

*As Amended by Senate Committee*

Session of 2007

**SENATE BILL No. 376**

By Committee on Ways and Means

3-6

10 AN ACT concerning driving; relating to driver's licenses; concerning ha-  
11 bitual violators; relating to driving under the influence of alcohol or  
12 drugs; concerning administrative hearings; relating to the computation  
13 of time; ignition interlock and impoundment; amending K.S.A. 8-235,  
14 8-286, 8-288, 8-1002 and 8-1020 and K.S.A. 2006 Supp. 8-287 and 8-  
15 1567 and repealing the existing sections.

16

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

18 Section 1. K.S.A. 8-235 is hereby amended to read as follows: 8-235.

19 (a) No person, except those expressly exempted, shall drive any motor  
20 vehicle upon a highway in this state unless such person has a valid driver's  
21 license. No person shall receive a driver's license unless and until such  
22 person surrenders or with the approval of the division, lists to the division  
23 all valid licenses in such person's possession issued to such person by any  
24 other jurisdiction. All surrendered licenses or the information listed on  
25 foreign licenses shall be returned by the division to the issuing depart-  
26 ment, together with information that the licensee is now licensed in a  
27 new jurisdiction. No person shall be permitted to have more than one  
28 valid license at any time.

29 (b) Any person licensed under the motor vehicle drivers' license act  
30 may exercise the privilege granted upon all streets and highways in this  
31 state and shall not be required to obtain any other license to exercise such  
32 privilege by any local authority. Nothing herein shall prevent cities from  
33 requiring licenses of persons who drive taxicabs or municipally franchised  
34 transit systems for hire upon city streets, to protect the public from drivers  
35 whose character or habits make them unfit to transport the public. If a  
36 license is denied, the applicant may appeal such decision to the district  
37 court of the county in which such city is located by filing within 10 days  
38 after such denial, a notice of appeal with the clerk of the district court  
39 and by filing a copy of such notice with the city clerk of the involved city.  
40 The city clerk shall certify a copy of such decision of the city governing  
41 body to the clerk of the district court and the matter shall be docketed  
42 as any other cause and the applicant shall be granted a trial of such per-  
43 son's character and habits. The matter shall be heard by the court *de novo*

1 in accordance with the code of civil procedure. The cost of such appeal  
2 shall be assessed in such manner as the court may direct.

3 (c) Any person operating in this state a motor vehicle, except a mo-  
4 torcycle, which is registered in this state other than under a temporary  
5 thirty-day permit shall be the holder of a driver's license which is classified  
6 for the operation of such motor vehicle, and any person operating in this  
7 state a motorcycle which is registered in this state shall be the holder of  
8 a class M driver's license, except that any person operating in this state a  
9 motorcycle which is registered under a temporary thirty-day permit shall  
10 be the holder of a driver's license for any class of motor vehicles.

11 (d) No person shall drive any motorized bicycle upon a highway of  
12 this state unless: (1) Such person has a valid driver's license which entitles  
13 the licensee to drive a motor vehicle in any class or classes; (2) such person  
14 is at least 15 years of age and has passed the written and visual exami-  
15 nations required for obtaining a class C driver's license, in which case the  
16 division shall issue to such person a class C license which clearly indicates  
17 such license is valid only for the operation of motorized bicycles; ~~or~~ (3)  
18 such person has had their driving privileges suspended, *for a violation*  
19 *other than ~~a~~ for a second or subsequent violation of K.S.A. 8-1567 or*  
20 *8-1567a, and amendments thereto*, and has made application to the di-  
21 vision for the issuance of a class C license for the operation of motorized  
22 bicycles, in accordance with paragraph (2), in which case the division shall  
23 issue to such person a class C license which clearly indicates such license  
24 is valid only for the operation of motorized bicycles; ~~or~~ (4) *such person*  
25 *has had their driving privileges revoked under K.S.A. 8-286, and amend-*  
26 *ments thereto, for violations other than violations of K.S.A. 8-1567*  
27 *or 8-1567a, and amendments thereto and has made application to the*  
28 *division for issuance of a class C license for the operation of motorized*  
29 *bicycles, in accordance with paragraph (2), in which case the division*  
30 *shall issue to such person a class C license which clearly indicates such*  
31 *license is valid only for the operation of motorized bicycles; or*

