

## 2012 Kansas Statutes

**75-7c12. Carrying concealed handgun while under influence of alcohol or drugs prohibited; evidence; testing; revocation of license, when.** (a) Except as otherwise provided in this section, a licensee under the influence of alcohol or an illegally used controlled substance, to such a degree as to render such licensee incapable of safely operating a handgun, who knowingly possesses or carries a loaded handgun on or about the licensee, or within the licensee's immediate access and control while in a vehicle, commits a class A nonperson misdemeanor.

(b) This section shall not apply to any of the following:

(1) A licensee who possesses or carries a handgun while in the licensee's own dwelling or place of business or on land owned or possessed by the licensee; or

(2) the transitory possession or use of a handgun during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.

(c) An officer shall have probable cause to believe that the licensee used or attempted to use a concealed handgun under the influence of alcohol or drugs, or both, if the handgun was operated by the licensee in such a manner as to have caused death of, or serious injury to, a person. In such event, one or more tests of the licensee's blood, breath, urine or other bodily substance to determine the presence of alcohol, drugs, or both, 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. As used in this section, "serious injury" shall be defined in accordance with K.S.A. 8-1001, and amendments thereto.

(d) The test or tests shall be administered in the manner provided by for administration of tests for alcohol or drugs pursuant to K.S.A. 8-1001, and amendments thereto. Notwithstanding any provisions of K.S.A. 8-1001, and amendments thereto, to the contrary, any testing to determine impairment shall be through the voluntary consent of the licensee to be tested or as prescribed in subsection (c), and no licensee shall be deemed to have consented to such testing solely by the use or attempted use of a concealed handgun.

(e) If a licensee is subject to subsection (c) and refuses to submit to and complete any test of breath, blood or urine requested by a law enforcement officer, the licensee's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

(f) If the licensee submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater or shows the presence of a drug or drugs which render the licensee incapable of safely handling a handgun, the licensee's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

(g) In any criminal prosecution for carrying a concealed handgun 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:

(1) 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 as it applies in subsection (a).

(2) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol as it applies in subsection (a).

(3) 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 incapacitated, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs as it applies in subsection (a).

(h) The provisions of subsection (b) 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.

(i) 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 or voluntary testing, but no person shall be deemed to have implied consent to mandatory testing by obtaining a concealed handgun license or by carrying a concealed handgun under the terms of this act.

(j) Upon the request of any person submitting to testing under subsection (c), a report of the results of the testing shall be made available to such person.

(k) The provisions of K.S.A. 8-1023 and 8-1024, and amendments thereto, shall be applicable and followed during any administration or enforcement of this section.

**History:** L. 2006, ch. 32, § 12; L. 2006, ch. 210, § 9; L. 2010, ch. 140, § 10; July 1.