

1 **[As Amended by House Committee of the Whole]**

2
3 **As Amended by House Committee**

4 *Session of 2001*

5
6 **HOUSE BILL No. 2230**

7
8 By Representative O'Neal

9
10 1-31

11
12 AN ACT relating to driving; powers and duties of the division of vehicles;
13 operation of vehicles; concerning suspension or restriction of drivers'
14 licenses; amending K.S.A. 8-258, 8-285 and 41-727 and K.S.A. 2000
15 Supp. 8-255, 8-262, 8-1001, 8-1002, **8-1008**, 8-1014, 8-1015, 8-1016
16 and 8-1567a and repealing the existing sections.

17
18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. (a) Whenever a nonresident or a person who is un-
20 licensed is convicted of any offense or is subject to a juvenile adjudication
21 or an order of the division which would require the revocation or sus-
22 pension of a driver's license, if the person had been issued a driver's
23 license by the division, such nonresident's privilege to operate a motor
24 vehicle in this state or such unlicensed person's privilege of obtaining a
25 driver's license issued by the division shall be revoked or suspended. Such
26 revocation or suspension shall be for a period of time equal to the period
27 of time that the driver's license of a licensed driver would be revoked or
28 suspended. If the driving privileges of a licensed driver would be re-
29 stricted by a court or the division, the driving privileges of a nonresident
30 shall be restricted in the same manner. If the driving privileges of a li-
31 censed driver would be restricted by a court or the division, an unlicensed
32 driver shall be eligible to apply for a driver's license during the period of
33 restriction, but any license issued shall be subject to the same restrictions
34 which would apply to a licensed driver.

35 (b) The division is hereby authorized to create a record with an iden-
36 tifying number and other identifying information, including address and
37 date of birth, if known, for any nonresident or unlicensed driver subject
38 to subsection (a). Such record shall include information showing any rev-
39 ocation, suspension or restriction entered under subsection (a) and the
40 reason for such action in the same manner that records are maintained
41 for licensed drivers, pursuant to K.S.A. 8-249, and amendments thereto.
42 If any such person becomes a licensed driver, the information contained
43 in such record shall be included in the person's driving record maintained

1 by the division.

2 (c) The purpose of this section is to make nonresident and unlicensed
3 drivers subject to the same driving sanctions as licensed residents.

4 (d) This section shall be part of and supplemental to the motor ve-
5 hicle drivers' license act, article 2 of chapter 8 of the Kansas Statutes
6 Annotated, and amendments thereto.

7 New Sec. 2. (a) Any licensee served with an officer's certification and
8 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
9 may request an administrative hearing. Such request may be made either
10 by:

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

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

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

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

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

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

29 (d) Upon receipt of a timely request for a hearing, the division shall
30 forthwith set the matter for hearing before a representative of the director
31 and provide notice of the extension of temporary driving privileges. The
32 hearing shall be conducted in the county where the arrest occurred or a
33 county adjacent thereto. At the discretion of the division, the hearing may
34 be conducted by telephone or video conference call.

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

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

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

43 (3) in the case of a breath test failure, a copy of the affidavit showing

1 certification of the officer and the instrument; and

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

4 (f) At or prior to the time the notice of hearing is sent, the division
5 shall issue an order allowing the licensee or the licensee's attorney to
6 review any video or audio tape record made of the events upon which
7 the administrative action is based. Such review shall take place at a rea-
8 sonable time designated by the law enforcement agency and shall be
9 made at the location where the video or audio tape is kept. The licensee
10 may obtain a copy of any such video or audio tape upon request and upon
11 payment of a reasonable fee to the law enforcement agency, not to exceed
12 \$25 per tape.

13 (g) Witnesses at the hearing shall be limited to the licensee and to
14 any law enforcement officer who signed the certification form. The pres-
15 ence of the certifying officer or officers shall not be required, unless
16 requested by the licensee at the time of making the request for the hear-
17 ing. The examination of a law enforcement officer shall be restricted to
18 the factual circumstances relied upon in the officer's certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (D) the testing equipment used was reliable;

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

26 (F) the testing procedures used were reliable;

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

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

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

40 (j) At a hearing pursuant to this section, or upon court review of an
41 order entered at such a hearing, in which the report of blood test results
42 have been prepared by the Kansas bureau of investigation or other fo-
43 rensic laboratory of a state or local law enforcement agency are to be

1 introduced as evidence, the report, or a copy of the report, of the findings
2 of the forensic examiner shall be admissible into evidence in the same
3 manner and with the same force and effect as if the forensic examiner
4 who performed such examination, analysis, comparison or identification
5 and prepared the report thereon had testified in person.

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

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

12 (1) The documents set out in subsection (e);
13 (2) the testimony of the licensee;
14 (3) the testimony of any certifying officer;
15 (4) any affidavits submitted from other witnesses;
16 (5) any documents submitted by the licensee to show the existence
17 of a medical condition, as described in K.S.A. 8-1001, and amendments
18 thereto; and

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

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

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

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

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

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

24 (q) Upon review, the licensee shall have the burden to show that the
25 decision of the agency should be set aside. To be raised upon review, an
26 issue shall have been raised at the administrative hearing and also shall
27 be set out in the petition for review. The court is not limited to any
28 evidentiary record created during the administrative hearing and may
29 accept additional evidence on the issues preserved for review. Except as
30 otherwise provided in this section, the court shall not rely upon evidence
31 contained in the record of the administrative proceeding below, absent
32 compliance upon review with the rules of evidence in a civil proceeding.

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

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

1 (t) The facts found by the hearing officer or by the district court upon
2 a petition for review shall be independent of the determination of the
3 same or similar facts in the adjudication of any criminal charges arising
4 out of the same occurrence. The disposition of those criminal charges
5 shall not affect the suspension or suspension and restriction to be imposed
6 under this section.

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

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

20 (w) The provisions of this subsection shall be effective on and after
21 July 1, 2001.

22 Sec. 3. K.S.A. 2000 Supp. 8-255 is hereby amended to read as fol-
23 lows: 8-255. (a) The division is authorized to suspend or revoke a person's
24 driving privileges upon a showing by its records or other sufficient evi-
25 dence the person:

26 (1) Has been convicted with such frequency of serious offenses
27 against traffic regulations governing the movement of vehicles as to in-
28 dicate a disrespect for traffic laws and a disregard for the safety of other
29 persons on the highways;

30 (2) has been convicted of three or more moving traffic violations com-
31 mitted on separate occasions within a 12-month period;

32 (3) is incompetent to drive a motor vehicle;

33 (4) has been convicted of a moving traffic violation, committed at a
34 time when the person's driving privileges were suspended or revoked; or

35 (5) is a member of the armed forces of the United States stationed
36 at a military installation located in the state of Kansas, and the authorities
37 of the military establishment certify that such person's on-base driving
38 privileges have been suspended, by action of the proper military author-
39 ities, for violating the rules and regulations of the military installation
40 governing the movement of vehicular traffic or for any other reason re-
41 lating to the person's inability to exercise ordinary and reasonable control
42 in the operation of a motor vehicle.

