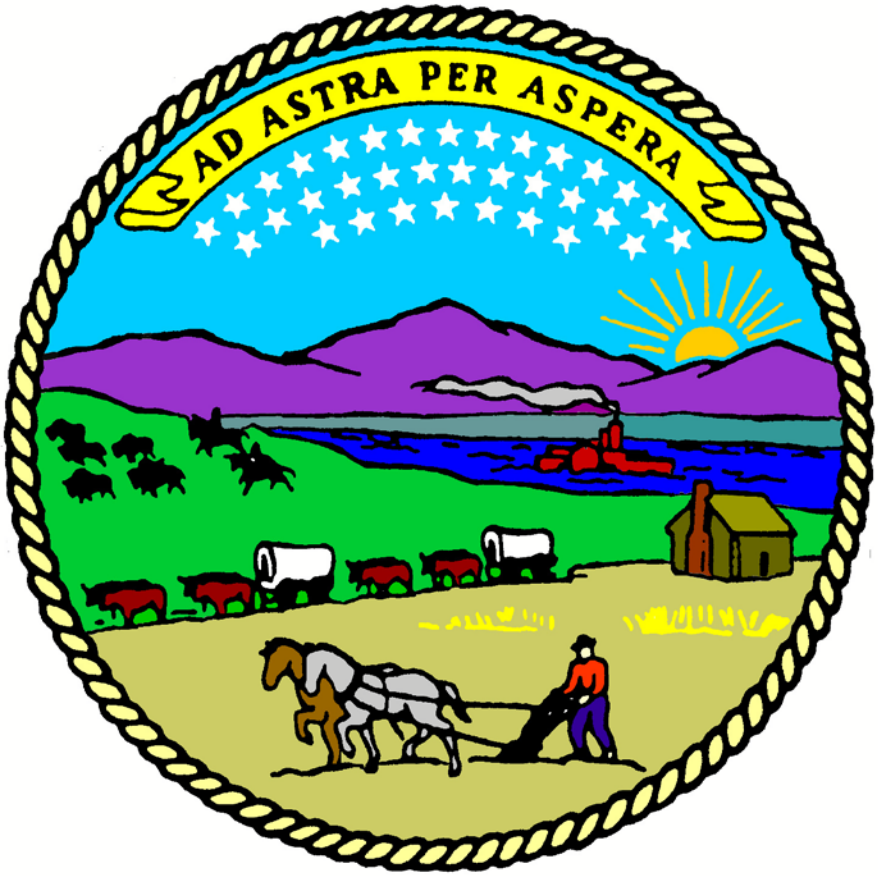
Kansas Department of Health and Environment

Kansas Health and Environmental Laboratory



Breath Alcohol Program
Training Manual

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PREFACE

The purpose of this manual is to provide the information for initial operator training and to be used as a reference and resource manual. All of the material presented in this manual may not be covered in the actual lecture material, nor is it designed to infer that all of the material is presented in its entirety.

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OBJECTIVES

THIS TRAINING SESSION IS ONLY A STEP IN THE CONTINUOUS FIGHT AGAINST “DRUNK DRIVING”. IT IS DESIGNED SO THAT AFTER THE TRAINING, THE OPERATOR WILL BE AWARE OF:

1. **THE INFORMATION THAT NEEDS TO BE COMPILED TO HAVE A STRONG DUI CASE IN COURT.**

2. **THOSE QUESTIONS WHICH ARE LIKELY TO BE ASKED DURING THE OPERATOR’S TESTIMONY.**

3. **THE NECESSARY STEPS TO ACHIEVE AN OBJECTIVE AND RELIABLE TEST RESULT, E.G., 20 MINUTE ALCOHOL DEPRIVATION PERIOD PRIOR TO TESTING.**

4. **THE BASIC OPERATION OF THE INSTRUMENTS USED FOR BREATH TESTING, INCLUDING ANY INFORMATIONAL MESSAGES GENERATED.**

5. **THE PRACTICAL AND THEORETICAL ASPECTS RELATED TO BREATH ALCOHOL TESTING.**

OPERATOR'S TESTIMONY IN COURT

YOU MAY BE ASKED ABOUT:

1. **YOUR OPERATOR'S CERTIFICATION.**

2. **INSTRUMENT (AGENCY) CERTIFICATE: THE OFFICER IN CHARGE OF THE PROGRAM AT THE AGENCY MAY ANSWER THIS QUESTION.**

3. **ADMINISTERING THE TEST STEP-BY-STEP ACCORDING TO THE KANSAS APPROVED PROTOCOL.**

4. **THE ALCOHOL DEPRIVATION PERIOD.**

5. **THE DEFENDANT'S CONDITION WHILE IN THE OFFICER'S PRESENCE.**

65-1,107
Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-1,107. Secretary of health and environment to adopt rules and regulations relating to procedures, testing protocols, qualifications of personnel and equipment of certain laboratories; list of approved preliminary screening devices for testing of breath for law enforcement purposes. The secretary of health and environment may adopt rules and regulations establishing:

(a) The procedures, testing protocols and qualifications of authorized personnel, instruments and methods used in laboratories performing tests for the presence of controlled substances included in schedule I or II of the uniform controlled substances act or metabolites thereof;

(b) the procedures, testing protocols, qualifications of personnel and standards of performance in the testing of human breath for law enforcement purposes, including procedures for the periodic inspection of apparatus, equipment and devices, other than preliminary screening devices, approved by the secretary of health and environment for the testing of human breath for law enforcement purposes;

(c) the requirements for the training, certification and periodic testing of persons who operate apparatus, equipment or devices, other than preliminary screening devices, for the testing of human breath for law enforcement purposes;

(d) criteria for preliminary screening devices for testing of breath for law enforcement purposes, based on health and performance considerations; and

(e) a list of preliminary screening devices which are approved for testing of breath for law enforcement purposes and which law enforcement agencies may purchase and train officers to use as aids in determining: (1) Probable cause to arrest and grounds for requiring testing pursuant to K.S.A. 8-1001, and amendments thereto; and (2) violations of K.S.A. 41-727, and amendments thereto.

History: L. 1947, ch. 330, § 3; L. 1973, ch. 307, § 3; L. 1974, ch. 352, § 169; L. 1986, ch. 40, § 7; L. 1988, ch. 233, § 1; L. 1990, ch. 215, § 1; L. 1994, ch. 262, § 1; L. 2001, ch. 200, § 16; L. 2006, ch. 173, § 8; July 1.

65-1,109
Chapter 65.--PUBLIC HEALTH
Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-1,109. Testing human breath for law enforcement purposes; unlawful acts; penalty.

(a) It shall be unlawful for any person to make any test of the human breath for law enforcement purposes, unless:

(1) Such person has complied with the rules and regulations of the secretary of health and environment adopted pursuant to K.S.A. 65-1,107 and amendments thereto to govern the procedures, standards of performance and the qualifications, training, certification and annual testing of personnel for the testing of human breath for law enforcement purposes; and

(2) the apparatus, equipment or device used by such person in the testing of human breath for law enforcement purposes is of a type approved by the secretary of health and environment and otherwise complies with the rules and regulations of the secretary of health and environment adopted pursuant to K.S.A. 65-1,107 and amendments thereto to govern the periodic inspection of such apparatus, equipment and devices.

(b) Any person who violates any provision of subsection (a) shall be guilty of a class C misdemeanor.

(c) Nothing in this section shall be construed to prohibit the use of devices approved pursuant to K.S.A. 65-1,107 and amendments thereto for preliminary screening tests for law enforcement purposes.

History: L. 1973, ch. 307, § 4; L. 1974, ch. 352, § 171; L. 1975, ch. 312, § 6; L. 1986, ch. 40, § 8; July 1.

8-1013

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1013. Definitions. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto, and this section:

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

(b) (1) "Alcohol or drug-related conviction" means any of the following: (A) Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 or 8-1025 and amendments thereto, or conviction of a violation of aggravated battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413, and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a crime described in subsection (b)(1)(A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-2,144 or 8-1567 or 8-1025, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state.

(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b) (1), including a diversion agreement entered into prior to the effective date of this act; and (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

(c) "Division" means the division of vehicles of the department of revenue.

(d) "Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

(e) "Occurrence" means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, including an arrest which occurred prior to the effective day of this act.

(f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken three hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(g) "Samples" includes breath supplied directly for testing, which breath is not preserved.

(h) "Test failure" or "fails a test" refers to a person's having results of a test administered pursuant to this act, other than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person's blood or breath, and includes failure of any such test on a military reservation.

(i) "Test refusal" or "refuses a test" refers to a person's failure to submit to or complete any test of the person's blood, breath, urine, or other bodily substance, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

(j) "Law enforcement officer" has the meaning provided by K.S.A. 2011 Supp. 21-5111, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567 or 8-1025, and amendments thereto, if committed off a military reservation in this state.

History: L. 1988, ch. 47, § 6; L. 1993, ch. 259, § 5; L. 2005, ch. 86, § 1; L. 2011, ch. 13, § 105; L. 2012, ch. 172, § 15; July 1.

8-1001
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1001. Tests for alcohol or drugs; request by officer, grounds; consent implied; administration of tests, when; procedures; immunity from liability; warning statement; search warrant, admissibility of test; availability of test result; remedial nature of law. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this article, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a): (1) If, at the time of the request, the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance or (B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; or (2) if the person

was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury or death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for

8-1001 (Continued)

purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

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

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

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

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

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

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

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

(g) If a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or

attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

8-1001 (Continued)

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

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

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

(k) Before a test or tests are administered under this section, the person shall be given oral and written notice that:(1) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(2) the opportunity to consent to or refuse a test is not a constitutional right;

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

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

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

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

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

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

(A) An alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence and one year for the second or subsequent occurrence; or

8-1001 (Continued)

(B) an alcohol concentration of .15 or greater, the person's driving privileges will be suspended for one year for the first or subsequent occurrence;

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

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

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

(l) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145, and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(m) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

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

(o) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges

shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(p) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by

8-1001 (Continued)

such person in such a manner as to have caused the death of or serious injury to a person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

(q) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows the inability caused by a medical condition unrelated to any ingested alcohol or drugs.

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

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

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

(u) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person. (v) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

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

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

(2) renders a person unconscious;

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

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

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

History: L. 1955, ch. 61, § 1; L. 1967, ch. 60, § 1; L. 1973, ch. 41, § 1; L. 1977, ch. 38, § 4; L. 1978, ch. 36, § 1; L. 1982, ch. 144, § 3; L. 1985, ch. 48, § 3; L. 1985, ch. 50, § 1; L. 1986, ch. 40, § 2; L. 1988, ch. 47, § 13; L. 1990, ch. 47, § 1; L. 1991, ch. 36, § 18; L. 1993, ch. 259, § 1; L. 1993, ch. 275, § 1; L. 1994, ch. 353, § 9; L. 1999, ch. 169, § 1; L. 2001, ch. 200, § 12; L. 2005, ch. 172, § 2; L. 2006, ch. 173, § 1; L. 2007, ch. 181, § 3; L. 2008, ch 170, § 1; L. 2010, ch. 119, § 13 L. 2011, ch. 105, § 9; L. 2012, ch. 172, § 12; July 1.

KANSAS STATUTES

IMPLIED CONSENT ADVISORY

INSTRUCTIONS: A copy of this form is required to be provided to the person from whom testing is to be requested. From another copy of the form, the officer must also read each of the notices contained in the "Implied Consent Advisory" to the person. A place is provided on the reverse side for the officer to record the name of the licensee and the date. The officer may retain his copy of this form to document that the notices were provided. The officer must also certify on the DC-27 form that the notices were provided.

Notices are also provided on the reverse side of this form to be used if the person was operating a commercial motor vehicle, pursuant to K.S.A. 8-2,145, or if the person is under 21 years of age, pursuant to K.S.A. 8-1567a. If either of those notices apply and are provided by the officer, the officer must also certify on the appropriate certification form regarding those notices.

IMPLIED CONSENT NOTICES

1. Kansas law (K.S.A. 8-1001) requires you to submit to and complete one or more tests of breath, blood or urine to determine if you are under the influence of alcohol or drugs or both.

2. The opportunity to consent to or refuse a test is not a constitutional right.

3. You have no constitutional right to consult with an attorney regarding whether to submit to testing.

4. If you refuse to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, you may be charged with a separate crime of refusing to submit to a test to determine the presence of alcohol or drugs, which carries criminal penalties that are greater than or equal to the criminal penalties for the crime of driving under the influence **if** you have a prior refusal for an evidentiary test for alcohol or drugs or a prior conviction or diversion for DUI or driving a commercial motor vehicle with an alcohol content of .04 or more, **and** such prior refusal or conviction occurred on or after July 1, 2001, and when you were 18 years of age or older.

5. In addition, if you **refuse** to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, your driving privileges will be suspended for 1 year.

6. If you submit to a breath or blood test requested by a law enforcement officer and produce a completed test result of .15 or greater, your driving privileges will be suspended for 1 year.

7. If you submit to a breath or blood test requested by a law enforcement officer and produce a completed test result of .08 or greater, but less than .15, the length of suspension will depend upon whether you have a prior occurrence. A prior occurrence is a prior test refusal, test failure or conviction or diversion for an alcohol or drug related conviction as defined in K.S.A. 8-1013, and amendments thereto, or any combination thereof, whether before, on or after July 1, 2001.

8. If you fail a test with an alcohol content of .08 or greater, but less than .15, **and do not have any prior occurrences**, your driving privileges will be suspended for 30 days.

9. **If you have a prior occurrence** and fail a test with an alcohol content of .08 or greater, but less than .15, your driving privileges will be suspended for one year.

10. Refusal to submit to testing may be used against you at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

11. The results of the testing may be used against you at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

12. After the completion of testing, you have the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

(After completing the above notices, refer to the reverse side of this form.)

DC-70 (Rev. 07/13)

.02 ADVISORY FOR DRIVERS UNDER 21

IF THE PERSON IS UNDER 21 YEARS OF AGE AT THE TIME OF THE TEST REQUEST, THE FOLLOWING NOTICES ARE ALSO APPLICABLE. IF THE PERSON IS 21 YEARS OF AGE OR OVER AT THE TIME OF THE TEST REQUEST, THE FOLLOWING NOTICES DO NOT APPLY.

1. It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater; and

2. If the person is less than 21 years of age at the time of the test request and submits to and completes the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges will be suspended for 30 days and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

CDL ADVISORY

IF THE PERSON WAS DRIVING A COMMERCIAL MOTOR VEHICLE, AS DEFINED BY KANSAS LAW, THE FOLLOWING NOTICE IS ALSO APPLICABLE. IF THE PERSON WAS NOT DRIVING A COMMERCIAL MOTOR VEHICLE, AS DEFINED BY KANSAS LAW, THE FOLLOWING NOTICE DOES NOT APPLY.

Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

AFTER PROVIDING A COPY OF THIS FORM TO THE PERSON AND READING ALL APPLICABLE NOTICES, THE OFFICER SHOULD THEN REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS, AS FOLLOWS:

WILL YOU TAKE A : ❑ Breath ❑ Blood ❑ Urine test (indicate the test(s) offered)

RESPONSE: ❑ Yes ❑ No

The officer who administers testing should complete the following information on the copy of this form retained by the officer. The officer's copy of this form can be retained in the officer's file to document that the required notices were given.

_____	_____
Name of licensee	**Name of law enforcement officer administering testing**
_____	
Date	

DC-70 (Rev. 07/13)

8-1002
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1002. Test refusal or failure; suspension of license; notice; procedure. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto, shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

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

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

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

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

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a) (1) have been met or determines that a person has failed a test and the criteria of subsection (a) (2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in

custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath,
blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

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

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

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

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

(h) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall be applicable in determining the effective date of suspension set out in subsection (d).

History: L. 1955, ch. 61, § 2; L. 1985, ch. 48, § 4; L. 1985, ch. 50, § 2; L. 1986, ch. 40, § 3; L. 1988, ch. 47, § 14; L. 1989, ch. 38, § 35; L. 1989, ch. 38, § 36; L. 1990, ch. 44, § 3; L. 1991, ch. 36, § 19; L. 1993, ch. 259, § 2; L. 1993, ch. 275, § 2; L. 1995, ch. 208, § 2; L. 2001, ch. 200, § 13; L. 2007, ch. 181, § 4; July 1; L. 2010, ch. 135, § 5.

OFFICER'S CERTIFICATION AND NOTICE OF SUSPENSION
(SEE REVERSE SIDE FOR HEARING INFORMATION)

INSTRUCTIONS: This form is to be used to certify a test refusal or test failure. A copy of the completed form is required to be served upon the person; a copy is to be forwarded to the Division of Vehicles within seven (7) days after service on the driver; and a copy should be retained by a certifying officer.

DRIVER INFORMATION

Name (Last)	(First)	(M/I)	Date of Birth
Current Address		City	
		State	
Driver's License No.	State of Issuance	Zip	

CDL YES ☐ NO ☐ **CMV** YES ☐ NO ☐ (If yes, CDL-5 form required also) **HAZ MAT** YES ☐ NO ☐

ADDRESS: The above address will be treated as a change of address if different from that on file with the Division of Vehicles and will be used for all correspondence with the person unless the Division of Vehicles is notified by the person in writing of a different address or a change of address. You can change your address on the Internet, by mail or fax to Central Office Operations, or by going to any Kansas Driver's License Examining Station.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

CERTIFICATION INSTRUCTIONS: To certify a test refusal or test failure, (1) each officer must complete the statement, if necessary, (2) at least one officer must initial on the line to the left of each of the statements intended to be certified and (3) each officer who initials a statement must sign in the space provided below.

_____ 1. On _____, 20_____, reasonable grounds existed to believe that the above-named person, within the State of Kansas in _____ County, ☐ had been operating a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution, or ☐ had been attempting to operate a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution (if certifying a failure of a test, the officer must certify that reasonable grounds existed to believe the person was operating a vehicle); and/or ☐ had been driving a commercial vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; and/or ☐ is under 21 years of age while having alcohol or other drugs in such person's system.

_____ 2. The person had been placed under arrest or otherwise taken into custody or had been involved in a vehicle accident or collision.

_____ 3. The person was presented oral and written notice as required by K.S.A. 8-1001(k) and amendments thereto.

_____ 4. Check one: ☐ The person refused to submit to or complete testing as requested by a law enforcement officer. ☐ The result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath. NOTE: Please attach a readable copy of the test report.

_____ 5. Reason(s) for the initial contact and/or stop: ☐ committed traffic violation(s) (explain below); ☐ officer arrived at scene of accident; ☐ vehicle already stopped; ☐ other (explain)

_____.

_____ 6. Reasonable grounds for my belief that the person was operating or attempting to operate a vehicle: ☐ saw person operate; ☐ person identified self as driver; ☐ other (explain)

_____.

_____ 7. Reasonable grounds for my belief that the person was under the influence of alcohol and/or drugs: ☐ odor of alcoholic beverages; ☐ alcoholic beverage containers found in vehicle; ☐ failed sobriety tests; ☐ slurred speech; ☐ bloodshot eyes; ☐ difficulty in communicating; ☐ poor balance or coordination; ☐ person stated alcohol/drugs consumed; ☐ failed preliminary breath test;

☐ other (explain) _____.

_____ 8. A copy of this document which contains a Notice of Driver's License Suspension is being served on the above-named person on _____, 20_____ by (check one) ☐ personal service; ☐ mailing by first-class mail to the address shown above. NOTE: Personal service is required if a determination of refusal or failure is made while the person is in custody.

IF CERTIFYING A FAILURE OF A BREATH TEST, STATEMENTS 9, 10 AND 11 MUST ALSO BE COMPLETED AND CERTIFIED

_____ 9. The testing equipment used was certified by the Kansas Department of Health and Environment.

_____ 10. The testing procedures used were in accordance with the requirements set out by the Kansas Department of Health and Environment.

_____ 11. The person who operated the testing equipment was certified by the Kansas Department of Health and Environment to operate such equipment.

I hereby certify to the Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-1002(b), and amendments thereto.

Title and name (printed):	_____	Title and name (printed):	_____
Agency name:	_____	Agency name:	_____
Agency address:	_____	Agency address:	_____
City/state/zip:	_____	City/state/zip:	_____
	Signature of Law Enforcement Officer		**Signature of Law Enforcement Officer**

TEMPORARY DRIVER'S LICENSE

THIS NOTICE IS:

☐ NOT VALID as a temporary license for the reason that your license: ☐ has expired; ☐ has been revoked; ☐ has been suspended; ☐ has been cancelled; or ☐ you have no driver's license.

☐ VALID as a temporary license until the 30th day after the date of service of this document. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary driver's license will end and your driving privileges will be suspended on the 30th day after service of this document unless an administrative hearing has been timely requested and the required $50 hearing fee paid, as set out in the INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ON THE REVERSE SIDE OF THIS FORM.

Before a test or tests are administered, the officer is required by K.S.A. 8-1001, and amendments thereto, to provide the person the oral and written notices contained on the implied consent advisory (DC-70). If the person was driving a commercial motor vehicle, as defined by Kansas law, the oral and written notice required by K.S.A. 8-2,146 should also be given. If the person is under the age of 21, the oral and written notice required by K.S.A. 8-1567a should also be given.

Distribution: 1st copy (white) copy to Division of Vehicles 2nd copy (yellow) for your file 3rd copy (pink) to licensee/driver

DC-27 (Rev. 07/13) (SEE REVERSE SIDE)

KANSAS STATUTES

NOTICE OF DRIVER'S LICENSE SUSPENSION
(Pursuant to K.S.A. 8-1002)

Based upon the certification on the reverse side of this form, your driving privileges are hereby suspended, pursuant to K.S.A. 8-1014, effective the 30th day after the date of service of this notice, unless a timely request for hearing is made, together with timely payment of the required hearing fee (see below). The action taken on your license depends upon whether the officer(s) certified a test refusal or a test failure (a completed test result of .08 or greater) and whether you have any prior "occurrences" on your driving record. "Occurrence" is defined in K.S.A. 8-1013(e), as amended by the 2013 legislature, as "a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest." "Alcohol or drug-related conviction" includes violations of K.S.A. 8-1567, 8-2,144, 8-1025, and for aggravated battery while committing an act described in K.S.A. 8-1567, as set out in K.S.A. 21-5413(b)(3). Entry into a diversion agreement in lieu of prosecution on a prior occasion is treated as a prior "alcohol or drug-related conviction," pursuant to K.S.A. 8-1013(b)(2). You may request a copy of your driving record in writing from Central Office Operations, Division of Vehicles, Kansas Department of Revenue at PO Box 12021, Topeka, Kansas, 66601 or, visit http://www.kansas.gov/mvr to request a copy of your driving record online.

If paragraph 4 of the certification on the reverse side indicates you refused to submit to or complete a test, the following action will be taken on your driving privileges:

First Occurrence: 1 year suspension & 2 year ignition interlock restriction
Second Occurrence: 1 year suspension & 3 year ignition interlock restriction
Third Occurrence: 1 year suspension & 4 year ignition interlock restriction
Fourth Occurrence: 1 year suspension & 5 year ignition interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year ignition interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .08 or above, but less than .15, the following action will be taken on your driving privileges:

First Occurrence: 30 day suspension & 180 days of ignition interlock restriction if you have not previously had your driving privileges revoked, suspended, canceled or withdrawn or been previously convicted of any of the following violations: (1) K.S.A. 8-1599; (2) K.S.A. 41-727; (3) any violations listed in K.S.A. 8-285(a) or (4) been convicted of three of more moving traffic violations committed on separate occasions within a 12-month period. If your driving privileges have previously been revoked, suspended, canceled or withdrawn or your driving record contains convictions as set out above, you will receive a 30 day suspension & 1 year of ignition interlock restriction.
Second Occurrence: 1 year suspension & 1 year ignition interlock restriction
Third Occurrence: 1 year suspension & 2 year ignition interlock restriction
Fourth Occurrence: 1 year suspension & 3 year ignition interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year ignition interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .15 or above, the following action will be taken on your driving privileges:

First Occurrence: 1 year suspension & 1 year ignition interlock restriction
Second Occurrence: 1 year suspension & 2 year ignition interlock restriction
Third Occurrence: 1 year suspension & 3 year ignition interlock restriction
Fourth Occurrence: 1 year suspension & 4 year ignition interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year ignition interlock restriction

If you possess a commercial driver's license, the following additional action will be taken on your commercial driving privileges as a result of a conviction for violating K.S.A. 8-1567 or K.S.A. 8-1025 or upon a final determination that you have refused or failed a test, as defined in K.S.A. 8-1013, and amendments thereto.

First Occurrence, as defined by K.S.A. 8-1013(e): 1 year suspension of commercial driving privileges
Second Occurrence, as defined by K.S.A. 8-1013(e): permanent revocation of commercial driving privileges

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

- A hearing request may be made either by mailing a written request which is postmarked within 14 calendar days after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles within 14 calendar days after the date of service of this form. If this form was served on you by mail, you will have an additional 3 days, pursuant to K.S.A. 60-206(d).

- The hearing request must include your full name, driver's license number, birth date and a telephone number at which you or your legal representative can be reached if necessary.

- The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.

- The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and the Law Enforcement Officer's Certification will be admitted as evidence at the hearing.

- You must pay a nonrefundable hearing fee of $50.00 within the time period for making a timely request for a hearing (check or money order preferred). The $50 hearing fee must be postmarked within the time period for making a timely hearing request or your hearing request will be denied. (A faxed image of cash or of a check or money order will not be accepted.) Checks should be made payable to: Administrative Hearing Section, Kansas Department of Revenue.

- HEARING LOCATION. Upon receipt of your timely written hearing request and fee, a hearing will be scheduled by telephone conference call. You may request that the hearing be conducted in person before a representative of the Director of Vehicles. Any request for an in person hearing must be made at the time you request a hearing. A written notice will be mailed to you setting out the time, date and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.

- Mail hearing requests to:

DL Administrative Hearing Section
Kansas Department of Revenue
P.O. Box 2744
Topeka, KS 66601-2744
(785) 296-6911

- Send electronic facsimile (fax) requests to: (785) 296-0275

DC-27 (Rev. 07/13)

8-1004
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1004. Same; additional test by own physician; effect of denial. Without limiting or affecting the provisions of K.S.A. 8-1001 and amendments thereto, the person tested shall have a reasonable opportunity to have an additional test by a physician of the person's own choosing. In case the officer refuses to permit such additional testing, the testing administered pursuant to K.S.A. 8-1001 and amendments thereto shall not be competent in evidence.

History: L. 1955, ch. 61, § 4; L. 1985, ch. 48, § 6; L. 1985, ch. 50, § 3; July 1.

8-1005
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1005. Evidence; test results admissible in prosecutions; weight to be given evidence. Except as provided by K.S.A. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(a) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol, or both alcohol and drugs.

(b) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that renders the person incapable of driving safely.

(c) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapable of safely driving a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that renders the defendant incapable of driving safely.

History: L. 1955, ch. 279, § 1; L. 1967, ch. 60, § 2; L. 1970, ch. 51, § 3; L. 1973, ch. 42, § 1; L. 1976, ch. 49, § 1; L. 1982, ch. 144, § 4; L. 1985, ch. 48, § 7; L. 1986, ch. 40, § 4; L. 1986, ch. 41, § 1; L. 1988, ch. 47, § 15; L. 1993, ch. 259, § 16; L. 1993, ch. 291, § 269; July 1.

8-1006
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1006. Same; submission of other evidence; preservation of samples not required. (a) The provisions of K.S.A. 8-1005, and amendments thereto, shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.

(b) Nothing in this act shall require any samples of blood, breath or urine to be preserved for or furnished to the person for independent testing.

History: L. 1955, ch. 279, § 2; L. 1985, ch. 48, § 8; L. 1985, ch. 50, § 4; L. 1986, ch. 40, § 5; L. 1988, ch. 47, § 16; L. 1994, ch. 319, § 3; May 19.

8-1011
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1011. Immunity from liability for damage to vehicle operated by or in control of person arrested or in custody. A law enforcement officer, and the state or any political subdivision of the state that employs a law enforcement officer, arresting or taking custody of a person for any offense involving the operation of or attempt to operate a vehicle while under the influence of alcohol or drugs, or both, shall have immunity from any civil or criminal liability for the care and custody of the vehicle that was being operated by or was in the physical control of the person arrested or in custody if the law enforcement officer acts in good faith and exercises due care.

History: L. 1985, ch. 48, § 5; L. 1993, ch. 259, § 3; July 1.

8-1012
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1012. Preliminary screening test of breath for alcohol concentration; request by officer, reasonable suspicion; notice required; refusal to take test is traffic infraction; use of results of test; additional tests. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath or saliva, or both, subject to the provisions set out in subsection (b).

(b) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath or saliva, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both alcohol and drugs.

(c) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense

in any action. The law enforcement officer then shall request the person to submit to the test.

(d) Refusal to take and complete the test as requested is a traffic infraction. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

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

History: L. 1986, ch. 40, § 1; L. 1993, ch. 259, § 4; L. 2005, ch. 172, § 3; L. 2006, ch. 173, § 2; L. 2006, ch. 211, § 1; L. 2011, ch. 12, § 105; L. 2012, ch. 172, § 14; July 1.

8-1020
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1020. Administrative hearing; requirements; procedure. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 14 days after service of notice or;

(2) transmitting a written request by electronic facsimile which is received by the division within 14 days after service of notice.

(b) If the licensee makes a timely request for an administrative hearing and makes a timely payment of the required hearing fee, any temporary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30th day after the effective date of the decision made by the division.

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

(d) (1) Upon receipt of a timely request for a hearing together with the required hearing fee, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.

