

SENATE BILL No. 297

By Committee on Judiciary

1-18

1 AN ACT concerning driving; relating to tests for alcohol or drugs; implied
2 consent; amending K.S.A. 2017 Supp. 8-1001 and repealing the
3 existing section.
4

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

6 Section 1. K.S.A. 2017 Supp. 8-1001 is hereby amended to read as
7 follows: 8-1001. (a) Any person who operates or attempts to operate a
8 vehicle within this state is deemed to have given consent, subject to the
9 provisions of this article, to submit to one or more tests of the person's
10 blood, breath, urine or other bodily substance to determine the presence of
11 alcohol or drugs. The testing deemed consented to herein shall include all
12 quantitative and qualitative tests for alcohol and drugs. A person who is
13 dead or unconscious shall be deemed not to have withdrawn the person's
14 consent to such test or tests, which shall be administered in the manner
15 provided by this section.

16 (b) A law enforcement officer shall request a person to submit to a
17 test or tests deemed consented to under subsection (a): (1) If, at the time of
18 the request, the officer has reasonable grounds to believe the person was
19 operating or attempting to operate a vehicle while under the influence of
20 alcohol or drugs, or both, or to believe that the person was driving a
21 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
22 thereto, while having alcohol or other drugs in such person's system, or
23 was under the age of 21 years and was operating or attempting to operate a
24 vehicle while having alcohol or other drugs in such person's system; and
25 one of the following conditions exists: (A) The person has been arrested or
26 otherwise taken into custody for any violation of any state statute, county
27 resolution or city ordinance; or (B) the person has been involved in a
28 vehicle accident or collision resulting in property damage or personal
29 injury other than serious injury; or (2) if the person was operating or
30 attempting to operate a vehicle and such vehicle has been involved in an
31 accident or collision resulting in serious injury or death of any person and
32 the operator could be cited for any traffic offense, as defined in K.S.A. 8-
33 2117, and amendments thereto. The traffic offense violation shall
34 constitute probable cause for purposes of paragraph (2). The test or tests
35 under paragraph (2) shall not be required if a law enforcement officer has
36 reasonable grounds to believe the actions of the operator did not contribute

1 to the accident or collision. The law enforcement officer directing
2 administration of the test or tests may act on personal knowledge or on the
3 basis of the collective information available to law enforcement officers
4 involved in the accident investigation or arrest.

5 (c) If a law enforcement officer requests a person to submit to a test
6 of blood under this section, the withdrawal of blood at the direction of the
7 officer may be performed only by: (1) A person licensed to practice
8 medicine and surgery, licensed as a physician assistant, or a person acting
9 under the direction of any such licensed person; (2) a registered nurse or a
10 licensed practical nurse; (3) any qualified medical technician, including,
11 but not limited to, an emergency medical technician-intermediate, mobile
12 intensive care technician, an emergency medical technician-intermediate
13 defibrillator, an advanced emergency medical technician or a paramedic,
14 as those terms are defined in K.S.A. 65-6112, and amendments thereto,
15 authorized by medical protocol; or (4) a phlebotomist.

16 (d) A law enforcement officer may direct a medical professional
17 described in this section to draw a sample of blood from a person:

18 (1) If the person has given consent and meets the requirements of
19 subsection (b);

20 (2) if medically unable to consent, if the person meets the
21 requirements of ~~paragraph (2)~~ of subsection (b)(2); or

22 (3) if the person refuses to submit to and complete a test, if the person
23 meets the requirements of ~~paragraph (2)~~ of subsection (b)(2).

24 (e) When so directed by a law enforcement officer through a written
25 statement, the medical professional shall withdraw the sample as soon as
26 practical and shall deliver the sample to the law enforcement officer or
27 another law enforcement officer as directed by the requesting law
28 enforcement officer as soon as practical, provided the collection of the
29 sample does not jeopardize the person's life, cause serious injury to the
30 person or seriously impede the person's medical assessment, care or
31 treatment. The medical professional authorized herein to withdraw the
32 blood and the medical care facility where the blood is drawn may act on
33 good faith that the requirements have been met for directing the
34 withdrawing of blood once presented with the written statement provided
35 for under this subsection. The medical professional shall not require the
36 person to sign any additional consent or waiver form. In such a case, the
37 person authorized to withdraw blood and the medical care facility shall not
38 be liable in any action alleging lack of consent or lack of informed
39 consent.

