

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2387

By Committee on Judiciary

2-12

1 AN ACT concerning aircraft; relating to operating an aircraft under the  
2 influence; prescribing criminal and administrative penalties; providing  
3 for testing of blood, breath, urine or other bodily substances and  
4 preliminary screening tests of breath or oral fluid; **amending K.S.A.**  
5 **65-1,107 and 75-712h and K.S.A. 2020 Supp. 22-3437 and 60-427**  
6 **and repealing the existing sections; also repealing K.S.A. 3-1001, 3-**  
7 **1002, 3-1003, 3-1004 and 3-1005.**

2021

8  
9 *Be it enacted by the Legislature of the State of Kansas:*

10 **New Section 1.** (a) Operating an aircraft under the influence is  
11 operating or attempting to operate any aircraft within this state while:

12 (1) The alcohol concentration in the person's blood or breath as  
13 shown by any competent evidence, including other competent evidence, is  
14 0.04 or more;

15 (2) the alcohol concentration in the person's blood or breath, as  
16 measured within four hours of the time of operating or attempting to  
17 operate an aircraft, is 0.04 or more;

18 (3) under the influence of alcohol to a degree that renders the person  
19 incapable of safely operating an aircraft;

20 (4) under the influence of any drug or combination of drugs to a  
21 degree that renders the person incapable of safely operating an aircraft; or

22 (5) under the influence of a combination of alcohol and any drug or  
23 drugs to a degree that renders the person incapable of safely operating an  
24 aircraft.

25 (b) (1) Operating an aircraft under the influence is a class A  
26 nonperson misdemeanor, except as provided in subsection (b)(2).

27 (A) On a first conviction, the person convicted shall be sentenced to  
28 not less than 48 consecutive hours nor more than six months'  
29 imprisonment, or in the court's discretion 100 hours of public service, and  
30 fined not less than \$750.

31 (B) On second or subsequent conviction, the person convicted shall  
32 be sentenced to not less than 90 days nor more than one year's  
33 imprisonment and fined not less than \$1,250. The following conditions  
34 shall apply to such sentence:

35 (i) As a condition of any probation granted under this subsection, the  
36 person shall serve at least 120 hours of confinement. The hours of

1 confinement shall include at least 48 hours imprisonment and otherwise  
 2 may be served by a combination of: Imprisonment; a work release  
 3 program, provided such work release program requires such person to  
 4 return to the confinement at the end of each day in the work release  
 5 program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-  
 6 6609, and amendments thereto; and

of

2021

7 (ii) (a) if the person is placed into a work release program or placed  
 8 under a house arrest program for the minimum 120 hours confinement  
 9 mandated by this subsection, the person shall receive hour-for-hour credit  
 10 for time served in such program until the minimum sentence is met. If the  
 11 person is placed into a work release program or placed under a house  
 12 arrest program for more than the minimum 120 hours confinement  
 13 mandated by this subsection, the person shall receive hour-for-hour credit  
 14 for time served in such program and thereafter the person shall receive  
 15 day-for-day credit for time served in such program unless otherwise  
 16 ordered by the court; and

any portion of

of

of

until the minimum 120 hours of confinement is completed,

,

17 (b) when in a work release program, the person shall only be given  
 18 credit for the time served in confinement at the end of and continuing to  
 19 the beginning of the person's work day. When under a house arrest  
 20 program, the person shall be monitored by an electronic monitoring device  
 21 that verifies the person's location and shall only be given credit for the  
 22 time served within the boundaries of the person's residence.

23 (2) Operating an aircraft under the influence is a severity level 6,  
 24 nonperson felony if the offense occurred while the person convicted ~~did~~  
 25 ~~not hold a valid pilot license issued by the federal aviation administration.~~  
 26 **is prohibited from operating an aircraft:**

27 ~~(A) The person convicted shall be sentenced to not less than 90 days~~  
 28 ~~nor more than one year's imprisonment and fined \$2,500. The person~~  
 29 ~~convicted shall not be eligible for release on probation, suspension or~~  
 30 ~~reduction of sentence or parole until the person has served at least 90 days'~~  
 31 ~~imprisonment. **By a court order pursuant to this section; or**~~