32 **(5) such person has had their driving privileges revoked for vi-**  
33 **olations of K.S.A. 8-1567 or 8-1567a, and amendments thereto, and**  
34 **has served at least a one year suspension in which case the division**  
35 **may issue such person a class C license which clearly indicates such**  
36 **license is valid only for operation of motorized bicycles.**

37 (e) Violation of this section shall constitute a class B misdemeanor.  
38 Sec. 2. K.S.A. 8-286 is hereby amended to read as follows: 8-286.  
39 Whenever the files and records of the division shall disclose that the  
40 record of convictions of any person is such that the person is an habitual  
41 violator, as prescribed by K.S.A. 8-285, and amendments thereto, the  
42 division promptly shall revoke the person's driving privileges for a period  
43 of three years, *except as allowed under subsection (d)(4) or (5) of K.S.A.*

1 8-235, and amendments thereto.

2 Sec. 3. K.S.A. 2006 Supp. 8-287 is hereby amended to read as fol-  
3 lows: 8-287. *Except as allowed under subsection (d)(4) or (5) of K.S.A.*  
4 *8-235, and amendments thereto*, operation of a motor vehicle in this state  
5 while one's driving privileges are revoked pursuant to K.S.A. 8-286 and  
6 amendments thereto is a class A nonperson misdemeanor. The person  
7 found guilty of a third or subsequent conviction of this section shall be  
8 sentenced to not less than 90 days imprisonment and fined not less than  
9 \$1,500. The person convicted shall not be eligible for release on proba-  
10 tion, suspension or reduction of sentence or parole until the person has  
11 served at least 90 days' imprisonment. The 90 days' imprisonment man-  
12 dated by this subsection may be served in a work release program only  
13 after such person has served 48 consecutive hours' imprisonment pro-  
14 vided such work release program requires such person to return to con-  
15 finement at the end of each day in the work release program. The court  
16 may place the person convicted under a house arrest program pursuant  
17 to K.S.A. 21-4603b, and amendments thereto, or any municipal ordinance  
18 to serve the remainder of the minimum sentence only after such person  
19 has served 48 consecutive hours' imprisonment.

20 Sec. 4. K.S.A. 8-288 is hereby amended to read as follows: 8-288.  
21 *Except as allowed under subsection (d)(4) or (5) of K.S.A. 8-235, and*  
22 *amendments thereto*, no license to operate a motor vehicle in Kansas shall  
23 be issued to a person for a period of three years from the date of the  
24 division's order revoking such person's driving privileges pursuant to  
25 K.S.A. 8-286 and amendments thereto and until the person's driving priv-  
26 ileges have been restored.

27 Sec. 5. K.S.A. 8-1002 is hereby amended to read as follows: 8-1002.  
28 (a) Whenever a test is requested pursuant to this act and results in either  
29 a test failure or test refusal, a law enforcement officer's certification shall  
30 be prepared. If the person had been driving a commercial motor vehicle,  
31 as defined in K.S.A. 8-2,128, and amendments thereto, a separate certi-  
32 fication pursuant to K.S.A. 8-2,145, and amendments thereto, shall be  
33 prepared in addition to any certification required by this section. The  
34 certification required by this section shall be signed by one or more of-  
35 ficers to certify:

36 (1) With regard to a test refusal, that: (A) There existed reasonable  
37 grounds to believe the person was operating or attempting to operate a  
38 vehicle while under the influence of alcohol or drugs, or both, or to be-  
39 lieve that the person had been driving a commercial motor vehicle, as  
40 defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years  
41 of age while having alcohol or other drugs in such person's system; (B)  
42 the person had been placed under arrest, was in custody or had been  
43 involved in a vehicle accident or collision; (C) a law enforcement officer

1 had presented the person with the oral and written notice required by  
2 K.S.A. 8-1001, and amendments thereto; and (D) the person refused to  
3 submit to and complete a test as requested by a law enforcement officer.

