

HOUSE BILL No. 2012

By Special Committee on Judiciary

12-5

9 AN ACT relating to driving under influence of alcohol or drugs; con-
10 cerning excessive blood or breath alcohol concentration; providing
11 penalties; amending K.S.A. 8-1005 and 8-1020 and K.S.A. 2006 Supp.
12 8-1001, 8-1014, 8-1567 and 21-4502 and repealing the existing
13 sections.

14

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

16 Section 1. K.S.A. 2006 Supp. 8-1001 is hereby amended to read as
17 follows: 8-1001. (a) Any person who operates or attempts to operate a
18 vehicle within this state is deemed to have given consent, subject to the
19 provisions of this act, to submit to one or more tests of the person's blood,
20 breath, urine or other bodily substance to determine the presence of
21 alcohol or drugs. The testing deemed consented to herein shall include
22 all quantitative and qualitative tests for alcohol and drugs. A person who
23 is dead or unconscious shall be deemed not to have withdrawn the per-
24 son's consent to such test or tests, which shall be administered in the
25 manner provided by this section.

26 (b) A law enforcement officer shall request a person to submit to a
27 test or tests deemed consented to under subsection (a) if the officer has
28 reasonable grounds to believe the person was operating or attempting to
29 operate a vehicle while under the influence of alcohol or drugs, or both,
30 or to believe that the person was driving a commercial motor vehicle, as
31 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
32 or other drugs in such person's system, or was under the age of 21 years
33 while having alcohol or other drugs in such person's system; and one of
34 the following conditions exists: (1) The person has been arrested or oth-
35 erwise taken into custody for any offense involving operation or attempted
36 operation of a vehicle while under the influence of alcohol or drugs, or
37 both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or
38 involving driving a commercial motor vehicle, as defined in K.S.A. 8-
39 2,128, and amendments thereto, while having alcohol or other drugs in
40 such person's system, in violation of a state statute or a city ordinance; or
41 (2) the person has been involved in a vehicle accident or collision resulting
42 in property damage, personal injury or death. The law enforcement of-
43 ficer directing administration of the test or tests may act on personal

1 knowledge or on the basis of the collective information available to law
2 enforcement officers involved in the accident investigation or arrest.

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

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

38 (e) No law enforcement officer who is acting in accordance with this
39 section shall be liable in any civil or criminal proceeding involving the
40 action.

41 (f) Before a test or tests are administered under this section, the
42 person shall be given oral and written notice that: ~~(A)~~ (1) Kansas law
43 requires the person to submit to and complete one or more tests of

1 breath, blood or urine to determine if the person is under the influence
2 of alcohol or drugs, or both;

3 ~~(B)~~ (2) the opportunity to consent to or refuse a test is not a consti-
4 tutional right;

5 ~~(C)~~ (3) there is no constitutional right to consult with an attorney
6 regarding whether to submit to testing;

7 ~~(D)~~ (4) if the person refuses to submit to and complete any test of
8 breath, blood or urine hereafter requested by a law enforcement officer,
9 the person's driving privileges will be suspended for one year for the first
10 occurrence, two years for the second occurrence, three years for the third
11 occurrence, 10 years for the fourth occurrence and permanently revoked
12 for a fifth or subsequent ~~offense~~ occurrence;

13 ~~(E)~~ (5) if the person submits to and completes the test or tests and
14 the test results show *for the first occurrence*:

15 (A) An alcohol concentration of .08 or greater, the person's driving
16 privileges will be suspended for 30 days for the first occurrence, ~~not less~~
17 ~~than one year for the second, third or fourth occurrence and permanently~~
18 ~~revoked for a fifth or subsequent offense; or~~

19 (B) *an alcohol concentration of .15 or greater, the person's driving*
20 *privileges will be suspended for one year;*

21 (6) *if the person submits to and completes the test or tests and the*
22 *test results show an alcohol concentration of .08 or greater, the person's*
23 *driving privileges will be suspended for one year for the second, third or*
24 *fourth occurrence and permanently revoked for a fifth or subsequent oc-*
25 *urrence;*

26 ~~(F)~~ (7) if the person is less than 21 years of age at the time of the test
27 request and submits to and completes the tests and the test results show
28 an alcohol concentration of .08 or greater, the person's driving privileges
29 will be suspended ~~up to~~ for one year *except the person's driving privileges*
30 *will be permanently revoked for a fifth or subsequent occurrence;*

31 ~~(G)~~ (8) refusal to submit to testing may be used against the person
32 at any trial on a charge arising out of the operation or attempted operation
33 of a vehicle while under the influence of alcohol or drugs, or both;

34 ~~(H)~~ (9) the results of the testing may be used against the person at
35 any trial on a charge arising out of the operation or attempted operation
36 of a vehicle while under the influence of alcohol or drugs, or both; and

37 ~~(I)~~ (10) after the completion of the testing, the person has the right
38 to consult with an attorney and may secure additional testing, which, if
39 desired, should be done as soon as possible and is customarily available
40 from medical care facilities and physicians.

41 (g) If a law enforcement officer has reasonable grounds to believe
42 that the person has been driving a commercial motor vehicle, as defined
43 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other

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

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

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

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

41 (k) An officer shall have probable cause to believe that the person
42 operated a vehicle while under the influence of alcohol or drugs, or both,
43 if the vehicle was operated by such person in such a manner as to have

1 caused the death of or serious injury to another person. In such event,
2 such test or tests may be made pursuant to a search warrant issued under
3 the authority of K.S.A. 22-2502, and amendments thereto, or without a
4 search warrant under the authority of K.S.A. 22-2501, and amendments
5 thereto.

6 (l) Failure of a person to provide an adequate breath sample or sam-
7 ples as directed shall constitute a refusal unless the person shows that the
8 failure was due to physical inability caused by a medical condition unre-
9 lated to any ingested alcohol or drugs.

10 (m) It shall not be a defense that the person did not understand the
11 written or oral notice required by this section.

12 (n) No test results shall be suppressed because of technical irregu-
13 larities in the consent or notice required pursuant to this act.

