

SENATE BILL No. 453

By Committee on Federal and State Affairs

3-5

1 AN ACT concerning driving under the influence; relating to administrative
2 penalties; crimes, punishment and criminal procedure; amending
3 K.S.A. 8-241 and K.S.A. 2011 Supp. 8-2,144, 8-1008, 8-1014, 8-1015,
4 8-1020 and 8-1567 and repealing the existing sections; also repealing
5 K.S.A. 2011 Supp. 8-1020b.
6

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

8 Section 1. K.S.A. 8-241 is hereby amended to read as follows: 8-241.
9 (a) Except as provided in K.S.A. 8-2,125 through 8-2,142, and
10 amendments thereto, any person licensed to operate a motor vehicle in this
11 state shall submit to an examination whenever: (1) The division of vehicles
12 has good cause to believe that such person is incompetent or otherwise not
13 qualified to be licensed; or (2) the division of vehicles has suspended such
14 person's license pursuant to K.S.A. 8-1014, and amendments thereto, as
15 the result of a test refusal, test failure or conviction for a violation of
16 K.S.A. 8-1567, and amendments thereto, or a violation a of city ordinance
17 or county resolution prohibiting the acts prohibited by K.S.A. 8-1567, and
18 amendments thereto, except that no person shall have to submit to and
19 successfully complete an examination more than once as the result of
20 separate suspensions arising out of the same occurrence.

21 (b) When a person is required to submit to an examination pursuant
22 to subsection (a)(1), the fee for such examination shall be in the amount
23 provided by K.S.A 8-240, and amendments thereto. When a person is
24 required to submit to an examination pursuant to subsection (a)(2), the fee
25 for such examination shall be \$25. In addition, any person required to
26 submit to an examination pursuant to subsection (a)(2): (1) As the result of
27 a test failure, a conviction for a violation of K.S.A. 8-1567, and
28 amendments thereto, or a violation of a city ordinance or county resolution
29 prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto,
30 shall be required, at the time of examination, to pay a reinstatement fee of
31 \$100 after the first occurrence, \$200 after the second occurrence, \$300
32 after the third occurrence and \$400 after the fourth *or subsequent*
33 occurrence; and (2) as a result of a test refusal shall be required, at the time
34 of examination, to pay a reinstatement fee of \$400 after the first
35 occurrence, \$600 after the second occurrence, \$800 after the third
36 occurrence and \$1,000 after the fourth *or subsequent* occurrence. ~~No~~

1 ~~reinstatement shall be allowed after the fifth or subsequent occurrence~~
2 ~~under either subsection (b)(1) or (b)(2).~~ All examination fees collected
3 pursuant to this section shall be remitted to the state treasurer, in
4 accordance with the provisions of K.S.A. 75-4215, and amendments
5 thereto, who shall deposit the entire amount in the state treasury and credit
6 80% to the state highway fund and 20% shall be disposed of as provided in
7 K.S.A. 8-267, and amendments thereto. All reinstatement fees collected
8 pursuant to this section shall be remitted to the state treasurer, in
9 accordance with the provisions of K.S.A. 75-4215, and amendments
10 thereto, who shall deposit the entire amount in the state treasury and credit
11 50% to the community alcoholism and intoxication programs fund created
12 pursuant to K.S.A. 41-1126, and amendments thereto, 20% to the juvenile
13 detention facilities fund created by K.S.A. 79-4803, and amendments
14 thereto, 20% to the forensic laboratory and materials fee fund cited in
15 K.S.A. 28-176, and amendments thereto, and 10% to the driving under the
16 influence equipment fund created by K.S.A. 75-5660, and amendments
17 thereto. Moneys credited to the forensic laboratory and materials fee fund
18 as provided herein shall be used to supplement existing appropriations and
19 shall not be used to supplant general fund appropriations to the Kansas
20 bureau of investigation.

21 (c) When an examination is required pursuant to subsection (a), at
22 least five days' written notice of the examination shall be given to the
23 licensee. The examination administered hereunder shall be at least
24 equivalent to the examination required by subsection (e) of K.S.A. 8-247,
25 and amendments thereto, with such additional tests as the division deems
26 necessary. Upon the conclusion of such examination, the division shall
27 take action as may be appropriate and may suspend or revoke the license
28 of such person or permit the licensee to retain such license, or may issue a
29 license subject to restrictions as permitted under K.S.A. 8-245, and
30 amendments thereto.

31 (d) Refusal or neglect of the licensee to submit to an examination as
32 required by this section shall be grounds for suspension or revocation of
33 the license.

34 Sec. 2. K.S.A. 2011 Supp. 8-2,144 is hereby amended to read as
35 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
36 influence is operating or attempting to operate any commercial motor
37 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
38 state while:

39 (1) The alcohol concentration in the person's blood or breath, as
40 shown by any competent evidence, including other competent evidence, as
41 defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and
42 amendments thereto, is .04 or more;

43 (2) the alcohol concentration in the person's blood or breath, as

1 measured within three hours of the time of driving a commercial motor
2 vehicle, is .04 or more; or

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

6 (b) (1) Driving a commercial motor vehicle under the influence is:

7 (A) On a first conviction a class B, nonperson misdemeanor. The
8 person convicted shall be sentenced to not less than 48 consecutive hours
9 nor more than six months' imprisonment, or in the court's discretion, 100
10 hours of public service, and fined not less than ~~\$750~~ \$500 nor more than
11 \$1,000. The person convicted shall serve at least 48 consecutive hours'
12 imprisonment or 100 hours of public service either before or as a condition
13 of any grant of probation, suspension or reduction of sentence or parole or
14 other release;

15 (B) on a second conviction a class A, nonperson misdemeanor. The
16 person convicted shall be sentenced to not less than 90 days nor more than
17 one year's imprisonment and fined not less than ~~\$1,250~~ \$1,000 nor more
18 than ~~\$1,750~~ \$1,500. The person convicted shall serve at least five
19 consecutive days' imprisonment before the person is granted probation,
20 suspension or reduction of sentence or parole or is otherwise released. The
21 five days' imprisonment mandated by this subsection may be served in a
22 work release program only after such person has served 48 consecutive
23 hours' imprisonment, provided such work release program requires such
24 person to return to confinement at the end of each day in the work release
25 program. The person convicted, if placed into a work release program,
26 shall serve a minimum of 120 hours of confinement. Such 120 hours of
27 confinement shall be a period of at least 48 consecutive hours of
28 imprisonment followed by confinement hours at the end of and continuing
29 to the beginning of the offender's work day. The court may place the
30 person convicted under a house arrest program pursuant to K.S.A. 2011
31 Supp. 21-6609, and amendments thereto, to serve the remainder of the
32 minimum sentence only after such person has served 48 consecutive hours'
33 imprisonment. The person convicted, if placed under house arrest, shall be
34 monitored by an electronic monitoring device, which verifies the
35 offender's location. The offender shall serve a minimum of 120 hours of
36 confinement within the boundaries of the offender's residence. Any
37 exceptions to remaining within the boundaries of the offender's residence
38 provided for in the house arrest agreement shall not be counted as part of
39 the 120 hours; and