32 (B) ~~The 90 days' imprisonment mandated by this subsection may be~~  
 33 ~~served in a work release program only after such person has served 72~~  
 34 ~~consecutive hours' imprisonment, provided such work release program~~  
 35 ~~requires such person to return to confinement at the end of each day in the~~  
 36 ~~work release program. The person convicted, if placed into a work release~~  
 37 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~  
 38 ~~2,160 hours of confinement shall be a period of at least 72 consecutive~~  
 39 ~~hours of imprisonment followed by confinement hours at the end of and~~  
 40 ~~continuing to the beginning of the offender's work day because such~~  
 41 ~~person's pilot license is revoked or suspended by an order of the~~  
 42 ~~federal aviation administration for a prior alcohol or drug-related~~  
 43 ~~conviction.~~

1 ~~(C) The court may place the person convicted under a house arrest~~  
2 ~~program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto,~~  
3 ~~to serve the 90 days' imprisonment mandated by this subsection only after~~  
4 ~~such person has served 72 consecutive hours' imprisonment. The person~~  
5 ~~convicted, if placed under house arrest, shall be monitored by an electronic~~  
6 ~~monitoring device that verifies the offender's location. The offender shall~~  
7 ~~serve a minimum of 2,160 hours of confinement within the boundaries of~~  
8 ~~the offender's residence. Any exceptions to remaining within the~~  
9 ~~boundaries of the offender's residence provided for in the house arrest~~  
10 ~~agreement shall not be counted as part of the 2,160 hours.~~

11 (3) As part of the judgment of conviction, the court shall order the  
12 person convicted not to operate an aircraft for any purpose for a period of  
13 six months from the date of final discharge from the county jail, or the date  
14 of payment or satisfaction of such fine, whichever is later or one year from  
15 such date on a second conviction. If the court suspends the sentence and  
16 places the person on probation as provided by law, the court shall order as  
17 one of the conditions of probation that such person not operate an aircraft  
18 for any purpose for a period of 30 days from the date of the order on a first  
19 conviction or 60 days from the date of the order on a second conviction.

20 (4) For the purpose of determining whether an occurrence is a first,  
21 second or subsequent occurrence:

22 (A) "Conviction" includes entering into a diversion agreement in lieu  
23 of further criminal proceedings on a complaint alleging commission of a  
24 crime described in subsection (a); and

25 (B) it is irrelevant whether an offense occurred before or after  
26 conviction or diversion for a previous offense.

27 (c) If a person is charged with a violation of subsection (a)(4) or (a)  
28 (5), the fact that the person is or has been entitled to use the drug under the  
29 laws of this state shall not constitute a defense against the charge.

30 **New Sec. 2.** (a) Any person who operates or attempts to operate an  
31 aircraft within this state may be requested, subject to the provisions of  
32 sections 1 through 4, and amendments thereto, to submit to one or more  
33 tests of the person's blood, breath, urine or other bodily substance to  
34 determine the presence of alcohol or drugs. The testing shall include all  
35 quantitative and qualitative tests for alcohol and drugs. The test shall be  
36 administered at the direction of a law enforcement officer, and the law  
37 enforcement officer shall determine which type of test is to be conducted  
38 or requested.

39 (b) (1) One or more tests may be required of a person when, at the  
40 time of the request, a law enforcement officer has probable cause to  
41 believe the person has committed a violation of section (1)(a), and  
42 amendments thereto, while having alcohol or drugs in such person's  
43 system, and one of the following conditions exists:

- 1 (A) The person has been arrested or otherwise taken into custody for  
2 any offense violation of any state statute, county resolution or city  
3 ordinance; or
- 4 (B) the person has been involved in an aircraft accident or crash  
5 resulting in property damage, personal injury or death.
- 6 (2) The law enforcement officer directing administration of the test or  
7 tests may act on personal knowledge or on the basis of the collective  
8 information available to law enforcement officers involved in the  
9 investigation or arrest.
- 10 (c) Nothing in this section shall be construed to limit the right of a  
11 law enforcement officer to conduct any search of a person's breath or other  
12 bodily substance, other than blood or urine, incident to a lawful arrest  
13 pursuant to the constitution of the United States, nor limit the admissibility  
14 at any trial or hearing of alcohol or drug concentration testing results  
15 obtained pursuant to such a search.
- 16 (d) Nothing in this section shall be construed to limit the right of a  
17 law enforcement officer to conduct or obtain a blood or urine test of a  
18 person pursuant to a warrant under K.S.A. 22-2502, and amendments  
19 thereto, the constitution of the United States or a judicially recognized  
20 exception to the search warrant requirement, nor limit the admissibility at  
21 any trial or hearing of alcohol or drug concentration testing results  
22 obtained pursuant to such a search.
- 23 (e) A law enforcement officer may direct a medical professional, as  
24 described in subsection (f), to draw one or more samples of blood from a  
25 person to determine the blood's alcohol or drug concentration if:
- 26 (1) The person has given consent and meets the requirements of  
27 subsection (b);
- 28 (2) law enforcement has obtained a search warrant authorizing the  
29 collection of blood from the person; or
- 30 (3) the person refuses or is unable to consent to, submit to and  
31 complete a test, and another judicially recognized exception to the warrant  
32 requirement applies.
- 33 (f) If a law enforcement officer is authorized to collect one or more  
34 tests of blood under this section, the withdrawal of blood at the direction  
35 of the officer may be performed only by:
- 36 (1) A person licensed to practice medicine and surgery, licensed as a  
37 physician assistant or a person acting under the direction of any such  
38 licensed person;
- 39 (2) a registered nurse or a licensed practical nurse;
- 40 (3) any qualified medical technician, including, but not limited to, an  
41 advanced emergency medical technician or a paramedic, as those terms are  
42 defined in K.S.A. 65-6112, and amendments thereto, authorized by  
43 medical protocol; or

- 1 (4) a phlebotomist.
- 2 (g) When so directed by a law enforcement officer through a written  
3 statement, the medical professional shall withdraw the sample of blood as  
4 soon as practical and shall deliver the sample to the law enforcement  
5 officer or another law enforcement officer as directed by the requesting  
6 law enforcement officer as soon as practical, provided the collection of the  
7 sample does not jeopardize the person's life, cause serious injury to the  
8 person or seriously impede the person's medical assessment, care or  
9 treatment. The medical professional authorized in this section to withdraw  
10 the blood and the medical care facility where the blood is drawn may act  
11 on good faith that the requirements have been met for directing the  
12 withdrawal of blood once presented with the written statement provided  
13 for under this subsection. The medical professional shall not require the  
14 person that is the subject of the test or tests to provide any additional  
15 consent or sign any waiver form. In such a case, the person authorized to  
16 withdraw blood and the medical care facility shall not be liable in any  
17 action alleging lack of consent or lack of informed consent. Such sample  
18 or samples shall be an independent sample and not be a portion of a  
19 sample collected for medical purposes. The person collecting the blood  
20 sample shall complete the collection portion of a document if provided by  
21 law enforcement.
- 22 (h) If a person must be restrained to collect the sample pursuant to  
23 this section, law enforcement shall be responsible for applying any such  
24 restraint utilizing acceptable law enforcement restraint practices. The  
25 restraint shall be effective in controlling the person in a manner not to  
26 jeopardize the person's safety or that of the medical professional or  
27 attending medical or healthcare staff during the drawing of the sample and  
28 without interfering with medical treatment.
- 29 (i) (1) If a law enforcement officer is authorized to collect one or  
30 more tests of urine, the collection of the urine sample shall be supervised  
31 by:
- 32 (A) A person licensed to practice medicine and surgery, licensed as a  
33 physician assistant or a person acting under the direction of any such  
34 licensed person;
- 35 (B) a registered nurse or a licensed practical nurse; or
- 36 (C) a law enforcement officer of the same sex as the person being  
37 tested.
- 38 (2) The collection of the urine sample shall be conducted out of the  
39 view of any person other than the person supervising the collection of the  
40 sample and the person being tested, unless the right to privacy is waived  
41 by the person being tested. When possible, the supervising person shall be  
42 a law enforcement officer.
- 43 (3) The results of qualitative testing for drug presence shall be

1 admissible in evidence and questions of accuracy or reliability shall go to  
2 the weight rather than the admissibility of the evidence.

3 (4) If the person is medically unable to provide a urine sample in such  
4 manner due to the injuries or treatment of the injuries, the same  
5 authorization and procedure as used for the collection of blood in  
6 subsections (g) and (i) shall apply to the collection of a urine sample.

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

10 (k) The person's refusal shall be admissible in evidence against the  
11 person at any trial on a charge arising out of the alleged operation or  
12 attempted operation of an aircraft while under the influence of alcohol or  
13 drugs, or a combination of alcohol and any drug or drugs.

14 (l) No test shall be suppressed because of irregularities not affecting  
15 the substantial rights of the accused in the consent or notice authorized  
16 pursuant to this section.