4 (2) With regard to a test failure, that: (A) There existed reasonable  
5 grounds to believe the person was operating a vehicle while under the  
6 influence of alcohol or drugs, or both, or to believe that the person had  
7 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,  
8 and amendments thereto, or is under 21 years of age while having alcohol  
9 or other drugs in such person's system; (B) the person had been placed  
10 under arrest, was in custody or had been involved in a vehicle accident  
11 or collision; (C) a law enforcement officer had presented the person with  
12 the oral and written notice required by K.S.A. 8-1001, and amendments  
13 thereto; and (D) the result of the test showed that the person had an  
14 alcohol concentration of .08 or greater in such person's blood or breath.

15 (3) With regard to failure of a breath test, in addition to those matters  
16 required to be certified under subsection (a)(2), that: (A) The testing  
17 equipment used was certified by the Kansas department of health and  
18 environment; (B) the testing procedures used were in accordance with  
19 the requirements set out by the Kansas department of health and envi-  
20 ronment; and (C) the person who operated the testing equipment was  
21 certified by the Kansas department of health and environment to operate  
22 such equipment.

23 (b) For purposes of this section, certification shall be complete upon  
24 signing, and no additional acts of oath, affirmation, acknowledgment or  
25 proof of execution shall be required. The signed certification or a copy  
26 or photostatic reproduction thereof shall be admissible in evidence in all  
27 proceedings brought pursuant to this act, and receipt of any such certi-  
28 fication, copy or reproduction shall accord the department authority to  
29 proceed as set forth herein. Any person who signs a certification submit-  
30 ted to the division knowing it contains a false statement is guilty of a class  
31 B nonperson misdemeanor.

32 (c) When the officer directing administration of the testing deter-  
33 mines that a person has refused a test and the criteria of subsection (a)(1)  
34 have been met or determines that a person has failed a test and the criteria  
35 of subsection (a)(2) have been met, the officer shall serve upon the person  
36 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and  
37 amendments thereto. If the determination is made while the person is  
38 still in custody, service shall be made in person by the officer on behalf  
39 of the division of vehicles. In cases where a test failure is established by  
40 a subsequent analysis of a breath, blood or urine sample, the officer shall  
41 serve notice of such suspension in person or by another designated officer  
42 or by mailing the notice to the person at the address provided at the time  
43 of the test.

1 (d) In addition to the information required by subsection (a), the law  
2 enforcement officer's certification and notice of suspension shall contain  
3 the following information: (1) The person's name, driver's license number  
4 and current address; (2) the reason and statutory grounds for the suspen-  
5 sion; (3) the date notice is being served and a statement that the effective  
6 date of the suspension shall be the 30th ~~calendar~~ day after the date of  
7 service; (4) the right of the person to request an administrative hearing;  
8 and (5) the procedure the person must follow to request an administrative  
9 hearing. The law enforcement officer's certification and notice of suspen-  
10 sion shall also inform the person that all correspondence will be mailed  
11 to the person at the address contained in the law enforcement officer's  
12 certification and notice of suspension unless the person notifies the di-  
13 vision in writing of a different address or change of address. The address  
14 provided will be considered a change of address for purposes of K.S.A.  
15 8-248, and amendments thereto, if the address furnished is different from  
16 that on file with the division.

17 (e) If a person refuses a test or if a person is still in custody when it  
18 is determined that the person has failed a test, the officer shall take any  
19 license in the possession of the person and, if the license is not expired,  
20 suspended, revoked or canceled, shall issue a temporary license effective  
21 until the 30th ~~calendar~~ day after the date of service set out in the law  
22 enforcement officer's certification and notice of suspension. If the test  
23 failure is established by a subsequent analysis of a breath or blood sample,  
24 the temporary license shall be served together with the copy of the law  
25 enforcement officer's certification and notice of suspension. A temporary  
26 license issued pursuant to this subsection shall bear the same restrictions  
27 and limitations as the license for which it was exchanged. Within five days  
28 after the date of service of a copy of the law enforcement officer's certi-  
29 fication and notice of suspension the officer's certification and notice of  
30 suspension, along with any licenses taken, shall be forwarded to the  
31 division.