43 (b) The division shall suspend a person's driving privileges when re-

1 quired by K.S.A. 8-262 ~~or~~, 8-1014 *or* 41-727, and amendments thereto,
2 and K.S.A. 2000 Supp. 21-3765, and amendments thereto, and shall dis-
3 qualify a person's privilege to drive commercial motor vehicles when re-
4 quired by K.S.A. 8-2,142, and amendments thereto.

5 (c) When the action by the division suspending, revoking or disqual-
6 ifying a person's driving privileges is based upon a report of a conviction
7 or convictions from a convicting court, the person may not request a
8 hearing but, within 30 days after notice of suspension, revocation or dis-
9 qualification is mailed, may submit a written request for administrative
10 review and provide evidence to the division to show the person whose
11 driving privileges have been suspended, revoked or disqualified by the
12 division was not convicted of the offense upon which the suspension,
13 revocation or disqualification is based. Within 30 days of its receipt of the
14 request for administrative review, the division shall notify the person
15 whether the suspension, revocation or disqualification has been affirmed
16 or set aside. The request for administrative review shall not stay any action
17 taken by the division.

18 (d) Upon suspending, revoking or disqualifying the driving privileges
19 of any person as authorized by this act, the division shall immediately
20 notify the person in writing. Except as provided by K.S.A. 8-1002 and 8-
21 2,145, and amendments thereto, and subsection (c) of this section, if the
22 person makes a written request for hearing within 30 days after such
23 notice of suspension or revocation is mailed, the division shall afford the
24 person an opportunity for a hearing as early as practical not sooner than
25 five days nor more than 30 days after such request is mailed. If the division
26 has not revoked or suspended the person's driving privileges or vehicle
27 registration prior to the hearing, the hearing may be held within not to
28 exceed 45 days. Except as provided by K.S.A. 8-1002 and 8-2,145, and
29 amendments thereto, the hearing shall be held in the person's county of
30 residence or a county adjacent thereto, unless the division and the person
31 agree that the hearing may be held in some other county. Upon the
32 hearing, the director or the director's duly authorized agent may admin-
33 ister oaths and may issue subpoenas for the attendance of witnesses and
34 the production of relevant books and papers and may require an exami-
35 nation or reexamination of the person. When the action proposed or taken
36 by the division is authorized but not required, the division, upon the
37 hearing, shall either rescind or affirm its order of suspension or revocation
38 or, good cause appearing therefor, extend the suspension of the person's
39 driving privileges, modify the terms of the suspension or revoke the per-
40 son's driving privileges. When the action proposed or taken by the division
41 is required, the division, upon the hearing, shall either affirm its order of
42 suspension, revocation or disqualification, or, good cause appearing there-
43 for, dismiss the administrative action. If the person fails to request a

1 hearing within the time prescribed or if, after a hearing, the order of
2 suspension, revocation or disqualification is upheld, the person shall sur-
3 render to the division, upon proper demand, any driver's license in the
4 person's possession.

5 (e) In case of failure on the part of any person to comply with any
6 subpoena issued in behalf of the division or the refusal of any witness to
7 testify to any matters regarding which the witness may be lawfully inter-
8 rogated, the district court of any county, on application of the division,
9 may compel obedience by proceedings for contempt, as in the case of
10 disobedience of the requirements of a subpoena issued from the court or
11 a refusal to testify in the court. Each witness who appears before the
12 director or the director's duly authorized agent by order or subpoena,
13 other than an officer or employee of the state or of a political subdivision
14 of the state, shall receive for the witness' attendance the fees and mileage
15 provided for witnesses in civil cases in courts of record, which shall be
16 audited and paid upon the presentation of proper vouchers sworn to by
17 the witness.

18 (f) The division, in the interest of traffic and safety, may establish
19 driver improvement clinics throughout the state and, upon reviewing the
20 driving record of a person whose driving privileges are subject to suspen-
21 sion under subsection (a)(2), may permit the person to retain such per-
22 son's driving privileges by attending a driver improvement clinic. A person
23 who is required to attend a driver improvement clinic shall pay a fee of
24 \$15. Amounts received under this subsection shall be remitted at least
25 monthly to the state treasurer who shall deposit the same in the state
26 treasury and shall be credited to the division of vehicles operating fund.

27 Sec. 4. K.S.A. 8-258 is hereby amended to read as follows: 8-258.
28 Any resident or nonresident, whose license to operate a motor vehicle in
29 this state has been suspended or revoked as provided in this act, *or whose*
30 *privilege to obtain a driver's license has been suspended or revoked pur-*
31 *suant to section 1, and amendments thereto*, shall not operate a motor
32 vehicle in this state under a license, permit, or registration certificate
33 issued by any other jurisdiction or otherwise during such suspension or
34 after such revocation until a new license is obtained when and as per-
35 mitted under this act.

36 Sec. 5. K.S.A. 2000 Supp. 8-262 is hereby amended to read as fol-
37 lows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway
38 of this state at a time when such person's privilege so to do is canceled,
39 suspended or revoked *or while such person's privilege to obtain a driver's*
40 *license is suspended or revoked pursuant to section 1, and amendments*
41 *thereto*, shall be guilty of a: (A) Class B nonperson misdemeanor on the
42 first conviction; and (B) class A nonperson misdemeanor on the second
43 conviction or subsequent conviction.

1 (2) No person shall be convicted under this section if such person
2 was entitled at the time of arrest under K.S.A. 8-257, and amendments
3 thereto, to the return of such person's driver's license ~~or was, at the time~~
4 ~~of arrest, eligible under K.S.A. 8-256, and amendments thereto, to apply~~
5 ~~for a new license to operate a motor vehicle.~~

6 (3) Except as otherwise provided by subsection (a)(4), every person
7 convicted under this section shall be sentenced to at least five days' im-
8 prisonment and fined at least \$100 and upon a second or subsequent
9 conviction shall not be eligible for parole until completion of five days'
10 imprisonment.

11 (4) If a person (A) is convicted of a violation of this section, commit-
12 ted while the person's privilege to drive *or privilege to obtain a driver's*
13 *license* was suspended or revoked for a violation of K.S.A. 8-1567, and
14 amendments thereto, or any ordinance of any city or a law of another
15 state, which ordinance or law prohibits the acts prohibited by that statute,
16 and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and
17 amendments thereto, or of a municipal ordinance or law of another state,
18 which ordinance or law prohibits the acts prohibited by that statute, com-
19 mitted while the person's privilege to drive *or privilege to obtain a driver's*
20 *license* was so suspended or revoked, the person shall not be eligible for
21 suspension of sentence, probation or parole until the person has served
22 at least 90 days' imprisonment, and any fine imposed on such person shall
23 be in addition to such a term of imprisonment.