8-1020 (Continued)

(2) The division shall charge a fee of $50 for a hearing, to be paid within the time period for making a timely request for a hearing, whether held by telephone or in person, to be applied by the division for administrative costs to conduct the hearing. The division shall remit all hearing fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund. The hearing fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such hearing. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

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

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

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

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

(4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

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

(g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

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

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

(B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

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

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

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

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

(B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

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

(D) the testing equipment used was certified by the Kansas department of health and environment;

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

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

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

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

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

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

(B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

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

(D) the testing equipment used was reliable;

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

(F) the testing procedures used were reliable;

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

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

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified

operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

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

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

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

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

(2) the testimony of the licensee;

(3) the testimony of any certifying officer;

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

(5) any affidavits submitted from other witnesses;

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

(7) any video or audio tape record of the events upon which the administrative action is based.

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

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

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve

the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

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

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

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

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

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

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

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

History: L. 2001, ch. 200, § 1; L. 2007, ch. 181, § 6; July 1; L. 2010, ch. 17, § 18; L. 2010, ch. 135, § 6; L. 2011, ch. 17, § 105; L. 2012, ch. 172, § 18; July 1.

8-1023

Chapter 8. – AUTOMOBILES AND OTHER VEHICLES

Article 10. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1023. Testing not considered medical care; information to be provided law enforcement officer; costs, assessment; privileges not applicable

(a) The testing and method of testing consented to under K.S.A. 8-1001, and amendments thereto, shall not be considered to have been conducted for any medical care or treatment purpose. The results of such test, the person's name whose bodily substance is drawn or tested, the location of the test or procedure, the names of all health care providers and personnel who participated in the procedure or test, and the date and time of the test or procedure are required by law to be provided to the requesting law enforcement officer or the law enforcement officer's designee after the requesting law enforcement officer has complied with K.S.A. 8-1001, and amendments thereto.

(b) All costs of conducting any procedure or test requested by a law enforcement agency and authorized by K.S.A. 8-1001, and amendments thereto, including the costs of the evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may be reimbursed such costs upon the costs being paid by the defendant as court costs assessed pursuant to K.S.A. 28-172a, and amendments thereto.

(c) The cost assessed under K.S.A. 8-1001, and amendments thereto, shall be the then current medicaid rate for any such procedure or test, or both.

(d) Notwithstanding any other law to the contrary, the collection and delivery of the sample and required information to the law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto, shall not be subject to the physician-patient privilege or any other law that prohibits the transfer, release or disclosure of the sample or of the required information.

History: L. 2008, ch. 170, § 2, eff. July 1, 2008.

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 10. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1024. Immunity of persons and entities involved in testing from liability

No medical care facility, clinical laboratory, medical clinic, other medical institution, person licensed to practice medicine or surgery, person acting under the direction of any such licensed person, licensed physician assistant, registered nurse, licensed practical nurse, medical technician, emergency medical technician, phlebotomist, health care provider or person who participates in good faith in the obtaining, withdrawal, collection or testing of blood, breath, urine or other bodily substance at the direction of a law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto, shall incur any civil, administrative or criminal liability as a result of such participation, regardless of whether or not the patient resisted or objected to the administration of the procedure or test.

History: L. 2008, ch. 170, § 3, eff. July 1, 2008.

8-1025
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 10.--DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1025. Refusal of a chemical test; penalties.

(a) Refusing to submit to a test to determine the presence of alcohol or drugs is refusing to submit to or complete a test or tests deemed consented to under subsection (a) of K.S.A. 8-1001, and amendments thereto, if such person has:

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

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

(b) (1) Refusing to submit to a test to determine the presence of alcohol or drugs is:

(A) On a first conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,250 nor more than $1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp.
21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(B) on a second conviction a class A, nonperson misdemeanor, except as provided in subsection (b)(1)(C). The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,750 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by

confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours;

(C) on a second conviction a nonperson felony if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,750 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours; and

(D) on a third or subsequent conviction a nonperson felony. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the

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

(2) The court may order that the term of imprisonment imposed pursuant to subsection (b)(1)(C) or (b)(1)(D) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

(3) In addition, for any conviction pursuant to subsection (b)(1)(B), (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the

period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(4) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(d) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessments and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

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

(f) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

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

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring: (A) On or after July 1, 2001; and (B) when such

person was 18 years of age or older. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections which occurred during a person's lifetime shall be taken into account, but only convictions occurring when such person was 18 years of age or older: (A) This section; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) aggravated battery as described in subsection (b)(3) of K.S.A. 21-5413, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) ''conviction'' includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (h)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (h)(1) or (h)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (h)(1) or (h)(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense;

(5) multiple convictions of any crime described in subsection (h)(1) or (h)(2) arising from the same arrest shall only be counted as one conviction;

(6) the prior conviction that is an element of the crime of refusing to submit to a test to determine the presence of alcohol or drugs shall not be used for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section and shall not be considered in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense; and

(7) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or an ordinance which prohibits the acts of this section, only once during the person's lifetime.

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

(j) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

(3) An ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.

(4) Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(k) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:

(A) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

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

(m) As used in this section, ‘‘imprisonment’’ shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(n) On and after July 1, 2012, the amount of $250 from each fine imposed pursuant to this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

History: L. 2012, ch. 172, § 2.

8-1567
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 15.--UNIFORM ACT REGULATING TRAFFIC; RULES OF THE ROAD

8-1567. Driving under influence of alcohol or drugs; blood alcohol concentration; penalties. (a) Driving under the influence is operating or attempting to operate any vehicle within this state while:

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

(2) the alcohol concentration in the person’s blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is .08 or more;

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

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

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

(b) (1) Driving under the influence is:

(A) On a first conviction a class B, nonperson misdemeanor. The person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than $750 nor more than $1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,250 nor more than $1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(C) on a third conviction a class A, nonperson misdemeanor, except as provided in subsection (b)(1)(D). The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,750 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 1,260 hours of confinement. Such 1,260 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement

hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours;

(D) on a third conviction a nonperson felony if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1750 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served the 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours; and

(E) on a fourth or subsequent conviction a nonperson felony. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of

the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(2) The court may order that the term of imprisonment imposed pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

(3) In addition, for any conviction pursuant to subsection (b)(1)(C), (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

8-1567 (Continued)

(4) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

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

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

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

(g) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(h) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

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

(1) Convictions for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court

from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Refusing to submit to a test to determine the presence of alcohol or drugs, 8-1025, and amendments thereto; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) aggravated battery as described in subsection (b)(3) of K.S.A. 21-5413, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) ''conviction'' includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (i)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (i)(1) or (i)(2) if committed off a military reservation in this state;

(4) multiple convictions of any crime described in subsection (i)(1) or (i)(2) arising from the same arrest shall only be counted as one conviction;

(5) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

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

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

(k) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

(3) On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are

the same as the elements of a violation of this section that would constitute, and be punished as, a felony.

(4) Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(l) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:

(A) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(B) Kansas bureau of investigation ventral repository all criminal history record information concerning such person.

(2) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

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

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

(o) As used in this section: (1) ‘‘Alcohol concentration’’ means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

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

(3) ‘‘Drug’’ includes toxic vapors as such term is defined in K.S.A. 21-5712, and amendments thereto.

(p) (1) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

(2) On and after July 1, 2011, the amount of $250 from each fine imposed pursuant to this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

History: L. 1974, ch. 33, § 8-1567; L. 1976, ch. 50, § 1; L. 1982, ch. 144, § 5; L. 1983, ch. 37, § 2; L. 1984, ch. 37, § 4; L. 1984, ch. 39, § 9; L. 1985, ch. 48, § 9; L. 1985, ch. 50, § 5; L. 1988, ch. 48, § 6; L. 1988, ch. 47, § 17; L. 1989, ch. 92, § 16; L. 1990, ch. 44, § 6; L. 1990, ch. 47, § 3; L. 1991, ch. 36, § 20; L. 1992, ch. 298, § 1; L. 1993, ch. 259, § 8; L. 1993, ch. 291, § 270; L. 1994, ch. 291, § 2; L. 2001, ch. 200, § 14; L. 2002, ch. 50, § 1; L. 2002, ch. 166, § 2; L. 2003, ch. 100, § 1; L. 2007, ch. 181, § 9; July 1; L. 2008, ch. 170, § 4; L. 2011, ch. 153, § 3; L. 2012 ch. 172, § 20; July 1.

8-1567a
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 15.--UNIFORM ACT REGULATING TRAFFIC; RULES OF THE ROAD

8-1567a. Driving under the influence of alcohol or drugs by any person less than 21 years of age; blood alcohol concentration; penalties. (a) It shall be unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater.

(b) Whenever a law enforcement officer determines that a breath or blood alcohol test is to be required of a person less than 21 years of age pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and amendments thereto, in addition to any other notices required by law, the law enforcement officer shall provide written and oral notice that: (1) It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater; and (2) if the person is less than 21 years of age at the time of the test request and submits to and completes the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges will be suspended for 30 days and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

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

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

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

8-1567a (Continued)

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

(e) If a hearing is requested as a result of a law enforcement officer's certification under this section, the scope of the hearing shall be limited to whether: (1) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128 and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person’s system; (2) the person bad been placed under arrest, was in custody or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (3) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto, and the oral and written notice required by this section; (4) the testing equipment used was reliable; (5) the person who operated the testing equipment was qualified; (6) the testing procedures used were reliable; (7) the test result determined that the person had an alcohol concentration of .02 or greater in such person's blood or breath; (8) the person was operating a vehicle; and (9) the person was less than 21 years of age at the time a test was requested.

(f) If a person less than 21 years of age submits to a breath or blood alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and amendments thereto, and produces a test result of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges shall be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days, and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

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

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

History: L. 1996, ch. 216, § 1; L. 1999, ch. 125, § 19; 1999, ch. 169, § 2; L. 2001, ch. 200, § 8; July 1.

CERTIFICATION AND NOTICE OF SUSPENSION OF TEST RESULT OF .02 OR GREATER, BUT LESS THAN .08 FOR PERSONS UNDER 21 YEARS OF AGE (SEE REVERSE SIDE FOR HEARING INFORMATION)

INSTRUCTIONS: This form is to be used to certify a completed test result by a person less than 21 years of age of .02 or greater, but less than .08. A copy of the completed form is required to be served upon the person; a copy is to be forwarded to the Division of Vehicles within seven days after service on the driver; and a copy should be retained by a certifying officer. **If the person refuses the test or completes a test with a test result of .08 or greater, complete Form DC-27 instead of this form.**

DRIVER INFORMATION

Name (Last)	(First)	(MI)	Date of Birth
Current Address		City	
		State	
Driver's License No.	State of Issuance	Zip	

ADDRESS: The above address will be treated as a change of address if different from that on file with the Division of Vehicles and will be used for all correspondence with the person unless the Division of Vehicles is notified by the person in writing of a different address or a change of address. You can change your address on the Internet, by mail or fax to Central Office Operations, or by going to any Kansas Driver's License Examining Station.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

CERTIFICATION INSTRUCTIONS: To certify that a person less than 21 years of age has completed a breath or blood alcohol test with a result of .02 or greater, but less than .08, (1) each officer must complete the statement, if necessary, (2) at least one officer must initial on the line to the left of each of the statements intended to be certified and (3) each officer who initials a statement must sign in the space provided below.

_____ 1. On _____, 20_____, reasonable grounds existed to believe that the above-named person, within the State of Kansas in _____ County, ☐ had been operating a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution, ☐ had been driving a commercial vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or ☐ was under the age of 21 years and had been operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system.

_____ 2. The person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision.

_____ 3 The person was presented oral and written notice as required by K.S.A. 8-1001(k) and amendments thereto, and the notices required by K.S.A. 8-1567a and amendments thereto.

_____ 4. The person was less than 21 years of age at the time of the test request.

_____ 5. **The result of the test showed that the person had an alcohol concentration of .02 or greater, but less than .08 in such person's blood or breath. NOTE: Please attach a readable copy of the test report.**

_____ 6 Reasonable grounds for the initial contact and/or stop: ☐committed traffic violation(s) (explain below); ☐officer arrived at scene of accident; ☐vehicle already stopped; ☐other (explain)

_____.

_____ 7 Reasonable grounds for my belief that the person was operating or attempting to operate a vehicle: ☐saw person operate; ☐person identified self as driver; ☐other (explain)

_____.

_____ 8. Reasonable grounds for my belief that the person was under the influence of alcohol and/or drugs: ☐odor of alcoholic beverages; ☐alcoholic beverages found in vehicle; ☐failed sobriety tests; ☐slurred speech; ☐bloodshot eyes; ☐difficulty in communicating; ☐poor balance or coordination; ☐person stated that alcohol/drugs consumed; ☐failed preliminary screening test; ☐other (explain)

_____.

_____ 9. A copy of this document which contains a Notice of Driver's License Suspension was served on the above-named person on_____, 20____ by (check one) ☐personal service; or ☐mailing by first-class mail to the address shown above. NOTE: Personal service is required if a determination of the test result is made while the person is in custody.

IF CERTIFYING A BREATH TEST RESULT, STATEMENTS 10, 11 AND 12 MUST ALSO BE COMPLETED AND CERTIFIED.

_____ 10. The testing equipment used was certified by the Kansas Department of Health and Environment.

_____ 11. The testing procedures used were in accordance with the requirements set out by the Kansas Department of Health and Environment.

_____ 12. The person who operated the testing equipment was certified by the Kansas Department of Health and Environment to operate such equipment.

I hereby certify to the Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-1002(b), and amendments thereto.

Title and name (printed):	_____	Title and name (printed):	_____
Agency name:	_____	Agency name:	_____
Agency address:	_____	Agency address:	_____
City/state/zip:	_____	City/state/zip:	_____
	Signature of Law Enforcement Officer		**Signature of Law Enforcement Officer**

TEMPORARY DRIVER'S LICENSE

THIS NOTICE IS:

☐ NOT VALID as a temporary license for the reason that your license: ☐has expired; ☐has been revoked; ☐has been suspended; ☐has been cancelled; or ☐you have no driver's license.

☐ VALID as a temporary license until the 30th day after the date of service of this document. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary driver's license will end and your driving privileges will be suspended on the 30th day after service of this document unless an administrative hearing has been timely requested. THE INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ARE ON THE REVERSE SIDE OF THIS FORM.

Before a test or tests are administered, the officer is required by K.S.A. 8-1001, and amendments thereto, to provide the person the oral and written notices contained on the implied consent advisory (DC-70). If the person is under the age of 21, the oral and written notice required by K.S.A. 8-1567a should also be given.

Distribution: 1st copy (white) copy to Division of Vehicles 2nd copy (yellow) for your file 3rd copy (pink) to licensee/driver

DC-28 (Rev. 7/13) (SEE REVERSE SIDE)

KANSAS STATUTES

NOTICE OF DRIVER'S LICENSE SUSPENSION
(Pursuant to K.S.A. 8-1567a)

Based upon the certification on the reverse side of this form, your driving privileges are hereby suspended, pursuant to K.S.A. 8-1567a, effective the 30th day after the date of service of this notice, unless a timely request for hearing is made (see below). The action taken on your license depends upon whether you have had a prior test result of .02 or greater, but less than .08.