14 (o) Nothing in this section shall be construed to limit the admissibility
15 at any trial of alcohol or drug concentration testing results obtained pur-
16 suant to a search warrant.

17 (p) Upon the request of any person submitting to testing under this
18 section, a report of the results of the testing shall be made available to
19 such person.

20 (q) This act is remedial law and shall be liberally construed to pro-
21 mote public health, safety and welfare.

22 Sec. 2. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005.
23 Except as provided by K.S.A. 8-1012 and amendments thereto, in any
24 criminal prosecution for violation of the laws of this state relating to op-
25 erating or attempting to operate a vehicle while under the influence of
26 alcohol or drugs, or both, or the commission of vehicular homicide or
27 manslaughter while under the influence of alcohol or drugs, or both, or
28 in any prosecution for a violation of a city ordinance relating to the op-
29 eration or attempted operation of a vehicle while under the influence of
30 alcohol or drugs, or both, evidence:

31 (a) Of the concentration of alcohol or drugs in the defendant's blood,
32 urine, breath or other bodily substance may be admitted and shall give
33 rise to the following:

34 ~~(a)~~ (1) If the alcohol concentration is less than .08, that fact may be
35 considered with other competent evidence to determine if the defendant
36 was under the influence of alcohol, or both alcohol and drugs.

37 ~~(b)~~ (2) If the alcohol concentration is .08 or more, it shall be prima
38 facie evidence that the defendant was under the influence of alcohol to
39 a degree that renders the person incapable of driving safely.

40 ~~(c)~~ (3) If there was present in the defendant's bodily substance any
41 narcotic, hypnotic, somnifacient, stimulating or other drug which has the
42 capacity to render the defendant incapable of safely driving a vehicle, that
43 fact may be considered to determine if the defendant was under the

1 influence of drugs, or both alcohol and drugs, to a degree that renders
2 the defendant incapable of driving safely.

3 *(b) Obtained by and testimony regarding a drug impairment assess-*
4 *ment conducted by a law enforcement officer certified as a drug recog-*
5 *niton evaluator by the international association of chiefs of police shall*
6 *be admissible. The defendant is accorded a fair opportunity to rebut the*
7 *accuracy or reliability of such evidence.*

8 Sec. 3. K.S.A. 2006 Supp. 8-1014 is hereby amended to read as fol-
9 lows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142,
10 and amendments thereto, if a person refuses a test, the division, pursuant
11 to K.S.A. 8-1002, and amendments thereto, shall:

12 (1) On the person's first occurrence, suspend the person's driving
13 privileges for one year *and at the end of the suspension, restrict the per-*
14 *son's driving privileges for one year to driving only a motor vehicle*
15 *equipped with an ignition interlock device;*

16 (2) on the person's second occurrence, suspend the person's driving
17 privileges for two years;

18 (3) on the person's third occurrence, suspend the person's driving
19 privileges for three years;

20 (4) on the person's fourth occurrence, suspend the person's driving
21 privileges for 10 years; and

22 (5) on the person's fifth or subsequent occurrence, revoke the per-
23 son's driving privileges permanently.

24 (b) *(1)* Except as provided by subsections (c) and (e) and K.S.A. 8-
25 2,142, and amendments thereto, if a person fails a test or has an alcohol
26 or drug-related conviction in this state, the division shall:

27 ~~(1)~~ (A) On the person's first occurrence, suspend the person's driving
28 privileges for 30 days, then restrict the person's driving privileges as pro-
29 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
30 days;

31 ~~(2)~~ (B) on the person's second, third or fourth occurrence, suspend
32 the person's driving privileges for one year and at the end of the suspen-
33 sion ~~for an alcohol-related conviction~~, restrict the person's driving privi-
34 leges for one year to driving only a motor vehicle equipped with an ig-
35 nition interlock device. ~~Proof of the installation of such device, for the~~
36 ~~full year of the restricted period, shall be provided to the division before~~
37 ~~the person's driving privileges are fully reinstated; and~~

38 ~~(3)~~ (C) on the person's fifth or subsequent occurrence, the person's
39 driving privileges shall be permanently revoked.

40 (2) *Except as provided by subsection (e) and K.S.A. 8-2,142, and*
41 *amendments thereto, if a person fails a test or has an alcohol or drug-*
42 *related conviction in this state and the person's blood or breath alcohol*
43 *concentration is .15 or greater, the division shall:*

- 1 (A) *On the person's first occurrence, suspend the person's driving*
2 *privileges for one year and at the end of the suspension, restrict the per-*
3 *son's driving privileges for one year to driving only a motor vehicle*
4 *equipped with an ignition interlock device;*
- 5 (B) *on the person's second occurrence, suspend the person's driving*
6 *privileges for one year and at the end of the suspension, restrict the per-*
7 *son's driving privileges for two years to driving only a motor vehicle*
8 *equipped with an ignition interlock device;*
- 9 (C) *on the person's third occurrence, suspend the person's driving*
10 *privileges for one year and at the end of the suspension restrict the per-*
11 *son's driving privileges for three years to driving only a motor vehicle*
12 *equipped with an ignition interlock device;*
- 13 (D) *on the person's fourth occurrence, suspend the person's driving*
14 *privileges for one year and at the end of the suspension, restrict the per-*
15 *son's driving privileges for four years to driving only a motor vehicle*
16 *equipped with an ignition interlock device; and*
- 17 (E) *on the person's fifth or subsequent occurrence, the person's driv-*
18 *ing privileges shall be permanently revoked.*
- 19 (3) *Whenever a person's driving privileges have been restricted to*
20 *driving only a motor vehicle equipped with an ignition interlock device,*
21 *proof of the installation of such device, for the entire restriction period,*
22 *shall be provided to the division before the person's driving privileges are*
23 *fully reinstated.*
- 24 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
25 amendments thereto, if a person who is less than 21 years of age fails a
26 test or has an alcohol or drug-related conviction in this state, the division
27 shall:
- 28 (1) *On the person's first occurrence, suspend the person's driving*
29 *privileges for one year. If the person's blood or breath alcohol concentra-*
30 *tion is .15 or greater, the division shall at the end of the suspension,*
31 *restrict, the person's driving privileges for one year to driving only a*
32 *motor vehicle equipped with an ignition interlock device;*
- 33 (2) *on the person's second and subsequent occurrences, penalties shall*
34 *be imposed pursuant to subsection (b).*
- 35 (d) Whenever the division is notified by an alcohol and drug safety
36 action program that a person has failed to complete any alcohol and drug
37 safety action education or treatment program ordered by a court for a
38 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
39 division shall suspend the person's driving privileges until the division
40 receives notice of the person's completion of such program.
- 41 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
42 if a person's driving privileges are subject to suspension pursuant to this
43 section for a test refusal, test failure or alcohol or drug-related conviction

