

Approved: April 27, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 22, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Gary Merritt - Excused
Representative Britt Nichols - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Others attending: See attached list

HB 2410 - nonpayment of child support; contempt of court; interest on the arrearages; suspension of driving privileges; names in sheriff's office

Staff provided the committee with committee report (Attachment 1).

Representative Adkins made a motion to report **HB 2410** favorably for passage as amended. Representative Haley seconded the motion. The motion carried. Representative Pugh requested that he be recorded as voting no.

HB 2319 - financial responsibility for minor's abortion without parental consent

Some committee members were concerned about the language in the bill and Representative Pugh provided the committee with an amendment would make it clear that a "waiver shall relieve the minor's parents or legal guardian of financial responsibility for the cost", (Attachment 2).

Representative Pugh made a motion to adopt the amendment. Representative Merritt seconded the motion. The motion carried.

Representative Snowbarger made a motion to report **HB 2319** favorably for passage as amended. Representative Yoh seconded the motion. The motion carried. Representative's Adkins, Haley & Standifer requested that they be recorded as voting no.

Chairman O'Neal announced that the committee would consider sub committee reports.

HB 2992 - amendments to the definition of capital murder (Attachments 3-7)

The Chairman explained that the sub committee recommended that the bill be reported favorably, without any amendments.

Representative Snowbarger made a motion to adopt the sub committee recommendation and report **HB 2992** favorably for passage. Representative Yoh seconded the motion. The motion carried. Representative's Goodwin & Standifer requested that they be recorded as voting no.

HB 2939 & HB 2443 - expanding law enforcement powers for city police officers outside their jurisdiction (Attachments 8-12)

Chairman O'Neal announced that the sub committee recommended that no action be taken on **HB 2939**. They recommended that **HB 2443** be reported favorably.

Staff explained that this section of the statute was amended last year and that this would need to be a substitute bill.

Representative Miller made a motion to adopt the sub committee recommendations and report **Substitute HB 2443** favorably for passage. Representative Adkins seconded the motion.

Representative Nichols believes that this bill doesn't do what the sponsors of the bill wants it to do. He made a substitute motion to table the bill. Representative Merritt seconded the motion. The motion failed.

Representative Nichols made a motion to strike lines 20 & 21. Representative Merritt seconded the motion. The motion failed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S Statehouse, at 3:30 p.m. on February 22, 1996.

Representative Nichols made a motion to add on page 2, line 23 "the city employing the officer". Representative Merritt seconded the motion. The motion failed.

The motion to report **Substitute HB 2443** carried. Representative's Nichols & Merritt requested that they be recorded as voting no. Representative Haley requested that he be recorded as abstaining.

HB 2603 - drivers under 21 blood alcohol concentration of .02 or greater

The committee received information from the Department of Transportation regarding the structure of the zero tolerance laws in the twenty-eight states that possess them. (Attachment 13)

Currently, Kansas would not allow the insurance carrier to cancel the underage drinker who drives from coverage, but they could chose to "non-renew" the policy. State Farm Insurance requires the individual who has been sanctioned to carry a separate policy.

The Chairman proposed a balloon amendment that would strike all criminal provisions in the bill and only have the administrative suspension apply. (Attachment 14)

Representative Adkins made a motion to adopt the balloon amendment. Representative Snowbarger seconded the motion. The motion carried.

Representative Garner made a motion the have the language state that "Any conviction, test refusal or test failure shall not be considered by any insurance in determining the rate charged for any automobile liability insurance policy" (Attachment 15) Representative Haley seconded the motion. The motion failed.

Representative Haley made a motion to change the drinking age from age 21 to age 18. Representative Pugh seconded the motion. The motion failed.

Representative Garner made a motion that any violation of the .02 would not be reported to the National Driver Register (Attachment 16). Representative Miller seconded the motion. John Smith, Division of Motor Vehicles, explained that all states must report suspensions to the National Driver Register. The motion carried.

Representative Miller made a motion to report **HB 2603** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

HB 2838 - involuntary manslaughter while driving under the influence of alcohol or drugs

Representative Mays made a motion to report **HB 2838** favorably for passage. Representative Spangler seconded the motion. The motion carried.

HB 3038 - amendments to the penalties the division of motor vehicles enforces concerning the suspension of drivers' licenses for driving under the influence

Representative Spangler made a motion to strike on page 4, lines 20-26 and line 39 and report **HB 3038** favorably for passage as amended. Representative Grant seconded the motion. The motion failed.

HB 3020 - escape from custody, aggravated escape from custody and aiding an escape amended to include an adult juvenile offender who escapes from a detention facility

Representative Adkins made a motion to report **HB 3020** favorably for passage. Representative Miller seconded the motion. The motion carried.

HB 3026 - seizing weapons pursuant to a lawful domestic violence arrest (Attachments 17-19)

Representative Adkins made a motion to adopt a balloon amendment from the KBI (see attachment 17) and report **HB 3026** favorably for passage as amended. Representative Miller seconded the motion.

Representative Garner made a substitute motion to change "any" back to "the" regarding the scope of a search incident to the arrest. Representative Howell seconded the motion. The motion failed.

The motion to report **HB 3026** favorably as amended carried.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for February 23, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: February 22, 96

NAME	REPRESENTING
<i>Guardiff</i>	<i>intern</i>
Jennifer Linscott	Landwehrs Intern
Kyle Smith	KBT
Frances Kastner	K's Food Dealers Assn
Helen Stephens	KPDA / KSA
Kathy Peterson	The Century Council
Paul Shelby	OJA
Dodie Lacey	KCSA
Danielle Noe	KCWA
Julienne Marlin	A.G. office
<i>Rosalie Thornburg</i>	<i>KDOT</i>
TOM WHITAKER	K's MOTOR CARRIERS ASSN.
ART THOMASON	K's BAR ASSOC.
Jerry Cooney	Lifelines
Joseph Woodley	Fathers Coalition
Gene Johnson	KASAP
John W. Smith	KDOR DMV
Jim Cappellin	Intern
Jim Keele	BLE

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-22-96

NAME	REPRESENTING
Jennifer L. Brandenberg	City of Overland Park
Roger Aeschliman	KIDHR
Jim McDavitt	Ks Education Watch
PAUL BICKWELL	KDHR
Bill Laves	KDHR
Randall Hodgkinson	-
JASON PITSEMBERGER	KGC
Julie Meyer	Ks Sentencing Commission
Jessica Weisman	Ks Sentencing Comm.
Subina Tombs	Ks Sentencing Comm
Jan Johnson	KDOC
Charles Simmons	KDOC
Cleta Perryer	Right to Life of Ks
Hanna Malleal	RTLK, Inc.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Judiciary

Recommends that House Bill No. 2410

"AN ACT concerning child support; relating to contempt of court; allowing the court to suspend driving privileges for lack of payment; person who fails to pay is named on a list in sheriff's office; interest charged on arrearages; amending K.S.A. 20-1203 and K.S.A. 1994 Supp. 20-1204a and 23-4,107 and repealing the existing sections."

Be amended:

On page 1, by striking all in lines 21 through 40;

And by renumbering sections accordingly;

Also on page 1, in line 41, by striking "1994 Supp.";

On page 2, in line 5, by striking "subsection (e)" and inserting "subsections (e) and (g)"; following line 23, by inserting the following:

"(d) If the proceeding is for failure to pay support, any cash bond posted to guarantee the appearance of the person after such person's arrest on a bench warrant shall be applied to such person's arrearage in support, to the extent there is an arrearage.

(e) In cases involving contempt for the alleged nonpayment of child or spousal support, the order to appear and show cause with a copy of the affidavit provided for in subsection (a) shall be served upon the alleged party in accordance with K.S.A. 60-303 and subsection (a) of K.S.A. 60-304, and amendments thereto.";

And by redesignating subsections accordingly;

Also on page 2, in line 36, by striking "1994" and inserting "1995"; in line 38, by striking "1994" and inserting "1995";

On page 3, in line 2, by striking all after "proceeding"; by striking all in lines 3 through 5 and inserting the following:
"in an amount equal to or greater than the amount of support

payable for six months or the obligor has been ordered by the court to pay a sum certain each month toward the liquidation of the arrearages and the obligor has substantially failed to abide by that order, the court may restrict the obligor's driver's license. Such restriction may include, but not be limited to, driving to, from and during the course of such person's employment. The court may order the public office, as defined in K.S.A. 23-4,106, and amendments thereto, to contact the division of vehicles of the department of revenue to restrict the obligor's driver's license as indicated in the court order until further order of the court."; in line 9, by striking "1994 Supp."; in line 17, by striking all after "(b)"; by striking all in line 18; in line 19, by striking all before "new" and inserting "All"; in line 20, by striking ", in all other cases"; in line 21, by striking "Prior to July 1,"; by striking all in lines 22 and 23; in line 24, by striking all before "The"; in line 43, by striking "Not" and inserting "In all cases with orders for support issued prior to July 1, 1993, not";

On page 4, in line 35, by striking "1994" and inserting in lieu thereof "1995";

On page 7, in line 22, by striking all after "(n)"; in line 23, by striking all before the period and inserting "Notwithstanding the provisions of K.S.A. 16-204, and amendments thereto, the court trustee's office shall apply simple interest in the amount of 7% to all arrearages"; in line 24, by striking "20-1203 and K.S.A. 1994 Supp.";

On page 1, in the title, in line 15, by striking "suspend" and inserting "restrict"; also in line 15, by striking "person"; in line 16, by striking all before "interest"; in line 17, by striking "20-1203 and K.S.A. 1994 Supp.";

And the bill be passed as amended.

Chairperson

HOUSE BILL No. 2319

By Representatives O'Connor, Ballou, Cornfield, Donovan,
Larkin, Merritt, Mollenkamp, Thimesch and Toplikar

2-3

10 AN ACT concerning abortion; relating to financial responsibility for costs
11 relating to abortions performed on certain minors.

12

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

14 Section 1. If the court grants a minor's application for waiver of no-
15 tice pursuant to K.S.A. 65-6705 and amendments thereto, ~~the court shall~~
16 ~~obtain from an individual or private agency a signed written agreement~~
17 ~~that the individual or agency will be financially responsible for the costs~~
18 of the minor's abortion and all costs related to any complications arising
19 from such abortion. ~~Such agreement shall be made a part of the record~~
20 ~~of the proceedings.~~

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

Such waiver shall relieve the
minor's Parents or legal guardian of
financial responsibility for the
Cost

DOUG MAYS
REPRESENTATIVE, FIFTY-FOURTH DISTRICT
SHAWNEE COUNTY
1920 SW DAMON CT.
TOPEKA, KANSAS 66611-1926
(913) 266-4885

STATE CAPITOL—ROOM 182-W
TOPEKA, KS 66612-1504
(913) 296-7668



TOPEKA

HOUSE OF
REPRESENTATIVES

House Bill 2992

Testimony of Representative Doug Mays

Alas! regardless of their doom,
The little victims play!
No sense have they of ills to come
Nor care beyond today.

--Thomas Grey

House Bill 2992 deals with the definition of capital murder in Kansas, specifically with the intentional and premeditated killing of a child.

Our present capital murder statute, KSA 21-3439, provides several sets of circumstances, all requiring intent and premeditation, in which a murder becomes a capital crime:

- Murder during a kidnapping for ransom
- Contract murder
- Murder by an inmate or prisoner
- Murder of a law enforcement officer
- Murder in the commission of rape or criminal sodomy
- Murder of more than one person at a time

With regard to the murder of children, the existing statute is nothing short of Byzantine. In order to qualify for capital status, the murder must, in addition to being intentional and premeditated:

- 1) Occur during the commission of a kidnapping, and
- 2) The kidnapping must be committed with the intent to commit at least one of several defined sex offenses

HB 2992 simply removes these conditions, and recognizes that the intentional and premeditated murder of a child, any child regardless of circumstances, is a heinous act that should be classified as a capital crime. This bill proposes to accord the same level of importance to our children as inmates, police officers, and the victims of contract murder.



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

STATEMENT OF PATRICK W. PETERS
ASSISTANT ATTORNEY GENERAL
CHIEF, CAPITAL LITIGATION SECTION
BEFORE THE HOUSE CRIMINAL LAW SUBCOMMITTEE
RE: HOUSE BILL 2992
FEBRUARY 20, 1996

Dear Chairperson and Members of the Subcommittee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of House Bill 2992. This bill recognizes the heightened protection society affords children under the age of 14, and eliminates the requirement that the intentional and premeditated killing of such a child be committed in the commission of a kidnapping for the purpose of a sex offense.

As the law currently stands, only seven limited types of premeditated murders are qualified for consideration of charges of capital murder. They are the intentional and premeditated killing of: 1) any person in the commission of kidnapping; 2) any person pursuant to a contract or agreement; 3) any person by an inmate or prisoner; 4) the victim of a rape or sodomy; 5) a law enforcement officer; 6) more than one person; and 7) a child under the age of 14 in the commission of a kidnapping with the intent to commit a sex offense.

The seventh type of murder in section 7, as currently worded, provides no additional protection to children under the age of 14. The intentional and premeditated killing of any person during the commission of any kidnapping is eligible for consideration of a charge of capital murder under Section 1. In Section 7, the statute tacitly acknowledges the heightened protection society should afford such children, but actually sets a higher threshold of abuse before their murderers can be held accountable. Not only must the child be killed during a kidnapping (as proscribed in Section 1), but the kidnapping must have been for the purpose of committing a sex offense against the child.

The legislature has recognized that a child under the age of 14 should receive heightened protection by the State and that criminals whose chosen victims are young should be more severely punished. *See, for example*, K.S.A. 21-3106 (time limitations expanded for child victims); 21-3502 (rape); 21-3504 (aggravated indecent liberties); 21-3506 (sodomy); and 21-3510 & 21-3511 (indecent solicitation). The same should apply to that rarefied class of cold-blooded, premeditated killers who intentionally kill a young child.

House Judiciary
2-22-96
Attachment 4

The proposed change in the statute allows the State to hold accountable those individuals who intentionally choose to kill a defenseless victim; who premeditate before killing a child. Of the 38 states with capital punishment, about two-thirds provide for capital punishment in any deliberate or premeditated killing. About one-third authorize the death penalty for murders that are not premeditated, but arise out of a felony. In these felony-murder states (which do not require premeditation) several specifically add additional language to make the killing of a child a capital offense (*see, for example, Alabama, Oklahoma, Texas and Virginia statutes*).

The proposed legislation will reaffirm Kansas' commitment to the protection of young children and provide prosecutors with the option of filing capital murder charges against society's most callous killers.

In addition I am appearing before you today and asking for your support to an amendment to House Bill 2992, which would cover the mutilation of dead human bodies. I have attached proposed legislation on this subject to my testimony.

In 1994, two young men were charged in Shawnee County with the murder of Timothy Evans. However after Mr. Evans was murdered he was decapitated and his arms, hands, legs and feet were cut off. His body was then buried in three different locations in Shawnee County and Douglas County. There were no criminal charges that could be filed against the individuals who participated in the direct act of mutilating the body of Mr. Evans, after his death.

On behalf of the Attorney General, I would urge your favorable consideration of this amendment to House Bill 2992.

Mutilation of dead human bodies

(a) Except as provided in this section, a person who dissects or mutilates a dead human body is guilty of a level 6 person felony.

(b) This section does not apply to:

(i) A physician or surgeon acting on the order of a court of competent jurisdiction, a coroner, a pathologist or other qualified officer;

(ii) Dissection to determine the cause of death when authorized by the nearest living kin of deceased;

(iii) Unclaimed dead human bodies delivered by state or county authorities to regularly chartered institutions for scientific research;

(iv) The necessary mutilation incident to embalming a dead human body when authorized by the nearest living kin, a court of competent jurisdiction or other qualified officer; or

(v) Conduct authorized by the Uniform Anatomical Gift Act, K.S.A. 65-3209 through 65-3218.

February 20, 1996

Testimony on HB 2992
House Judiciary Subcommittee

By Sister Therese Bangert
Coordinator of Kansas Coalition Against the Death Penalty

I am here this afternoon to raise my voice in opposition to HB 2992. As leader of the Kansas Coalition Against the Death Penalty, I represent individuals, families and various groups throughout Kansas who oppose killing by the state as public policy. Therefore we oppose HB 2992 and its expansion of the present death penalty law. Some may say the change is very minor but I challenge that attitude.

I come before this committee as one who abhors all kinds of violence, including violence of all kinds to children. In the 23 years that I have lived in Topeka, I have walked very painful journeys with children who bear the wounds of violence. I must presume that those who advocate for HB 2992 see it as a way to tell people that we will not tolerate violence against our children. I agree with that message - embrace it wholeheartedly, in fact, but wonder if there are not other ways that we can offer Kansas children more protection. I was struck by some statistics from the 1996 Kansas Kids Count Data Book that I would like to share with you:

In 1994 in Shawnee County there were 3,599 reported cases of child abuse, yet only 392 confirmed cases.

The same '94 statistics for Sedgwick County are 7,219 reported cases and 509 confirmed cases.

The total number of cases reported in Kansas in '94 is 33,555 while the confirmed cases were 3,430.

While most states in our nation confirm around 40% of abuse/neglect cases, Kansas confirms around 10%. I present to you that I believe that public policy decisions that would expend more Kansas resources to protect children in their homes would be better spent than widening the net on those Kansas could charge with the death penalty in regard to the death of children. (I affirm with delight Attorney General Carla Stovall's support with dollars the Healthy Start Plus program which is designed to address the needs of children in at-risk families from the time of their birth. I believe this kind of public policy will offer more protection to our children.)

According to a report issued by the U.S. Advisory Board on Child Abuse and Neglect in April of 1995, on a national level there is not accurate accounting for the death of children. They express that there are sometimes confusing and contradictory messages about the scope and nature of the death of children. For example, in 1994 the Department of Justice (DOJ) released a report titled Murder in Families which identified mothers as the most frequent killers of children. However, DOJ's data appears to reflect who is prosecuted and convicted. Several new studies that go beyond prosecution and

conviction for child murders, show that fathers and other caretakers account for significantly more abuse and neglect deaths than mothers or other female caretakers. The report further states that a person can call the Center for Disease Control and Protection and find out the number of children who had a brown spider bite last year, but a person cannot get correct information about child abuse and fatalities

In closing, I want to reiterate that KCADP opposes the death penalty in all cases and stands firmly against any expansion of the present death penalty statute. Dr. Karl Menninger, one of Kansas' most famous citizens says, "Rescued children can help save our world." And I know that he would challenge us in his scolding voice if we really think HB 2992 will help to rescue or protect our children.

Sister Therese Banzett

Testimony to the House Judiciary Sub-Committee in Opposition to House Bill 2992

Robert R. Keller
Father of Child Murder Victim
13442 SW 57th Street
Topeka, Kansas 66610

February 20, 1996

On a Saturday afternoon in October 1991, my 12-year-old daughter Brenda decided to go on a bike ride. She never came home.

Less than a mile from her home, in broad daylight, Brenda was grabbed from behind, pulled off the road and forced to go to a secluded area. She was raped. She was sodomized. Throughout she was savagely beaten. Then, after her attacker was through with her, he strangled her and tossed her broken body into a shed.

This man is now serving what will be a minimum of 40 years in prison. As it is, he has no hope of seeing freedom until the year 2031. He received four life sentences. He received 15 to life for kidnapping, 15 to life for murder, 10 to life for rape, and 10 to life for sodomy. If the bill before you had been Kansas law that day, he could possibly be on death row at this very moment.

I was thinking about that the other day. I asked myself how would I feel if this man were executed? What would it be like to know that in the near future he would be strapped to a table and killed? This man who destroyed my daughter's very precious life.

To be honest with you, there are times when I find the idea very appealing. I am not trivializing the way she died when I speak out against the death penalty and when I speak out against this bill. I will never forget how she died. But neither can I forget how she lived. One of the major reasons why I can't join others in supporting the death penalty and bills such as this, is my memory of how Brenda lived. This was the little red-haired girl who announced when she was five that she thought maybe God had put her in this world to love bugs. And all through her very short life, she was dedicated to saving and protecting bugs, and worms and spiders and snakes and things most people would just as soon step on. **And I think--no, I know--she would be horrified if a man, not a bug, not a snake, not a beast, but a human being, were to be killed in her name.**

I deplore the crimes that took my daughter's life more than you can ever know. But there are better ways to respond than to answer death for death, and violence for violence.

Please, do not pass this bill into law.



MURDER VICTIMS FAMILIES FOR RECONCILIATION

1176 SW Warren Ave. • Topeka, KS 66604
(913) 232-5958 • (913) 296-7705

Testimony to House Judiciary Subcommittee

In opposition to House Bill #2992

William J. Lucero

Conferee and State Coordinator

Murder Victim Families for Reconciliation

Mr. Chairman and Members of the Committee,

I am Bill Lucero, State Coordinator of Murder Victims Families for Reconciliation in Kansas. For the past ten years I have been actively involved with other murder victims' families who have opposed state executions as a response to our murdered loved ones. The reason for this is really quite simple—it doesn't do any good and actually does more harm to the process of the families moving from victim-hood to survivor-hood. I've been told so often, "If my loved one was murdered, I know what I would want to happen to his/her murderer." Well let me set the record straight, unless it has happened to you, you have no idea how you would feel. And believe me, I don't wish that pain, misery or suffering to you or anyone!

I lost a father to murder, Bob Keller has lost his daughter. Comparing those losses are like comparing apples and oranges—but make no mistake here—we have both suffered and we still do, but we have been able to go on living—in part because we were both spared having to deal with capital trials.

House Judiciary
2-22-96
Attachment 7

Those of you who brave the evening news in Topeka, might be able to reflect on the loss of privacy and the continued endless pain of Julie Patterson--day after day having cameras pointed at her and microphones shoved in her face during the recent preliminary hearing of Steven Shively's capital murder charge. When Shively's trial--now for second degree murder--is over, I only hope that Mrs. Patterson will be afforded the decent privacy she and her family deserve as well as being given the support they need.

But if a child is murdered after this bill is passed into law, pity the poor parents who will be devastated not just by the loss, but having to serve as martyrs for the D.A. to first convict, then appeal after appeal and finally execute the murderer some ten to fifteen years after the crime was committed. During those years there is virtually little chance for healing to occur.

Today, I stand before you and ask you, Are you going to be there for these families--physically and emotionally for those ten to fifteen years? Let me assure you, few others will be. The family desperately needing support is typically ignored by friends and relatives. Instead they are suppose to "get over it," "get a life," and so on--which THEY CAN'T DO! And what if they, like the Keller's, don't seek an eye for an eye--Are you going to subject them to that torment as well? Keep in mind, once a murder is committed it is no longer the victim vs. the defendant; it is the State vs. the Defendant and the victim's family are only fodder to be fed to the press. As murder cases in other states clearly demonstrate, the wishes for reconciliation by the victim's family are typically ignored.

As I close, several of you may choose to remind me that I don't speak for every victim's families. I know that. Not all victims' families oppose the death penalty—but you would be surprised by the number that do. And I don't know any of them who are "bleeding hearts/soft on criminals" or any other stereotype you would lay on us.

Angry? Sure we were—many of us still are. But there is a limit as to what we can do with our anger. As one survivor once told me—"Execute the murderer? NO! All I really want to do is go back in time and shoot him before he is able to kill anybody. What good does it do to kill him now?"

JOHNSON COUNTY SHERIFF'S OFFICE

FRED ALLENBRAND
SHERIFF

JOHN L. FOSTER
UNDER SHERIFF

COURT HOUSE

OLATHE, KANSAS 66061

782-5000

Testimony of John L. Foster, Undersheriff
Johnson County, Kansas
House Bill 2443
House Judiciary Committee

The Johnson County Sheriff's Office supports House Bill 2443. There are 21 cities in Johnson County and all but three have common borders with another jurisdiction. There are many occasions when an officer will observe a serious offense in another city and the violator will be only a matter of feet from the observing officer. House Bill 2443 would give the officer the ability to take whatever action is necessary while the officers from the adjoining jurisdiction are proceeding to the scene.

No better example exists than that of the drunk driver. Since the only border separation between these cities is often a street, frequently the drunk driver is headed south on the border street in one jurisdiction while an officer from an adjoining jurisdiction is approaching the driver from the opposite direction. House Bill 2443 would allow the officer to remove the problem driver from the roadway without any question whether the officer had the legal powers to effect the arrest.

The bottom line results is the ability to take an offender into custody before any harm may be done to the public.

House Judiciary
2-22-96
Attachment 8

TESTIMONY REFERENCE HOUSE BILL 2443 AND 2939

Date: February 20, 1996

Testimony by: Kenneth Sissom
Chief of Police
Merriam, Kansas

I am here on behalf of the Merriam, Kansas Police Department. I also represent the Johnson County Police Chiefs' Association as their current President and currently serve on the Legislative Committee of the Kansas Association of Police Chiefs.