If this is the first time you have had a test result of .02 or greater, but less than .08, your driving privileges will be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days.

If this is the second or subsequent time you have had a test result of .02 or greater, but less than .08, your driving privileges will be suspended for one year.

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

• A hearing request may be made either by mailing a written request which is postmarked within 14 calendar days after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles within 14 calendar days after the date of service of this form. If this form was served on you by mail, you will have an additional 3 days, pursuant to K.S.A. 60-206(d).

• The hearing request must include your full name, driver's license number, birth date and a telephone number at which you or your legal representative can be reached if necessary.

• The hearing request must include you current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.

• The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and the Law Enforcement Officer's Certification will be admitted as evidence at the hearing.

• HEARING LOCATION. Upon receipt of your timely written hearing request, a hearing will be scheduled by telephone conference call. You may request that the hearing be conducted in person before a representative of the Director of Vehicles. Any request for an in person hearing must be made at the time you request a hearing. A written notice will be mailed to you setting out the time, date and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.

• Mail hearing requests to: DL Administrative Hearing Section
Kansas Department of Revenue
P.O. Box 2744
Topeka, KS 66601-2744
(785) 296-6911

• Send electronic facsimile (fax) requests to: (785) 296-0275

DC-28 (Rev. 7/13)

21-5712

Chapter 21.--CRIMES AND PUNISHMENTS

PART II.--PROHIBITED CONDUCT

Article 36a.--CRIMES INVOLVING CONTROLLED SUBSTANCES

21-5712. Unlawful abuse of toxic vapors. (a) Unlawful abuse of toxic vapors is possessing, buying, using, smelling or inhaling toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system.

(b) Unlawful abuse of toxic vapors is a class B nonperson misdemeanor.

(c) In addition to any sentence or fine imposed, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program, treatment program or both such programs as provided in K.S.A. 8-1008, and amendments thereto.

(d) This section shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(e) For the purposes of this section, the term "toxic vapors" means vapors from the following substances or products containing such substances:

(1) Alcohols, including methyl, isopropyl, propyl or butyl;

(2) aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;

(3) acetone;

(4) benzene;

(5) carbon tetrachloride;

(6) cyclohexane;

(7) freons, including freon 11 and freon 12;

(8) hexane;

(9) methyl ethyl ketone;

(10) methyl isobutyl ketone;

(11) naptha;

(12) perchlorethylene;

(13) toluene;

(14) trichloroethane; or

(15) xylene.

(f) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (e) as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors.

History: L. 2009, ch. 32, § 12; July 1.

8-2,136

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 2.--DRIVERS' LICENSES

8-2,136. Same; prohibiting driving with alcohol in person's system; out-of-service order. (a) Notwithstanding any other provisions of this act, a driver shall not drive, operate or be in physical control of a commercial motor vehicle while having alcohol in such driver's system.

(b) A driver who drives, operates or is in physical control of a commercial motor vehicle while having alcohol in such driver's system or who refuses to take a test to determine their alcohol content as provided by K.S.A. 8-2,142, and amendments thereto, shall be placed out-of-service for 24 hours.

(c) A driver convicted of violating an out-of-service order while driving or operating a commercial motor vehicle shall be subject to the following disqualifications:

(1) First conviction, the driver is disqualified for 90 days;

(2) second conviction, the driver is disqualified for one year;

(3) third and subsequent conviction, the driver is disqualified for three years.

History: L. 1989, ch. 38, § 12; L. 1995, ch. 190, § 6; July 1.

8-2,142
Chapter 8.--AUTOMOBILES AND OTHER VEHICLES
Article 2.--DRIVERS' LICENSES

8-2,142. Same; disqualification from driving commercial vehicle; suspension, revocation or cancellation of license; notification.

(a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year upon a first occurrence of any one of the following:

(1) While operating a commercial motor vehicle:

(A) The person is convicted of violating K.S.A. 8-2,144 and amendments thereto;

(B) the person is convicted of violating subsection (b) of K.S.A. 8-2,132, and amendments thereto;

(C) the person is convicted of causing a fatality through the negligent operation of a commercial motor vehicle;

(D) the person's test refusal or test failure, as defined in subsection (m); or

(E) the person is convicted of a violation identified in subsection (a)(2)(A); or

(2) while operating a noncommercial motor vehicle:

(A) The person is convicted of a violation of K.S.A. 8-1567 or 8-1025, and amendments thereto, or of a violation of an ordinance of any city in this state, a resolution of any county in this state or any law of another state, which ordinance or law declares to be unlawful the acts prohibited by that statute; or

(B) the person's test refusal or test failure, as defined in K.S.A. 8-1013, and amendments thereto; or

(3) while operating any motor vehicle:

(A) The person is convicted of leaving the scene of an accident; or

(B) the person is convicted of a felony, other than a felony described in subsection (e), while using a motor vehicle to commit such felony.

(b) If any offenses, test refusal or test failure specified in subsection (a) occurred in a commercial motor vehicle while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(c) A person shall be disqualified for life upon the second or a subsequent occurrence of any offense, test refusal or test failure specified in subsection (a), or any combination thereof, arising from two or more separate incidents.

(d) The secretary of revenue may adopt rules and regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) may be reduced to a period of not less than 10 years.

(e) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle or noncommercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

8-2,142 (Continued)

(f) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. Any disqualification period under this paragraph shall be in addition to any other previous period of disqualification. The beginning date for any three-year period within a ten-year period, required by this subsection, shall be the issuance date of the citation which resulted in a conviction.

(g) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a noncommercial motor vehicle arising from separate incidents occurring within a three-year period, if such convictions result in the revocation, cancellation or suspension of the person's driving privileges.

(h) (1) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order shall be disqualified from driving a commercial motor vehicle for a period of not less than:

(A) Ninety days nor more than one year, if the driver is convicted of a first violation of an out-of-service order;

(B) one year nor more than five years if the person has one prior conviction for violating an out-of-service order in a separate incident and such prior offense was committed within the 10 years immediately preceding the date of the present violation; or

(C) three years nor more than five years if the person has two or more prior convictions for violating out-of-service orders in separate incidents and such prior offenses were committed within the 10 years immediately preceding the date of the present violation.

(2) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order while transporting a hazardous material required to be placarded under 49 U.S.C. § 5101 et seq. or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, shall be disqualified from driving a commercial motor vehicle for a period of not less than:

(A) One hundred and eighty days nor more than two years if the driver is convicted of a first violation of an out-of-service order; or

(B) three years nor more than five years if the person has a prior conviction for violating an out-of-service order in a separate incident and such prior offense was committed within the 10 years immediately preceding the date of the present violation.

(i) (1) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing shall be disqualified from driving a commercial motor vehicle for the period of time specified in paragraph (2):

(A) For persons who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(B) for persons who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(C) for persons who are always required to stop, failing to stop before driving onto the crossing;

(D) for all persons failing to have sufficient space to drive completely through the crossing without stopping;

(E) for all persons failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(F) for all persons failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) A driver shall be disqualified from driving a commercial motor vehicle for not less than:

(A) Sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation;

(B) one hundred and twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents; or

(C) one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(j) After suspending, revoking or canceling a commercial driver's license, the division shall update its records to reflect that action within 10 days. After suspending, revoking or canceling a nonresident commercial driver's privileges, the division shall notify the licensing authority of the state which issued the commercial driver's license or nonresident commercial driver's license within 10 days. The notification shall include both the disqualification and the violation that resulted in the disqualification, suspension, revocation or cancellation.

(k) Upon receiving notification from the licensing authority of another state, that it has disqualified a commercial driver's license holder licensed by this state, or has suspended, revoked or canceled such commercial driver's license holder's commercial driver's license, the division shall record such notification and the information such notification provides on the driver's record.

(l) Upon suspension, revocation, cancellation or disqualification of a commercial driver's license under this act, the license shall be immediately surrendered to the division if still in the licensee's possession. If otherwise eligible, and upon payment of the required fees, the licensee may be issued a noncommercial driver's license for the period of suspension, revocation, cancellation or disqualification of the commercial driver's license under the same identifier number.

(m) As used in this section, ''test refusal'' means a person's refusal to submit to and complete a test requested pursuant to K.S.A. 8-2,145, and amendments thereto; ''test failure'' means a person's submission to and completion of a test which determines that the person's alcohol concentration is .04 or greater, pursuant to K.S.A. 8-2,145, and amendments thereto.

History: L. 1989, ch. 38, § 18; L. 1991, ch. 36, § 17; L. 2003, ch. 42, § 7; L. 2005, ch. 31, § 4; L. 2006, ch. 54, § 7; L. 2011, ch. 105, § 7; L. 2012, ch. 172, § 10; July 1.

8-2,144

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 2.--DRIVERS' LICENSES

8-2,144. Commercial motor vehicles; driving under influence of alcohol or drugs; blood alcohol concentration; penalties.

(a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this state while:

(1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .04 or more;

8-2,144 (Continued)

(2) the alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of subsection (a) of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited there under.

(b) (1) Driving a commercial motor vehicle under the influence is:

(A) On a first conviction a class, nonperson misdemeanor. The person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than $750 nor more than $1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,250 nor more than $1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours; and

(C) on a third or subsequent conviction a nonperson felony. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,750 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if

placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(2) In addition, for any conviction pursuant to subsection (b)(1)(C),at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(3) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

8-2,144 (Continued)

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

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

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

(g) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(h) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(i) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall: (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto.; and (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(j) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this section as unlawful or prohibited in such city or county and prescribing penalties for violation thereof.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

(3) Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(k) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (A) Division of

vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such violation back to the city attorney.

(l) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance or resolution.

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

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

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) refusing to submit to a test to determine the presence of alcohol or drugs, 8-1025, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) aggravated battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) ''conviction'' includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (n)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (n)(1) or (n)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (n)(1) or (n)(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) multiple convictions of any crime described in subsection (n)(1) or (n)(2) arising from the same arrest shall only be counted as one conviction.

(o) For the purpose of this section:

(1) ‘‘Alcohol concentration’’ means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

(2) ‘‘imprisonment’’ shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city; and

(3) ‘‘drug’’ includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-5712, and amendments thereto.

(p) On and after July 1, 2011, the amount of $250 from each fine imposed pursuant to this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

History: L. 1991, ch. 36, § 1; L. 2006, ch. 173, § 5; L. 2011, ch. 105, § 8; L. 2012, ch. 172, § 11; July 1.

8-2,145

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 2.--DRIVERS' LICENSES

8-2,145. Tests for alcohol or drugs; notices; certification by officer; hearing; disqualification of driver.

(a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and amendments thereto, in addition to any notices provided pursuant to K.S.A. 8-1001, and amendments thereto, the following notice shall be provided orally and in writing: Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

(b) It shall not be a defense that the person did not understand the notices required by this section.

(c) Upon completion of the notices set out in K.S.A. 8-1001, and amendments thereto, and the notices in subsection (a), the law enforcement officer shall proceed to request a test or tests. In addition to the completion of any certification required under K.S.A. 8-1002, and amendments thereto, a law enforcement officer's certification shall be prepared and signed by one or more officers to certify:

(1) There existed reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(2) the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision;

(3) a law enforcement officer had presented the person with the notices required by this section; and

(4) the person refused to submit to and complete a test or the test result for alcohol content of blood or breath was .04 or greater.

(d) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the division authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B misdemeanor.

(e) Upon completing a certification under subsection (c), the officer shall serve upon the person notice of disqualification of the privilege to drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto, together with a copy of the certification. In cases where a .04 or greater test result is established by a subsequent analysis of a breath or blood sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test. If the determination of a test refusal or .04 or greater test result is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles.

(f) The notice shall contain the following information:

(1) The person's name, driver's license number and current address pursuant to K.S.A. 8-248, and amendments thereto;

(2) the reason and statutory grounds for the disqualification;

(3) the date notice is being served and the effective date of the disqualification, which shall be the 20th day after the date of service;

(4) the right of the person to request an administrative hearing; and

(5) the procedure the person must follow to request an administrative hearing. The notice of disqualification shall also inform the person that all correspondence will be mailed to the person at the address contained in the notice of disqualification unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(g) If the person mails a written request which is postmarked within 10 calendar days after service of the notice, if by personal service, or 13 calendar days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee may request that subpoenas be issued in accordance with the notice provided pursuant to subsection (d). Any request made by the licensee to subpoena witnesses must be made in writing at the time the hearing is requested and must include the name and current address of such witness and, except for the certifying law enforcement officer or officers, a statement of how the testimony of such witness is relevant. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with subsection (i) and extend the person's temporary driving privileges until the date set for the hearing by the division, unless otherwise disqualified, suspended, revoked or canceled.

(h) The law enforcement officer shall forward the certification required under subsection (c) to the director within five days of the date of certification. Upon receipt of the

8-2,145 (Continued)

certification, the division shall review the certification to determine that it meets the requirements of subsection (c). Upon so determining, the director shall proceed to disqualify the driver from driving a commercial motor vehicle in accordance with the notice of disqualification previously served.

(i) All notices of disqualification under this section and all notices of a hearing held under this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(j) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(k) The rules regarding evidence and procedure at hearings held under K.S.A. 8-1020, and amendments thereto, shall be applicable to hearings held under this section. At the hearing on a disqualification of commercial driving privileges, the issues shall be limited to those set out in the certification.

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

History: L. 1991, ch. 36, § 2; L. 2001, ch. 200, § 11; July 1.

OFFICER'S REPORT AND NOTICE OF DISQUALIFICATION OF COMMERCIAL DRIVING PRIVILEGES

(SEE REVERSE SIDE FOR HEARING INFORMATION)

DRIVER INFORMATION

Name (Last)	(First)	(M/I)	Driver's License No.	State
Current Address			Date of Birth	Type of Vehicle
City	State	Zip	License Plate No.	Hazardous Material Involved? o YES o NO

INSTRUCTIONS: This form must be used to certify a refusal or test result of .04 or greater when a commercial motor vehicle is involved. The CDL advisory in the DC-70 form should be provided together with the Implied Consent Notice because it will not be known at the time the notices are given whether the person will refuse a test, produce a sample of .08 or above, produce a sample from .04 to .079, or produce a sample lower than .04. If the person refuses a test or has a test result of .08 or greater, Form DC-27 must also be completed. A copy of this completed form must be served upon the licensee, along with a completed DC-27 form, if applicable.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

INSTRUCTIONS: To certify a test refusal or test result of .04 or greater, the officer or officers must complete the appropriate statements and initial each of the statements intended to be certified in the indicated space to the left of each statement and sign in the space provided below. **NOTE: TO PROPERLY CERTIFY A STATEMENT, THE STATEMENT MUST BE INITIALED AND THE OFFICER WHO INITIALS THE STATEMENT MUST ALSO SIGN BELOW.**

_____ 1. On the _____ day of _____, 20_____, reasonable grounds existed to believe that the above-named person within the State of Kansas in _____ County, had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system.