32 (f) Upon receipt of the law enforcement officer's certification, the  
33 division shall review the certification to determine that it meets the  
34 requirements of subsection (a). Upon so determining, the division shall  
35 proceed to suspend the person's driving privileges in accordance with the  
36 notice of suspension previously served. If the requirements of subsection  
37 (a) are not met, the division shall dismiss the administrative proceeding  
38 and return any license surrendered by the person.

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

41 (h) The provisions of K.S.A. 60-206 and amendments thereto regard-  
42 ing the computation of time shall ~~not~~ be applicable in determining the  
43 effective date of suspension set out in subsection (d).~~“Calendar day” when~~

1 ~~used in this section shall mean that every day shall be included in com-~~  
2 ~~putations of time whether a week day, Saturday, Sunday or holiday.~~

3 Sec. 6. K.S.A. 8-1020 is hereby amended to read as follows: 8-1020.

4 (a) Any licensee served with an officer's certification and notice of sus-  
5 pension pursuant to K.S.A. 8-1002, and amendments thereto, may re-  
6 quest an administrative hearing. Such request may be made either by:

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

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

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

14 ~~—(4) transmitting a written request by electronic facsimile which is re-~~  
15 ~~ceived by the division within 13 calendar days after service, if such notice~~  
16 ~~was given by mail.~~

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

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

25 (d) Upon receipt of a timely request for a hearing, the division shall  
26 forthwith set the matter for hearing before a representative of the director  
27 and provide notice of the extension of temporary driving privileges. Ex-  
28 cept for a hearing conducted by telephone or video conference call, the  
29 hearing shall be conducted in the county where the arrest occurred or a  
30 county adjacent thereto. If the licensee requests, the hearing may be  
31 conducted by telephone or video conference call.

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

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

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

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

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

- 1 (f) At or prior to the time the notice of hearing is sent, the division  
2 shall issue an order allowing the licensee or the licensee's attorney to  
3 review any video or audio tape record made of the events upon which  
4 the administrative action is based. Such review shall take place at a rea-  
5 sonable time designated by the law enforcement agency and shall be  
6 made at the location where the video or audio tape is kept. The licensee  
7 may obtain a copy of any such video or audio tape upon request and upon  
8 payment of a reasonable fee to the law enforcement agency, not to exceed  
9 \$25 per tape.
- 10 (g) Witnesses at the hearing shall be limited to the licensee, to any  
11 law enforcement officer who signed the certification form and to one  
12 other witness who was present at the time of the issuance of the certifi-  
13 cation and called by the licensee. The presence of the certifying officer  
14 or officers shall not be required, unless requested by the licensee at the  
15 time of making the request for the hearing. The examination of a law  
16 enforcement officer shall be restricted to the factual circumstances relied  
17 upon in the officer's certification.
- 18 (h) (1) If the officer certifies that the person refused the test, the  
19 scope of the hearing shall be limited to whether:
- 20 (A) A law enforcement officer had reasonable grounds to believe the  
21 person was operating or attempting to operate a vehicle while under the  
22 influence of alcohol or drugs, or both, or had been driving a commercial  
23 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,  
24 while having alcohol or other drugs in such person's system;
- 25 (B) the person was in custody or arrested for an alcohol or drug re-  
26 lated offense or was involved in a vehicle accident or collision resulting  
27 in property damage, personal injury or death;
- 28 (C) a law enforcement officer had presented the person with the oral  
29 and written notice required by K.S.A. 8-1001, and amendments thereto;  
30 and
- 31 (D) the person refused to submit to and complete a test as requested  
32 by a law enforcement officer.
- 33 (2) If the officer certifies that the person failed a breath test, the  
34 scope of the hearing shall be limited to whether:
- 35 (A) A law enforcement officer had reasonable grounds to believe the  
36 person was operating a vehicle while under the influence of alcohol or  
37 drugs, or both, or had been driving a commercial motor vehicle, as de-  
38 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol  
39 or other drugs in such person's system;
- 40 (B) the person was in custody or arrested for an alcohol or drug re-  
41 lated offense or was involved in a vehicle accident or collision resulting  
42 in property damage, personal injury or death;
- 43 (C) a law enforcement officer had presented the person with the oral

