

HOUSE BILL No. 2315

By Committee on Judiciary

2-6

9 AN ACT concerning crimes and punishment; relating to driving under
10 the influence; amending K.S.A. 2008 Supp. 8-1001, 8-1014 and 8-1015
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2008 Supp. 8-1014 is hereby amended to read as
15 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
16 2,142, and amendments thereto, if a person refuses a test, the division,
17 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

18 (1) On the person's first occurrence, suspend the person's driving
19 privileges for ~~one year~~ 30 days and at the end of the suspension, restrict
20 the person's driving privileges for ~~one year~~ two years to driving only a
21 motor vehicle equipped with an ignition interlock device;

22 (2) on the person's second occurrence, suspend the person's driving
23 privileges for ~~two years~~ one year and at the end of the suspension, restrict
24 the person's driving privileges for three years to driving only a motor
25 vehicle equipped with an ignition interlock device;

26 (3) on the person's third occurrence, suspend the person's driving
27 privileges for ~~three years~~ one year and at the end of the suspension, re-
28 strict the person's driving privileges for four years to driving only a motor
29 vehicle equipped with an ignition interlock device;

30 (4) on the person's fourth occurrence, suspend the person's driving
31 privileges for ~~10 years~~ one year and at the end of the suspension, restrict
32 the person's driving privileges for five years to driving only a motor ve-
33 hicle equipped with an ignition interlock device; and

34 (5) on the person's fifth or subsequent occurrence, ~~revoke~~ suspend
35 the person's driving privileges for one year and at the end of the suspen-
36 sion, restrict the person's driving privileges permanently to driving only
37 a motor vehicle equipped with an ignition interlock device.

38 (b) (1) Except as provided by subsections (c) and (e) and K.S.A. 8-
39 2,142, and amendments thereto, if a person fails a test or has an alcohol
40 or drug-related conviction in this state, the division shall:

41 (A) On the person's first occurrence, suspend the person's driving
42 privileges for 30 days, then restrict the person's driving privileges as pro-
43 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330

1 ~~days~~ 45 days and at the end of the suspension, restrict the person's driving
2 privileges for one year to driving only a motor vehicle equipped with an
3 ignition interlock device;

4 (B) on the person's second, ~~third or fourth~~ occurrence, suspend the
5 person's driving privileges for one year and at the end of the suspension,
6 restrict the person's driving privileges for ~~one year~~ two years to driving
7 only a motor vehicle equipped with an ignition interlock device; and

8 (C) on the person's third occurrence, suspend the person's driving
9 privileges for one year and at the end of the suspension, restrict the per-
10 son's driving privileges for three years to driving only a motor vehicle
11 equipped with an ignition interlock device;

12 (D) on the person's fourth occurrence, suspend the person's driving
13 privileges for one year and at the end of the suspension, restrict the per-
14 son's driving privileges for four years to driving only a motor vehicle
15 equipped with an ignition interlock device; and

16 (E) on the person's fifth or subsequent occurrence, suspend the per-
17 son's driving privileges for one year and at the end of the suspension,
18 restrict the person's driving privileges ~~shall be~~ permanently ~~revoked~~ to
19 driving only a motor vehicle equipped with an ignition interlock device.

20 (2) Except as provided by subsection (e) and K.S.A. 8-2,142, and
21 amendments thereto, if a person fails a test or has an alcohol or drug-
22 related conviction in this state and the person's blood or breath alcohol
23 concentration is .15 or greater, the division shall:

24 (A) On the person's first occurrence, suspend the person's driving
25 privileges for ~~one year~~ 45 days and at the end of the suspension, restrict
26 the person's driving privileges for ~~one year~~ two years to driving only a
27 motor vehicle equipped with an ignition interlock device;

28 (B) on the person's second occurrence, suspend the person's driving
29 privileges for one year and at the end of the suspension, restrict the
30 person's driving privileges for ~~two~~ three years to driving only a motor
31 vehicle equipped with an ignition interlock device;

32 (C) on the person's third occurrence, suspend the person's driving
33 privileges for one year and at the end of the suspension restrict the per-
34 son's driving privileges for ~~three~~ four years to driving only a motor vehicle
35 equipped with an ignition interlock device;

36 (D) on the person's fourth occurrence, suspend the person's driving
37 privileges for one year and at the end of the suspension, restrict the
38 person's driving privileges for ~~four~~ five years to driving only a motor ve-
39 hicle equipped with an ignition interlock device; and

40 (E) on the person's fifth or subsequent occurrence, suspend the per-
41 son's driving privileges for one year and at the end of the suspension,
42 restrict the person's driving privileges ~~shall be~~ permanently ~~revoked~~ to
43 driving only a motor vehicle equipped with an ignition interlock device.

