

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2006

## SENATE BILL No. 479

By Committee on Judiciary

1-31

12 AN ACT concerning ~~crimes, criminal procedure and punishment, relat-~~  
13 ~~ing to~~ alcohol and drugs; **[relating to]** preliminary screening tests;  
14 amending **[K.S.A. 65-1,107 and]** K.S.A. 2005 Supp. 8-1001 ~~and,~~ 8-  
15 1012 **[and 41-727]** and repealing the existing sections.  
16

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

18 Section 1. K.S.A. 2005 Supp. 8-1001 is hereby amended to read as  
19 follows: 8-1001. (a) Any person who operates or attempts to operate a  
20 vehicle within this state is deemed to have given consent, subject to the  
21 provisions of this act, to submit to one or more tests, ~~including, but not~~  
22 ~~limited to, a preliminary screening test pursuant to K.S.A. 8-1012, and~~  
23 ~~amendments thereto,~~ of the person's blood, breath, urine or other bodily  
24 substance to determine the presence of alcohol or drugs. The testing  
25 deemed consented to herein shall include all quantitative and qualitative  
26 tests for alcohol and drugs. A person who is dead or unconscious shall be  
27 deemed not to have withdrawn the person's consent to such test or tests,  
28 which shall be administered in the manner provided by this section.

29 (b) A law enforcement officer shall request a person to submit to a  
30 test or tests deemed consented to under subsection (a) if the officer has  
31 reasonable grounds to believe the person was operating or attempting to  
32 operate a vehicle while under the influence of alcohol or drugs, or both,  
33 or to believe that the person was driving a commercial motor vehicle, as  
34 defined in K.S.A. 8-2,128, and amendments thereto, **while having al-**  
35 **cohol or other drugs in such person's system,** or was under the age  
36 of 21 years while having alcohol or other drugs in such person's system;  
37 and one of the following conditions exists: (1) The person has been ar-  
38 rested or otherwise taken into custody for any offense involving operation  
39 or attempted operation of a vehicle while under the influence of alcohol  
40 or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments  
41 thereto, or involving driving a commercial motor vehicle, as defined in  
42 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
43 drugs in such person's system, in violation of a state statute or a city

1 ordinance; or (2) the person has been involved in a vehicle accident or  
2 collision resulting in property damage, personal injury or death. The law  
3 enforcement officer directing administration of the test or tests may act  
4 on personal knowledge or on the basis of the collective information avail-  
5 able to law enforcement officers involved in the accident investigation or  
6 arrest.

7 (c) If a law enforcement officer requests a person to submit to a test  
8 of blood under this section, the withdrawal of blood at the direction of  
9 the officer may be performed only by: (1) A person licensed to practice  
10 medicine and surgery or a person acting under the supervision of any  
11 such licensed person; (2) a registered nurse or a licensed practical nurse;  
12 or (3) any qualified medical technician, including, but not limited to, an  
13 emergency medical technician-intermediate or mobile intensive care  
14 technician, as those terms are defined in K.S.A. 65-6112, and amend-  
15 ments thereto, or a phlebotomist. When presented with a written state-  
16 ment by a law enforcement officer directing blood to be withdrawn from  
17 a person who has tentatively agreed to allow the withdrawal of blood  
18 under this section, the person authorized herein to withdraw blood and  
19 the medical care facility where blood is withdrawn may rely on such a  
20 statement as evidence that the person has consented to the medical pro-  
21 cedure used and shall not require the person to sign any additional con-  
22 sent or waiver form. In such a case, the person authorized to withdraw  
23 blood and the medical care facility shall not be liable in any action alleging  
24 lack of consent or lack of informed consent. No person authorized by this  
25 subsection to withdraw blood, nor any person assisting in the performance  
26 of a blood test nor any medical care facility where blood is withdrawn or  
27 tested that has been directed by any law enforcement officer to withdraw  
28 or test blood, shall be liable in any civil or criminal action when the act  
29 is performed in a reasonable manner according to generally accepted  
30 medical practices in the community where performed.

31 (d) If there are reasonable grounds to believe that there is impair-  
32 ment by a drug which is not subject to detection by the blood or breath  
33 test used, a urine test may be required. If a law enforcement officer  
34 requests a person to submit to a test of urine under this section, the  
35 collection of the urine sample shall be supervised by persons of the same  
36 sex as the person being tested and shall be conducted out of the view of  
37 any person other than the persons supervising the collection of the sample  
38 and the person being tested, unless the right to privacy is waived by the  
39 person being tested. The results of qualitative testing for drug presence  
40 shall be admissible in evidence and questions of accuracy or reliability  
41 shall go to the weight rather than the admissibility of the evidence.