40 (C) on a third or subsequent conviction a nonperson felony. The
41 person convicted shall be sentenced to not less than 90 days nor more than
42 one year's imprisonment and fined not less than ~~\$1,750~~ \$1,500 nor more
43 than \$2,500. The person convicted shall not be eligible for release on

1 probation, suspension or reduction of sentence or parole until the person
2 has served at least 90 days' imprisonment. The 90 days' imprisonment
3 mandated by this subsection may be served in a work release program only
4 after such person has served 48 consecutive hours' imprisonment, provided
5 such work release program requires such person to return to confinement
6 at the end of each day in the work release program. The person convicted,
7 if placed into a work release program, shall serve a minimum of ~~240~~ 2,160
8 hours of confinement. Such ~~240~~ 2,160 hours of confinement shall be a
9 period of at least 48 consecutive hours of imprisonment followed by
10 confinement hours at the end of and continuing to the beginning of the
11 offender's work day. The court may place the person convicted under a
12 house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and
13 amendments thereto, to serve the remainder of the minimum sentence only
14 after such person has served 48 consecutive hours' imprisonment. The
15 person convicted, if placed under house arrest, shall be monitored by an
16 electronic monitoring device, which verifies the offender's location. The
17 offender shall serve a minimum of ~~240~~ 2,160 hours of confinement within
18 the boundaries of the offender's residence. Any exceptions to remaining
19 within the boundaries of the offender's residence provided for in the house
20 arrest agreement shall not be counted as part of the ~~240~~ 2,160 hours.

21 (2) In addition, prior to sentencing for any conviction, the court shall
22 order the person to participate in an alcohol and drug evaluation conducted
23 by a provider in accordance with K.S.A. 8-1008, and amendments thereto.
24 The person shall be required to follow any recommendation made by the
25 provider after such evaluation, unless otherwise ordered by the court.

26 (c) Any person convicted of a violation of this section, or a violation
27 of a city ordinance or county resolution prohibiting the acts prohibited by
28 this section, who had one or more children under the age of 14 years in the
29 vehicle at the time of the offense shall have such person's punishment
30 enhanced by one month of imprisonment. This imprisonment shall be
31 served consecutively to any other minimum mandatory penalty imposed
32 for a violation of this section, or a violation of a city ordinance or county
33 resolution prohibiting the acts prohibited by this section. Any enhanced
34 penalty imposed shall not exceed the maximum sentence allowable by law.
35 During the service of the enhanced penalty, the judge may order the person
36 on house arrest, work release or other conditional release.

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

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

1 release of the defendant by the court.

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

12 (g) Prior to filing a complaint alleging a violation of this section, a
13 prosecutor shall request and shall receive from the: (1) Division a record
14 of all prior convictions obtained against such person for any violations of
15 any of the motor vehicle laws of this state; and (2) Kansas bureau of
16 investigation central repository all criminal history record information
17 concerning such person.

18 (h) The court shall electronically report every conviction of a
19 violation of this section and every diversion agreement entered into in lieu
20 of further criminal proceedings on a complaint alleging a violation of this
21 section to the division. Prior to sentencing under the provisions of this
22 section, the court shall request and shall receive from the: (1) Division
23 a record of all prior convictions obtained against such person for any
24 violation of any of the motor vehicle laws of this state; and (2) Kansas
25 bureau of investigation central repository all criminal history record
26 information concerning such person.

27 (i) Upon conviction of a person of a violation of this section or a
28 violation of a city ordinance or county resolution prohibiting the acts
29 prohibited by this section, the division, upon receiving a report of
30 conviction, shall: (1) Disqualify the person from driving a commercial
31 motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2)
32 suspend, restrict or suspend and restrict the person's driving privileges as
33 provided by K.S.A. 8-1014, and amendments thereto.

34 (j) (1) Nothing contained in this section shall be construed as
35 preventing any city from enacting ordinances, or any county from adopting
36 resolutions, declaring acts prohibited or made unlawful by this section as
37 unlawful or prohibited in such city or county and prescribing penalties for
38 violation thereof.

39 (2) The minimum penalty prescribed by any such ordinance or
40 resolution shall not be less than the minimum penalty prescribed by this
41 section for the same violation, and the maximum penalty in any such
42 ordinance or resolution shall not exceed the maximum penalty prescribed
43 for the same violation.

1 (3) Any such ordinance or resolution shall authorize the court to order
2 that the convicted person pay restitution to any victim who suffered loss
3 due to the violation for which the person was convicted.

4 (k) (1) Upon the filing of a complaint, citation or notice to appear
5 alleging a person has violated a city ordinance prohibiting the acts
6 prohibited by this section, and prior to conviction thereof, a city attorney
7 shall request and shall receive from the: (A) Division of vehicles a record
8 of all prior convictions obtained against such person for any violations of
9 any of the motor vehicle laws of this state; and (B) Kansas bureau of
10 investigation central repository all criminal history record information
11 concerning such person.

12 (2) If the elements of such ordinance violation are the same as the
13 elements of a violation of this section that would constitute, and be
14 punished as, a felony, the city attorney shall refer the violation to the
15 appropriate county or district attorney for prosecution. The county or
16 district attorney shall accept such referral and pursue a disposition of such
17 violation, and shall not refer any such violation back to the city attorney.

18 (l) No plea bargaining agreement shall be entered into nor shall any
19 judge approve a plea bargaining agreement entered into for the purpose of
20 permitting a person charged with a violation of this section, or a violation
21 of any ordinance of a city or resolution of any county in this state which
22 prohibits the acts prohibited by this section, to avoid the mandatory
23 penalties established by this section or by the ordinance or resolution.

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

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

30 (1) "Conviction" includes being convicted of a violation of a law of
31 another state or an ordinance of any city, or resolution of any county,
32 which prohibits the acts that this section prohibits;

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

36 (3) it is irrelevant whether an offense occurred before or after
37 conviction for a previous offense.