24 (b) The division, upon receiving a record of the conviction of any
25 person under this section, or any ordinance of any city or a law of another
26 state which is in substantial conformity with this section, upon a charge
27 of driving a vehicle while the license of such person is revoked or sus-
28 pended, shall extend the period of such suspension or revocation for an
29 additional period of 90 days.

30 (c) ~~In addition to extension of the period of suspension or revocation~~
31 ~~under subsection (b), if the conviction is for a violation committed after~~
32 ~~June 30, 1994, and before July 1, 1996, and committed while the person's~~
33 ~~driving privileges are suspended pursuant to K.S.A. 8-1014 and amend-~~
34 ~~ments thereto, the division, upon completion of the extended period of~~
35 ~~suspension, shall restrict the person's driving privileges for an additional~~
36 ~~120 days to driving only a motor vehicle equipped with an ignition inter-~~
37 ~~lock device, as defined by K.S.A. 8-1013 and amendments thereto, ap-~~
38 ~~proved by the division and obtained, installed and maintained at the per-~~
39 ~~son's expense.~~

40 ~~—On or before February 1, 1996, the division shall report to the legis-~~
41 ~~lature regarding the use of the provisions of this subsection and making~~
42 ~~recommendations concerning continuation or modification of such~~
43 ~~provisions.~~

1 —(d) For the purposes of determining whether a conviction is a first,
2 second or subsequent conviction in sentencing under this section, “con-
3 viction” includes a conviction of a violation of any ordinance of any city
4 or a law of another state which is in substantial conformity with this
5 section.

6 Sec. 6. K.S.A. 8-285 is hereby amended to read as follows: 8-285.
7 Except as otherwise provided in this section, as used in this act, the words
8 and phrases defined in K.S.A. 8-234a and amendments thereto shall have
9 the meanings ascribed to them therein. The term “habitual violator”
10 means any resident or nonresident person who, within the immediately
11 preceding five years, has been convicted in this or any other state:

12 (a) Three or more times of:

13 (1) Vehicular homicide, as defined by K.S.A. 21-3405 and amend-
14 ments thereto or as prohibited by any ordinance of any city in this state
15 or any law of another state which is in substantial conformity with that
16 statute;

17 (2) violating K.S.A. 8-1567 and amendments thereto, or violating an
18 ordinance of any city in this state or any law of another state, which
19 ordinance or law declares to be unlawful the acts prohibited by that
20 statute;

21 (3) driving while the privilege to operate a motor vehicle on the public
22 highways of this state has been canceled, suspended or revoked, as pro-
23 hibited by K.S.A. 8-262 and amendments thereto, *or while such person’s*
24 *privilege to obtain a driver’s license is suspended or revoked pursuant to*
25 *section 1, and amendments thereto*, or as prohibited by any ordinance of
26 any city in this state or any law of another state which is in substantial
27 conformity with ~~that statute~~ *those statutes*;

28 (4) perjury resulting from a violation of K.S.A. 8-261a and amend-
29 ments thereto or resulting from the violation of a law of another state
30 which is in substantial conformity with that statute;

31 (5) violating the provisions of the fifth clause of K.S.A. 8-142 and
32 amendments thereto, relating to fraudulent applications, or violating the
33 provisions of a law of another state which is in substantial conformity with
34 that statute;

35 (6) any crime punishable as a felony, if a motor vehicle was used in
36 the perpetration of the crime;

37 (7) failing to stop at the scene of an accident and perform the duties
38 required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or
39 required by any ordinance of any city in this state or a law of another
40 state which is in substantial conformity with those statutes; or

41 (8) violating the provisions of K.S.A. 40-3104 and amendments
42 thereto, relating to motor vehicle liability insurance coverage or an or-
43 dinance of any city in this state, which is in substantial conformity with

1 such statute.

2 (b) Three or more times, either singly or in combination, of any of
3 the offenses enumerated in subsection (a).

4 For the purpose of subsection (a)(2), in addition to the definition of
5 “conviction” otherwise provided by law, conviction includes, but is not
6 limited to, a diversion agreement entered into in lieu of further criminal
7 proceedings, or a plea of *nolo contendere*, on a complaint, indictment,
8 information, citation or notice to appear alleging a violation of K.S.A. 8-
9 1567 and amendments thereto or an ordinance of a city in this state or
10 law of another state, which ordinance or law prohibits the acts prohibited
11 by that statute.

12 Sec. 7. K.S.A. 2000 Supp. 8-1001 is hereby amended to read as fol-
13 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle
14 within this state is deemed to have given consent, subject to the provisions
15 of this act, to submit to one or more tests of the person’s blood, breath,
16 urine or other bodily substance to determine the presence of alcohol or
17 drugs. The testing deemed consented to herein shall include all quanti-
18 tative and qualitative tests for alcohol and drugs. A person who is dead
19 or unconscious shall be deemed not to have withdrawn the person’s con-
20 sent to such test or tests, which shall be administered in the manner
21 provided by this section.

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

40 (c) If a law enforcement officer requests a person to submit to a test
41 of blood under this section, the withdrawal of blood at the direction of
42 the officer may be performed only by: (1) A person licensed to practice
43 medicine and surgery or a person acting under the supervision of any

1 such licensed person; (2) a registered nurse or a licensed practical nurse;
2 or (3) any qualified medical technician, including, but not limited to, an
3 emergency medical technician-intermediate or mobile intensive care
4 technician, as those terms are defined in K.S.A. 65-6112, and amend-
5 ments thereto, or a phlebotomist. When presented with a written state-
6 ment by a law enforcement officer directing blood to be withdrawn from
7 a person who has tentatively agreed to allow the withdrawal of blood
8 under this section, the person authorized herein to withdraw blood and
9 the medical care facility where blood is withdrawn may rely on such a
10 statement as evidence that the person has consented to the medical pro-
11 cedure used and shall not require the person to sign any additional con-
12 sent or waiver form. In such a case, the person authorized to withdraw
13 blood and the medical care facility shall not be liable in any action alleging
14 lack of consent or lack of informed consent. No person authorized by this
15 subsection to withdraw blood, nor any person assisting in the performance
16 of a blood test nor any medical care facility where blood is withdrawn or
17 tested that has been directed by any law enforcement officer to withdraw
18 or test blood, shall be liable in any civil or criminal action when the act
19 is performed in a reasonable manner according to generally accepted
20 medical practices in the community where performed.

