

DUI Amendment – Kyle Smith – 03/15/12

Prepared by Jason Thompson, Senior Assistant Revisor

75-712h. ~~On or before July 1, 2012,~~ The director of the Kansas bureau of investigation shall is authorized to adopt rules and regulations establishing: (a) Criteria for preliminary screening devices for testing of saliva for law enforcement purposes, based on health and performance considerations; and (b) a list of preliminary screening devices which are approved for testing of saliva for law enforcement purposes and which law enforcement agencies may purchase and train officers to use as aids in determining probable cause to arrest and grounds for requiring testing pursuant to K.S.A. 8-1001, and amendments thereto.

8-1012. Preliminary screening test of breath or saliva; request by officer, reasonable suspicion; notice required; refusal to take test is traffic infraction; use of results of test; additional tests; approved devices. (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. Any preliminary screening of a person's saliva shall be conducted with a device approved pursuant to K.S.A. 2011 Supp. 75-712h, 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. 105, § 12; July 1.