1 arising from the same arrest, the period of such suspension shall not
2 exceed the longest applicable period authorized by subsection (a), (b) or
3 (c), and such suspension periods shall not be added together or otherwise
4 imposed consecutively. In addition, in determining the period of such
5 suspension as authorized by subsection (a), (b) or (c), such person shall
6 receive credit for any period of time for which such person's driving
7 privileges were suspended while awaiting any hearing or final order au-
8 thorized by this act.

9 If a person's driving privileges are subject to restriction pursuant to
10 this section for a test failure or alcohol or drug-related conviction arising
11 from the same arrest, the restriction periods shall not be added together
12 or otherwise imposed consecutively. In addition, in determining the pe-
13 riod of restriction, the person shall receive credit for any period of sus-
14 pension imposed for a test refusal arising from the same arrest.

15 (f) If the division has taken action under subsection (a) for a test
16 refusal or under subsection (b) or (c) for a test failure and such action is
17 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
18 rary driving privileges are issued pursuant to K.S.A. 8-1020, and amend-
19 ments thereto, the stay or temporary driving privileges shall not prevent
20 the division from taking the action required by subsection (b) or (c) for
21 an alcohol or drug-related conviction.

22 (g) Upon restricting a person's driving privileges pursuant to this sec-
23 tion, the division shall issue a copy of the order imposing the restrictions
24 which is required to be carried by the person at any time the person is
25 operating a motor vehicle on the highways of this state.

26 (h) Any person whose license is restricted to operating only a motor
27 vehicle with an ignition interlock device installed may operate an em-
28 ployer's vehicle without an ignition interlock device installed during nor-
29 mal business activities, provided that the person does not partly or entirely
30 own or control the employer's vehicle or business.

31 Sec. 4. K.S.A. 8-1020 is hereby amended to read as follows: 8-1020.

32 (a) Any licensee served with an officer's certification and notice of sus-
33 pension pursuant to K.S.A. 8-1002, and amendments thereto, may re-
34 quest an administrative hearing. Such request may be made either by:

35 (1) Mailing a written request which is postmarked 10 calendar days
36 after service of notice, if such notice was given by personal service;

37 (2) mailing a written request which is postmarked 13 calendar days
38 after service of notice, if such notice was given by mail;

39 (3) transmitting a written request by electronic facsimile which is re-
40 ceived by the division within 10 calendar days after service of notice, if
41 such notice was given by personal service; or

42 (4) transmitting a written request by electronic facsimile which is re-
43 ceived by the division within 13 calendar days after service, if such notice

1 was given by mail.

2 (b) If the licensee makes a timely request for an administrative hear-
3 ing, any temporary license issued pursuant to K.S.A. 8-1002, and amend-
4 ments thereto, shall remain in effect until the 30th calendar day after the
5 effective date of the decision made by the division.

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

10 (d) Upon receipt of a timely request for a hearing, the division shall
11 forthwith set the matter for hearing before a representative of the director
12 and provide notice of the extension of temporary driving privileges. *At*
13 *the discretion of the division, or upon request of the licensee, the hearing*
14 *may be held by telephone conference call.* Except for a hearing conducted
15 by telephone ~~or video~~ conference call, the hearing shall be conducted in
16 the county where the arrest occurred or a county adjacent thereto. ~~If the~~
17 ~~licensee requests, the hearing may be conducted by telephone or video~~
18 ~~conference call.~~

19 (e) Except as provided in subsection (f), prehearing discovery shall
20 be limited to the following documents, which shall be provided to the
21 licensee or the licensee's attorney no later than five calendar days prior
22 to the date of hearing:

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

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

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

29 (4) in the case of a breath test failure, a copy of the Kansas depart-
30 ment of health and environment testing protocol checklist.

31 (f) At or prior to the time the notice of hearing is sent, the division
32 shall issue an order allowing the licensee or the licensee's attorney to
33 review any video or audio tape record made of the events upon which
34 the administrative action is based. Such review shall take place at a rea-
35 sonable time designated by the law enforcement agency and shall be
36 made at the location where the video or audio tape is kept. The licensee
37 may obtain a copy of any such video or audio tape upon request and upon
38 payment of a reasonable fee to the law enforcement agency, not to exceed
39 \$25 per tape.

40 (g) Witnesses at the hearing shall be limited to the licensee, to any
41 law enforcement officer who signed the certification form and to one
42 other witness who was present at the time of the issuance of the certifi-
43 cation and called by the licensee. The presence of the certifying officer

