

HOUSE BILL No. 2387

By Committee on Judiciary

2-12

1 AN ACT concerning aircraft; relating to operating an aircraft under the
2 influence; prescribing criminal and administrative penalties; providing
3 for testing of blood, breath, urine or other bodily substances and
4 preliminary screening tests of breath or oral fluid; **amending K.S.A.**
5 **65-1,107 and 75-712h and K.S.A. ~~2020~~ 2021 Supp. 22-3437 and 60-**
6 **427 and repealing the existing sections; also** repealing K.S.A. 3-
7 1001, 3-1002, 3-1003, 3-1004 and 3-1005.
8

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

10 **New** Section 1. (a) Operating an aircraft under the influence is
11 operating or attempting to operate any aircraft within this state while:

12 (1) The alcohol concentration in the person's blood or breath as
13 shown by any competent evidence, including other competent evidence, is
14 0.04 or more;

15 (2) the alcohol concentration in the person's blood or breath, as
16 measured within four hours of the time of operating or attempting to
17 operate an aircraft, is 0.04 or more;

18 (3) under the influence of alcohol to a degree that renders the person
19 incapable of safely operating an aircraft;

20 (4) under the influence of any drug or combination of drugs to a
21 degree that renders the person incapable of safely operating an aircraft; or

22 (5) under the influence of a combination of alcohol and any drug or
23 drugs to a degree that renders the person incapable of safely operating an
24 aircraft.

25 (b) (1) Operating an aircraft under the influence is a class A
26 nonperson misdemeanor, except as provided in subsection (b)(2).

27 (A) On a first conviction, the person convicted shall be sentenced to
28 not less than 48 consecutive hours nor more than six months'
29 imprisonment, or in the court's discretion 100 hours of public service, and
30 fined not less than \$750.

31 (B) On second or subsequent conviction, the person convicted shall
32 be sentenced to not less than 90 days nor more than one year's
33 imprisonment and fined not less than \$1,250. The following conditions
34 shall apply to such sentence:

1 (i) As a condition of any probation granted under this subsection, the
2 person shall serve at least 120 hours of confinement. The hours of
3 confinement shall include at least 48 hours *of* imprisonment and otherwise
4 may be served by a combination of: Imprisonment; a work release
5 program, ~~provided if~~ such work release program requires such person to
6 return to the confinement at the end of each day in the work release
7 program; or a house arrest program pursuant to K.S.A. ~~2020~~ 2021 Supp.
8 21-6609, and amendments thereto; and

9 (ii) (a) if the person is placed into a work release program or placed
10 under a house arrest program for *any portion of* the minimum *of* 120 hours
11 *of* confinement mandated by this subsection, the person shall receive hour-
12 for-hour credit for time served in such program until the minimum
13 sentence is met. If the person is placed into a work release program or
14 placed under a house arrest program for more than the minimum *of* 120
15 hours *of* confinement mandated by this subsection, the person shall receive
16 hour-for-hour credit for time served in such program *until the minimum*
17 *of 120 hours of confinement is completed*, and thereafter, the person shall
18 receive day-for-day credit for time served in such program unless
19 otherwise ordered by the court; and

20 (b) when in a work release program, the person shall only be given
21 credit for the time served in confinement at the end of and continuing to
22 the beginning of the person's work day. When under a house arrest
23 program, the person shall be monitored by an electronic monitoring device
24 that verifies the person's location and shall only be given credit for the
25 time served within the boundaries of the person's residence.

26 (2) (A) Operating an aircraft under the influence is a severity level 6,
27 nonperson felony if the offense occurred while the person convicted ~~did~~
28 ~~not hold a valid pilot license issued by the federal aviation administration.~~
29 **is prohibited from operating an aircraft:**

30 ~~(A)(i) The person convicted shall be sentenced to not less than 90~~
31 ~~days nor more than one year's imprisonment and fined \$2,500. The person~~
32 ~~convicted shall not be eligible for release on probation, suspension or~~
33 ~~reduction of sentence or parole until the person has served at least 90 days'~~
34 ~~imprisonment. **By a court order pursuant to this section; or**~~

35 ~~(B)(ii) The 90 days' imprisonment mandated by this subsection may~~
36 ~~be served in a work release program only after such person has served 72~~
37 ~~consecutive hours' imprisonment, provided such work release program~~
38 ~~requires such person to return to confinement at the end of each day in the~~
39 ~~work release program. The person convicted, if placed into a work release~~
40 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~
41 ~~2,160 hours of confinement shall be a period of at least 72 consecutive~~
42 ~~hours of imprisonment followed by confinement hours at the end of and~~
43 ~~continuing to the beginning of the offender's work day because such~~

1 person's pilot license is revoked or suspended by an order of the
2 federal aviation administration for a prior alcohol or drug-related
3 conviction.

