

As Amended by House Committee

Session of 2021

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 Supp. 22-3437 and 60-427**
6 **and repealing the existing sections; also** repealing K.S.A. 3-1001, 3-
7 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:

35 (i) As a condition of any probation granted under this subsection, the
36 person shall serve at least 120 hours of confinement. The hours of

1 confinement shall include at least 48 hours imprisonment and otherwise
2 may be served by a combination of: Imprisonment; a work release
3 program, provided such work release program requires such person to
4 return to the confinement at the end of each day in the work release
5 program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-
6 6609, and amendments thereto; and

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

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

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

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

32 ~~(B) The 90 days' imprisonment mandated by this subsection may be~~
33 ~~served in a work release program only after such person has served 72~~
34 ~~consecutive hours' imprisonment, provided such work release program~~
35 ~~requires such person to return to confinement at the end of each day in the~~
36 ~~work release program. The person convicted, if placed into a work release~~
37 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~
38 ~~2,160 hours of confinement shall be a period of at least 72 consecutive~~
39 ~~hours of imprisonment followed by confinement hours at the end of and~~
40 ~~continuing to the beginning of the offender's work day **because such**~~
41 ~~person's pilot license is revoked or suspended by an order of the~~
42 ~~federal aviation administration for a prior alcohol or drug-related~~
43 ~~conviction.~~

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

11 (3) As part of the judgment of conviction, the court shall order the
12 person convicted not to operate an aircraft for any purpose for a period of
13 six months from the date of final discharge from the county jail, or the date
14 of payment or satisfaction of such fine, whichever is later or one year from
15 such date on a second conviction. If the court suspends the sentence and
16 places the person on probation as provided by law, the court shall order as
17 one of the conditions of probation that such person not operate an aircraft
18 for any purpose for a period of 30 days from the date of the order on a first
19 conviction or 60 days from the date of the order on a second conviction.

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

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

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

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

30 **New Sec. 2.** (a) Any person who operates or attempts to operate an
31 aircraft within this state may be requested, subject to the provisions of
32 sections 1 through 4, and amendments thereto, to submit to one or more
33 tests of the person's blood, breath, urine or other bodily substance to
34 determine the presence of alcohol or drugs. The testing shall include all
35 quantitative and qualitative tests for alcohol and drugs. The test shall be
36 administered at the direction of a law enforcement officer, and the law
37 enforcement officer shall determine which type of test is to be conducted
38 or requested.

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

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

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

6 (2) The law enforcement officer directing administration of the test or
7 tests may act on personal knowledge or on the basis of the collective
8 information available to law enforcement officers involved in the
9 investigation or arrest.

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

16 (d) Nothing in this section shall be construed to limit the right of a
17 law enforcement officer to conduct or obtain a blood or urine test of a
18 person pursuant to a warrant under K.S.A. 22-2502, and amendments
19 thereto, the constitution of the United States or a judicially recognized
20 exception to the search warrant requirement, nor limit the admissibility at
21 any trial or hearing of alcohol or drug concentration testing results
22 obtained pursuant to such a search.

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

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

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

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

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

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

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

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

1 (4) a phlebotomist.

2 (g) When so directed by a law enforcement officer through a written
3 statement, the medical professional shall withdraw the sample of blood as
4 soon as practical and shall deliver the sample to the law enforcement
5 officer or another law enforcement officer as directed by the requesting
6 law enforcement officer as soon as practical, provided the collection of the
7 sample does not jeopardize the person's life, cause serious injury to the
8 person or seriously impede the person's medical assessment, care or
9 treatment. The medical professional authorized in this section to withdraw
10 the blood and the medical care facility where the blood is drawn may act
11 on good faith that the requirements have been met for directing the
12 withdrawal of blood once presented with the written statement provided
13 for under this subsection. The medical professional shall not require the
14 person that is the subject of the test or tests to provide any additional
15 consent or sign any waiver form. In such a case, the person authorized to
16 withdraw blood and the medical care facility shall not be liable in any
17 action alleging lack of consent or lack of informed consent. Such sample
18 or samples shall be an independent sample and not be a portion of a
19 sample collected for medical purposes. The person collecting the blood
20 sample shall complete the collection portion of a document if provided by
21 law enforcement.

