

HOUSE BILL No. 2387

By Committee on Judiciary

2-12

1 AN ACT concerning aircraft; relating to operating an aircraft under the
2 influence; prescribing criminal and administrative penalties; providing
3 for testing of blood, breath, urine or other bodily substances and
4 preliminary screening tests of breath or oral fluid; repealing K.S.A. 3-
5 1001, 3-1002, 3-1003, 3-1004 and 3-1005.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

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

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

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

33 (i) As a condition of any probation granted under this subsection, the
34 person shall serve at least 120 hours of confinement. The hours of
35 confinement shall include at least 48 hours imprisonment and otherwise
36 may be served by a combination of: Imprisonment; a work release

1 program, provided such work release program requires such person to
2 return to the confinement at the end of each day in the work release
3 program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-
4 6609, and amendments thereto; and

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

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

21 (2) Operating an aircraft under the influence is a severity level 6,
22 nonperson felony if the offense occurred while the person convicted did
23 not hold a valid pilot license issued by the federal aviation administration.

24 (A) The person convicted shall be sentenced to not less than 90 days
25 nor more than one year's imprisonment and fined \$2,500. The person
26 convicted shall not be eligible for release on probation, suspension or
27 reduction of sentence or parole until the person has served at least 90 days'
28 imprisonment.

29 (B) The 90 days' imprisonment mandated by this subsection may be
30 served in a work release program only after such person has served 72
31 consecutive hours' imprisonment, provided such work release program
32 requires such person to return to confinement at the end of each day in the
33 work release program. The person convicted, if placed into a work release
34 program, shall serve a minimum of 2,160 hours of confinement. Such
35 2,160 hours of confinement shall be a period of at least 72 consecutive
36 hours of imprisonment followed by confinement hours at the end of and
37 continuing to the beginning of the offender's work day.

38 (C) The court may place the person convicted under a house arrest
39 program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto,
40 to serve the 90 days' imprisonment mandated by this subsection only after
41 such person has served 72 consecutive hours' imprisonment. The person
42 convicted, if placed under house arrest, shall be monitored by an electronic
43 monitoring device that verifies the offender's location. The offender shall

1 serve a minimum of 2,160 hours of confinement within the boundaries of
2 the offender's residence. Any exceptions to remaining within the
3 boundaries of the offender's residence provided for in the house arrest
4 agreement shall not be counted as part of the 2,160 hours.

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

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

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

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

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

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

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

37 (A) The person has been arrested or otherwise taken into custody for
38 any offense violation of any state statute, county resolution or city
39 ordinance; or

40 (B) the person has been involved in an aircraft accident or crash
41 resulting in property damage, personal injury or death.

42 (2) The law enforcement officer directing administration of the test or
43 tests may act on personal knowledge or on the basis of the collective

1 information available to law enforcement officers involved in the
2 investigation or arrest.

3 (c) Nothing in this section shall be construed to limit the right of a
4 law enforcement officer to conduct any search of a person's breath or other
5 bodily substance, other than blood or urine, incident to a lawful arrest
6 pursuant to the constitution of the United States, nor limit the admissibility
7 at any trial or hearing of alcohol or drug concentration testing results
8 obtained pursuant to such a search.

9 (d) Nothing in this section shall be construed to limit the right of a
10 law enforcement officer to conduct or obtain a blood or urine test of a
11 person pursuant to a warrant under K.S.A. 22-2502, and amendments
12 thereto, the constitution of the United States or a judicially recognized
13 exception to the search warrant requirement, nor limit the admissibility at
14 any trial or hearing of alcohol or drug concentration testing results
15 obtained pursuant to such a search.

16 (e) A law enforcement officer may direct a medical professional, as
17 described in subsection (f), to draw one or more samples of blood from a
18 person to determine the blood's alcohol or drug concentration if:

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

21 (2) law enforcement has obtained a search warrant authorizing the
22 collection of blood from the person; or

23 (3) the person refuses or is unable to consent to, submit to and
24 complete a test, and another judicially recognized exception to the warrant
25 requirement applies.