4 *(B) The following conditions shall apply to such sentence:*

5 *(i) As a condition of any probation granted under this subsection,*
6 *the person shall serve at least 30 days of confinement. After at least 48*
7 *consecutive hours of imprisonment, the remainder of the period of*
8 *confinement may be served by a combination of: Imprisonment; a work*
9 *release program, if such work release program requires such person to*
10 *return to the confinement at the end of each day in the work release*
11 *program; or a house arrest program pursuant to K.S.A. 2021 Supp. 21-*
12 *6609, and amendments thereto; and*

13 *(ii) (a) if the person is placed into a work release program or placed*
14 *under a house arrest program for any portion of the minimum of 30*
15 *days of confinement mandated by this subsection, the person shall*
16 *receive hour-for-hour credit for time served in such program for the first*
17 *240 hours of confinement, and thereafter, the person shall receive day-*
18 *for-day credit for time served in such program unless otherwise ordered*
19 *by the court; and*

20 *(b) when in a work release program, the person shall only be given*
21 *credit for the time served in confinement at the end of and continuing to*
22 *the beginning of the person's work day. When under a house arrest*
23 *program, the person shall be monitored by an electronic monitoring*
24 *device that verifies the person's location and shall only be given credit*
25 *for the time served within the boundaries of the person's residence.*

26 ~~(C) The court may place the person convicted under a house arrest~~
27 ~~program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto,~~
28 ~~to serve the 90 days' imprisonment mandated by this subsection only after~~
29 ~~such person has served 72 consecutive hours' imprisonment. The person~~
30 ~~convicted, if placed under house arrest, shall be monitored by an electronic~~
31 ~~monitoring device that verifies the offender's location. The offender shall~~
32 ~~serve a minimum of 2,160 hours of confinement within the boundaries of~~
33 ~~the offender's residence. Any exceptions to remaining within the~~
34 ~~boundaries of the offender's residence provided for in the house arrest~~
35 ~~agreement shall not be counted as part of the 2,160 hours.~~

36 (3) As part of the judgment of conviction, the court shall order the
37 person convicted not to operate an aircraft for any purpose for a period of
38 six months from the date of final discharge from the county jail, or the date
39 of payment or satisfaction of such fine, whichever is later or one year from
40 such date on a second conviction. If the court suspends the sentence and
41 places the person on probation as provided by law, the court shall order as
42 one of the conditions of probation that such person not operate an aircraft
43 for any purpose for a period of 30 days from the date of the order on a first

1 conviction or 60 days from the date of the order on a second conviction.

2 (4) For the purpose of determining whether an occurrence is a first,
3 second or subsequent occurrence:

4 (A) "Conviction" includes entering into a diversion agreement in lieu
5 of further criminal proceedings on a complaint alleging commission of a
6 crime described in subsection (a); and

7 (B) it is irrelevant whether an offense occurred before or after
8 conviction or diversion for a previous offense.

9 (c) If a person is charged with a violation of subsection (a)(4) or (a)
10 (5), the fact that the person is or has been entitled to use the drug under the
11 laws of this state shall not constitute a defense against the charge.

12 **New Sec. 2.** (a) Any person who operates or attempts to operate an
13 aircraft within this state may be requested, subject to the provisions of
14 sections 1 through 4, and amendments thereto, to submit to one or more
15 tests of the person's blood, breath, urine or other bodily substance to
16 determine the presence of alcohol or drugs. The testing shall include all
17 quantitative and qualitative tests for alcohol and drugs. The test shall be
18 administered at the direction of a law enforcement officer, and the law
19 enforcement officer shall determine which type of test is to be conducted
20 or requested.

21 (b) (1) One or more tests may be required of a person when, at the
22 time of the request, a law enforcement officer has probable cause to
23 believe the person has committed a violation of section (1)(a), and
24 amendments thereto, while having alcohol or drugs in such person's
25 system, and one of the following conditions exists:

26 (A) The person has been arrested or otherwise taken into custody for
27 any offense violation of any state statute, county resolution or city
28 ordinance; or

29 (B) the person has been involved in an aircraft accident or crash
30 resulting in property damage, personal injury or death.

