

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 7, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

HB 2530 - the Kansas Consumer Protection Act does not apply to professional services by health care providers

Representative Roth made the motion to report HB 2530 favorably for passage. Representative Watkins seconded the motion.

Representative Kinzer made a substitute motion to adopt the proposed balloon amendment provided by the Kansas Medical Society. (Attachment 1) The balloon is an effort to make clear that claims for professional services would not apply to the Consumer Protection Act. It specifically excludes billing, advertising and other business related services. Representative Owens seconded the motion.

A committee member expressed her concern that with the passage of the proposed bill, a Missouri pharmacist who altered drugs would not be covered under medical malpractice act or the consumer protection act because he had no personal relationship with the individuals he harmed and therefore the individuals who were affected by the act would not have a remedy.

Catherine Walberg, Kansas Medical Mutual Insurance Company, responded that the proposed bill would not prohibit a remedy through civil tort laws. The concept of lack of privity, a contract concept, would not prevent a direct cause of action under tort laws. Medical malpractice actions apply to anything that "springs" out of a health care providers rendering of care. The duties that are owed to patients are imposed by law. These duties can't be escaped through contracts.

Chairman O'Neal read that the Supreme Court referred to *Bonin v Vannaman* case in *Amrani* "As malpractice covers every way in which a patient is injured through the dereliction of a doctor in his professional capacity, the approach, depending on the facts, can be through any of several familiar forms of action. But no matter what the approach, it remains an action for malpractice, not one for deceit, contract or anything else. A well recognized ground for recovery is where a physician represents that he has the skill to perform a certain operation when in fact he does not. This form of action requires the same elements of proof that an action in fraud requires, yet it could not be successfully disputed that as between the two it is an action for malpractice." One can frame an action against a doctor in various ways, but it is still malpractice.

Rick Guinn, Attorney General's Office, commented that they would support the proposed amendment but would like an additional paragraph that would not exempt doctors for the intentional misrepresentation, deceptive, unconscionable, or willful acts. There would need to be a prima facia showing that there was a violation of the act.

Chairman O'Neal commented that the only thing plaintiff attorneys would have to do is to make the allegation that there was an willful act to be covered under the Consumer Protection Act. There is no insurance coverage, there is no duty to defend. When in fact, under current law, if one wants to claim willful acts, one can amend their petition to include punitive damages, The ability to recover moneys under the medical malpractice act far outnumbers the amount of moneys one would receive under the Consumer Protection Act.

A committee member relayed that he had recently spoken to the Board of Accountancy. The individual stated that by statute the attorney general has to handle cases where an accountant does something wrong, but it does not fall under the Consumer Protection Act, instead Kansas statute governs those who are certified under the

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Board of Accountancy. The only time the attorney general's office could prosecute under the Consumer Protection Act is once the individual is no longer a certified public accountant.

The motion to adopt the proposed balloon amendment carried.

Representative Ward proposed a balloon amendment, suggested by the Attorney General. (Attachment 2) Representative Garcia seconded the motion.

Representative Kinzer was concerned that (b)(1) does not give protection to hospitals, only to individual persons. Representative Ward agreed.

Representative Watkins suggested that if subsection (c) is included in the bill, it should be broadened to include other professional services for professionals which are already covered under other Acts in Kansas Statute. For example, there are Acts that deal with real estate sales people, attorneys, accountants, insurance agents. We are trying to avoid having Consumer Protection Act claims being brought when it's really not the public policy the state has had for many years.

Representative Ward, believes that the doctors are right, there is a body of law that deals with negligence, which requires an expert to testify to that standard of care. However, there are certain business practices that both doctors and attorneys engage in to obtain clients, such as advertising, and billings. Those business like related need to be covered under the Consumer Protection Act. The state mandated doctors carry medical malpractice insurance. Both doctors and lawyers are required to carry malpractice insurance, this is why they are listed in the amendment.

Representative Watkins responded that accountants carry malpractice insurance along with other professions that provide services to individuals. Representative Ward stated there is a lot of similarities between doctors and attorneys and that is why they were included in the balloon.