- 1 or officers shall not be required, unless requested by the licensee at the
2 time of making the request for the hearing. The examination of a law
3 enforcement officer shall be restricted to the factual circumstances relied
4 upon in the officer's certification.
- 5 (h) (1) If the officer certifies that the person refused the test, the
6 scope of the hearing shall be limited to whether:
- 7 (A) A law enforcement officer had reasonable grounds to believe the
8 person was operating or attempting to operate a vehicle while under the
9 influence of alcohol or drugs, or both, or had been driving a commercial
10 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
11 while having alcohol or other drugs in such person's system;
- 12 (B) the person was in custody or arrested for an alcohol or drug re-
13 lated offense or was involved in a vehicle accident or collision resulting
14 in property damage, personal injury or death;
- 15 (C) a law enforcement officer had presented the person with the oral
16 and written notice required by K.S.A. 8-1001, and amendments thereto;
17 and
- 18 (D) the person refused to submit to and complete a test as requested
19 by a law enforcement officer.
- 20 (2) If the officer certifies that the person failed a breath test, the
21 scope of the hearing shall be limited to whether:
- 22 (A) A law enforcement officer had reasonable grounds to believe the
23 person was operating a vehicle while under the influence of alcohol or
24 drugs, or both, or had been driving a commercial motor vehicle, as de-
25 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
26 or other drugs in such person's system;
- 27 (B) the person was in custody or arrested for an alcohol or drug re-
28 lated offense or was involved in a vehicle accident or collision resulting
29 in property damage, personal injury or death;
- 30 (C) a law enforcement officer had presented the person with the oral
31 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 32 (D) the testing equipment used was certified by the Kansas depart-
33 ment of health and environment;
- 34 (E) the person who operated the testing equipment was certified by
35 the Kansas department of health and environment;
- 36 (F) the testing procedures used substantially complied with the pro-
37 cedures set out by the Kansas department of health and environment;
- 38 (G) the test result determined that the person had an alcohol con-
39 centration of .08 or greater in such person's breath; and
- 40 (H) the person was operating or attempting to operate a vehicle.
- 41 (3) If the officer certifies that the person failed a blood test, the scope
42 of the hearing shall be limited to whether:
- 43 (A) A law enforcement officer had reasonable grounds to believe the

- 1 person was operating a vehicle while under the influence of alcohol or
2 drugs, or both, or had been driving a commercial motor vehicle, as de-
3 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
4 or other drugs in such person's system;
- 5 (B) the person was in custody or arrested for an alcohol or drug re-
6 lated offense or was involved in a vehicle accident or collision resulting
7 in property damage, personal injury or death;
- 8 (C) a law enforcement officer had presented the person with the oral
9 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 10 (D) the testing equipment used was reliable;
- 11 (E) the person who operated the testing equipment was qualified;
- 12 (F) the testing procedures used were reliable;
- 13 (G) the test result determined that the person had an alcohol con-
14 centration of .08 or greater in such person's blood; and
- 15 (H) the person was operating or attempting to operate a vehicle.
- 16 (i) At a hearing pursuant to this section, or upon court review of an
17 order entered at such a hearing, an affidavit of the custodian of records
18 at the Kansas department of health and environment stating that the
19 breath testing device was certified and the operator of such device was
20 certified on the date of the test shall be admissible into evidence in the
21 same manner and with the same force and effect as if the certifying officer
22 or employee of the Kansas department of health and environment had
23 testified in person. A certified operator of a breath testing device shall be
24 competent to testify regarding the proper procedures to be used in con-
25 ducting the test.
- 26 (j) At a hearing pursuant to this section, or upon court review of an
27 order entered at such a hearing, in which the report of blood test results
28 have been prepared by the Kansas bureau of investigation or other fo-
29 rensic laboratory of a state or local law enforcement agency are to be
30 introduced as evidence, the report, or a copy of the report, of the findings
31 of the forensic examiner shall be admissible into evidence in the same
32 manner and with the same force and effect as if the forensic examiner
33 who performed such examination, analysis, comparison or identification
34 and prepared the report thereon had testified in person.
- 35 (k) At the hearing, the licensee has the burden of proof by a prepon-
36 derance of the evidence to show that the facts set out in the officer's
37 certification are false or insufficient and that the order suspending or
38 suspending and restricting the licensee's driving privileges should be
39 dismissed.
- 40 (l) Evidence at the hearing shall be limited to the following:
- 41 (1) The documents set out in subsection (e);
- 42 (2) the testimony of the licensee;
- 43 (3) the testimony of any certifying officer;

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

3 (5) any affidavits submitted from other witnesses;

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

7 (7) any video or audio tape record of the events upon which the ad-
8 ministrative action is based.

9 (m) After the hearing, the representative of the director shall enter
10 an order affirming the order of suspension or suspension and restriction
11 of driving privileges or for good cause appearing therefor, dismiss the
12 administrative action. If the representative of the director enters an order
13 affirming the order of suspension or suspension and restriction of driving
14 privileges, the suspension or suspension and restriction shall begin on the
15 30th day after the effective date of the order of suspension or suspension
16 and restriction. If the person whose privileges are suspended is a non-
17 resident licensee, the license of the person shall be forwarded to the
18 appropriate licensing authority in the person's state of residence if the
19 result at the hearing is adverse to such person or if no timely request for
20 a hearing is received.

21 (n) The representative of the director may issue an order at the close
22 of the hearing or may take the matter under advisement and issue a
23 hearing order at a later date. If the order is made at the close of the
24 hearing, the licensee or the licensee's attorney shall be served with a copy
25 of the order by the representative of the director. If the matter is taken
26 under advisement or if the hearing was by telephone or video conference
27 call, the licensee and any attorney who appeared at the administrative
28 hearing upon behalf of the licensee each shall be served with a copy of
29 the hearing order by mail. Any law enforcement officer who appeared at
30 the hearing also may be mailed a copy of the hearing order. The effective
31 date of the hearing order shall be the date upon which the hearing order
32 is served, whether served in person or by mail.

33 (o) The licensee may file a petition for review of the hearing order
34 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition
35 for review, the licensee shall serve the secretary of revenue with a copy
36 of the petition and summons. Upon receipt of a copy of the petition for
37 review by the secretary, the temporary license issued pursuant to subsec-
38 tion (b) shall be extended until the decision on the petition for review is
39 final.

40 (p) Such review shall be in accordance with this section and the act
41 for judicial review and civil enforcement of agency actions. To the extent
42 that this section and any other provision of law conflicts, this section shall
43 prevail. The petition for review shall be filed within 10 days after the

1 effective date of the order. Venue of the action for review is the county
2 where the person was arrested or the accident occurred, or, if the hearing
3 was not conducted by telephone conference call, the county where the
4 administrative proceeding was held. The action for review shall be by trial
5 de novo to the court and the evidentiary restrictions of subsection (l) shall
6 not apply to the trial de novo. The court shall take testimony, examine
7 the facts of the case and determine whether the petitioner is entitled to
8 driving privileges or whether the petitioner's driving privileges are subject
9 to suspension or suspension and restriction under the provisions of this
10 act. If the court finds that the grounds for action by the agency have been
11 met, the court shall affirm the agency action.