- 1 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 2 (D) the testing equipment used was certified by the Kansas depart-  
3 ment of health and environment;
- 4 (E) the person who operated the testing equipment was certified by  
5 the Kansas department of health and environment;
- 6 (F) the testing procedures used substantially complied with the pro-  
7 cedures set out by the Kansas department of health and environment;
- 8 (G) the test result determined that the person had an alcohol con-  
9 centration of .08 or greater in such person's breath; and
- 10 (H) the person was operating or attempting to operate a vehicle.
- 11 (3) If the officer certifies that the person failed a blood test, the scope  
12 of the hearing shall be limited to whether:
- 13 (A) A law enforcement officer had reasonable grounds to believe the  
14 person was operating a vehicle while under the influence of alcohol or  
15 drugs, or both, or had been driving a commercial motor vehicle, as de-  
16 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol  
17 or other drugs in such person's system;
- 18 (B) the person was in custody or arrested for an alcohol or drug re-  
19 lated offense or was involved in a vehicle accident or collision resulting  
20 in property damage, personal injury or death;
- 21 (C) a law enforcement officer had presented the person with the oral  
22 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 23 (D) the testing equipment used was reliable;
- 24 (E) the person who operated the testing equipment was qualified;
- 25 (F) the testing procedures used were reliable;
- 26 (G) the test result determined that the person had an alcohol con-  
27 centration of .08 or greater in such person's blood; and
- 28 (H) the person was operating or attempting to operate a vehicle.
- 29 (i) At a hearing pursuant to this section, or upon court review of an  
30 order entered at such a hearing, an affidavit of the custodian of records  
31 at the Kansas department of health and environment stating that the  
32 breath testing device was certified and the operator of such device was  
33 certified on the date of the test shall be admissible into evidence in the  
34 same manner and with the same force and effect as if the certifying officer  
35 or employee of the Kansas department of health and environment had  
36 testified in person. A certified operator of a breath testing device shall be  
37 competent to testify regarding the proper procedures to be used in con-  
38 ducting the test.
- 39 (j) At a hearing pursuant to this section, or upon court review of an  
40 order entered at such a hearing, in which the report of blood test results  
41 have been prepared by the Kansas bureau of investigation or other fo-  
42 rensic laboratory of a state or local law enforcement agency are to be  
43 introduced as evidence, the report, or a copy of the report, of the findings



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

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

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

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

12 (2) the testimony of the licensee;

13 (3) the testimony of any certifying officer;

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

16 (5) any affidavits submitted from other witnesses;

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

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

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

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

1 date of the hearing order shall be the date upon which the hearing order  
2 is served, whether served in person or by mail.

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

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

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

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

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

38 (t) The facts found by the hearing officer or by the district court upon  
39 a petition for review shall be independent of the determination of the  
40 same or similar facts in the adjudication of any criminal charges arising  
41 out of the same occurrence. The disposition of those criminal charges  
42 shall not affect the suspension or suspension and restriction to be imposed  
43 under this section.

1 (u) All notices affirming or canceling a suspension under this section,  
2 all notices of a hearing held under this section and all issuances of tem-  
3 porary driving privileges pursuant to this section shall be sent by first-  
4 class mail and a United States post office certificate of mailing shall be  
5 obtained therefor. All notices so mailed shall be deemed received three  
6 days after mailing, except that this provision shall not apply to any licensee  
7 where such application would result in a manifest injustice.