Chairman O'Neal commented that *Chelsie v Plaza Homes* makes a point to state that the Consumer Protection Act does not apply to landlords because there they fall under the Kansas Residential Landlord Tenant Act, which provides protection for the tenants and duties for landlords. It is a self-contained act. The same argument can be made for the Health Care Provider Act, is they same type of act. Attorneys are under the jurisdiction of the Supreme Court, not an Act. The *Armine* case is concerning because there is a licensing agency that polices them and now it's been expanded to the Consumer Protection Act.

Chairman O'Neal stated that by nature a deceptive or unconscionable would not come under medical malpractice act, but it would come under Consumer Protection Act and do not need a statute to specifically state it.

Representative Patton questioned the words "bodily injury or death". He believed that one could have a consumer protection act if there is no bodily injury. The proposed amendment would give immunity to physicians if their actions resulted in bodily injury or death but no immunity for those claims where there is no damages. This would provide no protection for professional services, where a patient could not prove any damage of any kind, but could still being a consumer protection claim.

Rick Guinn agreed that there could be an action under the consumer protection act where damages could not be provable but would still be penalty associated with it. An example was that it would be very had to show actual damages from advertising.

Chairman O'Neal reminded the committee that under the Board of Healing Arts Act there are around 40 specific deceptive acts and practices which could be use to file a complaint. It's more expansive than the list under the Consumer Protection Act.

Representative Yoder questioned how the proposed amendment would have applied to the *Amrani* case.

Representative Ward stated he understood that the plaintiff filed a medical malpractice case but could not find

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an expert to testify as to the deviation of the standard of care and had to amend his pleading to be filed under the Consumer Protection Act.

Chairman O'Neal announced that the question for the committee is a public policy issue. The motion to amend in the Attorney General's balloon failed.

Chairman O'Neal reminded the committee that the Kansas Veterinary Medical Association appeared before the committee at the hearing and requested that they be included in the bill. The adopted balloon amendment which included the definition of "professional services" does not include the word "human" and therefore would include veterinaries be covered by the proposed bill.

Representative Kinzer made the motion to report HB 2530 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

SB 35 - DUI computation of time to request administrative hearings

Staff provided the committee with a balloon which addressed concerns raised by the Kansas Department of Transportation at the hearing. It also amends in the provisions on **HB 2012**. (Attachment 3) Representative Kinzer made the motion to adopt the balloon. Representative Owens seconded the motion. The motion carried.

Representative Patton made the motion to amend in the provisions of HB 2269. Representative Roth seconded the motion. The motion carried.

Representative Kinzer made the motion to strike in HB 2012 the drug impairment assessment provisions. Representative Whitham seconded the motion. The motion carried.

Representative Pauls voiced her concern against the provision that requires conferences be held by telephone unless a request is made for a face to face conference. Chairman O'Neal suggested that the certification form be redone to notify individuals about the conference availability and that they would need to do so in writing.

Representative Patton made the motion to amend Section 11(a) so that once the need is satisfied, the remaining funds would be used towards housing other inmates. Representative Kinzer seconded the motion. Chairman O'Neal explained that as a practical matter there would not be enough funds to meet the demand. With permission of the second, Representative Patton amended his motion to state that "preference shall be given to any one applying for a grant under K.S.A. 8-1567. The motion carried.

Representative Kinzer made the motion to strike "calendar" everywhere it appears in the bill. Representative Whitham seconded the motion. The motion carried.

Representative Kinzer made the motion to report Substitute for SB 35 favorably for passage. Representative Whitham seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 8, 2007.

HOUSE BILL No. 2530

By Committee on Appropriations

2-15

9 AN ACT concerning consumer protection; relating to health care pro-
10 viders; amending K.S.A. 50-635 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 50-635 is hereby amended to read as follows: 50-
14 635. (a) The Kansas consumer protection act does not apply to a pub-
15 lisher; broadcaster, printer or other person engaged in the dissemination
16 of information or the reproduction of printed or pictorial matter so far as
17 the information or matter has been disseminated or reproduced on behalf
18 of others without actual knowledge that it violated the Kansas consumer
19 protection act.

20 (b) *The Kansas consumer protection act does not apply to the ren-*
21 *dering of or failure to render professional services by a physician or other*
22 *health care provider with respect to professional services for which such*
23 *physician or health care provider is licensed or regulated by the state of*
24 *Kansas.*

25 (c) A supplier alleged to have violated this act has the burden of
26 showing the applicability of this section.