1 (3) Whenever a person's driving privileges have been restricted to
2 driving only a motor vehicle equipped with an ignition interlock device,
3 proof of the installation of such device, for the entire restriction period,
4 shall be provided to the division before the person's driving privileges are
5 fully reinstated.

6 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
7 amendments thereto, if a person who is less than 21 years of age fails a
8 test or has an alcohol or drug-related conviction in this state, the division
9 shall:

10 (1) On the person's first occurrence, suspend the person's driving
11 privileges for one year. If the person's blood or breath alcohol concen-
12 tration is .15 or greater, the division shall at the end of the suspension,
13 restrict the person's driving privileges for one year to driving only a motor
14 vehicle equipped with an ignition interlock device;

15 (2) on the person's second and subsequent occurrences, penalties
16 shall be imposed pursuant to subsection (b).

17 (d) Whenever the division is notified by an alcohol and drug safety
18 action program that a person has failed to complete any alcohol and drug
19 safety action education or treatment program ordered by a court for a
20 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
21 division shall suspend the person's driving privileges until the division
22 receives notice of the person's completion of such program.

23 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
24 if a person's driving privileges are subject to suspension pursuant to this
25 section for a test refusal, test failure or alcohol or drug-related conviction
26 arising from the same arrest, the period of such suspension shall not
27 exceed the longest applicable period authorized by subsection (a), (b) or
28 (c), and such suspension periods shall not be added together or otherwise
29 imposed consecutively. In addition, in determining the period of such
30 suspension as authorized by subsection (a), (b) or (c), such person shall
31 receive credit for any period of time for which such person's driving
32 privileges were suspended while awaiting any hearing or final order au-
33 thorized by this act.

34 If a person's driving privileges are subject to restriction pursuant to
35 this section for a test failure or alcohol or drug-related conviction arising
36 from the same arrest, the restriction periods shall not be added together
37 or otherwise imposed consecutively. In addition, in determining the pe-
38 riod of restriction, the person shall receive credit for any period of sus-
39 pension imposed for a test refusal arising from the same arrest.

40 (f) If the division has taken action under subsection (a) for a test
41 refusal or under subsection (b) or (c) for a test failure and such action is
42 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
43 rary driving privileges are issued pursuant to K.S.A. 8-1020, and amend-

1 ments thereto, the stay or temporary driving privileges shall not prevent
2 the division from taking the action required by subsection (b) or (c) for
3 an alcohol or drug-related conviction.

4 (g) Upon restricting a person's driving privileges pursuant to this sec-
5 tion, the division shall issue a copy of the order imposing the restrictions
6 which is required to be carried by the person at any time the person is
7 operating a motor vehicle on the highways of this state.

8 (h) Any person whose license is restricted to operating only a motor
9 vehicle with an ignition interlock device installed may operate an em-
10 ployer's vehicle without an ignition interlock device installed during nor-
11 mal business activities, provided that the person does not partly or entirely
12 own or control the employer's vehicle or business.

13 Sec. 2. K.S.A. 2008 Supp. 8-1015 is hereby amended to read as fol-
14 lows: 8-1015. (a) ~~When subsection (b)(1) of K.S.A. 8-1014, and amend-~~
15 ~~ments thereto, requires or authorizes the division to place restrictions on~~
16 ~~a person's driving privileges, the division shall restrict the person's driving~~
17 ~~privileges to driving only under the circumstances provided by subsec-~~
18 ~~tions (a)(1), (2), (3) and (4) of K.S.A. 8-292 and amendments thereto.~~