The majority of citizens in our state are under the mistaken impression that when a police officer is on-duty, in full uniform, they may act as a police officer with full authority anywhere in the State of Kansas. **This is not true.**

A police officer may only act with law enforcement authority within the boundaries of the jurisdiction that employs them. This condition would be acceptable if the officer never left their city while on-duty. This creates a serious problem for many cities in Kansas, especially in Johnson County.

Johnson County, by virtue of the way it is laid out, requires officers to drive through different cities, or jurisdictions, while in the performance of their duty. This is true in varying degrees in each of the 17 cities that are located in Johnson County. (Refer to map)

As an example, in Merriam, if an officer is at 75th and Antioch and gets a call to respond to 47th and Antioch, they will drive through two separate sections of Overland Park, while in-route to the call. While driving through Overland Park, they will have no law enforcement authority.

What happens if an officer, while driving through another city, comes across a crime in progress. If the officer was off-duty, they could opt to not get involved and no one would know the difference. This becomes a less desirable option if the officer is on-duty, in full uniform, and driving a fully marked police car. The public would demand that the officer do something.

Several months ago, a Merriam Police Officer, working the evening shift, was driving north on Antioch in the 7300 block. They observed a car stopped for reasons unknown in the street ahead. The lone vehicle was sitting in the street, occupied by two persons. As the officer approached the car to investigate, he could hear shouting. Suddenly the man grabbed the woman by the hair and began to repeatedly strike her in the face. At that point, the officer had three options to consider:

1. Return to his patrol vehicle and notify Overland Park Police of the disturbance;
2. Contact Overland Park Police by radio, and hope that they ask the Merriam Officer to assist them by responding to the situation. This would give the officer some law enforcement authority under Mutual Aid; and,
3. Intervene by arresting the offender, which would give the victim immediate protection from further abuse, and then request the Overland Park Police Department to respond and assist.

Due to the immediate need to intervene, there was really only one choice for the officer. The officer placed the man under arrest and then called Overland Park Police, who responded and took the man into custody.

While this was obviously the proper course of action, it is extremely important to note that the officer had **absolutely no lawful authority to make an arrest.** This fact could create problems later during the prosecution of this case. The department's and officer's level of liability is also increased by this fact.

In closing I must state that the law needs to be changed. Police officers must be given the authority to act as police officers in these cases. The public would demand it and the law should provide for it. I ask that this committee strongly consider proceeding with House Bill 2939 which would grant law enforcement authority statewide; or at the least, proceed with House Bill 2443 which provides for appropriate law changes in Johnson County. Thank you for your consideration of my testimony.



LEAWOOD POLICE DEPARTMENT

9617 LEE BOULEVARD, LEAWOOD, KANSAS 66206

(913) 642-5555

FAX (913) 642-2238

February, 1996

TESTIMONY IN SUPPORT OF H.B. 2443

Law enforcement officers in Kansas are routinely hampered in the performance of duty by statutory restrictions on the exercise of police powers. According to existing law, officers may use their powers:

1. Within the limits of the jurisdiction which employs them;
2. When in fresh pursuit of a fleeing suspect; and
3. When assistance is requested by another agency.

There is one additional exemption only for Sedgwick and Johnson Counties when officers are serving arrest or search warrants.

These restrictions frequently create situations in which the public interest is not served. In the suburban areas of Johnson County, officers from one jurisdiction routinely travel boundary streets while in the course of normal patrol. Further, officers regularly travel across jurisdiction lines transporting prisoners, responding to emergencies, and the like. Criminal acts, drunk driving, and other offenses can occur in the immediate presence of an officer who is legally powerless to take any action. Further, it is not outside the realm of possibility that officers and their communities are placed in civil jeopardy while performing routine duties in an absolutely proper manner.

House Judiciary
2-22-96
Attachment 10

GUIDING PRINCIPLES

• THE EXTRA MILE IS OUR STANDARD • WE ARE HERE TO PROTECT, HELP, AND REASSURE THE COMMUNITY •
• HOW WE GET THE JOB DONE SETS US APART • WE ARE FAIR BUT FIRM • THE ATTITUDE IS AS IMPORTANT AS THE JOB •

Here are three examples:

1. Because of city boundaries and geographic features, it is physically impossible for an officer of the Leawood Police Department to move from the northern area of the city to the southern area without entering Overland Park or even the State of Missouri. Thus, Leawood officers routinely drive streets in Overland Park simply moving from one part of their patrol districts to another. To cite a very real situation, the Leawood officer leaves the city limits and, while in Overland Park, observes an obviously intoxicated driver who is an immediate danger to other motorists. The Leawood officer has no authority whatsoever to stop the impaired driver. To follow the statute, he or she must radio the Leawood dispatcher, who phones the Overland Park dispatcher, who phones or radios an Overland Park supervisor or officer, who then requests assistance from Leawood. This request is given to the Overland Park dispatcher, who relays it to the Leawood dispatcher, who radios the Leawood car that assistance has been requested and that the car should be stopped. This sequence of events may take 3-5 minutes or more; the officer only hopes that the drunk driver doesn't hit someone in the meantime.

The reverse situation poses an equal dilemma. The Leawood officer knows there is a moral responsibility to stop the impaired driver at the earliest possible moment in the interest of public safety. He or she makes the stop despite the fact that he or she has no legal police powers in Overland Park. The driver will not be prosecuted because the officer had no authority to intervene or to exercise any police power. Thus, the drunk driver not only escapes the legal consequences but, at least in theory, can probably sue the officer and the City of Leawood. Why should officers be placed in jeopardy for doing what is obviously the right thing to do?

2. A Prairie Village officer is on routine patrol in the area of 95th and Mission Road and is dispatched to a child struck by a car at 83rd and Mission Road. The officer turns on the emergency lights and siren and drives north on Mission to the accident. Unfortunately, the northbound lanes of Mission Road from 95th to 84th are in Leawood. Is the officer exercising police authority in a city where he has no police authority? If the officer is involved in an accident, is the city potentially liable? There is no pat answer, but it can certainly be argued that the officer was exceeding statutory authority, and an unpredictable civil jury can rule against Prairie Village.

3. True story: an Overland Park officer is taking a meal break at a restaurant in Lenexa, literally across half the width of Quivira Road from her city and patrol district. While eating, she is approached by citizens who tell her an intoxicated man is brandishing a gun outside a nearby restaurant and bar, also in Lenexa. The officer responds, confronts the man, and eventually has no choice but to

shoot him. This is excellent police work, except that the officer has no authority to act in Lenexa. What is her exposure?

I certainly understand that almost all statutes have a "letter of the law" and a "spirit of the law" and that some common sense must be applied. There is no question what a conscientious, professional law enforcement officer will do in any of the cases outlined above. However, criminals and other law violators will go free, and municipalities will be sued because officers doing the "right thing" are exceeding the authority granted to them by law. In both cases, the public is being done a disservice.

H.B. 2939 is modeled after a Minnesota statute which addresses these issues in a reasonable manner. Anywhere in the state, a full-time state-certified officer has authority to exercise full police powers, provided the officer is on duty. Off-duty exercise of powers is restricted by the same statute, which further allows any agency to place additional restrictions on off-duty exercise of police powers. The theory behind the statute is that a certified officer is presumed to meet certain prescribed minimum training standards which are uniform across the state and should be able to exercise powers state-wide. This same type of certification process exists in Kansas.

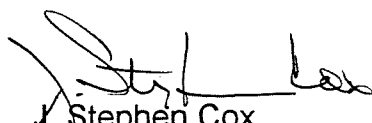
I believe that H.B. 2939 offers the best remedy to the existing dilemma. Sheriff Fred Allenbrand pointed out that on any given day he has as many as fifty deputies scattered across the state, transporting prisoners, conducting investigations, and the like. These deputies have no police powers outside of the county.

If there are officers who would abuse this authority by trying to exercise police powers in situations where they have no business intervening, these are training and management problems which need to be addressed.

H.B. 2443 is an acceptable alternative which broadens the authority of officers in Johnson County. It doesn't help the sheriff, nor does it help the University Police in Lawrence, but it does offer a measure of protection to my officers and their peers. That, frankly, is my primary concern.

Thank you for your consideration.

Sincerely,


J. Stephen Cox
Chief of Police
Leawood, Kansas

KANSAS PEACE OFFICERS ASSOCIATION
and
KANSAS SHERIFFS ASSOCIATION

House Judiciary Subcommittee
HB 2443

Mr. Chairman and Members of the Subcommittee:

My name is Helen Stephens, representing the above organizations.

KPOA and KSA support passage of HB 2443.

Law enforcement officers in Johnson County have a unique and difficult situation to handle. HB 2443 is in the best interests of the citizens of Johnson County.

Please give your favorable consideration to this bill.

Thank you for your time.

KANSAS PEACE OFFICERS ASSOCIATION
and
KANSAS SHERIFFS ASSOCIATION

House Judiciary Subcommittee
HB 2939

Mr. Chairman and Members of the Subcommittee:

My name is Helen Stephens, representing the above organizations.

The KPOA and KSA met last Friday. Both organizations had hard discussions on HB 2939, which gives state-wide arrest powers to all Kansas law enforcement. Although both may support the concept, the discussions left more unanswered questions than either would like. These questions centered on the definition of law enforcement officer and liability concerns.

For these reasons, we would ask that HB 2939 be put into an interim study so you, the legislators, and law enforcement can take a longer look at this concept.

Thank you for your time.

STATE OF KANSAS

KANSAS DEPARTMENT OF TRANSPORTATION

E. Dean Carlson
Secretary of Transportation

*Docking State Office Building
Topeka 66612-1568
(913) 296-3566
TTY (913) 296-3585
FAX (913) 296-1095*

Bill Graves
Governor of Kansas

February 20, 1996

The Honorable Mike O'Neal, Chairman
House Judiciary Committee
Room 112-S
Statehouse
Topeka, Kansas 66612

Dear Representative O'Neal:

In regard to your inquiry Thursday, February 15, during the House Judiciary Committee meeting, I regret that I cannot provide you with the specific sanction that is required under the federally-mandated zero tolerance law (House Bill 2603). Perhaps it may help to know the structure of the zero tolerance laws in the twenty-eight states possessing them.

As I indicated Thursday, the National Highway Traffic Safety Administration (NHTSA) is required to complete a rulemaking process for determination of the sanction. Upon recent inquiry, the NHTSA Regional Office is reluctant to give me any specific guidelines prior to the issuance of the proposed rulemaking. As you know, sanctioning requirements have been established for zero tolerance laws under the Section 410 program, as specified in my testimony of January 23, 1996. The minimum criteria is a thirty-day "hard" administrative suspension. The enclosed list indicates that there is a broad range of sanctions in the current zero tolerance laws.

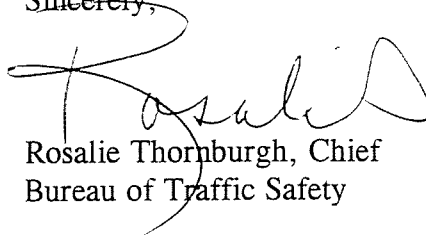
On a related, but different matter, I'd like to offer you the following information I gathered regarding a concern I heard expressed during your committee meeting on February 6, 1996. A concern was expressed in regard to the zero tolerance bill, specifically having to do with insurance coverage for families of those apprehended and/or convicted for DUI. The question was whether or not other states with zero tolerance laws had "hold-harmless" laws protecting family members or family insurance policies from being cancelled or non-renewed.

House Judiciary
2-22-96
Attachment 13

The Honorable Mike O'Neal, Chairman
House Judiciary Committee
February 20, 1996

I know you did not ask me to look into this issue, however, I do feel compelled to share with you my knowledge. As indicated in the enclosed communiqué from the Kansas Insurance Department, most states will permit the insurance company to cancel or non-renew the parents' auto policy if the son or daughter has a blood alcohol content greater than the limit imposed by law. I hope this information is helpful..

Sincerely,

A handwritten signature in cursive script, appearing to read "Rosalie", written in black ink. The signature is fluid and somewhat stylized, with a large loop at the end of the last name.

Rosalie Thornburgh, Chief
Bureau of Traffic Safety

Enclosures

DRUNK DRIVING STATUTORY AND CASE LAW SUMMARY

.02 OR LOWER ALCOHOL CONCENTRATIONS FOR DUI OFFENDERS
UNDER AGE 21

STATE	BAC	TYPE OF SANCTION			
		LICENSING	FINE	JAIL	COMMUNITY SERVICE
AZ	0.00		X	X	
AR	0.02	C	X		X
CA	0.01	A			
CT	0.02	A			
DE	(0.02) ²	A & C			
DC	0.00	C	X	X	
ID	0.02	C	X	X ¹	
IL	0.00	A			
IA	0.02	A			
ME	0.00	A			
MD	0.02	C	X		
MA	0.02	A			
MI	(0.00) ²	C	X		X
MN	0.00	C	X	X	
MT	0.02	C	X	X ¹	
NE	0.02	C	X		
NH	0.02	A & C	X	X	X
NJ	0.01	C			X
NM	0.02	A			
NC	0.00	C	X	X	

DRUNK DRIVING STATUTORY AND CASE LAW SUMMARY

STATE	BAC	TYPE OF SANCTION			
		LICENSING	FINE	JAIL	COMMUNITY SERVICE
OH	0.02	C	X	X	
OR	0.00	A			
RI	0.02	C	X		X
TN	0.02	C	X		X
UT	0.00	A			
VA	0.02	C	X		
WA	0.02	A ⁴	X	X	
WV	0.02	A ⁴	X	X ⁵	
TOTAL = 28		A (11) C (14) A & C (2)	17	10	6

A = Based on administrative procedure

C = based on a criminal conviction

¹This sanction applies only for 3rd and subsequent offenses.

²The law prohibits operating a motor vehicle with "any bodily alcohol content" which means either (1) a BAC ≥ 0.02 but ≤ 0.07 or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony."

³A person <21 years old is prohibited from operating a motor vehicle either while or after consuming alcoholic beverages. An alcohol concentration ≥ 0.02 is *prima facie* evidence of such an offense.

⁴Licensing action is based on an administrative proceeding not related to a criminal conviction.

⁵This sanction applies only for subsequent offenses.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

February 13, 1996

MS ROSALIE THORNBURGH
KANSAS DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC SAFETY
THACHER BUILDING
217 S E 4TH STREET
TOPEKA KS 66603

Re: Proposed Blood Alcohol Limit
Youthful Operators

Dear Ms. Thornburgh:

This will acknowledge your facsimile of February 7, 1996, regarding the captioned topic.

We have reviewed your submission and surveyed the states with lower BAC levels for youthful operators. Our findings are attached. Most states will permit the insurance company to cancel or non -- renew the parents' auto policy if the son or daughter has a blood alcohol content greater than the limit imposed by law. Kansas would also fall into this category. Some states will permit the insurance company to exclude the son or daughter from the parents' policy. When a company takes this action, there will not be any coverage afforded to the son or daughter if he or she operates the parents' insured car. A company can not exclude a driver in Kansas because K.S.A. 40-3107 will not permit such an exclusion. K.S.A. 40-3107 only permits a company to exclude coverage under those situations listed in the statute. A driver exclusion is not one of the permitted exclusions. In cases where a company can surcharge a policy, the policyholder will pay a higher premium for the insurance coverage. Many companies in Kansas have the ability to surcharge a policy for a DUI conviction; however, most companies writing preferred or standard business (these companies generally write coverage at the lowest premium) will terminate the policy.

We hope that the information provided adequately responds to your inquiry. If you have any additional questions or comments, please feel free to call me at 296-7833.

Very truly yours,

Kathleen Sebelius
Commissioner of Insurance

James G. Newins
Fire and Casualty Policy Examiner

JGN:jgn

RECEIVED

FEB 13 1996

Office of Traffic Safety
TOPEKA, KANSAS

STATE	CANCEL OR NONRENEW PARENTS POLICY	OTHER ACTION INS. CO. CAN TAKE
Arizona	no	Can exclude driver
Arkansas	yes	Can exclude driver
California	yes	Can exclude driver
Connecticut	yes	
Delaware	yes	
Wash D.C.	No response	
Idaho	yes	
Illinois	yes	
Louisiana	no	Can exclude driver or surcharge policy
Maine	yes	Can exclude driver
Maryland	no	Can exclude driver or surcharge policy
Michigan	yes	
Minnesota	No response	
Montana	No response	
Nebraska	yes	
New Hampshire	no	Surcharge policy only
New Jersey	No response	
New Mexico	yes	
North Carolina	no	Surcharge policy only
Ohio	yes	
Rhode Island	yes	
Tennessee	yes	
Utah	yes	
Virginia	yes	
Washington	yes	Can exclude driver
West Virginia	yes	Can exclude driver

HOUSE BILL No. 2603

By Special Committee on Transportation
Re Proposal No. 59

12-20

Rep. O'Neal
2/22/96

House Judiciary
2-22-96
Attachment 14

10 AN ACT concerning ~~alcohol or drug related offenses involving the op-~~
11 ~~eration of a vehicle, relating to~~ the blood alcohol concentration of a
12 person under 21; amending ~~K.S.A. 8-2,142, 8-2,144 and 8-2,145 and~~
13 ~~K.S.A. 1995 Supp. 8-1001, 8-1002, 8-1005, 8-1013, 8-1567 and 12-~~
14 ~~4308~~ and repealing the existing sections.

and

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

17 ~~Section 1. K.S.A. 8-2,142 is hereby amended to read as follows: 8-~~
18 ~~2,142. (a) A person is disqualified from driving a commercial motor ve-~~
19 ~~hicle for a period of not less than one year upon a first occurrence of any~~
20 ~~one of the following:~~

21 (1) The person's conviction of a violation of K.S.A. 8-2,144, *and*
22 *amendments thereto;*

23 (2) leaving the scene of an accident involving a commercial motor
24 vehicle driven by the person;

25 (3) the person's conviction of using a commercial motor vehicle in
26 the commission of any felony as defined in this act; or

27 (4) the person's test refusal or test failure, as defined by subsection
28 (i).

29 (b) If any offenses, test refusal or test failure specified in subsection
30 (a) occurred while transporting a hazardous material required to be plac-
31 arded, the person is disqualified for a period of not less than three years.

32 (c) A person shall be disqualified for life upon the second or a sub-
33 sequent occurrence of any offense, test refusal or test failure specified in
34 subsection (a), or any combination thereof, arising from two or more
35 separate incidents.

36 (d) The secretary of revenue may adopt rules and regulations estab-
37 lishing guidelines, including conditions, under which a disqualification for
38 life under subsection (c) may be reduced to a period of not less than 10
39 years.

40 (e) A person is disqualified from driving a commercial motor vehicle
41 for life who uses a commercial motor vehicle in the commission of any
42 felony involving the manufacture, distribution or dispensing of a con-
43 trolled substance, or possession with intent to manufacture, distribute or

14-2

1 dispense a controlled substance.

2 (f) A person is disqualified from driving a commercial motor vehicle
3 for a period of not less than 60 days if convicted of two serious traffic
4 violations, or 120 days if convicted of three serious traffic violations, com-
5 mitted in a commercial motor vehicle arising from separate incidents
6 occurring within a three-year period.

7 (g) After suspending, revoking or canceling a commercial driver's li-
8 cense, the division shall update its records to reflect that action within 10
9 days. After suspending, revoking or canceling a nonresident commercial
10 driver's privileges, the division shall notify the licensing authority of the
11 state which issued the commercial driver's license or nonresident com-
12 mercial driver's license within 10 days.

13 (h) Upon suspension, revocation, cancellation or disqualification of a
14 commercial driver's license under this act, the license shall be immedi-
15 ately surrendered to the division if still in the licensee's possession. If
16 otherwise eligible, and upon payment of the required fees, the licensee
17 may be issued a noncommercial driver's license for the period of suspen-
18 sion, revocation, cancellation or disqualification of the commercial driv-
19 er's license under the same identifier number.

20 (i) As used in this section, "test refusal" means a person's refusal to
21 submit to and complete a test requested pursuant to K.S.A. 8-2,145, and
22 amendments thereto; "test failure" means a person's submission to and
23 completion of a test which determines that the person's alcohol concen-
24 tration is .02 or greater, if such person is less than 21 years of age or .04
25 or greater, if such person is 21 or more years of age, pursuant to K.S.A.
26 8-2,145, and amendments thereto.

27 Sec. 2. K.S.A. 8-2,144 is hereby amended to read as follows: 8-2,144.

28 (a) No person shall drive any commercial motor vehicle, as defined in
29 K.S.A. 8-2,128, and amendments thereto, within this state while:

30 (1) The alcohol concentration in the person's blood or breath, as
31 shown by any competent evidence, including other competent evidence,
32 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
33 ments thereto, is .04 or more .02 or greater, if such person is less than
34 21 years of age or .04 or greater, if such person is 21 or more years of
35 age;

36 (2) the alcohol concentration in the person's blood or breath, as meas-
37 ured within two hours of the time of driving a commercial motor vehicle,
38 is .04 or more .02 or greater, if such person is less than 21 years of age
39 or .04 or greater, if such person is 21 or more years of age; or

40 (3) committing a violation of subsection (a) of K.S.A. 8-1567, and
41 amendments thereto, or the ordinance of a city or resolution of a county
42 which prohibits any of the acts prohibited thereunder.

43 (b) Violation of this section is a misdemeanor. In addition to any pen-

14-3

1 alties ordered under K.S.A. 8-1567, and amendments thereto, the person
2 convicted shall be sentenced to not less than 48 consecutive hours nor
3 more than six months imprisonment, and fined not less than \$200 nor
4 more than \$500.

5 (c) The court shall report every conviction of a violation of this section
6 to the division. Prior to sentencing under the provisions of this section,
7 the court shall request and shall receive from the division a record of all
8 prior convictions obtained against such person for any violation of any of
9 the motor vehicle laws of this state.

10 (d) Upon conviction of a person of a violation of this section or a
11 violation of a city ordinance or county resolution prohibiting the acts
12 prohibited by this section, the division, upon receiving a report of con-
13 viction, shall disqualify the person from driving a commercial motor ve-
14 hicle under K.S.A. 8-2,142, and amendments thereto.

15 (e) For the purpose of this section, "alcohol concentration" means
16 the number of grams of alcohol per 100 milliliters of blood or per 210
17 liters of breath.

18 Sec. 3. K.S.A. 8-2,145 is hereby amended to read as follows: 8-2,145.

19 (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and
20 amendments thereto, in addition to any notices provided pursuant to par-
21 agraph (1) of subsection (f) of K.S.A. 8-1001, and amendments thereto,
22 the following notice shall be provided orally and in writing: Whenever a
23 law enforcement officer has reasonable grounds to believe a person has
24 been driving a commercial motor vehicle while having alcohol or other
25 drugs in such person's system and the person refuses to submit to and
26 complete a test or tests requested by a law enforcement officer or submits
27 to and completes a test requested by a law enforcement officer which
28 determines that the person's alcohol concentration is *.02 or greater, if*
29 *such person is less than 21 years of age, or .04 or greater, if such person*
30 *is 21 or more years of age*, the person will be disqualified from driving a
31 commercial motor vehicle for at least one year, pursuant to Kansas law.

32 (b) It shall not be a defense that the person did not understand the
33 notices required by this section.

34 (c) Upon completion of the notices set out in paragraph (1) of sub-
35 section (f) of K.S.A. 8-1001, and amendments thereto, and the notices in
36 subsection (a), the law enforcement officer shall proceed to request a test
37 or tests. In addition to the completion of any certification required under
38 K.S.A. 8-1002, and amendments thereto, a law enforcement officer's cer-
39 tification shall be prepared and signed by one or more officers to certify:

40 (1) There existed reasonable grounds to believe the person had been
41 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
42 amendments thereto, while having alcohol or other drugs in such person's
43 system;

J-1-1

1 (2) the person had been placed under arrest, was in custody or had
2 been involved in a motor vehicle accident or collision;

3 (3) a law enforcement officer had presented the person with the no-
4 tices required by this section; and

5 (4) the person refused to submit to and complete a test or the test
6 result for alcohol content of blood or breath was *.02 or greater, if such*
7 *person is less than 21 years of age, or .04 or greater, if such person is 21*
8 *or more years of age.*

9 (d) For purposes of this section, certification shall be complete upon
10 signing, and no additional acts of oath, affirmation, acknowledgment or
11 proof of execution shall be required. The signed certification or a copy
12 or photostatic reproduction thereof shall be admissible in evidence in all
13 proceedings brought pursuant to this act, and receipt of any such certi-
14 fication, copy or reproduction shall accord the division authority to pro-
15 ceed as set forth herein. Any person who signs a certification submitted
16 to the division knowing it contains a false statement is guilty of a class B
17 misdemeanor.