27 Sec. 2. K.S.A. 50-635 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the Kansas register.

Proposed KMS Amendment
3/07/07

For the purposes of this section, "professional services" means any service, treatment, operation, prescription, communication or practice related to the care, treatment, diagnosis, ascertainment, cure, relief, palliation, adjustment, or correction of any disease, condition, ailment, deformity, or injury. "Professional services" does not include billing, advertising or other business services.

House Judiciary
Date 3-7-07
Attachment # 1

HOUSE BILL No. 2530

By Committee on Appropriations

2-15

Proposed amendment
Representative Jim Ward
March 7, 2007

House Judiciary
Date 3-7-07
Attachment # 2

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19 protection act.

20 ~~(b) The Kansas consumer protection act does not apply to the ren-~~
21 ~~dering of or failure to render professional services by a physician or other~~
22 ~~health care provider with respect to professional services for which such~~
23 ~~physician or health care provider is licensed or regulated by the state of~~
24 ~~Kansas.~~

25 (c) A supplier alleged to have violated this act has the burden of
26 showing the applicability of this section.

27 Sec. 2. K.S.A. 50-635 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the Kansas register.

(b)(1) No licensed physician or other natural person licensed as a health care provider shall have liability to a consumer under the Kansas consumer protection act for damages arising out of bodily injury or death resulting from:
(i) The rendering or failure to render professional services for which he or she is licensed by the state of Kansas; or
(ii) the negligent failure to obtain a patient's informed consent to submit to the professional service that caused the bodily injury or death.
(2) For the purposes of this section, "professional services" means any service, treatment, operation, prescription, communication or practice related to the care, treatment, diagnosis, ascertainment, cure, relief, palliation, adjustment or correction of any disease, condition, ailment, deformity or injury. "Professional services" does not include billing, collections or other business activities or practices distinguishable from the physician or health care provider's competence to deliver health care services.
(3) The exemption provided by this subsection does not apply to:
(i) Any willful misrepresentation of a material fact;
(ii) any willful failure to disclose a material fact concerning goods or services which was known at the time of the transaction if such failure to disclose was intended to induce the consumer into a transaction; or
(iii) any deceptive or unconscionable act or practice that would not support a legally cognizable claim for medical malpractice.
(c) The Kansas consumer protection act does not apply to providing professional services by a licensed attorney.
[Reletter subsection (c) as (d)]

SENATE BILL No. 35

By Senator Journey

1-9

House Judiciary
Date 3-7-07
Attachment # 3

10 AN ACT relating to driving under the influence of alcohol or drugs; con-
11 cerning administrative hearings; **relating to the computation of time:**
12 amending K.S.A. ~~8-1002~~ and 8-1020 and repealing the existing section
13 sections.

8-235,

, 8-1005

and KSA 2006 Supp. 8-1001, 8-1014, 8-1567, 21-4502 and 74-7336

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

16 **Section 1. K.S.A. 8-1002 is hereby amended to read as follows:**
17 **8-1002. (a) Whenever a test is requested pursuant to this act and**
18 **results in either a test failure or test refusal, a law enforcement**
19 **officer's certification shall be prepared. If the person had been driv-**
20 **ing a commercial motor vehicle, as defined in K.S.A. 8-2,128, and**
21 **amendments thereto, a separate certification pursuant to K.S.A. 8-**
22 **2,145, and amendments thereto, shall be prepared in addition to**
23 **any certification required by this section. The certification required**
24 **by this section shall be signed by one or more officers to certify:**

Section 1. KSA 8-235. [See attached. Requested by KDOT, concerning NHTSA compliance.]
Sec. 2. KSA 2006 Supp. 8-1001. [See attached. This is Sec. 1. from HB 2012, with one amendment requested by Karen Whittman, SN County D.A., contained in subsection (k)]
Renumber remaining sections accordingly

25 (1) *With regard to a test refusal, that: (A) There existed reason-*
26 *able grounds to believe the person was operating or attempting to*
27 *operate a vehicle while under the influence of alcohol or drugs, or*
28 *both, or to believe that the person had been driving a commercial*
29 *motor vehicle, as defined in K.S.A. 8-2,128, and amendments*
30 *thereto, or is under 21 years of age while having alcohol or other*
31 *drugs in such person's system; (B) the person had been placed under*
32 *arrest, was in custody or had been involved in a vehicle accident or*
33 *collision; (C) a law enforcement officer had presented the person*
34 *with the oral and written notice required by K.S.A. 8-1001, and*
35 *amendments thereto; and (D) the person refused to submit to and*
36 *complete a test as requested by a law enforcement officer.*

