20 blood alcohol test is to be required of a person less than 21 years of age
21 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, in
22 addition to any other notices required by law, the law enforcement officer
23 shall provide written and oral notice that: (1) It is unlawful for any person
24 less than 21 years of age to operate or attempt to operate a vehicle in this
25 state with a breath or blood alcohol content of .02 or greater; and (2) if the
26 person is less than 21 years of age at the time of the test request and
27 submits to and completes the test or tests and the test results show an
28 alcohol concentration of .02 or greater, but less than .08, on the person's
29 first occurrence, the person's driving privileges will be suspended for 30
30 days and on the person's second or subsequent occurrence, the person's
31 driving privileges shall be suspended for one year.

32 (c) Any suspension and restriction of driving privileges pursuant to
33 this section shall be in addition to any disqualification from driving a
34 commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
35 thereto.

36 (d) Whenever a breath or blood alcohol test is requested pursuant to
37 K.S.A. 8-1001, and amendments thereto, from a person less than 21 years
38 of age, and results in a test result of .02 or greater, but less than .08, a law
39 enforcement officer's certification under this section shall be prepared. The
40 certification required by this section shall be signed by one or more
41 officers to certify that:

42 (1) (A) There existed reasonable grounds to believe the person was
43 operating a vehicle while under the influence of alcohol or drugs, or both,

1 or to believe that the person had been driving a commercial motor vehicle,
2 as defined in K.S.A. 8-2,128, and amendments thereto, while having
3 alcohol or other drugs in such person's system *or was under the age of 21*
4 *years and was operating or attempting to operate a vehicle while having*
5 *alcohol or other drugs in such person's system*; (B) the person had been
6 placed under arrest, was in custody or had been involved in a vehicle
7 accident or collision; (C) a law enforcement officer had presented the
8 person with the oral and written notice required by K.S.A. 8-1001, and
9 amendments thereto, and the oral and written notice required by this
10 section; (D) that the person was less than 21 years of age at the time of the
11 test request; and (E) the result of the test showed that the person had an
12 alcohol concentration of .02 or greater in such person's blood or breath.

13 (2) With regard to a breath test, in addition to those matters required
14 to be certified under subsection (d)(1), that: (A) The testing equipment
15 used was certified by the Kansas department of health and environment;
16 (B) the testing procedures used were in accordance with the requirements
17 set out by the Kansas department of health and environment; and (C) the
18 person who operated the testing equipment was certified by the Kansas
19 department of health and environment to operate such equipment.

20 (e) If a hearing is requested as a result of a law enforcement officer's
21 certification under this section, the scope of the hearing shall be limited to
22 whether: (1) A law enforcement officer had reasonable grounds to believe
23 the person was operating a vehicle while under the influence of alcohol or
24 drugs, or both, or to believe that the person had been driving a commercial
25 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
26 while having alcohol or other drugs in such person's system *or was under*
27 *the age of 21 years and was operating or attempting to operate a vehicle*
28 *while having alcohol or other drugs in such person's system*; (2) the
29 person ~~had been placed under arrest, was in custody or arrested for an~~
30 ~~alcohol or drug related offense~~ or was involved in a motor vehicle accident
31 or collision resulting in property damage, personal injury or death; (3) a
32 law enforcement officer had presented the person with the oral and written
33 notice required by K.S.A. 8-1001, and amendments thereto, and the oral
34 and written notice required by this section; (4) the testing equipment used
35 was reliable; (5) the person who operated the testing equipment was
36 qualified; (6) the testing procedures used were reliable; (7) the test result
37 determined that the person had an alcohol concentration of .02 or greater
38 in such person's blood or breath; (8) the person was operating a vehicle;
39 and (9) the person was less than 21 years of age at the time a test was
40 requested.

41 (f) If a person less than 21 years of age submits to a breath or blood
42 alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and
43 amendments thereto, and produces a test result of .02 or greater, but less

1 than .08, on the person's first occurrence, the person's driving privileges
2 shall be suspended for 30 days and then restricted as provided by K.S.A.
3 8-1015, and amendments thereto, for an additional 330 days, and on the
4 person's second or subsequent occurrence, the person's driving privileges
5 shall be suspended for one year.

6 (g) Except where there is a conflict between this section and K.S.A.
7 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-
8 1001 and 8-1002, and amendments thereto, shall be applicable to
9 proceedings under this section.

10 (h) Any determination under this section that a person less than 21
11 years of age had a test result of .02 or greater, but less than .08, and any
12 resulting administrative action upon the person's driving privileges, upon
13 the first occurrence of such test result and administrative action, shall not
14 be considered by any insurance company in determining the rate charged
15 for any automobile liability insurance policy or whether to cancel any such
16 policy under the provisions of subsection (4)(a) of K.S.A. 40-277, and
17 amendments thereto.

18 Sec. 4. K.S.A. 8-1567a and K.S.A. 2012 Supp. 8-1001 and 8-1020
19 are hereby repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.