38 (o) For the purpose of this section:

39 (1) "Alcohol concentration" means the number of grams of alcohol
40 per 100 milliliters of blood or per 210 liters of breath;

41 (2) "imprisonment" shall include any restrained environment in which
42 the court and law enforcement agency intend to retain custody and control
43 of a defendant and such environment has been approved by the board of

1 county commissioners or the governing body of a city; and

2 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
3 2011 Supp. 21-5712, and amendments thereto.

4 ~~(p) On and after July 1, 2011, the amount of \$250 from each fine~~
5 ~~imposed pursuant to this section shall be remitted by the clerk of the~~
6 ~~district court to the state treasurer in accordance with the provisions of~~
7 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of such~~
8 ~~remittance, the state treasurer shall credit the entire amount to the~~
9 ~~community corrections supervision fund established by K.S.A. 2011 Supp.~~
10 ~~75-52,113, and amendments thereto.~~

11 Sec. 3. K.S.A. 2011 Supp. 8-1008 is hereby amended to read as
12 follows: 8-1008. (a) As used in this section, "provider" means: (1) A
13 professional licensed by the behavioral sciences regulatory board to
14 diagnose and treat mental or substance use disorders at the independent
15 level who is compliant with the requirements set forth by the secretary of
16 social and rehabilitation services as described in subsection (f); or (2) a
17 professional licensed by the behavioral sciences regulatory board who is
18 working in an alcohol and drug treatment facility licensed by the secretary
19 of social and rehabilitation services as meeting the requirements described
20 in subsection (f).

21 (b) A provider shall provide:

22 (1) Alcohol and drug evaluations, prior to sentencing, of any person
23 who is convicted of a violation of K.S.A. 8-2,144 or 8-1567, and
24 amendments thereto, or the ordinance of a city or resolution of a county in
25 this state which prohibits the acts prohibited by those statutes; and

26 (2) alcohol and drug evaluations of persons whom the prosecutor
27 considers for eligibility or finds eligible to enter a diversion agreement in
28 lieu of further criminal proceedings on a complaint alleging a violation of
29 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or
30 resolution of a county in this state which prohibits the acts prohibited by
31 that statute.

32 (c) A provider shall be capable of providing, within the judicial
33 district: (1) The evaluations required under subsection (b); (2) the alcohol
34 and drug evaluation report required under subsection (d) or (e); (3) the
35 follow-up duties specified under subsection (d) or (e) for persons who
36 prepare the alcohol and drug evaluation report; and (4) any other functions
37 and duties specified by law. The secretary of social and rehabilitation
38 services shall provide each judicial district with an electronic list of
39 providers, and such list shall be used when selecting a provider to be used
40 as described in subsections (d) and (e). The secretary of social and
41 rehabilitation services shall also make all such lists of providers publicly
42 available on the official website of the department of social and
43 rehabilitation services. Any provider performing services in any judicial

1 district under this section prior to July 1, 2011, may continue to perform
2 those services until July 1, 2012.

3 (d) Prior to sentencing, an alcohol and drug evaluation shall be
4 conducted on any person who is convicted of a violation of K.S.A. 8-2,144
5 or 8-1567, and amendments thereto, or the ordinance of a city or resolution
6 of a county in this state which prohibits the acts prohibited by those
7 statutes. The alcohol and drug evaluation report shall be made available to
8 and shall be considered by the court prior to sentencing. *Except as*
9 *provided further*, the court shall order that *the* cost of any alcohol and drug
10 evaluation for any person shall be paid by such person to the provider at
11 the time of service, ~~and shall not exceed \$150.~~ *If the court finds that such*
12 *person is indigent, the court shall pay the cost of any alcohol and drug*
13 *evaluation for such person to the provider at the time of service. The cost*
14 *of any such evaluation, whether paid by the person or the court, shall be*
15 *not less than \$150.*

16 (e) An alcohol and drug evaluation shall be conducted on any person
17 whom the prosecutor considers for eligibility or finds eligible to enter a
18 diversion agreement in lieu of further criminal proceedings on a complaint
19 alleging a violation of K.S.A. 8-1567, and amendments thereto, or the
20 ordinance of a city or resolution of a county in this state which prohibits
21 the acts prohibited by that statute. The alcohol and drug evaluation report
22 shall be made available to the prosecuting attorney and shall be considered
23 by the prosecuting attorney. The cost of any alcohol and drug evaluation
24 for any person shall be paid by such person *or the court* to the provider at
25 the time of service, and shall ~~not exceed~~ *be not less than* \$150.

26 (f) All alcohol and drug evaluations conducted pursuant to this
27 section shall utilize a standardized substance use evaluation approved by
28 the secretary of social and rehabilitation services and be submitted in a
29 format approved by the secretary of social and rehabilitation services. On
30 or before July 1, 2012, the secretary of social and rehabilitation services
31 shall promulgate rules and regulations to implement this section.

32 Sec. 4. K.S.A. 2011 Supp. 8-1014 is hereby amended to read as
33 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
34 2,142, and amendments thereto, if a person refuses a test, the division,
35 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

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

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

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

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

9 (5) on the person's fifth or subsequent occurrence, suspend the
10 person's driving privileges for one year and at the end of the suspension,
11 restrict the person's driving privileges for 10 years to driving only a motor
12 vehicle equipped with an ignition interlock device.

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

16 (A) On the person's first occurrence, suspend the person's driving
17 privileges for 30 days and at the end of the suspension, restrict the person's
18 driving privileges as provided by subsection (b) of K.S.A. 8-1015, and
19 amendments thereto;

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

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

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

32 (E) on the person's fifth or subsequent occurrence, suspend the
33 person's driving privileges for one year and at the end of the suspension,
34 restrict the person's driving privileges for 10 years to driving only a motor
35 vehicle equipped with an ignition interlock device.

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

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

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

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

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

13 (E) on the person's fifth or subsequent occurrence, suspend the
14 person's driving privileges for one year and at the end of the suspension,
15 restrict the person's driving privileges for 10 years to driving only a motor
16 vehicle equipped with an ignition interlock device.

17 (3) Whenever a person's driving privileges have been restricted to
18 driving only a motor vehicle equipped with an ignition interlock device for
19 10 years under this section, such person may petition any district court for
20 relief from such restriction after five years of such restriction have been
21 served. The court shall consider, but not be limited to, whether: (A) Such
22 person's driving privileges have been restricted, suspended, revoked or
23 disqualified pursuant to another action by the division or a court; and (B)
24 such person proves installation, maintenance and use of an ignition
25 interlock device approved by the division throughout the five-year period.
26 If the court finds that the person's driving privileges should be restored,
27 then the court shall electronically report such order to the division. The
28 division, upon receiving such order, shall restore such person's driving
29 privileges, unless such person's driving privileges have been restricted,
30 suspended, revoked or disqualified pursuant to another action by the
31 division or a court.