37 (2) *With regard to a test failure, that: (A) There existed reason-*
38 *able grounds to believe the person was operating a vehicle while*
39 *under the influence of alcohol or drugs, or both, or to believe that*
40 *the person had been driving a commercial motor vehicle, as defined*
41 *in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of*
42 *age while having alcohol or other drugs in such person's system;*
43 *(B) the person had been placed under arrest, was in custody or had*

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1 *been involved in a vehicle accident or collision; (C) a law enforce-*
2 *ment officer had presented the person with the oral and written*
3 *notice required by K.S.A. 8-1001, and amendments thereto; and (D)*
4 *the result of the test showed that the person had an alcohol concen-*
5 *tration of .08 or greater in such person's blood or breath.*

6 (3) *With regard to failure of a breath test, in addition to those*
7 *matters required to be certified under subsection (a)(2), that: (A)*
8 *The testing equipment used was certified by the Kansas department*
9 *of health and environment; (B) the testing procedures used were in*
10 *accordance with the requirements set out by the Kansas department*
11 *of health and environment; and (C) the person who operated the*
12 *testing equipment was certified by the Kansas department of health*
13 *and environment to operate such equipment.*

14 (b) *For purposes of this section, certification shall be complete*
15 *upon signing, and no additional acts of oath, affirmation, acknow-*
16 *ledgment or proof of execution shall be required. The signed certi-*
17 *fication or a copy or photostatic reproduction thereof shall be ad-*
18 *missible in evidence in all proceedings brought pursuant to this act,*
19 *and receipt of any such certification, copy or reproduction shall*
20 *accord the department authority to proceed as set forth herein. Any*
21 *person who signs a certification submitted to the division knowing*
22 *it contains a false statement is guilty of a class B nonperson*
23 *misdemeanor.*

24 (c) *When the officer directing administration of the testing de-*
25 *termines that a person has refused a test and the criteria of subsec-*
26 *tion (a)(1) have been met or determines that a person has failed a*
27 *test and the criteria of subsection (a)(2) have been met, the officer*
28 *shall serve upon the person notice of suspension of driving privi-*
29 *leges pursuant to K.S.A. 8-1014, and amendments thereto. If the*
30 *determination is made while the person is still in custody, service*
31 *shall be made in person by the officer on behalf of the division of*
32 *vehicles. In cases where a test failure is established by a subsequent*
33 *analysis of a breath, blood or urine sample, the officer shall serve*
34 *notice of such suspension in person or by another designated officer*
35 *or by mailing the notice to the person at the address provided at*
36 *the time of the test.*

37 (d) *In addition to the information required by subsection (a),*
38 *the law enforcement officer's certification and notice of suspension*
39 *shall contain the following information: (1) The person's name,*
40 *driver's license number and current address; (2) the reason and*
41 *statutory grounds for the suspension; (3) the date notice is being*
42 *served and a statement that the effective date of the suspension shall*
43 *be the 30th calendar day after the date of service; (4) the right of*

1 *the person to request an administrative hearing; and (5) the pro-*
2 *cedure the person must follow to request an administrative hearing.*
3 *The law enforcement officer's certification and notice of suspension*
4 *shall also inform the person that all correspondence will be mailed*
5 *to the person at the address contained in the law enforcement offi-*
6 *cer's certification and notice of suspension unless the person notifies*
7 *the division in writing of a different address or change of address.*
8 *The address provided will be considered a change of address for*
9 *purposes of K.S.A. 8-248, and amendments thereto, if the address*
10 *furnished is different from that on file with the division.*

11 *(e) If a person refuses a test or if a person is still in custody*
12 *when it is determined that the person has failed a test, the officer*
13 *shall take any license in the possession of the person and, if the*
14 *license is not expired, suspended, revoked or canceled, shall issue a*
15 *temporary license effective until the 30th calendar day after the*
16 *date of service set out in the law enforcement officer's certification*
17 *and notice of suspension. If the test failure is established by a sub-*
18 *sequent analysis of a breath or blood sample, the temporary license*
19 *shall be served together with the copy of the law enforcement offi-*
20 *cer's certification and notice of suspension. A temporary license is-*
21 *sued pursuant to this subsection shall bear the same restrictions*
22 *and limitations as the license for which it was exchanged. Within*
23 *five days after the date of service of a copy of the law enforcement*
24 *officer's certification and notice of suspension the officer's certifi-*
25 *cation and notice of suspension, along with any licenses taken, shall*
26 *be forwarded to the division.*