22 (h) If a person must be restrained to collect the sample pursuant to
23 this section, law enforcement shall be responsible for applying any such
24 restraint utilizing acceptable law enforcement restraint practices. The
25 restraint shall be effective in controlling the person in a manner not to
26 jeopardize the person's safety or that of the medical professional or
27 attending medical or healthcare staff during the drawing of the sample and
28 without interfering with medical treatment.

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

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

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

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

38 (2) The collection of the urine sample shall be conducted out of the
39 view of any person other than the person supervising the collection of the
40 sample and the person being tested, unless the right to privacy is waived
41 by the person being tested. When possible, the supervising person shall be
42 a law enforcement officer.

43 (3) The results of qualitative testing for drug presence shall be

1 admissible in evidence and questions of accuracy or reliability shall go to
2 the weight rather than the admissibility of the evidence.

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

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

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

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

17 (m) Nothing in this section shall be construed to limit the
18 admissibility at any trial of alcohol or drug concentration testing results
19 obtained pursuant to a search warrant or other judicially recognized
20 exception to the warrant requirement.

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

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

28 **(p) (1) The testing and method of testing consented to under this**
29 **section shall not be considered to have been conducted for any medical**
30 **care or treatment purpose. The results of such test, the person's name**
31 **whose bodily substance is drawn or tested, the location of the test or**
32 **procedure, the names of all health care providers and personnel who**
33 **participated in the procedure or test and the date and time of the test**
34 **or procedure are required by law to be provided to the requesting law**
35 **enforcement officer or the law enforcement officer's designee after the**
36 **requesting law enforcement officer has complied with this section.**

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

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

3 **(4) Notwithstanding any other law to the contrary, the collection**
4 **and delivery of the sample and required information to the law**
5 **enforcement officer pursuant to this section shall not be subject to the**
6 **physician-patient privilege or any other law that prohibits the**
7 **transfer, release or disclosure of the sample or of the required**
8 **information.**

9 **(q) No medical care facility, clinical laboratory, medical clinic,**
10 **other medical institution, person licensed to practice medicine or**
11 **surgery, person acting under the direction of any such licensed person,**
12 **licensed physician assistant, registered nurse, licensed practical nurse,**
13 **medical technician, paramedic, advanced emergency medical**
14 **technician, phlebotomist, healthcare provider or person who**
15 **participates in good faith in the obtaining, withdrawal, collection or**
16 **testing of blood, breath, urine or other bodily substance at the**
17 **direction of a law enforcement officer pursuant to this section, or as**
18 **otherwise authorized by law, shall incur any civil, administrative or**
19 **criminal liability as a result of such participation, regardless of**
20 **whether or not the patient resisted or objected to the administration of**
21 **the procedure or test.**

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

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

31 **(b) If the person submits to the test, the results shall be used for the**
32 **purpose of assisting law enforcement officers in determining whether an**
33 **arrest should be made and whether to request the tests authorized by**
34 **section 2, and amendments thereto. A law enforcement officer may arrest a**
35 **person based in whole or in part upon the results of a preliminary**
36 **screening test. Such results shall not be admissible in any civil or criminal**
37 **action concerning the operation of or attempted operation of an aircraft**
38 **except to aid the court in determining a challenge to the validity of the**
39 **arrest or the validity of the request to submit to a test pursuant to section 2,**
40 **and amendments thereto. Following the preliminary screening test,**
41 **additional tests may be requested pursuant to section 2, and amendments**
42 **thereto.**

43 **(c) Any preliminary screening of a person's breath shall be conducted**

1 with a device approved pursuant to K.S.A. 65-1,107, and amendments
2 thereto. Any preliminary screening of a person's oral fluid shall be
3 conducted in accordance with rules and regulations, if any, approved
4 pursuant to K.S.A. 75-712h, and amendments thereto.

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

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

9 (b) "Drug" includes toxic vapors as such term is defined in K.S.A.
10 2020 Supp. 21-5712, and amendments thereto.

