

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

HOUSE BILL No. 2304

By Committee on Corrections and Juvenile Justice

2-4

12 AN ACT concerning ~~controlled substances~~ ***[crimes and punishment;***
13 ***relating to tests for alcohol and drugs when allegedly driving***
14 ***under the influence]***; relating to ingesting or injecting certain con-
15 trolled substances; amending K.S.A. ***[8-1001 and]*** 65-4162 and K.S.A.
16 2004 Supp. 65-4160 and repealing the existing sections.

17

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

19 Section 1. K.S.A. 2004 Supp. 65-4160 is hereby amended to read as
20 follows: 65-4160. (a) Except as authorized by the uniform controlled sub-
21 stances act, it shall be unlawful for any person to possess, *ingest, inject* or
22 have under such person's control any opiates, opium or narcotic drugs,
23 or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A.
24 65-4107 and amendments thereto. Any person who violates this subsec-
25 tion shall be guilty of a drug severity level 4 felony.

26 (b) It shall not be a defense to charges arising under this section that
27 the defendant was acting in an agency relationship on behalf of any other
28 party in a transaction involving a controlled substance.

29 (c) For purposes of the uniform controlled substances act, the pro-
30 hibitions contained in this section shall apply to controlled substance an-
31 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
32 thereto.

33 (d) The provisions of this section shall be part of and supplemental
34 to the uniform controlled substances act.

35 Sec. 2. K.S.A. 65-4162 is hereby amended to read as follows: 65-
36 4162. (a) Except as authorized by the uniform controlled substances act,
37 it shall be unlawful for any person to possess, *ingest, inject* or have under
38 such person's control:

39 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
40 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
41 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

42 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
43 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.

1 65-4109, and amendments thereto;

2 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
3 4105 and amendments thereto or designated in subsection (g) of K.S.A.
4 65-4107 and amendments thereto or designated in subsection (g) of
5 K.S.A. 65-4109 and amendments thereto;

6 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and
7 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)
8 of K.S.A. 65-4111 and amendments thereto; or

9 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
10 4109, and amendments thereto.

11 Except as otherwise provided, any person who violates this subsection
12 shall be guilty of a class A nonperson misdemeanor. If any person has a
13 prior conviction under this section, a conviction for a substantially similar
14 offense from another jurisdiction or a conviction of a violation of an or-
15 dinance of any city or resolution of any county for a substantially similar
16 offense if the substance involved was marijuana or tetrahydrocannabinol
17 as designated in subsection (d) of K.S.A. 65-4105 and amendments
18 thereto, then such person shall be guilty of a drug severity level 4 felony.

19 (b) It shall not be a defense to charges arising under this section that
20 the defendant was acting in an agency relationship on behalf of any other
21 party in a transaction involving a controlled substance.

22 (c) For purposes of the uniform controlled substances act, the pro-
23 hibitions contained in this section shall apply to controlled substance an-
24 alogos as defined in subsection (bb) of K.S.A. 65-4101 and amendments
25 thereto.

26 (d) The provisions of this section shall be part of and supplemental
27 to the uniform controlled substances act.

28 ***[Sec. 3. K.S.A. 8-1001 is hereby amended to read as follows: 8-***
29 ***1001. (a) Any person who operates or attempts to operate a vehicle***
30 ***within this state is deemed to have given consent, subject to the***
31 ***provisions of this act, to submit to one or more tests, including, but***
32 ***not limited to, a preliminary screening test pursuant to K.S.A. 8-1012,***
33 ***and amendments thereto, of the person's blood, breath, urine or other***
34 ***bodily substance to determine the presence of alcohol or drugs. The***
35 ***testing deemed consented to herein shall include all quantitative***
36 ***and qualitative tests for alcohol and drugs. A person who is dead***
37 ***or unconscious shall be deemed not to have withdrawn the person's***
38 ***consent to such test or tests, which shall be administered in the***
39 ***manner provided by this section.***

40 ***[(b) A law enforcement officer shall request a person to submit***
41 ***to a test or tests deemed consented to under subsection (a) if the***
42 ***officer has reasonable grounds to believe the person was operating***
43 ***or attempting to operate a vehicle while under the influence of al-***