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

35 (c) Nothing in this section shall be construed to limit the right of a
36 law enforcement officer to conduct any search of a person's breath or other
37 bodily substance, other than blood or urine, incident to a lawful arrest
38 pursuant to the constitution of the United States, nor limit the admissibility
39 at any trial or hearing of alcohol or drug concentration testing results
40 obtained pursuant to such a search.

41 (d) Nothing in this section shall be construed to limit the right of a
42 law enforcement officer to conduct or obtain a blood or urine test of a
43 person pursuant to a warrant under K.S.A. 22-2502, and amendments

1 thereto, the constitution of the United States or a judicially recognized
2 exception to the search warrant requirement, nor limit the admissibility at
3 any trial or hearing of alcohol or drug concentration testing results
4 obtained pursuant to such a search.

5 (e) A law enforcement officer may direct a medical professional, as
6 described in subsection (f), to draw one or more samples of blood from a
7 person to determine the blood's alcohol or drug concentration if:

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

10 (2) law enforcement has obtained a search warrant authorizing the
11 collection of blood from the person; or

12 (3) the person refuses or is unable to consent to, submit to and
13 complete a test, and another judicially recognized exception to the warrant
14 requirement applies.

15 (f) If a law enforcement officer is authorized to collect one or more
16 tests of blood under this section, the withdrawal of blood at the direction
17 of the officer may be performed only by:

18 (1) A person licensed to practice medicine and surgery, licensed as a
19 physician assistant or a person acting under the direction of any such
20 licensed person;

21 (2) a registered nurse or a licensed practical nurse;

22 (3) any qualified medical technician, including, but not limited to, an
23 advanced emergency medical technician or a paramedic, as those terms are
24 defined in K.S.A. 65-6112, and amendments thereto, authorized by
25 medical protocol; or

26 (4) a phlebotomist.

27 (g) When so directed by a law enforcement officer through a written
28 statement, the medical professional shall withdraw the sample of blood as
29 soon as practical and shall deliver the sample to the law enforcement
30 officer or another law enforcement officer as directed by the requesting
31 law enforcement officer as soon as practical, provided the collection of the
32 sample does not jeopardize the person's life, cause serious injury to the
33 person or seriously impede the person's medical assessment, care or
34 treatment. The medical professional authorized in this section to withdraw
35 the blood and the medical care facility where the blood is drawn may act
36 on good faith that the requirements have been met for directing the
37 withdrawal of blood once presented with the written statement provided
38 for under this subsection. The medical professional shall not require the
39 person that is the subject of the test or tests to provide any additional
40 consent or sign any waiver form. In such a case, the person authorized to
41 withdraw blood and the medical care facility shall not be liable in any
42 action alleging lack of consent or lack of informed consent. Such sample
43 or samples shall be an independent sample and not be a portion of a

1 sample collected for medical purposes. The person collecting the blood
2 sample shall complete the collection portion of a document if provided by
3 law enforcement.

4 (h) If a person must be restrained to collect the sample pursuant to
5 this section, law enforcement shall be responsible for applying any such
6 restraint utilizing acceptable law enforcement restraint practices. The
7 restraint shall be effective in controlling the person in a manner not to
8 jeopardize the person's safety or that of the medical professional or
9 attending medical or healthcare staff during the drawing of the sample and
10 without interfering with medical treatment.

11 (i) (1) If a law enforcement officer is authorized to collect one or
12 more tests of urine, the collection of the urine sample shall be supervised
13 by:

14 (A) A person licensed to practice medicine and surgery, licensed as a
15 physician assistant or a person acting under the direction of any such
16 licensed person;

17 (B) a registered nurse or a licensed practical nurse; or

18 (C) a law enforcement officer of the same sex as the person being
19 tested.

20 (2) The collection of the urine sample shall be conducted out of the
21 view of any person other than the person supervising the collection of the
22 sample and the person being tested, unless the right to privacy is waived
23 by the person being tested. When possible, the supervising person shall be
24 a law enforcement officer.

25 (3) The results of qualitative testing for drug presence shall be
26 admissible in evidence and questions of accuracy or reliability shall go to
27 the weight rather than the admissibility of the evidence.