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

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

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

42 (d) Whenever the division is notified by ~~an alcohol and drug safety~~
43 ~~action program that a person has failed to complete any alcohol and drug~~

1 ~~safety action education or treatment program ordered a provider, as~~
2 ~~defined in K.S.A. 8-1008, and amendments thereto, or a court that the~~
3 ~~person has failed to follow any recommendation made by the provider or~~
4 ~~otherwise ordered by a court for a conviction of a violation of K.S.A. 8-~~
5 ~~1567, and amendments thereto, the division shall suspend the person's~~
6 ~~driving privileges until the division receives notice of the person's~~
7 ~~completion of such program recommendation.~~

8 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if
9 a person's driving privileges are subject to suspension pursuant to this
10 section for a test refusal, test failure or alcohol or drug-related conviction
11 arising from the same arrest, the period of such suspension shall not
12 exceed the longest applicable period authorized by subsection (a), (b) or
13 (c), and such suspension periods shall not be added together or otherwise
14 imposed consecutively. In addition, in determining the period of such
15 suspension as authorized by subsection (a), (b) or (c), such person shall
16 receive credit for any period of time for which such person's driving
17 privileges were suspended while awaiting any hearing or final order
18 authorized by this act.

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

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

32 (g) The provisions of subsections (a), (b) and (c), as amended by ~~this~~
33 ~~act section 14 of chapter 105 of the 2011 Session Laws of Kansas~~, may be
34 applied retroactively only if requested by a person who has had such
35 person's driving privileges suspended or restricted pursuant to subsection
36 (a), (b) or (c) prior to such amendment. Such person may apply to the
37 division to have the penalties applied retroactively, as provided under
38 subsection ~~(f)~~ (g) of K.S.A. 8-1015, and amendments thereto.

39 (h) *When modifying penalties pursuant to subsection (g), the division*
40 *shall credit any suspension or revocation time in excess of one year which*
41 *was imposed and served prior to retroactive application of the provisions*
42 *of subsections (a), (b) and (c), as amended by section 14 of chapter 105 of*
43 *the 2011 Session Laws of Kansas, toward the required ignition interlock*

1 *restriction period imposed pursuant to the retroactive application of such*
2 *provisions if: (1) The person's driving record indicates no driving by the*
3 *person during the applicable suspension or revocation period; and (2) the*
4 *person completes a form prescribed by the division indicating that the*
5 *person did not drive during the applicable suspension or revocation*
6 *period.*

7 ~~(h)~~ (i) As used in this section, "suspension" includes any period of
8 suspension and any period of restriction as provided in subsection (a) of
9 K.S.A. 8-1015, and amendments thereto.

10 Sec. 5. K.S.A. 2011 Supp. 8-1015 is hereby amended to read as
11 follows: 8-1015.

12 (a) (1) *Except as provided in subsection (a)(2), whenever a person's*
13 *driving privileges have been suspended for one year as provided in*
14 *subsection (a) of K.S.A. 8-1014, and amendments thereto, after 90 days of*
15 *such suspension, such person may apply to the division for such person's*
16 *driving privileges to be restricted for the remainder of the one-year*
17 *suspension period to driving only a motor vehicle equipped with an*
18 *ignition interlock device and only for the purposes of getting to and from:*
19 *Work, school or an alcohol treatment program; and the ignition interlock*
20 *provider for maintenance and downloading of data from the device.*

21 (2) *Whenever a person's driving privileges have been suspended for*
22 *one year as provided in subsection (a)(1) of K.S.A. 8-1014, and*
23 *amendments thereto, after 90 days of such suspension, such person may*
24 *apply to the division for such person's driving privileges to be restricted*
25 *for the remainder of the one-year suspension period to driving only a*
26 *motor vehicle equipped with an ignition interlock device and only under*
27 *the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A.*
28 *8-292, and amendments thereto.*

29 (3) *Except as provided in subsection (a)(4), whenever a person's*
30 *driving privileges have been suspended for one year as provided in*
31 *subsection ~~(a)~~; (b) or (c) of K.S.A. 8-1014, and amendments thereto, after*
32 *45 days of such suspension, such person may apply to the division for such*
33 *person's driving privileges to be restricted for the remainder of the one-*
34 *year suspension period to driving only a motor vehicle equipped with an*
35 *ignition interlock device and only for the purposes of getting to and from:*
36 *Work, school or an alcohol treatment program; and the ignition interlock*
37 *provider for maintenance and downloading of data from the device.*

38 (4) *Whenever a person's driving privileges have been suspended for*
39 *one year as provided in subsection (b)(2)(A) or (c)(1) of K.S.A. 8-1014,*
40 *and amendments thereto, after 45 days of such suspension, such person*
41 *may apply to the division for such person's driving privileges to be*
42 *restricted for the remainder of the one-year suspension period to driving*
43 *only a motor vehicle equipped with an ignition interlock device and only*

1 *under the circumstances provided by subsections (a)(1), (2), (3) and (4) of*
2 *K.S.A. 8-292, and amendments thereto.*

3 (5) *The division shall assess an application fee of \$100 for a person*
4 *to apply to modify the suspension to restricted ignition interlock status.*

5 ~~(2)~~ (6) The division shall approve the request for such restricted
6 license unless such person's driving privileges have been restricted,
7 suspended, revoked or disqualified pursuant to another action by the
8 division or a court. If the request is approved, upon receipt of proof of the
9 installation of such device, the division shall issue a copy of the order
10 imposing such restrictions on the person's driving privileges and such
11 order shall be carried by the person at any time the person is operating a
12 motor vehicle on the highways of this state. Except as provided in K.S.A.
13 8-1017, and amendments thereto, if such person is convicted of a violation
14 of the restrictions, such person's driving privileges shall be suspended for
15 an additional year, in addition to any term of suspension or restriction as
16 provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments
17 thereto.

18 (b) (1) On and after July 1, 2011, through June 30, 2015:

19 (A) Except as provided in subsection (b)(1)(B), when a person has
20 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-
21 1014, and amendments thereto, the division shall restrict the person's
22 driving privileges for 180 days to driving only a motor vehicle equipped
23 with an ignition interlock device.

