

**HOUSE BILL No. 2104**

By Committee on Judiciary

1-30

1 AN ACT concerning driving under the influence; relating to testing;  
2 notice; preliminary screening; amending K.S.A. 2018 Supp. 8-1001, 8-  
3 1012 and 75-712h and repealing the existing sections; also repealing  
4 K.S.A. 2018 Supp. 8-1025.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. On and after July 1, 2019, K.S.A. 2018 Supp. 8-1001 is  
8 hereby amended to read as follows: 8-1001. (a) Any person who operates  
9 or attempts to operate a vehicle within this state may be requested, subject  
10 to the provisions of this article, to submit to one or more tests of the  
11 person's blood, breath, urine or other bodily substance to determine the  
12 presence of alcohol or drugs. The testing shall include all quantitative and  
13 qualitative tests for alcohol and drugs. The test must be administered at the  
14 direction of a law enforcement officer, and the law enforcement officer  
15 shall determine which type of test is to be conducted or requested.

16 (b) (1) One or more tests may be required of a person when, at the  
17 time of the request, a law enforcement officer has probable cause to  
18 believe the person has committed a violation of K.S.A. 8-1567(a), and  
19 amendments thereto, or to believe the person was driving a commercial  
20 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,  
21 while having alcohol or other drugs in such person's system, or to believe  
22 the person is under the age of 21 years and was operating or attempting to  
23 operate a vehicle while having alcohol or other drugs in such person's  
24 system; and one of the following conditions exists: (A) The person has  
25 been arrested or otherwise taken into custody for any violation of any state  
26 statute, county resolution or city ordinance; or (B) the person has been  
27 involved in a motor vehicle accident or collision resulting in property  
28 damage, personal injury or death.

29 (2) The law enforcement officer directing administration of the test or  
30 tests may act on personal knowledge or on the basis of the collective  
31 information available to law enforcement officers involved in the  
32 investigation or arrest.

33 (c) When requesting a test or tests of breath or other bodily substance  
34 other than blood or urine, under this section, the person shall be given oral  
35 and written notice that:

36 (1) There is no right to consult with an attorney regarding whether to

1 submit to testing, but, after the completion of the testing, the person may  
2 request and has the right to consult with an attorney and may secure  
3 additional testing;

4 (2) if the person refuses to submit to and complete the test or tests, ~~or~~  
5 *the person's driving privileges will be suspended for a period of one year;*

6 (3) if the person fails a test, the person's driving privileges will be  
7 suspended for a period of ~~at least~~ *either 30 days and up to or one year;*

8 ~~(3)~~(4) refusal to submit to testing may be used against the person at  
9 any trial or hearing on a charge arising out of the operation or attempted  
10 operation of a vehicle while under the influence of alcohol or drugs, or  
11 both; and

12 ~~(4)~~(5) the results of the testing may be used against the person at any  
13 trial or hearing on a charge arising out of the operation or attempted  
14 operation of a vehicle while under the influence of alcohol or drugs, or  
15 both.

16 (d) When requesting a test or tests of blood or urine, under this  
17 section, the person shall be given oral and written notice that:

18 (1) If the person refuses to submit to and complete the test or tests, ~~or~~  
19 *the person's driving privileges will be suspended for a period of one year;*

20 (2) if the person fails a test, the person's driving privileges will be  
21 suspended for a period of ~~at least~~ *either 30 days and up to or one year;*

22 ~~(2)~~(3) the results of the testing may be used against the person at any  
23 trial or hearing on a charge arising out of the operation or attempted  
24 operation of a vehicle while under the influence of alcohol or drugs, or  
25 both; and

26 ~~(3)~~(4) after the completion of the testing, the person may request and  
27 has the right to consult with an attorney and may secure additional testing.

28 (e) Nothing in this section shall be construed to limit the right of a  
29 law enforcement officer to conduct any search of a person's breath or other  
30 bodily substance, other than blood or urine, incident to a lawful arrest  
31 pursuant to the constitution of the United States, with or without providing  
32 the person the advisories authorized in subsection (c), nor limit the  
33 admissibility at any trial or hearing of alcohol or drug concentration testing  
34 results obtained pursuant to such a search.