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

14 (r) Notwithstanding the requirement to issue a temporary license in
15 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
16 the temporary license in this section, any such temporary driving privi-
17 leges are subject to restriction, suspension, revocation or cancellation as
18 provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

19 (s) Upon motion by a party, or on the court's own motion, the court
20 may enter an order restricting the driving privileges allowed by the tem-
21 porary license provided for in K.S.A. 8-1002, and amendments thereto,
22 and in this section. The temporary license also shall be subject to restric-
23 tion, suspension, revocation or cancellation, as set out in K.S.A. 8-1014,
24 and amendments thereto, or for other cause.

25 (t) The facts found by the hearing officer or by the district court upon
26 a petition for review shall be independent of the determination of the
27 same or similar facts in the adjudication of any criminal charges arising
28 out of the same occurrence. The disposition of those criminal charges
29 shall not affect the suspension or suspension and restriction to be imposed
30 under this section.

31 (u) All notices affirming or canceling a suspension under this section,
32 all notices of a hearing held under this section and all issuances of tem-
33 porary driving privileges pursuant to this section shall be sent by first-
34 class mail and a United States post office certificate of mailing shall be
35 obtained therefor. All notices so mailed shall be deemed received three
36 days after mailing, except that this provision shall not apply to any licensee
37 where such application would result in a manifest injustice.

38 (v) The provisions of K.S.A. 60-206, and amendments thereto, re-
39 garding the computation of time shall not be applicable in determining
40 the time for requesting an administrative hearing as set out in subsection
41 (a) but shall apply to the time for filing a petition for review pursuant to
42 subsection (o) and K.S.A. 8-259, and amendments thereto. "Calendar
43 day" shall mean that every day shall be included in computations of time

1 whether a weekday, Saturday, Sunday or holiday.
2 Sec. 5. K.S.A. 2006 Supp. 8-1567 is hereby amended to read as fol-
3 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
4 within this state while:
5 (1) The alcohol concentration in the person's blood or breath as
6 shown by any competent evidence, including other competent evidence,
7 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
8 ments thereto, is .08 or more;
9 (2) the alcohol concentration in the person's blood or breath, as meas-
10 ured within two hours of the time of operating or attempting to operate
11 a vehicle, is .08 or more;
12 (3) under the influence of alcohol to a degree that renders the person
13 incapable of safely driving a vehicle;
14 (4) under the influence of any drug or combination of drugs to a
15 degree that renders the person incapable of safely driving a vehicle; or
16 (5) under the influence of a combination of alcohol and any drug or
17 drugs to a degree that renders the person incapable of safely driving a
18 vehicle.
19 (b) No person shall operate or attempt to operate any vehicle within
20 this state if the person is a habitual user of any narcotic, hypnotic, som-
21 nifacient or stimulating drug.
22 (c) If a person is charged with a violation of this section involving
23 drugs, the fact that the person is or has been entitled to use the drug
24 under the laws of this state shall not constitute a defense against the
25 charge.
26 (d) Upon a first conviction of a violation of this section, a person shall
27 be guilty of a class B, nonperson misdemeanor and sentenced to:
28 (1) *Except as provided in paragraph (2)*, not less than 48 consecutive
29 hours nor more than six months' imprisonment, or in the court's discre-
30 tion 100 hours of public service, and fined not less than \$500 nor more
31 than \$1,000. The person convicted must serve at least 48 consecutive
32 hours' imprisonment or 100 hours of public service either before or as a
33 condition of any grant of probation or suspension, reduction of sentence
34 or parole; or
35 (2) *if a person refuses to submit and complete any test of blood, breath*
36 *or urine requested by law enforcement excluding the preliminary screen-*
37 *ing test as set forth in K.S.A. 8-1012, and amendments thereto, or has a*
38 *blood or breath alcohol concentration at .15 or greater, not less than 96*
39 *consecutive hours nor more than one years' imprisonment, or in the*
40 *court's discretion 200 hours of public service, and fined not less than*
41 *\$1,000 nor more than \$2,000. The person convicted must serve at least*
42 *96 consecutive hours' imprisonment or 200 hours of public service either*
43 *before or as a condition of any grant of probation or suspension, reduction*

1 *of sentence or parole.*

2 In addition, the court shall enter an order which requires that the
3 person enroll in and successfully complete an alcohol and drug safety
4 action education program or treatment program as provided in K.S.A. 8-
5 1008, and amendments thereto, or both the education and treatment
6 programs.

7 (e) On a second conviction of a violation of this section, a person shall
8 be guilty of a class A, nonperson misdemeanor and sentenced to:

9 (1) *Except as provided in paragraph (2), not less than 90 days nor*
10 *more than one year's imprisonment and fined not less than \$1,000 nor*
11 *more than \$1,500. The person convicted must serve at least five consec-*
12 *utive days' imprisonment before the person is granted probation, suspen-*
13 *sion or reduction of sentence or parole or is otherwise released. The five*
14 *days' imprisonment mandated by this ~~subsection~~ paragraph may be*
15 *served in a work release program only after such person has served 48*
16 *consecutive hours' imprisonment, provided such work release program*
17 *requires such person to return to confinement at the end of each day in*
18 *the work release program. The court may place the person convicted*
19 *under a house arrest program pursuant to K.S.A. 21-4603b, and amend-*
20 *ments thereto, to serve the remainder of the minimum sentence only*
21 *after such person has served 48 consecutive hours' imprisonment; or*

22 (2) *if a person refuses to submit and complete any test of blood, breath*
23 *or urine requested by law enforcement excluding the preliminary screen-*
24 *ing test as set forth in K.S.A. 8-1012, and amendments thereto, or has a*
25 *blood or breath alcohol concentration at .15 or greater, not less than 180*
26 *days nor more than two year's imprisonment and fined not less than*
27 *\$2,000 nor more than \$3,000. The person convicted must serve at least*
28 *10 consecutive days' imprisonment before the person is granted probation,*
29 *suspension or reduction of sentence or parole or is otherwise released. The*
30 *10 days' imprisonment mandated by this paragraph may be served in a*
31 *work release program only after such person has served 96 consecutive*
32 *hours' imprisonment, provided such work release program requires such*
33 *person to return to confinement at the end of each day in the work release*
34 *program. The court may place the person convicted under a house arrest*
35 *program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve*
36 *the remainder of the minimum sentence only after such person has served*
37 *96 consecutive hours' imprisonment.*

38 As a condition of any grant of probation, suspension of sentence or
39 parole or of any other release, the person shall be required to enter into
40 and complete a treatment program for alcohol and drug abuse as provided
41 in K.S.A. 8-1008, and amendments thereto.