24 (B) When a person has completed the suspension pursuant to
25 subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the
26 division shall restrict the person's driving privileges for one year to driving
27 only a motor vehicle equipped with an ignition interlock device if the
28 records maintained by the division indicate that such person has
29 previously: (A) Been convicted of a violation of K.S.A. 8-1599, and
30 amendments thereto; (B) been convicted of a violation of K.S.A. 41-727,
31 and amendments thereto; (C) been convicted of any violations listed in
32 subsection (a) of K.S.A. 8-285, and amendments thereto; (D) been
33 convicted of three or more moving traffic violations committed on separate
34 occasions within a 12-month period; or (E) had such person's driving
35 privileges revoked, suspended, canceled or withdrawn.

36 (2) On and after July 1, 2015:

37 (A) Except as provided in subsection (b)(2)(B), when a person has
38 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-
39 1014, and amendments thereto, the division shall restrict the person's
40 driving privileges to driving only under the circumstances provided by
41 subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments
42 thereto.

43 (B) In lieu of the restrictions set out in subsection (b)(2)(A), the

1 division, upon request of the person whose driving privileges are to be
2 restricted, may restrict the person's driving privileges to driving only a
3 motor vehicle equipped with an ignition interlock device.

4 (c) Except as provided in subsection (b), when a person has
5 completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A.
6 8-1014, and amendments thereto, the division shall restrict the person's
7 driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014,
8 and amendments thereto, to driving only a motor vehicle equipped with an
9 ignition interlock device. Upon restricting a person's driving privileges
10 pursuant to this subsection, the division shall issue a copy of the order
11 imposing the restrictions which is required to be carried by the person at
12 any time the person is operating a motor vehicle on the highways of this
13 state.

14 (d) Whenever an ignition interlock device is required by law, such
15 ignition interlock device shall be approved by the division and maintained
16 at the person's expense. Proof of the installation of such ignition interlock
17 device, for the entire period required by the applicable law, shall be
18 provided to the division before the person's driving privileges are fully
19 reinstated.

20 (e) Except as provided further, any person whose license is restricted
21 to operating only a motor vehicle with an ignition interlock device
22 installed may operate an employer's vehicle without an ignition interlock
23 device installed during normal business activities, provided that the person
24 does not partly or entirely own or control the employer's vehicle or
25 business. The provisions of this subsection shall not apply to any person
26 whose driving privileges have been restricted for the remainder of the one-
27 year suspension period as provided in subsection (a).

28 (f) Upon expiration of the period of time for which restrictions are
29 imposed pursuant to this section, the licensee may apply to the division for
30 the return of any license previously surrendered by the licensee. If the
31 license has expired, the person may apply to the division for a new license,
32 which shall be issued by the division upon payment of the proper fee and
33 satisfaction of the other conditions established by law, unless the person's
34 driving privileges have been suspended or revoked prior to expiration.

35 (g) Any person who has had the person's driving privileges suspended
36 ~~or~~, restricted *or revoked* pursuant to subsection (a), (b) or (c) of K.S.A. 8-
37 1014, prior to the amendments by ~~this act~~ *section 14 of chapter 105 of the*
38 *2011 Session Laws of Kansas*, may apply to the division to have the
39 suspension ~~and~~, restriction *or revocation* penalties modified in conformity
40 with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and
41 amendments thereto. The division shall assess an application fee of \$100
42 for a person to apply to modify the suspension ~~and~~, restriction *or*
43 *revocation* penalties previously issued. *The division shall modify the*

1 *suspension, restriction or revocation penalties, unless such person's*
2 *driving privileges have been restricted, suspended, revoked or disqualified*
3 *pursuant to another action by the division or a court.*

4 (h) The division shall remit all application fees *collected pursuant to*
5 *subsections (a) and (g) to the state treasurer in accordance with the*
6 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*
7 *such remittance, the state treasurer shall deposit the entire amount in the*
8 *state treasury and shall credit such moneys to the division of vehicles*
9 *operating fund until an aggregate amount of \$100,000 is credited to the*
10 *division of vehicles operating fund each fiscal year. On and after an*
11 *aggregate amount of \$100,000 is credited to such fund each fiscal year, the*
12 *entire amount of such remittance shall be credited to the community*
13 *corrections supervision fund created by K.S.A. 2011 Supp. 75-52,113, and*
14 *amendments thereto. The application fee established in this section shall*
15 *be the only fee collected or moneys in the nature of a fee collected for such*
16 *application. Such fee shall only be established by an act of the legislature*
17 *and no other authority is established by law or otherwise to collect a fee.*
18 ~~The division shall modify the suspension and restriction penalties, unless~~
19 ~~such person's driving privileges have been restricted, suspended, revoked~~
20 ~~or disqualified pursuant to another action by the division or a court.~~

21 Sec. 6. K.S.A. 2011 Supp. 8-1020 is hereby amended to read as
22 follows: 8-1020. (a) Any licensee served with an officer's certification and
23 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
24 may request an administrative hearing. Such request may be made either
25 by:

26 (1) Mailing a written request which is postmarked 14 days after
27 service of notice; or

28 (2) transmitting a written request by electronic facsimile which is
29 received by the division within 14 days after service of notice.

30 (b) If the licensee makes a timely request for an administrative
31 hearing *and makes a timely payment of the required hearing fee*, any
32 temporary license issued pursuant to K.S.A. 8-1002, and amendments
33 thereto, shall remain in effect until the 30th day after the effective date of
34 the decision made by the division.

35 (c) If the licensee fails to make a timely request for an administrative
36 hearing *together with the required hearing fee*, the licensee's driving
37 privileges shall be suspended or suspended and then restricted in
38 accordance with the notice of suspension served pursuant to K.S.A. 8-
39 1002, and amendments thereto.

40 (d) (1) Upon receipt of a timely request for a hearing *together with*
41 *the required hearing fee*, the division shall forthwith set the matter for
42 hearing before a representative of the director and provide notice of the
43 extension of temporary driving privileges. The hearing shall be held by

1 telephone conference call unless the hearing request includes a request that
2 the hearing be held in person before a representative of the director. The
3 officer's certification and notice of suspension shall inform the licensee of
4 the availability of a hearing before a representative of the director. Except
5 for a hearing conducted by telephone conference call, the hearing shall be
6 conducted in the county where the arrest occurred or a county adjacent
7 thereto.