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

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

35 (f) (1) Before a test or tests are administered under this section, the
36 person shall be given oral and written notice that: (A) Kansas law requires
37 the person to submit to and complete one or more tests of breath, blood
38 or urine to determine if the person is under the influence of alcohol or
39 drugs, or both; (B) the opportunity to consent to or refuse a test is not a
40 constitutional right; (C) there is no constitutional right to consult with an
41 attorney regarding whether to submit to testing; (D) if the person refuses
42 to submit to and complete any test of breath, blood or urine hereafter
43 requested by a law enforcement officer, **the person shall be guilty of**

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

1 warrant under the authority of K.S.A. 22-2501, and amendments thereto.
2 If the test results show a blood or breath alcohol concentration of .08 or
3 greater, the person's driving privileges shall be subject to suspension, or
4 suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and
5 amendments thereto. The person's refusal shall be admissible in evidence
6 against the person at any trial on a charge arising out of the alleged op-
7 eration or attempted operation of a vehicle while under the influence of
8 alcohol or drugs, or both. If a law enforcement officer had reasonable
9 grounds to believe the person had been driving a commercial motor ve-
10 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test
11 results show a blood or breath alcohol concentration of .04 or greater,
12 the person shall be disqualified from driving a commercial motor vehicle,
13 pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforce-
14 ment officer had reasonable grounds to believe the person had been driv-
15 ing a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-
16 ments thereto, and the test results show a blood or breath alcohol
17 concentration of .08 or greater, or the person refuses a test, the person's
18 driving privileges shall be subject to suspension, or suspension and re-
19 striction, pursuant to this section, in addition to being disqualified from
20 driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and
21 amendments thereto. **An officer shall have probable cause to believe**
22 **that the person operated a vehicle while under the influence of**
23 **alcohol or drugs, or both, if the vehicle was operated by such per-**
24 **son in such a manner as to have caused the death of or serious**
25 **injury to another person. In such event, such test or tests may be**
26 **made pursuant to a search warrant issued under the authority of**
27 **K.S.A. 22-2502, and amendments thereto, or without a search war-**
28 **rant under the authority of K.S.A. 22-2501, and amendments**
29 **thereto.**

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

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

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

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

42 (h) Upon the request of any person submitting to testing under this
43 section, a report of the results of the testing shall be made available to

1 such person.

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

4 Sec. 8. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1002 is hereby
5 amended to read as follows: 8-1002. (a) Whenever a test is requested
6 pursuant to this act and results in either a test failure or test refusal, a
7 law enforcement officer's certification shall be prepared. If the person
8 had been driving a commercial motor vehicle, as defined in K.S.A. 8-
9 2,128, and amendments thereto, a separate certification pursuant to
10 K.S.A. 8-2,145 and amendments thereto shall be prepared in addition to
11 any certification required by this section. The certification required by
12 this section shall be signed by one or more officers to certify:

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

24 (2) With regard to a test failure, that: (A) There existed reasonable
25 grounds to believe the person was operating a vehicle while under the
26 influence of alcohol or drugs, or both, or to believe that the person had
27 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
28 and amendments thereto, while having alcohol or other drugs in such
29 person's system; (B) the person had been placed under arrest, was in
30 custody or had been involved in a vehicle accident or collision; (C) a law
31 enforcement officer had presented the person with the oral and written
32 notice required by K.S.A. 8-1001, and amendments thereto; and (D) the
33 result of the test showed that the person had an alcohol concentration of
34 .08 or greater in such person's blood or breath.

35 (3) With regard to failure of a breath test, in addition to those matters
36 required to be certified under subsection (a)(2), that: (A) The testing
37 equipment used was certified by the Kansas department of health and
38 environment; (B) the testing procedures used were in accordance with
39 the requirements set out by the Kansas department of health and envi-
40 ronment; and (C) the person who operated the testing equipment was
41 certified by the Kansas department of health and environment to operate
42 such equipment.

43 (b) For purposes of this section, certification shall be complete upon

1 signing, and no additional acts of oath, affirmation, acknowledgment or
2 proof of execution shall be required. The signed certification or a copy
3 or photostatic reproduction thereof shall be admissible in evidence in all
4 proceedings brought pursuant to this act, and receipt of any such certi-
5 fication, copy or reproduction shall accord the department authority to
6 proceed as set forth herein. Any person who signs a certification submit-
7 ted to the division knowing it contains a false statement is guilty of a class
8 B nonperson misdemeanor.

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

21 (d) In addition to the information required by subsection (a), the law
22 enforcement officer's certification and notice of suspension shall contain
23 the following information: (1) The person's name, driver's license number
24 and current address; (2) the reason and statutory grounds for the suspen-
25 sion; (3) the date notice is being served and a statement that the effective
26 date of the suspension shall be the 30th calendar day after the date of
27 service; (4) the right of the person to request an administrative hearing;
28 and (5) the procedure the person must follow to request an administrative
29 hearing. The law enforcement officer's certification and notice of suspen-
30 sion shall also inform the person that all correspondence will be mailed
31 to the person at the address contained in the law enforcement officer's
32 certification and notice of suspension unless the person notifies the di-
33 vision in writing of a different address or change of address. The address
34 provided will be considered a change of address for purposes of K.S.A.
35 8-248, and amendments thereto, if the address furnished is different from
36 that on file with the division.

37 (e) If a person refuses a test or if a person is still in custody when it
38 is determined that the person has failed a test, the officer shall take any
39 license in the possession of the person and, if the license is not expired,
40 suspended, revoked or canceled, shall issue a temporary license effective
41 until the 30th calendar day after the date of service set out in the law
42 enforcement officer's certification and notice of suspension. If the test
43 failure is established by a subsequent analysis of a breath or blood sample,

1 the temporary license shall be served together with the copy of the law
2 enforcement officer's certification and notice of suspension. A temporary
3 license issued pursuant to this subsection shall bear the same restrictions
4 and limitations as the license for which it was exchanged. Within five days
5 after the date of service of a copy of the law enforcement officer's certi-
6 fication and notice of suspension the officer's certification and notice of
7 suspension, along with any licenses taken, shall be forwarded to the
8 division.

9 (f) Upon receipt of the law enforcement officer's certification, the
10 division shall review the certification to determine that it meets the
11 requirements of subsection (a). Upon so determining, the division shall
12 proceed to suspend the person's driving privileges in accordance with the
13 notice of suspension previously served. If the requirements of subsection
14 (a) are not met, the division shall dismiss the administrative proceeding
15 and return any license surrendered by the person.