42 (f) On the third conviction of a violation of this section, a person shall
43 be guilty of a nonperson felony and sentenced to:

1 (1) *Except as provided in paragraph (2), not less than 90 days nor*
2 *more than one year's imprisonment and fined not less than \$1,500 nor*
3 *more than \$2,500. The person convicted shall not be eligible for release*
4 *on probation, suspension or reduction of sentence or parole until the*
5 *person has served at least 90 days' imprisonment. ~~The court may also~~*
6 *~~require as a condition of parole that such person enter into and complete~~*
7 *~~a treatment program for alcohol and drug abuse as provided by K.S.A. 8-~~*
8 *~~1008, and amendments thereto.~~ The 90 days' imprisonment mandated by*
9 *this subsection paragraph may be served in a work release program only*
10 *after such person has served 48 consecutive hours' imprisonment, pro-*
11 *vided such work release program requires such person to return to con-*
12 *finement at the end of each day in the work release program. The court*
13 *may place the person convicted under a house arrest program pursuant*
14 *to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of*
15 *the minimum sentence only after such person has served 48 consecutive*
16 *hours' imprisonment; or*

17 (2) *if a person refuses to submit and complete any test of blood, breath*
18 *or urine requested by law enforcement excluding the preliminary screen-*
19 *ing test as set forth in K.S.A. 8-1012, and amendments thereto, or has a*
20 *blood or breath alcohol concentration at .15 or greater, not less than 180*
21 *days nor more than two year's imprisonment and fined not less than*
22 *\$3,000 nor more than \$5,000. The person convicted shall not be eligible*
23 *for release on probation, suspension or reduction of sentence or parole*
24 *until the person has served at least 180 days' imprisonment. The 180 days'*
25 *imprisonment mandated by this paragraph may be served in a work re-*
26 *lease program only after such person has served 96 consecutive hours'*
27 *imprisonment, provided such work release program requires such person*
28 *to return to confinement at the end of each day in the work release pro-*
29 *gram. The court may place the person convicted under a house arrest*
30 *program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve*
31 *the remainder of the minimum sentence only after such person has served*
32 *96 consecutive hours' imprisonment.*

33 *The court shall also require as a condition of parole that such person*
34 *enter into and complete a treatment program for alcohol and drug abuse*
35 *as provided by K.S.A. 8-1008, and amendments thereto.*

36 (g) On the fourth or subsequent conviction of a violation of this sec-
37 tion, a person shall be guilty of a nonperson felony and sentenced to:

38 (1) *Except as provided in paragraph (2), not less than 90 days nor*
39 *more than one year's imprisonment and fined \$2,500. The person con-*
40 *vinced shall not be eligible for release on probation, suspension or reduc-*
41 *tion of sentence or parole until the person has served at least 90 days'*
42 *imprisonment. The 90 days' imprisonment mandated by this subsection*
43 *paragraph may be served in a work release program only after such per-*

1 son has served 72 consecutive hours' imprisonment, provided such work
2 release program requires such person to return to confinement at the end
3 of each day in the work release program; *or*

4 (2) *if a person refuses to submit and complete any test of blood, breath*
5 *or urine requested by law enforcement excluding the preliminary screen-*
6 *ing test as set forth in K.S.A. 8-1012, or has a blood or breath alcohol*
7 *concentration at .15 or greater, not less than 180 days nor more than two*
8 *year's imprisonment and fined \$5,000. The person convicted shall not be*
9 *eligible for release on probation, suspension or reduction of sentence or*
10 *parole until the person has served at least 180 days' imprisonment. The*
11 *180 days' imprisonment mandated by this paragraph may be served in a*
12 *work release program only after such person has served 144 consecutive*
13 *hours' imprisonment, provided such work release program requires such*
14 *person to return to confinement at the end of each day in the work release*
15 *program.*

16 At the time of the filing of the judgment form or journal entry as
17 required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the
18 court shall cause a certified copy to be sent to the officer having the
19 offender in charge. The law enforcement agency maintaining custody and
20 control of a defendant for imprisonment shall cause a certified copy of
21 the judgment form or journal entry to be sent to the secretary of correc-
22 tions within three business days of receipt of the judgment form or journal
23 entry from the court and notify the secretary of corrections when the
24 term of imprisonment expires and upon expiration of the term of impris-
25 onment shall deliver the defendant to a location designated by the sec-
26 retary. After the term of imprisonment imposed by the court, the person
27 shall be placed in the custody of the secretary of corrections for a man-
28 datory one-year period of postrelease supervision, which such period of
29 postrelease supervision shall not be reduced. During such postrelease
30 supervision, the person shall be required to participate in an inpatient or
31 outpatient program for alcohol and drug abuse, including, but not limited
32 to, an approved aftercare plan or mental health counseling, as determined
33 by the secretary and satisfy conditions imposed by the Kansas parole
34 board as provided by K.S.A. 22-3717, and amendments thereto. Any vi-
35 olation of the conditions of such postrelease supervision may subject such
36 person to revocation of postrelease supervision pursuant to K.S.A. 75-
37 5217 et seq., and amendments thereto and as otherwise provided by law.