_____ 2. The person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision.

_____ 3. The person was presented oral and written notice as required by K.S.A. 8-2,145 and amendments thereto.

_____ 4. The person refused to submit to or complete a test or the test result for alcohol content of blood or breath was .04 or greater.
Please check to indicate which applies:
o the person refused to submit to or complete a test
o the result of the test showed that the person had an alcohol concentration of .04 or greater in such person's blood or breath. **(Attach copy of test report.)**

_____ 5. Reason(s) for the initial contact and/or stop: o committed traffic violation(s) (explain below) o officer arrived at scene of accident
o vehicle already stopped o other (explain) _____

_____ 6. Reasonable grounds for my belief that the person was driving a commercial motor vehicle:
o saw person operate o person identified self as driver o saw person in physical control of a commercial motor vehicle
o other (explain) _____

_____ 7. Reasonable grounds for my belief that the person had alcohol or other drugs in his/her system.
o odor of alcoholic beverages o alcoholic beverage containers found in vehicle o failed sobriety tests
o slurred speech o bloodshot eyes o difficulty in communicating
o poor balance or coordination o person stated alcohol/drugs consumed o failed preliminary screening test
o other (explain) _____

_____ 8. A copy of this document which contains a Notice of Disqualification of Commercial Driving Privileges is being served by me on the above-named person on _____, 20_____ by (check one) o Personal Service o Mailing by first-class mail to the above address.
NOTE: PERSONAL SERVICE IS REQUIRED IF THE DETERMINATION OF REFUSAL OR FAILURE IS MADE WHILE THE PERSON IS STILL IN CUSTODY.

I hereby certify to the Department of Revenue, Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-2,145(d), and amendments thereto.

Title and name (printed): _____ Title and name (printed): _____

Agency name: _____ Agency name: _____

Agency address: _____ Agency address: _____

City/state/zip: _____ City/state/zip: _____

_____ _____
Signature of Law Enforcement Officer **Signature of Law Enforcement Officer**

Completion date of certification: _____

TEMPORARY COMMERCIAL DRIVER'S LICENSE

THIS NOTICE IS:

o **NOT VALID** as a temporary license because your license: o has expired o has been revoked o has been suspended o has been cancelled o you have no driver's license. If the reason for invalidity is removed, you may apply for temporary driving privileges within 20 days from the date of service of this notice.

o **VALID** as a temporary license for twenty (20) days from the date of service of this document, subject to any out of service order issued by a law enforcement officer. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary commercial driver's license will end and your commercial driving privileges will be suspended 20 days after service of this document unless an administrative hearing has been timely requested and the required $50 hearing fee paid, as set out in the INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ON THE REVERSE SIDE OF THIS FORM.

CDL-5 (Rev. 07/13)

NOTICE OF DISQUALIFICATION OF COMMERCIAL DRIVING PRIVILEGES

(Pursuant to K.S.A. 8-2,145, and amendments thereto.)

Based upon the certification by one or more law enforcement officers that you have refused to submit to and complete a test requested by a law enforcement officer or that the test results upon completion of a test showed that you had an alcohol concentration in your breath or blood of .04 or greater, you are hereby disqualified from driving a commercial motor vehicle, effective twenty (20) days from the date of service of this notice.

The length of the period of disqualification from driving a commercial motor vehicle will be one (1) year unless you were transporting a hazardous material required to be placarded or you have a prior occurrence of any offense or test refusal or test failure, as defined by K.S.A. 8-2,142, and amendments thereto.

If you were transporting a hazardous material required to be placarded at the time you refused to submit to and complete a test or the test results upon completion of a test showed that you had an alcohol concentration in your system of .04 or greater, the length of the period of disqualification from driving a commercial motor vehicle will be three (3) years.

If you have a prior occurrence of any offense or test refusal or test failure, listed in and as defined by K.S.A. 8-2,142, and amendments thereto, at the time you refused to submit to and complete a test or the test results upon completion of a test showed that you had an alcohol concentration in your system of .04 or greater, the length of the period of disqualification from driving a commercial motor vehicle will be for life.

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

- **If this form was personally served upon you**, a hearing request may be made **either** by mailing a written request which is postmarked **within 14 calendar days** after the date of service of this form, **or** by sending a written request by electronic facsimile (fax) to the Division of Vehicles **within 14 calendar days** after the date of service of this form.

- **If this form was served upon you by mail**, a hearing request may be made **either** by mailing a written request which is postmarked **within 17 calendar days** after the date of service of this form, **or** by sending a written request by electronic facsimile (fax) to the Division of Vehicles **within 17 calendar days** after the date of service of this form.

- The hearing request must include your full name, driver's license number and birth date. You should also include a telephone number where you or your legal representative can be reached if necessary.

- The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.

- The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and the Law Enforcement Officer's Certification will be admitted as evidence at the hearing.

- You must pay a nonrefundable fee of $50.00 within the time period for making a timely request for a hearing (check or money order preferred). The $50 hearing fee must be postmarked within the time period for making a timely hearing request or your hearing request will be denied. (A faxed image of cash or of a check or money order will not be accepted.) **Checks should be made payable to: Administrative Hearing Section, Kansas Department of Revenue.**

- HEARING LOCATION. Upon receipt of your timely written hearing request and fee, a hearing will be scheduled for you within the county where the alleged violation occurred, or a county adjacent thereto, and you will receive by mail written notice of the time, date, and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.

- SUBPOENAING WITNESSES. If you request an administrative hearing, you may request that witnesses be subpoenaed. Any request you make to issue subpoenas must be made in writing at the time the hearing is requested and must include the name and current address of each witness requested and, except for the certifying law enforcement officer or officers, a statement of how the testimony of such witness is relevant.

- Mail hearing requests to: DL Administrative Hearing Section
  Kansas Department of Revenue
  P. O. Box 2744
  Topeka, KS 66601-2744

- Send electronic facsimile (fax) requests to: (785) 296-0275

CDL-5 (Rev. 07/13)

28-32-8. Definitions.

The following terms and abbreviations as used in this article shall have the following meanings, unless the context requires otherwise.

(a) "Agency" means any law enforcement agency under whose authority evidential breath alcohol tests are performed.

(b) "Agency custodian" means the employee at a certified agency who is responsible for administering the certified agency's EBAT program.

(c) "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

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

(e) "Certified agency" means a law enforcement agency that meets the requirements of K.A.R. 28-32-9.

(f) "Certified operator" means an individual who meets the requirements of K.A.R. 28-32-10.

(g) "Department" means the Kansas department of health and environment.

(h) "Device custodian" means the certified operator employed by a certified agency who is responsible for oversight of the certified agency's EBAT device.

(i) "Evidential breath alcohol test" and "EBAT" mean a quantitative chemical test for alcohol performed on a sample or samples of breath of an individual suspected of an offense that subjects the individual to the provisions of K.S.A. 8-1001 through K.S.A. 8-1022 and amendments thereto.

(j) "Evidential breath alcohol test device" and "EBAT device" mean an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of an individual, which yields test results that are admissible as evidence in a court of law.

(k) "Preliminary breath-screening test device" means an instrument designed to perform a qualitative or quantitative chemical test for alcohol on a sample of breath of an individual to determine the presence or absence of alcohol pursuant to K.S.A. 8-1012 and amendments thereto.

(l) "Quality control" means a test of an evidential breath alcohol test device that is administered at the direction of the secretary and that uses a known alcohol standard to evaluate the accuracy of the device.

(m) "Secretary" means the secretary of the Kansas department of health and environment or the secretary's designee. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-9. Agency certification.

(a) Application. Each agency head seeking agency certification shall submit an application for agency certification on forms provided by the department.

(b) Certification requirements. Each agency for which certification is sought shall demonstrate to the secretary that all of the following requirements are met:

(1) The agency head shall specify each certified EBAT device proposed for conducting evidential breath alcohol testing.

(2) The agency head shall provide and maintain a roster of the certified operators who perform evidential breath alcohol testing for the agency.

(3) Each certified operator shall use only EBAT devices certified by the secretary.

(4) Each certified operator shall follow the standard operating procedure provided by the secretary for the EBAT device in use.

(5) For quality control, each device custodian or the device custodian's designee shall test each EBAT device once each calendar week using the alcohol standards furnished by the department. The agency custodian shall report the test results to the department monthly on forms provided by the department.

(c) Inspection. An annual inspection of each certified agency shall be made by the secretary or the secretary's designee to ensure compliance with this article.

(d) Certificate term. Each agency that meets the requirements of this regulation shall be issued a certificate by the secretary. Each certificate shall expire at midnight on December 31 of the year of the certificate's issuance.

(e) Certificate renewal. Each agency head of a certified agency seeking to renew the agency's certificate shall submit an application for renewal on forms provided by the department. If an application for renewal is submitted and approved before the expiration date, the certificate shall be considered renewed even if the agency does not have physical possession of the renewal certificate.

(f) Certificate suspension or revocation. The failure to comply with this regulation may be grounds for suspension or revocation of the agency's certification. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-10. Operator certification.

(a) Application. Each individual seeking certification shall submit an application for operator certification through that individual's certified agency on forms provided by the department. Each applicant shall be a duly appointed Kansas law enforcement officer or have the written endorsement of a supervisory law enforcement officer or an agency custodian.

(b) Certification requirements. Each applicant for operator certification shall be required to successfully complete the course of instruction and written examination approved by the secretary. Additional instruction may be required by the secretary to qualify a certified operator to perform evidential breath alcohol tests using additional EBAT devices.

(c) Certificate term. Each applicant that meets the requirements for conducting evidential breath alcohol testing shall be issued a certificate by the secretary. Each operator certificate that is issued in an even-numbered year shall expire at midnight on December 31 of the next even-numbered year. Each operator certificate that is issued in an odd-numbered year shall expire at midnight on December 31 of the next odd-numbered year.

(d) Certificate renewal. Each certified operator seeking to renew the operator certificate shall submit an application for renewal through that individual's certified agency on forms provided by the department. As a condition of an operator's certificate renewal, each certified operator shall biennially complete EBAT continuing education as approved by the secretary. If an application for renewal is submitted and approved before the certificate's expiration date, the certificate shall be considered renewed even if the operator does not have physical possession of the renewal certificate.

(e) Effect of military service or official leave of absence.

(1) Any operator who returns from active military service or an official leave of absence that does not exceed two years may renew an inactive certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:

(A) Provide proof of active military duty or official leave of absence;

(B) provide proof of the last operator certification before going on active duty or taking leave of absence;

(C) pass the current department-approved written operator examination; and

(D) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.

(2) Any operator who returns from active military service or an official leave of absence that exceeds two years may renew an expired certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:

(A) Provide proof of active military duty or official leave of absence;

(B) provide proof of the last operator certification before going on active duty or taking leave of absence;

(C) provide proof of completion of EBAT continuing education within 180 days of the date of return to the agency;

(D) pass the current department-approved written operator examination; and

(E) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.

(f) Certificate denial, suspension, and revocation. The failure of an applicant or a certified operator to comply with this regulation may be grounds for denial of the application or renewal or for suspension or revocation of the operator's certificate. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-11. EBAT device certification.

(a) Application. Each agency custodian seeking EBAT device certification shall submit an application on forms provided by the department for certification of each EBAT device the certified agency intends to use in the certified agency's EBAT program.

(b) EBAT device list. The "conforming products list of evidential breath measurement devices" (CPL) established by the national highway traffic safety administration (NHTSA) and published in 71 fed. reg. 37159-37162 (2006) is hereby adopted by reference. Only an EBAT device listed on the CPL shall be submitted to the secretary for consideration for certification as an EBAT device.

(c) Initial certification requirements. Each EBAT device shall be certified by the secretary if the secretary determines that the EBAT device meets NHTSA's performance criteria when operated according to the manufacturer's instruction manual.

(d) Inspection. Once an EBAT device is certified, an inspection of the EBAT device may be made by the secretary at any time. Any EBAT device may be removed from service at the time of the inspection if deemed necessary.

(e) Device maintenance. Each EBAT device shall be maintained by the device custodian or the device custodian's designee as directed by the secretary.

(f) Device repair. Each EBAT device removed from service for repair shall be repaired by the manufacturer or the manufacturer's authorized repair service. When the

device is returned to the agency, the EBAT device shall be tested for accuracy by the device custodian or the device custodian's designee. The device custodian or the device custodian's designee shall notify the department of the date the instrument is placed back into service.

(g) Device modification. No modification shall be made to any EBAT device without the prior written consent of the secretary. For purposes of this regulation, "modification" shall mean any change in the operating software or any physical change to a certified EBAT device that alters the accuracy or precision of the device. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-12. Certified operator instruction and continuing education requirements.

(a) Agency personnel may be trained to administer evidential breath alcohol tests by any of the following entities:

(1) The department;

(2) a certified agency;

(3) a college or university; or

(4) a law enforcement training center.

(b) Both of the following shall be approved in advance by the secretary:

(1) Each course instructor; and

(2) each course of instruction offered to fulfill operator certification and EBAT continuing education requirements. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-13. Records and reports.

(a) Records.

(1) Each agency custodian or the agency custodian's designee shall maintain the following records on file at the certified agency's office for at least three years:

(A) Records of each current certified operator;

(B) records showing that a quality control check was completed at least once each week for each EBAT device assigned to the agency; and

(C) records documenting any maintenance or repair made to each EBAT device.

(2) The records specified in this subsection shall be subject to inspection by the secretary at least annually.

(b) Reports. Each agency custodian or the agency custodian's designee shall maintain a record of the number of individuals tested by each certified operator under the certified agency's supervision and shall submit a quarterly report to the department on forms provided by the department. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-14. Preliminary breath-screening test devices.