28 (4) If the person is medically unable to provide a urine sample in such
29 manner due to the injuries or treatment of the injuries, the same
30 authorization and procedure as used for the collection of blood in
31 subsections (g) and (i) shall apply to the collection of a urine sample.

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

35 (k) The person's refusal shall be admissible in evidence against the
36 person at any trial on a charge arising out of the alleged operation or
37 attempted operation of an aircraft while under the influence of alcohol or
38 drugs, or a combination of alcohol and any drug or drugs.

39 (l) No test shall be suppressed because of irregularities not affecting
40 the substantial rights of the accused in the consent or notice authorized
41 pursuant to this section.

42 (m) Nothing in this section shall be construed to limit the
43 admissibility at any trial of alcohol or drug concentration testing results

1 obtained pursuant to a search warrant or other judicially recognized
2 exception to the warrant requirement.

3 (n) Upon the request of any person submitting to testing under this
4 section, a report of the results of the testing shall be made available to such
5 person when available.

6 (o) The person tested shall have a reasonable opportunity to have an
7 additional chemical test by a physician of such person's own choosing. If
8 the law enforcement officer refuses to permit such additional chemical test
9 to be taken, the original test shall not be competent evidence.

10 (p) **(1) The testing and method of testing consented to under this**
11 **section shall not be considered to have been conducted for any medical**
12 **care or treatment purpose. The results of such test, the person's name**
13 **whose bodily substance is drawn or tested, the location of the test or**
14 **procedure, the names of all health care providers and personnel who**
15 **participated in the procedure or test and the date and time of the test**
16 **or procedure are required by law to be provided to the requesting law**
17 **enforcement officer or the law enforcement officer's designee after the**
18 **requesting law enforcement officer has complied with this section.**

19 **(2) All costs of conducting any procedure or test requested by a**
20 **law enforcement agency and authorized by this section, including the**
21 **costs of the evidence collection kits, shall be charged to and paid by**
22 **the county where the alleged offense was committed. Such county may**
23 **be reimbursed such costs upon the costs being paid by the defendant**
24 **as court costs assessed pursuant to K.S.A. 28-172a, and amendments**
25 **thereto.**

26 **(3) The cost assessed under this section shall be the then-current**
27 **medicaid rate for any such procedure or test, or both.**

28 **(4) Notwithstanding any other law to the contrary, the collection**
29 **and delivery of the sample and required information to the law**
30 **enforcement officer pursuant to this section shall not be subject to the**
31 **physician-patient privilege or any other law that prohibits the**
32 **transfer, release or disclosure of the sample or of the required**
33 **information.**

34 **(q) No medical care facility, clinical laboratory, medical clinic,**
35 **other medical institution, person licensed to practice medicine or**
36 **surgery, person acting under the direction of any such licensed person,**
37 **licensed physician assistant, registered nurse, licensed practical nurse,**
38 **medical technician, paramedic, advanced emergency medical**
39 **technician, phlebotomist, healthcare provider or person who**
40 **participates in good faith in the obtaining, withdrawal, collection or**
41 **testing of blood, breath, urine or other bodily substance at the**
42 **direction of a law enforcement officer pursuant to this section, or as**
43 **otherwise authorized by law, shall incur any civil, administrative or**

1 **criminal liability as a result of such participation, regardless of**
2 **whether or not the patient resisted or objected to the administration of**
3 **the procedure or test.**

4 (r) Sections 1 through 4, and amendments thereto, are remedial law
5 and shall be liberally construed to promote public health, safety and
6 welfare.

7 **New Sec. 3.** (a) A law enforcement officer may request a person who
8 is operating or attempting to operate an aircraft within this state to submit
9 to a preliminary screening test of the person's breath or oral fluid, or both,
10 if the officer has reasonable suspicion to believe the person has been
11 operating or attempting to operate an aircraft while under the influence of
12 alcohol or drugs, or a combination of alcohol and any drug or drugs.

13 (b) If the person submits to the test, the results shall be used for the
14 purpose of assisting law enforcement officers in determining whether an
15 arrest should be made and whether to request the tests authorized by
16 section 2, and amendments thereto. A law enforcement officer may arrest a
17 person based in whole or in part upon the results of a preliminary
18 screening test. Such results shall not be admissible in any civil or criminal
19 action concerning the operation of or attempted operation of an aircraft
20 except to aid the court in determining a challenge to the validity of the
21 arrest or the validity of the request to submit to a test pursuant to section 2,
22 and amendments thereto. Following the preliminary screening test,
23 additional tests may be requested pursuant to section 2, and amendments
24 thereto.