35 (f) Nothing in this section shall be construed to limit the right of a law  
36 enforcement officer to conduct or obtain a blood or urine test of a person  
37 pursuant to a warrant under K.S.A. 22-2502, and amendments thereto, the  
38 constitution of the United States or a judicially recognized exception to the  
39 search warrant requirement, with or without providing the person the  
40 advisories authorized in subsection (d), nor limit the admissibility at any  
41 trial or hearing of alcohol or drug concentration testing results obtained  
42 pursuant to such a search.

43 (g) A law enforcement officer may direct a medical professional, as

1 described in subsection (h), to draw one or more samples of blood from a  
2 person to determine the blood's alcohol or drug concentration:

3 (1) If the person has given consent, with or without the advisories in  
4 subsection (d), and meets the requirements of subsection (b);

5 (2) if law enforcement has obtained a search warrant authorizing the  
6 collection of blood from the person; or

7 (3) if the person refuses or is unable to consent to submit to and  
8 complete a test, and another judicially recognized exception to the warrant  
9 requirement applies.

10 (h) If a law enforcement officer is authorized to collect one or more  
11 tests of blood under this section, the withdrawal of blood at the direction  
12 of the officer may be performed only by: (1) A person licensed to practice  
13 medicine and surgery, licensed as a physician assistant, or a person acting  
14 under the direction of any such licensed person; (2) a registered nurse or a  
15 licensed practical nurse; (3) any qualified medical technician, including,  
16 but not limited to, an advanced emergency medical technician or a  
17 paramedic, as those terms are defined in K.S.A. 65-6112, and amendments  
18 thereto, authorized by medical protocol; or (4) a phlebotomist.

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

35 Such sample or samples shall be an independent sample and not be a  
36 portion of a sample collected for medical purposes. The person collecting  
37 the blood sample shall complete the collection portion of a document, if  
38 provided by law enforcement.

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

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

3 (k) If a law enforcement officer is authorized to collect one or more  
4 tests of urine, the collection of the urine sample shall be supervised by: (1)  
5 A person licensed to practice medicine and surgery, licensed as a physician  
6 assistant, or a person acting under the direction of any such licensed  
7 person; (2) a registered nurse or a licensed practical nurse; or (3) a law  
8 enforcement officer of the same sex as the person being tested. The  
9 collection of the urine sample shall be conducted out of the view of any  
10 person other than the persons supervising the collection of the sample and  
11 the person being tested, unless the right to privacy is waived by the person  
12 being tested. When possible, the supervising person shall be a law  
13 enforcement officer. The results of qualitative testing for drug presence  
14 shall be admissible in evidence and questions of accuracy or reliability  
15 shall go to the weight rather than the admissibility of the evidence. If the  
16 person is medically unable to provide a urine sample in such manner due  
17 to the injuries or treatment of the injuries, the same authorization and  
18 procedure as used for the collection of blood in subsections (g) and (i)  
19 shall apply to the collection of a urine sample.

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

23 (m) If a law enforcement officer has probable cause to believe that  
24 the person has been driving a commercial motor vehicle, as defined in  
25 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
26 drugs in such person's system, the person shall also be provided the oral  
27 and written notice pursuant to K.S.A. 8-2,145, and amendments thereto.  
28 Any failure to give the notices required by K.S.A. 8-2,145, and  
29 amendments thereto, shall not invalidate any action taken as a result of the  
30 requirements of this section. If a law enforcement officer has probable  
31 cause to believe that the person has been operating or attempting to  
32 operate a vehicle while having alcohol or other drugs in such person's  
33 system and such person was under 21 years of age, the person also shall be  
34 given the notices required by K.S.A. 8-1567a, and amendments thereto.  
35 Any failure to give the notices required by K.S.A. 8-1567a, and  
36 amendments thereto, shall not invalidate any action taken as a result of the  
37 requirements of this section.

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 probable cause to believe the  
43 person had been driving a commercial motor vehicle, as defined in K.S.A.

1 8-2,128, and amendments thereto, and the test results show a blood or  
2 breath alcohol concentration of 0.04 or greater, the person shall be  
3 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.  
4 8-2,142, and amendments thereto. If a law enforcement officer had  
5 probable cause to believe the person had been driving any motor vehicle,  
6 the person fails a test, as defined in K.S.A. 8-1013(h), and amendments  
7 thereto, or the person refuses a test, the person's driving privileges shall be  
8 subject to suspension, or suspension and restriction, pursuant to this  
9 section, in addition to being disqualified from driving a commercial motor  
10 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

15 (q) It shall not be a defense that the person did not understand the  
16 written or oral notice authorized by this section.