18 (e) Upon completing a certification under subsection (c), the officer
19 shall serve upon the person notice of disqualification of the privilege to
20 drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amend-
21 ments thereto, together with a copy of the certification. In cases where a
22 *.02 or greater test result, for persons less than 21 years of age or .04 or*
23 *greater test result for persons 21 or more years of age,* is established by
24 a subsequent analysis of a breath or blood sample, the officer shall serve
25 notice of such suspension in person or by another designated officer or
26 by mailing the notice to the person at the address provided at the time
27 of the test. If the determination of a test refusal or *.02 or greater test*
28 *result, for persons less than 21 years of age or .04 or greater test result*
29 *for persons 21 or more years of age* is made while the person is still in
30 custody, service shall be made in person by the officer on behalf of the
31 division of vehicles.

32 (f) The notice shall contain the following information:

33 (1) The person's name, driver's license number and current address
34 pursuant to K.S.A. 8-248, and amendments thereto;

35 (2) the reason and statutory grounds for the disqualification;

36 (3) the date notice is being served and the effective date of the dis-
37 qualification, which shall be the 20th day after the date of service;

38 (4) the right of the person to request an administrative hearing; and

39 (5) the procedure the person must follow to request an administrative
40 hearing.

41 The notice of disqualification shall also inform the person that all corre-
42 spondence will be mailed to the person at the address contained in the
43 notice of disqualification unless the person notifies the division in writing

14-5

1 of a different address or change of address. The address provided will be
2 considered a change of address for purposes of K.S.A. 8-248, and amend-
3 ments thereto, if the address furnished is different from that on file with
4 the division.

5 (g) If the person mails a written request which is postmarked within
6 10 days after service of the notice, if by personal service, or 13 days after
7 service, if by mail, the division shall schedule a hearing in the county
8 where the alleged violation occurred, or in a county adjacent thereto. The
9 licensee may request that subpoenas be issued in accordance with the
10 notice provided pursuant to subsection (d). Any request made by the
11 licensee to subpoena witnesses must be made in writing at the time the
12 hearing is requested and must include the name and current address of
13 such witness and, except for the certifying law enforcement officer or
14 officers, a statement of how the testimony of such witness is relevant.
15 Upon receiving a timely request for a hearing, the division shall mail to
16 the person notice of the time, date and place of hearing in accordance
17 with subsection (i) and extend the person's temporary driving privileges
18 until the date set for the hearing by the division, unless otherwise dis-
19 qualified, suspended, revoked or cancelled.

20 (h) The law enforcement officer shall forward the certification re-
21 quired under subsection (c) to the director within five days of the date
22 of certification. Upon receipt of the certification, the division shall review
23 the certification to determine that it meets the requirements of subsection
24 (c). Upon so determining, the director shall proceed to disqualify the
25 driver from driving a commercial motor vehicle in accordance with the
26 notice of disqualification previously served.

27 (i) All notices of disqualification under this section and all notices of
28 a hearing held under this section shall be sent by first-class mail and a
29 United States post office certificate of mailing shall be obtained therefor.
30 All notices so mailed shall be deemed received three days after mailing.

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

35 (k) The rules regarding evidence and procedure at hearings held un-
36 der K.S.A. 8-1002, and amendments thereto, shall be applicable to hear-
37 ings held under this section. At the hearing on a disqualification of com-
38 mercial driving privileges, the issues shall be limited to those set out in
39 the certification.

40 (l) The division shall prepare and distribute forms for use by law
41 enforcement officers in giving the notice required by this section.

42 ~~Sec. 4. K.S.A. 1995 Supp. 8-1001 is hereby amended to read as fol-~~
43 ~~lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle~~

Section 1.

1 within this state is deemed to have given consent, subject to the provisions
2 of this act, to submit to one or more tests of the person's blood, breath,
3 urine or other bodily substance to determine the presence of alcohol or
4 drugs. The testing deemed consented to herein shall include all quanti-
5 tative and qualitative tests for alcohol and drugs. A person who is dead
6 or unconscious shall be deemed not to have withdrawn the person's con-
7 sent to such test or tests, which shall be administered in the manner
8 provided by this section.

9 (b) A law enforcement officer shall request a person to submit to a
10 test or tests deemed consented to under subsection (a) if the officer has
11 reasonable grounds to believe the person was operating or attempting to
12 operate a vehicle while under the influence of alcohol or drugs, or both,
13 or to believe that the person was driving a commercial motor vehicle, as
14 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
15 or other drugs in such person's system; and one of the following condi-
16 tions exists: (1) The person has been arrested or otherwise taken into
17 custody for any offense involving operation or attempted operation of a
18 vehicle while under the influence of alcohol or drugs, or both, or involving
19 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
20 amendments thereto, while having alcohol or other drugs in such person's
21 system, in violation of a state statute or a city ordinance; or (2) the person
22 has been involved in a vehicle accident or collision resulting in property
23 damage, personal injury or death. The law enforcement officer directing
24 administration of the test or tests may act on personal knowledge or on
25 the basis of the collective information available to law enforcement offi-
26 cers involved in the accident investigation or arrest.

27 (c) If a law enforcement officer requests a person to submit to a test
28 of blood under this section, the withdrawal of blood at the direction of
29 the officer may be performed only by: (1) A person licensed to practice
30 medicine and surgery or a person acting under the supervision of any
31 such licensed person; (2) a registered nurse or a licensed practical nurse;
32 or (3) any qualified medical technician, including, but not limited to, an
33 emergency medical technician-intermediate or mobile intensive care
34 technician, as those terms are defined in K.S.A. 65-6112, and amend-
35 ments thereto, or a phlebotomist. When presented with a written state-
36 ment by a law enforcement officer directing blood to be withdrawn from
37 a person who has tentatively agreed to allow the withdrawal of blood
38 under this section, the person authorized herein to withdraw blood and
39 the medical care facility where blood is withdrawn may rely on such a
40 statement as evidence that the person has consented to the medical pro-
41 cedure used and shall not require the person to sign any additional con-
42 sent or waiver form. In such a case, the person authorized to withdraw
43 blood and the medical care facility shall not be liable in any action alleging

2-4-7

1 lack of consent or lack of informed consent. No person authorized by this
 2 subsection to withdraw blood, nor any person assisting in the performance
 3 of a blood test nor any medical care facility where blood is withdrawn or
 4 tested that has been directed by any law enforcement officer to withdraw
 5 or test blood, shall be liable in any civil or criminal action when the act
 6 is performed in a reasonable manner according to generally accepted
 7 medical practices in the community where performed.

8 (d) If there are reasonable grounds to believe that there is impair-
 9 ment by a drug which is not subject to detection by the blood or breath
 10 test used, a urine test may be required. If a law enforcement officer
 11 requests a person to submit to a test of urine under this section, the
 12 collection of the urine sample shall be supervised by persons of the same
 13 sex as the person being tested and shall be conducted out of the view of
 14 any person other than the persons supervising the collection of the sample
 15 and the person being tested, unless the right to privacy is waived by the
 16 person being tested. The results of qualitative testing for drug presence
 17 shall be admissible in evidence and questions of accuracy or reliability
 18 shall go to the weight rather than the admissibility of the evidence.

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

22 (f) (1) Before a test or tests are administered under this section, the
 23 person shall be given oral and written notice that: (A) Kansas law requires
 24 the person to submit to and complete one or more tests of breath, blood
 25 or urine to determine if the person is under the influence of alcohol or
 26 drugs, or both; (B) the opportunity to consent to or refuse a test is not a
 27 constitutional right; (C) there is no constitutional right to consult with an
 28 attorney regarding whether to submit to testing; (D) if the person refuses
 29 to submit to and complete any test of breath, blood or urine hereafter
 30 requested by a law enforcement officer, the person's driving privileges
 31 will be suspended for at least one year; (E) if the person is 21 or more
 32 years of age at the time of the test and submits to and completes the test
 33 or tests and the test results show an alcohol concentration of .08 or
 34 greater, the person's driving privileges will be suspended for at least 30
 35 days; (F) if the person is less than 21 years of age at the time of the test
 36 and submits to and completes the test or tests and the test results show
 37 an alcohol concentration of .02 or greater, the person's driving privileges
 38 will be suspended for at least 30 days; (G) if the person is 21 or more
 39 years of age at the time of the test and refuses a test or the test results
 40 show an alcohol concentration of .08 or greater and if, within the past
 41 five years, the person has been convicted or granted diversion on a charge
 42 of driving under the influence of alcohol or drugs, or both, or a related
 43 offense or has refused or failed a test, the person's driving privileges will

1 be suspended for at least one year; ~~(G)~~ (H) if the person is less than 21
2 years of age at the time of the test and refuses a test or the test results
3 show an alcohol concentration of .02 or greater and if, within the past
4 five years, the person has been convicted or granted a diversion on a
5 charge of driving under the influence of alcohol or drugs, or both, or a
6 related offense or has refused or failed a test, the person's driving privi-
7 leges will be suspended for at least one year; (I) refusal to submit to testing
8 may be used against the person at any trial on a charge arising out of the
9 operation or attempted operation of a vehicle while under the influence
10 of alcohol or drugs, or both; ~~(H)~~ (J) the results of the testing may be used
11 against the person at any trial on a charge arising out of the operation or
12 attempted operation of a vehicle while under the influence of alcohol or
13 drugs, or both; and ~~(H)~~ (K) after the completion of the testing, the person
14 has the right to consult with an attorney and may secure additional testing,
15 which, if desired, should be done as soon as possible and is customarily
16 available from medical care facilities and physicians. If a law enforcement
17 officer has reasonable grounds to believe that the person has been driving
18 a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-
19 ments thereto, while having alcohol or other drugs in such person's sys-
20 tem, the person must also be provided the oral and written notice pur-
21 suant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the
22 notices required by K.S.A. 8-2,145 and amendments thereto shall not
23 invalidate any action taken as a result of the requirements of this section.
24 After giving the foregoing information, a law enforcement officer shall
25 request the person to submit to testing. The selection of the test or tests
26 shall be made by the officer. If the person refuses to submit to and com-
27 plete a test as requested pursuant to this section, additional testing shall
28 not be given unless the certifying officer has probable cause to believe
29 that the person, while under the influence of alcohol or drugs, or both,
30 has operated a vehicle in such a manner as to have caused the death of
31 or serious injury to another person. As used in this section, the officer
32 shall have probable cause to believe that the person operated a vehicle
33 while under the influence of alcohol or drugs, or both, if the vehicle was
34 operated by such person in such a manner as to have caused the death
35 of or serious injury to another person. In such event, such test or tests
36 may be made pursuant to a search warrant issued under the authority of
37 K.S.A. 22-2502, and amendments thereto, or without a search warrant
38 under the authority of K.S.A. 22-2501, and amendments thereto. If the
39 test results show a blood or breath alcohol concentration of .02 or greater,
40 if such person is less than 21 years of age or .08 or greater, if such person
41 is 21 or more years of age, the person's driving privileges shall be subject
42 to suspension, or suspension and restriction, as provided in K.S.A. 8-1002
43 and 8-1014, and amendments thereto. The person's refusal shall be ad-

8-71

1 missible in evidence against the person at any trial on a charge arising out
 2 of the alleged operation or attempted operation of a vehicle while under
 3 the influence of alcohol or drugs, or both. If a law enforcement officer
 4 had reasonable grounds to believe the person had been driving a com-
 5 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
 6 thereto, and the test results show a blood or breath alcohol concentration
 7 of ~~(.02 or greater, if such person is less than 21 years of age or~~ .04 or
 8 greater, ~~(if such person is 21 or more years of age)~~ the person shall be
 9 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
 10 8-2,142, and amendments thereto. If a law enforcement officer had rea-
 11 sonable grounds to believe the person had been driving a commercial
 12 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
 13 and the test results show a blood or breath alcohol concentration of ~~(.02~~
 14 ~~or greater, if such person is less than 21 years of age or~~ .08 or greater, ~~(if~~
 15 ~~such person is 21 or more years of age)~~ or the person refuses a test, the
 16 person's driving privileges shall be subject to suspension, or suspension
 17 and restriction, pursuant to this section, in addition to being disqualified
 18 from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and
 19 amendments thereto.

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

24 (3) It shall not be a defense that the person did not understand the
 25 written or oral notice required by this section.

26 (4) No test shall be suppressed because of technical irregularities in
 27 the consent or notice pursuant to K.S.A. 8-2,145, and amendments
 28 thereto.

29 (g) Nothing in this section shall be construed to limit the admissibility
 30 at any trial of alcohol or drug concentration testing results obtained pur-
 31 suant to a search warrant.

32 (h) Upon the request of any person submitting to testing under this
 33 section, a report of the results of the testing shall be made available to
 34 such person.

35 (i) This act is remedial law and shall be liberally construed to promote
 36 public health, safety and welfare.

37 Sec. ~~§~~ K.S.A. 1995 Supp. 8-1002 is hereby amended to read as fol-
 38 lows: 8-1002. (a) Whenever a test is requested pursuant to this act and
 39 results in either a test failure or test refusal, a law enforcement officer's
 40 certification shall be prepared. If the person had been driving a com-
 41 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
 42 thereto, a separate certification pursuant to K.S.A. 8-2,145 and amend-
 43 ments thereto shall be prepared in addition to any certification required

01-4-10

1 by this section. The certification required by this section shall be signed
2 by one or more officers to certify:

3 (1) With regard to a test refusal, that: (A) There existed reasonable
4 grounds to believe the person was operating or attempting to operate a
5 vehicle while under the influence of alcohol or drugs, or both, or to be-
6 lieve that the person had been driving a commercial motor vehicle, as
7 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
8 or other drugs in such person's system; (B) the person had been placed
9 under arrest, was in custody or had been involved in a vehicle accident
10 or collision; (C) a law enforcement officer had presented the person with
11 the oral and written notice required by K.S.A. 8-1001, and amendments
12 thereto; and (D) the person refused to submit to and complete a test as
13 requested by a law enforcement officer.

14 (2) With regard to a test failure, that: (A) There existed reasonable
15 grounds to believe the person was operating a vehicle while under the
16 influence of alcohol or drugs, or both, or to believe that the person had
17 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
18 and amendments thereto, while having alcohol or other drugs in such
19 person's system; (B) the person had been placed under arrest, was in
20 custody or had been involved in a vehicle accident or collision; (C) a law
21 enforcement officer had presented the person with the oral and written
22 notice required by K.S.A. 8-1001, and amendments thereto; and (D) the
23 result of the test showed that the person had an alcohol concentration of
24 *.02 or greater, if such person is less than 21 years of age, in such person's*
25 *blood or breath or .08 or greater, if such person is 21 or more years of*
26 *age, in such person's blood or breath.*

27 (3) With regard to failure of a breath test, in addition to those matters
28 required to be certified under subsection (a)(2), that: (A) The testing
29 equipment used was certified by the Kansas department of health and
30 environment; (B) the testing procedures used were in accordance with
31 the requirements set out by the Kansas department of health and envi-
32 ronment; and (C) the person who operated the testing equipment was
33 certified by the Kansas department of health and environment to operate
34 such equipment.

35 (b) For purposes of this section, certification shall be complete upon
36 signing, and no additional acts of oath, affirmation, acknowledgment or
37 proof of execution shall be required. The signed certification or a copy
38 or photostatic reproduction thereof shall be admissible in evidence in all
39 proceedings brought pursuant to this act, and receipt of any such certi-
40 fication, copy or reproduction shall accord the department authority to
41 proceed as set forth herein. Any person who signs a certification submit-
42 ted to the division knowing it contains a false statement is guilty of a class
43 B nonperson misdemeanor.

1 (c) When the officer directing administration of the testing deter-
2 mines that a person has refused a test and the criteria of subsection (a)(1)
3 have been met or determines that a person has failed a test and the criteria
4 of subsection (a)(2) have been met, the officer shall serve upon the person
5 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and
6 amendments thereto. If the determination is made while the person is
7 still in custody, service shall be made in person by the officer on behalf
8 of the division of vehicles. In cases where a test failure is established by
9 a subsequent analysis of a breath, blood or urine sample, the officer shall
10 serve notice of such suspension in person or by another designated officer
11 or by mailing the notice to the person at the address provided at the time
12 of the test.

13 (d) In addition to the information required by subsection (a), the law
14 enforcement officer's certification and notice of suspension shall contain
15 the following information: (1) The person's name, driver's license number
16 and current address; (2) the reason and statutory grounds for the suspen-
17 sion; (3) the date notice is being served and a statement that the effective
18 date of the suspension shall be the 30th calendar day after the date of
19 service; (4) the right of the person to request an administrative hearing;
20 and (5) the procedure the person must follow to request an administrative
21 hearing. The law enforcement officer's certification and notice of suspen-
22 sion shall also inform the person that all correspondence will be mailed
23 to the person at the address contained in the law enforcement officer's
24 certification and notice of suspension unless the person notifies the di-
25 vision in writing of a different address or change of address. The address
26 provided will be considered a change of address for purposes of K.S.A.
27 8-248, and amendments thereto, if the address furnished is different from
28 that on file with the division.

29 (e) If a person refuses a test or if a person is still in custody when it
30 is determined that the person has failed a test, the officer shall take any
31 license in the possession of the person and, if the license is not expired,
32 suspended, revoked or canceled, shall issue a temporary license effective
33 until the 30th calendar day after the date of service set out in the law
34 enforcement officer's certification and notice of suspension. If the test
35 failure is established by a subsequent analysis of a breath or blood sample,
36 the temporary license shall be served together with the copy of the law
37 enforcement officer's certification and notice of suspension. A temporary
38 license issued pursuant to this subsection shall bear the same restrictions
39 and limitations as the license for which it was exchanged. Within five days
40 after the date of service of a copy of the law enforcement officer's certi-
41 fication and notice of suspension the officer's certification and notice of
42 suspension, along with any licenses taken, shall be forwarded to the di-
43 vision.

11-71

1 (f) Upon receipt of the law enforcement officer's certification, the
2 division shall review the certification to determine that it meets the
3 requirements of subsection (a). Upon so determining, the division shall
4 proceed to suspend the person's driving privileges in accordance with the
5 notice of suspension previously served. If the requirements of subsection
6 (a) are not met, the division shall dismiss the administrative proceeding
7 and return any license surrendered by the person.

8 (g) If the person mails a written request which is postmarked within
9 10 days after service of the notice, if by personal service, or 13 days after
10 service, if by mail, the division shall schedule a hearing in the county
11 where the alleged violation occurred, or in a county adjacent thereto. The
12 licensee may request that subpoenas be issued in accordance with the
13 notice provided pursuant to subsection (d). Any request made by the
14 licensee to subpoena witnesses must be made in writing at the time the
15 hearing is requested and must include the name and current address of
16 such witnesses and, except for the law enforcement officer or officers
17 certifying refusal or failure, a statement of how the testimony of such
18 witness is relevant. Upon receiving a timely request for a hearing, the
19 division shall mail to the person notice of the time, date and place of
20 hearing in accordance with subsection (l) and extend the person's tem-
21 porary driving privileges until the date set for the hearing by the division.

22 (h) (1) If the officer certifies that the person refused the test, the
23 scope of the hearing shall be limited to whether: (A) A law enforcement
24 officer had reasonable grounds to believe the person was operating or
25 attempting to operate a vehicle while under the influence of alcohol or
26 drugs, or both, or to believe that the person had been driving a com-
27 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
28 thereto, while having alcohol or other drugs in such person's system; (B)
29 the person was in custody or arrested for an alcohol or drug related of-
30 fense or was involved in a vehicle accident or collision resulting in prop-
31 erty damage, personal injury or death; (C) a law enforcement officer had
32 presented the person with the oral and written notice required by K.S.A.
33 8-1001, and amendments thereto; and (D) the person refused to submit
34 to and complete a test as requested by a law enforcement officer.

35 (2) If the officer certifies that the person failed the test, the scope of
36 the hearing shall be limited to whether: (A) A law enforcement officer
37 had reasonable grounds to believe the person was operating a vehicle
38 while under the influence of alcohol or drugs, or both, or to believe that
39 the person had been driving a commercial motor vehicle, as defined in
40 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
41 drugs in such person's system; (B) the person was in custody or arrested
42 for an alcohol or drug related offense or was involved in a vehicle accident
43 or collision resulting in property damage, personal injury or death; (C) a

1 law enforcement officer had presented the person with the oral and writ-
2 ten notice required by K.S.A. 8-1001, and amendments thereto; (D) the
3 testing equipment used was reliable; (E) the person who operated the
4 testing equipment was qualified; (F) the testing procedures used were
5 reliable; (G) the test result determined that the person had an alcohol
6 concentration of *.02 or greater, if such person is less than 21 years of age,*
7 *in such person's blood or breath or .08 or greater, if such person is 21 or*
8 *more years of age,* in such person's blood or breath; and (H) the person
9 was operating a vehicle.

10 (i) At a hearing pursuant to this section, or upon court review of an
11 order entered at such a hearing, an affidavit of the custodian of records
12 at the Kansas department of health and environment stating that the
13 breath testing device was certified and the operator of such device was
14 certified on the date of the test shall be admissible into evidence in the
15 same manner and with the same force and effect as if the certifying officer
16 or employee of the Kansas department of health and environment had
17 testified in person. Such affidavit shall be admitted to prove such reli-
18 ability without further foundation requirement. A certified operator of a
19 breath testing device shall be competent to testify regarding the proper
20 procedures to be used in conducting the test.

21 (j) At a hearing pursuant to this section, or upon court review of an
22 order entered at such hearing, in which the report of blood test results
23 have been prepared by the Kansas bureau of investigation or other fo-
24 rensic laboratory of a state or local law enforcement agency are to be
25 introduced as evidence, the report, or a copy of the report, of the findings
26 of the forensic examiner shall be admissible into evidence in the same
27 manner and with the same force and effect as if the forensic examiner
28 who performed such examination, analysis, comparison or identification
29 and prepared the report thereon had testified in person.

30 (k) If no timely request for hearing is made, the suspension period
31 imposed pursuant to this section shall begin upon the expiration of the
32 temporary license granted under subsection (e). If a timely request for
33 hearing is made, the hearing shall be held within 30 days of the date the
34 request for hearing is received by the division, except that failure to hold
35 such hearing within 30 days shall not be cause for dismissal absent a
36 showing of prejudice. At the hearing, the director or the representative
37 of the director, shall either affirm the order of suspension or suspension
38 and restriction or dismiss the administrative action. If the division is un-
39 able to hold a hearing within 30 days of the date upon which the request
40 for hearing is received, the division shall extend the person's temporary
41 driving privileges until the date set for the hearing by the division. No
42 extension of temporary driving privileges shall be issued for continuances
43 requested by or on behalf of the licensee. If the person whose privileges

1 are suspended is a nonresident licensee, the license of the person shall
 2 be forwarded to the appropriate licensing authority in the person's state
 3 of residence if the result at the hearing is adverse to such person or if no
 4 timely request for a hearing is received.

5 (l) All notices affirming or canceling a suspension under this section,
 6 all notices of a hearing held under this section and all issuances of tem-
 7 porary driving privileges pursuant to subsection (k) shall be sent by first-
 8 class mail and a U.S. post office certificate of mailing shall be obtained
 9 therefor. All notices so mailed shall be deemed received three days after
 10 mailing.

11 (m) The division shall prepare and distribute forms for use by law
 12 enforcement officers in giving the notice required by this section.

13 (n) This section and the applicable provisions contained in subsec-
 14 tions (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the
 15 administrative procedures to be used for all administrative hearings held
 16 under this act. To the extent that this section and any other provision of
 17 law conflicts, this section prevails.

18 (o) The provisions of K.S.A. 60-206 and amendments thereto regard-
 19 ing the computation of time shall not be applicable in determining the
 20 effective date of suspension set out in subsection (d) or the time for
 21 requesting an administrative hearing set out in subsection (g). "Calendar
 22 day" when used in this section shall mean that every day shall be included
 23 in computations of time whether a week day, Saturday, Sunday or holiday.