1 *cohol or drugs, or both, or to believe that the person was driving a*
2 *commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-*
3 *ments thereto, or was under the age of 21 years while having alcohol*
4 *or other drugs in such person's system; and one of the following*
5 *conditions exists: (1) The person has been arrested or otherwise*
6 *taken into custody for any offense involving operation or attempted*
7 *operation of a vehicle while under the influence of alcohol or drugs,*
8 *or both, or for a violation of K.S.A. 8-1567a, and amendments*
9 *thereto, or involving driving a commercial motor vehicle, as defined*
10 *in K.S.A. 8-2,128, and amendments thereto, while having alcohol or*
11 *other drugs in such person's system, in violation of a state statute*
12 *or a city ordinance; or (2) the person has been involved in a vehicle*
13 *accident or collision resulting in property damage, personal injury*
14 *or death. The law enforcement officer directing administration of*
15 *the test or tests may act on personal knowledge or on the basis of*
16 *the collective information available to law enforcement officers in-*
17 *olved in the accident investigation or arrest.*

18 *[(c) If a law enforcement officer requests a person to submit to*
19 *a test of blood under this section, the withdrawal of blood at the*
20 *direction of the officer may be performed only by: (1) A person*
21 *licensed to practice medicine and surgery or a person acting under*
22 *the supervision of any such licensed person; (2) a registered nurse*
23 *or a licensed practical nurse; or (3) any qualified medical techni-*
24 *cian, including, but not limited to, an emergency medical techni-*
25 *cian-intermediate or mobile intensive care technician, as those*
26 *terms are defined in K.S.A. 65-6112, and amendments thereto, or a*
27 *phlebotomist. When presented with a written statement by a law*
28 *enforcement officer directing blood to be withdrawn from a person*
29 *who has tentatively agreed to allow the withdrawal of blood under*
30 *this section, the person authorized herein to withdraw blood and*
31 *the medical care facility where blood is withdrawn may rely on such*
32 *a statement as evidence that the person has consented to the medical*
33 *procedure used and shall not require the person to sign any addi-*
34 *tional consent or waiver form. In such a case, the person authorized*
35 *to withdraw blood and the medical care facility shall not be liable*
36 *in any action alleging lack of consent or lack of informed consent.*
37 *No person authorized by this subsection to withdraw blood, nor any*
38 *person assisting in the performance of a blood test nor any medical*
39 *care facility where blood is withdrawn or tested that has been di-*
40 *rected by any law enforcement officer to withdraw or test blood,*
41 *shall be liable in any civil or criminal action when the act is per-*
42 *formed in a reasonable manner according to generally accepted*
43 *medical practices in the community where performed.*

1 *[(d) If there are reasonable grounds to believe that there is im-*
2 *pairment by a drug which is not subject to detection by the blood*
3 *or breath test used, a urine test may be required. If a law enforce-*
4 *ment officer requests a person to submit to a test of urine under this*
5 *section, the collection of the urine sample shall be supervised by*
6 *persons of the same sex as the person being tested and shall be con-*
7 *ducted out of the view of any person other than the persons super-*
8 *vising the collection of the sample and the person being tested, un-*
9 *less the right to privacy is waived by the person being tested. The*
10 *results of qualitative testing for drug presence shall be admissible*
11 *in evidence and questions of accuracy or reliability shall go to the*
12 *weight rather than the admissibility of the evidence.*

13 *[(e) No law enforcement officer who is acting in accordance*
14 *with this section shall be liable in any civil or criminal proceeding*
15 *involving the action.*

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

21 *[(B) the opportunity to consent to or refuse a test is not a con-*
22 *stitutional right;*

23 *[(C) there is no constitutional right to consult with an attorney*
24 *regarding whether to submit to testing;*

25 *[(D) if the person refuses to submit to and complete any test of*
26 *breath, blood or urine hereafter requested by a law enforcement*
27 *officer, the person's driving privileges will be suspended for one*
28 *year for the first occurrence, two years for the second occurrence,*
29 *three years for the third occurrence, 10 years for the fourth occur-*
30 *rence and permanently revoked for a fifth or subsequent offense;*

31 *[(E) if the person submits to and completes the test or tests and*
32 *the test results show an alcohol concentration of .08 or greater, the*
33 *person's driving privileges will be suspended for 30 days for the*
34 *first occurrence, one year for the second, third or fourth occurrence*
35 *and permanently revoked for a fifth or subsequent offense;*

36 *[(F) if the person is less than 21 years of age at the time of the*
37 *test request and submits to and completes the tests and the test*
38 *results show an alcohol concentration of .08 or greater, the person's*
39 *driving privileges will be suspended up to one year;*

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

1 *[(H) the results of the testing may be used against the person at*
2 *any trial on a charge arising out of the operation or attempted op-*
3 *eration of a vehicle while under the influence of alcohol or drugs,*
4 *or both; and*