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

30 **New Sec. 4.** As used in sections 1 through 4, and amendments
31 thereto:

32 (a) "Alcohol concentration" means the number of grams of alcohol
33 per 100 milliliters of blood or per 210 liters of breath.

34 (b) "Drug" includes toxic vapors as such term is defined in K.S.A.
35 ~~2020~~ 2021 Supp. 21-5712, and amendments thereto.

36 (c) "Imprisonment" includes any restrained environment in which the
37 court and law enforcement agency intend to retain custody and control of a
38 defendant and such environment has been approved by the board of county
39 commissioners or the governing body of a city.

40 (d) "Law enforcement officer" means the same as in K.S.A. ~~2020~~
41 2021 Supp. 21-5111, and amendments thereto, and includes any person
42 authorized by law to make an arrest on a military reservation for an act
43 which would constitute a violation of section 1, and amendments thereto,

1 if committed off a military reservation in this state.

2 (e) "Other competent evidence" includes:

3 (1) Alcohol concentration tests obtained from samples taken four
4 hours or more after the operation or attempted operation of an aircraft; and

5 (2) readings obtained from a partial alcohol concentration test on a
6 breath testing machine.

7 (f) "Test refusal" refers to a person's failure to submit to or complete
8 any test of the person's blood, breath, urine or other bodily substance, other
9 than a preliminary screening test, in accordance with section 2, and
10 amendments thereto, and includes refusal of any such test on a military
11 reservation.

12 **Sec. 5. K.S.A. ~~2020~~ 2021 Supp. 22-3437 is hereby amended to read**
13 **as follows: 22-3437. (a) (1) In any hearing or trial, a report concerning**
14 **forensic examinations and certificate of forensic examination executed**
15 **pursuant to this section shall be admissible in evidence if the report**
16 **and certificate are prepared and attested by a criminalist or other**
17 **employee of the Kansas bureau of investigation, Kansas highway**
18 **patrol, Johnson County sheriff's laboratory, Sedgwick County**
19 **regional forensic science center, or any laboratory of the federal**
20 **bureau of investigation, federal postal inspection service, federal**
21 **bureau of alcohol, tobacco and firearms or federal drug enforcement**
22 **administration. If the examination involves a breath test for alcohol**
23 **content, the report must also be admissible pursuant to K.S.A. 8-1001,**
24 **and amendments thereto, or section 2, and amendments thereto, and be**
25 **conducted by a law enforcement officer or other person who is**
26 **certified by the department of health and environment as a breath test**
27 **operator as provided by K.S.A. 65-1,107 et seq., and amendments**
28 **thereto.**

29 (2) Upon the request of any law enforcement agency, such person
30 as provided in paragraph (1) performing the analysis shall prepare a
31 certificate. Such person shall sign the certificate under oath and shall
32 include in the certificate an attestation as to the result of the analysis.
33 The presentation of this certificate to a court by any party to a
34 proceeding shall be evidence that all of the requirements and
35 provisions of this section have been complied with. This certificate
36 shall be supported by a written declaration pursuant to K.S.A. 53-601,
37 and amendments thereto, or shall be sworn to before a notary public
38 or other person empowered by law to take oaths and shall contain a
39 statement establishing the following: The type of analysis performed;
40 the result achieved; any conclusions reached based upon that result;
41 that the subscriber is the person who performed the analysis and
42 made the conclusions; the subscriber's training or experience to
43 perform the analysis; the nature and condition of the equipment used;

1 and the certification and foundation requirements for admissibility of
2 breath test results, when appropriate. When properly executed, the
3 certificate shall, subject to the provisions of paragraph (3) and
4 notwithstanding any other provision of law, be admissible evidence of
5 the results of the forensic examination of the samples or evidence
6 submitted for analysis and the court shall take judicial notice of the
7 signature of the person performing the analysis and of the fact that
8 such person is that person who performed the analysis.