24 ~~Sec. 6. K.S.A. 1995 Supp. 8-1005 is hereby amended to read as fol-~~
 25 ~~lows: 8-1005. Except as provided by K.S.A. 8-1012 and amendments~~
 26 ~~thereto, in any criminal prosecution for violation of the laws of this state~~
 27 ~~relating to operating or attempting to operate a vehicle while under the~~
 28 ~~influence of alcohol or drugs, or both, or the commission of vehicular~~
 29 ~~homicide or manslaughter while under the influence of alcohol or drugs,~~
 30 ~~or both, or in any prosecution for a violation of a city ordinance relating~~
 31 ~~to the operation or attempted operation of a vehicle while under the~~
 32 ~~influence of alcohol or drugs, or both, evidence of the concentration of~~
 33 ~~alcohol or drugs in the defendant's blood, urine, breath or other bodily~~
 34 ~~substance may be admitted and shall give rise to the following:~~

35 (a) ~~If the alcohol concentration is less than .02, if the defendant is less~~
 36 ~~than 21 years of age, or .08, if the defendant is 21 or more years of age,~~
 37 ~~that fact may be considered with other competent evidence to determine~~
 38 ~~if the defendant was under the influence of alcohol, or both alcohol and~~
 39 ~~drugs.~~

40 (b) ~~If the alcohol concentration is .02 or greater, if the defendant is~~
 41 ~~less than 21 years of age, or .08 or more greater, if the defendant is 21 or~~
 42 ~~more years of age, it shall be prima facie evidence that the defendant was~~
 43 ~~under the influence of alcohol to a degree that renders the person inca-~~

14-14

14-15

1 ~~pable of driving safely.~~

2 (c) If there was present in the defendant's bodily substance any nar-
3 cotic, hypnotic, somnifacient, stimulating or other drug which has the
4 capacity to render the defendant incapable of safely driving a vehicle, that
5 fact may be considered to determine if the defendant was under the
6 influence of drugs, or both alcohol and drugs, to a degree that renders
7 ~~the defendant incapable of driving safely.~~

8 Sec. ~~f~~ K.S.A. 1995 Supp. 8-1013 is hereby amended to read as fol-
9 lows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012,
10 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto,
11 and this section:

3

12 (a) "Alcohol concentration" means the number of grams of alcohol
13 per 100 milliliters of blood or per 210 liters of breath.

14 (b) (1) "Alcohol or drug-related conviction" means any of the follow-
15 ing: (A) Conviction of vehicular battery or aggravated vehicular homicide,
16 if the crime is committed while committing a violation of K.S.A. 8-1567
17 and amendments thereto or the ordinance of a city or resolution of a
18 county in this state which prohibits any acts prohibited by that statute, or
19 conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B)
20 conviction of a violation of a law of another state which would constitute
21 a crime described in subsection (b)(1)(A) if committed in this state; (C)
22 conviction of a violation of an ordinance of a city in this state or a reso-
23 lution of a county in this state which would constitute a crime described
24 in subsection (b)(1)(A), whether or not such conviction is in a court of
25 record; or (D) conviction of an act which was committed on a military
26 reservation and which would constitute a violation of K.S.A. 8-1567, and
27 amendments thereto, or would constitute a crime described in subsection
28 (b)(1)(A) if committed off a military reservation in this state.

29 (2) For the purpose of determining whether an occurrence is a first,
30 second or subsequent occurrence: (A) "Alcohol or drug-related convic-
31 tion" also includes entering into a diversion agreement in lieu of further
32 criminal proceedings on a complaint alleging commission of a crime de-
33 scribed in subsection (b)(1) which agreement was entered into during the
34 immediately preceding five years, including prior to the effective date of
35 this act; and (B) it is irrelevant whether an offense occurred before or
36 after conviction or diversion for a previous offense.

37 (c) "Division" means the division of vehicles of the department of
38 revenue.

39 (d) "Ignition interlock device" means a device which uses a breath
40 analysis mechanism to prevent a person from operating a motor vehicle
41 if such person has consumed an alcoholic beverage.

42 (e) "Occurrence" means a test refusal, test failure or alcohol or drug-
43 related conviction, or any combination thereof arising from one arrest,

1 occurring in the immediately preceding five years, including prior to the
2 effective day of this act.

3 (f) "Other competent evidence" includes: (1) Alcohol concentration
4 tests obtained from samples taken two hours or more after the operation
5 or attempted operation of a vehicle; and (2) readings obtained from a
6 partial alcohol concentration test on a breath testing machine.

7 (g) "Samples" includes breath supplied directly for testing, which
8 breath is not preserved.

9 (h) "Test failure" or "fails a test" refers to a person's having results
10 of a test administered pursuant to this act, other than a preliminary
11 screening test, which show an alcohol concentration of *.02 or greater, if*
12 *such person is less than 21 years of age, in such person's blood or breath,*
13 *or .08 or greater, if such person is 21 or more years of age,* in the person's
14 blood or breath, and includes failure of any such test on a military res-
15 ervation.

16 (i) "Test refusal" or "refuses a test" refers to a person's failure to
17 submit to or complete any test, other than a preliminary screening test,
18 in accordance with this act, and includes refusal of any such test on a
19 military reservation.

20 (j) "Law enforcement officer" has the meaning provided by K.S.A.
21 21-3110, and amendments thereto, and includes any person authorized
22 by law to make an arrest on a military reservation for an act which would
23 constitute a violation of K.S.A. 8-1567, and amendments thereto, if com-
24 mitted off a military reservation in this state.

25 ~~Sec. 8. K.S.A. 1995 Supp. 8-1567 is hereby amended to read as fol-~~
26 ~~lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle~~
27 ~~within this state while:~~

28 (1) ~~The alcohol concentration in the person's blood or breath as~~
29 ~~shown by any competent evidence, including other competent evidence,~~
30 ~~as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-~~
31 ~~ments thereto, is *.02 or more, if such person is less than 21 years of age,*~~
32 ~~*or .08 or more greater, if such person is 21 or more years of age;*~~

33 (2) ~~the alcohol concentration in the person's blood or breath, as meas-~~
34 ~~ured within two hours of the time of operating or attempting to operate~~
35 ~~a vehicle, is *.02 or more, if such person is less than 21 years of age, or .08*~~
36 ~~*or more greater, if such person is 21 or more years of age;*~~

37 (3) ~~under the influence of alcohol to a degree that renders the person~~
38 ~~incapable of safely driving a vehicle;~~

39 (4) ~~under the influence of any drug or combination of drugs to a~~
40 ~~degree that renders the person incapable of safely driving a vehicle; or~~

41 (5) ~~under the influence of a combination of alcohol and any drug or~~
42 ~~drugs to a degree that renders the person incapable of safely driving a~~
43 ~~vehicle.~~

1 (b) No person shall operate or attempt to operate any vehicle within
2 this state if the person is a habitual user of any narcotic, hypnotic, som-
3 nifacient or stimulating drug.

4 (c) If a person is charged with a violation of this section involving
5 drugs, the fact that the person is or has been entitled to use the drug
6 under the laws of this state shall not constitute a defense against the
7 charge.

8 (d) Upon a first conviction of a violation of this section, a person shall
9 be guilty of a class B, nonperson misdemeanor and sentenced to not less
10 than 48 consecutive hours nor more than six months' imprisonment, or
11 in the court's discretion 100 hours of public service, and fined not less
12 than \$200 nor more than \$500. The person convicted must serve at least
13 48 consecutive hours' imprisonment or 100 hours of public service either
14 before or as a condition of any grant of probation or suspension, reduction
15 of sentence or parole. In addition, the court shall enter an order which
16 requires that the person enroll in and successfully complete an alcohol
17 and drug safety action education program or treatment program as pro-
18 vided in K.S.A. 8-1008, and amendments thereto, or both the education
19 and treatment programs.

20 (e) On a second conviction of a violation of this section, a person shall
21 be guilty of a class A, nonperson misdemeanor and sentenced to not less
22 than 90 days nor more than one year's imprisonment and fined not less
23 than \$500 nor more than \$1,000. The five days' imprisonment mandated
24 by this subsection may be served in a work release program only after
25 such person has served 48 consecutive hours' imprisonment, provided
26 such work release program requires such person to return to confinement
27 at the end of each day in the work release program. Except as provided
28 in subsection (g), the person convicted must serve at least five consecutive
29 days' imprisonment before the person is granted probation, suspension
30 or reduction of sentence or parole or is otherwise released. As a condition
31 of any grant of probation, suspension of sentence or parole or of any other
32 release, the person shall be required to enter into and complete a treat-
33 ment program for alcohol and drug abuse as provided in K.S.A. 8-1008,
34 and amendments thereto.

35 (f) On the third or a subsequent conviction of a violation of this sec-
36 tion, a person shall be guilty of a nonperson felony and sentenced to not
37 less than 90 days nor more than one year's imprisonment and fined not
38 less than \$1,000 nor more than \$2,500. Except as provided in subsection
39 (g), the person convicted shall not be eligible for release on probation,
40 suspension or reduction of sentence or parole until the person has served
41 at least 90 days' imprisonment. The court may also require as a condition
42 of parole that such person enter into and complete a treatment program
43 for alcohol and drug abuse as provided by K.S.A. 8-1008, and amend-

1 ~~ments~~ thereto. The 90 days' imprisonment mandated by this subsection
2 ~~may be~~ served in a work release program only after such person has served
3 ~~48 consecutive~~ hours' imprisonment, provided such work release program
4 ~~requires~~ such person to return to confinement at the end of each day in
5 ~~the work~~ release program.

6 (g) ~~On a second or subsequent conviction of a violation of this section,~~
7 ~~the court may place the person convicted under a house arrest program,~~
8 ~~pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-~~
9 ~~mainder of the minimum sentence only after such person has served 48~~
10 ~~consecutive hours' imprisonment.~~

11 (h) ~~The court may establish the terms and time for payment of any~~
12 ~~finer, fees, assessments and costs imposed pursuant to this section. Any~~
13 ~~assessment and costs shall be required to be paid not later than 90 days~~
14 ~~after imposed, and any remainder of the fine shall be paid prior to the~~
15 ~~final release of the defendant by the court.~~

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

26 (j) ~~The court shall report every conviction of a violation of this section~~
27 ~~and every diversion agreement entered into in lieu of further criminal~~
28 ~~proceedings or a complaint alleging a violation of this section to the di-~~
29 ~~vision. Prior to sentencing under the provisions of this section, the court~~
30 ~~shall request and shall receive from the division a record of all prior~~
31 ~~convictions obtained against such person for any violations of any of the~~
32 ~~motor vehicle laws of this state.~~

33 (k) ~~For the purpose of determining whether a conviction is a first,~~
34 ~~second, third or subsequent conviction in sentencing under this section:~~

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

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

43 (3) ~~only convictions occurring in the immediately preceding five~~

61-71
14-19

1 years, including prior to the effective date of this act, shall be taken into
2 account, but the court may consider other prior convictions in determin-
3 ing the sentence to be imposed within the limits provided for a first,
4 second, third or subsequent offender, whichever is applicable; and

5 (4) it is irrelevant whether an offense occurred before or after con-
6 viction for a previous offense.

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

12 (m) Nothing contained in this section shall be construed as prevent-
13 ing any city from enacting ordinances, or any county from adopting res-
14 olutions, declaring acts prohibited or made unlawful by this act as unlaw-
15 ful or prohibited in such city or county and prescribing penalties for
16 violation thereof, but the minimum penalty prescribed by any such or-
17 dinance or resolution shall not be less than the minimum penalty pre-
18 scribed by this act for the same violation, and the maximum penalty in
19 any such ordinance or resolution shall not exceed the maximum penalty
20 prescribed for the same violation. In addition, any such ordinance or
21 resolution shall authorize the court to order that the convicted person
22 pay restitution to any victim who suffered loss due to the violation for
23 which the person was convicted.

24 (n) No plea bargaining agreement shall be entered into nor shall any
25 judge approve a plea bargaining agreement entered into for the purpose
26 of permitting a person charged with a violation of this section, or a vio-
27 lation of any ordinance of a city or resolution of any county in this state
28 which prohibits the acts prohibited by this section, to avoid the mandatory
29 penalties established by this section or by the ordinance. For the purpose
30 of this subsection, entering into a diversion agreement pursuant to K.S.A.
31 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
32 constitute plea bargaining.

33 (o) The alternatives set out in subsections (a)(1) (2) and (3) may be
34 pleaded in the alternative, and the state, city or county, but shall not be
35 required to, may elect one or two of the three prior to submission of the
36 case to the fact finder.

37 (p) Upon a fourth or subsequent conviction, the judge of any court
38 in which any person is convicted of violating this section, may revoke the
39 person's license plate or temporary registration certificate of the motor
40 vehicle driven during the violation of this section for a period of one year.
41 Upon revoking any license plate or temporary registration certificate pur-
42 suant to this subsection, the court shall require that such license plate or
43 temporary registration certificate be surrendered to the court.

14-20

1 (q) For the purpose of this section:

2 (1) "Alcohol concentration" means the number of grams of alcohol
3 per 100 milliliters of blood or per 210 liters of breath.

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

8 Sec. 9. K.S.A. 1995 Supp. 12-4305 is hereby amended to read as
9 follows: 12-4305. (a) The municipal judge shall establish a schedule of
10 fines which shall be imposed for municipal ordinance violations that are
11 classified as ordinance traffic infractions. Also, the municipal judge may
12 establish a schedule of fines which shall be imposed for the violation of
13 certain other ordinances. Any fine so established shall be within the min-
14 imum and maximum allowable fines established by ordinance for such
15 offenses by the governing body. The following traffic violations are spe-
16 cifically excluded from any schedule of fines:

17 (1) Reckless driving;

18 (2) driving while under the influence of alcohol or drugs, or both, or
19 driving with a blood or breath alcohol concentration of .02 or greater, if
20 the person is less than 21 years of age or .08 or more greater, if the person
21 is 21 or more years of age;

22 (3) driving without a valid license issued or on a canceled, suspended
23 or revoked license;

24 (4) fleeing or attempting to elude a police officer; or

25 (5) offense comparable to those prescribed by K.S.A. 8-1602, 8-1603
26 and 8-1604 and amendments thereto.

27 (b) A person charged with the violation of an ordinance contained in
28 a schedule of fines established under subsection (a) shall, except as pro-
29 vided in subsection (c), appear at the place and time specified in the
30 notice to appear. If the person enters an appearance, waives right to trial,
31 pleads guilty or no contest, the fine shall be no greater than that specified
32 in the schedule.

33 (c) Prior to the time specified in the notice to appear, a person
34 charged with the violation of an ordinance contained in a schedule of
35 fines established under subsection (a) may enter an appearance, waive
36 right to trial, plead guilty or no contest and pay the fine for the violation
37 as specified in the schedule. At the election of the person charged, such
38 appearance, waiver, plea and payment may be made by mail or in person
39 and payment may be by personal check. The complaint shall not have
40 been complied with if a check is not honored for any reason, or the fine
41 is not paid in full prior to the time specified in the notice to appear. When
42 a person charged with an ordinance traffic infraction or other ordinance
43 violation on a schedule of fines makes payment without executing a writ-

14-21

1 ~~ten-waiver of right to trial and plea of guilty or no contest, the payment~~
2 shall be deemed such an appearance, waiver of right to trial and plea of
3 no contest.

4 The municipal judge may authorize the clerk of the municipal court or
5 some other person to accept by mail or in person such voluntary appear-
6 ance, plea of guilty or no contest and payment of the fine imposed by the
7 schedule.

8 The schedule of fines and persons authorized to accept such pleas shall
9 be conspicuously displayed in the office where such voluntary appearance,
10 plea of guilty and payment of fine occurs.

4 11 Sec. ~~10~~. [~~K.S.A. 8-2,142, 8-2,144 and 8-2,145 and~~ K.S.A. 1995 Supp.
12 8-1001, 8-1002, 8-1005, 8-1013, ~~8-1567 and 12-4305~~] are hereby repealed.

5 13 Sec. ~~11~~. This act shall take effect and be in force from and after its
14 publication in the statute book.

and

HOUSE BILL No. 2603

By Special Committee on Transportation
Re Proposal No. 59

12-20

Representative Garner
Insurance policies
February 22, 1996

House Judiciary
2-22-96
Attachment 15

10 AN ACT concerning alcohol or drug related offenses involving the op-
11 eration of a vehicle; relating to the blood alcohol concentration of a
12 person under 21; amending K.S.A. 8-2,142, 8-2,144 and 8-2,145 and
13 K.S.A. 1995 Supp. 8-1001, 8-1002, 8-1005, 8-1013, 8-1567 and 12-
14 4305 and repealing the existing sections.

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

17 Section 1. K.S.A. 8-2,142 is hereby amended to read as follows: 8-
18 2,142. (a) A person is disqualified from driving a commercial motor ve-
19 hicle for a period of not less than one year upon a first occurrence of any
20 one of the following:

21 (1) The person's conviction of a violation of K.S.A. 8-2,144, *and*
22 *amendments thereto;*

23 (2) leaving the scene of an accident involving a commercial motor
24 vehicle driven by the person;

25 (3) the person's conviction of using a commercial motor vehicle in
26 the commission of any felony as defined in this act; or

27 (4) the person's test refusal or test failure, as defined by subsection
28 (i).

29 (b) If any offenses, test refusal or test failure specified in subsection
30 (a) occurred while transporting a hazardous material required to be plac-
31 arded, the person is disqualified for a period of not less than three years.

32 (c) A person shall be disqualified for life upon the second or a sub-
33 sequent occurrence of any offense, test refusal or test failure specified in
34 subsection (a), or any combination thereof, arising from two or more
35 separate incidents.

36 (d) The secretary of revenue may adopt rules and regulations estab-
37 lishing guidelines, including conditions, under which a disqualification for
38 life under subsection (c) may be reduced to a period of not less than 10
39 years.

40 (e) A person is disqualified from driving a commercial motor vehicle
41 for life who uses a commercial motor vehicle in the commission of any
42 felony involving the manufacture, distribution or dispensing of a con-
43 trolled substance, or possession with intent to manufacture, distribute or

1 dispense a controlled substance.

2 (f) A person is disqualified from driving a commercial motor vehicle
3 for a period of not less than 60 days if convicted of two serious traffic
4 violations, or 120 days if convicted of three serious traffic violations, com-
5 mitted in a commercial motor vehicle arising from separate incidents
6 occurring within a three-year period.

7 (g) After suspending, revoking or canceling a commercial driver's li-
8 cense, the division shall update its records to reflect that action within 10
9 days. After suspending, revoking or canceling a nonresident commercial
10 driver's privileges, the division shall notify the licensing authority of the
11 state which issued the commercial driver's license or nonresident com-
12 mercial driver's license within 10 days.

13 (h) Upon suspension, revocation, cancellation or disqualification of a
14 commercial driver's license under this act, the license shall be immedi-
15 ately surrendered to the division if still in the licensee's possession. If
16 otherwise eligible, and upon payment of the required fees, the licensee
17 may be issued a noncommercial driver's license for the period of suspen-
18 sion, revocation, cancellation or disqualification of the commercial driv-
19 er's license under the same identifier number.

20 (i) As used in this section, "test refusal" means a person's refusal to
21 submit to and complete a test requested pursuant to K.S.A. 8-2,145, and
22 amendments thereto; "test failure" means a person's submission to and
23 completion of a test which determines that the person's alcohol concen-
24 tration is .02 or greater, if such person is less than 21 years of age or .04
25 or greater, if such person is 21 or more years of age, pursuant to K.S.A.
26 8-2,145, and amendments thereto.

27 Sec 2 K.S.A. 8-2,144 is hereby amended to read as follows: 8-2,144.

28 (a) No person shall drive any commercial motor vehicle, as defined in
29 K.S.A. 8-2,128, and amendments thereto, within this state while:

30 (1) The alcohol concentration in the person's blood or breath, as
31 shown by any competent evidence, including other competent evidence,
32 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
33 ments thereto, is ~~.04 or more~~ .02 or greater, if such person is less than
34 21 years of age or .04 or greater, if such person is 21 or more years of
35 age;

36 (2) the alcohol concentration in the person's blood or breath, as meas-
37 ured within two hours of the time of driving a commercial motor vehicle,
38 is ~~.04 or more~~ .02 or greater, if such person is less than 21 years of age
39 or .04 or greater, if such person is 21 or more years of age; or

40 (3) committing a violation of subsection (a) of K.S.A. 8-1567, and
41 amendments thereto, or the ordinance of a city or resolution of a county
42 which prohibits any of the acts prohibited thereunder.

43 (b) Violation of this section is a misdemeanor. In addition to any pen-

15-2

1 alties ordered under K.S.A. 8-1567, and amendments thereto, the person
2 convicted shall be sentenced to not less than 48 consecutive hours nor
3 more than six months imprisonment, and fined not less than \$200 nor
4 more than \$500.

5 (c) The court shall report every conviction of a violation of this section
6 to the division. Prior to sentencing under the provisions of this section,
7 the court shall request and shall receive from the division a record of all
8 prior convictions obtained against such person for any violation of any of
9 the motor vehicle laws of this state.

10 (d) Upon conviction of a person of a violation of this section or a
11 violation of a city ordinance or county resolution prohibiting the acts
12 prohibited by this section, the division, upon receiving a report of con-
13 viction, shall disqualify the person from driving a commercial motor ve-
14 hicle under K.S.A. 8-2,142, and amendments thereto.

15 (e) For the purpose of this section, "alcohol concentration" means
16 the number of grams of alcohol per 100 milliliters of blood or per 210
17 liters of breath.

18 Sec. 3. K.S.A. 8-2,145 is hereby amended to read as follows: 8-2,145.

19 (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and
20 amendments thereto, in addition to any notices provided pursuant to par-
21 agraph (1) of subsection (f) of K.S.A. 8-1001, and amendments thereto,
22 the following notice shall be provided orally and in writing: Whenever a
23 law enforcement officer has reasonable grounds to believe a person has
24 been driving a commercial motor vehicle while having alcohol or other
25 drugs in such person's system and the person refuses to submit to and
26 complete a test or tests requested by a law enforcement officer or submits
27 to and completes a test requested by a law enforcement officer which
28 determines that the person's alcohol concentration is *.02 or greater, if*
29 *such person is less than 21 years of age, or .04 or greater, if such person*
30 *is 21 or more years of age*, the person will be disqualified from driving a
31 commercial motor vehicle for at least one year, pursuant to Kansas law.

32 (b) It shall not be a defense that the person did not understand the
33 notices required by this section.

34 (c) Upon completion of the notices set out in paragraph (1) of sub-
35 section (f) of K.S.A. 8-1001, and amendments thereto, and the notices in
36 subsection (a), the law enforcement officer shall proceed to request a test
37 or tests. In addition to the completion of any certification required under
38 K.S.A. 8-1002, and amendments thereto, a law enforcement officer's cer-
39 tification shall be prepared and signed by one or more officers to certify:

40 (1) There existed reasonable grounds to believe the person had been
41 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
42 amendments thereto, while having alcohol or other drugs in such person's
43 system;

F-51

1 (2) the person had been placed under arrest, was in custody or had
2 been involved in a motor vehicle accident or collision;

3 (3) a law enforcement officer had presented the person with the no-
4 tices required by this section; and

5 (4) the person refused to submit to and complete a test or the test
6 result for alcohol content of blood or breath was *.02 or greater, if such*
7 *person is less than 21 years of age, or .04 or greater, if such person is 21*
8 *or more years of age.*

9 (d) For purposes of this section, certification shall be complete upon
10 signing, and no additional acts of oath, affirmation, acknowledgment or
11 proof of execution shall be required. The signed certification or a copy
12 or photostatic reproduction thereof shall be admissible in evidence in all
13 proceedings brought pursuant to this act, and receipt of any such certi-
14 fication, copy or reproduction shall accord the division authority to pro-
15 ceed as set forth herein. Any person who signs a certification submitted
16 to the division knowing it contains a false statement is guilty of a class B
17 misdemeanor.

18 (e) Upon completing a certification under subsection (c), the officer
19 shall serve upon the person notice of disqualification of the privilege to
20 drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amend-
21 ments thereto, together with a copy of the certification. In cases where a
22 *.02 or greater test result, for persons less than 21 years of age or .04 or*
23 *greater test result for persons 21 or more years of age, is established by*
24 *a subsequent analysis of a breath or blood sample, the officer shall serve*
25 *notice of such suspension in person or by another designated officer or*
26 *by mailing the notice to the person at the address provided at the time*
27 *of the test. If the determination of a test refusal or .02 or greater test*
28 *result, for persons less than 21 years of age or .04 or greater test result*
29 *for persons 21 or more years of age is made while the person is still in*
30 *custody, service shall be made in person by the officer on behalf of the*
31 *division of vehicles.*

32 (f) The notice shall contain the following information:

33 (1) The person's name, driver's license number and current address
34 pursuant to K.S.A. 8-248, and amendments thereto;

35 (2) the reason and statutory grounds for the disqualification;

36 (3) the date notice is being served and the effective date of the dis-
37 qualification, which shall be the 20th day after the date of service;

38 (4) the right of the person to request an administrative hearing; and

39 (5) the procedure the person must follow to request an administrative
40 hearing.

41 The notice of disqualification shall also inform the person that all corre-
42 spondence will be mailed to the person at the address contained in the
43 notice of disqualification unless the person notifies the division in writing

1 of a different address or change of address. The address provided will be
 2 considered a change of address for purposes of K.S.A. 8-248, and amend-
 3 ments thereto, if the address furnished is different from that on file with
 4 the division.