40 (f) Such sample or samples shall be an independent sample and not
41 be a portion of a sample collected for medical purposes. The person
42 collecting the blood sample shall complete the collection portion of a
43 document provided by law enforcement.

1 (g) If a person must be restrained to collect the sample pursuant to
2 this section, law enforcement shall be responsible for applying any such
3 restraint utilizing acceptable law enforcement restraint practices. The
4 restraint shall be effective in controlling the person in a manner not to
5 jeopardize the person's safety or that of the medical professional or
6 attending medical or health care staff during the drawing of the sample and
7 without interfering with medical treatment.

8 (h) A law enforcement officer may request a urine sample upon
9 meeting the requirements of ~~paragraph (1) of subsection (b)(1)~~ and shall
10 request a urine sample upon meeting the requirements of ~~paragraph (2) of~~
11 subsection (b)(2).

12 (i) If a law enforcement officer requests a person to submit to a test of
13 urine under this section, the collection of the urine sample shall be
14 supervised by: (1) A person licensed to practice medicine and surgery,
15 licensed as a physician assistant, or a person acting under the direction of
16 any such licensed person; (2) a registered nurse or a licensed practical
17 nurse; or (3) a law enforcement officer of the same sex as the person being
18 tested. The collection of the urine sample shall be conducted out of the
19 view of any person other than the persons supervising the collection of the
20 sample and the person being tested, unless the right to privacy is waived
21 by the person being tested. When possible, the supervising person shall be
22 a law enforcement officer. The results of qualitative testing for drug
23 presence shall be admissible in evidence and questions of accuracy or
24 reliability shall go to the weight rather than the admissibility of the
25 evidence. If the person is medically unable to provide a urine sample in
26 such manner due to the injuries or treatment of the injuries, the same
27 authorization and procedure as used for the collection of blood in
28 subsections (d) and (e) shall apply to the collection of a urine sample.

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

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

34 (1) Kansas law ~~requires~~ *allows* the person to ~~submit consent~~ to and
35 complete one or more tests of breath, blood or urine ~~to determine for the~~
36 *sole purpose of determining* if the person is under the influence of alcohol
37 or drugs, or both;

38 (2) ~~the opportunity to consent to or refuse a test is not a constitutional~~
39 ~~right if lawfully arrested, the person does not have a constitutional right to~~
40 *refuse a breath test, but does have a constitutional right to refuse a blood*
41 *or urine test;*

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

1 ~~(4) if the person refuses to submit to and complete any test of breath,~~
2 ~~blood or urine hereafter requested by a law enforcement officer, the person~~
3 ~~may be charged with a separate crime of refusing to submit to a test to~~
4 ~~determine the presence of alcohol or drugs, which carries criminal~~
5 ~~penalties that are greater than or equal to the criminal penalties for the~~
6 ~~crime of driving under the influence, if such person has:~~

7 ~~(A) Any prior test refusal as defined in K.S.A. 8-1013, and~~
8 ~~amendments thereto, which occurred: (i) On or after July 1, 2001; and (ii)~~
9 ~~when such person was 18 years of age or older; or~~

10 ~~(B) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,~~
11 ~~and amendments thereto, or a violation of an ordinance of any city or~~
12 ~~resolution of any county which prohibits the acts that such section~~
13 ~~prohibits, or entering into a diversion agreement in lieu of further criminal~~
14 ~~proceedings on a complaint alleging any such violations, which occurred:~~
15 ~~(i) On or after July 1, 2001; and (ii) when such person was 18 years of age~~
16 ~~or older;~~

17 ~~(5) if the person refuses to submit to and complete any test of breath,~~
18 ~~blood or urine hereafter requested by a law enforcement officer, the~~
19 ~~person's driving privileges will be suspended for one year for the first or~~
20 ~~subsequent occurrence;~~