38 (h) Any person convicted of violating this section or an ordinance
39 which prohibits the acts that this section prohibits who had ~~a child~~ *one*
40 *or more children* under the age of 14 years in the vehicle at the time of
41 the offense shall have such person's punishment enhanced by one month
42 of imprisonment *for each child in the vehicle at the time of the offense.*
43 This imprisonment must be served consecutively to any other *minimum*

1 *mandatory* penalty imposed for a violation of this section or an ordinance
2 which prohibits the acts that this section prohibits. *Any enhanced penalty*
3 *imposed shall not exceed the maximum sentence allowable by law.* During
4 the service of the ~~one month~~ enhanced penalty, the judge may order the
5 person on house arrest, work release or other conditional release.

6 (i) The court may establish the terms and time for payment of any
7 fines, fees, assessments and costs imposed pursuant to this section. Any
8 assessment and costs shall be required to be paid not later than 90 days
9 after imposed, and any remainder of the fine shall be paid prior to the
10 final release of the defendant by the court.

11 (j) In lieu of payment of a fine imposed pursuant to this section, the
12 court may order that the person perform community service specified by
13 the court. The person shall receive a credit on the fine imposed in an
14 amount equal to \$5 for each full hour spent by the person in the specified
15 community service. The community service ordered by the court shall be
16 required to be performed not later than one year after the fine is imposed
17 or by an earlier date specified by the court. If by the required date the
18 person performs an insufficient amount of community service to reduce
19 to zero the portion of the fine required to be paid by the person, the
20 remaining balance of the fine shall become due on that date.

21 (k) (1) Except as provided in paragraph (5), in addition to any other
22 penalty which may be imposed upon a person convicted of a violation of
23 this section, the court may order that the convicted person's motor vehicle
24 or vehicles be impounded or immobilized for a period not to exceed one
25 year and that the convicted person pay all towing, impoundment and
26 storage fees or other immobilization costs.

27 (2) The court shall not order the impoundment or immobilization of
28 a motor vehicle driven by a person convicted of a violation of this section
29 if the motor vehicle had been stolen or converted at the time it was driven
30 in violation of this section.

31 (3) Prior to ordering the impoundment or immobilization of a motor
32 vehicle or vehicles owned by a person convicted of a violation of this
33 section, the court shall consider, but not be limited to, the following:

34 (A) Whether the impoundment or immobilization of the motor ve-
35 hicle would result in the loss of employment by the convicted person or
36 a member of such person's family; and

37 (B) whether the ability of the convicted person or a member of such
38 person's family to attend school or obtain medical care would be impaired.

39 (4) Any personal property in a vehicle impounded or immobilized
40 pursuant to this subsection may be retrieved prior to or during the period
41 of such impoundment or immobilization.

42 (5) As used in this subsection, the convicted person's motor vehicle
43 or vehicles shall include any vehicle leased by such person. If the lease

1 on the convicted person's motor vehicle subject to impoundment or im-
2 mobilization expires in less than one year from the date of the impound-
3 ment or immobilization, the time of impoundment or immobilization of
4 such vehicle shall be the amount of time remaining on the lease.

5 (l) The court shall report every conviction of a violation of this section
6 and every diversion agreement entered into in lieu of further criminal
7 proceedings or a complaint alleging a violation of this section to the di-
8 vision. Prior to sentencing under the provisions of this section, the court
9 shall request and shall receive from the division a record of all prior
10 convictions obtained against such person for any violations of any of the
11 motor vehicle laws of this state.

12 (m) For the purpose of determining whether a conviction is a first,
13 second, third, fourth or subsequent conviction in sentencing under this
14 section:

15 (1) "Conviction" includes being convicted of a violation of this section
16 or entering into a diversion agreement in lieu of further criminal pro-
17 ceedings on a complaint alleging a violation of this section;

18 (2) "conviction" includes being convicted of a violation of a law of
19 another state or an ordinance of any city, or resolution of any county,
20 which prohibits the acts that this section prohibits or entering into a di-
21 version agreement in lieu of further criminal proceedings in a case alleg-
22 ing a violation of such law, ordinance or resolution;

23 (3) any convictions occurring during a person's lifetime shall be taken
24 into account when determining the sentence to be imposed for a first,
25 second, third, fourth or subsequent offender;

26 (4) it is irrelevant whether an offense occurred before or after con-
27 viction for a previous offense; and

28 (5) a person may enter into a diversion agreement in lieu of further
29 criminal proceedings for a violation of this section, and amendments
30 thereto, or an ordinance which prohibits the acts of this section, and
31 amendments thereto, only once during the person's lifetime.

32 (n) Upon conviction of a person of a violation of this section or a
33 violation of a city ordinance or county resolution prohibiting the acts
34 prohibited by this section, the division, upon receiving a report of con-
35 viction, shall suspend, restrict or suspend and restrict the person's driving
36 privileges as provided by K.S.A. 8-1014, and amendments thereto.

37 (o) (1) Nothing contained in this section shall be construed as pre-
38 venting any city from enacting ordinances, or any county from adopting
39 resolutions, declaring acts prohibited or made unlawful by this act as
40 unlawful or prohibited in such city or county and prescribing penalties
41 for violation thereof. Except as specifically provided by this subsection,
42 the minimum penalty prescribed by any such ordinance or resolution shall
43 not be less than the minimum penalty prescribed by this act for the same

1 violation, and the maximum penalty in any such ordinance or resolution
2 shall not exceed the maximum penalty prescribed for the same violation.
3 Any such ordinance or resolution shall authorize the court to order that
4 the convicted person pay restitution to any victim who suffered loss due
5 to the violation for which the person was convicted. Except as provided
6 in paragraph (5), any such ordinance or resolution may require or au-
7 thorize the court to order that the convicted person's motor vehicle or
8 vehicles be impounded or immobilized for a period not to exceed one
9 year and that the convicted person pay all towing, impoundment and
10 storage fees or other immobilization costs.

11 (2) The court shall not order the impoundment or immobilization of
12 a motor vehicle driven by a person convicted of a violation of this section
13 if the motor vehicle had been stolen or converted at the time it was driven
14 in violation of this section.