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

30 ~~—(h) (1) If the officer certifies that the person refused the test, the
31 scope of the hearing shall be limited to whether: (A) A law enforcement
32 officer had reasonable grounds to believe the person was operating or
33 attempting to operate a vehicle while under the influence of alcohol or
34 drugs, or both, or to believe that the person had been driving a com-
35 mercial motor vehicle, as defined in K.S.A. 8-2-128, and amendments
36 thereto, while having alcohol or other drugs in such person's system; (B)
37 the person was in custody or arrested for an alcohol or drug related of-
38 fense or was involved in a vehicle accident or collision resulting in prop-
39 erty damage, personal injury or death; (C) a law enforcement officer had
40 presented the person with the oral and written notice required by K.S.A.
41 8-1001, and amendments thereto; and (D) the person refused to submit
42 to and complete a test as requested by a law enforcement officer.~~

43 ~~—(2) If the officer certifies that the person failed the test, the scope of~~

1 the hearing shall be limited to whether: (A) A law enforcement officer
2 had reasonable grounds to believe the person was operating a vehicle
3 while under the influence of alcohol or drugs, or both, or to believe that
4 the person had been driving a commercial motor vehicle, as defined in
5 K.S.A. 8 2,128, and amendments thereto, while having alcohol or other
6 drugs in such person's system; (B) the person was in custody or arrested
7 for an alcohol or drug related offense or was involved in a vehicle accident
8 or collision resulting in property damage, personal injury or death; (C) a
9 law enforcement officer had presented the person with the oral and writ-
10 ten notice required by K.S.A. 8 1001, and amendments thereto; (D) the
11 testing equipment used was reliable; (E) the person who operated the
12 testing equipment was qualified; (F) the testing procedures used were
13 reliable; (G) the test result determined that the person had an alcohol
14 concentration of .08 or greater in such person's blood or breath; and (H)
15 the person was operating 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
18 at the Kansas department of health and environment stating that the
19 breath testing device was certified and the operator of such device was
20 certified on the date of the test shall be admissible into evidence in the
21 same manner and with the same force and effect as if the certifying officer
22 or employee of the Kansas department of health and environment had
23 testified in person. Such affidavit shall be admitted to prove such reli-
24 ability without further foundation requirement. A certified operator of a
25 breath testing device shall be competent to testify regarding the proper
26 procedures to be used in conducting the test.

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

36 — (k) — If no timely request for hearing is made, the suspension period
37 imposed pursuant to this section shall begin upon the expiration of the
38 temporary license granted under subsection (c). If a timely request for
39 hearing is made, the hearing shall be held within 30 days of the date the
40 request for hearing is received by the division, except that failure to hold
41 such hearing within 30 days shall not be cause for dismissal absent a
42 showing of prejudice. At the hearing, the director or the representative
43 of the director, shall either affirm the order of suspension or suspension

1 and restriction or dismiss the administrative action. If the division is un-
2 able to hold a hearing within 30 days of the date upon which the request
3 for hearing is received, the division shall extend the person's temporary
4 driving privileges until the date set for the hearing by the division. No
5 extension of temporary driving privileges shall be issued for continuances
6 requested by or on behalf of the licensee. If the person whose privileges
7 are suspended is a nonresident licensee, the license of the person shall
8 be forwarded to the appropriate licensing authority in the person's state
9 of residence if the result at the hearing is adverse to such person or if no
10 timely request for a hearing is received.

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

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

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

24 —(o) (h) The provisions of K.S.A. 60-206 and amendments thereto re-
25 garding the computation of time shall not be applicable in determining
26 the effective date of suspension set out in subsection (d) or the time for
27 requesting an administrative hearing set out in subsection (g). "Calendar
28 day" when used in this section act shall mean that every day shall be
29 included in computations of time whether a weekday, Saturday, Sunday
30 or holiday.

31 **Sec. 9. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1008 is**
32 **hereby amended to read as follows: 8-1008. (a) Community-based**
33 **alcohol and drug safety action programs certified in accordance**
34 **with subsection (b) shall provide:**

35 **(1) Presentence alcohol and drug evaluations of any person**
36 **who is convicted of a violation of K.S.A. 8-1567 and amendments**
37 **thereto, or the ordinance of a city in this state which prohibits the**
38 **acts prohibited by that statute;**

39 **(2) supervision and monitoring of all persons who are con-**
40 **vinced of a violation of K.S.A. 8-1567 and amendments thereto, or**
41 **the ordinance of a city in this state which prohibits the acts pro-**
42 **hibited by that statute, and whose sentences or terms of probation**
43 **require completion of an alcohol and drug safety action program,**

1 as provided in this section, or an alcohol and drug abuse treatment
2 program, as provided in this section;

3 (3) alcohol and drug evaluations of persons whom the prose-
4 cutor considers for eligibility or finds eligible to enter a diversion
5 agreement in lieu of further criminal proceedings on a complaint
6 alleging a violation of K.S.A. 8-1567 and amendments thereto, or
7 the ordinance of a city in this state which prohibits the acts pro-
8 hibited by that statute;

9 (4) supervision and monitoring of persons required, under a
10 diversion agreement in lieu of further criminal proceedings on a
11 complaint alleging a violation of K.S.A. 8-1567 and amendments
12 thereto, or the ordinance of a city in this state which prohibits the
13 acts prohibited by that statute, to complete an alcohol and drug
14 safety action program, as provided in this section, or an alcohol
15 and drug abuse treatment program, as provided in this section; or

16 (5) any combination of (1), (2), (3) and (4).

17 (b) The presentence alcohol and drug evaluation shall be con-
18 ducted by a community-based alcohol and drug safety action pro-
19 gram certified in accordance with the provisions of this subsection
20 to provide evaluation and supervision services as described in sub-
21 sections (c) and (d). A community-based alcohol and drug safety
22 action program shall be certified either by the chief judge of the
23 judicial district to be served by the program or by the secretary of
24 social and rehabilitation services for judicial districts in which the
25 chief judge declines to certify a program. In addition to any qual-
26 ifications established by the secretary, the chief judge may estab-
27 lish qualifications for the certification of programs, which qualifi-
28 cations may include requirements for training, education and
29 certification of personnel; supervision and monitoring of clients;
30 fee reimbursement procedures; handling of conflicts of interest;
31 delivery of services to clients unable to pay; and other matters
32 relating to quality and delivery of services by the program. In es-
33 tablishing the qualifications for programs, the chief judge or the
34 secretary shall give preference to those programs which have had
35 practical experience prior to July 1, 1982, in diagnosis and referral
36 in alcohol and drug abuse. Certification of a program by the chief
37 judge shall be done with consultation and approval of a majority
38 of the judges of the district court of the district and municipal
39 judges of cities lying in whole or in part within the district. If within
40 60 days after the effective date of this act the chief judge declines
41 to certify any program for the judicial district, the judge shall no-
42 tify the secretary of social and rehabilitation services, and the sec-
43 retary of social and rehabilitation services shall certify a commu-

1 nity-based alcohol and drug safety action program for that judicial
2 district. The certification shall be for a four-year period. Recerti-
3 fication of a program or certification of a different program shall
4 be by the chief judge, with consultation and approval of a majority
5 of the judges of the district court of the district and municipal
6 judges of cities lying in whole or in part within the district. If upon
7 expiration of certification of a program there will be no certified
8 program for the district and the chief judge declines to recertify
9 or certify any program in the district, the judge shall notify the
10 secretary of social and rehabilitation services, at least six months
11 prior to the expiration of certification, that the judge declines to
12 recertify or certify a program under this subsection. Upon receipt
13 of the notice and prior to the expiration of certification, the sec-
14 retary shall recertify or certify a community-based alcohol and
15 drug safety action program for the judicial district for the next
16 four-year period. To be eligible for certification under this sub-
17 section, the chief judge or the secretary of social and rehabilitation
18 services shall determine that a community-based alcohol and drug
19 safety action program meets the qualifications established by the
20 judge or secretary and is capable of providing, within the judicial
21 district: (1) The evaluations, supervision and monitoring required
22 under subsection (a); (2) the alcohol and drug evaluation report
23 required under subsection (c) or (d); (3) the follow-up duties spec-
24 ified under subsection (c) or (d) for persons who prepare the al-
25 cohol and drug evaluation report; and (4) any other functions and
26 duties specified by law. Community-based alcohol and drug safety
27 action programs performing services in any judicial district under
28 this section prior to the effective date of this act may continue to
29 perform those services until a community-based alcohol and drug
30 safety action program is certified for that judicial district.