5 (g) If the person mails a written request which is postmarked within
 6 10 days after service of the notice, if by personal service, or 13 days after
 7 service, if by mail, the division shall schedule a hearing in the county
 8 where the alleged violation occurred, or in a county adjacent thereto. The
 9 licensee may request that subpoenas be issued in accordance with the
 10 notice provided pursuant to subsection (d). Any request made by the
 11 licensee to subpoena witnesses must be made in writing at the time the
 12 hearing is requested and must include the name and current address of
 13 such witness and, except for the certifying law enforcement officer or
 14 officers, a statement of how the testimony of such witness is relevant.
 15 Upon receiving a timely request for a hearing, the division shall mail to
 16 the person notice of the time, date and place of hearing in accordance
 17 with subsection (i) and extend the person's temporary driving privileges
 18 until the date set for the hearing by the division, unless otherwise dis-
 19 qualified, suspended, revoked or cancelled.

20 (h) The law enforcement officer shall forward the certification re-
 21 quired under subsection (c) to the director within five days of the date
 22 of certification. Upon receipt of the certification, the division shall review
 23 the certification to determine that it meets the requirements of subsection
 24 (c). Upon so determining, the director shall proceed to disqualify the
 25 driver from driving a commercial motor vehicle in accordance with the
 26 notice of disqualification previously served.

27 (i) All notices of disqualification under this section and all notices of
 28 a hearing held under this section shall be sent by first-class mail and a
 29 United States post office certificate of mailing shall be obtained therefor.
 30 All notices so mailed shall be deemed received three days after mailing.

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

35 (k) The rules regarding evidence and procedure at hearings held un-
 36 der K.S.A. 8-1002, and amendments thereto, shall be applicable to hear-
 37 ings held under this section. At the hearing on a disqualification of com-
 38 mercial driving privileges, the issues shall be limited to those set out in
 39 the certification.

40 (l) The division shall prepare and distribute forms for use by law
 41 enforcement officers in giving the notice required by this section.

42 Sec. 4. K.S.A. 1995 Supp. 8-1001 is hereby amended to read as fol-
 43 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle

(m) Any conviction, test refusal or test failure pursuant to article 2 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, if such person was under 21 years of age and the alcohol concentration in the person's blood or breath was .02 or greater, shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(a) or (4)(c)(3) of K.S.A. 40-277, and amendments thereto.

15-6

1 within this state is deemed to have given consent, subject to the provisions
2 of this act, to submit to one or more tests of the person's blood, breath,
3 urine or other bodily substance to determine the presence of alcohol or
4 drugs. The testing deemed consented to herein shall include all quanti-
5 tative and qualitative tests for alcohol and drugs. A person who is dead
6 or unconscious shall be deemed not to have withdrawn the person's con-
7 sent to such test or tests, which shall be administered in the manner
8 provided by this section.

9 (b) A law enforcement officer shall request a person to submit to a
10 test or tests deemed consented to under subsection (a) if the officer has
11 reasonable grounds to believe the person was operating or attempting to
12 operate a vehicle while under the influence of alcohol or drugs, or both,
13 or to believe that the person was driving a commercial motor vehicle, as
14 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
15 or other drugs in such person's system; and one of the following condi-
16 tions exists: (1) The person has been arrested or otherwise taken into
17 custody for any offense involving operation or attempted operation of a
18 vehicle while under the influence of alcohol or drugs, or both, or involving
19 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
20 amendments thereto, while having alcohol or other drugs in such person's
21 system, in violation of a state statute or a city ordinance; or (2) the person
22 has been involved in a vehicle accident or collision resulting in property
23 damage, personal injury or death. The law enforcement officer directing
24 administration of the test or tests may act on personal knowledge or on
25 the basis of the collective information available to law enforcement offi-
26 cers involved in the accident investigation or arrest.

27 (c) If a law enforcement officer requests a person to submit to a test
28 of blood under this section, the withdrawal of blood at the direction of
29 the officer may be performed only by: (1) A person licensed to practice
30 medicine and surgery or a person acting under the supervision of any
31 such licensed person; (2) a registered nurse or a licensed practical nurse;
32 or (3) any qualified medical technician, including, but not limited to, an
33 emergency medical technician-intermediate or mobile intensive care
34 technician, as those terms are defined in K.S.A. 65-6112, and amend-
35 ments thereto, or a phlebotomist. When presented with a written state-
36 ment by a law enforcement officer directing blood to be withdrawn from
37 a person who has tentatively agreed to allow the withdrawal of blood
38 under this section, the person authorized herein to withdraw blood and
39 the medical care facility where blood is withdrawn may rely on such a
40 statement as evidence that the person has consented to the medical pro-
41 cedure used and shall not require the person to sign any additional con-
42 sent or waiver form. In such a case, the person authorized to withdraw
43 blood and the medical care facility shall not be liable in any action alleging

1 lack of consent or lack of informed consent. No person authorized by this
2 subsection to withdraw blood, nor any person assisting in the performance
3 of a blood test nor any medical care facility where blood is withdrawn or
4 tested that has been directed by any law enforcement officer to withdraw
5 or test blood, shall be liable in any civil or criminal action when the act
6 is performed in a reasonable manner according to generally accepted
7 medical practices in the community where performed.

8 (d) If there are reasonable grounds to believe that there is impair-
9 ment by a drug which is not subject to detection by the blood or breath
10 test used, a urine test may be required. If a law enforcement officer
11 requests a person to submit to a test of urine under this section, the
12 collection of the urine sample shall be supervised by persons of the same
13 sex as the person being tested and shall be conducted out of the view of
14 any person other than the persons supervising the collection of the sample
15 and the person being tested, unless the right to privacy is waived by the
16 person being tested. The results of qualitative testing for drug presence
17 shall be admissible in evidence and questions of accuracy or reliability
18 shall go to the weight rather than the admissibility of the evidence.

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

22 (f) (1) Before a test or tests are administered under this section, the
23 person shall be given oral and written notice that: (A) Kansas law requires
24 the person to submit to and complete one or more tests of breath, blood
25 or urine to determine if the person is under the influence of alcohol or
26 drugs, or both; (B) the opportunity to consent to or refuse a test is not a
27 constitutional right; (C) there is no constitutional right to consult with an
28 attorney regarding whether to submit to testing; (D) if the person refuses
29 to submit to and complete any test of breath, blood or urine hereafter
30 requested by a law enforcement officer, the person's driving privileges
31 will be suspended for at least one year; (E) if the person is *21 or more*
32 *years of age at the time of the test and* submits to and completes the test
33 or tests and the test results show an alcohol concentration of .08 or
34 greater, the person's driving privileges will be suspended for at least 30
35 days; (F) *if the person is less than 21 years of age at the time of the test*
36 *and submits to and completes the test or tests and the test results show*
37 *an alcohol concentration of .02 or greater, the person's driving privileges*
38 *will be suspended for at least 30 days;* (G) if the person is *21 or more*
39 *years of age at the time of the test and* refuses a test or the test results
40 show an alcohol concentration of .08 or greater and if, within the past
41 five years, the person has been convicted or granted diversion on a charge
42 of driving under the influence of alcohol or drugs, or both, or a related
43 offense or has refused or failed a test, the person's driving privileges will

1 be suspended for at least one year; ~~(G)~~ (H) if the person is less than 21
2 years of age at the time of the test and refuses a test or the test results
3 show an alcohol concentration of .02 or greater and if, within the past
4 five years, the person has been convicted or granted a diversion on a
5 charge of driving under the influence of alcohol or drugs, or both, or a
6 related offense or has refused or failed a test, the person's driving privi-
7 leges will be suspended for at least one year; (I) refusal to submit to testing
8 may be used against the person at any trial on a charge arising out of the
9 operation or attempted operation of a vehicle while under the influence
10 of alcohol or drugs, or both; ~~(H)~~ (J) the results of the testing may be used
11 against the person at any trial on a charge arising out of the operation or
12 attempted operation of a vehicle while under the influence of alcohol or
13 drugs, or both; and ~~(H)~~ (K) after the completion of the testing, the person
14 has the right to consult with an attorney and may secure additional testing,
15 which, if desired, should be done as soon as possible and is customarily
16 available from medical care facilities and physicians. If a law enforcement
17 officer has reasonable grounds to believe that the person has been driving
18 a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-
19 ments thereto, while having alcohol or other drugs in such person's sys-
20 tem, the person must also be provided the oral and written notice pur-
21 suant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the
22 notices required by K.S.A. 8-2,145 and amendments thereto shall not
23 invalidate any action taken as a result of the requirements of this section.
24 After giving the foregoing information, a law enforcement officer shall
25 request the person to submit to testing. The selection of the test or tests
26 shall be made by the officer. If the person refuses to submit to and com-
27 plete a test as requested pursuant to this section, additional testing shall
28 not be given unless the certifying officer has probable cause to believe
29 that the person, while under the influence of alcohol or drugs, or both,
30 has operated a vehicle in such a manner as to have caused the death of
31 or serious injury to another person. As used in this section, the officer
32 shall have probable cause to believe that the person operated a vehicle
33 while under the influence of alcohol or drugs, or both, if the vehicle was
34 operated by such person in such a manner as to have caused the death
35 of or serious injury to another person. In such event, such test or tests
36 may be made pursuant to a search warrant issued under the authority of
37 K.S.A. 22-2502, and amendments thereto, or without a search warrant
38 under the authority of K.S.A. 22-2501, and amendments thereto. If the
39 test results show a blood or breath alcohol concentration of .02 or greater,
40 if such person is less than 21 years of age or .08 or greater, if such person
41 is 21 or more years of age, the person's driving privileges shall be subject
42 to suspension, or suspension and restriction, as provided in K.S.A. 8-1002
43 and 8-1014, and amendments thereto. The person's refusal shall be ad-

1 missible in evidence against the person at any trial on a charge arising out
 2 of the alleged operation or attempted operation of a vehicle while under
 3 the influence of alcohol or drugs, or both. If a law enforcement officer
 4 had reasonable grounds to believe the person had been driving a com-
 5 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
 6 thereto, and the test results show a blood or breath alcohol concentration
 7 of *.02 or greater, if such person is less than 21 years of age* or *.04 or*
 8 *greater, if such person is 21 or more years of age*, the person shall be
 9 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
 10 8-2,142, and amendments thereto. If a law enforcement officer had rea-
 11 sonable grounds to believe the person had been driving a commercial
 12 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
 13 and the test results show a blood or breath alcohol concentration of *.02*
 14 *or greater, if such person is less than 21 years of age* or *.08 or greater, if*
 15 *such person is 21 or more years of age*, or the person refuses a test, the
 16 person's driving privileges shall be subject to suspension, or suspension
 17 and restriction, pursuant to this section, in addition to being disqualified
 18 from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and
 19 amendments thereto.

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

24 (3) It shall not be a defense that the person did not understand the
 25 written or oral notice required by this section.

26 (4) No test shall be suppressed because of technical irregularities in
 27 the consent or notice pursuant to K.S.A. 8-2,145, and amendments
 28 thereto.

29 (g) Nothing in this section shall be construed to limit the admissibility
 30 at any trial of alcohol or drug concentration testing results obtained pur-
 31 suant to a search warrant.

32 (h) Upon the request of any person submitting to testing under this
 33 section, a report of the results of the testing shall be made available to
 34 such person.

35 (i) This act is remedial law and shall be liberally construed to promote
 36 public health, safety and welfare.

37 Sec. 5. K.S.A. 1995 Supp. 8-1002 is hereby amended to read as fol-
 38 lows: 8-1002. (a) Whenever a test is requested pursuant to this act and
 39 results in either a test failure or test refusal, a law enforcement officer's
 40 certification shall be prepared. If the person had been driving a com-
 41 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
 42 thereto, a separate certification pursuant to K.S.A. 8-2,145 and amend-
 43 ments thereto shall be prepared in addition to any certification required

(j) Any test refusal or test failure pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, if such person was under 21 years of age and the alcohol concentration in the person's blood or breath was *.02 or greater*, shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(a) of K.S.A. 40-277, and amendments thereto.

b-51

1 by this section. The certification required by this section shall be signed
2 by one or more officers to certify:

3 (1) With regard to a test refusal, that: (A) There existed reasonable
4 grounds to believe the person was operating or attempting to operate a
5 vehicle while under the influence of alcohol or drugs, or both, or to be-
6 lieve that the person had been driving a commercial motor vehicle, as
7 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
8 or other drugs in such person's system; (B) the person had been placed
9 under arrest, was in custody or had been involved in a vehicle accident
10 or collision; (C) a law enforcement officer had presented the person with
11 the oral and written notice required by K.S.A. 8-1001, and amendments
12 thereto; and (D) the person refused to submit to and complete a test as
13 requested by a law enforcement officer

14 (2) With regard to a test failure, that: (A) There existed reasonable
15 grounds to believe the person was operating a vehicle while under the
16 influence of alcohol or drugs, or both, or to believe that the person had
17 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
18 and amendments thereto, while having alcohol or other drugs in such
19 person's system; (B) the person had been placed under arrest, was in
20 custody or had been involved in a vehicle accident or collision; (C) a law
21 enforcement officer had presented the person with the oral and written
22 notice required by K.S.A. 8-1001, and amendments thereto; and (D) the
23 result of the test showed that the person had an alcohol concentration of
24 *.02 or greater, if such person is less than 21 years of age, in such person's*
25 *blood or breath or .08 or greater, if such person is 21 or more years of*
26 *age, in such person's blood or breath*

27 (3) With regard to failure of a breath test, in addition to those matters
28 required to be certified under subsection (a)(2), that: (A) The testing
29 equipment used was certified by the Kansas department of health and
30 environment; (B) the testing procedures used were in accordance with
31 the requirements set out by the Kansas department of health and envi-
32 ronment; and (C) the person who operated the testing equipment was
33 certified by the Kansas department of health and environment to operate
34 such equipment.

35 (b) For purposes of this section, certification shall be complete upon
36 signing, and no additional acts of oath, affirmation, acknowledgment or
37 proof of execution shall be required. The signed certification or a copy
38 or photostatic reproduction thereof shall be admissible in evidence in all
39 proceedings brought pursuant to this act, and receipt of any such certi-
40 fication, copy or reproduction shall accord the department authority to
41 proceed as set forth herein. Any person who signs a certification submit-
42 ted to the division knowing it contains a false statement is guilty of a class
43 B nonperson misdemeanor.

1 (c) When the officer directing administration of the testing deter-
2 mines that a person has refused a test and the criteria of subsection (a)(1)
3 have been met or determines that a person has failed a test and the criteria
4 of subsection (a)(2) have been met, the officer shall serve upon the person
5 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and
6 amendments thereto. If the determination is made while the person is
7 still in custody, service shall be made in person by the officer on behalf
8 of the division of vehicles. In cases where a test failure is established by
9 a subsequent analysis of a breath, blood or urine sample, the officer shall
10 serve notice of such suspension in person or by another designated officer
11 or by mailing the notice to the person at the address provided at the time
12 of the test.

13 (d) In addition to the information required by subsection (a), the law
14 enforcement officer's certification and notice of suspension shall contain
15 the following information: (1) The person's name, driver's license number
16 and current address; (2) the reason and statutory grounds for the suspen-
17 sion; (3) the date notice is being served and a statement that the effective
18 date of the suspension shall be the 30th calendar day after the date of
19 service; (4) the right of the person to request an administrative hearing;
20 and (5) the procedure the person must follow to request an administrative
21 hearing. The law enforcement officer's certification and notice of suspen-
22 sion shall also inform the person that all correspondence will be mailed
23 to the person at the address contained in the law enforcement officer's
24 certification and notice of suspension unless the person notifies the di-
25 vision in writing of a different address or change of address. The address
26 provided will be considered a change of address for purposes of K.S.A.
27 8-248, and amendments thereto, if the address furnished is different from
28 that on file with the division.

29 (e) If a person refuses a test or if a person is still in custody when it
30 is determined that the person has failed a test, the officer shall take any
31 license in the possession of the person and, if the license is not expired,
32 suspended, revoked or canceled, shall issue a temporary license effective
33 until the 30th calendar day after the date of service set out in the law
34 enforcement officer's certification and notice of suspension. If the test
35 failure is established by a subsequent analysis of a breath or blood sample,
36 the temporary license shall be served together with the copy of the law
37 enforcement officer's certification and notice of suspension. A temporary
38 license issued pursuant to this subsection shall bear the same restrictions
39 and limitations as the license for which it was exchanged. Within five days
40 after the date of service of a copy of the law enforcement officer's certi-
41 fication and notice of suspension the officer's certification and notice of
42 suspension, along with any licenses taken, shall be forwarded to the di-
43 vision.

1 (f) Upon receipt of the law enforcement officer's certification, the
2 division shall review the certification to determine that it meets the
3 requirements of subsection (a). Upon so determining, the division shall
4 proceed to suspend the person's driving privileges in accordance with the
5 notice of suspension previously served. If the requirements of subsection
6 (a) are not met, the division shall dismiss the administrative proceeding
7 and return any license surrendered by the person.

8 (g) If the person mails a written request which is postmarked within
9 10 days after service of the notice, if by personal service, or 13 days after
10 service, if by mail, the division shall schedule a hearing in the county
11 where the alleged violation occurred, or in a county adjacent thereto. The
12 licensee may request that subpoenas be issued in accordance with the
13 notice provided pursuant to subsection (d). Any request made by the
14 licensee to subpoena witnesses must be made in writing at the time the
15 hearing is requested and must include the name and current address of
16 such witnesses and, except for the law enforcement officer or officers
17 certifying refusal or failure, a statement of how the testimony of such
18 witness is relevant. Upon receiving a timely request for a hearing, the
19 division shall mail to the person notice of the time, date and place of
20 hearing in accordance with subsection (l) and extend the person's tem-
21 porary driving privileges until the date set for the hearing by the division.

22 (h) (1) If the officer certifies that the person refused the test, the
23 scope of the hearing shall be limited to whether: (A) A law enforcement
24 officer had reasonable grounds to believe the person was operating or
25 attempting to operate a vehicle while under the influence of alcohol or
26 drugs, or both, or to believe that the person had been driving a com-
27 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
28 thereto, while having alcohol or other drugs in such person's system; (B)
29 the person was in custody or arrested for an alcohol or drug related of-
30 fense or was involved in a vehicle accident or collision resulting in prop-
31 erty damage, personal injury or death; (C) a law enforcement officer had
32 presented the person with the oral and written notice required by K.S.A.
33 8-1001, and amendments thereto; and (D) the person refused to submit
34 to and complete a test as requested by a law enforcement officer.

35 (2) If the officer certifies that the person failed the test, the scope of
36 the hearing shall be limited to whether: (A) A law enforcement officer
37 had reasonable grounds to believe the person was operating a vehicle
38 while under the influence of alcohol or drugs, or both, or to believe that
39 the person had been driving a commercial motor vehicle, as defined in
40 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
41 drugs in such person's system; (B) the person was in custody or arrested
42 for an alcohol or drug related offense or was involved in a vehicle accident
43 or collision resulting in property damage, personal injury or death; (C) a

15-13

1 law enforcement officer had presented the person with the oral and writ-
2 ten notice required by K.S.A. 8-1001, and amendments thereto; (D) the
3 testing equipment used was reliable; (E) the person who operated the
4 testing equipment was qualified; (F) the testing procedures used were
5 reliable; (G) the test result determined that the person had an alcohol
6 concentration of .02 or greater, if such person is less than 21 years of age,
7 in such person's blood or breath or .08 or greater, if such person is 21 or
8 more years of age, in such person's blood or breath; and (H) the person
9 was operating a vehicle.

10 (i) At a hearing pursuant to this section, or upon court review of an
11 order entered at such a hearing, an affidavit of the custodian of records
12 at the Kansas department of health and environment stating that the
13 breath testing device was certified and the operator of such device was
14 certified on the date of the test shall be admissible into evidence in the
15 same manner and with the same force and effect as if the certifying officer
16 or employee of the Kansas department of health and environment had
17 testified in person. Such affidavit shall be admitted to prove such reli-
18 ability without further foundation requirement. A certified operator of a
19 breath testing device shall be competent to testify regarding the proper
20 procedures to be used in conducting the test.

21 (j) At a hearing pursuant to this section, or upon court review of an
22 order entered at such hearing, in which the report of blood test results
23 have been prepared by the Kansas bureau of investigation or other fo-
24 rensic laboratory of a state or local law enforcement agency are to be
25 introduced as evidence, the report, or a copy of the report, of the findings
26 of the forensic examiner shall be admissible into evidence in the same
27 manner and with the same force and effect as if the forensic examiner
28 who performed such examination, analysis, comparison or identification
29 and prepared the report thereon had testified in person.

30 (k) If no timely request for hearing is made, the suspension period
31 imposed pursuant to this section shall begin upon the expiration of the
32 temporary license granted under subsection (e). If a timely request for
33 hearing is made, the hearing shall be held within 30 days of the date the
34 request for hearing is received by the division, except that failure to hold
35 such hearing within 30 days shall not be cause for dismissal absent a
36 showing of prejudice. At the hearing, the director or the representative
37 of the director, shall either affirm the order of suspension or suspension
38 and restriction or dismiss the administrative action. If the division is un-
39 able to hold a hearing within 30 days of the date upon which the request
40 for hearing is received, the division shall extend the person's temporary
41 driving privileges until the date set for the hearing by the division. No
42 extension of temporary driving privileges shall be issued for continuances
43 requested by or on behalf of the licensee. If the person whose privileges

1 are suspended is a nonresident licensee, the license of the person shall
2 be forwarded to the appropriate licensing authority in the person's state
3 of residence if the result at the hearing is adverse to such person or if no
4 timely request for a hearing is received.

5 (l) All notices affirming or canceling a suspension under this section,
6 all notices of a hearing held under this section and all issuances of tem-
7 porary driving privileges pursuant to subsection (k) shall be sent by first-
8 class mail and a U.S. post office certificate of mailing shall be obtained
9 therefor. All notices so mailed shall be deemed received three days after
10 mailing.

11 (m) The division shall prepare and distribute forms for use by law
12 enforcement officers in giving the notice required by this section.

13 (n) This section and the applicable provisions contained in subsec-
14 tions (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the
15 administrative procedures to be used for all administrative hearings held
16 under this act. To the extent that this section and any other provision of
17 law conflicts, this section prevails.

18 (o) The provisions of K.S.A. 60-206 and amendments thereto regard-
19 ing the computation of time shall not be applicable in determining the
20 effective date of suspension set out in subsection (d) or the time for
21 requesting an administrative hearing set out in subsection (g). "Calendar
22 day" when used in this section shall mean that every day shall be included
23 in computations of time whether a week day, Saturday, Sunday or holiday.

24 Sec. 6 K.S.A. 1995 Supp 8-1005 is hereby amended to read as fol-
25 lows: 8-1005. Except as provided by K.S.A. 8-1012 and amendments
26 thereto, in any criminal prosecution for violation of the laws of this state
27 relating to operating or attempting to operate a vehicle while under the
28 influence of alcohol or drugs, or both, or the commission of vehicular
29 homicide or manslaughter while under the influence of alcohol or drugs,
30 or both, or in any prosecution for a violation of a city ordinance relating
31 to the operation or attempted operation of a vehicle while under the
32 influence of alcohol or drugs, or both, evidence of the concentration of
33 alcohol or drugs in the defendant's blood, urine, breath or other bodily
34 substance may be admitted and shall give rise to the following:

35 (a) If the alcohol concentration is less than .02, if the defendant is less
36 than 21 years of age, or .08, if the defendant is 21 or more years of age,
37 that fact may be considered with other competent evidence to determine
38 if the defendant was under the influence of alcohol, or both alcohol and
39 drugs.

40 (b) If the alcohol concentration is .02 or greater, if the defendant is
41 less than 21 years of age, or .08 or more greater, if the defendant is 21 or
42 more years of age, it shall be prima facie evidence that the defendant was
43 under the influence of alcohol to a degree that renders the person inca-

15-15

1 pable of driving safely.

2 (c) If there was present in the defendant's bodily substance any nar-
3 cotic, hypnotic, somnifacient, stimulating or other drug which has the
4 capacity to render the defendant incapable of safely driving a vehicle, that
5 fact may be considered to determine if the defendant was under the
6 influence of drugs, or both alcohol and drugs, to a degree that renders
7 the defendant incapable of driving safely.

8 Sec. 7. K.S.A. 1995 Supp. 8-1013 is hereby amended to read as fol-
9 lows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012,
10 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto,
11 and this section:

12 (a) "Alcohol concentration" means the number of grams of alcohol
13 per 100 milliliters of blood or per 210 liters of breath.