5 *[(I) after the completion of the testing, the person has the right*
6 *to consult with an attorney and may secure additional testing,*
7 *which, if desired, should be done as soon as possible and is custom-*
8 *arily available from medical care facilities and physicians.*

9 *[(g) If a law enforcement officer has reasonable grounds to be-*
10 *lieve that the person has been driving a commercial motor vehicle,*
11 *as defined in K.S.A. 8-2,128, and amendments thereto, while having*
12 *alcohol or other drugs in such person's system, the person shall also*
13 *be provided the oral and written notice pursuant to K.S.A. 8-2,145*
14 *and amendments thereto. Any failure to give the notices required*
15 *by K.S.A. 8-2,145 and amendments thereto shall not invalidate any*
16 *action taken as a result of the requirements of this section. If a law*
17 *enforcement officer has reasonable grounds to believe that the per-*
18 *son has been driving or attempting to drive a vehicle while having*
19 *alcohol or other drugs in such person's system and such person was*
20 *under 21 years of age, the person also shall be given the notices*
21 *required by K.S.A. 8-1567a, and amendments thereto. Any failure*
22 *to give the notices required by K.S.A. 8-1567a, and amendments*
23 *thereto, shall not invalidate any action taken as a result of the*
24 *requirements of this section.*

25 *[(h) After giving the foregoing information, a law enforcement*
26 *officer shall request the person to submit to testing. The selection*
27 *of the test or tests shall be made by the officer. If the person refuses*
28 *to submit to and complete a test as requested pursuant to this sec-*
29 *tion, additional testing shall not be given unless the certifying of-*
30 *ficer has probable cause to believe that the person, while under the*
31 *influence of alcohol or drugs, or both, has operated a vehicle in*
32 *such a manner as to have caused the death of or serious injury to*
33 *another person. If the test results show a blood or breath alcohol*
34 *concentration of .08 or greater, the person's driving privileges shall*
35 *be subject to suspension, or suspension and restriction, as provided*
36 *in K.S.A. 8-1002 and 8-1014, and amendments thereto.*

37 *[(i) The person's refusal shall be admissible in evidence against*
38 *the person at any trial on a charge arising out of the alleged oper-*
39 *ation or attempted operation of a vehicle while under the influence*
40 *of alcohol or drugs, or both.*

41 *[(j) If a law enforcement officer had reasonable grounds to be-*
42 *lieve the person had been driving a commercial motor vehicle, as*
43 *defined in K.S.A. 8-2,128, and amendments thereto, and the test*

1 *results show a blood or breath alcohol concentration of .04 or*
2 *greater, the person shall be disqualified from driving a commercial*
3 *motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto.*
4 *If a law enforcement officer had reasonable grounds to believe the*
5 *person had been driving a commercial motor vehicle, as defined in*
6 *K.S.A. 8-2,128, and amendments thereto, and the test results show*
7 *a blood or breath alcohol concentration of .08 or greater, or the*
8 *person refuses a test, the person's driving privileges shall be subject*
9 *to suspension, or suspension and restriction, pursuant to this sec-*
10 *tion, in addition to being disqualified from driving a commercial*
11 *motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.*

12 *[(k) An officer shall have probable cause to believe that the per-*
13 *son operated a vehicle while under the influence of alcohol or drugs,*
14 *or both, if the vehicle was operated by such person in such a manner*
15 *as to have caused the death of or serious injury to another person.*
16 *In such event, such test or tests may be made pursuant to a search*
17 *warrant issued under the authority of K.S.A. 22-2502, and amend-*
18 *ments thereto, or without a search warrant under the authority of*
19 *K.S.A. 22-2501, and amendments thereto.*

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

24 *[(m) It shall not be a defense that the person did not understand*
25 *the written or oral notice required by this section.*

26 *[(n) No test results shall be suppressed because of technical ir-*
27 *regularities in the consent or notice required pursuant to this act.*

28 *[(o) Nothing in this section shall be construed to limit the ad-*
29 *missibility at any trial of alcohol or drug concentration testing re-*
30 *sults obtained pursuant to a search warrant.*

31 *[(p) Upon the request of any person submitting to testing under*
32 *this section, a report of the results of the testing shall be made avail-*
33 *able to such person.*

34 *[(q) This act is remedial law and shall be liberally construed to*
35 *promote public health, safety and welfare.]*

36 *Sec. ~~3~~ [4.] K.S.A. [8-1001 and] 65-4162 and K.S.A. 2004 Supp.*
37 *65-4160 are hereby repealed.*

38 *Sec. ~~4~~ [5.] This act shall take effect and be in force from and after*
39 *its publication in the ~~statute book~~ **Kansas register**.*