(a) Each preliminary breath-screening test conducted shall be performed on a preliminary breath-screening test device approved by the secretary. The devices approved for use as preliminary breath-screening test devices in Kansas shall consist of the following devices and any other device approved by the secretary as specified in subsection (b):

Manufacturer	Model
Alcohol Countermeasure Systems Corporation	Alert J5
CMI, Inc.	Intoxilyzer 300
CMI, Inc	Intoxilyzer 400
CMI, Inc.	Intoxilyzer S-D2
CMI, Inc.	Intoxilyzer S-D5
Draeger Safety, Inc.	Alcotest 6510
Draeger Safety, Inc.	Alcotest 6810
Draeger Safety, Inc.	Breathalyzer 7410
Guth Laboratories, Inc.	WAT89EC-1
Guth Laboratories, Inc.	Alcotector BAC-100
Intoximeters, Inc.	Alco-Sensor
Intoximeters, Inc.	Alco-Sensor Pass-Warn-Fail
Intoximeters, Inc.	Alco-Sensor III
Intoximeters, Inc.	Alco-Sensor Digital
Intoximeters, Inc.	Alco-Sensor IV Digital
Intoximeters, Inc.	Alco-Sensor IV Pass-Warn-Fail
Intoximeters, Inc.	Alco-Sensor FST
Lifeloc Technologies, Inc.	FC10
Lifeloc Technologies, Inc.	FC10Plus
Lifeloc Technologies, Inc.	FC20
Lifeloc Technologies, Inc.	PBA 3000
Sound-Off, Inc.	AlcoData

(b) Each agency custodian seeking to use a preliminary breath-screening test device that is not specified in subsection (a) shall submit the device to the secretary for examination and evaluation to determine if the device meets the criteria for approval. In order for a preliminary breath-screening test device to be approved, whether the device meets the following requirements shall be determined by the secretary:

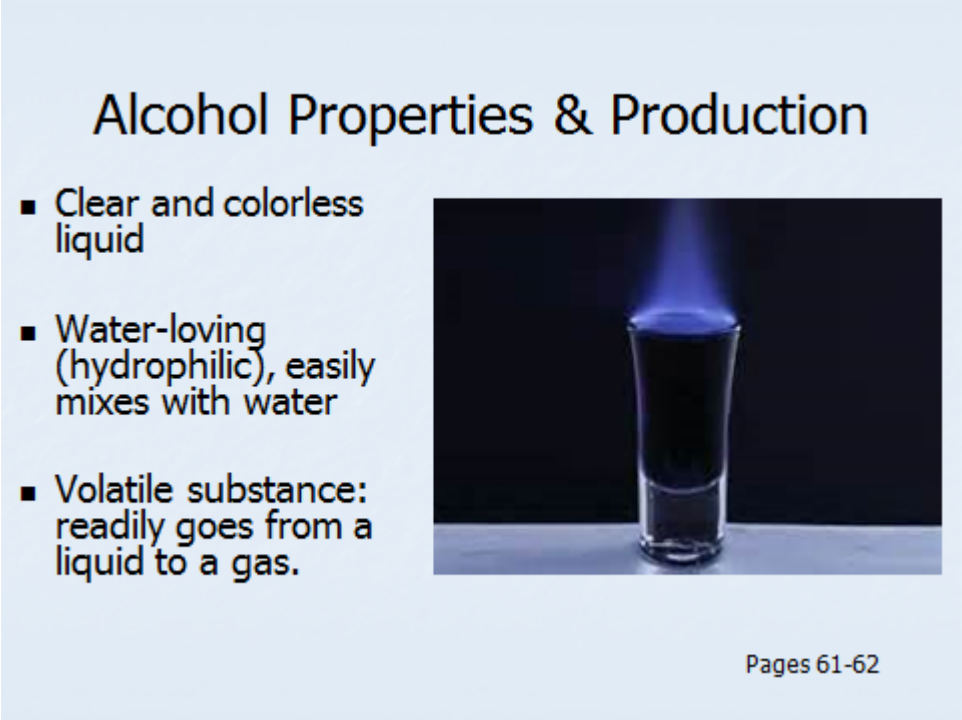
(1) Each preliminary breath-screening test device shall meet the manufacturer's performance criteria when operated according to the procedures specified in the manufacturer's instruction manual for the device in use.

(2) Each reusable preliminary breath-screening test device shall have a disposable mouthpiece.

(c) Each approved preliminary breath-screening test device shall be operated according to the procedures specified in the manufacturer's instruction manual for the device in use.

(d) All training of preliminary breath-screening test device operators shall be the responsibility of each agency. All training shall follow the operational instructions supplied by the manufacturer for the device in use. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

Alcohol Properties & Production



Alcohol is the chemical name for a number of compounds having one hydroxyl group attached to one or more carbon atoms. The above picture shows the chemical structure of ethyl alcohol. The 'H' is a hydrogen molecule, the 'C' is a carbon molecule and the 'OH' is an oxygen molecule attached to a hydrogen molecule.

Types of Alcohol

Ethyl alcohol: This is the type of alcohol found in alcoholic beverages. Other common names include grain alcohol, neutral spirits and ethanol. Its chemical formula C_2H_5OH is shown above. It is a clear, colorless liquid that imparts a burning sensation to the mouth and throat when swallowed. Pure ethanol has a very slight, pleasant odor; the odor commonly associated with an alcoholic beverage usually comes from the raw material used to make the drink, or from added flavoring. It is freely soluble in water.

Ethyl alcohol has a depressant effect on the body. It is generally harmless when consumed moderately, but can be highly poisonous when consumed in large quantities.

Ethyl alcohol can be produced both synthetically and by fermentation of sugars. When it is to be consumed as a beverage, legally it must be produced by fermentation. Synthetically produced alcohols, used for industrial purposes, are typically denatured to make them unacceptable for human consumption. Denaturing involves the addition of a small percentage of unpleasant or poisonous substances. Their removal to make the alcohol fit for human use, would be extremely time consuming and costly.

Alcohol Properties & Production

Methyl alcohol: Methyl alcohol is commonly known as wood alcohol. It is usually made synthetically. It is also known as methanol. Its chemical formula is CH_3OH. Methyl alcohol is a colorless liquid with a wine-like odor and a burning taste. It is used in the manufacture of industrial solvents and chemicals and is highly poisonous if swallowed or inhaled. Ethyl alcohol can actually be used as a treatment for methanol poisoning. It competes with the methanol for the enzymes used to break down both methanol and ethanol. Slowing down the breakdown of methanol gives the body time to eliminate any toxic by-products.

Endogenous alcohol: Endogenous alcohol refers to alcohol that exists “normally” in the body regardless of whether or not a person consumes alcoholic beverages. There is considerable disagreement among experts regarding the existence of “normal” alcohol in the body; however, both “normal” methyl and ethyl alcohol have been reported in the research literature. The values reported have not exceeded a BAC of 0.003 g/210L and generally are less than 0.001 g/210L. These values are too low to be of any medicolegal significance and are of academic interest only.

Other alcohols: There are many other types of alcohols used for various purposes. For example, isopropyl alcohol is used as rubbing alcohol.

Production of Alcohol

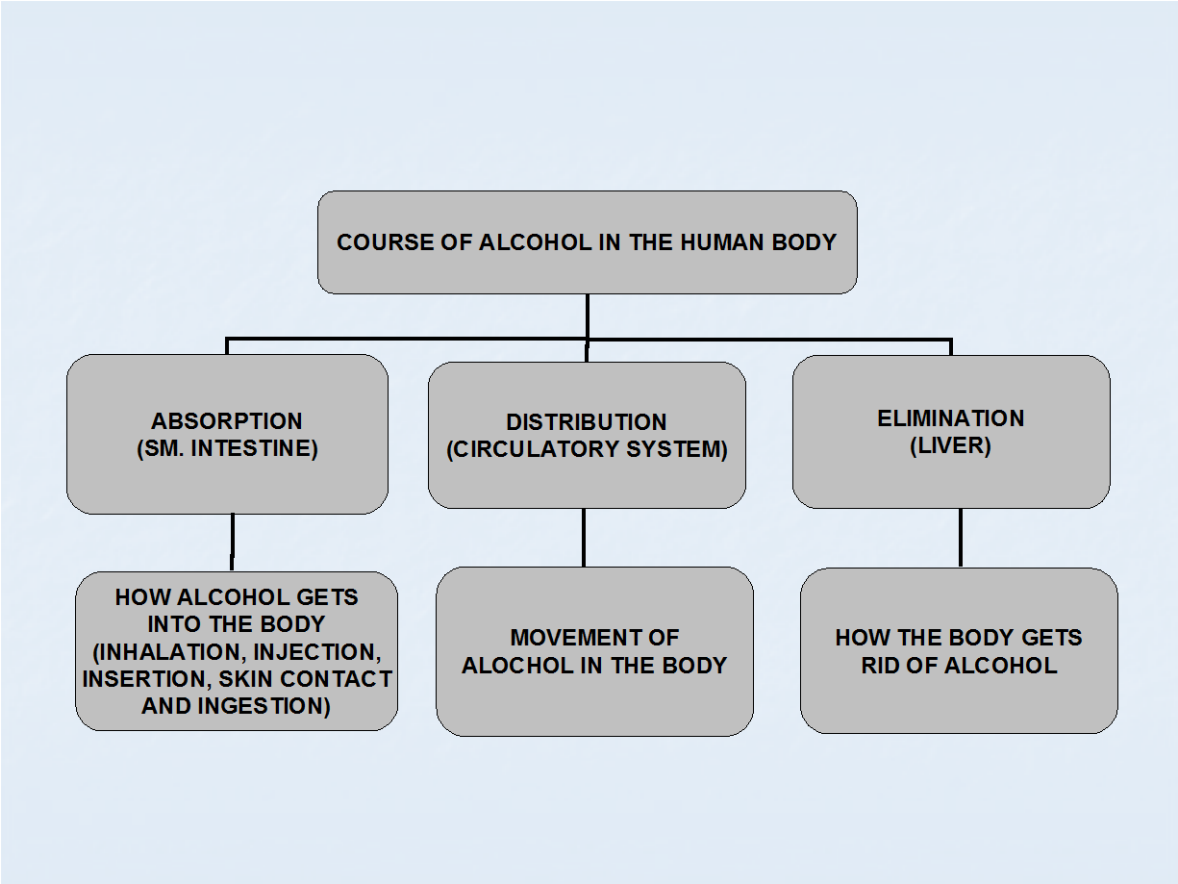
Sources: Any material can serve as the basic material for alcohol as long as it contains 12-15% sugar. Good examples of this would be fruit juices, malt or cereal grain extract, vegetable pulp (potato, cactus) and molasses.

Fermentation: Fermentation is the process by which all drinking alcohols are produced. Yeast from the air, or added as a pure culture, produces alcohol and carbon dioxide by fermenting the sugars in the raw material. The maximum alcohol content of a fermented beverage is 14-15% by volume; higher alcohol contents are produced by the process of distillation.

Distillation: Whiskey, gin, rum, brandy, etc., attain high alcohol contents through the process of distillation. Alcohol boils at 78.3^{o}C (173°F) and water at 100°C (212°F). When a mixture of alcohol and water is heated, the alcohol boils at a lower temperature. This resultant steam is caught, cooled and may be repeated until nearly pure ethanol is obtained.

Proof system: In the United States, the proof of an alcoholic beverage is twice the percentage of alcohol by volume. Thus, an 86-proof bottle of whiskey contains 43% of alcohol by volume. Most alcoholic beverages have a maximum of approximately 50% alcohol by volume; the remainder consists of water and flavoring agents (congeners). For example, beer has a relatively low alcohol content and is approximately 90% water.

Physiology of Alcohol



Absorption:

Most likely route. Alcohol is typically swallowed; therefore, the most common route of absorption is through the gastrointestinal (GI) tract.

Absorption from GI tract. Alcohol is absorbed by various parts of the GI tract as follows:

* **Mouth.** Alcohol can be absorbed through the mouth lining; however, the amount is normally minor since fluid leaves the mouth rapidly. Normal body processes will eliminate residual mouth alcohol within fifteen minutes.

* **Stomach.** About 20% of the alcohol is absorbed directly into the blood stream through the stomach wall. The exact amount is variable and influenced by the emptying time of the stomach. In contrast, no other substances (even liquids) are absorbed from the stomach.

* **Small intestine.** The remainder, approximately 75-80%, of the alcohol is absorbed from the **small intestine**; very little gets past the duodenum (the first 8 to 10 inches of the small intestine).

Physiology of Alcohol

* **Rate.** The rate of absorption varies somewhat from person to person and for the same person at different times depending on the condition of their body. However, alcohol begins to pass into the blood stream within 1 to 2 minutes after it is consumed, most alcohol is absorbed within 15 minutes, nearly 90% is absorbed within 1 hour, and nearly all is absorbed in 1.5 hours.

* **Absorption rate factors.** Absorption through the stomach wall is slow and represents only a portion of total alcohol intake. Absorption through the small intestine is rapid. Therefore, anything that increases emptying time of the stomach increases the absorption rate; anything that delays emptying time slows the absorption rate.

* **Dilution.** Absorption is slow in weak and strong beverages. It is fastest for a 20% water solution. Apparently, very strong beverages irritate the gastrointestinal walls and slow down absorption.

* **Food in the stomach.** Food in the stomach delays absorption. Absorption is slowed since stomach emptying time is delayed. This applies to eating while drinking and to eating before drinking.

Less likely routes. Alcohol may also be absorbed by inhalation, injection or direct insertion into the bladder or rectum. Absorption through direct skin contact to achieve a high BAC is impossible.

* **Inhalation.** Ethyl alcohol is readily absorbed by lung tissue, and both children and animals have become severely intoxicated by breathing alcohol fumes in confined spaces. Approximately 62% of the inhaled alcohol will be absorbed into the blood regardless of the concentration in the air or the rate of ventilation. However, a concentration of alcohol high enough to produce a significant rise in blood levels is very irritating. Investigators have shown that inhalation of a 0.9% alcohol-air mixture (about the highest tolerable limit) will produce a BAC of 0.045 g/210L only with forced respirations of 3 to 4 hours duration. Such conditions would not be obtained by industrial exposure to alcohol solvents.

* **Injection.** Alcohol is detectable in the blood within 5 to 15 minutes after injection into a muscle or skin.

* **Insertion.** When given as an enema, alcohol is readily absorbed by the large intestine (colon). Less than 10% of alcohol inserted in the bladder will be absorbed because alcohol passes more readily from the blood to the urine than from the urine to the blood.

* **Skin contact.** In experimental situations, no detectable blood levels have been obtained from alcohol rubs. If absorbed via this route, apparently the rate of absorption is less than the rate of elimination.

Physiology of Alcohol

Distribution:

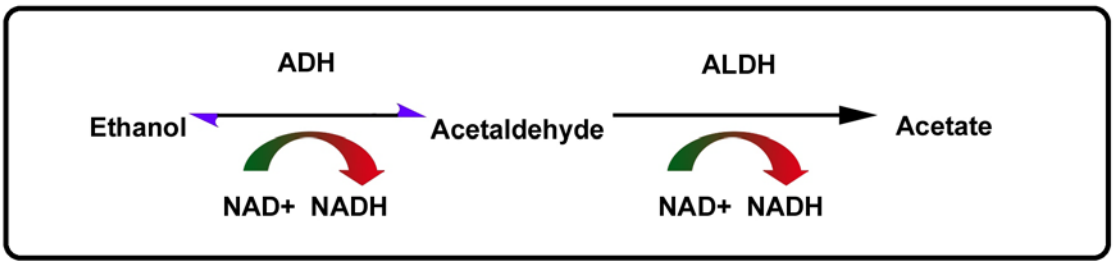
Pathway. Alcohol is absorbed into the blood through the walls of the stomach and small intestine, travels through the portal vein to the liver, and then travels with the circulatory system to the heart, lungs and back to the heart. It is then pumped from the heart to all parts of the body.