19 ~~—(b) In lieu of the restrictions set out in subsection (a), the division,~~
20 ~~upon request of the person whose driving privileges are to be restricted,~~
21 ~~may restrict the person's driving privileges to driving only a motor vehicle~~
22 ~~equipped with an ignition interlock device, approved by the division and~~
23 ~~obtained, installed and maintained at the person's expense. Prior to is-~~
24 ~~suuing such restricted license, the division shall receive proof of the in-~~
25 ~~stallation of such device.~~

26 ~~—(c) When a person has completed the one-year suspension pursuant~~
27 ~~to subsection (b)(2) of K.S.A. 8-1014, and amendments thereto, the di-~~
28 ~~vision shall restrict the person's driving privileges for one year pursuant~~
29 ~~to K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle~~
30 ~~equipped with an ignition interlock device; that is approved by the divi-~~
31 ~~sion and maintained at the person's expense. Proof of the installation of~~
32 ~~such device, for the full year of the restricted period, shall be provided~~
33 ~~to the division before the person's driving privileges are fully reinstated.~~

34 ~~(d) (b)~~ Upon expiration of the period of time for which restrictions
35 are imposed pursuant to this section, the licensee may apply to the divi-
36 sion for the return of any license previously surrendered by the licensee.
37 If the license has expired, the person may apply to the division for a new
38 license, which shall be issued by the division upon payment of the proper
39 fee and satisfaction of the other conditions established by law, unless the
40 person's driving privileges have been suspended or revoked prior to
41 expiration.

42 Sec. 3. K.S.A. 2008 Supp. 8-1001 is hereby amended to read as fol-
43 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle

1 within this state is deemed to have given consent, subject to the provisions
2 of this act, to submit to one or more tests of the person's blood, breath,
3 urine or other bodily substance to determine the presence of alcohol or
4 drugs. The testing deemed consented to herein shall include all quanti-
5 tative and qualitative tests for alcohol and drugs. A person who is dead
6 or unconscious shall be deemed not to have withdrawn the person's con-
7 sent to such test or tests, which shall be administered in the manner
8 provided by this section.

9 (b) A law enforcement officer shall request a person to submit to a
10 test or tests deemed consented to under subsection (a): (1) If the officer
11 has reasonable grounds to believe the person was operating or attempting
12 to operate a vehicle while under the influence of alcohol or drugs, or
13 both, or to believe that the person was driving a commercial motor ve-
14 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having
15 alcohol or other drugs in such person's system, or was under the age of
16 21 years while having alcohol or other drugs in such person's system; and
17 one of the following conditions exists: (A) The person has been arrested
18 or otherwise taken into custody for any offense involving operation or
19 attempted operation of a vehicle while under the influence of alcohol or
20 drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments
21 thereto, or involving driving a commercial motor vehicle, as defined in
22 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
23 drugs in such person's system, in violation of a state statute or a city
24 ordinance; or (B) the person has been involved in a vehicle accident or
25 collision resulting in property damage or personal injury other than se-
26 rious injury; or (2) if the person was operating or attempting to operate
27 a vehicle and such vehicle has been involved in an accident or collision
28 resulting in serious injury or death of any person and the operator could
29 be cited for any traffic offense, as defined in K.S.A. 8-2117, and amend-
30 ments thereto. The traffic offense violation shall constitute probable cause
31 for purposes of paragraph (2). The test or tests under paragraph (2) shall
32 not be required if a law enforcement officer has reasonable grounds to
33 believe the actions of the operator did not contribute to the accident or
34 collision. The law enforcement officer directing administration of the test
35 or tests may act on personal knowledge or on the basis of the collective
36 information available to law enforcement officers involved in the accident
37 investigation or arrest.

38 (c) If a law enforcement officer requests a person to submit to a test
39 of blood under this section, the withdrawal of blood at the direction of
40 the officer may be performed only by: (1) A person licensed to practice
41 medicine and surgery, licensed as a physician's assistant, or a person act-
42 ing under the direction of any such licensed person; (2) a registered nurse
43 or a licensed practical nurse; (3) any qualified medical technician, includ-

1 ing, but not limited to, an emergency medical technician-intermediate or
2 mobile intensive care technician, as those terms are defined in K.S.A. 65-
3 6112, and amendments thereto, authorized by medical protocol or (4) a
4 phlebotomist.