9 (3) Whenever a party intends to proffer in a criminal or civil
10 proceeding, a certificate executed pursuant to this section, notice of an
11 intent to proffer that certificate and the reports relating to the analysis
12 in question, including a copy of the certificate, shall be conveyed to the
13 opposing party or parties at least 21 days before the beginning of a
14 hearing where the proffer will be used. An opposing party who intends
15 to object to the admission into evidence of a certificate shall give
16 notice of objection and the grounds for the objection within 14 days
17 upon receiving the adversary's notice of intent to proffer the
18 certificate. Whenever a notice of objection is filed, admissibility of the
19 certificate shall be determined not later than two days before the
20 beginning of the trial. A proffered certificate shall be admitted in
21 evidence unless it appears from the notice of objection and grounds
22 for that objection that the conclusions of the certificate, including the
23 composition, quality or quantity of the substance submitted to the
24 laboratory for analysis or the alcohol content of a blood or breath
25 sample will be contested at trial. A failure to comply with the time
26 limitations regarding the notice of objection required by this section
27 shall constitute a waiver of any objections to the admission of the
28 certificate. The time limitations set forth in this section may be
29 extended upon a showing of good cause.

30 (b) (1) In any hearing or trial where there is a report concerning
31 forensic examinations from a person as provided in ~~paragraph (1) of~~
32 subsection (a)(1), district and municipal courts may, upon request of
33 either party, use two-way interactive video technology, including
34 internet-based videoconferencing, to take testimony from that person
35 if the testimony is in relation to the report.

36 (2) The use of any two-way interactive video technology must be
37 in accordance with any requirements and guidelines established by the
38 office of judicial administration, and all proceedings at which such
39 technology is used in a district court must be recorded verbatim by the
40 court.

41 Sec. 6. K.S.A. ~~2020~~ 2021 Supp. 60-427 is hereby amended to read
42 as follows: 60-427. (a) As used in this section:

43 (1) "Patient" means a person who, for the sole purpose of

1 securing preventive, palliative, or curative treatment, or a diagnosis
2 preliminary to such treatment, of such person's physical or mental
3 condition, consults a physician, or submits to an examination by a
4 physician.

5 (2) "Physician" means a person licensed or reasonably believed
6 by the patient to be licensed to practice medicine or one of the healing
7 arts as defined in K.S.A. 65-2802, and amendments thereto, in the
8 state or jurisdiction in which the consultation or examination takes
9 place.

10 (3) "Holder of the privilege" means the patient while alive and
11 not under guardianship or conservatorship or the guardian or
12 conservator of the patient, or the personal representative of a deceased
13 patient.

14 (4) "Confidential communication between physician and patient"
15 means such information transmitted between physician and patient,
16 including information obtained by an examination of the patient, as is
17 transmitted in confidence and by a means which, so far as the patient
18 is aware, discloses the information to no third persons other than
19 those reasonably necessary for the transmission of the information or
20 the accomplishment of the purpose for which it is transmitted.

21 (b) Except as provided by subsections (c), (d), (e) and (f), a
22 person, whether or not a party, has a privilege in a civil action or in a
23 prosecution for a misdemeanor, other than a prosecution for a
24 violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or a
25 city ordinance or county resolution which prohibits the acts prohibited
26 by those statutes, to refuse to disclose, and to prevent a witness from
27 disclosing, a communication, if the person claims the privilege and the
28 judge finds that: (1) The communication was a confidential
29 communication between patient and physician; (2) the patient or the
30 physician reasonably believed the communication necessary or helpful
31 to enable the physician to make a diagnosis of the condition of the
32 patient or to prescribe or render treatment therefor; (3) the witness (i)
33 is the holder of the privilege, (ii) at the time of the communication was
34 the physician or a person to whom disclosure was made because
35 reasonably necessary for the transmission of the communication or for
36 the accomplishment of the purpose for which it was transmitted or
37 (iii) is any other person who obtained knowledge or possession of the
38 communication as the result of an intentional breach of the physician's
39 duty of nondisclosure by the physician or the physician's agent or
40 servant; and (4) the claimant is the holder of the privilege or a person
41 authorized to claim the privilege for the holder of the privilege.

42 (c) There is no privilege under this section as to any relevant
43 communication between the patient and the patient's physician: (1)

1 Upon an issue of the patient's condition in an action to commit the
2 patient or otherwise place the patient under the control of another or
3 others because of alleged incapacity or mental illness, in an action in
4 which the patient seeks to establish the patient's competence or in an
5 action to recover damages on account of conduct of the patient which
6 constitutes a criminal offense other than a misdemeanor; (2) upon an
7 issue as to the validity of a document as a will of the patient; or (3)
8 upon an issue between parties claiming by testate or intestate
9 succession from a deceased patient.

