

SENATE BILL No. 131

By Committee on Judiciary

1-25

AN ACT concerning the operation of a motor vehicle while under the influence of alcohol or drugs; criminal activity, punishment; amending K.S.A. 2000 Supp. 8-1012 and 8-1567a and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 8-1012 is hereby amended to read as follows: 8-1012. A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath to determine the alcohol concentration of the person's breath if the officer has reasonable grounds to believe that the person: (a) Has alcohol in the person's body; (b) has committed a traffic infraction; or (c) has been involved in a vehicle accident or collision. At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a ~~traffic infraction~~ class C misdemeanor; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test. Refusal to take and complete the test as requested is a ~~traffic infraction~~ class C misdemeanor. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

Sec. 2. K.S.A. 2000 Supp. 8-1567a is hereby amended to read as follows: 8-1567a. (a) It shall be unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath

1 ~~or~~, blood or urine alcohol content of .02 or greater.

2 (b) *If a person less than 21 years of age submits to a breath, blood or*
3 *urine alcohol test requested pursuant to K.S.A. 8-1001 or 8-2,142, and*
4 *amendments thereto, and produces a test result of .02 or greater, but less*
5 *than .08, the person is guilty of a traffic infraction.*

6 (c) Whenever a law enforcement officer determines that a breath or
7 blood alcohol test is to be required of a person less than 21 years of age
8 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and amendments thereto, in
9 addition to any other notices required by law, the law enforcement officer
10 shall provide written and oral notice that: (1) It is unlawful for any person
11 less than 21 years of age to operate or attempt to operate a vehicle in this
12 state with a breath ~~or~~, blood or urine alcohol content of .02 or greater;
13 and (2) if the person is less than 21 years of age at the time of the test
14 request and submits to and completes the test or tests and the test results
15 show an alcohol concentration of .02 or greater, ~~the such person shall be~~
16 *guilty of a traffic infraction, subject to a fine in the amount of \$200 and*
17 *such person's driving privileges will be suspended for one year.*

18 ~~(c)~~ (d) Any suspension and restriction of driving privileges pursuant
19 to this section shall be in addition to any disqualification from driving a
20 commercial motor vehicle pursuant to K.S.A. 8-2,142 and amendments
21 thereto.

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

28 (1) (A) There existed reasonable grounds to believe ~~the person was~~
29 ~~operating a vehicle while under the influence of alcohol or drugs, or both,~~
30 ~~or to believe that the person had been driving operating or attempting to~~
31 ~~operate a commercial motor vehicle, as defined in K.S.A. 8-2,128 and~~
32 ~~amendments thereto,~~ while having alcohol or other drugs in such person's
33 system; (B) the person had been placed under arrest, was in custody or
34 had been involved in a vehicle accident or collision; (C) a law enforcement
35 officer had presented the person with the oral and written notice required
36 by K.S.A. 8-1001 and amendments thereto, and the oral and written no-
37 tice required by this section; (D) that the person was less than 21 years
38 of age at the time of the test request; and (E) the result of the test showed
39 that the person had an alcohol concentration of .02 or greater in such
40 person's blood or breath.

41 (2) With regard to a breath test, in addition to those matters required
42 to be certified under subsection ~~(d)(1)~~ (e)(1), that: (A) The testing equip-
43 ment used was certified by the Kansas department of health and envi-

1 ronment; (B) the testing procedures used were in accordance with the
2 requirements set out by the Kansas department of health and environ-
3 ment; and (C) the person who operated the testing equipment was cer-
4 tified by the Kansas department of health and environment to operate
5 such equipment.

6 ~~(e)~~ (f) If a hearing is requested as a result of a law enforcement of-
7 ficer's certification under this section, the scope of the hearing shall be
8 limited to whether: (1) A law enforcement officer had reasonable grounds
9 to believe the person was operating *or attempting to operate* a vehicle
10 while ~~under the influence of alcohol or drugs, or both, or to believe that~~
11 ~~the person had been driving a commercial motor vehicle, as defined in~~
12 ~~K.S.A. 8-2,128 and amendments thereto, while~~ having alcohol or other
13 drugs in such person's system; (2) the person was in custody or arrested
14 for an alcohol or drug related offense or was involved in a motor vehicle
15 accident or collision resulting in property damage, personal injury or
16 death; (3) a law enforcement officer had presented the person with the
17 oral and written notice required by K.S.A. 8-1001 and amendments
18 thereto, and the oral and written notice required by this section; (4) the
19 testing equipment used was ~~reliable~~ *certified by the department of health*
20 *and environment*; (5) the person who operated the testing equipment was
21 qualified; (6) the testing procedures used were ~~reliable~~ *in accordance with*
22 *the requirements set out by the department of health and environment*;
23 (7) the test result determined that the person had an alcohol concentra-
24 tion of .02 or greater in such person's blood or breath; (8) the person was
25 operating a vehicle; and (9) the person was less than 21 years of age at
26 the time a test was requested.

27 ~~(f)~~ (g) If a person less than 21 years of age submits to a breath or
28 blood alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142
29 and amendments thereto, and produces a test result of .02 or greater, but
30 less than .08, the person's driving privileges shall be suspended for one
31 year.

32 ~~(g)~~ (h) Except where there is a conflict between this section and
33 K.S.A. 8-1001 and 8-1002 and amendments thereto, the provisions of
34 K.S.A. 8-1001 and 8-1002 and amendments thereto, shall be applicable
35 to proceedings under this section.

36 ~~(h)~~ (i) Any determination under this section that a person less than
37 21 years of age had a test result of .02 or greater, but less than .08, and
38 any resulting administrative action upon the person's driving privileges,
39 upon the first occurrence of such test result and administrative action,
40 shall not be considered by any insurance company in determining the rate
41 charged for any automobile liability insurance policy or whether to cancel
42 any such policy under the provisions of subsection (4)(a) of K.S.A. 40-277
43 and amendments thereto.

1 Sec. 3. K.S.A. 2000 Supp. 8-1012 and 8-1567a are hereby repealed.

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

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