31 (c) A presentence alcohol and drug evaluation shall be con-
32 ducted on any person who is convicted of a violation of K.S.A. 8-
33 1567 and amendments thereto, or the ordinance of a city in this
34 state which prohibits the acts prohibited by that statute. The pre-
35 sentence alcohol and drug evaluation report shall be made avail-
36 able to and shall be considered by the court prior to sentencing.
37 The presentence alcohol and drug evaluation report shall contain
38 a history of the defendant's prior traffic record, characteristics and
39 alcohol or drug problems, or both, and a recommendation con-
40 cerning the amenability of the defendant to education and reha-
41 bilitation. The presentence alcohol and drug evaluation report
42 shall include a recommendation concerning the alcohol and drug
43 driving safety education and treatment for the defendant. The pre-

1 sentence alcohol and drug evaluation report shall be prepared by
2 a program which has demonstrated practical experience in the di-
3 agnosis of alcohol and drug abuse. The duties of persons who pre-
4 pare the presentence alcohol and drug evaluation report may also
5 include appearing at sentencing and probation hearings in accord-
6 ance with the orders of the court, monitoring defendants in the
7 treatment programs, notifying the probation department and the
8 court of any defendant failing to meet the conditions of probation
9 or referrals to treatment, appearing at revocation hearings as may
10 be required and providing assistance and data reporting and pro-
11 gram evaluation. The cost of any alcohol and drug education, re-
12 habilitation and treatment programs for any person shall be paid
13 by such person, and such costs shall include, but not be limited to,
14 the assessments required by subsection (e). If financial obligations
15 are not met or cannot be met, the sentencing court shall be notified
16 for the purpose of collection or review and further action on the
17 defendant's sentence.

18 (d) An alcohol and drug evaluation shall be conducted on any
19 person whom the prosecutor considers for eligibility or finds eli-
20 gible to enter a diversion agreement in lieu of further criminal
21 proceedings on a complaint alleging a violation of K.S.A. 8-1567
22 and amendments thereto, or the ordinance of a city in this state
23 which prohibits the acts prohibited by that statute. The alcohol and
24 drug evaluation report shall be made available to the prosecuting
25 attorney and shall be considered by the prosecuting attorney. The
26 alcohol and drug evaluation report shall contain a history of the
27 person's prior traffic record, characteristics and alcohol or drug
28 problems, or both, and a recommendation concerning the amen-
29 ability of the person to education and rehabilitation. The alcohol
30 and drug evaluation report shall include a recommendation con-
31 cerning the alcohol and drug driving safety education and treat-
32 ment for the person. The alcohol and drug evaluation report shall
33 be prepared by a program which has demonstrated practical ex-
34 perience in the diagnosis of alcohol and drug abuse. The duties of
35 persons who prepare the alcohol and drug evaluation report may
36 also include monitoring persons in the treatment programs, noti-
37 fying the prosecutor and the court of any person failing to meet
38 the conditions of diversion or referrals to treatment, and providing
39 assistance and data reporting and program evaluation. The cost of
40 any alcohol and drug education, rehabilitation and treatment pro-
41 grams for any person shall be paid by such person, and such costs
42 shall include, but not be limited to, the assessments required by
43 subsection (e).

1 (e) In addition to any fines, fees, penalties or costs levied
2 against a person who is convicted of a violation of K.S.A. 8-1567
3 and amendments thereto, or the ordinance of a city in this state
4 which prohibits the acts prohibited by that statute, or who enters
5 a diversion agreement in lieu of further criminal proceedings on
6 a complaint alleging a violation of that statute or such an ordi-
7 nance, ~~§125~~ \$150 shall be assessed against the person by the sen-
8 tencing court or under the diversion agreement. The ~~§125~~ \$150
9 assessment may be waived by the court or, in the case of diversion
10 of criminal proceedings, by the prosecuting attorney, if the court
11 or prosecuting attorney finds that the defendant is an indigent
12 person. Except as otherwise provided in this subsection, the clerk
13 of the court shall deposit all assessments received under this sec-
14 tion in the alcohol and drug safety action fund of the court, which
15 fund shall be subject to the administration of the judge having
16 administrative authority over that court. If the secretary of social
17 and rehabilitation services certifies the community-based alcohol
18 and drug safety action program for the judicial district in which
19 the court is located, the clerk of the court shall remit, during the
20 four-year period for which the program is certified, 15% of all
21 assessments received under this section to the secretary of social
22 and rehabilitation services. Moneys credited to the alcohol and
23 drug safety action fund shall be expended by the court, pursuant
24 to vouchers signed by the judge having administrative authority
25 over that court, only for costs of the services specified by subsec-
26 tion (a) or otherwise required or authorized by law and provided
27 by community-based alcohol and drug safety action programs, ex-
28 cept that not more than 10% of the money credited to the fund
29 may be expended to cover the expenses of the court involved in
30 administering the provisions of this section. In the provision of
31 these services the court shall contract as may be necessary to carry
32 out the provisions of this section. The district or municipal judge
33 having administrative authority over that court shall compile a re-
34 port and send such report to the office of the state judicial admin-
35 istrator on or before January 20 of each year, beginning January
36 20, 1991. Such report shall include, but not be limited to:

37 (1) The balance of the alcohol and drug safety action fund of
38 the court on December 31 of each year;

39 (2) the assessments deposited into the fund during the 12-
40 month period ending the preceding December 31; and

41 (3) the dollar amounts expended from the fund during the 12-
42 month period ending the preceding December 31.

43 The office of the state judicial administrator shall compile such

1 **reports into a statewide report and submit such statewide report**
2 **to the legislature on or before March 1 of each year.**

3 **(f) The secretary of social and rehabilitation services shall re-**
4 **mit all moneys received by the secretary under this section to the**
5 **state treasurer at least monthly. Upon receipt of the remittance,**
6 **the state treasurer shall deposit the entire amount in the state**
7 **treasury and credit it to the certification of community-based al-**
8 **cohol and drug safety action programs fee fund, which is hereby**
9 **created. All expenditures from such fund shall be made in accord-**
10 **ance with appropriation acts upon warrants issued pursuant to**
11 **vouchers approved by the secretary of social and rehabilitation**
12 **services or a person designated by the secretary.**

13 ~~Sec. 9-10.~~ K.S.A. 2000 Supp. 8-1014 is hereby amended to read as
14 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
15 2,142, and amendments thereto, if a person refuses a test, the division,
16 pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the
17 person's driving privileges for one year.