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

15 Sec. 7. K.S.A. 2006 Supp. 8-1567 is hereby amended to read as fol-  
16 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle  
17 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 \$500 nor more than \$1,000. The person convicted must serve at

1 least 48 consecutive hours' imprisonment or 100 hours of public service  
2 either before or as a condition of any grant of probation or suspension,  
3 reduction of sentence or parole. In addition, the court shall enter an order  
4 which requires that the person enroll in and successfully complete an  
5 alcohol and drug safety action education program or treatment program  
6 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-  
7 ucation 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 \$1,000 nor more than \$1,500. The person convicted must serve at  
12 least five consecutive days' imprisonment before the person is granted  
13 probation, suspension or reduction of sentence or parole or is otherwise  
14 released. The five days' imprisonment mandated by this subsection may  
15 be served in a work release program only after such person has served  
16 48 consecutive hours' imprisonment, provided such work release program  
17 requires such person to return to confinement at the end of each day in  
18 the work release program. The court may place the person convicted  
19 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-  
20 ments thereto, to serve the remainder of the minimum sentence only  
21 after such person has served 48 consecutive hours' imprisonment. As a  
22 condition of any grant of probation, suspension of sentence or parole or  
23 of any other release, the person shall be required to enter into and com-  
24 plete a treatment program for alcohol and drug abuse as provided in  
25 K.S.A. 8-1008, and amendments thereto.

26 (f) On the third conviction of a violation of this section, a person shall  
27 be guilty of a nonperson felony and sentenced to not less than 90 days  
28 nor more than one year's imprisonment and fined not less than \$1,500  
29 nor more than \$2,500. The person convicted shall not be eligible for  
30 release on probation, suspension or reduction of sentence or parole until  
31 the person has served at least 90 days' imprisonment. The court may also  
32 require as a condition of parole that such person enter into and complete  
33 a treatment program for alcohol and drug abuse as provided by K.S.A. 8-  
34 1008, and amendments thereto. The 90 days' imprisonment mandated by  
35 this subsection may be served in a work release program only after such  
36 person has served 48 consecutive hours' imprisonment, provided such  
37 work release program requires such person to return to confinement at  
38 the end of each day in the work release program. The court may place  
39 the person convicted under a house arrest program pursuant to K.S.A.  
40 21-4603b, and amendments thereto, to serve the remainder of the min-  
41 imum sentence only after such person has served 48 consecutive hours'  
42 imprisonment.

43 (g) On the fourth or subsequent conviction of a violation of this sec-

1 tion, a person shall be guilty of a nonperson felony and sentenced to not  
2 less than 90 days nor more than one year's imprisonment and fined  
3 \$2,500. The person convicted shall not be eligible for release on proba-  
4 tion, suspension or reduction of sentence or parole until the person has  
5 served at least 90 days' imprisonment. The 90 days' imprisonment man-  
6 dated by this subsection may be served in a work release program only  
7 after such person has served 72 consecutive hours' imprisonment, pro-  
8 vided such work release program requires such person to return to con-  
9 finement at the end of each day in the work release program. At the time  
10 of the filing of the judgment form or journal entry as required by K.S.A.  
11 21-4620 or 22-3426, and amendments thereto, the court shall cause a  
12 certified copy to be sent to the officer having the offender in charge. The  
13 law enforcement agency maintaining custody and control of a defendant  
14 for imprisonment shall cause a certified copy of the judgment form or  
15 journal entry to be sent to the secretary of corrections within three busi-  
16 ness days of receipt of the judgment form or journal entry from the court  
17 and notify the secretary of corrections when the term of imprisonment  
18 expires and upon expiration of the term of imprisonment shall deliver the  
19 defendant to a location designated by the secretary. After the term of  
20 imprisonment imposed by the court, the person shall be placed in the  
21 custody of the secretary of corrections for a mandatory one-year period  
22 of postrelease supervision, which such period of postrelease supervision  
23 shall not be reduced. During such postrelease supervision, the person  
24 shall be required to participate in an inpatient or outpatient program for  
25 alcohol and drug abuse, including, but not limited to, an approved after-  
26 care plan or mental health counseling, as determined by the secretary  
27 and satisfy conditions imposed by the Kansas parole board as provided  
28 by K.S.A. 22-3717, and amendments thereto. Any violation of the con-  
29 ditions of such postrelease supervision may subject such person to revo-  
30 cation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and  
31 amendments thereto and as otherwise provided by law.