27 *(f) Upon receipt of the law enforcement officer's certification,*
28 *the division shall review the certification to determine that it meets*
29 *the requirements of subsection (a). Upon so determining, the divi-*
30 *sion shall proceed to suspend the person's driving privileges in ac-*
31 *cordance with the notice of suspension previously served. If the*
32 *requirements of subsection (a) are not met, the division shall dismiss*
33 *the administrative proceeding and return any license surrendered*
34 *by the person.*

35 *(g) The division shall prepare and distribute forms for use by*
36 *law enforcement officers in giving the notice required by this*
37 *section.*

38 *(h) The provisions of K.S.A. 60-206 and amendments thereto re-*
39 *garding the computation of time shall not be applicable in deter-*
40 *mining the effective date of suspension set out in subsection (d).*
41 *"Calendar day" when used in this section shall mean that every day shall*
42 *be included in computations of time whether a week day, Saturday, Sun-*
43 *day or holiday.*

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1 ~~Section 1.~~ **Sec. 2.** K.S.A. 8-1020 is hereby amended to read as fol-
2 lows: 8-1020. (a) Any licensee served with an officer's certification and
3 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
4 may request an administrative hearing. Such request may be made either
5 by:

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

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

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

13 ~~—(4) transmitting a written request by electronic facsimile which is re-~~
14 ~~ceived by the division within 13 calendar days after service, if such notice~~
15 ~~was given by mail.~~

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

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

24 (d) Upon receipt of a timely request for a hearing, the division shall
25 forthwith set the matter for hearing before a representative of the director
26 and provide notice of the extension of temporary driving privileges. ~~Ex-~~
27 ~~cept for a hearing conducted by telephone or video conference call, the~~
28 ~~hearing shall be conducted in the county where the arrest occurred or a~~
29 ~~county adjacent thereto. If the licensee requests, the hearing may be~~
30 ~~conducted by telephone or video conference call.~~

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

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

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

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

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

43 (f) At or prior to the time the notice of hearing is sent, the division

Sec. 4. KSA 8-1005. [See attached. This is Sec. 2. from HB 2012, allowing
evidence obtained by and testimony of a certified drug recognition evaluator to be
admitted in a criminal prosecution.]

Sec. 5. KSA 2006 Supp. 8-1014. [See attached. This is Sec. 3 from HB 2012]

Renumber remaining sections accordingly.

The hearing shall be held by telephone conference call unless the hearing
request includes a request that the hearing be held in person before a
representative of the director. The officer's certification and notice of
suspension shall inform the licensee of the availability of a hearing
before a representative of the director.

[Requested by Dept. of Revenue]

1 shall issue an order allowing the licensee or the licensee's attorney to
2 review any video or audio tape record made of the events upon which
3 the administrative action is based. Such review shall take place at a rea-
4 sonable time designated by the law enforcement agency and shall be
5 made at the location where the video or audio tape is kept. The licensee
6 may obtain a copy of any such video or audio tape upon request and upon
7 payment of a reasonable fee to the law enforcement agency, not to exceed
8 \$25 per tape.

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

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

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

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

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

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

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

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

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

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

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1 (D) the testing equipment used was certified by the Kansas depart-
2 ment of health and environment;

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

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

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

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

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

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

17 (B) the person was in custody or arrested for an alcohol or drug re-
18 lated offense or was involved in a vehicle accident or collision resulting
19 in property damage, personal injury or death;

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

22 (D) the testing equipment used was reliable;

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

24 (F) the testing procedures used were reliable;

25 (G) the test result determined that the person had an alcohol con-
26 centration of .08 or greater in such person's blood; and

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

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

38 (j) At a hearing pursuant to this section, or upon court review of an
39 order entered at such a hearing, in which the report of blood test results
40 have been prepared by the Kansas bureau of investigation or other fo-
41 rensic laboratory of a state or local law enforcement agency are to be
42 introduced as evidence, the report, or a copy of the report, of the findings
43 of the forensic examiner shall be admissible into evidence in the same

1 manner and with the same force and effect as if the forensic examiner
2 who performed such examination, analysis, comparison or identification
3 and prepared the report thereon had testified in person.