15 (3) Prior to ordering the impoundment or immobilization of a motor
16 vehicle or vehicles owned by a person convicted of a violation of this
17 section, the court shall consider, but not be limited to, the following:

18 (A) Whether the impoundment or immobilization of the motor ve-
19 hicle would result in the loss of employment by the convicted person or
20 a member of such person's family; and

21 (B) whether the ability of the convicted person or a member of such
22 person's family to attend school or obtain medical care would be impaired.

23 (4) Any personal property in a vehicle impounded or immobilized
24 pursuant to this subsection may be retrieved prior to or during the period
25 of such impoundment or immobilization.

26 (5) As used in this subsection, the convicted person's motor vehicle
27 or vehicles shall include any vehicle leased by such person. If the lease
28 on the convicted person's motor vehicle subject to impoundment or im-
29 mobilization expires in less than one year from the date of the impound-
30 ment or immobilization, the time of impoundment or immobilization of
31 such vehicle shall be the amount of time remaining on the lease.

32 (p) No plea bargaining agreement shall be entered into nor shall any
33 judge approve a plea bargaining agreement entered into for the purpose
34 of permitting a person charged with a violation of this section, or a vio-
35 lation of any ordinance of a city or resolution of any county in this state
36 which prohibits the acts prohibited by this section, to avoid the mandatory
37 penalties established by this section or by the ordinance. For the purpose
38 of this subsection, entering into a diversion agreement pursuant to K.S.A.
39 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
40 constitute plea bargaining.

41 (q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
42 be pleaded in the alternative, and the state, city or county, but shall not
43 be required to, may elect one or two of the three prior to submission of

1 the case to the fact finder.

2 (r) Upon a fourth or subsequent conviction, the judge of any court in
3 which any person is convicted of violating this section, may revoke the
4 person's license plate or temporary registration certificate of the motor
5 vehicle driven during the violation of this section for a period of one year.
6 Upon revoking any license plate or temporary registration certificate pur-
7 suant to this subsection, the court shall require that such license plate or
8 temporary registration certificate be surrendered to the court.

9 (s) For the purpose of this section: (1) "Alcohol concentration" means
10 the number of grams of alcohol per 100 milliliters of blood or per 210
11 liters of breath.

12 (2) "Imprisonment" shall include any restrained environment in
13 which the court and law enforcement agency intend to retain custody and
14 control of a defendant and such environment has been approved by the
15 board of county commissioners or the governing body of a city.

16 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
17 4165, and amendments thereto.

18 (t) The amount of the increase in fines as specified in this section
19 shall be remitted by the clerk of the district court to the state treasurer
20 in accordance with the provisions of K.S.A. 75-4215, and amendments
21 thereto. Upon receipt of remittance of the increase provided in this act,
22 the state treasurer shall deposit the entire amount in the state treasury
23 and the state treasurer shall credit 50% to the community alcoholism and
24 intoxication programs fund and 50% to the department of corrections
25 alcohol and drug abuse treatment fund, which is hereby created in the
26 state treasury.

27 (u) *Upon every conviction of a violation of this section, the court shall*
28 *order such person to submit to a pre-sentence alcohol and drug abuse*
29 *evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-*
30 *sentence evaluation shall be made available, and shall be considered by*
31 *the sentencing court.*

32 Sec. 6. K.S.A. 2006 Supp. 21-4502 is hereby amended to read as
33 follows: 21-4502. (1) For the purpose of sentencing, the following classes
34 of misdemeanors and the punishment and the terms of confinement au-
35 thorized for each class are established:

36 (a) *Except as provided in K.S.A. 8-1567, and amendments thereto,*
37 class A, the sentence for which shall be a definite term of confinement
38 in the county jail which shall be fixed by the court and shall not exceed
39 one year.

40 (b) Class B, the sentence for which shall be a definite term of con-
41 finement in the county jail which shall be fixed by the court and shall not
42 exceed six months.

43 (c) Class C, the sentence for which shall be a definite term of con-

1 finement in the county jail which shall be fixed by the court and shall not
2 exceed one month.

3 (d) Unclassified misdemeanors, which shall include all crimes de-
4 clared to be misdemeanors without specification as to class, the sentence
5 for which shall be in accordance with the sentence specified in the statute
6 that defines the crime; if no penalty is provided in such law, the sentence
7 shall be the same penalty as provided herein for a class C misdemeanor.

8 (2) Upon conviction of a misdemeanor, a person may be punished by
9 a fine, as provided in K.S.A. 21-4503 and amendments thereto, instead
10 of or in addition to confinement, as provided in this section.

11 (3) In addition to or in lieu of any other sentence authorized by law,
12 whenever there is evidence that the act constituting the misdemeanor
13 was substantially related to the possession, use or ingestion of cereal malt
14 beverage or alcoholic liquor by such person, the court may order such
15 person to attend and satisfactorily complete an alcohol or drug education
16 or training program certified by the chief judge of the judicial district or
17 licensed by the secretary of social and rehabilitation services.

18 (4) Except as provided in subsection (5), in addition to or in lieu of
19 any other sentence authorized by law, whenever a person is convicted of
20 having committed, while under 21 years of age, a misdemeanor under
21 the uniform controlled substances act (K.S.A. 65-4101 *et seq.* and amend-
22 ments thereto), K.S.A. 41-719, 41-727, 65-4152, 65-4153, 65-4154 or 65-
23 4155 or 8-1599, and amendments thereto, the court shall order such
24 person to submit to and complete an alcohol and drug evaluation by a
25 community-based alcohol and drug safety action program certified pur-
26 suant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to
27 exceed the fee established by that statute for such evaluation. If the court
28 finds that the person is indigent, the fee may be waived.

29 (5) If the person is 18 or more years of age but less than 21 years of
30 age and is convicted of a violation of K.S.A. 41-727, and amendments
31 thereto, involving cereal malt beverage, the provisions of subsection (4)
32 are permissive and not mandatory.

33 Sec. 7. K.S.A. 8-1005 and 8-1020 and K.S.A. 2006 Supp. 8-1001, 8-
34 1014, 8-1567 and 21-4502 are hereby repealed.

35 Sec. 8. This act shall take effect and be in force from and after its
36 publication in the statute book.