17 (m) Nothing in this section shall be construed to limit the  
18 admissibility at any trial of alcohol or drug concentration testing results  
19 obtained pursuant to a search warrant or other judicially recognized  
20 exception to the warrant requirement.

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

24 (o) The person tested shall have a reasonable opportunity to have an  
25 additional chemical test by a physician of such person's own choosing. If  
26 the law enforcement officer refuses to permit such additional chemical test  
27 to be taken, the original test shall not be competent evidence.

28 **(p) (1) The testing and method of testing consented to under this**  
29 **section shall not be considered to have been conducted for any medical**  
30 **care or treatment purpose. The results of such test, the person's name**  
31 **whose bodily substance is drawn or tested, the location of the test or**  
32 **procedure, the names of all health care providers and personnel who**  
33 **participated in the procedure or test and the date and time of the test**  
34 **or procedure are required by law to be provided to the requesting law**  
35 **enforcement officer or the law enforcement officer's designee after the**  
36 **requesting law enforcement officer has complied with this section.**

37 **(2) All costs of conducting any procedure or test requested by a**  
38 **law enforcement agency and authorized by this section, including the**  
39 **costs of the evidence collection kits, shall be charged to and paid by**  
40 **the county where the alleged offense was committed. Such county may**  
41 **be reimbursed such costs upon the costs being paid by the defendant**  
42 **as court costs assessed pursuant to K.S.A. 28-172a, and amendments**  
43 **thereto.**

1       **(3) The cost assessed under this section shall be the then-current**  
2 **medicaid rate for any such procedure or test, or both.**

3       **(4) Notwithstanding any other law to the contrary, the collection**  
4 **and delivery of the sample and required information to the law**  
5 **enforcement officer pursuant to this section shall not be subject to the**  
6 **physician-patient privilege or any other law that prohibits the**  
7 **transfer, release or disclosure of the sample or of the required**  
8 **information.**

9       **(q) No medical care facility, clinical laboratory, medical clinic,**  
10 **other medical institution, person licensed to practice medicine or**  
11 **surgery, person acting under the direction of any such licensed person,**  
12 **licensed physician assistant, registered nurse, licensed practical nurse,**  
13 **medical technician, paramedic, advanced emergency medical**  
14 **technician, phlebotomist, healthcare provider or person who**  
15 **participates in good faith in the obtaining, withdrawal, collection or**  
16 **testing of blood, breath, urine or other bodily substance at the**  
17 **direction of a law enforcement officer pursuant to this section, or as**  
18 **otherwise authorized by law, shall incur any civil, administrative or**  
19 **criminal liability as a result of such participation, regardless of**  
20 **whether or not the patient resisted or objected to the administration of**  
21 **the procedure or test.**

22       **(r) Sections 1 through 4, and amendments thereto, are remedial law**  
23 **and shall be liberally construed to promote public health, safety and**  
24 **welfare.**

25       **New Sec. 3. (a) A law enforcement officer may request a person who**  
26 **is operating or attempting to operate an aircraft within this state to submit**  
27 **to a preliminary screening test of the person's breath or oral fluid, or both,**  
28 **if the officer has reasonable suspicion to believe the person has been**  
29 **operating or attempting to operate an aircraft while under the influence of**  
30 **alcohol or drugs, or a combination of alcohol and any drug or drugs.**

31       **(b) If the person submits to the test, the results shall be used for the**  
32 **purpose of assisting law enforcement officers in determining whether an**  
33 **arrest should be made and whether to request the tests authorized by**  
34 **section 2, and amendments thereto. A law enforcement officer may arrest a**  
35 **person based in whole or in part upon the results of a preliminary**  
36 **screening test. Such results shall not be admissible in any civil or criminal**  
37 **action concerning the operation of or attempted operation of an aircraft**  
38 **except to aid the court in determining a challenge to the validity of the**  
39 **arrest or the validity of the request to submit to a test pursuant to section 2,**  
40 **and amendments thereto. Following the preliminary screening test,**  
41 **additional tests may be requested pursuant to section 2, and amendments**  
42 **thereto.**

43       **(c) Any preliminary screening of a person's breath shall be conducted**

1 with a device approved pursuant to K.S.A. 65-1,107, and amendments  
2 thereto. Any preliminary screening of a person's oral fluid shall be  
3 conducted in accordance with rules and regulations, if any, approved  
4 pursuant to K.S.A. 75-712h, and amendments thereto.