32 (h) Any person convicted of violating this section or an ordinance  
33 which prohibits the acts that this section prohibits who had a child under  
34 the age of 14 years in the vehicle at the time of the offense shall have  
35 such person's punishment enhanced by one month of imprisonment. This  
36 imprisonment must be served consecutively to any other penalty imposed  
37 for a violation of this section or an ordinance which prohibits the acts that  
38 this section prohibits. During the service of the one month enhanced  
39 penalty, the judge may order the person on house arrest, work release or  
40 other conditional release.

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

1 after imposed, and any remainder of the fine shall be paid prior to the  
2 final release of the defendant by the court.

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

13 (k) (1) Except as provided in paragraph (5), in addition to any other  
14 penalty which may be imposed upon a ~~person convicted~~ *first conviction*  
15 of a violation of this section, the court may order that the convicted per-  
16 son's motor vehicle or vehicles be impounded or immobilized for a period  
17 not to exceed one year and that the convicted person pay all towing,  
18 impoundment and storage fees or other immobilization costs.

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

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

26 (A) Whether the impoundment or immobilization of the motor ve-  
27 hicle would result in the loss of employment by the convicted person or  
28 a member of such person's family; and

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

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

34 (5) As used in this subsection, the convicted person's motor vehicle  
35 or vehicles shall include any vehicle leased by such person. If the lease  
36 on the convicted person's motor vehicle subject to impoundment or im-  
37 mobilization expires in less than one year from the date of the impound-  
38 ment or immobilization, the time of impoundment or immobilization of  
39 such vehicle shall be the amount of time remaining on the lease.

40 (l) (1) *Except as provided in paragraph (3), in addition to any other*  
41 *penalty which may be imposed upon a second or subsequent conviction*  
42 *of a violation of this section, the court shall order that each motor vehicle*  
43 *owned or leased by the convicted person shall either be equipped with an*

1 *ignition interlock device or be impounded or immobilized for a period*  
 2 *of two years. The convicted person shall pay all costs associated with the*  
 3 *installation, maintenance and removal of the ignition interlock device and*  
 4 *all towing, impoundment and storage fees or other immobilization costs.*

5 (2) *Any personal property in a vehicle impounded or immobilized*  
 6 *pursuant to this subsection may be retrieved prior to or during the period*  
 7 *of such impoundment or immobilization.*

8 (3) *As used in this subsection, the convicted person's motor vehicle*  
 9 *or vehicles shall include any vehicle leased by such person. If the lease on*  
 10 *the convicted person's motor vehicle subject to impoundment or immo-*  
 11 *bilization expires in less than two years from the date of the impoundment*  
 12 *or immobilization, the time of impoundment or immobilization of such*  
 13 *vehicle shall be the amount of time remaining on the lease.*

14 ~~(k)~~ (m) The court shall report every conviction of a violation of this  
 15 section and every diversion agreement entered into in lieu of further  
 16 criminal proceedings or a complaint alleging a violation of this section to  
 17 the division. Prior to sentencing under the provisions of this section, the  
 18 court 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 ~~(n)~~ (n) For the purpose of determining whether a conviction is a  
 22 first, second, third, fourth or subsequent conviction in sentencing under  
 23 this section:

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

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

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

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

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

41 ~~(o)~~ (o) Upon conviction of a person of a violation of this section or a  
 42 violation of a city ordinance or county resolution prohibiting the acts  
 43 prohibited by this section, the division, upon receiving a report of con-

1 viction, shall suspend, restrict or suspend and restrict the person's driving  
2 privileges as provided by K.S.A. 8-1014, and amendments thereto.