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

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

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

11 (2) the testimony of the licensee;

12 (3) the testimony of any certifying officer;

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

15 (5) any affidavits submitted from other witnesses;

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

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

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

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

1 is served, whether served in person or by mail.

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

9 (p) Such review shall be in accordance with this section and the act
10 for judicial review and civil enforcement of agency actions. To the extent
11 that this section and any other provision of law conflicts, this section shall
12 prevail. The petition for review shall be filed within 10 days after the
13 effective date of the order. Venue of the action for review is the county
14 where the person was arrested or the accident occurred, or, if the hearing
15 was not conducted by telephone conference call, the county where the
16 administrative proceeding was held. The action for review shall be by trial
17 de novo to the court and the evidentiary restrictions of subsection (l) shall
18 not apply to the trial de novo. The court shall take testimony, examine
19 the facts of the case and determine whether the petitioner is entitled to
20 driving privileges or whether the petitioner's driving privileges are subject
21 to suspension or suspension and restriction under the provisions of this
22 act. If the court finds that the grounds for action by the agency have been
23 met, the court shall affirm the agency action.

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

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

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

37 (t) The facts found by the hearing officer or by the district court upon
38 a petition for review shall be independent of the determination of the
39 same or similar facts in the adjudication of any criminal charges arising
40 out of the same occurrence. The disposition of those criminal charges
41 shall not affect the suspension or suspension and restriction to be imposed
42 under this section.

43 (u) All notices affirming or canceling a suspension under this section,

1 all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

7 (v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall ~~not~~ be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) ~~but shall apply~~ and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto. "Calendar day" shall mean that every day shall be included in computations of time whether a weekday, Saturday, Sunday or holiday.

14 Sec. ~~2-3~~. K.S.A. ~~8-1020~~ is ~~8-1002~~ and ~~8-1020~~ are hereby repealed.

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

Sec. 7. KSA 2006 Supp. 8-1567. [This is Sec. 5 from HB 2012, with one amendment requested by KDOT for NHTSA compliance, and specific language as requested by Division of Motor Vehicles, contained in subsection (l)]
 Sec. 8. KSA 2006 Supp. 21-4502. [This is Sec. 6 from HB 2012]
 Sec. 9. KSA 2006 Supp 74-7336. [Requested by the Task Force]
 New Sec. 10. [Requested by KDHE and Task Force.]
 New. Sec. 11. [Requested by Task Force.]

Renumber remaining sections accordingly.

8-235,

, 8-1005

and KSA 2006 Supp. 8-1001, 8-1014, 8-1567, 21-4502 and 74-7336

Section 1. K.S.A. 8-235 is hereby amended to read as follows: 8-235. (a) No person, except those expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license. No person shall receive a driver's license unless and until such person surrenders or with the approval of the division, lists to the division all valid licenses in such person's possession issued to such person by any other jurisdiction. All surrendered licenses or the information listed on foreign licenses shall be returned by the division to the issuing department, together with information that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid license at any time.

(b) Any person licensed under the motor vehicle drivers' license act may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any local authority. Nothing herein shall prevent cities from requiring licenses of persons who drive taxicabs or municipally franchised transit systems for hire upon city streets, to protect the public from drivers whose character or habits make them unfit to transport the public. If a license is denied, the applicant may appeal such decision to the district court of the county in which such city is located by filing within 10 days after such denial, a notice of appeal with the clerk of the district court and by filing a copy of such notice with the city clerk of the involved city. The city clerk shall certify a copy of such decision of the city governing body to the clerk of the district court and the matter shall be docketed as any other cause and the applicant shall be granted a trial of such person's character and habits. The matter shall be heard by the court de novo in accordance with the code of civil procedure. The cost of such appeal shall be assessed in such manner as the court may direct.

(c) Any person operating in this state a motor vehicle, except a motorcycle, which is registered in this state other than under a temporary thirty-day permit shall be the holder of a driver's license which is classified for the operation of such motor vehicle, and any person operating in this state a motorcycle which is registered in this state shall be the holder of a class M driver's license, except that any person operating in this state a motorcycle which is registered under a temporary thirty-day permit shall be the holder of a driver's license for any class of motor vehicles.