10 (d) There is no privilege under this section in an action in which
11 the condition of the patient is an element or factor of the claim or
12 defense of the patient or of any party claiming through or under the
13 patient or claiming as a beneficiary of the patient through a contract
14 to which the patient is or was a party.

15 (e) There is no privilege under this section: (1) As to blood drawn
16 at the request of a law enforcement officer pursuant to K.S.A. 8-1001,
17 and amendments thereto, *or section 2, and amendments thereto*; and (2)
18 as to information which the physician or the patient is required to
19 report to a public official or as to information required to be recorded
20 in a public office, unless the statute requiring the report or record
21 specifically provides that the information shall not be disclosed.

22 (f) No person has a privilege under this section if the judge finds
23 that sufficient evidence, aside from the communication has been
24 introduced to warrant a finding that the services of the physician were
25 sought or obtained to enable or aid anyone to commit or to plan to
26 commit a crime or a tort, or to escape detection or apprehension after
27 the commission of a crime or a tort.

28 (g) A privilege under this section as to a communication is
29 terminated if the judge finds that any person while a holder of the
30 privilege has caused the physician or any agent or servant of the
31 physician to testify in any action to any matter of which the physician
32 or the physician's agent or servant gained knowledge through the
33 communication.

34 (h) Providing false information to a physician for the purpose of
35 obtaining a prescription-only drug shall not be a confidential
36 communication between physician and patient and no person shall
37 have a privilege in any prosecution for unlawfully obtaining or
38 distributing a prescription-only drug under K.S.A. ~~2020~~2021 Supp.
39 21-5708, and amendments thereto.

40 Sec. 7. K.S.A. 65-1,107 is hereby amended to read as follows: 65-
41 1,107. The secretary of health and environment may adopt rules and
42 regulations establishing:

43 (a) The procedures, testing protocols and qualifications of

1 authorized personnel, instruments and methods used in laboratories
2 performing tests for the presence of controlled substances included in
3 schedule I or II of the uniform controlled substances act or
4 metabolites thereof;

5 (b) the procedures, testing protocols, qualifications of personnel
6 and standards of performance in the testing of human breath for law
7 enforcement purposes, including procedures for the periodic
8 inspection of apparatus, equipment and devices, other than
9 preliminary screening devices, approved by the secretary of health
10 and environment for the testing of human breath for law enforcement
11 purposes;

12 (c) the requirements for the training, certification and periodic
13 testing of persons who operate apparatus, equipment or devices, other
14 than preliminary screening devices, for the testing of human breath
15 for law enforcement purposes;

16 (d) criteria for preliminary screening devices for testing of breath
17 for law enforcement purposes, based on health and performance
18 considerations; and

19 (e) a list of preliminary screening devices which are approved for
20 testing of breath for law enforcement purposes and which law
21 enforcement agencies may purchase and train officers to use as aids in
22 determining:

23 (1) Probable cause to arrest and grounds for requiring testing
24 pursuant to K.S.A. 8-1001, and amendments thereto, *or section 3, and*
25 *amendments thereto*; and

26 (2) violations of K.S.A. 41-727, and amendments thereto.

27 Sec. 8. K.S.A. 75-712h is hereby amended to read as follows: 75-
28 712h. The director of the Kansas bureau of investigation is authorized
29 to adopt rules and regulations establishing:

30 (a) Criteria for preliminary screening devices for testing of oral
31 fluid for law enforcement purposes, based on health and performance
32 considerations; and

33 (b) a list of preliminary screening devices that are approved for
34 testing of oral fluid for law enforcement purposes and that law
35 enforcement agencies may purchase and train officers to use as aids in
36 determining probable cause to arrest and grounds for requiring
37 testing pursuant to K.S.A. 8-1001, and amendments thereto, *or section*
38 *3, and amendments thereto*.

39 Sec. ~~5~~ 9. K.S.A. 3-1001, 3-1002, 3-1003, 3-1004 ~~and~~, 3-1005, 65-
40 1,107 and 75-712h and K.S.A. ~~2020~~ 2021 Supp. 22-3437 and 60-427 are
41 hereby repealed.

42 Sec. ~~6~~ 10. This act shall take effect and be in force from and after its
43 publication in the statute book.