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

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

25 (2) on the person's second or a subsequent occurrence, suspend the
26 person's driving privileges for one year *and, commencing July 1, 2001,*
27 *then at the end of the suspension, restrict the person's driving privileges*
28 *for one year to driving only a motor vehicle equipped with an ignition*
29 *interlock device.*

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

34 ~~—(1) suspend the person's driving privileges for one year; or~~
35 ~~—(2) if such person has entered a diversion agreement under K.S.A.~~
36 ~~12-4412 *et seq.*, and amendments thereto, or K.S.A. 22-2006 *et seq.*, and~~
37 ~~amendments thereto, suspend the person's driving privileges for the term~~
38 ~~of such diversion agreement.~~

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

1 receives notice of the person's completion of such program.

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

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

19 (f) If the division has taken action under subsection (a) for a test
20 refusal or under subsection (b) or (c) for a test failure and such action is
21 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
22 rary driving privileges are issued pursuant to subsection (k) of K.S.A. 8-
23 1002, and amendments thereto, the stay or temporary driving privileges
24 shall not prevent the division from taking the action required by subsec-
25 tion (b) or (c) for an alcohol or drug-related conviction.

26 (g) Upon restricting a person's driving privileges pursuant to this sec-
27 tion, the division shall issue ~~without charge a driver's license which shall~~
28 ~~indicate on the face of the license that restrictions have been imposed on~~
29 ~~the person's driving privileges and that a copy of the order imposing the~~
30 ~~restrictions which is required to be carried by the person for whom the~~
31 ~~license was issued at any time the person is operating a motor vehicle on~~
32 ~~the highways of this state.~~

33 (h) *Any person whose license is restricted to operating only a motor*
34 *vehicle with an ignition interlock device installed may operate an em-*
35 *ployer's vehicle without an ignition interlock device installed during nor-*
36 *mal business activities, provided that the person does not partly or entirely*
37 *own or control the employer's vehicle or business. The provisions of this*
38 *subsection shall be effective on and after July 1, 2001.*

39 ~~Sec. 10. 11.~~ On and after July 1, 2001, K.S.A. 2000 Supp. 8-1015 is
40 hereby amended to read as follows: 8-1015. (a) When subsection (b)(1)
41 of K.S.A. 8-1014, and amendments thereto, requires or authorizes the
42 division to place restrictions on a person's driving privileges, the division
43 shall restrict the person's driving privileges to driving only under the cir-

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

3 (b) In lieu of the restrictions set out in subsection (a), the division,
4 upon request of the person whose driving privileges are to be restricted,
5 may restrict the person's driving privileges to driving only a motor vehicle
6 equipped with an ignition interlock device, approved by the division and
7 obtained, installed and maintained at the person's expense.

8 ~~Upon a person's second or subsequent conviction for an alcohol~~
9 ~~related offense, if the person had an alcohol concentration of .15 or more~~
10 ~~in the person's blood or breath, the convicting court shall restrict the~~
11 ~~person's driving privileges to driving only a motor vehicle equipped with~~
12 ~~an ignition interlock device, approved by the division and obtained, in-~~
13 ~~stalled and maintained at the person's expense. When a person has com-~~
14 ~~pleted the one-year suspension pursuant to subsection (b)(2) of K.S.A. 8-~~
15 ~~1014, and amendments thereto, the division shall restrict the person's~~
16 ~~driving privileges for one year to driving only a motor vehicle equipped~~
17 ~~with an ignition interlock device, approved by the division and main-~~
18 ~~tained at the person's expense.~~

19 (d) Upon expiration of the period of time for which restrictions are
20 imposed pursuant to this section, the licensee may apply to the division
21 for the return of any license previously surrendered by the licensee. If
22 the license has expired, the person may apply to the division for a new
23 license, which shall be issued by the division upon payment of the proper
24 fee and satisfaction of the other conditions established by law, unless the
25 person's driving privileges have been suspended or revoked prior to
26 expiration.

27 ~~Sec. 44-12.~~ On and after July 1, 2001, K.S.A. 2000 Supp. 8-1016 is
28 hereby amended to read as follows: 8-1016. (a) The secretary of revenue
29 ~~shall may~~ adopt rules and regulations for:

30 (1) The approval by the division of models and classes of ignition
31 interlock devices suitable for use by persons whose driving privileges have
32 been restricted to driving a vehicle equipped with such a device; ~~and~~

33 (2) the calibration and maintenance of such devices, which shall be
34 the responsibility of the manufacturer; *and*

35 (3) *ensuring that each manufacturer approved provides a reasonable*
36 *statewide service network where such devices may be obtained, repaired,*
37 *replaced or serviced and such service network can be accessed 24 hours*
38 *per day through a toll-free phone service.*

39 In adopting rules and regulations for approval of ignition interlock de-
40 vices under this section, the secretary of revenue shall ~~insure that those~~
41 ~~devices approved do not impede the safe operation of a motor vehicle~~
42 ~~and have the fewest opportunities to be bypassed so as to render them~~
43 ~~ineffective.~~ *require that the manufacturer or the manufacturer's repre-*

1 *sentatives calibrate and maintain the devices at intervals not to exceed 60*
2 *days. Calibration and maintenance shall include but not be limited to*
3 *physical inspection of the device, the vehicle and wiring of the device to*
4 *the vehicle for signs of tampering, calibration of the device and down-*
5 *loading of all data contained within the device's memory and reporting*
6 *of any violation or noncompliance to the division.*

7 *(4) The division shall adopt by rules and regulations participant*
8 *requirements for proper use and maintenance of a certified ignition in-*
9 *terlock device during any time period the person's license is restricted by*
10 *the division to only operating a motor vehicle with an ignition interlock*
11 *device installed and by rules and regulations the reporting requirements*
12 *of the approved manufacturer to the division relating to the person's*
13 *proper use and maintenance of a certified ignition interlock device.*

14 **[(5) The division shall require that each manufacturer provide**
15 **a credit of at least 2% of the gross program revenues in the state**
16 **as a credit for those persons who have otherwise qualified to obtain**
17 **an ignition interlock restricted license under this act who are in-**
18 **digent as evidenced by qualification and eligibility for the federal**
19 **food stamp program.]**

20 (b) If the division approves an ignition interlock device in accordance
21 with rules and regulations adopted under this section, the division shall
22 give written notice of the approval to the manufacturer of the device.
23 Such notice shall be admissible in any civil or criminal proceeding in this
24 state.

25 (c) The manufacturer of an ignition interlock device shall reimburse
26 the division for any cost incurred in approving or disapproving such device
27 under this section.

28 (d) Neither the state nor any agency, officer or employee thereof shall
29 be liable in any civil or criminal proceeding arising out of the use of an
30 ignition interlock device approved under this section.