(d) No person shall drive any motorized bicycle upon a highway of this state unless: (1) Such person has a valid driver's license which entitles the licensee to drive a motor vehicle in any class or classes; (2) such person is at least 15 years of age and has passed the written and visual examinations required for obtaining a class C driver's license, in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles; or (3) such person has had their driving privileges suspended, for a violation other than a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto, and has made

Section 1. K.S.A. 8-235 is hereby amended to read as follows: 8-235. (a) No person, except those expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license. No person shall receive a driver's license unless and until such person surrenders or with the approval of the division, lists to the division all valid licenses in such person's possession issued to such person by any other jurisdiction. All surrendered licenses or the information listed on foreign licenses shall be returned by the division to the issuing department, together with information that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid license at any time.

(b) Any person licensed under the motor vehicle drivers' license act may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any local authority. Nothing herein shall prevent cities from requiring licenses of persons who drive taxicabs or municipally franchised transit systems for hire upon city streets, to protect the public from drivers whose character or habits make them unfit to transport the public. If a license is denied, the applicant may appeal such decision to the district court of the county in which such city is located by filing within 10 days after such denial, a notice of appeal with the clerk of the district court and by filing a copy of such notice with the city clerk of the involved city. The city clerk shall certify a copy of such decision of the city governing body to the clerk of the district court and the matter shall be docketed as any other cause and the applicant shall be granted a trial of such person's character and habits. The matter shall be heard by the court de novo in accordance with the code of civil procedure. The cost of such appeal shall be assessed in such manner as the court may direct.

(c) Any person operating in this state a motor vehicle, except a motorcycle, which is registered in this state other than under a temporary thirty-day permit shall be the holder of a driver's license which is classified for the operation of such motor vehicle, and any person operating in this state a motorcycle which is registered in this state shall be the holder of a class M driver's license, except that any person operating in this state a motorcycle which is registered under a temporary thirty-day permit shall be the holder of a driver's license for any class of motor vehicles.

(d) No person shall drive any motorized bicycle upon a highway of this state unless: (1) Such person has a valid driver's license which entitles the licensee to drive a motor vehicle in any class or classes; (2) such person is at least 15 years of age and has passed the written and visual examinations required for obtaining a class C driver's license, in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles; or (3) such person has had their driving privileges suspended, for a violation other than a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto, and has made

application to the division for the issuance of a class C license for the operation of motorized bicycles, in accordance with paragraph (2), in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles.

(e) Violation of this section shall constitute a class B misdemeanor.

Sec. 2. K.S.A. 2006 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized

herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

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

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

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

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

(B) (2) the opportunity to consent to or refuse a test is not a constitutional right;

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

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

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

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

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

(6) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or

greater, the person's driving privileges will be suspended for one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

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

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

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

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

(g) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

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

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

(j) If a law enforcement officer had reasonable grounds to

believe the person had been driving a commercial motor vehicle as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

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

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

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

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

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

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

Sec. 3. K.S.A. 2006 Supp. 8-1002(see SB 35, as am.)

Sec. 4. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005. Except as provided by K.S.A. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, evidence:

(a) Of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be

admitted and shall give rise to the following:

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

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

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

(b) Obtained by and testimony regarding a drug impairment assessment conducted by a law enforcement officer certified as a drug recognition evaluator by the international association of chiefs of police shall be admissible. The defendant is accorded a fair opportunity to rebut the accuracy or reliability of such evidence.

Sec. 5. K.S.A. 2006 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

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

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

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

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

(5) on the person's fifth or subsequent occurrence, revoke the person's driving privileges permanently.

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

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

(2) (B) on the person's second, third or fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension ~~for an alcohol-related conviction~~, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device. ~~Proof of the installation of such device, for the full year of the restricted period, shall be provided to the division before the person's driving privileges are fully reinstated;~~ and

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

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

(A) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(B) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;

(D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and

(E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated.

(c) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction in this state, the division shall:

(1) On the person's first occurrence, suspend the person's driving privileges for one year. If the person's blood or breath alcohol concentration is .15 or greater, the division shall at the end of the suspension, restrict, the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(2) on the person's second and subsequent occurrences, penalties shall be imposed pursuant to subsection (b).