5 **New** Sec. 4. As used in sections 1 through 4, and amendments  
6 thereto:

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

9 (b) "Drug" includes toxic vapors as such term is defined in K.S.A.  
10 ~~2020~~ Supp. 21-5712, and amendments thereto.

2021

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

15 (d) "Law enforcement officer" means the same as in K.S.A. ~~2020~~  
16 Supp. 21-5111, and amendments thereto, and includes any person  
17 authorized by law to make an arrest on a military reservation for an act  
18 which would constitute a violation of section 1, and amendments thereto,  
19 if committed off a military reservation in this state.

2021

20 (e) "Other competent evidence" includes:

21 (1) Alcohol concentration tests obtained from samples taken four  
22 hours or more after the operation or attempted operation of an aircraft; and

23 (2) readings obtained from a partial alcohol concentration test on a  
24 breath testing machine.

25 (f) "Test refusal" refers to a person's failure to submit to or complete  
26 any test of the person's blood, breath, urine or other bodily substance, other  
27 than a preliminary screening test, in accordance with section 2, and  
28 amendments thereto, and includes refusal of any such test on a military  
29 reservation.

2021

30 **Sec. 5. K.S.A. ~~2020~~ Supp. 22-3437 is hereby amended to read as**  
31 **follows: 22-3437. (a) (1) In any hearing or trial, a report concerning**  
32 **forensic examinations and certificate of forensic examination executed**  
33 **pursuant to this section shall be admissible in evidence if the report**  
34 **and certificate are prepared and attested by a criminalist or other**  
35 **employee of the Kansas bureau of investigation, Kansas highway**  
36 **patrol, Johnson County sheriff's laboratory, Sedgwick County**  
37 **regional forensic science center, or any laboratory of the federal**  
38 **bureau of investigation, federal postal inspection service, federal**  
39 **bureau of alcohol, tobacco and firearms or federal drug enforcement**  
40 **administration. If the examination involves a breath test for alcohol**  
41 **content, the report must also be admissible pursuant to K.S.A. 8-1001,**  
42 **and amendments thereto, or section 2, and amendments thereto, and be**  
43 **conducted by a law enforcement officer or other person who is**



1 certified by the department of health and environment as a breath test  
2 operator as provided by K.S.A. 65-1,107 et seq., and amendments  
3 thereto.

4 (2) Upon the request of any law enforcement agency, such person  
5 as provided in paragraph (1) performing the analysis shall prepare a  
6 certificate. Such person shall sign the certificate under oath and shall  
7 include in the certificate an attestation as to the result of the analysis.  
8 The presentation of this certificate to a court by any party to a  
9 proceeding shall be evidence that all of the requirements and  
10 provisions of this section have been complied with. This certificate  
11 shall be supported by a written declaration pursuant to K.S.A. 53-601,  
12 and amendments thereto, or shall be sworn to before a notary public  
13 or other person empowered by law to take oaths and shall contain a  
14 statement establishing the following: The type of analysis performed;  
15 the result achieved; any conclusions reached based upon that result;  
16 that the subscriber is the person who performed the analysis and  
17 made the conclusions; the subscriber's training or experience to  
18 perform the analysis; the nature and condition of the equipment used;  
19 and the certification and foundation requirements for admissibility of  
20 breath test results, when appropriate. When properly executed, the  
21 certificate shall, subject to the provisions of paragraph (3) and  
22 notwithstanding any other provision of law, be admissible evidence of  
23 the results of the forensic examination of the samples or evidence  
24 submitted for analysis and the court shall take judicial notice of the  
25 signature of the person performing the analysis and of the fact that  
26 such person is that person who performed the analysis.

27 (3) Whenever a party intends to proffer in a criminal or civil  
28 proceeding, a certificate executed pursuant to this section, notice of an  
29 intent to proffer that certificate and the reports relating to the analysis  
30 in question, including a copy of the certificate, shall be conveyed to the  
31 opposing party or parties at least 21 days before the beginning of a  
32 hearing where the proffer will be used. An opposing party who intends  
33 to object to the admission into evidence of a certificate shall give  
34 notice of objection and the grounds for the objection within 14 days  
35 upon receiving the adversary's notice of intent to proffer the  
36 certificate. Whenever a notice of objection is filed, admissibility of the  
37 certificate shall be determined not later than two days before the  
38 beginning of the trial. A proffered certificate shall be admitted in  
39 evidence unless it appears from the notice of objection and grounds  
40 for that objection that the conclusions of the certificate, including the  
41 composition, quality or quantity of the substance submitted to the  
42 laboratory for analysis or the alcohol content of a blood or breath  
43 sample will be contested at trial. A failure to comply with the time

1 limitations regarding the notice of objection required by this section  
2 shall constitute a waiver of any objections to the admission of the  
3 certificate. The time limitations set forth in this section may be  
4 extended upon a showing of good cause.