42 (e) No law enforcement officer who is acting in accordance with this  
43 section shall be liable in any civil or criminal proceeding involving the

1 action.

2 (f) Before a test or tests are administered under this section, the  
3 person shall be given oral and written notice that: (A) Kansas law requires  
4 the person to submit to and complete one or more tests of breath, blood  
5 or urine to determine if the person is under the influence of alcohol or  
6 drugs, or both;

7 (B) the opportunity to consent to or refuse a test is not a constitu-  
8 tional right;

9 (C) there is no constitutional right to consult with an attorney re-  
10 garding whether to submit to testing;

11 (D) if the person refuses to submit to and complete any test of breath,  
12 blood or urine hereafter requested by a law enforcement officer, the  
13 person's driving privileges will be suspended for one year for the first  
14 occurrence, two years for the second occurrence, three years for the third  
15 occurrence, 10 years for the fourth occurrence and permanently revoked  
16 for a fifth or subsequent offense;

17 (E) if the person submits to and completes the test or tests and the  
18 test results show an alcohol concentration of .08 or greater, the person's  
19 driving privileges will be suspended for 30 days for the first occurrence,  
20 one year for the second, third or fourth occurrence and permanently  
21 revoked for a fifth or subsequent offense;

22 (F) if the person is less than 21 years of age at the time of the test  
23 request and submits to and completes the tests and the test results show  
24 an alcohol concentration of .08 or greater, the person's driving privileges  
25 will be suspended up to one year;

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

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

32 (I) after the completion of the testing, the person has the right to  
33 consult with an attorney and may secure additional testing, which, if de-  
34 sired, should be done as soon as possible and is customarily available from  
35 medical care facilities and physicians.

36 (g) If a law enforcement officer has reasonable grounds to believe  
37 that the person has been driving a commercial motor vehicle, as defined  
38 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
39 drugs in such person's system, the person shall also be provided the oral  
40 and written notice pursuant to K.S.A. 8-2,145 and amendments thereto.  
41 Any failure to give the notices required by K.S.A. 8-2,145 and amend-  
42 ments thereto shall not invalidate any action taken as a result of the  
43 requirements of this section. If a law enforcement officer has reasonable

1 grounds to believe that the person has been driving or attempting to drive  
2 a vehicle while having alcohol or other drugs in such person's system and  
3 such person was under 21 years of age, the person also shall be given the  
4 notices required by K.S.A. 8-1567a, and amendments thereto. Any failure  
5 to give the notices required by K.S.A. 8-1567a, and amendments thereto,  
6 shall not invalidate any action taken as a result of the requirements of  
7 this section.

8 (h) After giving the foregoing information, a law enforcement officer  
9 shall request the person to submit to testing. The selection of the test or  
10 tests shall be made by the officer. If the person refuses to submit to and  
11 complete a test as requested pursuant to this section, additional testing  
12 shall not be given unless the certifying officer has probable cause to be-  
13 lieve that the person, while under the influence of alcohol or drugs, or  
14 both, has operated a vehicle in such a manner as to have caused the death  
15 of or serious injury to another person. If the test results show a blood or  
16 breath alcohol concentration of .08 or greater, the person's driving priv-  
17 ileges shall be subject to suspension, or suspension and restriction, as  
18 provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

19 (i) The person's refusal shall be admissible in evidence against the  
20 person at any trial on a charge arising out of the alleged operation or  
21 attempted operation of a vehicle while under the influence of alcohol or  
22 drugs, or both.

23 (j) If a law enforcement officer had reasonable grounds to believe the  
24 person had been driving a commercial motor vehicle, as defined in K.S.A.  
25 8-2,128, and amendments thereto, and the test results show a blood or  
26 breath alcohol concentration of .04 or greater, the person shall be dis-  
27 qualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-  
28 2,142, and amendments thereto. If a law enforcement officer had rea-  
29 sonable grounds to believe the person had been driving a commercial  
30 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,  
31 and the test results show a blood or breath alcohol concentration of .08  
32 or greater, or the person refuses a test, the person's driving privileges  
33 shall be subject to suspension, or suspension and restriction, pursuant to  
34 this section, in addition to being disqualified from driving a commercial  
35 motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

36 (k) An officer shall have probable cause to believe that the person  
37 operated a vehicle while under the influence of alcohol or drugs, or both,  
38 if the vehicle was operated by such person in such a manner as to have  
39 caused the death of or serious injury to another person. In such event,  
40 such test or tests may be made pursuant to a search warrant issued under  
41 the authority of K.S.A. 22-2502, and amendments thereto, or without a  
42 search warrant under the authority of K.S.A. 22-2501, and amendments  
43 thereto.