5 (d) A law enforcement officer may direct a medical professional de-
6 scribed in this section to draw a sample of blood from a person:

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

9 (2) if medically unable to consent, if the person meets the require-
10 ments of paragraph (2) of subsection (b); or

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

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

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

32 (g) If a person must be restrained to collect the sample pursuant to
33 this section, law enforcement shall be responsible for applying any such
34 restraint utilizing acceptable law enforcement restraint practices. The re-
35 straint shall be effective in controlling the person in a manner not to
36 jeopardize the person's safety or that of the medical professional or at-
37 tending medical or health care staff during the drawing of the sample and
38 without interfering with medical treatment.

39 (h) A law enforcement officer may request a urine sample upon meet-
40 ing the requirements of paragraph (1) of subsection (b) and shall request
41 a urine sample upon meeting the requirements of paragraph (2) of sub-
42 section (b).

43 (i) If a law enforcement officer requests a person to submit to a test

1 of urine under this section, the collection of the urine sample shall be
2 supervised by persons of the same sex as the person being tested and
3 shall be conducted out of the view of any person other than the persons
4 supervising the collection of the sample and the person being tested,
5 unless the right to privacy is waived by the person being tested. When
6 possible, the supervising person shall be a law enforcement officer. The
7 results of qualitative testing for drug presence shall be admissible in ev-
8 idence and questions of accuracy or reliability shall go to the weight rather
9 than the admissibility of the evidence. If the person is medically unable
10 to provide a urine sample in such manner due to the injuries or treatment
11 of the injuries, the same authorization and procedure as used for the
12 collection of blood in subsections (d) and (e) shall apply to the collection
13 of a urine sample.

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

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

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

24 (3) there is no constitutional right to consult with an attorney regard-
25 ing whether to submit to testing;

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

32 (5) if the person submits to and completes the test or tests and the
33 test results show ~~for the first occurrence:~~

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

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

40 ~~(6) if the person submits to and completes the test or tests and the~~
41 ~~test results show an alcohol concentration of .08 or greater, the person's~~
42 ~~driving privileges will be suspended for one year for the second, third or~~
43 ~~fourth occurrence and permanently revoked for a fifth or subsequent~~

1 ~~occurrence;~~

2 ~~(7)~~ (6) if the person is less than 21 years of age at the time of the test
3 request and submits to and completes the tests and the test results show
4 an alcohol concentration of .08 or greater, the person's driving privileges
5 will be suspended for one year except the person's driving privileges will
6 be permanently revoked for a fifth or subsequent occurrence;

7 ~~(8)~~ (7) refusal to submit to testing may be used against the person at
8 any trial on a charge arising out of the operation or attempted operation
9 of a vehicle while under the influence of alcohol or drugs, or both;

10 ~~(9)~~ (8) the results of the testing may be used against the person at
11 any trial on a charge arising out of the operation or attempted operation
12 of a vehicle while under the influence of alcohol or drugs, or both; and

13 ~~(10)~~ (9) after the completion of the testing, the person has the right
14 to consult with an attorney and may secure additional testing, which, if
15 desired, should be done as soon as possible and is customarily available
16 from medical care facilities willing to conduct such testing.

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

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

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

42 (o) If a law enforcement officer had reasonable grounds to believe
43 the person had been driving a commercial motor vehicle, as defined in

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

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

20 (q) Failure of a person to provide an adequate breath sample or sam-
21 ples as directed shall constitute a refusal unless the person shows that the
22 failure was due to physical inability caused by a medical condition unre-
23 lated to any ingested alcohol or drugs.

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

26 (s) No test results shall be suppressed because of technical irregular-
27 ities in the consent or notice required pursuant to this act.

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

31 (u) Upon the request of any person submitting to testing under this
32 section, a report of the results of the testing shall be made available to
33 such person.

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

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

39 (1) Disabling a person from the physical capacity to remove them-
40 selves from the scene;

41 (2) renders a person unconscious;

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

- 1 (4) an injury determined by a physician to require surgery; or
- 2 (5) otherwise indicates the person may die or be permanently disa-
- 3 bled by the injury.
- 4 Sec. 4. K.S.A. 2008 Supp. 8-1001, 8-1014 and 8-1015 are hereby
- 5 repealed.
- 6 Sec. 5. This act shall take effect and be in force from and after its
- 7 publication in the statute book.