5 (b) (1) In any hearing or trial where there is a report concerning  
6 forensic examinations from a person as provided in ~~paragraph (1) of~~  
7 subsection (a)(1), district and municipal courts may, upon request of  
8 either party, use two-way interactive video technology, including  
9 internet-based videoconferencing, to take testimony from that person  
10 if the testimony is in relation to the report.

11 (2) The use of any two-way interactive video technology must be  
12 in accordance with any requirements and guidelines established by the  
13 office of judicial administration, and all proceedings at which such  
14 technology is used in a district court must be recorded verbatim by the  
15 court.

2021

16 Sec. 6. K.S.A. 2020 Supp. 60-427 is hereby amended to read as  
17 follows: 60-427. (a) As used in this section:

18 (1) "Patient" means a person who, for the sole purpose of  
19 securing preventive, palliative, or curative treatment, or a diagnosis  
20 preliminary to such treatment, of such person's physical or mental  
21 condition, consults a physician, or submits to an examination by a  
22 physician.

23 (2) "Physician" means a person licensed or reasonably believed  
24 by the patient to be licensed to practice medicine or one of the healing  
25 arts as defined in K.S.A. 65-2802, and amendments thereto, in the  
26 state or jurisdiction in which the consultation or examination takes  
27 place.

28 (3) "Holder of the privilege" means the patient while alive and  
29 not under guardianship or conservatorship or the guardian or  
30 conservator of the patient, or the personal representative of a deceased  
31 patient.

32 (4) "Confidential communication between physician and patient"  
33 means such information transmitted between physician and patient,  
34 including information obtained by an examination of the patient, as is  
35 transmitted in confidence and by a means which, so far as the patient  
36 is aware, discloses the information to no third persons other than  
37 those reasonably necessary for the transmission of the information or  
38 the accomplishment of the purpose for which it is transmitted.

39 (b) Except as provided by subsections (c), (d), (e) and (f), a  
40 person, whether or not a party, has a privilege in a civil action or in a  
41 prosecution for a misdemeanor, other than a prosecution for a  
42 violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or a  
43 city ordinance or county resolution which prohibits the acts prohibited

1 by those statutes, to refuse to disclose, and to prevent a witness from  
2 disclosing, a communication, if the person claims the privilege and the  
3 judge finds that: (1) The communication was a confidential  
4 communication between patient and physician; (2) the patient or the  
5 physician reasonably believed the communication necessary or helpful  
6 to enable the physician to make a diagnosis of the condition of the  
7 patient or to prescribe or render treatment therefor; (3) the witness (i)  
8 is the holder of the privilege, (ii) at the time of the communication was  
9 the physician or a person to whom disclosure was made because  
10 reasonably necessary for the transmission of the communication or for  
11 the accomplishment of the purpose for which it was transmitted or  
12 (iii) is any other person who obtained knowledge or possession of the  
13 communication as the result of an intentional breach of the physician's  
14 duty of nondisclosure by the physician or the physician's agent or  
15 servant; and (4) the claimant is the holder of the privilege or a person  
16 authorized to claim the privilege for the holder of the privilege.

17 (c) There is no privilege under this section as to any relevant  
18 communication between the patient and the patient's physician: (1)  
19 Upon an issue of the patient's condition in an action to commit the  
20 patient or otherwise place the patient under the control of another or  
21 others because of alleged incapacity or mental illness, in an action in  
22 which the patient seeks to establish the patient's competence or in an  
23 action to recover damages on account of conduct of the patient which  
24 constitutes a criminal offense other than a misdemeanor; (2) upon an  
25 issue as to the validity of a document as a will of the patient; or (3)  
26 upon an issue between parties claiming by testate or intestate  
27 succession from a deceased patient.

28 (d) There is no privilege under this section in an action in which  
29 the condition of the patient is an element or factor of the claim or  
30 defense of the patient or of any party claiming through or under the  
31 patient or claiming as a beneficiary of the patient through a contract  
32 to which the patient is or was a party.