14 (b) (1) "Alcohol or drug-related conviction" means any of the follow-
15 ing: (A) Conviction of vehicular battery or aggravated vehicular homicide,
16 if the crime is committed while committing a violation of K.S.A. 8-1567
17 and amendments thereto or the ordinance of a city or resolution of a
18 county in this state which prohibits any acts prohibited by that statute, or
19 conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B)
20 conviction of a violation of a law of another state which would constitute
21 a crime described in subsection (b)(1)(A) if committed in this state; (C)
22 conviction of a violation of an ordinance of a city in this state or a reso-
23 lution of a county in this state which would constitute a crime described
24 in subsection (b)(1)(A), whether or not such conviction is in a court of
25 record; or (D) conviction of an act which was committed on a military
26 reservation and which would constitute a violation of K.S.A. 8-1567, and
27 amendments thereto, or would constitute a crime described in subsection
28 (b)(1)(A) if committed off a military reservation in this state.

29 (2) For the purpose of determining whether an occurrence is a first,
30 second or subsequent occurrence: (A) "Alcohol or drug-related convic-
31 tion" also includes entering into a diversion agreement in lieu of further
32 criminal proceedings on a complaint alleging commission of a crime de-
33 scribed in subsection (b)(1) which agreement was entered into during the
34 immediately preceding five years, including prior to the effective date of
35 this act; and (B) it is irrelevant whether an offense occurred before or
36 after conviction or diversion for a previous offense.

37 (c) "Division" means the division of vehicles of the department of
38 revenue.

39 (d) "Ignition interlock device" means a device which uses a breath
40 analysis mechanism to prevent a person from operating a motor vehicle
41 if such person has consumed an alcoholic beverage.

42 (e) "Occurrence" means a test refusal, test failure or alcohol or drug-
43 related conviction, or any combination thereof arising from one arrest,

15-16

1 occurring in the immediately preceding five years, including prior to the
2 effective day of this act.

3 (f) "Other competent evidence" includes: (1) Alcohol concentration
4 tests obtained from samples taken two hours or more after the operation
5 or attempted operation of a vehicle; and (2) readings obtained from a
6 partial alcohol concentration test on a breath testing machine.

7 (g) "Samples" includes breath supplied directly for testing, which
8 breath is not preserved.

9 (h) "Test failure" or "fails a test" refers to a person's having results
10 of a test administered pursuant to this act, other than a preliminary
11 screening test, which show an alcohol concentration of *.02 or greater, if*
12 *such person is less than 21 years of age, in such person's blood or breath,*
13 *or .08 or greater, if such person is 21 or more years of age,* in the person's
14 blood or breath, and includes failure of any such test on a military res-
15 ervation.

16 (i) "Test refusal" or "refuses a test" refers to a person's failure to
17 submit to or complete any test, other than a preliminary screening test,
18 in accordance with this act, and includes refusal of any such test on a
19 military reservation.

20 (j) "Law enforcement officer" has the meaning provided by K.S.A.
21 21-3110, and amendments thereto, and includes any person authorized
22 by law to make an arrest on a military reservation for an act which would
23 constitute a violation of K.S.A. 8-1567, and amendments thereto, if com-
24 mitted off a military reservation in this state.

25 Sec. 8. K.S.A. 1995 Supp. 8-1567 is hereby amended to read as fol-
26 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
27 within this state while:

28 (1) The alcohol concentration in the person's blood or breath as
29 shown by any competent evidence, including other competent evidence,
30 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
31 ments thereto, is *.02 or more, if such person is less than 21 years of age,*
32 *or .08 or more greater, if such person is 21 or more years of age;*

33 (2) the alcohol concentration in the person's blood or breath, as meas-
34 ured within two hours of the time of operating or attempting to operate
35 a vehicle, is *.02 or more, if such person is less than 21 years of age, or .08*
36 *or more greater, if such person is 21 or more years of age;*

37 (3) under the influence of alcohol to a degree that renders the person
38 incapable of safely driving a vehicle;

39 (4) under the influence of any drug or combination of drugs to a
40 degree that renders the person incapable of safely driving a vehicle; or

41 (5) under the influence of a combination of alcohol and any drug or
42 drugs to a degree that renders the person incapable of safely driving a
43 vehicle.

1 (b) No person shall operate or attempt to operate any vehicle within
2 this state if the person is a habitual user of any narcotic, hypnotic, som-
3 nifacient or stimulating drug.

4 (c) If a person is charged with a violation of this section involving
5 drugs, the fact that the person is or has been entitled to use the drug
6 under the laws of this state shall not constitute a defense against the
7 charge.

8 (d) Upon a first conviction of a violation of this section, a person shall
9 be guilty of a class B, nonperson misdemeanor and sentenced to not less
10 than 48 consecutive hours nor more than six months' imprisonment, or
11 in the court's discretion 100 hours of public service, and fined not less
12 than \$200 nor more than \$500. The person convicted must serve at least
13 48 consecutive hours' imprisonment or 100 hours of public service either
14 before or as a condition of any grant of probation or suspension, reduction
15 of sentence or parole. In addition, the court shall enter an order which
16 requires that the person enroll in and successfully complete an alcohol
17 and drug safety action education program or treatment program as pro-
18 vided in K.S.A. 8-1008, and amendments thereto, or both the education
19 and treatment programs.

20 (e) On a second conviction of a violation of this section, a person shall
21 be guilty of a class A, nonperson misdemeanor and sentenced to not less
22 than 90 days nor more than one year's imprisonment and fined not less
23 than \$500 nor more than \$1,000. The five days' imprisonment mandated
24 by this subsection may be served in a work release program only after
25 such person has served 48 consecutive hours' imprisonment, provided
26 such work release program requires such person to return to confinement
27 at the end of each day in the work release program. Except as provided
28 in subsection (g), the person convicted must serve at least five consecutive
29 days' imprisonment before the person is granted probation, suspension
30 or reduction of sentence or parole or is otherwise released. As a condition
31 of any grant of probation, suspension of sentence or parole or of any other
32 release, the person shall be required to enter into and complete a treat-
33 ment program for alcohol and drug abuse as provided in K.S.A. 8-1008,
34 and amendments thereto.

35 (f) On the third or a subsequent conviction of a violation of this sec-
36 tion, a person shall be guilty of a nonperson felony and sentenced to not
37 less than 90 days nor more than one year's imprisonment and fined not
38 less than \$1,000 nor more than \$2,500. Except as provided in subsection
39 (g), the person convicted shall not be eligible for release on probation,
40 suspension or reduction of sentence or parole until the person has served
41 at least 90 days' imprisonment. The court may also require as a condition
42 of parole that such person enter into and complete a treatment program
43 for alcohol and drug abuse as provided by K.S.A. 8-1008, and amend-

1 ments thereto. The 90 days' imprisonment mandated by this subsection
2 may be served in a work release program only after such person has served
3 48 consecutive hours' imprisonment, provided such work release program
4 requires such person to return to confinement at the end of each day in
5 the work release program.

6 (g) On a second or subsequent conviction of a violation of this section,
7 the court may place the person convicted under a house arrest program,
8 pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-
9 mainder of the minimum sentence only after such person has served 48
10 consecutive hours' imprisonment.

11 (h) The court may establish the terms and time for payment of any
12 fines, fees, assessments and costs imposed pursuant to this section. Any
13 assessment and costs shall be required to be paid not later than 90 days
14 after imposed, and any remainder of the fine shall be paid prior to the
15 final release of the defendant by the court.

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

26 (j) The court shall report every conviction of a violation of this section
27 and every diversion agreement entered into in lieu of further criminal
28 proceedings or a complaint alleging a violation of this section to the di-
29 vision. Prior to sentencing under the provisions of this section, the court
30 shall request and shall receive from the division a record of all prior
31 convictions obtained against such person for any violations of any of the
32 motor vehicle laws of this state.

33 (k) For the purpose of determining whether a conviction is a first,
34 second, third or subsequent conviction in sentencing under this section:

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

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

43 (3) only convictions occurring in the immediately preceding five

61-19
1

1 years, including prior to the effective date of this act, shall be taken into
2 account, but the court may consider other prior convictions in determin-
3 ing the sentence to be imposed within the limits provided for a first,
4 second, third or subsequent offender, whichever is applicable; and

5 (4) it is irrelevant whether an offense occurred before or after con-
6 viction for a previous offense.

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

12 (m) Nothing contained in this section shall be construed as prevent-
13 ing any city from enacting ordinances, or any county from adopting res-
14 olutions, declaring acts prohibited or made unlawful by this act as unlaw-
15 ful or prohibited in such city or county and prescribing penalties for
16 violation thereof, but the minimum penalty prescribed by any such or-
17 dinance or resolution shall not be less than the minimum penalty pre-
18 scribed by this act for the same violation, and the maximum penalty in
19 any such ordinance or resolution shall not exceed the maximum penalty
20 prescribed for the same violation. In addition, any such ordinance or
21 resolution shall authorize the court to order that the convicted person
22 pay restitution to any victim who suffered loss due to the violation for
23 which the person was convicted.

24 (n) No plea bargaining agreement shall be entered into nor shall any
25 judge approve a plea bargaining agreement entered into for the purpose
26 of permitting a person charged with a violation of this section, or a vio-
27 lation of any ordinance of a city or resolution of any county in this state
28 which prohibits the acts prohibited by this section, to avoid the mandatory
29 penalties established by this section or by the ordinance. For the purpose
30 of this subsection, entering into a diversion agreement pursuant to K.S.A.
31 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
32 constitute plea bargaining.

33 (o) The alternatives set out in subsections (a)(1) (2) and (3) may be
34 pleaded in the alternative, and the state, city or county, but shall not be
35 required to, may elect one or two of the three prior to submission of the
36 case to the fact finder.

37 (p) Upon a fourth or subsequent conviction, the judge of any court
38 in which any person is convicted of violating this section, may revoke the
39 person's license plate or temporary registration certificate of the motor
40 vehicle driven during the violation of this section for a period of one year.
41 Upon revoking any license plate or temporary registration certificate pur-
42 suant to this subsection, the court shall require that such license plate or
43 temporary registration certificate be surrendered to the court.

1 (q) For the purpose of this section:

2 (1) "Alcohol concentration" means the number of grams of alcohol
3 per 100 milliliters of blood or per 210 liters of breath.

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

8 Sec. 9. K.S.A. 1995 Supp. 12-4305 is hereby amended to read as
9 follows: 12-4305. (a) The municipal judge shall establish a schedule of
10 fines which shall be imposed for municipal ordinance violations that are
11 classified as ordinance traffic infractions. Also, the municipal judge may
12 establish a schedule of fines which shall be imposed for the violation of
13 certain other ordinances. Any fine so established shall be within the min-
14 imum and maximum allowable fines established by ordinance for such
15 offenses by the governing body. The following traffic violations are spe-
16 cifically excluded from any schedule of fines:

17 (1) Reckless driving;

18 (2) driving while under the influence of alcohol or drugs, or both, or
19 driving with a blood or breath alcohol concentration of .02 or greater, if
20 the person is less than 21 years of age or .08 or more greater, if the person
21 is 21 or more years of age;

22 (3) driving without a valid license issued or on a canceled, suspended
23 or revoked license;

24 (4) fleeing or attempting to elude a police officer; or

25 (5) offense comparable to those prescribed by K.S.A. 8-1602, 8-1603
26 and 8-1604 and amendments thereto.

27 (b) A person charged with the violation of an ordinance contained in
28 a schedule of fines established under subsection (a) shall, except as pro-
29 vided in subsection (c), appear at the place and time specified in the
30 notice to appear. If the person enters an appearance, waives right to trial,
31 pleads guilty or no contest, the fine shall be no greater than that specified
32 in the schedule.

33 (c) Prior to the time specified in the notice to appear, a person
34 charged with the violation of an ordinance contained in a schedule of
35 fines established under subsection (a) may enter an appearance, waive
36 right to trial, plead guilty or no contest and pay the fine for the violation
37 as specified in the schedule. At the election of the person charged, such
38 appearance, waiver, plea and payment may be made by mail or in person
39 and payment may be by personal check. The complaint shall not have
40 been complied with if a check is not honored for any reason, or the fine
41 is not paid in full prior to the time specified in the notice to appear. When
42 a person charged with an ordinance traffic infraction or other ordinance
43 violation on a schedule of fines makes payment without executing a writ-

(r) Any conviction pursuant to K.S.A. 8-1567,
and amendments thereto, if such person was under
21 years of age and the alcohol concentration in the
person's blood or breath was .02 or greater, shall
not be a part of the public record and shall not be
considered by any insurance company in
determining the rate charged for any automobile
liability insurance policy or whether to cancel any
such policy under the provisions of subsection
(4)(c)(3) of K.S.A. 40-277, and amendments thereto.

1 ten waiver of right to trial and plea of guilty or no contest, the payment
2 shall be deemed such an appearance, waiver of right to trial and plea of
3 no contest.

4 The municipal judge may authorize the clerk of the municipal court or
5 some other person to accept by mail or in person such voluntary appear-
6 ance, plea of guilty or no contest and payment of the fine imposed by the
7 schedule.

8 The schedule of fines and persons authorized to accept such pleas shall
9 be conspicuously displayed in the office where such voluntary appearance,
10 plea of guilty and payment of fine occurs.

11 Sec. 10. K.S.A. 8-2,142, 8-2,144 and 8-2,145 and K.S.A. 1995 Supp.
12 8-1001, 8-1002, 8-1005, 8-1013, 8-1567 and 12-4305 are hereby repealed.

13 Sec. 11. This act shall take effect and be in force from and after its
14 publication in the statute book.

15-21

(d) Any violation of a municipal ordinance, which prohibits driving under the influence of alcohol or drugs, if such person was under 21 years of age and the alcohol concentration in the person's blood or breath was .02 or greater, shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(a) or (4)(c)(3) of K.S.A. 40-277, and amendments thereto.

HOUSE BILL No. 2603

By Special Committee on Transportation
Re Proposal No. 59

12-20

10 AN ACT concerning alcohol or drug related offenses involving the op-
11 eration of a vehicle; relating to the blood alcohol concentration of a
12 person under 21; amending K.S.A. 8-2,142, 8-2,144 and 8-2,145 and
13 K.S.A. 1995 Supp. 8-1001, 8-1002, 8-1005, 8-1013, 8-1567 and 12-
14 4305 and repealing the existing sections.

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

17 Section 1. K.S.A. 8-2,142 is hereby amended to read as follows: 8-
18 2,142. (a) A person is disqualified from driving a commercial motor ve-
19 hicle for a period of not less than one year upon a first occurrence of any
20 one of the following:

21 (1) The person's conviction of a violation of K.S.A. 8-2,144, *and*
22 *amendments thereto;*

23 (2) leaving the scene of an accident involving a commercial motor
24 vehicle driven by the person;

25 (3) the person's conviction of using a commercial motor vehicle in
26 the commission of any felony as defined in this act; or

27 (4) the person's test refusal or test failure, as defined by subsection
28 (i).

29 (b) If any offenses, test refusal or test failure specified in subsection
30 (a) occurred while transporting a hazardous material required to be plac-
31 arded, the person is disqualified for a period of not less than three years.

32 (c) A person shall be disqualified for life upon the second or a sub-
33 sequent occurrence of any offense, test refusal or test failure specified in
34 subsection (a), or any combination thereof, arising from two or more
35 separate incidents.

36 (d) The secretary of revenue may adopt rules and regulations estab-
37 lishing guidelines, including conditions, under which a disqualification for
38 life under subsection (c) may be reduced to a period of not less than 10
39 years.

40 (e) A person is disqualified from driving a commercial motor vehicle
41 for life who uses a commercial motor vehicle in the commission of any
42 felony involving the manufacture, distribution or dispensing of a con-
43 trolled substance, or possession with intent to manufacture, distribute or

1 dispense a controlled substance.

2 (f) A person is disqualified from driving a commercial motor vehicle
3 for a period of not less than 60 days if convicted of two serious traffic
4 violations, or 120 days if convicted of three serious traffic violations, com-
5 mitted in a commercial motor vehicle arising from separate incidents
6 occurring within a three-year period.

7 (g) After suspending, revoking or canceling a commercial driver's li-
8 cense, the division shall update its records to reflect that action within 10
9 days. After suspending, revoking or canceling a nonresident commercial
10 driver's privileges, the division shall notify the licensing authority of the
11 state which issued the commercial driver's license or nonresident com-
12 mercial driver's license within 10 days.

13 (h) Upon suspension, revocation, cancellation or disqualification of a
14 commercial driver's license under this act, the license shall be immedi-
15 ately surrendered to the division if still in the licensee's possession. If
16 otherwise eligible, and upon payment of the required fees, the licensee
17 may be issued a noncommercial driver's license for the period of suspen-
18 sion, revocation, cancellation or disqualification of the commercial driv-
19 er's license under the same identifier number.

20 (i) As used in this section, "test refusal" means a person's refusal to
21 submit to and complete a test requested pursuant to K.S.A. 8-2,145, *and*
22 *amendments thereto*; "test failure" means a person's submission to and
23 completion of a test which determines that the person's alcohol concen-
24 tration is *.02 or greater, if such person is less than 21 years of age or .04*
25 *or greater, if such person is 21 or more years of age*, pursuant to K.S.A.
26 8-2,145, *and amendments thereto*.

27 Sec. 2 K.S.A. 8-2,144 is hereby amended to read as follows: 8-2,144.

28 (a) No person shall drive any commercial motor vehicle, as defined in
29 K.S.A. 8-2,128, and amendments thereto, within this state while:

30 (1) The alcohol concentration in the person's blood or breath, as
31 shown by any competent evidence, including other competent evidence,
32 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
33 ments thereto, is ~~.04 or more~~ *.02 or greater, if such person is less than*
34 *21 years of age or .04 or greater, if such person is 21 or more years of*
35 *age*;

36 (2) the alcohol concentration in the person's blood or breath, as meas-
37 ured within two hours of the time of driving a commercial motor vehicle,
38 is ~~.04 or more~~ *.02 or greater, if such person is less than 21 years of age*
39 *or .04 or greater, if such person is 21 or more years of age*; or

40 (3) committing a violation of subsection (a) of K.S.A. 8-1567, and
41 amendments thereto, or the ordinance of a city or resolution of a county
42 which prohibits any of the acts prohibited thereunder.

43 (b) Violation of this section is a misdemeanor. In addition to any pen-

1 alties ordered under K.S.A. 8-1567, and amendments thereto, the person
2 convicted shall be sentenced to not less than 48 consecutive hours nor
3 more than six months imprisonment, and fined not less than \$200 nor
4 more than \$500.

5 (c) The court shall report every conviction of a violation of this section
6 to the division. Prior to sentencing under the provisions of this section,
7 the court shall request and shall receive from the division a record of all
8 prior convictions obtained against such person for any violation of any of
9 the motor vehicle laws of this state.

10 (d) Upon conviction of a person of a violation of this section or a
11 violation of a city ordinance or county resolution prohibiting the acts
12 prohibited by this section, the division, upon receiving a report of con-
13 viction, shall disqualify the person from driving a commercial motor ve-
14 hicle under K.S.A. 8-2,142, and amendments thereto.

15 (e) For the purpose of this section, "alcohol concentration" means
16 the number of grams of alcohol per 100 milliliters of blood or per 210
17 liters of breath.

18 Sec. 3. K.S.A. 8-2,145 is hereby amended to read as follows: 8-2,145.

19 (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and
20 amendments thereto, in addition to any notices provided pursuant to par-
21 agraph (1) of subsection (f) of K.S.A. 8-1001, and amendments thereto,
22 the following notice shall be provided orally and in writing: Whenever a
23 law enforcement officer has reasonable grounds to believe a person has
24 been driving a commercial motor vehicle while having alcohol or other
25 drugs in such person's system and the person refuses to submit to and
26 complete a test or tests requested by a law enforcement officer or submits
27 to and completes a test requested by a law enforcement officer which
28 determines that the person's alcohol concentration is *.02 or greater, if*
29 *such person is less than 21 years of age, or .04 or greater, if such person*
30 *is 21 or more years of age*, the person will be disqualified from driving a
31 commercial motor vehicle for at least one year, pursuant to Kansas law.

32 (b) It shall not be a defense that the person did not understand the
33 notices required by this section.

34 (c) Upon completion of the notices set out in paragraph (1) of sub-
35 section (f) of K.S.A. 8-1001, and amendments thereto, and the notices in
36 subsection (a), the law enforcement officer shall proceed to request a test
37 or tests. In addition to the completion of any certification required under
38 K.S.A. 8-1002, and amendments thereto, a law enforcement officer's cer-
39 tification shall be prepared and signed by one or more officers to certify:

40 (1) There existed reasonable grounds to believe the person had been
41 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
42 amendments thereto, while having alcohol or other drugs in such person's
43 system;

16-3

1 (2) the person had been placed under arrest, was in custody or had
2 been involved in a motor vehicle accident or collision;

3 (3) a law enforcement officer had presented the person with the no-
4 tices required by this section; and

5 (4) the person refused to submit to and complete a test or the test
6 result for alcohol content of blood or breath was *.02 or greater, if such*
7 *person is less than 21 years of age, or .04 or greater, if such person is 21*
8 *or more years of age.*

9 (d) For purposes of this section, certification shall be complete upon
10 signing, and no additional acts of oath, affirmation, acknowledgment or
11 proof of execution shall be required. The signed certification or a copy
12 or photostatic reproduction thereof shall be admissible in evidence in all
13 proceedings brought pursuant to this act, and receipt of any such certi-
14 fication, copy or reproduction shall accord the division authority to pro-
15 ceed as set forth herein. Any person who signs a certification submitted
16 to the division knowing it contains a false statement is guilty of a class B
17 misdemeanor.

18 (e) Upon completing a certification under subsection (c), the officer
19 shall serve upon the person notice of disqualification of the privilege to
20 drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amend-
21 ments thereto, together with a copy of the certification. In cases where a
22 *.02 or greater test result, for persons less than 21 years of age or .04 or*
23 *greater test result for persons 21 or more years of age,* is established by
24 a subsequent analysis of a breath or blood sample, the officer shall serve
25 notice of such suspension in person or by another designated officer or
26 by mailing the notice to the person at the address provided at the time
27 of the test. If the determination of a test refusal or *.02 or greater test*
28 *result, for persons less than 21 years of age or .04 or greater test result*
29 *for persons 21 or more years of age* is made while the person is still in
30 custody, service shall be made in person by the officer on behalf of the
31 division of vehicles.

32 (f) The notice shall contain the following information:

33 (1) The person's name, driver's license number and current address
34 pursuant to K.S.A. 8-248, and amendments thereto;

35 (2) the reason and statutory grounds for the disqualification;

36 (3) the date notice is being served and the effective date of the dis-
37 qualification, which shall be the 20th day after the date of service;

38 (4) the right of the person to request an administrative hearing; and

39 (5) the procedure the person must follow to request an administrative
40 hearing.

41 The notice of disqualification shall also inform the person that all corre-
42 spondence will be mailed to the person at the address contained in the
43 notice of disqualification unless the person notifies the division in writing

16-4

1 of a different address or change of address. The address provided will be
 2 considered a change of address for purposes of K.S.A. 8-248, and amend-
 3 ments thereto, if the address furnished is different from that on file with
 4 the division.

5 (g) If the person mails a written request which is postmarked within
 6 10 days after service of the notice, if by personal service, or 13 days after
 7 service, if by mail, the division shall schedule a hearing in the county
 8 where the alleged violation occurred, or in a county adjacent thereto. The
 9 licensee may request that subpoenas be issued in accordance with the
 10 notice provided pursuant to subsection (d). Any request made by the
 11 licensee to subpoena witnesses must be made in writing at the time the
 12 hearing is requested and must include the name and current address of
 13 such witness and, except for the certifying law enforcement officer or
 14 officers, a statement of how the testimony of such witness is relevant.
 15 Upon receiving a timely request for a hearing, the division shall mail to
 16 the person notice of the time, date and place of hearing in accordance
 17 with subsection (i) and extend the person's temporary driving privileges
 18 until the date set for the hearing by the division, unless otherwise dis-
 19 qualified, suspended, revoked or cancelled.

20 (h) The law enforcement officer shall forward the certification re-
 21 quired under subsection (c) to the director within five days of the date
 22 of certification. Upon receipt of the certification, the division shall review
 23 the certification to determine that it meets the requirements of subsection
 24 (c). Upon so determining, the director shall proceed to disqualify the
 25 driver from driving a commercial motor vehicle in accordance with the
 26 notice of disqualification previously served.

27 (i) All notices of disqualification under this section and all notices of
 28 a hearing held under this section shall be sent by first-class mail and a
 29 United States post office certificate of mailing shall be obtained therefor.
 30 All notices so mailed shall be deemed received three days after mailing.