(d) Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program.

(e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the

longest applicable period authorized by subsection (a), (b) (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a), (b) or (c), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

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

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

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

(h) Any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business.

Sec. 6. K.S.A. 8-1020. (See SB 35, as am.)

Sec. 7. K.S.A. 2006 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

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

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

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

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

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

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to:

(1) Except as provided in paragraph (2), not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole; or

(2) if a person refuses to submit and complete any test of blood, breath or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto, or has a blood or breath alcohol concentration at .15 or greater, not less than 96 consecutive hours nor more than one years' imprisonment, or in the court's discretion 200 hours of public service, and fined not less than \$1,000 nor more than \$2,000. The person convicted must serve at least 96 consecutive hours' imprisonment or 200 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

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

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

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

(2) if a person refuses to submit and complete any test of blood, breath or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto, or has a blood or breath alcohol concentration at .15 or greater, not less than 180 days nor more than two year's imprisonment and fined not less than \$2,000 nor

more than \$3,000. The person convicted must serve at least 1 consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The 10 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 96 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 96 consecutive hours' imprisonment.

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

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

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

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

The court shall also require as a condition of parole that such person enter into and complete a treatment program for

alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto.

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

(1) Except as provided in paragraph (2), not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program; or

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

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had ~~a child~~ one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's

punishment enhanced by one month of imprisonment for each child in the vehicle at the time of the offense. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the one-month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

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

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

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

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time

of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(1) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

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

(3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

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

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

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

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

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

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

~~(n)~~ (o) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division,

upon receiving a report of conviction, shall suspend, restrict (suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(e) (p) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

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

(p) (q) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq.,

and amendments thereto, shall not constitute plea bargaining.

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

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

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

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

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

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

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

Sec. 8. K.S.A. 2006 Supp. 21-4502 is hereby amended to read as follows: 21-4502. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

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

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

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month.

(d) Unclassified misdemeanors, which shall include all

crimes declared to be misdemeanors without specification as class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

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

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

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

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

Sec. 9. K.S.A. 2006 Supp. 74-7336 is hereby amended to read as follows: 74-7336.

(a) Of the remittances of fines, penalties and forfeitures received from clerks of the district court, at least monthly, the state treasurer shall:

(1) On and after July 1, 2007 through June 30, 2008, credit ~~11.99%~~ 11.87% to the crime victims compensation fund, ~~2.45%~~ 2.43% to the crime victims assistance fund, ~~2.01%~~ 1.99% to the community alcoholism and intoxication programs fund, ~~2.01%~~ 1.99% to the department of corrections alcohol and drug abuse treatment fund, and 0.17% to the boating fee fund, 0.48% to the department of health and environment driving under the influence expense fund and 0.54% to the county jail cost assistance fund.

(2) On and after July 1, 2008, credit 11.75% to the crime victims compensation fund, 2.40% to the crime victims assistance fund, 1.97% to the community alcoholism and intoxication programs fund, 1.97% to the department of corrections alcohol and drug abuse treatment fund, 0.17% to the boating fee fund, 0.47% to the department of health and environment driving under the influence expense fund and 1.55% to the county jail cost assistance fund.

The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit grant moneys as provided in subsection (a), from the crime victims assistance fund, to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

New Sec. 10. (a) There is hereby created in the state treasury the department of health and environment driving under the influence expense fund. All moneys credited to the fund pursuant to K.S.A. 74-7336, and amendments thereto, shall be used for the following nonexclusive purposes: expenses relating to the presentation of evidence in cases involving the violation of driving under the influence, including employee salaries, travel, lodging and mileage; and establishing and maintaining driver's safety programs.

(b) All expenditures from the department of health and environment driving under the influence expense fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or by a person or persons designated by the secretary.

New Sec. 11. (a) There is hereby created in the state treasury the county jail cost assistance fund. All moneys credited to the fund pursuant to K.S.A. 74-7336, and amendments thereto, shall be used to establish a grant program to assist in reimbursing counties for the costs of offenders confined to county jails pursuant to K.S.A. 8-1567, and amendments thereto.

(b) The attorney general shall adopt criteria, through rules and regulations, to disburse such funds to the counties.

(c) All expenditures from the county jail cost assistance fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.