17 (r) No test results shall be suppressed because of irregularities not  
18 affecting the substantial rights of the accused in the consent or notice  
19 authorized pursuant to this act. Failure to provide any or all of the notices  
20 set forth in subsection (c) or (d) shall not be an issue or defense in any  
21 action other than an administrative action regarding the subject's driving  
22 privileges.

23 (s) Nothing in this section shall be construed to limit the admissibility  
24 at any trial of alcohol or drug concentration testing results obtained  
25 pursuant to a search warrant or other judicially recognized exception to the  
26 warrant requirement.

27 (t) Upon the request of any person submitting to testing under this  
28 section, a report of the results of the testing shall be made available to such  
29 person when available.

30 (u) This act is remedial law and shall be liberally construed to  
31 promote public health, safety and welfare.

32 Sec. 2. K.S.A. 2018 Supp. 8-1012 is hereby amended to read as  
33 follows: 8-1012. ~~(a) Any person who operates or attempts to operate a~~  
34 ~~vehicle within this state is deemed to have given consent to submit to a~~  
35 ~~preliminary screening test of the person's breath or saliva, or both, subject~~  
36 ~~to the provisions set out in subsection (b).~~

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

43 ~~(e)~~—At the time the test is requested, the person shall be given oral

1 notice that: (1) There is no right to consult with an attorney regarding  
2 whether to submit to testing; (2) refusal to submit to testing is a traffic  
3 infraction; and (3) further testing may be required after the preliminary  
4 screening test. Failure to provide the notice shall not be an issue or defense  
5 in any action. The law enforcement officer then shall request the person to  
6 submit to the test.

7 ~~(d) Refusal to take and complete the test as requested is a traffic~~  
8 ~~infraction.~~

9 (b) If the person submits to the test, the results shall be used for the  
10 purpose of assisting law enforcement officers in determining whether an  
11 arrest should be made and whether to request the tests authorized by  
12 K.S.A. 8-1001, and amendments thereto. A law enforcement officer may  
13 arrest a person based in whole or in part upon the results of a preliminary  
14 screening test. Such results shall not be admissible in any civil or criminal  
15 action concerning the operation of or attempted operation of a vehicle  
16 except to aid the court or hearing officer in determining a challenge to the  
17 validity of the arrest or the validity of the request to submit to a test  
18 pursuant to K.S.A. 8-1001, and amendments thereto. Following the  
19 preliminary screening test, additional tests may be requested pursuant to  
20 K.S.A. 8-1001, and amendments thereto.

21 ~~(e)~~(c) Any preliminary screening of a person's breath shall be  
22 conducted with a device approved pursuant to K.S.A. 65-1,107, and  
23 amendments thereto. *Any preliminary screening of a person's oral fluid*  
24 *shall be conducted in accordance with rules and regulations, if any,*  
25 *approved pursuant to K.S.A. 75-712h, and amendments thereto.*

26 Sec. 3. K.S.A. 2018 Supp. 75-712h is hereby amended to read as  
27 follows: 75-712h. The director of the Kansas bureau of investigation is  
28 authorized to adopt rules and regulations establishing: (a) Criteria for  
29 preliminary screening devices for testing of ~~saliva oral fluid~~ for law  
30 enforcement purposes, based on health and performance considerations;  
31 and (b) a list of preliminary screening devices ~~which that~~ are approved for  
32 testing of ~~saliva oral fluid~~ for law enforcement purposes and ~~which that~~  
33 law enforcement agencies may purchase and train officers to use as aids in  
34 determining probable cause to arrest and grounds for requiring testing  
35 pursuant to K.S.A. 8-1001, and amendments thereto.

36 Sec. 4. K.S.A. 2018 Supp. 8-1012, 8-1025 and 75-712h are hereby  
37 repealed.

38 Sec. 5. On and after July 1, 2019, K.S.A. 2018 Supp. 8-1001 is  
39 hereby repealed.

40 Sec. 6. This act shall take effect and be in force from and after its  
41 publication in the Kansas register.