

3
4 **SENATE BILL No. 208**

5
6 By Committee on Judiciary

7
8 2-1
9

10 AN ACT concerning crimes, criminal procedure and penalties; relating
11 to driving under the influence of inhalants; amending K.S.A. 2000
12 Supp. 8-1567 and repealing the existing section.

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

15 Section 1. K.S.A. 2000 Supp. 8-1567 is hereby amended to read as
16 follows: 8-1567. (a) No person shall operate or attempt to operate any
17 vehicle within this state while:

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

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

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

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

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

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

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

39 (d) Upon a first conviction of a violation of this section, a person shall
40 be guilty of a class B, nonperson misdemeanor and sentenced to not less
41 than 48 consecutive hours nor more than six months' imprisonment, or
42 in the court's discretion 100 hours of public service, and fined not less
43 than \$200 nor more than \$500. The person convicted must serve at least

1 48 consecutive hours' imprisonment or 100 hours of public service either
2 before or as a condition of any grant of probation or suspension, reduction
3 of sentence or parole. In addition, the court shall enter an order which
4 requires that the person enroll in and successfully complete an alcohol
5 and drug safety action education program or treatment program as pro-
6 vided in K.S.A. 8-1008, and amendments thereto, or both the education
7 and treatment programs.

8 (e) On a second conviction of a violation of this section, a person shall
9 be guilty of a class A, nonperson misdemeanor and sentenced to not less
10 than 90 days nor more than one year's imprisonment and fined not less
11 than \$500 nor more than \$1,000. The five days' imprisonment mandated
12 by this subsection may be served in a work release program only after
13 such person has served 48 consecutive hours' imprisonment, provided
14 such work release program requires such person to return to confinement
15 at the end of each day in the work release program. Except as provided
16 in subsection (g), the person convicted must serve at least five consecutive
17 days' imprisonment before the person is granted probation, suspension
18 or reduction of sentence or parole or is otherwise released. As a condition
19 of any grant of probation, suspension of sentence or parole or of any other
20 release, the person shall be required to enter into and complete a treat-
21 ment program for alcohol and drug abuse as provided in K.S.A. 8-1008,
22 and amendments thereto.

23 (f) On the third or a subsequent conviction of a violation of this sec-
24 tion, a person shall be guilty of a nonperson felony and sentenced to not
25 less than 90 days nor more than one year's imprisonment and fined not
26 less than \$1,000 nor more than \$2,500. Except as provided in subsection
27 (g), the person convicted shall not be eligible for release on probation,
28 suspension or reduction of sentence or parole until the person has served
29 at least 90 days' imprisonment. The court may also require as a condition
30 of parole that such person enter into and complete a treatment program
31 for alcohol and drug abuse as provided by K.S.A. 8-1008, and amend-
32 ments thereto. The 90 days' imprisonment mandated by this subsection
33 may be served in a work release program only after such person has served
34 48 consecutive hours' imprisonment, provided such work release program
35 requires such person to return to confinement at the end of each day in
36 the work release program.

37 (g) On a second or subsequent conviction of a violation of this section,
38 the court may place the person convicted under a house arrest program,
39 pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-
40 mainder of the minimum sentence only after such person has served 48
41 consecutive hours' imprisonment.

42 (h) The court may establish the terms and time for payment of any
43 fines, fees, assessments and costs imposed pursuant to this section. Any

1 assessment and costs shall be required to be paid not later than 90 days
2 after imposed, and any remainder of the fine shall be paid prior to the
3 final release of the defendant by the court.

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

14 (j) The court shall report every conviction of a violation of this section
15 and every diversion agreement entered into in lieu of further criminal
16 proceedings or a complaint alleging a violation of this section to the di-
17 vision. Prior to sentencing under the provisions of this section, the court
18 shall request and shall receive from the division a record of all prior
19 convictions obtained against such person for any violations of any of the
20 motor vehicle laws of this state.

21 (k) For the purpose of determining whether a conviction is a first,
22 second, third or subsequent conviction in sentencing under this section:

23 (1) "Conviction" includes being convicted of a violation of this section
24 or entering into a diversion agreement in lieu of further criminal pro-
25 ceedings on a complaint alleging a violation of this section;

26 (2) "conviction" includes being convicted of a violation of a law of
27 another state or an ordinance of any city, or resolution of any county,
28 which prohibits the acts that this section prohibits or entering into a di-
29 version agreement in lieu of further criminal proceedings in a case alleg-
30 ing a violation of such law, ordinance or resolution;

31 (3) only convictions occurring in the immediately preceding five
32 years, including prior to the effective date of this act, shall be taken into
33 account, but the court may consider other prior convictions in determin-
34 ing the sentence to be imposed within the limits provided for a first,
35 second, third or subsequent offender, whichever is applicable; and

36 (4) it is irrelevant whether an offense occurred before or after con-
37 viction for a previous offense.

38 (l) Upon conviction of a person of a violation of this section or a
39 violation of a city ordinance or county resolution prohibiting the acts
40 prohibited by this section, the division, upon receiving a report of con-
41 viction, shall suspend, restrict or suspend and restrict the person's driving
42 privileges as provided by K.S.A. 8-1014, and amendments thereto.

43 (m) Nothing contained in this section shall be construed as prevent-

1 ing any city from enacting ordinances, or any county from adopting res-
2 olutions, declaring acts prohibited or made unlawful by this act as unlaw-
3 ful or prohibited in such city or county and prescribing penalties for
4 violation thereof, but the minimum penalty prescribed by any such or-
5 dinance or resolution shall not be less than the minimum penalty pre-
6 scribed by this act for the same violation, and the maximum penalty in
7 any such ordinance or resolution shall not exceed the maximum penalty
8 prescribed for the same violation. In addition, any such ordinance or
9 resolution shall authorize the court to order that the convicted person
10 pay restitution to any victim who suffered loss due to the violation for
11 which the person was convicted.

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

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

25 (p) Upon a fourth or subsequent conviction, the judge of any court
26 in which any person is convicted of violating this section, may revoke the
27 person's license plate or temporary registration certificate of the motor
28 vehicle driven during the violation of this section for a period of one year.
29 Upon revoking any license plate or temporary registration certificate pur-
30 suant to this subsection, the court shall require that such license plate or
31 temporary registration certificate be surrendered to the court.

32 (q) For the purpose of this section: (1) "Alcohol concentration"
33 means the number of grams of alcohol per 100 milliliters of blood or per
34 210 liters of breath.

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

39 (r) *For purposes of this section drug includes an inhalant or other*
40 *substance containing a chemical capable of releasing any toxic vapors or*
41 *fumes for the purpose inducing a condition of intoxication, such as any*
42 *glue, cement or any other substance containing one or more of the follow-*
43 *ing chemical compounds: Acetone and acetate, amyl nitrite or amyl nitrate*

1 ~~or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their~~
2 ~~isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene~~
3 ~~dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl~~
4 ~~ethyl ketone, nitrous oxide, n propyl alcohol, pentachlorophenol, petro-~~
5 ~~leum ether, propyl nitrate or proyl nitrate or their isomers, toluene, toluol~~
6 ~~or xylene or any other chemical substance capable of causing a condition~~
7 ~~of intoxication, inebriation, excitement, stupefaction or the dulling of the~~
8 ~~brain or nervous system as a result of the inhalation of the fumes or vapors~~
9 ~~of such chemical substance.~~

10 Sec. 2. K.S.A. 2000 Supp. 8-1567 is hereby repealed.

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

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