8 (2) The division shall charge a fee of \$50 for a hearing, *to be paid*
9 *within the time period for making a timely request for a hearing*, whether
10 held by telephone or in person, to be applied by the division for
11 administrative costs to conduct the hearing. The division shall remit all
12 hearing fees to the state treasurer in accordance with the provisions of
13 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
14 remittance, the state treasurer shall deposit the entire amount in the state
15 treasury to the credit of the division of vehicles operating fund. The
16 hearing fee established in this section shall be the only fee collected or
17 moneys in the nature of a fee collected for such hearing. Such fee shall
18 only be established by an act of the legislature and no other authority is
19 established by law or otherwise to collect a fee.

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

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

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

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

30 (4) in the case of a breath test failure, a copy of the Kansas
31 department of health and environment testing protocol checklist.

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

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

1 shall not be required, unless requested by the licensee at the time of
2 making the request for the hearing. The examination of a law enforcement
3 officer shall be restricted to the factual circumstances relied upon in the
4 officer's certification.

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

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

12 (B) the person was in custody or arrested for an alcohol or drug
13 related offense or was involved in a vehicle accident or collision resulting
14 in property damage, personal injury or death;

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

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

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

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

27 (B) the person was in custody or arrested for an alcohol or drug
28 related offense or was involved in a vehicle accident or collision resulting
29 in property damage, personal injury or death;

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

32 (D) the testing equipment used was certified by the Kansas
33 department of health and environment;

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

36 (F) the testing procedures used substantially complied with the
37 procedures set out by the Kansas department of health and environment;

38 (G) the test result determined that the person had an alcohol
39 concentration of .08 or greater in such person's breath; and

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

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

43 (A) A law enforcement officer had reasonable grounds to believe the

1 person was operating a vehicle while under the influence of alcohol or
2 drugs, or both, or had been driving a commercial motor vehicle, as defined
3 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
4 drugs in such person's system;

5 (B) the person was in custody or arrested for an alcohol or drug
6 related offense or was involved in a vehicle accident or collision resulting
7 in property damage, personal injury or death;

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

10 (D) the testing equipment used was reliable;

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

12 (F) the testing procedures used were reliable;

13 (G) the test result determined that the person had an alcohol
14 concentration of .08 or greater in such person's blood; and

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

16 (i) At a hearing pursuant to this section, or upon court review of an
17 order entered at such a hearing, an affidavit of the custodian of records at
18 the Kansas department of health and environment stating that the breath
19 testing device was certified and the operator of such device was certified
20 on the date of the test shall be admissible into evidence in the same
21 manner and with the same force and effect as if the certifying officer or
22 employee of the Kansas department of health and environment had
23 testified in person. A certified operator of a breath testing device shall be
24 competent to testify regarding the proper procedures to be used in
25 conducting the test.

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

35 (k) At the hearing, the licensee has the burden of proof by a
36 preponderance of the evidence to show that the facts set out in the officer's
37 certification are false or insufficient and that the order suspending or
38 suspending and restricting the licensee's driving privileges should be
39 dismissed.

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

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

42 (2) the testimony of the licensee;

43 (3) the testimony of any certifying officer;

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

3 (5) any affidavits submitted from other witnesses;

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

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

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

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

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

40 (p) Such review shall be in accordance with this section and the
41 Kansas judicial review act. To the extent that this section and any other
42 provision of law conflicts, this section shall prevail. The petition for
43 review shall be filed within 14 days after the effective date of the order.

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

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

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

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

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

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

38 (v) The provisions of K.S.A. 60-206, and amendments thereto,
39 regarding the computation of time shall be applicable in determining the
40 time for requesting an administrative hearing as set out in subsection (a)
41 and to the time for filing a petition for review pursuant to subsection (o)
42 and K.S.A. 8-259, and amendments thereto.

43 Sec. 7. K.S.A. 2011 Supp. 8-1567 is hereby amended to read as

1 follows: 8-1567. (a) Driving under the influence is operating or attempting
2 to operate any vehicle within this state while:

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

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

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

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

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

17 ~~(6) The person is a habitual user of any narcotic, hypnotic,~~
18 ~~somnifacient or stimulating drug.~~

19 (b) (1) Driving under the influence is:

20 (A) On a first conviction a class B, nonperson misdemeanor. The
21 person convicted shall be sentenced to not less than 48 consecutive hours
22 nor more than six months' imprisonment, or in the court's discretion 100
23 hours of public service, and fined not less than ~~\$750~~ \$500 nor more than
24 \$1,000. The person convicted shall serve at least 48 consecutive hours'
25 imprisonment or 100 hours of public service either before or as a condition
26 of any grant of probation or suspension, reduction of sentence or parole.
27 The court may place the person convicted under a house arrest program
28 pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve
29 the remainder of the minimum sentence only after such person has served
30 48 consecutive hours' imprisonment;

31 (B) on a second conviction a class A, nonperson misdemeanor. The
32 person convicted shall be sentenced to not less than 90 days nor more than
33 one year's imprisonment and fined not less than ~~\$1,250~~ \$1,000 nor more than
34 ~~\$1,750~~ \$1,500. The person convicted shall serve at least five
35 consecutive days' imprisonment before the person is granted probation,
36 suspension or reduction of sentence or parole or is otherwise released. The
37 five days' imprisonment mandated by this subsection may be served in a
38 work release program only after such person has served 48 consecutive
39 hours' imprisonment, provided such work release program requires such
40 person to return to confinement at the end of each day in the work release
41 program. The person convicted, if placed into a work release program,
42 shall serve a minimum of 120 hours of confinement. Such 120 hours of
43 confinement shall be a period of at least 48 consecutive hours of

1 imprisonment followed by confinement hours at the end of and continuing
2 to the beginning of the offender's work day. The court may place the
3 person convicted under a house arrest program pursuant to K.S.A. 2011
4 Supp. 21-6609, and amendments thereto, to serve the remainder of the
5 minimum sentence only after such person has served 48 consecutive hours'
6 imprisonment. The person convicted, if placed under house arrest, shall be
7 monitored by an electronic monitoring device, which verifies the
8 offender's location. The offender shall serve a minimum of 120 hours of
9 confinement within the boundaries of the offender's residence. Any
10 exceptions to remaining within the boundaries of the offender's residence
11 provided for in the house arrest agreement shall not be counted as part of
12 the 120 hours;