- 1 (l) Failure of a person to provide an adequate breath sample or sam-  
2 ples as directed shall constitute a refusal unless the person shows that the  
3 failure was due to physical inability caused by a medical condition unre-  
4 lated to any ingested alcohol or drugs.
- 5 (m) It shall not be a defense that the person did not understand the  
6 written or oral notice required by this section.
- 7 (n) No test results shall be suppressed because of technical irregu-  
8 larities in the consent or notice required pursuant to this act.
- 9 (o) Nothing in this section shall be construed to limit the admissibility  
10 at any trial of alcohol or drug concentration testing results obtained pur-  
11 suant to a search warrant.
- 12 (p) Upon the request of any person submitting to testing under this  
13 section, a report of the results of the testing shall be made available to  
14 such person.
- 15 (q) This act is remedial law and shall be liberally construed to pro-  
16 mote public health, safety and welfare.
- 17 Sec. 2. K.S.A. 2005 Supp. 8-1012 is hereby amended to read as fol-  
18 lows: 8-1012. *(a) Any person who operates or attempts to operate a vehicle*  
19 *within this state is deemed to have given consent to submit to a prelimi-*  
20 *nary screening test of the person's breath subject to the provisions set out*  
21 *in subsection (b).*
- 22 (b) A law enforcement officer may request a person who is operating  
23 or attempting to operate a vehicle within this state to submit to a prelim-  
24 inary screening test of the person's breath to determine the alcohol con-  
25 centration of the person's breath if the officer has reasonable grounds to  
26 believe that the person: ~~(a) Has alcohol in the person's body, (b) has~~  
27 ~~committed a traffic infraction, or (c) has been involved in a vehicle acci-~~  
28 ~~dent or collision.~~ *suspicion to believe the person has been operating or*  
29 *attempting to operate a vehicle while under the influence of alcohol or*  
30 *drugs or both alcohol and drugs.*
- 31 (c) At the time the test is requested, the person ~~shall~~ *may* **shall** be  
32 given oral notice that: (1) There is no right to consult with an attorney  
33 regarding whether to submit to testing; (2) refusal to submit to testing is  
34 a traffic infraction; and (3) further testing may be required after the pre-  
35 liminary screening test. Failure to provide the notice shall not be an issue  
36 or defense in any action. The law enforcement officer then shall request  
37 the person to submit to the test.
- 38 (d) Refusal to take and complete the test as requested is a traffic  
39 infraction. If the person submits to the test, the results shall be used for  
40 the purpose of assisting law enforcement officers in determining whether  
41 an arrest should be made and whether to request the tests authorized by  
42 K.S.A. 8-1001 and amendments thereto. A law enforcement officer may  
43 arrest a person based in whole or in part upon the results of a preliminary

1 screening test. Such results shall not be admissible in any civil or criminal  
2 action concerning the operation of or attempted operation of a vehicle  
3 except to aid the court or hearing officer in determining a challenge to  
4 the validity of the arrest or the validity of the request to submit to a test  
5 pursuant to K.S.A. 8-1001 and amendments thereto. Following the pre-  
6 liminary screening test, additional tests may be requested pursuant to  
7 K.S.A. 8-1001 and amendments thereto.

8 **[Sec. 3. K.S.A. 2005 Supp. 41-727 is hereby amended to read**  
9 **as follows: 41-727. (a) Except with regard to serving of alcoholic**  
10 **liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-**  
11 **308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and**  
12 **amendments thereto, and subject to any rules and regulations**  
13 **adopted pursuant to such statutes, no person under 21 years of age**  
14 **shall possess, consume, obtain, purchase or attempt to obtain or**  
15 **purchase alcoholic liquor or cereal malt beverage except as au-**  
16 **thorized by law.**

17 **[(b) Violation of this section by a person 18 or more years of**  
18 **age but less than 21 years of age is a class C misdemeanor for which**  
19 **the minimum fine is \$200.**

20 **[(c) Any person less than 18 years of age who violates this sec-**  
21 **tion is a juvenile offender under the Kansas juvenile justice code.**  
22 **Upon adjudication thereof and as a condition of disposition, the**  
23 **court shall require the offender to pay a fine of not less than \$200**  
24 **nor more than \$500.**

25 **[(d) In addition to any other penalty provided for a violation**  
26 **of this section: (1) The court may order the offender to do either**  
27 **or both of the following:**

28 **[(A) Perform 40 hours of public service; or**

29 **[(B) attend and satisfactorily complete a suitable educational**  
30 **or training program dealing with the effects of alcohol or other**  
31 **chemical substances when ingested by humans; and**