33 (e) There is no privilege under this section: (1) As to blood drawn  
34 at the request of a law enforcement officer pursuant to K.S.A. 8-1001,  
35 and amendments thereto, *or section 2, and amendments thereto*; and (2)  
36 as to information which the physician or the patient is required to  
37 report to a public official or as to information required to be recorded  
38 in a public office, unless the statute requiring the report or record  
39 specifically provides that the information shall not be disclosed.

40 (f) No person has a privilege under this section if the judge finds  
41 that sufficient evidence, aside from the communication has been  
42 introduced to warrant a finding that the services of the physician were  
43 sought or obtained to enable or aid anyone to commit or to plan to

1 **commit a crime or a tort, or to escape detection or apprehension after**  
2 **the commission of a crime or a tort.**

3 **(g) A privilege under this section as to a communication is**  
4 **terminated if the judge finds that any person while a holder of the**  
5 **privilege has caused the physician or any agent or servant of the**  
6 **physician to testify in any action to any matter of which the physician**  
7 **or the physician's agent or servant gained knowledge through the**  
8 **communication.**

9 **(h) Providing false information to a physician for the purpose of**  
10 **obtaining a prescription-only drug shall not be a confidential**  
11 **communication between physician and patient and no person shall**  
12 **have a privilege in any prosecution for unlawfully obtaining or**  
13 **distributing a prescription-only drug under K.S.A. 2020<sup>2021</sup> Supp. 21-**  
14 **5708, and amendments thereto.**

2021

15 **Sec. 7. K.S.A. 65-1,107 is hereby amended to read as follows: 65-**  
16 **1,107. The secretary of health and environment may adopt rules and**  
17 **regulations establishing:**

18 **(a) The procedures, testing protocols and qualifications of**  
19 **authorized personnel, instruments and methods used in laboratories**  
20 **performing tests for the presence of controlled substances included in**  
21 **schedule I or II of the uniform controlled substances act or**  
22 **metabolites thereof;**

23 **(b) the procedures, testing protocols, qualifications of personnel**  
24 **and standards of performance in the testing of human breath for law**  
25 **enforcement purposes, including procedures for the periodic**  
26 **inspection of apparatus, equipment and devices, other than**  
27 **preliminary screening devices, approved by the secretary of health**  
28 **and environment for the testing of human breath for law enforcement**  
29 **purposes;**

30 **(c) the requirements for the training, certification and periodic**  
31 **testing of persons who operate apparatus, equipment or devices, other**  
32 **than preliminary screening devices, for the testing of human breath**  
33 **for law enforcement purposes;**

34 **(d) criteria for preliminary screening devices for testing of breath**  
35 **for law enforcement purposes, based on health and performance**  
36 **considerations; and**

37 **(e) a list of preliminary screening devices which are approved for**  
38 **testing of breath for law enforcement purposes and which law**  
39 **enforcement agencies may purchase and train officers to use as aids in**  
40 **determining:**

41 **(1) Probable cause to arrest and grounds for requiring testing**  
42 **pursuant to K.S.A. 8-1001, and amendments thereto, or section 3, and**  
43 **amendments thereto; and**

1       (2) violations of K.S.A. 41-727, and amendments thereto.  
2       Sec. 8. K.S.A. 75-712h is hereby amended to read as follows: 75-  
3 712h. The director of the Kansas bureau of investigation is authorized  
4 to adopt rules and regulations establishing:  
5       (a) Criteria for preliminary screening devices for testing of oral  
6 fluid for law enforcement purposes, based on health and performance  
7 considerations; and  
8       (b) a list of preliminary screening devices that are approved for  
9 testing of oral fluid for law enforcement purposes and that law  
10 enforcement agencies may purchase and train officers to use as aids in  
11 determining probable cause to arrest and grounds for requiring  
12 testing pursuant to K.S.A. 8-1001, and amendments thereto, *or section*  
13 *3, and amendments thereto.*  
14       Sec. ~~5~~ 9. K.S.A. 3-1001, 3-1002, 3-1003, 3-1004 ~~and~~, 3-1005, 65-  
15 1,107 and 75-712h and K.S.A. 2020 ~~Supp. 22-3437 and 60-427~~ are  
16 hereby repealed.  
17       Sec. ~~6~~ 10. This act shall take effect and be in force from and after its  
18 publication in the statute book.

2021