13 (C) on a third conviction a class A, nonperson misdemeanor, except
14 as provided in subsection (b)(1)(D). The person convicted shall be
15 sentenced to not less than 90 days nor more than one year's imprisonment
16 and fined not less than ~~\$1,750~~ \$1,500 nor more than \$2,500. The person
17 convicted shall not be eligible for release on probation, suspension or
18 reduction of sentence or parole until the person has served at least 90 days'
19 imprisonment. The 90 days' imprisonment mandated by this subsection
20 may be served in a work release program only after such person has served
21 48 consecutive hours' imprisonment, provided such work release program
22 requires such person to return to confinement at the end of each day in the
23 work release program. The person convicted, if placed into a work release
24 program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such
25 ~~240~~ 2,160 hours of confinement shall be a period of at least 48 consecutive
26 hours of imprisonment followed by confinement hours at the end of and
27 continuing to the beginning of the offender's work day. The court may
28 place the person convicted under a house arrest program pursuant to
29 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the
30 remainder of the minimum sentence only after such person has served 48
31 consecutive hours' imprisonment. The person convicted, if placed under
32 house arrest, shall be monitored by an electronic monitoring device, which
33 verifies the offender's location. The offender shall serve a minimum of ~~240~~
34 2,160 hours of confinement within the boundaries of the offender's
35 residence. Any exceptions to remaining within the boundaries of the
36 offender's residence provided for in the house arrest agreement shall not be
37 counted as part of the ~~240~~ 2,160 hours;

38 (D) on a third conviction a nonperson felony if the person has a prior
39 conviction which occurred within the preceding 10 years, not including
40 any period of incarceration. The person convicted shall be sentenced to not
41 less than 90 days nor more than one year's imprisonment and fined not less
42 than ~~\$1,750~~ \$1,500 nor more than \$2,500. The person convicted shall not
43 be eligible for release on probation, suspension or reduction of sentence or

1 parole until the person has served at least 90 days' imprisonment. The 90
2 days' imprisonment mandated by this subsection may be served in a work
3 release program only after such person has served 48 consecutive hours'
4 imprisonment, provided such work release program requires such person
5 to return to confinement at the end of each day in the work release
6 program. The person convicted, if placed into a work release program,
7 shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160
8 hours of confinement shall be a period of at least 48 consecutive hours of
9 imprisonment followed by confinement hours at the end of and continuing
10 to the beginning of the offender's work day. The court may place the
11 person convicted under a house arrest program pursuant to K.S.A. 2011
12 Supp. 21-6609, and amendments thereto, to serve the remainder of the
13 minimum sentence only after such person has served 48 consecutive hours'
14 imprisonment. The person convicted, if placed under house arrest, shall be
15 monitored by an electronic monitoring device, which verifies the
16 offender's location. The offender shall serve a minimum of ~~240~~ 2,160
17 hours of confinement within the boundaries of the offender's residence.
18 Any exceptions to remaining within the boundaries of the offender's
19 residence provided for in the house arrest agreement shall not be counted
20 as part of the ~~240~~ 2,160 hours; and

21 (E) on a fourth or subsequent conviction a nonperson felon. The
22 person convicted shall be sentenced to not less than 90 days nor more than
23 one year's imprisonment and fined \$2,500. The person convicted shall not
24 be eligible for release on probation, suspension or reduction of sentence or
25 parole until the person has served at least 90 days' imprisonment. The 90
26 days' imprisonment mandated by this paragraph may be served in a work
27 release program only after such person has served 72 consecutive hours'
28 imprisonment, provided such work release program requires such person
29 to return to confinement at the end of each day in the work release
30 program. The person convicted, if placed into a work release program,
31 shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160
32 hours of confinement shall be a period of at least 72 consecutive hours of
33 imprisonment followed by confinement hours at the end of and continuing
34 to the beginning of the offender's work day. The court may place the
35 person convicted under a house arrest program pursuant to K.S.A. 2011
36 Supp. 21-6609, and amendments thereto, to serve the remainder of the
37 minimum sentence only after such person has served 72 consecutive hours'
38 imprisonment. The person convicted, if placed under house arrest, shall be
39 monitored by an electronic monitoring device, which verifies the
40 offender's location. The offender shall serve a minimum of ~~240~~ 2,160
41 hours of confinement within the boundaries of the offender's residence.
42 Any exceptions to remaining within the boundaries of the offender's
43 residence provided for in the house arrest agreement shall not be counted

1 as part of the ~~240~~ 2,160 hours.

2 (2) The court may order that the term of imprisonment imposed
3 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
4 the custody of the secretary of corrections in a facility designated by the
5 secretary for the provision of substance abuse treatment pursuant to the
6 provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto. The
7 person shall remain imprisoned at the state facility only while participating
8 in the substance abuse treatment program designated by the secretary and
9 shall be returned to the custody of the sheriff for execution of the balance
10 of the term of imprisonment upon completion of or the person's discharge
11 from the substance abuse treatment program. Custody of the person shall
12 be returned to the sheriff for execution of the sentence imposed in the
13 event the secretary of corrections determines: (A) That substance abuse
14 treatment resources or the capacity of the facility designated by the
15 secretary for the incarceration and treatment of the person is not available;
16 (B) the person fails to meaningfully participate in the treatment program of
17 the designated facility; (C) the person is disruptive to the security or
18 operation of the designated facility; or (D) the medical or mental health
19 condition of the person renders the person unsuitable for confinement at
20 the designated facility. The determination by the secretary that the person
21 either is not to be admitted into the designated facility or is to be
22 transferred from the designated facility is not subject to review. The sheriff
23 shall be responsible for all transportation expenses to and from the state
24 correctional facility.

25 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
26 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
27 journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-
28 6711, and amendments thereto, the court shall cause a certified copy to be
29 sent to the officer having the offender in charge. The court shall determine
30 whether the offender, upon release from imprisonment, shall be supervised
31 by community correctional services or court services based upon the risk
32 and needs of the offender. The risk and needs of the offender shall be
33 determined by use of a risk assessment tool specified by the Kansas
34 sentencing commission. The law enforcement agency maintaining custody
35 and control of a defendant for imprisonment shall cause a certified copy of
36 the judgment form or journal entry to be sent to the supervision office
37 designated by the court and upon expiration of the term of imprisonment
38 shall deliver the defendant to a location designated by the supervision
39 office designated by the court. After the term of imprisonment imposed by
40 the court, the person shall be placed on supervision to community
41 correctional services or court services, as determined by the court, for a
42 mandatory one-year period of supervision, which such period of
43 supervision shall not be reduced. During such supervision, the person shall

1 be required to participate in a multidisciplinary model of services for
2 substance use disorders facilitated by a department of social and
3 rehabilitation services designated care coordination agency to include
4 assessment and, if appropriate, referral to a community based substance
5 use disorder treatment including recovery management and mental health
6 counseling as needed. The multidisciplinary team shall include the
7 designated care coordination agency, the supervision officer, the social and
8 rehabilitation services department designated treatment provider and the
9 offender. Any violation of the conditions of such supervision may subject
10 such person to revocation of supervision and imprisonment in jail for the
11 remainder of the period of imprisonment, the remainder of the supervision
12 period, or any combination or portion thereof.