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

35 (k) The rules regarding evidence and procedure at hearings held un-
 36 der K.S.A. 8-1002, and amendments thereto, shall be applicable to hear-
 37 ings held under this section. At the hearing on a disqualification of com-
 38 mercial driving privileges, the issues shall be limited to those set out in
 39 the certification.

40 (l) The division shall prepare and distribute forms for use by law
 41 enforcement officers in giving the notice required by this section.

42 Sec. 4. K.S.A. 1995 Supp. 8-1001 is hereby amended to read as fol-
 43 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle

(m) Any conviction, test refusal or test failure pursuant to article 2 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, if such person was under 21 years of age and the alcohol concentration in the person's blood or breath was .02 or greater, shall not be reported to the national driver register.

1 within this state is deemed to have given consent, subject to the provisions
2 of this act, to submit to one or more tests of the person's blood, breath,
3 urine or other bodily substance to determine the presence of alcohol or
4 drugs. The testing deemed consented to herein shall include all quanti-
5 tative and qualitative tests for alcohol and drugs. A person who is dead
6 or unconscious shall be deemed not to have withdrawn the person's con-
7 sent to such test or tests, which shall be administered in the manner
8 provided by this section.

9 (b) A law enforcement officer shall request a person to submit to a
10 test or tests deemed consented to under subsection (a) if the officer has
11 reasonable grounds to believe the person was operating or attempting to
12 operate a vehicle while under the influence of alcohol or drugs, or both,
13 or to believe that the person was driving a commercial motor vehicle, as
14 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
15 or other drugs in such person's system; and one of the following condi-
16 tions exists: (1) The person has been arrested or otherwise taken into
17 custody for any offense involving operation or attempted operation of a
18 vehicle while under the influence of alcohol or drugs, or both, or involving
19 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
20 amendments thereto, while having alcohol or other drugs in such person's
21 system, in violation of a state statute or a city ordinance; or (2) the person
22 has been involved in a vehicle accident or collision resulting in property
23 damage, personal injury or death. The law enforcement officer directing
24 administration of the test or tests may act on personal knowledge or on
25 the basis of the collective information available to law enforcement offi-
26 cers involved in the accident investigation or arrest.

27 (c) If a law enforcement officer requests a person to submit to a test
28 of blood under this section, the withdrawal of blood at the direction of
29 the officer may be performed only by: (1) A person licensed to practice
30 medicine and surgery or a person acting under the supervision of any
31 such licensed person; (2) a registered nurse or a licensed practical nurse;
32 or (3) any qualified medical technician, including, but not limited to, an
33 emergency medical technician-intermediate or mobile intensive care
34 technician, as those terms are defined in K.S.A. 65-6112, and amend-
35 ments thereto, or a phlebotomist. When presented with a written state-
36 ment by a law enforcement officer directing blood to be withdrawn from
37 a person who has tentatively agreed to allow the withdrawal of blood
38 under this section, the person authorized herein to withdraw blood and
39 the medical care facility where blood is withdrawn may rely on such a
40 statement as evidence that the person has consented to the medical pro-
41 cedure used and shall not require the person to sign any additional con-
42 sent or waiver form. In such a case, the person authorized to withdraw
43 blood and the medical care facility shall not be liable in any action alleging

1 lack of consent or lack of informed consent. No person authorized by this
2 subsection to withdraw blood, nor any person assisting in the performance
3 of a blood test nor any medical care facility where blood is withdrawn or
4 tested that has been directed by any law enforcement officer to withdraw
5 or test blood, shall be liable in any civil or criminal action when the act
6 is performed in a reasonable manner according to generally accepted
7 medical practices in the community where performed.

8 (d) If there are reasonable grounds to believe that there is impair-
9 ment by a drug which is not subject to detection by the blood or breath
10 test used, a urine test may be required. If a law enforcement officer
11 requests a person to submit to a test of urine under this section, the
12 collection of the urine sample shall be supervised by persons of the same
13 sex as the person being tested and shall be conducted out of the view of
14 any person other than the persons supervising the collection of the sample
15 and the person being tested, unless the right to privacy is waived by the
16 person being tested. The results of qualitative testing for drug presence
17 shall be admissible in evidence and questions of accuracy or reliability
18 shall go to the weight rather than the admissibility of the evidence.

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

22 (f) (1) Before a test or tests are administered under this section, the
23 person shall be given oral and written notice that: (A) Kansas law requires
24 the person to submit to and complete one or more tests of breath, blood
25 or urine to determine if the person is under the influence of alcohol or
26 drugs, or both; (B) the opportunity to consent to or refuse a test is not a
27 constitutional right; (C) there is no constitutional right to consult with an
28 attorney regarding whether to submit to testing; (D) if the person refuses
29 to submit to and complete any test of breath, blood or urine hereafter
30 requested by a law enforcement officer, the person's driving privileges
31 will be suspended for at least one year; (E) if the person is *21 or more*
32 *years of age at the time of the test and* submits to and completes the test
33 or tests and the test results show an alcohol concentration of .08 or
34 greater, the person's driving privileges will be suspended for at least 30
35 days; (F) *if the person is less than 21 years of age at the time of the test*
36 *and submits to and completes the test or tests and the test results show*
37 *an alcohol concentration of .02 or greater, the person's driving privileges*
38 *will be suspended for at least 30 days;* (G) if the person is *21 or more*
39 *years of age at the time of the test and* refuses a test or the test results
40 show an alcohol concentration of .08 or greater and if, within the past
41 five years, the person has been convicted or granted diversion on a charge
42 of driving under the influence of alcohol or drugs, or both, or a related
43 offense or has refused or failed a test, the person's driving privileges will

1 be suspended for at least one year; ~~(G)~~ (H) if the person is less than 21
2 years of age at the time of the test and refuses a test or the test results
3 show an alcohol concentration of .02 or greater and if, within the past
4 five years, the person has been convicted or granted a diversion on a
5 charge of driving under the influence of alcohol or drugs, or both, or a
6 related offense or has refused or failed a test, the person's driving privi-
7 leges will be suspended for at least one year; (I) refusal to submit to testing
8 may be used against the person at any trial on a charge arising out of the
9 operation or attempted operation of a vehicle while under the influence
10 of alcohol or drugs, or both; ~~(H)~~ (J) the results of the testing may be used
11 against the person at any trial on a charge arising out of the operation or
12 attempted operation of a vehicle while under the influence of alcohol or
13 drugs, or both; and ~~(H)~~ (K) after the completion of the testing, the person
14 has the right to consult with an attorney and may secure additional testing,
15 which, if desired, should be done as soon as possible and is customarily
16 available from medical care facilities and physicians. If a law enforcement
17 officer has reasonable grounds to believe that the person has been driving
18 a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-
19 ments thereto, while having alcohol or other drugs in such person's sys-
20 tem, the person must also be provided the oral and written notice pur-
21 suant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the
22 notices required by K.S.A. 8-2,145 and amendments thereto shall not
23 invalidate any action taken as a result of the requirements of this section.
24 After giving the foregoing information, a law enforcement officer shall
25 request the person to submit to testing. The selection of the test or tests
26 shall be made by the officer. If the person refuses to submit to and com-
27 plete a test as requested pursuant to this section, additional testing shall
28 not be given unless the certifying officer has probable cause to believe
29 that the person, while under the influence of alcohol or drugs, or both,
30 has operated a vehicle in such a manner as to have caused the death of
31 or serious injury to another person. As used in this section, the officer
32 shall have probable cause to believe that the person operated a vehicle
33 while under the influence of alcohol or drugs, or both, if the vehicle was
34 operated by such person in such a manner as to have caused the death
35 of or serious injury to another person. In such event, such test or tests
36 may be made pursuant to a search warrant issued under the authority of
37 K.S.A. 22-2502, and amendments thereto, or without a search warrant
38 under the authority of K.S.A. 22-2501, and amendments thereto. If the
39 test results show a blood or breath alcohol concentration of .02 or greater,
40 if such person is less than 21 years of age or .08 or greater, if such person
41 is 21 or more years of age, the person's driving privileges shall be subject
42 to suspension, or suspension and restriction, as provided in K.S.A. 8-1002
43 and 8-1014, and amendments thereto. The person's refusal shall be ad-

8-91

1 missible in evidence against the person at any trial on a charge arising out
2 of the alleged operation or attempted operation of a vehicle while under
3 the influence of alcohol or drugs, or both. If a law enforcement officer
4 had reasonable grounds to believe the person had been driving a com-
5 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
6 thereto, and the test results show a blood or breath alcohol concentration
7 of .02 or greater, if such person is less than 21 years of age or .04 or
8 greater, if such person is 21 or more years of age, the person shall be
9 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
10 8-2,142, and amendments thereto. If a law enforcement officer had rea-
11 sonable grounds to believe the person had been driving a commercial
12 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
13 and the test results show a blood or breath alcohol concentration of .02
14 or greater, if such person is less than 21 years of age or .08 or greater, if
15 such person is 21 or more years of age, or the person refuses a test, the
16 person's driving privileges shall be subject to suspension, or suspension
17 and restriction, pursuant to this section, in addition to being disqualified
18 from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and
19 amendments thereto.

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

24 (3) It shall not be a defense that the person did not understand the
25 written or oral notice required by this section.

26 (4) No test shall be suppressed because of technical irregularities in
27 the consent or notice pursuant to K.S.A. 8-2,145, and amendments
28 thereto.

29 (g) Nothing in this section shall be construed to limit the admissibility
30 at any trial of alcohol or drug concentration testing results obtained pur-
31 suant to a search warrant.

32 (h) Upon the request of any person submitting to testing under this
33 section, a report of the results of the testing shall be made available to
34 such person.

35 (i) This act is remedial law and shall be liberally construed to promote
36 public health, safety and welfare.

37 Sec. 5. K.S.A. 1995 Supp. 8-1002 is hereby amended to read as fol-
38 lows: 8-1002. (a) Whenever a test is requested pursuant to this act and
39 results in either a test failure or test refusal, a law enforcement officer's
40 certification shall be prepared. If the person had been driving a com-
41 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
42 thereto, a separate certification pursuant to K.S.A. 8-2,145 and amend-
43 ments thereto shall be prepared in addition to any certification required

16-9
16-91

(j) Any test refusal or test failure pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, if such person was under 21 years of age and the alcohol concentration in the person's blood or breath was .02 or greater, shall not be reported to the national driver register.

1 by this section. The certification required by this section shall be signed
2 by one or more officers to certify:

3 (1) With regard to a test refusal, that: (A) There existed reasonable
4 grounds to believe the person was operating or attempting to operate a
5 vehicle while under the influence of alcohol or drugs, or both, or to be-
6 lieve that the person had been driving a commercial motor vehicle, as
7 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
8 or other drugs in such person's system; (B) the person had been placed
9 under arrest, was in custody or had been involved in a vehicle accident
10 or collision; (C) a law enforcement officer had presented the person with
11 the oral and written notice required by K.S.A. 8-1001, and amendments
12 thereto; and (D) the person refused to submit to and complete a test as
13 requested by a law enforcement officer

14 (2) With regard to a test failure, that: (A) There existed reasonable
15 grounds to believe the person was operating a vehicle while under the
16 influence of alcohol or drugs, or both, or to believe that the person had
17 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
18 and amendments thereto, while having alcohol or other drugs in such
19 person's system; (B) the person had been placed under arrest, was in
20 custody or had been involved in a vehicle accident or collision; (C) a law
21 enforcement officer had presented the person with the oral and written
22 notice required by K.S.A. 8-1001, and amendments thereto; and (D) the
23 result of the test showed that the person had an alcohol concentration of
24 *.02 or greater, if such person is less than 21 years of age, in such person's*
25 *blood or breath or .08 or greater, if such person is 21 or more years of*
26 *age, in such person's blood or breath*

27 (3) With regard to failure of a breath test, in addition to those matters
28 required to be certified under subsection (a)(2), that: (A) The testing
29 equipment used was certified by the Kansas department of health and
30 environment; (B) the testing procedures used were in accordance with
31 the requirements set out by the Kansas department of health and envi-
32 ronment; and (C) the person who operated the testing equipment was
33 certified by the Kansas department of health and environment to operate
34 such equipment.

35 (b) For purposes of this section, certification shall be complete upon
36 signing, and no additional acts of oath, affirmation, acknowledgment or
37 proof of execution shall be required. The signed certification or a copy
38 or photostatic reproduction thereof shall be admissible in evidence in all
39 proceedings brought pursuant to this act, and receipt of any such certi-
40 fication, copy or reproduction shall accord the department authority to
41 proceed as set forth herein. Any person who signs a certification submit-
42 ted to the division knowing it contains a false statement is guilty of a class
43 B nonperson misdemeanor.

1 (c) When the officer directing administration of the testing deter-
2 mines that a person has refused a test and the criteria of subsection (a)(1)
3 have been met or determines that a person has failed a test and the criteria
4 of subsection (a)(2) have been met, the officer shall serve upon the person
5 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and
6 amendments thereto. If the determination is made while the person is
7 still in custody, service shall be made in person by the officer on behalf
8 of the division of vehicles. In cases where a test failure is established by
9 a subsequent analysis of a breath, blood or urine sample, the officer shall
10 serve notice of such suspension in person or by another designated officer
11 or by mailing the notice to the person at the address provided at the time
12 of the test.

13 (d) In addition to the information required by subsection (a), the law
14 enforcement officer's certification and notice of suspension shall contain
15 the following information: (1) The person's name, driver's license number
16 and current address; (2) the reason and statutory grounds for the suspen-
17 sion; (3) the date notice is being served and a statement that the effective
18 date of the suspension shall be the 30th calendar day after the date of
19 service; (4) the right of the person to request an administrative hearing;
20 and (5) the procedure the person must follow to request an administrative
21 hearing. The law enforcement officer's certification and notice of suspen-
22 sion shall also inform the person that all correspondence will be mailed
23 to the person at the address contained in the law enforcement officer's
24 certification and notice of suspension unless the person notifies the di-
25 vision in writing of a different address or change of address. The address
26 provided will be considered a change of address for purposes of K.S.A.
27 8-248, and amendments thereto, if the address furnished is different from
28 that on file with the division.

29 (e) If a person refuses a test or if a person is still in custody when it
30 is determined that the person has failed a test, the officer shall take any
31 license in the possession of the person and, if the license is not expired,
32 suspended, revoked or canceled, shall issue a temporary license effective
33 until the 30th calendar day after the date of service set out in the law
34 enforcement officer's certification and notice of suspension. If the test
35 failure is established by a subsequent analysis of a breath or blood sample,
36 the temporary license shall be served together with the copy of the law
37 enforcement officer's certification and notice of suspension. A temporary
38 license issued pursuant to this subsection shall bear the same restrictions
39 and limitations as the license for which it was exchanged. Within five days
40 after the date of service of a copy of the law enforcement officer's certi-
41 fication and notice of suspension the officer's certification and notice of
42 suspension, along with any licenses taken, shall be forwarded to the di-
43 vision.

1 (f) Upon receipt of the law enforcement officer's certification, the
2 division shall review the certification to determine that it meets the
3 requirements of subsection (a). Upon so determining, the division shall
4 proceed to suspend the person's driving privileges in accordance with the
5 notice of suspension previously served. If the requirements of subsection
6 (a) are not met, the division shall dismiss the administrative proceeding
7 and return any license surrendered by the person.

8 (g) If the person mails a written request which is postmarked within
9 10 days after service of the notice, if by personal service, or 13 days after
10 service, if by mail, the division shall schedule a hearing in the county
11 where the alleged violation occurred, or in a county adjacent thereto. The
12 licensee may request that subpoenas be issued in accordance with the
13 notice provided pursuant to subsection (d). Any request made by the
14 licensee to subpoena witnesses must be made in writing at the time the
15 hearing is requested and must include the name and current address of
16 such witnesses and, except for the law enforcement officer or officers
17 certifying refusal or failure, a statement of how the testimony of such
18 witness is relevant. Upon receiving a timely request for a hearing, the
19 division shall mail to the person notice of the time, date and place of
20 hearing in accordance with subsection (l) and extend the person's tem-
21 porary driving privileges until the date set for the hearing by the division.

22 (h) (1) If the officer certifies that the person refused the test, the
23 scope of the hearing shall be limited to whether: (A) A law enforcement
24 officer had reasonable grounds to believe the person was operating or
25 attempting to operate a vehicle while under the influence of alcohol or
26 drugs, or both, or to believe that the person had been driving a com-
27 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
28 thereto, while having alcohol or other drugs in such person's system; (B)
29 the person was in custody or arrested for an alcohol or drug related of-
30 fense or was involved in a vehicle accident or collision resulting in prop-
31 erty damage, personal injury or death; (C) a law enforcement officer had
32 presented the person with the oral and written notice required by K.S.A.
33 8-1001, and amendments thereto; and (D) the person refused to submit
34 to and complete a test as requested by a law enforcement officer.

35 (2) If the officer certifies that the person failed the test, the scope of
36 the hearing shall be limited to whether: (A) A law enforcement officer
37 had reasonable grounds to believe the person was operating a vehicle
38 while under the influence of alcohol or drugs, or both, or to believe that
39 the person had been driving a commercial motor vehicle, as defined in
40 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
41 drugs in such person's system; (B) the person was in custody or arrested
42 for an alcohol or drug related offense or was involved in a vehicle accident
43 or collision resulting in property damage, personal injury or death; (C) a

16-13

1 law enforcement officer had presented the person with the oral and writ-
2 ten notice required by K.S.A. 8-1001, and amendments thereto; (D) the
3 testing equipment used was reliable; (E) the person who operated the
4 testing equipment was qualified; (F) the testing procedures used were
5 reliable; (G) the test result determined that the person had an alcohol
6 concentration of .02 or greater, if such person is less than 21 years of age,
7 in such person's blood or breath or .08 or greater, if such person is 21 or
8 more years of age, in such person's blood or breath; and (H) the person
9 was operating a vehicle.

10 (i) At a hearing pursuant to this section, or upon court review of an
11 order entered at such a hearing, an affidavit of the custodian of records
12 at the Kansas department of health and environment stating that the
13 breath testing device was certified and the operator of such device was
14 certified on the date of the test shall be admissible into evidence in the
15 same manner and with the same force and effect as if the certifying officer
16 or employee of the Kansas department of health and environment had
17 testified in person. Such affidavit shall be admitted to prove such reli-
18 ability without further foundation requirement. A certified operator of a
19 breath testing device shall be competent to testify regarding the proper
20 procedures to be used in conducting the test.

21 (j) At a hearing pursuant to this section, or upon court review of an
22 order entered at such hearing, in which the report of blood test results
23 have been prepared by the Kansas bureau of investigation or other fo-
24 rensic laboratory of a state or local law enforcement agency are to be
25 introduced as evidence, the report, or a copy of the report, of the findings
26 of the forensic examiner shall be admissible into evidence in the same
27 manner and with the same force and effect as if the forensic examiner
28 who performed such examination, analysis, comparison or identification
29 and prepared the report thereon had testified in person.

30 (k) If no timely request for hearing is made, the suspension period
31 imposed pursuant to this section shall begin upon the expiration of the
32 temporary license granted under subsection (e). If a timely request for
33 hearing is made, the hearing shall be held within 30 days of the date the
34 request for hearing is received by the division, except that failure to hold
35 such hearing within 30 days shall not be cause for dismissal absent a
36 showing of prejudice. At the hearing, the director or the representative
37 of the director, shall either affirm the order of suspension or suspension
38 and restriction or dismiss the administrative action. If the division is un-
39 able to hold a hearing within 30 days of the date upon which the request
40 for hearing is received, the division shall extend the person's temporary
41 driving privileges until the date set for the hearing by the division. No
42 extension of temporary driving privileges shall be issued for continuances
43 requested by or on behalf of the licensee. If the person whose privileges

16-14

1 are suspended is a nonresident licensee, the license of the person shall
2 be forwarded to the appropriate licensing authority in the person's state
3 of residence if the result at the hearing is adverse to such person or if no
4 timely request for a hearing is received.

5 (l) All notices affirming or canceling a suspension under this section,
6 all notices of a hearing held under this section and all issuances of tem-
7 porary driving privileges pursuant to subsection (k) shall be sent by first-
8 class mail and a U.S. post office certificate of mailing shall be obtained
9 therefor. All notices so mailed shall be deemed received three days after
10 mailing.

11 (m) The division shall prepare and distribute forms for use by law
12 enforcement officers in giving the notice required by this section.

13 (n) This section and the applicable provisions contained in subsec-
14 tions (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the
15 administrative procedures to be used for all administrative hearings held
16 under this act. To the extent that this section and any other provision of
17 law conflicts, this section prevails.

18 (o) The provisions of K.S.A. 60-206 and amendments thereto regard-
19 ing the computation of time shall not be applicable in determining the
20 effective date of suspension set out in subsection (d) or the time for
21 requesting an administrative hearing set out in subsection (g). "Calendar
22 day" when used in this section shall mean that every day shall be included
23 in computations of time whether a week day, Saturday, Sunday or holiday.

24 Sec. 6 K.S.A. 1995 Supp 8-1005 is hereby amended to read as fol-
25 lows: 8-1005. Except as provided by K.S.A. 8-1012 and amendments
26 thereto, in any criminal prosecution for violation of the laws of this state
27 relating to operating or attempting to operate a vehicle while under the
28 influence of alcohol or drugs, or both, or the commission of vehicular
29 homicide or manslaughter while under the influence of alcohol or drugs,
30 or both, or in any prosecution for a violation of a city ordinance relating
31 to the operation or attempted operation of a vehicle while under the
32 influence of alcohol or drugs, or both, evidence of the concentration of
33 alcohol or drugs in the defendant's blood, urine, breath or other bodily
34 substance may be admitted and shall give rise to the following:

35 (a) If the alcohol concentration is less than .02, if the defendant is less
36 than 21 years of age, or .08, if the defendant is 21 or more years of age,
37 that fact may be considered with other competent evidence to determine
38 if the defendant was under the influence of alcohol, or both alcohol and
39 drugs.

40 (b) If the alcohol concentration is .02 or greater, if the defendant is
41 less than 21 years of age, or .08 or more greater, if the defendant is 21 or
42 more years of age, it shall be prima facie evidence that the defendant was
43 under the influence of alcohol to a degree that renders the person inca-

1 pable of driving safely.

2 (c) If there was present in the defendant's bodily substance any nar-
3 cotic, hypnotic, somnifacient, stimulating or other drug which has the
4 capacity to render the defendant incapable of safely driving a vehicle, that
5 fact may be considered to determine if the defendant was under the
6 influence of drugs, or both alcohol and drugs, to a degree that renders
7 the defendant incapable of driving safely.

8 Sec. 7. K.S.A. 1995 Supp. 8-1013 is hereby amended to read as fol-
9 lows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012,
10 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto,
11 and this section:

12 (a) "Alcohol concentration" means the number of grams of alcohol
13 per 100 milliliters of blood or per 210 liters of breath.

14 (b) (1) "Alcohol or drug-related conviction" means any of the follow-
15 ing: (A) Conviction of vehicular battery or aggravated vehicular homicide,
16 if the crime is committed while committing a violation of K.S.A. 8-1567
17 and amendments thereto or the ordinance of a city or resolution of a
18 county in this state which prohibits any acts prohibited by that statute, or
19 conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B)
20 conviction of a violation of a law of another state which would constitute
21 a crime described in subsection (b)(1)(A) if committed in this state; (C)
22 conviction of a violation of an ordinance of a city in this state or a reso-
23 lution of a county in this state which would constitute a crime described
24 in subsection (b)(1)(A), whether or not such conviction is in a court of
25 record; or (D) conviction of an act which was committed on a military
26 reservation and which would constitute a violation of K.S.A. 8-1567, and
27 amendments thereto, or would constitute a crime described in subsection
28 (b)(1)(A) if committed off a military reservation in this state.

29 (2) For the purpose of determining whether an occurrence is a first,
30 second or subsequent occurrence: (A) "Alcohol or drug-related convic-
31 tion" also includes entering into a diversion agreement in lieu of further
32 criminal proceedings on a complaint alleging commission of a crime de-
33 scribed in subsection (b)(1) which agreement was entered into during the
34 immediately preceding five years, including prior to the effective date of
35 this act; and (B) it is irrelevant whether an offense occurred before or
36 after conviction or diversion for a previous offense.

37 (c) "Division" means the division of vehicles of the department of
38 revenue.

39 (d) "Ignition interlock device" means a device which uses a breath
40 analysis mechanism to prevent a person from operating a motor vehicle
41 if such person has consumed an alcoholic beverage.

42 (e) "Occurrence" means a test refusal, test failure or alcohol or drug-
43 related conviction, or any combination thereof arising from one arrest,

51-91

16-16

1 occurring in the immediately preceding five years, including prior to the
2 effective day of this act.