Equilibrium. Alcohol has an attraction for water and distributes itself throughout the body organs and tissues in relation to their water content. Blood circulates through the body at a rate of 3 to 4.5 liters per minute. Organs, such as the brain, liver and kidney, have a large blood supply, and therefore have a greater exposure to alcohol initially. When absorption and distribution are complete, equilibrium is achieved, that is, alcohol is even with the fluid content. This occurs typically within one or two hours after ingestion.

Elimination:

Method. Alcohol is eliminated from the body both by metabolism (indirect method) and by excretion (direct method). The indirect method of ethanol break down is illustrated in the picture below. The ethanol is broken down into the intermediate compound called acetaldehyde by the enzyme alcohol dehydrogenase (ADH). Acetaldehyde is a known carcinogen but is generally short lived. The enzyme aldehyde dehydrogenase (ALDH) reacts in response to the acetaldehyde to form acetate (also known as acetic acid). Once acetate is formed it is broken down into carbon dioxide and water- generally in tissues other than the liver.

Ethanol Breakdown in the Human Body:



Metabolism. Most alcohol (between 90 to 95%) is broken down into carbon dioxide and water. **This process takes place in the liver**. Since this breakdown provides the body with calories, alcohol is considered a food, although it has no direct food value.

Excretion. A small amount of alcohol leaves the body directly through breath, urine, tears, saliva, perspiration, etc. The amount expelled in this way is generally about 5% and rarely exceeds 10% of the quantity absorbed.

Physiology of Alcohol

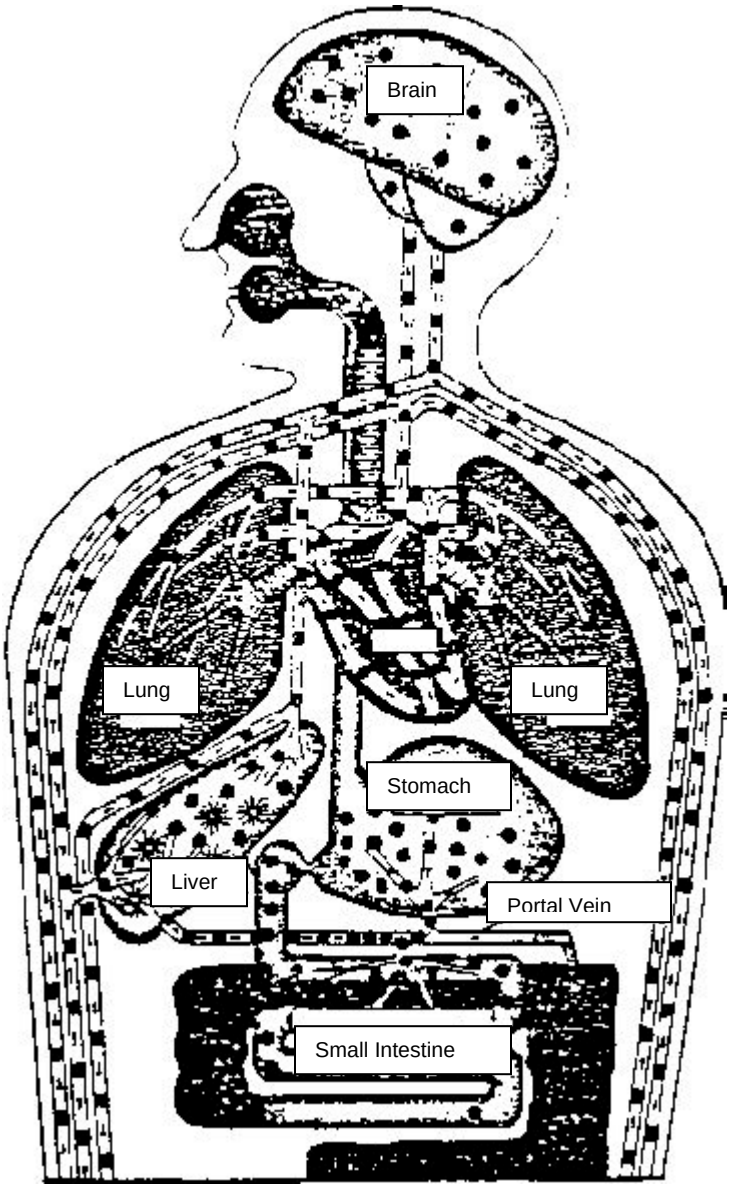
Rate of elimination. As soon as alcohol is absorbed into the blood system and travels to the liver, the body immediately starts to eliminate it. The **average rate of elimination** is reported as approximately **0.015 g/210L per hour** and varies between .007 and 0.037g/210L per hour. At very low BAC's, the average rate of elimination is about 0.01g/210L per hour. For a man weighing 150 pounds, the quantity eliminated in one hour is about 7 g or 2/3 oz. of 100-proof whiskey. Although there is some controversy in the literature, the majority of the scientific evidence indicates that the rate of elimination is essentially linear; that is, for any given person at a given time, the rate of alcohol elimination per hour will be essentially constant. The rate of elimination in regards to alcohol consumed varies from 1/2 to 1/3 ounce of pure alcohol per hour.

Elimination rate factors. In general, the rate of elimination is not affected by stimulants, disease states, or exercise. Where changes in rates have been noted, they are too small to be of any practical value. Because of the small quantity excreted directly, any attempt aimed at eliminating alcohol through increasing breathing rate, urine, or perspiration has little to no effect.

Physiology of Alcohol

Alcohol in the human body

According to concentration in the brain, alcohol first impairs judgment, then causes muscular incoordination, stupor and finally unconsciousness.



Course of Alcohol:

Mouth
|
Esophagus
|
Stomach
|
Pylorus
|
Small Intestines
|
Blood
|
Portal Vein
|
To all parts of the body where it is stored in the water until returned by the blood to the liver to be oxidized

Primary Lobule of the Lung
Diameter of circle = 1/50th inch

Blood vessels in the lungs end in the network of capillaries in the walls of the alveoli.

Alcohol from the blood is imparted to the alveolar breath.

Alveolar breath contains 1/2100th as much alcohol as the blood.

Henry's Law

Basis for all breath testing

Definition:

Weight of any gas that dissolves in a definite volume of liquid is directly proportional to the vapor pressure that the gas exerts above the liquid (dependent on temperature).

Scientists were able to dose individuals with alcohol and determine the ratio of blood to breath, which is 1 mL of blood to 2100 mL of breath (1:2100)

Meaning

If one shakes a closed bottle containing an alcohol solution and air, the amount of alcohol in the air will build up to a certain point and stop. This point is what chemists call equilibrium. At equilibrium for any given temperature and pressure, there will be a definite ratio between the amount of alcohol in the air and in the water. This ratio will be the same for any given temperature and atmospheric pressure; the higher the temperature, the more alcohol will be in the air.

Three things required for Henry's Law to apply:

1. **Closed container**
   For breath testing purposes deep lung air (alveolar air) best simulates a closed container

2. **Volatile substance**
   Alcohol in the blood

3. **Constant temperature**
   The average temperature of human breath is 34.0°C

Application to breath testing

Alcohol in alveolar air comes into equilibrium with alcohol in the blood. Thus, if the constant is known and the amount of alcohol in the breath can be measured, the amount of alcohol in the blood can be determined. The average temperature at which the breath leaves the mouth is 34.0^{o} Celsius (C). This ratio was found to be approximately 2100:1. Thus, 1 milliliter (mL) of blood will contain the same weight of alcohol as 2100 mL of the alveolar air with which it has come to equilibrium.

Conversion: $\frac{2100}{1} \times \frac{100}{100} = \frac{210{,}000}{100}$ milliliters or 210 liters of breath per 100 milliliters of blood

Now we have the statute's definition of alcohol concentration and we could report the results as the number of grams of alcohol per 210 liters of breath.

Glossary

AGENCY– Law Enforcement Agency.

ALCOHOL CONCENTRATION- The number of grams of alcohol per 100 mL of blood or 210 L of breath.

ALVEOLAR BREATH – Breath from the deepest part of the lung.

(TIDAL BREATH – This is the breath from the upper part of the lungs and the mouth.)

BREATH ALCOHOL CONCENTRATION (BrAC) – The amount of alcohol in a person's breath.

DEPARTMENT – Kansas Department of Health and Environment.

DUI –Driving Under the Influence. The subject was driving a vehicle while under the influence of alcohol or other drugs.

EVIDENCE – Any means by which some alleged fact that has been submitted to investigation may either be established or disproved. Evidence of a DUI violation may be of various types:

a. Physical (or real) evidence: something tangible, visible, or audible.
b. Well established facts (judicial notice).
c. Demonstrative evidence: demonstrations performed in the courtroom.
d. Written matter or documentation.
e. Testimony.

FURNISHED STANDARD – Alcohol standard furnished by the Department, with a concentration of 0.0968% ethyl alcohol w/v and equivalent to 0.080 g/210L blood alcohol w/v, (grams alcohol per 100 ml blood, or per 210 L of breath).

ILLEGAL PER SE – Unlawful in and of itself. This term is used to describe a law which makes it illegal to drive while having a statutorily prohibited Blood Alcohol Concentration (BAC), or Breath Alcohol Concentration (BrAC).

INACTIVATION OF AGENCY CERTIFICATION- It is illegal for the operators at an Agency to measure breath for alcohol for law enforcement purposes following inactivation of that Agency's certification (class C misdemeanor).

INACTIVATION OF OPERATOR CERTIFICATION– It is illegal for an operator to measure breath for alcohol for law enforcement purposes following inactivation of their certification (class C misdemeanor).

PRELIMINARY BREATH TEST (PBT) – A pre-evidential (or roadside) breath test administered during investigation of a possible DUI violation to obtain an indication of the person's blood alcohol concentration.

The use of the words **shall** and **will** in correspondence indicate a mandatory requirement, while the terms **should** and **may** are not mandatory.

Summary Review

1. **Alcohol is volatile; it can exist as a liquid or gas, depending on temperature.**

2. **The type of alcohol that is consumed is ethyl alcohol, also known as ethanol.**

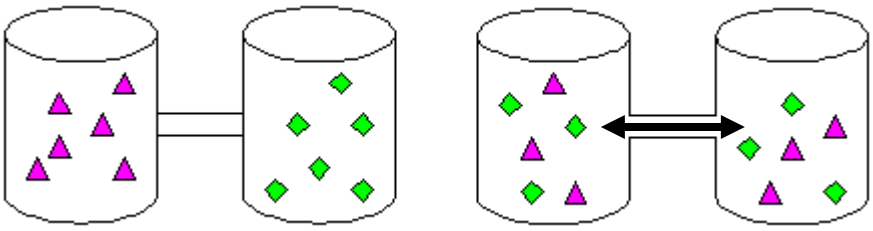
3. **Most of the ingested alcohol is absorbed through the small intestine, approximately 75%.**

4. **Most alcohol is eliminated through metabolism in the liver, approximately 95%.**

5. **Average alcohol elimination rate for a person is considered to be about .015 g/210L.**

6. **Fatal level is considered to be about 0.450 g/210 L.**

7. **This picture illustrates equilibrium. When the containers are closed they contain only their shape. When the containers are opened to each other then they mix together until they are balanced (or at equilibrium).**



8. **Equilibrium occurs between the alcohol in the blood and nearly all body tissues. For breath testing purposes we look at the equilibrium between the alcohol in the blood and the alcohol in the deep lung (alveolar) air.**

9. **At 34.0^{o}C, 1 milliliter of blood will contain the same weight of alcohol as 2100 milliliters of alveolar air.**

10. **Alcohol concentration means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.**

11. **The basis for human breath alcohol testing is Henry's Law. It has three requirements: closed container, volatile substance, and constant temperature.**

Summary Review

12. **A closed container is approximated by the deep lung or alveolar air sample.**

13. **The .02 Advisory on the back of the DC-70 form is to be given to drivers under the age of 21 years.**

14. **The CDL Advisory on the back of the DC-70 form is to be given to drivers operating or attempting to operate a commercial motor vehicle.**

15. **The State of Kansas protocol consists of seven steps (see page 77) which yield valid, objective test results.**

16. **The State of Kansas protocol requires a 20 minute deprivation period.**

17. **The steps for the Kansas approved sequence for breath testing are Air Blank, External Standard Check, Air Blank, Subject Test, Air Blank, also known as 'ACABA'.**

18. **Operators, custodians and KDHE staff never calibrate an instrument; they check the calibration using the dry gas.**

19. **The acceptable range for the external standard check is 0.075 - 0.085 g/210L, inclusive.**

20. **The dry gas cylinder contains ethyl alcohol and nitrogen. It shall be used to check the instrument ONCE per calendar week by the agency custodian or their designee.**

21. **The calendar week runs from Sunday through Saturday.**

22. **When alcohol is introduced into the sample chamber the amount of light hitting the detector is decreased.**

23. **If the instrument indicates mouth alcohol was present during testing it prints "Invalid Sample .XXX". You need to restart the 20 minute alcohol deprivation period and retest the subject.**

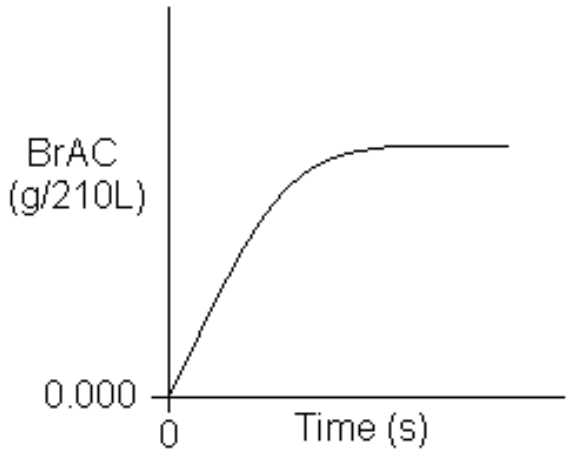
24. **If you get the message 'Interferent Detect' there may have been another chemical similar to alcohol in the person's breath. Take the person for a blood draw and/or seek medical attention following your agency's policy.**

Summary Review

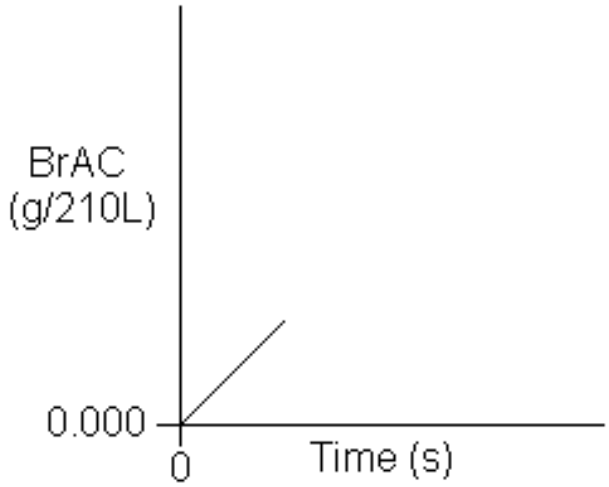
25. **If you get the message 'Ambient Failed' there may have been alcohol or other vapors in the air immediately around the instrument. The area should be ventilated by whatever means possible.**

26. **The units on a breath sample are g/210L. This indicates that the breath sample had some number of grams of alcohol in 210 liters of alveolar breath.**

27. **The graph for an completed sample would look similar to the graph shown below:**

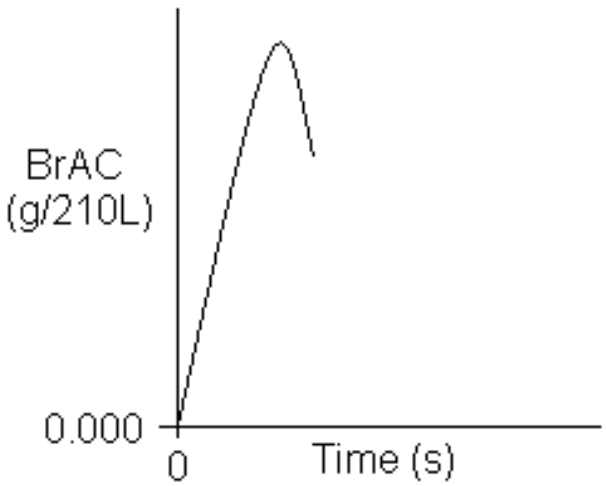


28. **The graph for a deficient sample would look similar to the graph shown below:**



Summary Review

29. **The graph for a invalid sample would look similar to the graph shown below:**



30. **Prima facie evidence is obtained from a test taken within three hours of operating or attempting to operate a motor vehicle.**

31. **Other competent evidence is obtained from a test taken three or more hours after operating or attempting to operate a motor vehicle.**

32. **A deficient sample is also considered to be other competent evidence.**

Summary Review

All Subjects get DC-70

Under 21 YOA:

- 0.02 – 0.079 g/210L
  DC-28
- = 0.08 or Refusal
  DC-27
- In CMV 0.04 - 0.079
  CDL-5 & DC-28
- In CMV = 0.08
  CDL-5 & DC-27.