21 ~~(6) (5) if the person submits to and completes the test or tests and the~~
22 ~~test results show:~~

23 ~~(A) An alcohol concentration of 0.08 or greater, the person's driving~~
24 ~~privileges will be suspended for 30 days for the first occurrence and one~~
25 ~~year for the second or subsequent occurrence; or~~

26 ~~(B) an alcohol concentration of 0.15 or greater, the person's driving~~
27 ~~privileges will be suspended for one year for the first or subsequent~~
28 ~~occurrence;~~

29 ~~(7) (6) refusal to submit to testing may be used against the person at~~
30 ~~any trial on a charge arising out of the operation or attempted operation of~~
31 ~~a vehicle while under the influence of alcohol or drugs, or both;~~

32 ~~(8) (7) the results of the testing may be used against the person at any~~
33 ~~trial on a charge arising out of the operation or attempted operation of a~~
34 ~~vehicle while under the influence of alcohol or drugs, or both; and~~

35 ~~(9) (8) after the completion of the testing, the person has the right to~~
36 ~~consult with an attorney and may secure additional testing, which, if~~
37 ~~desired, should be done as soon as possible and is customarily available~~
38 ~~from medical care facilities willing to conduct such testing.~~

39 ~~(l) If a law enforcement officer has reasonable grounds to believe that~~
40 ~~the person has been driving a commercial motor vehicle, as defined in~~
41 ~~K.S.A. 8-2,128, and amendments thereto, while having alcohol or other~~
42 ~~drugs in such person's system, the person shall also be provided the oral~~
43 ~~and written notice pursuant to K.S.A. 8-2,145, and amendments thereto.~~

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

11 (m) After giving the foregoing information, a law enforcement officer
12 shall request the person to submit to testing. The selection of the test or
13 tests shall be made by the officer. If the test results show a blood or breath
14 alcohol concentration of 0.08 or greater, the person's driving privileges
15 shall be subject to suspension, or suspension and restriction, as provided in
16 K.S.A. 8-1002 and 8-1014, and amendments thereto.

17 (n) The person's refusal shall be admissible in evidence against the
18 person at any trial on a charge arising out of the alleged operation or
19 attempted operation of a vehicle while under the influence of alcohol or
20 drugs, or both. The person's refusal shall be admissible in evidence against
21 the person at any trial on a charge arising out of the alleged violation of
22 K.S.A. 2017 Supp. 8-1025, and amendments thereto.

23 (o) If a law enforcement officer had reasonable grounds to believe the
24 person had been driving a commercial motor vehicle, as defined in K.S.A.
25 8-2,128, and amendments thereto, and the test results show a blood or
26 breath alcohol concentration of 0.04 or greater, the person shall be
27 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
28 8-2,142, and amendments thereto. If a law enforcement officer had
29 reasonable grounds to believe the person had been driving a commercial
30 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and
31 the test results show a blood or breath alcohol concentration of 0.08 or
32 greater, or the person refuses a test, the person's driving privileges shall be
33 subject to suspension, or suspension and restriction, pursuant to this
34 section, in addition to being disqualified from driving a commercial motor
35 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

43 (q) Failure of a person to provide an adequate breath sample or

1 samples as directed shall constitute a refusal unless the person shows that
2 the failure was due to physical inability caused by a medical condition
3 unrelated to any ingested alcohol or drugs.

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

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

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

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

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

16 (w) As used in this section, "serious injury" means a physical injury
17 to a person, as determined by law enforcement, which has the effect of,
18 prior to the request for testing:

19 (1) Disabling a person from the physical capacity to remove
20 themselves from the scene;

21 (2) renders a person unconscious;

22 (3) the immediate loss of or absence of the normal use of at least one
23 limb;

24 (4) an injury determined by a physician to require surgery; or

25 (5) otherwise indicates the person may die or be permanently disabled
26 by the injury.

27 Sec. 2. K.S.A. 2017 Supp. 8-1001 is hereby repealed.

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