13 (4) In addition, prior to sentencing for any conviction, the court shall
14 order the person to participate in an alcohol and drug evaluation conducted
15 by a provider in accordance with K.S.A. 8-1008, and amendments thereto.
16 The person shall be required to follow any recommendation made by the
17 provider after such evaluation, unless otherwise ordered by the court.

18 (c) Any person convicted of violating this section or an ordinance
19 which prohibits the acts that this section prohibits who had one or more
20 children under the age of 14 years in the vehicle at the time of the offense
21 shall have such person's punishment enhanced by one month of
22 imprisonment. This imprisonment must be served consecutively to any
23 other minimum mandatory penalty imposed for a violation of this section
24 or an ordinance which prohibits the acts that this section prohibits. Any
25 enhanced penalty imposed shall not exceed the maximum sentence
26 allowable by law. During the service of the enhanced penalty, the judge
27 may order the person on house arrest, work release or other conditional
28 release.

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

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

37 (f) In lieu of payment of a fine imposed pursuant to this section, the
38 court may order that the person perform community service specified by
39 the court. The person shall receive a credit on the fine imposed in an
40 amount equal to \$5 for each full hour spent by the person in the specified
41 community service. The community service ordered by the court shall be
42 required to be performed not later than one year after the fine is imposed
43 or by an earlier date specified by the court. If by the required date the

1 person performs an insufficient amount of community service to reduce to
2 zero the portion of the fine required to be paid by the person, the
3 remaining balance of the fine shall become due on that date.

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

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

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

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

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

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

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

32 ~~(h)~~ (g) Prior to filing a complaint alleging a violation of this section, a
33 prosecutor shall request and shall receive from the:

34 (1) Division a record of all prior convictions obtained against such
35 person for any violations of any of the motor vehicle laws of this state; and

36 (2) Kansas bureau of investigation central repository all criminal
37 history record information concerning such person.

38 ~~(i)~~ (h) The court shall electronically report every conviction of a
39 violation of this section and every diversion agreement entered into in lieu
40 of further criminal proceedings on a complaint alleging a violation of this
41 section to the division. Prior to sentencing under the provisions of this
42 section, the court shall request and shall receive from the division a record
43 of all prior convictions obtained against such person for any violations of

1 any of the motor vehicle laws of this state.

2 ~~(j)~~ (i) For the purpose of determining whether a conviction is a first,
3 second, third, fourth or subsequent conviction in sentencing under this
4 section:

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

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

13 (3) only convictions occurring on or after July 1, 2001, shall be taken
14 into account when determining the sentence to be imposed for a first,
15 second, third, fourth or subsequent offender;

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

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

22 ~~(k)~~ (j) Upon conviction of a person of a violation of this section or a
23 violation of a city ordinance or county resolution prohibiting the acts
24 prohibited by this section, the division, upon receiving a report of
25 conviction, shall suspend, restrict or suspend and restrict the person's
26 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

27 ~~(l)~~ (k) (1) Nothing contained in this section shall be construed as
28 preventing any city from enacting ordinances, or any county from adopting
29 resolutions, declaring acts prohibited or made unlawful by this act as
30 unlawful or prohibited in such city or county and prescribing penalties for
31 violation thereof.

32 (2) The minimum penalty prescribed by any such ordinance or
33 resolution shall not be less than the minimum penalty prescribed by this
34 section for the same violation, and the maximum penalty in any such
35 ordinance or resolution shall not exceed the maximum penalty prescribed
36 for the same violation.

37 (3) On and after July 1, 2007, and retroactive for ordinance violations
38 committed on or after July 1, 2006, an ordinance may grant to a municipal
39 court jurisdiction over a violation of such ordinance which is concurrent
40 with the jurisdiction of the district court over a violation of this section,
41 notwithstanding that the elements of such ordinance violation are the same
42 as the elements of a violation of this section that would constitute, and be
43 punished as, a felony.

1 (4) Any such ordinance or resolution shall authorize the court to order
2 that the convicted person pay restitution to any victim who suffered loss
3 due to the violation for which the person was convicted.

4 ~~(5) Any such ordinance or resolution may require or authorize the~~
5 ~~court to order that the convicted person's motor vehicle or vehicles be~~
6 ~~impounded or immobilized in accordance with subsection (g).~~

7 ~~(m)~~ (l) (1) Upon the filing of a complaint, citation or notice to appear
8 alleging a person has violated a city ordinance prohibiting the acts
9 prohibited by this section, and prior to conviction thereof, a city attorney
10 shall request and shall receive from the:

11 (A) Division a record of all prior convictions obtained against such
12 person for any violations of any of the motor vehicle laws of this state; and

13 (B) Kansas bureau of investigation central repository all criminal
14 history record information concerning such person.

15 (2) If the elements of such ordinance violation are the same as the
16 elements of a violation of this section that would constitute, and be
17 punished as, a felony, the city attorney shall refer the violation to the
18 appropriate county or district attorney for prosecution.

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

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

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

39 ~~(q)~~ (o) As used in this section: (1) "Alcohol concentration" means the
40 number of grams of alcohol per 100 milliliters of blood or per 210 liters of
41 breath;

42 (2) "imprisonment" shall include any restrained environment in which
43 the court and law enforcement agency intend to retain custody and control

1 of a defendant and such environment has been approved by the board of
2 county commissioners or the governing body of a city; and

3 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
4 2011 Supp. 21-5712, and amendments thereto.

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

14 ~~(2) On and after July 1, 2011, the amount of \$250 from each fine~~
15 ~~imposed pursuant to this section shall be remitted by the clerk of the~~
16 ~~district court to the state treasurer in accordance with the provisions of~~
17 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of such~~
18 ~~remittance, the state treasurer shall credit the entire amount to the~~
19 ~~community corrections supervision fund established by K.S.A. 2011 Supp.~~
20 ~~75-52,113, and amendments thereto.~~

21 Sec. 8. K.S.A. 8-241 and K.S.A. 2011 Supp. 8-2,144, 8-1008, 8-1014,
22 8-1015, 8-1020, 8-1020b and 8-1567 are hereby repealed.

23 Sec. 9. This act shall take effect and be in force from and after its
24 publication in the statute book.