Over 21 YOA:

- < .08
  Only DC-70
- = 0.08 or Refusal
  DC-27
- In CMV 0.04 - 0.079
  CDL-5
- In CMV = 0.08
  CDL-5 & DC-27.

Intoxilyzer 8000

GENERAL INFORMATION ABOUT THE INTOXILYZER 8000 EBAT DEVICE

The Intoxilyzer 8000 uses the concept that alcohol molecules absorb light energy at specific wavelengths to measure ethyl alcohol concentration in breath samples. The wavelengths of infrared (IR) light used are 3 and 9 micron.

The heart of the Intoxilyzer 8000 instrument is its self contained heated optical bench. This optical bench consists of the heated sample chamber, pulsed IR light source and the pyroelectric detector. The sample chamber within the Intoxilyzer 8000 consists of two preheat chambers and the final sample chamber. At one end of the chamber the light source, a quartz iodide lamp, emits IR light energy. This energy is directed through the chamber by a lens. At the other end of the chamber is a pyroelectric detector which changes the heat energy of the light source into an electrical response. This electrical response is then used to calculate the breath alcohol concentration (BrAC) of the sample.

The determination of the BrAC is based on the amount of light energy striking the detector. When no alcohol is present the IR light passes through the chamber unaffected creating a certain voltage level. This can be called X. As a sample with alcohol is introduced, some of the IR light is absorbed. As the alcohol level increases, the amount of light passing through the chamber reaching the detector decreases. This new level of voltage can be called Y. The difference between X and Y represents the concentration of alcohol in the sample. The greater the difference between the X and Y values the higher the BrAC reading.

There are other chemical structures that absorb light energy at similar wavelengths as alcohol. These chemical structures are known as interferents, such as acetone. The Intoxilyzer 8000 will detect a difference in the readings at the 3 and 9 micron wavelengths and will abort the test giving the message ‘Interferent Detect’. The following pages show examples of several other informational messages the Intoxilyzer 8000 will give.

Effective July 1, 2007

Intoxilyzer 8000

Protocol

1. Keep the subject in your immediate presence and deprive the subject of alcohol for 20 minutes immediately preceding the breath test.

2. Check to determine the power switch of the instrument has been activated and is in "Ready Mode".

3. Press the green Start Test button and follow the instructions displayed by the instrument.

4. The instrument will begin the Kansas approved sequence automatically. The sequence is Air Blank, Ext Std Check, Air Blank, Subject Test, Air Blank.

5. The acceptable range for the External Standard Check is 0.075 to 0.085.

6. When prompted for Subject Test, place an unused mouth piece into the breath tube and request the subject provide a breath sample.

7. After the final Air Blank cycle, a test result will be printed.

Intoxilyzer 8000 Fields

Case ID #

Subject Last Name

Subject First Name

Subject Middle Name/Initial

Subject Date of Birth

Subject Driver's License #

State of Issuance

Arresting Officer

Instrument Operator

Operator Number

Deprivation Period Start

Review Data?

Dry Gas Cylinder Information

a. The cylinders are purchased and tested by KDHE prior to being furnished to any law enforcement agency. Every cylinder is verified and must read within the acceptable external standard check range, 0.075 to 0.085 g/210 L, inclusive, or the cylinder is rejected.
b. The cylinders have a shelf life of approximately two years. The cylinders are replaced prior to their expiration date.
c. The cylinders are furnished at site inspections or mailed at the agency's request.
d. They are made of steel and are non-refillable. They can be recycled or land filled after the pressure is released. Your Agency or Device Custodian has an extractor device used to ventilate tanks to remove the pressure which allows for safe disposal.
e. The cylinders contain ethanol (ethyl alcohol) and nitrogen. The nitrogen is used as a propellant to help carry the ethanol into the instrument.
f. The cylinders are considered a hazardous material due to the pressure in the cylinder not the contents. In order to be able to ship the cylinders you must be Department of Transportation (DOT) Hazardous Materials Shipping Certified. KDHE Breath Alcohol Program staff has obtained the required training to be able to ship these cylinders.
g. When shipping an instrument for repair the dry gas cylinder **NEEDS TO BE REMOVED** to prevent fines and/or added expenses for shipping.

Completed Test Printout

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                            11:20

Case Iden No = 1111
Sub Name = DOE, JOHN
Sub DOB = 10/22/1950
Sub Driv Lic = KS123456
State of Issue = KS
Arrest Officer = JANE DOE
Inst Operator = JANE DOE
Operator Cert No. = 0001
Deprivation Period Began = 11:00


Test            g/210L BrAC          Time
----------------------------------------
Air Blank          0.000            11:22
Ext Std Check      0.078            11:22
Air Blank          0.000            11:23
Subject Test       0.079            11:23
Air Blank          0.000            11:24


_____________________________________________
JANE DOE
```

Possible Cause:

- This is a properly completed subject test print out.

Potential Solution:

- None.

Informational Message: ‘Ambient Failed’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                           11:34

Invalid Test
Check Ambient Conditions
```

JANE DOE

Possible Cause:

- This condition can occur if alcohol or other vapors are in the air immediately around the instrument.

Potential Solution:

- Ventilate the room by whatever means possible.
- Redo the subject test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.

Informational Message: ‘Sequence Aborted’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                           11:37

Invalid Test
Sequence Aborted
```

JANE DOE

Possible Cause:

- The ‘Start Test’ button was pressed more than once which aborted the testing sequence.

Potential Solution:

- Redo the subject test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.

*Note: If the test is aborted during the data entry portion the instrument will give a series of hi-lo tones and display ‘Sequence Aborted’ but no printout will be given. No printout is given because the instrument is not in the testing sequence.

Informational Message:
‘Reference Check Out of Tolerance’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                          11:41

Invalid Test
Reference Check Out of Tolerance
```

JANE DOE

Potential Solution:

- Try ventilating the room and/or moving the subject away from the instrument.
- Check to ensure the black tube, which leads from the regulator to the calibration inlet on the right side of the instrument, is well seated.
- Check to ensure the cylinder is snug on the regulator.
- Redo the subject test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.
- If you are unable to get a completed test, you may need to consult your agency/device custodian or follow your agency’s policy.

Informational Message: ‘Improper Time’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                           11:24

Invalid Test
Sample Introduced at Improper Time
```

JANE DOE

Possible Cause:

- The subject introduced a breath sample at a time other than during the ‘Subject Test’.

Potential Solution:

- Redo the subject test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.
- You will need to use a new mouthpiece for the next test sequence.

Informational Message: 'Deficient Sample'

```
CMI INC
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002945
02/16/2009                            08:57

Case Iden No = DEFICIENTSAMPLECHECK
Sub Name = THURMAN, AMANDA KAY
Sub DOB = 01/01/2000
Sub Driv Lic =
State of Issue =
Arrest Officer =
Inst Operator =
Operator Cert No. = 0001
Deprivation Period Began = 08:00


Test            g/210L BrAC          Time
---------------------------------------
Air Blank          0.000            08:58
Ext Std Check      0.078            08:58
Air Blank          0.000            08:59
Subject Test       DEF*             09:02
Air Blank          0.000            09:03

*Deficient Sample, Highest Value = 0.111
```

Possible Cause:

- The subject began to blow but never met the requirements to achieve a complete sample. The subject has a total of 2 to 3 minutes to provide an adequate sample. The highest value obtained is displayed along with the message "Deficient Sample".

Potential Solution:

- Another test may be administered at the officer's discretion with no new deprivation period needed as long as the subject was in your immediate presence.
- You will need to use a new mouthpiece for the next testing sequence.

Informational Message: ‘No Sample Given’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
07/12/2007                           10:59

Case Iden No = 1111
Sub Name = DOE, JOHN
Sub DOB = 10/22/1950
Sub Driv Lic = KS123456
State of Issue = KS
Arrest Officer = JANE DOE
Inst Operator = JANE DOE
Operator Cert No. = 0001
Deprivation Period Began = 10:30


Test            g/210L BrAC          Time
-------------------------------------
Air Blank          0.000            11:00
Ext Std Check      0.077            11:00
Air Blank          0.000            11:01
Subject Test       NSG*             11:04
Air Blank          0.000            11:04

*No Sample Given




_____________________________________
JANE DOE
```

Possible Cause:

- The subject never provided a breath sample.

Potential Solution:

- Another test may be administered at the officer’s discretion with no new deprivation period needed as long as the subject was in your immediate presence.
- You may need to use a new mouthpiece- refer to your agency’s policy.

Informational Message: ‘Inhibited- RFI’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                           11:52

Invalid Test
Inhibited - RFI
```

JANE DOE

Possible Cause:

- This instrument detected a radio frequency interference of some kind and aborted the testing sequence.

Potential Solution:

- Remove or turn off any cell phones or police radios in the testing area.
- Redo the subject test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.
- You may need to use a new mouthpiece.

Informational Message: 'Interferent Detect'

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
07/12/2007                           10:27

Case Iden No = 1111
Sub Name = DOE, JOHN
Sub DOB = 10/22/1950
Sub Driv Lic = KS123456
State of Issue = KS
Arrest Officer = JANE DOE
Inst Operator = JANE DOE
Operator Cert No. = 0001
Deprivation Period Began = 10:00


Test            g/210L BrAC          Time
---------------------------------------
Air Blank          0.000            10:32
Ext Std Check      0.077            10:33
Air Blank          0.000            10:33
Subject Test       INT*             10:34
Air Blank          0.000            10:34

*Interferent Detect
```

JANE DOE

Possible Cause:

- This instrument detected an interferent during the subject breath test. An interferent is another chemical with a similar IR fingerprint as ethanol.

Potential Solution:

- Obtain a blood draw and seek medical attention, if necessary. Follow your agency's policy.

Informational Message: ‘Invalid Sample’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                            12:03

Case Iden No = 1111
Sub Name = DOE, JOHN
Sub DOB = 10/22/1950
Sub Driv Lic = KS123456
State of Issue = KS
Arrest Officer = ROBERT DOE
Inst Operator = JANE DOE
Operator Cert No. = 0001
Deprivation Period Began = 11:40


Test            g/210L BrAC         Time
-------------------------------------
Air Blank          0.000           12:04
Ext Std Check      0.077           12:04
Air Blank          0.000           12:05
Subject Test       XXX*            12:05
Air Blank          0.000           12:06

*Invalid Sample
```

_____
JANE DOE

Possible Cause:

- If the instrument detects a quick increase in alcohol concentration followed by a drop off from the maximum value the above message is given. This has commonly been referred to as ‘Mouth Alcohol’ but may be caused by other conditions.

Potential Solution:

- Repeat the 20 minute deprivation period and the subject test.
- You will need to use a new mouthpiece.
- If you are unable to get a completed test, you may need to consult your agency/device custodian or follow your agency’s policy.

Informational Message: ‘Range Exceeded’

```
KDHE
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
06/12/2007                           11:59

Invalid Test
Range Exceeded
```

JANE DOE

Possible Cause:

- This message is given when the breath alcohol concentration exceeds the maximum measured by the instrument.

Potential Solution:

- If the subject is experiencing medical problems have them evaluated by medical personnel and obtain a blood sample.
- If you are unable to get a completed test, you may need to consult your agency/device custodian or follow your agency’s policy.

Informational Message:
‘Purge Fail’

```
KDHE 1
Intoxilyzer - Alcohol Analyzer
Model 8000                    SN 80-002124
08/23/2007                           14:47

Invalid Test
Purge Fail
```

Possible Cause:

- The instrument detected an elevation from the baseline determined in the first Air Blank. This may be caused by alcohol being detected during the purge cycle.

Potential Solution:

- Make sure the subject is not too close to the breath hose after supplying their sample.
- Ensure the mouthpiece has been removed from the breath hose.
- Ventilate the room by whatever means possible.
- Repeat the subject test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.
- You may need a new mouthpiece.
- If you are unable to get a completed test, you may need to consult your agency/device custodian or follow your agency’s policy.

Other Intoxilyzer 8000 Informational Messages

Unstable Signal

Potential Solution:

- Try rerunning the test- no new deprivation period needs to be performed as long as the subject was in your immediate presence.
- You may need a new mouthpiece.
- If you are unable to get a completed test, you may need to consult your agency/device custodian or follow your agency's policy.
- The instrument may need to be serviced.

Tank Below Minimum

Possible Cause:

- This message may be given by the instrument when one of these conditions occurs:
    - The cylinder is no longer tight to the regulator, or
    - The pressure in the dry gas cylinder is below the minimum needed by the instrument, or
    - The regulator cables are not attached at the back of the instrument

Potential Solution:

- Check to ensure the cylinder is snug to the regulator.
- The dry gas cylinder on the back of the instrument may need to be changed. You may need to contact your agency/device custodian to change the cylinder or follow your agency's policy.
- The regulator cables need to be reattached to the instrument. You may need to contact your agency/device custodian or follow your agency's policy.

Diagnostic Fail

Potential Solution:

- You may need to contact your agency/device custodian or follow your agency's policy.
- The custodian may have you rerun the diagnostics.