26 (f) If a law enforcement officer is authorized to collect one or more
27 tests of blood under this section, the withdrawal of blood at the direction
28 of the officer may be performed only by:

29 (1) A person licensed to practice medicine and surgery, licensed as a
30 physician assistant or a person acting under the direction of any such
31 licensed person;

32 (2) a registered nurse or a licensed practical nurse;

33 (3) any qualified medical technician, including, but not limited to, an
34 advanced emergency medical technician or a paramedic, as those terms are
35 defined in K.S.A. 65-6112, and amendments thereto, authorized by
36 medical protocol; or

37 (4) a phlebotomist.

38 (g) When so directed by a law enforcement officer through a written
39 statement, the medical professional shall withdraw the sample of blood as
40 soon as practical and shall deliver the sample to the law enforcement
41 officer or another law enforcement officer as directed by the requesting
42 law enforcement officer as soon as practical, provided the collection of the
43 sample does not jeopardize the person's life, cause serious injury to the

1 person or seriously impede the person's medical assessment, care or
2 treatment. The medical professional authorized in this section to withdraw
3 the blood and the medical care facility where the blood is drawn may act
4 on good faith that the requirements have been met for directing the
5 withdrawal of blood once presented with the written statement provided
6 for under this subsection. The medical professional shall not require the
7 person that is the subject of the test or tests to provide any additional
8 consent or sign any waiver form. In such a case, the person authorized to
9 withdraw blood and the medical care facility shall not be liable in any
10 action alleging lack of consent or lack of informed consent. Such sample
11 or samples shall be an independent sample and not be a portion of a
12 sample collected for medical purposes. The person collecting the blood
13 sample shall complete the collection portion of a document if provided by
14 law enforcement.

15 (h) If a person must be restrained to collect the sample pursuant to
16 this section, law enforcement shall be responsible for applying any such
17 restraint utilizing acceptable law enforcement restraint practices. The
18 restraint shall be effective in controlling the person in a manner not to
19 jeopardize the person's safety or that of the medical professional or
20 attending medical or healthcare staff during the drawing of the sample and
21 without interfering with medical treatment.

22 (i) (1) If a law enforcement officer is authorized to collect one or
23 more tests of urine, the collection of the urine sample shall be supervised
24 by:

25 (A) A person licensed to practice medicine and surgery, licensed as a
26 physician assistant or a person acting under the direction of any such
27 licensed person;

28 (B) a registered nurse or a licensed practical nurse; or

29 (C) a law enforcement officer of the same sex as the person being
30 tested.

31 (2) The collection of the urine sample shall be conducted out of the
32 view of any person other than the person supervising the collection of the
33 sample and the person being tested, unless the right to privacy is waived
34 by the person being tested. When possible, the supervising person shall be
35 a law enforcement officer.

36 (3) The results of qualitative testing for drug presence shall be
37 admissible in evidence and questions of accuracy or reliability shall go to
38 the weight rather than the admissibility of the evidence.

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

43 (j) No law enforcement officer who is acting in accordance with this

1 section shall be liable in any civil or criminal proceeding involving the
2 action.

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

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

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

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

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

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

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

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

42 (c) Any preliminary screening of a person's breath shall be conducted
43 with a device approved pursuant to K.S.A. 65-1,107, and amendments

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

4 Sec. 4. As used in sections 1 through 4, and amendments thereto:

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

7 (b) "Drug" includes toxic vapors as such term is defined in K.S.A.
8 2020 Supp. 21-5712, and amendments thereto.

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

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

18 (e) "Other competent evidence" includes:

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

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

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

28 Sec. 5. K.S.A. 3-1001, 3-1002, 3-1003, 3-1004 and 3-1005 are hereby
29 repealed.

30 Sec. 6. This act shall take effect and be in force from and after its
31 publication in the statute book.