32 **[(2) upon a first conviction of a violation of this section, the**  
33 **court shall order the division of vehicles to suspend the driving**  
34 **privilege of such offender for 30 days. Upon receipt of the court**  
35 **order, the division shall notify the violator and suspend the driving**  
36 **privileges of the violator for 30 days whether or not that person**  
37 **has a driver's license.**

38 **[(3) Upon a second conviction of a violation of this section, the**  
39 **court shall order the division of vehicles to suspend the driving**  
40 **privilege of such offender for 90 days. Upon receipt of the court**  
41 **order, the division shall notify the violator and suspend the driving**  
42 **privileges of the violator for 90 days whether or not that person**  
43 **has a driver's license.**

1     **[(4) Upon a third or subsequent conviction of a violation of this**  
2 **section, the court shall order the division of vehicles to suspend**  
3 **the driving privilege of such offender for one year. Upon receipt**  
4 **of the court order, the division shall notify the violator and suspend**  
5 **the driving privileges of the violator for one year whether or not**  
6 **that person has a driver's license.**

7     **[(e) This section shall not apply to the possession and con-**  
8 **sumption of cereal malt beverage by a person under the legal age**  
9 **for consumption of cereal malt beverage when such possession and**  
10 **consumption is permitted and supervised, and such beverage is**  
11 **furnished, by the person's parent or legal guardian.**

12     **[(f) Any city ordinance or county resolution prohibiting the acts**  
13 **prohibited by this section shall provide a minimum penalty which**  
14 **is not less than the minimum penalty prescribed by this section.**

15     **[(g) A law enforcement officer may request a person under 21 years**  
16 **of age to submit to a preliminary screening test of the person's breath to**  
17 **determine if alcohol has been consumed by such person if the officer has**  
18 **reasonable grounds to believe that the person has alcohol in the person's**  
19 **body. No waiting period shall apply to the use of a preliminary breath**  
20 **test under this subsection. If the person submits to the test, the results**  
21 **shall be used for the purpose of assisting law enforcement officers in de-**  
22 **termining whether an arrest should be made for violation of this section.**  
23 **A law enforcement officer may arrest a person based in whole or in part**  
24 **upon the results of a preliminary screening test. Such results or a refusal**  
25 **to submit to a preliminary breath test shall be admissible in court in any**  
26 **criminal action, but are not per se proof that the person has violated this**  
27 **section. The person may present to the court evidence to establish the**  
28 **positive preliminary screening test was not the result of a violation of this**  
29 **section.**

30     **[(h) This section shall be part of and supplemental to the Kan-**  
31 **sas liquor control act.**

32     **[Sec. 4. K.S.A. 65-1,107 is hereby amended to read as follows:**  
33 **65-1,107. The secretary of health and environment may adopt**  
34 **rules and regulations establishing:**

35     **[(a) The procedures, testing protocols and qualifications of au-**  
36 **thorized personnel, instruments and methods used in laboratories**  
37 **performing tests for the presence of controlled substances in-**  
38 **cluded in schedule I or II of the uniform controlled substances act**  
39 **or metabolites thereof;**

40     **[(b) the procedures, testing protocols, qualifications of person-**  
41 **nel and standards of performance in the testing of human breath**  
42 **for law enforcement purposes, including procedures for the peri-**  
43 **odic inspection of apparatus, equipment and devices, other than**

1 preliminary screening devices, approved by the secretary of health  
2 and environment for the testing of human breath for law enforce-  
3 ment purposes;

4 [(c) the requirements for the training, certification and peri-  
5 odic testing of persons who operate apparatus, equipment or de-  
6 vices, other than preliminary screening devices, for the testing of  
7 human breath for law enforcement purposes;

8 [(d) criteria for preliminary screening devices for testing of  
9 breath for law enforcement purposes, based on health and per-  
10 formance considerations; and

11 [(e) a list of preliminary screening devices which are approved  
12 for testing of breath for law enforcement purposes and which law  
13 enforcement agencies may purchase and train officers to use as  
14 aids in determining: (1) Probable cause to arrest and grounds for  
15 requiring testing pursuant to K.S.A. 8-1001, and amendments  
16 thereto; and (2) violations of K.S.A. 41-727, and amendments thereto.]

17 Sec. ~~5~~ [5.] [K.S.A. 65-1,107 and] K.S.A. 2005 Supp. 8-1001 ~~and~~ [,]  
18 8-1012 [and 41-727] are hereby repealed.

19 Sec. ~~4~~ [6.] This act shall take effect and be in force from and after  
20 its publication in the Kansas register.