3 ~~(p)~~ (1) Nothing contained in this section shall be construed as  
4 preventing any city from enacting ordinances, or any county from adopt-  
5 ing resolutions, declaring acts prohibited or made unlawful by this act as  
6 unlawful or prohibited in such city or county and prescribing penalties  
7 for violation thereof. Except as specifically provided by this subsection,  
8 the minimum penalty prescribed by any such ordinance or resolution shall  
9 not be less than the minimum penalty prescribed by this act for the same  
10 violation, and the maximum penalty in any such ordinance or resolution  
11 shall not exceed the maximum penalty prescribed for the same violation.

12 Any such ordinance or resolution shall authorize the court to order that  
13 the convicted person pay restitution to any victim who suffered loss due  
14 to the violation for which the person was convicted. Except as provided  
15 in paragraph (5), any such ordinance or resolution may require or au-  
16 thorize the court to order that the convicted person's motor vehicle or  
17 vehicles be impounded or immobilized for a period not to exceed one  
18 year and that the convicted person pay all towing, impoundment and  
19 storage fees or other immobilization costs.

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

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

27 (A) Whether the impoundment or immobilization of the motor ve-  
28 hicle would result in the loss of employment by the convicted person or  
29 a member of such person's family; and

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

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

35 (5) As used in this subsection, the convicted person's motor vehicle  
36 or vehicles shall include any vehicle leased by such person. If the lease  
37 on the convicted person's motor vehicle subject to impoundment or im-  
38 mobilization expires in less than one year from the date of the impound-  
39 ment or immobilization, the time of impoundment or immobilization of  
40 such vehicle shall be the amount of time remaining on the lease.

41 ~~(q)~~ (q) No plea bargaining agreement shall be entered into nor shall  
42 any judge approve a plea bargaining agreement entered into for the pur-  
43 pose of permitting a person charged with a violation of this section, or a



1 violation of any ordinance of a city or resolution of any county in this state  
2 which prohibits the acts prohibited by this section, to avoid the mandatory  
3 penalties established by this section or by the ordinance. For the purpose  
4 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
5 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
6 constitute plea bargaining.

7 ~~(q)~~ (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)  
8 may be pleaded in the alternative, and the state, city or county, but shall  
9 not be required to, may elect one or two of the three prior to submission  
10 of the case to the fact finder.

11 ~~(s)~~ (s) Upon a fourth or subsequent conviction, the judge of any court  
12 in which any person is convicted of violating this section, may revoke the  
13 person's license plate or temporary registration certificate of the motor  
14 vehicle driven during the violation of this section for a period of one year.  
15 Upon revoking any license plate or temporary registration certificate pur-  
16 suant to this subsection, the court shall require that such license plate or  
17 temporary registration certificate be surrendered to the court.

18 ~~(t)~~ (t) For the purpose of this section: (1) "Alcohol concentration"  
19 means the number of grams of alcohol per 100 milliliters of blood or per  
20 210 liters of breath.

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

25 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-  
26 4165, and amendments thereto.

27 ~~(u)~~ (u) The amount of the increase in fines as specified in this section  
28 shall be remitted by the clerk of the district court to the state treasurer  
29 in accordance with the provisions of K.S.A. 75-4215, and amendments  
30 thereto. Upon receipt of remittance of the increase provided in this act,  
31 the state treasurer shall deposit the entire amount in the state treasury  
32 and the state treasurer shall credit 50% to the community alcoholism and  
33 intoxication programs fund and 50% to the department of corrections  
34 alcohol and drug abuse treatment fund, which is hereby created in the  
35 state treasury.

36 Sec. 8. K.S.A. 8-235, 8-286, 8-288, 8-1002 and 8-1020 and K.S.A.  
37 2006 Supp. 8-287 and 8-1567 are hereby repealed.

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