31 ~~Sec. 12-13.~~ **13.** On and after July 1, 2001, K.S.A. 2000 Supp. 8-1567a is
32 hereby amended to read as follows: 8-1567a. (a) It shall be unlawful for
33 any person less than 21 years of age to operate or attempt to operate a
34 vehicle in this state with a breath or blood alcohol content of .02 or
35 greater.

36 (b) Whenever a law enforcement officer determines that a breath or
37 blood alcohol test is to be required of a person less than 21 years of age
38 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and amendments thereto, in
39 addition to any other notices required by law, the law enforcement officer
40 shall provide written and oral notice that: (1) It is unlawful for any person
41 less than 21 years of age to operate or attempt to operate a vehicle in this
42 state with a breath or blood alcohol content of .02 or greater; and (2) if
43 the person is less than 21 years of age at the time of the test request and

1 submits to and completes the test or tests and the test results show an
2 alcohol concentration of .02 or greater, *but less than .08*, the person's
3 driving privileges will be suspended for *at least 60 days but not more than*
4 one year.

5 (c) Any suspension and restriction of driving privileges pursuant to
6 this section shall be in addition to any disqualification from driving a
7 commercial motor vehicle pursuant to K.S.A. 8-2,142 and amendments
8 thereto.

9 (d) Whenever a breath or blood alcohol test is requested pursuant to
10 K.S.A. 8-1001 and amendments thereto, from a person less than 21 years
11 of age, and results in a test result of .02 or greater, but less than .08, a
12 law enforcement officer's certification under this section shall be pre-
13 pared. The certification required by this section shall be signed by one
14 or more officers to certify that:

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

28 (2) With regard to a breath test, in addition to those matters required
29 to be certified under subsection (d)(1), that: (A) The testing equipment
30 used was certified by the Kansas department of health and environment;
31 (B) the testing procedures used were in accordance with the require-
32 ments set out by the Kansas department of health and environment; and
33 (C) the person who operated the testing equipment was certified by the
34 Kansas department of health and environment to operate such
35 equipment.

36 (e) If a hearing is requested as a result of a law enforcement officer's
37 certification under this section, the scope of the hearing shall be limited
38 to whether: (1) A law enforcement officer had reasonable grounds to
39 believe the person was operating a vehicle while under the influence of
40 alcohol or drugs, or both, or to believe that the person had been driving
41 a commercial motor vehicle, as defined in K.S.A. 8-2,128 and amend-
42 ments thereto, while having alcohol or other drugs in such person's sys-
43 tem; (2) the person was in custody or arrested for an alcohol or drug

1 related offense or was involved in a motor vehicle accident or collision
2 resulting in property damage, personal injury or death; (3) a law enforce-
3 ment officer had presented the person with the oral and written notice
4 required by K.S.A. 8-1001 and amendments thereto, and the oral and
5 written notice required by this section; (4) the testing equipment used
6 was reliable; (5) the person who operated the testing equipment was
7 qualified; (6) the testing procedures used were reliable; (7) the test result
8 determined that the person had an alcohol concentration of .02 or greater
9 in such person's blood or breath; (8) the person was operating a vehicle;
10 and (9) the person was less than 21 years of age at the time a test was
11 requested.

12 (f) If a person less than 21 years of age submits to a breath or blood
13 alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and
14 amendments thereto, and produces a test result of .02 or greater, but less
15 than .08, the person's driving privileges shall be suspended for *at least 60*
16 *days but not more than one year.*

17 (g) Except where there is a conflict between this section and K.S.A.
18 8-1001 and 8-1002 and amendments thereto, the provisions of K.S.A. 8-
19 1001 and 8-1002 and amendments thereto, shall be applicable to pro-
20 ceedings under this section.

21 (h) Any determination under this section that a person less than 21
22 years of age had a test result of .02 or greater, but less than .08, and any
23 resulting administrative action upon the person's driving privileges, upon
24 the first occurrence of such test result and administrative action, shall not
25 be considered by any insurance company in determining the rate charged
26 for any automobile liability insurance policy or whether to cancel any such
27 policy under the provisions of subsection (4)(a) of K.S.A. 40-277 and
28 amendments thereto.

29 ~~Sec. 13. 14.~~ K.S.A. 41-727 is hereby amended to read as follows: 41-
30 727. (a) Except with regard to serving of alcoholic liquor or cereal malt
31 beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-
32 2652, 41-2704 and 41-2727, and amendments thereto, and subject to any
33 rules and regulations adopted pursuant to such statutes, no person under
34 21 years of age shall possess, consume, obtain, purchase or attempt to
35 obtain or purchase alcoholic liquor or cereal malt beverage except as
36 authorized by law.

37 (b) Violation of this section by a person 18 or more years of age but
38 less than 21 years of age is a class C misdemeanor for which the minimum
39 fine is \$200.

40 (c) Any person less than 18 years of age who violates this section is a
41 juvenile offender under the Kansas juvenile justice code. Upon adjudi-
42 cation thereof and as a condition of disposition, the court shall require
43 the offender to pay a fine of not less than \$200 nor more than \$500.

1 (d) In addition to any other penalty provided for a violation of this
2 section, the court may order the offender to do either or both of the
3 following:

- 4 (1) Perform 40 hours of public service; or
5 (2) attend and satisfactorily complete a suitable educational or train-
6 ing program dealing with the effects of alcohol or other chemical sub-
7 stances when ingested by humans.

8 *In addition, the court may order the division of vehicles to suspend the*
9 *driving privilege of such offender for up to 30 days.*

10 (e) This section shall not apply to the possession and consumption of
11 cereal malt beverage by a person under the legal age for consumption of
12 cereal malt beverage when such possession and consumption is permitted
13 and supervised, and such beverage is furnished, by the person's parent
14 or legal guardian.

15 (f) Any city ordinance or county resolution prohibiting the acts pro-
16 hibited by this section shall provide a minimum penalty which is not less
17 than the minimum penalty prescribed by this section.

18 (g) This section shall be part of and supplemental to the Kansas liquor
19 control act.

20 **New Sec. 15. Refusal to submit to a request by a law enforce-**
21 **ment officer to submit to a breath, blood or urine test pursuant to**
22 **K.S.A. 8-1001 or 8-1002, and amendments thereto, shall be a class**
23 **B misdemeanor.**

24 ~~Sec. 14-16.~~ K.S.A. 8-258, 8-285 and 41-727 and K.S.A. 2000 Supp.
25 8-255, 8-262, 8-1001 and 8-1014 are hereby repealed.

26 ~~Sec. 15-17.~~ On and after July 1, 2001, K.S.A. 2000 Supp. 8-1002, **8-**
27 **1008**, 8-1015, 8-1016 and 8-1567a are hereby repealed.

28 ~~Sec. 16-18.~~ This act shall take effect and be in force from and after
29 its publication in the Kansas register.

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