3 (f) "Other competent evidence" includes: (1) Alcohol concentration
4 tests obtained from samples taken two hours or more after the operation
5 or attempted operation of a vehicle; and (2) readings obtained from a
6 partial alcohol concentration test on a breath testing machine.

7 (g) "Samples" includes breath supplied directly for testing, which
8 breath is not preserved.

9 (h) "Test failure" or "fails a test" refers to a person's having results
10 of a test administered pursuant to this act, other than a preliminary
11 screening test, which show an alcohol concentration of *.02 or greater, if*
12 *such person is less than 21 years of age, in such person's blood or breath,*
13 *or .08 or greater, if such person is 21 or more years of age, in the person's*
14 *blood or breath, and includes failure of any such test on a military res-*
15 *ervation.*

16 (i) "Test refusal" or "refuses a test" refers to a person's failure to
17 submit to or complete any test, other than a preliminary screening test,
18 in accordance with this act, and includes refusal of any such test on a
19 military reservation.

20 (j) "Law enforcement officer" has the meaning provided by K.S.A.
21 21-3110, and amendments thereto, and includes any person authorized
22 by law to make an arrest on a military reservation for an act which would
23 constitute a violation of K.S.A. 8-1567, and amendments thereto, if com-
24 mitted off a military reservation in this state.

25 Sec. 8. K.S.A. 1995 Supp. 8-1567 is hereby amended to read as fol-
26 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
27 within this state while:

28 (1) The alcohol concentration in the person's blood or breath as
29 shown by any competent evidence, including other competent evidence,
30 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
31 ments thereto, is *.02 or more, if such person is less than 21 years of age,*
32 *or .08 or ~~more~~ greater, if such person is 21 or more years of age;*

33 (2) the alcohol concentration in the person's blood or breath, as meas-
34 ured within two hours of the time of operating or attempting to operate
35 a vehicle, is *.02 or more, if such person is less than 21 years of age, or .08*
36 *or ~~more~~ greater, if such person is 21 or more years of age;*

37 (3) under the influence of alcohol to a degree that renders the person
38 incapable of safely driving a vehicle;

39 (4) under the influence of any drug or combination of drugs to a
40 degree that renders the person incapable of safely driving a vehicle; or

41 (5) under the influence of a combination of alcohol and any drug or
42 drugs to a degree that renders the person incapable of safely driving a
43 vehicle.

1 (b) No person shall operate or attempt to operate any vehicle within
2 this state if the person is a habitual user of any narcotic, hypnotic, som-
3 nifacient or stimulating drug.

4 (c) If a person is charged with a violation of this section involving
5 drugs, the fact that the person is or has been entitled to use the drug
6 under the laws of this state shall not constitute a defense against the
7 charge.

8 (d) Upon a first conviction of a violation of this section, a person shall
9 be guilty of a class B, nonperson misdemeanor and sentenced to not less
10 than 48 consecutive hours nor more than six months' imprisonment, or
11 in the court's discretion 100 hours of public service, and fined not less
12 than \$200 nor more than \$500. The person convicted must serve at least
13 48 consecutive hours' imprisonment or 100 hours of public service either
14 before or as a condition of any grant of probation or suspension, reduction
15 of sentence or parole. In addition, the court shall enter an order which
16 requires that the person enroll in and successfully complete an alcohol
17 and drug safety action education program or treatment program as pro-
18 vided in K.S.A. 8-1008, and amendments thereto, or both the education
19 and treatment programs.

20 (e) On a second conviction of a violation of this section, a person shall
21 be guilty of a class A, nonperson misdemeanor and sentenced to not less
22 than 90 days nor more than one year's imprisonment and fined not less
23 than \$500 nor more than \$1,000. The five days' imprisonment mandated
24 by this subsection may be served in a work release program only after
25 such person has served 48 consecutive hours' imprisonment, provided
26 such work release program requires such person to return to confinement
27 at the end of each day in the work release program. Except as provided
28 in subsection (g), the person convicted must serve at least five consecutive
29 days' imprisonment before the person is granted probation, suspension
30 or reduction of sentence or parole or is otherwise released. As a condition
31 of any grant of probation, suspension of sentence or parole or of any other
32 release, the person shall be required to enter into and complete a treat-
33 ment program for alcohol and drug abuse as provided in K.S.A. 8-1008,
34 and amendments thereto.

35 (f) On the third or a subsequent conviction of a violation of this sec-
36 tion, a person shall be guilty of a nonperson felony and sentenced to not
37 less than 90 days nor more than one year's imprisonment and fined not
38 less than \$1,000 nor more than \$2,500. Except as provided in subsection
39 (g), the person convicted shall not be eligible for release on probation,
40 suspension or reduction of sentence or parole until the person has served
41 at least 90 days' imprisonment. The court may also require as a condition
42 of parole that such person enter into and complete a treatment program
43 for alcohol and drug abuse as provided by K.S.A. 8-1008, and amend-

81-91

1 ments thereto. The 90 days' imprisonment mandated by this subsection
2 may be served in a work release program only after such person has served
3 48 consecutive hours' imprisonment, provided such work release program
4 requires such person to return to confinement at the end of each day in
5 the work release program.

6 (g) On a second or subsequent conviction of a violation of this section,
7 the court may place the person convicted under a house arrest program,
8 pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-
9 mainder of the minimum sentence only after such person has served 48
10 consecutive hours' imprisonment.

11 (h) The court may establish the terms and time for payment of any
12 fines, fees, assessments and costs imposed pursuant to this section. Any
13 assessment and costs shall be required to be paid not later than 90 days
14 after imposed, and any remainder of the fine shall be paid prior to the
15 final release of the defendant by the court.

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

26 (j) The court shall report every conviction of a violation of this section
27 and every diversion agreement entered into in lieu of further criminal
28 proceedings or a complaint alleging a violation of this section to the di-
29 vision. Prior to sentencing under the provisions of this section, the court
30 shall request and shall receive from the division a record of all prior
31 convictions obtained against such person for any violations of any of the
32 motor vehicle laws of this state.

33 (k) For the purpose of determining whether a conviction is a first,
34 second, third or subsequent conviction in sentencing under this section:

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

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

43 (3) only convictions occurring in the immediately preceding five

1 years, including prior to the effective date of this act, shall be taken into
2 account, but the court may consider other prior convictions in determin-
3 ing the sentence to be imposed within the limits provided for a first,
4 second, third or subsequent offender, whichever is applicable; and

5 (4) it is irrelevant whether an offense occurred before or after con-
6 viction for a previous offense.

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

12 (m) Nothing contained in this section shall be construed as prevent-
13 ing any city from enacting ordinances, or any county from adopting res-
14 olutions, declaring acts prohibited or made unlawful by this act as unlaw-
15 ful or prohibited in such city or county and prescribing penalties for
16 violation thereof, but the minimum penalty prescribed by any such or-
17 dinance or resolution shall not be less than the minimum penalty pre-
18 scribed by this act for the same violation, and the maximum penalty in
19 any such ordinance or resolution shall not exceed the maximum penalty
20 prescribed for the same violation. In addition, any such ordinance or
21 resolution shall authorize the court to order that the convicted person
22 pay restitution to any victim who suffered loss due to the violation for
23 which the person was convicted.

24 (n) No plea bargaining agreement shall be entered into nor shall any
25 judge approve a plea bargaining agreement entered into for the purpose
26 of permitting a person charged with a violation of this section, or a vio-
27 lation of any ordinance of a city or resolution of any county in this state
28 which prohibits the acts prohibited by this section, to avoid the mandatory
29 penalties established by this section or by the ordinance. For the purpose
30 of this subsection, entering into a diversion agreement pursuant to K.S.A.
31 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
32 constitute plea bargaining.

33 (o) The alternatives set out in subsections (a)(1) (2) and (3) may be
34 pleaded in the alternative, and the state, city or county, but shall not be
35 required to, may elect one or two of the three prior to submission of the
36 case to the fact finder.

37 (p) Upon a fourth or subsequent conviction, the judge of any court
38 in which any person is convicted of violating this section, may revoke the
39 person's license plate or temporary registration certificate of the motor
40 vehicle driven during the violation of this section for a period of one year.
41 Upon revoking any license plate or temporary registration certificate pur-
42 suant to this subsection, the court shall require that such license plate or
43 temporary registration certificate be surrendered to the court.

16-20

1 (q) For the purpose of this section:

2 (1) "Alcohol concentration" means the number of grams of alcohol
3 per 100 milliliters of blood or per 210 liters of breath.

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

8 Sec. 9. K.S.A. 1995 Supp. 12-4305 is hereby amended to read as
9 follows: 12-4305. (a) The municipal judge shall establish a schedule of
10 fines which shall be imposed for municipal ordinance violations that are
11 classified as ordinance traffic infractions. Also, the municipal judge may
12 establish a schedule of fines which shall be imposed for the violation of
13 certain other ordinances. Any fine so established shall be within the min-
14 imum and maximum allowable fines established by ordinance for such
15 offenses by the governing body. The following traffic violations are spe-
16 cifically excluded from any schedule of fines:

17 (1) Reckless driving;

18 (2) driving while under the influence of alcohol or drugs, or both, or
19 driving with a blood or breath alcohol concentration of .02 or greater, if
20 the person is less than 21 years of age or .08 or more greater, if the person
21 is 21 or more years of age;

22 (3) driving without a valid license issued or on a canceled, suspended
23 or revoked license;

24 (4) fleeing or attempting to elude a police officer; or

25 (5) offense comparable to those prescribed by K.S.A. 8-1602, 8-1603
26 and 8-1604 and amendments thereto.

27 (b) A person charged with the violation of an ordinance contained in
28 a schedule of fines established under subsection (a) shall, except as pro-
29 vided in subsection (c), appear at the place and time specified in the
30 notice to appear. If the person enters an appearance, waives right to trial,
31 pleads guilty or no contest, the fine shall be no greater than that specified
32 in the schedule.

33 (c) Prior to the time specified in the notice to appear, a person
34 charged with the violation of an ordinance contained in a schedule of
35 fines established under subsection (a) may enter an appearance, waive
36 right to trial, plead guilty or no contest and pay the fine for the violation
37 as specified in the schedule. At the election of the person charged, such
38 appearance, waiver, plea and payment may be made by mail or in person
39 and payment may be by personal check. The complaint shall not have
40 been complied with if a check is not honored for any reason, or the fine
41 is not paid in full prior to the time specified in the notice to appear. When
42 a person charged with an ordinance traffic infraction or other ordinance
43 violation on a schedule of fines makes payment without executing a writ-

(r) Any conviction pursuant to K.S.A. 8-1567,
and amendments thereto, if such person was under
21 years of age and the alcohol concentration in the
person's blood or breath was .02 or greater, shall
not be reported to the national driver register.

16-21

1 ten waiver of right to trial and plea of guilty or no contest, the payment
2 shall be deemed such an appearance, waiver of right to trial and plea of
3 no contest.

4 The municipal judge may authorize the clerk of the municipal court or
5 some other person to accept by mail or in person such voluntary appear-
6 ance, plea of guilty or no contest and payment of the fine imposed by the
7 schedule.

8 The schedule of fines and persons authorized to accept such pleas shall
9 be conspicuously displayed in the office where such voluntary appearance,
10 plea of guilty and payment of fine occurs.

11 Sec. 10. K.S.A. 8-2,142, 8-2,144 and 8-2,145 and K.S.A. 1995 Supp.
12 8-1001, 8-1002, 8-1005, 8-1013, 8-1567 and 12-4305 are hereby repealed.

13 Sec. 11. This act shall take effect and be in force from and after its
14 publication in the statute book.

(d) Any violation of a municipal ordinance, which prohibits driving under the influence of alcohol or drugs, if such person was under 21 years of age and the alcohol concentration in the person's blood or breath was .02 or greater, shall not be reported to the national driver register.



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 3026
FEBRUARY 19, 1996

Chairman O'Neal and Members of the Committee:

I am Kyle Smith, Assistant Attorney General and Special Agent of the Kansas Bureau of Investigation, and appear today in support of HB 3026, but with a friendly amendment. The amendments are to Section 2 which statutorily sets out and clarifies the authority of law enforcement officers to seize weapons at the scene of a crime for officer protection and as evidence.

The first proposal would be to strike the "the" at the end of line 29 and replace it with the word "any". This is necessitated by a recent Kansas Supreme Court case, *State of Kansas v. Daniel W. Anderson*, issued January 26, 1996. This language was held to make Kansas law more restrictive than the United States Constitution as interpreted by the U.S. Supreme Court in *New York v. Belton*. In particular, this statute was construed by Justice McFarland as requiring evidence of other crimes found during searches incident to a lawful arrest to be suppressed. This is not constitutionally required and other than this recent decision, Kansas courts have consistently held Kansas constitutional search and seizure law to be co-extensive with federal search and seizure law. It seems impractical and unnecessary for a law enforcement officer searching under the seat for the drugs the suspect is supposed to have in his possession,

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

House Judiciary
2-22-96
Attachment 17

to disregard an illegal sawed-off shotgun that the officer finds instead.

The other amendments are primarily technical to avoid a concern that the current language might be interpreted as authorizing an officer to seize the weapons to protect himself or others only in domestic violence cases. The common law and common sense dictate that it might be necessary to secure weapons in any number of criminal investigations.

We believe the proposed amended language resolves that potential problem. I would be happy to stand for questions.

HOUSE BILL No. 3026

By Committee on Judiciary

2-13

9 AN ACT concerning criminal procedure; relating to lawful arrests and
10 searches; concerning policies adopted by prosecutors to handle do-
11 mestic violence situations; amending K.S.A. 22-2501 and repealing the
12 existing section.
13

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

15 New Section 1. On and after January 1, 1997, all prosecuting attor-
16 neys, as defined in K.S.A. 22-2202, and amendments thereto, if such
17 prosecuting attorney prosecute crimes relating to domestic violence, shall
18 adopt and put into effect written policies regarding the prosecution of
19 crimes related to domestic violence. Such written policies shall include,
20 but not be limited to, the effective prosecution of such crimes and the
21 protection and safety of victims and such victim's children from domestic
22 violence.

23 Sec. 2. K.S.A. 22-2501 is hereby amended to read as follows: 22-
24 2501. (a) When a lawful arrest is effected a law enforcement officer may
25 reasonably search the person arrested and the area within such person's
26 immediate presence for the purpose of

- 27 (a) (1) Protecting the officer from attack; ←
- 28 (b) (2) preventing the person from escaping; or
- 29 (c) (3) discovering the fruits, instrumentalities, or evidence of ~~the~~ ← any
30 crime.

31 (b) *When a lawful arrest is effected pursuant to the domestic violence*
32 *call policy, established pursuant to K.S.A. 22-2307, and amendments*
33 *thereto, a law enforcement officer*

34 ~~(a) Shall seize all weapons that are alleged to have been involved in~~ s
35 ~~or threatened to be used in the commission of a crime; and~~ ← .
36 ~~(b) Shall seize all weapons that are alleged to have been involved in~~
37 ~~or threatened to be used in the commission of a crime; and~~
38 ~~shall seize all weapons that are alleged to have been involved in~~

39 Sec. 3. K.S.A. 22-2501 is hereby repealed.

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

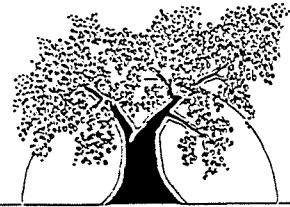
or others
and may temporarily seize any weapon so discovered;

any

s

The Crisis Center, Inc.

P.O. Box 1526, 513 Leavenworth
Manhattan, KS 66505
Administration (913) 539-7935
FAX: (913) 539-8467



Hotline: 1-800-727-2785 • Manhattan (913) 539-2785 • Junction City (913) 762-8835

TESTIMONY RE: HB-3026: PROPONENT

TESTIMONY OF: Sandra C. Barnett, Executive Director
The Crisis Center, Inc., Manhattan, KS
(913)539-7935

House Judiciary Committee;

The Crisis Center, Inc. is a seventeen-year-old comprehensive domestic violence and sexual assault program serving victims from five counties and Fort Riley. From our two emergency shelters and a counseling/outreach office the Crisis Center served over 700 people in residential programs and responded to more than 2,000 crisis call during 1995. We provide 24-hour per day services including; hotline, emergency safety, counselling, court advocacy, referrals, support groups, and numerous other services. In 1993 (last full year of statistics), the twenty-eight domestic violence programs in Kansas received over 42,000 crisis calls and housed or provided intensive services to 26,629 women and children, and 199 men. Of these, 840 incidents involved a weapon. When weapons are involved, the danger and lethality of domestic violence increases substantially. Victims need protection quickly which is sustained for a period of time. Protection can best be sustained by a criminal justice system that is prepared to act swiftly and definitively.

HB-3026 offers two important components to that protection by allowing an officer to remove a weapon from a domestic violence scene and by requiring Prosecutors' offices to have written policies outlining their procedure for dealing with domestic violence cases.

Therefore, today, I wish to express my support for HB-3026. Please consider the following points which support my position.

By the time victims of domestic violence reach out to law enforcement or shelter programs for assistance the violence has often escalated to dangerous or even lethal levels. In 1993, 840 cases of domestic violence incidents reported to Kansas shelter programs involved some sort of weapon. If the call to a shelter or law enforcement is the first step for the victim leaving the abuser, the danger increases substantially. Women are killed more often during the time of leaving and for the first few months after separation than at



Funded by: City of Manhattan, United Way of Riley and Geary C
Crime Victims Assistance Fund, Gifts, Memberships

House Judiciary
2-22-96
Attachment 18

Testimony Re: HB-3026
Barnett, Manhattan, KS
page 2.

any other time. It makes intuitive sense that easy access to a weapon during this volatile period increases the chances that it will be used impulsively. When a weapon is left laying out in plain view of the responding law enforcement officers, particularly when children are in the home, it may indicate a flagrant irresponsibility if not an implied or explicit threat to the victim and officers. HB-3026 authorizes law enforcement officers to remove the weapon which decreases the immediate danger to all parties.

Sustaining that additional protection afforded to the victim at such a volatile time can be done through prosecutors' offices when written policies guide the action taken by those offices.

We are not asking that those written policies include "no drop" clauses, we understand that prosecutor discretion is an important tool for quick disposition of cases when warranted. We are asking that prosecutor policies outline how they will handle cases so that victim safety is a central consideration. For example, a policy statement may include; (1) who will review case and within what time frame? (2) what will that review consist of -- evidence, victim testimony etc.? (3) consideration of victim safety -- will the victim be contacted, given referrals, linked with an advocate, at what point will the victim be notified of case disposition and how etc.? (4) will "victimless" cases be tried? (5) under what circumstances will diversions be considered?

Kansas has a precedent for considering domestic violence a special category of crime because of its dangerous and lethal implications, as evidenced by the pro-arrest statutes in domestic violence cases. HB-3026 is consistent with that policy initiative and simply brings the prosecutors' office into the loop of community intervention strategies.

I urge this committee to report favorably HB-3026 as another small step in protecting victims and holding abusers accountable for their crimes.

Respectfully Submitted,

A handwritten signature in black ink that reads "Sandra C. Barnett". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Sandra C. Barnett



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

TESTIMONY OF
JULIENE A. MASKA
STATEWIDE VICTIMS' RIGHTS COORDINATOR
BEFORE HOUSE JUDICIARY SUB-COMMITTEE
RE: HOUSE BILL 3026
FEBRUARY 19, 1996

On behalf of Attorney General Carla J. Stovall, I urge your support for House Bill 3026. This bill was asked for introduction by Attorney General Stovall in conjunction with her Committee on Violence Against Women and Children. This bill contains two provisions from the National Council of Juvenile and Family Court Judges on A Model State Code for Family Violence.

New Section 1 of the bill requires prosecutors to establish written policies relating to domestic violence. Written policies can be a benefit to the prosecutor, law enforcement, court staff, and most importantly to victims and their families. On the Attorney General's committee are five prosecutors who state they have written policies they follow for crimes of domestic violence. The adoption of this model code suggestion would put into law a general practice for most prosecutors. It would also let communities know that domestic violence is a serious problem that will be addressed by the criminal justice system.

New Section 2 would recognize the peril of weapons in domestic violence incidents. Seizure of weapons is both evidence collection and crime prevention for the law enforcement officer and the victim, as well as others. According to a July 1994 Bureau of Justice Statistics special report on murder in families, firearms were used in the killing of 42 percent of all family murder victims in the United States. Kansas domestic violence incidents that resulted in death reveal that the following statistics: 1992, 30, 1993, 41, 1994, 34 and during the first six months of 1995 11 were reported. It is important that law enforcement officers have

House Judiciary
2-22-96
Attachment 19

the ability to take weapons. Research shows that batterers who possess weapons, use them or threatened to use them when they assault, and continue to have access to the weapon increase the potential for lethal assault. A study done by Coker in 1992 found that approximately seven of 10 domestic violence related homicide offenders had been arrested previously and half had been convicted for violent crimes. Because the recidivism rate is greater for batterers and the risk can be lethal as the escalation of violence increases, it becomes important to give law enforcement a prevention tool by seizing the weapon.

The Kansas Bureau of Investigation has a proposed a balloon to the bill which Attorney General Stovall supports. Thank you for your consideration.

MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE

Drafted by the

Advisory Committee

of the

*Conrad N. Hilton Foundation
Model Code Project
of the
Family Violence Project*



National Council of Juvenile and Family Court Judges
Louis W. McHardy, Executive Director

CONRAD N. HILTON FOUNDATION
ADVISORY COMMITTEE

HON. MICHAEL A. TOWN, CO-CHAIR
19th Division, State of Hawaii
Honolulu, Hawaii

HON. DALE HARRIS, CO-CHAIR
Juvenile and Domestic Relations Family Court
Lynchburg, Virginia

SARAH BUEL, ESQ.
The Bunting Institute
Belmont, Massachusetts

MICHELLE CHINO, PH.D.
The National Indian Justice Center
Albuquerque, New Mexico

LORETTA M. FREDERICK, ESQ.
Southern Minnesota Regional Legal Services
Winona, Minnesota

HON. MARTHA GLAZE
Clayton County Juvenile Court
Jonesboro, Georgia

CHIEF REUBEN GREENBERG
South Carolina Police Department
Charleston, South Carolina

DAVID HARVIN, ESQ.
Department of Social Services
Columbia, South Carolina

HON. STEPHEN B. HERRELL
Multnomah County Courthouse
Portland, Oregon

NOLAN JONES, PH.D.
National Governors Association
Washington, D.C.

HON. SCOTT JORDAN
Second District Court
Reno, Nevada

SENATOR SANDRA KENNEDY
Arizona State Senate
Phoenix, Arizona

SHEILA KUEHL, ESQ.
Santa Monica, California

BRUCE M. LYONS, ESQ.
Lyons and Sanders
Fort Lauderdale, Florida

MS. DONNA MEDLEY
Victim Witness Assistance
San Francisco, California

BONNY J. MIDBY
Green Valley, Nevada

MIMI ROSE, ESQ.
Office of the District Attorney
Philadelphia, Pennsylvania

LEE S. ROSEN, ESQ.
American Bar Association
Family Law Division
Raleigh, North Carolina

HON. RAYMOND SHAWCROSS
Rhode Island Family Court
Providence, Rhode Island

W. DOUGLAS SKELTON, M.D.
Dean, Mercer School of Medicine
Macon, Georgia

REPRESENTATIVE KAYE STEINMETZ
Children, Youth & Families Committee
Jefferson City, Missouri

CHIEF JOHN WHETSEL
Choctaw Police Department
Choctaw, Oklahoma

DONALD L. WOLFF, ESQ.
Nat'l Association of Criminal Defense Lawyers
St. Louis, Missouri

STEERING COMMITTEE

HON. RAYMOND SHAWCROSS, Chair
LORETTA M. FREDERICK, ESQ.
HON. STEPHEN B. HERRELL
NOLAN JONES, PH.D.
SHEILA KUEHL, ESQ.
LEE S. ROSEN, ESQ.

CONSULTANTS

JANET CARTER, M.A.
Family Violence Prevention Fund
San Francisco, California

FRANK W. DAYKIN, ESQ.
*Member of the National Conference of
Commissioners on Uniform State Laws*
Carson City, Nevada

BARBARA J. HART, ESQ.
*Pennsylvania Coalition Against
Domestic Violence*
Reading, Pennsylvania

CANDACE ROMIG
and RITA THAEMERT
National Conference of State Legislatures
Denver, Colorado

SUSAN SCHECHTER, M.S.W.
University of Iowa, School of Social Work
Iowa City, Iowa

STAFF

MEREDITH HOFFORD, M.A., Director
CHRISTINE BAILEY, M.A., J.D., Project Attorney
SUE DANSIE, Manager
VICKI PERRY, Administrative Assistant