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

15 (d) "Law enforcement officer" means the same as in K.S.A. 2020
16 Supp. 21-5111, and amendments thereto, and includes any person
17 authorized by law to make an arrest on a military reservation for an act
18 which would constitute a violation of section 1, and amendments thereto,
19 if committed off a military reservation in this state.

20 (e) "Other competent evidence" includes:

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

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

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

30 **Sec. 5. K.S.A. 2020 Supp. 22-3437 is hereby amended to read as**
31 **follows: 22-3437. (a) (1) In any hearing or trial, a report concerning**
32 **forensic examinations and certificate of forensic examination executed**
33 **pursuant to this section shall be admissible in evidence if the report**
34 **and certificate are prepared and attested by a criminalist or other**
35 **employee of the Kansas bureau of investigation, Kansas highway**
36 **patrol, Johnson County sheriff's laboratory, Sedgwick County**
37 **regional forensic science center, or any laboratory of the federal**
38 **bureau of investigation, federal postal inspection service, federal**
39 **bureau of alcohol, tobacco and firearms or federal drug enforcement**
40 **administration. If the examination involves a breath test for alcohol**
41 **content, the report must also be admissible pursuant to K.S.A. 8-1001,**
42 **and amendments thereto, or section 2, and amendments thereto, and be**
43 **conducted by a law enforcement officer or other person who is**

1 certified by the department of health and environment as a breath test
2 operator as provided by K.S.A. 65-1,107 et seq., and amendments
3 thereto.

4 (2) Upon the request of any law enforcement agency, such person
5 as provided in paragraph (1) performing the analysis shall prepare a
6 certificate. Such person shall sign the certificate under oath and shall
7 include in the certificate an attestation as to the result of the analysis.
8 The presentation of this certificate to a court by any party to a
9 proceeding shall be evidence that all of the requirements and
10 provisions of this section have been complied with. This certificate
11 shall be supported by a written declaration pursuant to K.S.A. 53-601,
12 and amendments thereto, or shall be sworn to before a notary public
13 or other person empowered by law to take oaths and shall contain a
14 statement establishing the following: The type of analysis performed;
15 the result achieved; any conclusions reached based upon that result;
16 that the subscriber is the person who performed the analysis and
17 made the conclusions; the subscriber's training or experience to
18 perform the analysis; the nature and condition of the equipment used;
19 and the certification and foundation requirements for admissibility of
20 breath test results, when appropriate. When properly executed, the
21 certificate shall, subject to the provisions of paragraph (3) and
22 notwithstanding any other provision of law, be admissible evidence of
23 the results of the forensic examination of the samples or evidence
24 submitted for analysis and the court shall take judicial notice of the
25 signature of the person performing the analysis and of the fact that
26 such person is that person who performed the analysis.

27 (3) Whenever a party intends to proffer in a criminal or civil
28 proceeding, a certificate executed pursuant to this section, notice of an
29 intent to proffer that certificate and the reports relating to the analysis
30 in question, including a copy of the certificate, shall be conveyed to the
31 opposing party or parties at least 21 days before the beginning of a
32 hearing where the proffer will be used. An opposing party who intends
33 to object to the admission into evidence of a certificate shall give
34 notice of objection and the grounds for the objection within 14 days
35 upon receiving the adversary's notice of intent to proffer the
36 certificate. Whenever a notice of objection is filed, admissibility of the
37 certificate shall be determined not later than two days before the
38 beginning of the trial. A proffered certificate shall be admitted in
39 evidence unless it appears from the notice of objection and grounds
40 for that objection that the conclusions of the certificate, including the
41 composition, quality or quantity of the substance submitted to the
42 laboratory for analysis or the alcohol content of a blood or breath
43 sample will be contested at trial. A failure to comply with the time

1 limitations regarding the notice of objection required by this section
2 shall constitute a waiver of any objections to the admission of the
3 certificate. The time limitations set forth in this section may be
4 extended upon a showing of good cause.

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

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

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

18 (1) "Patient" means a person who, for the sole purpose of
19 securing preventive, palliative, or curative treatment, or a diagnosis
20 preliminary to such treatment, of such person's physical or mental
21 condition, consults a physician, or submits to an examination by a
22 physician.

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

28 (3) "Holder of the privilege" means the patient while alive and
29 not under guardianship or conservatorship or the guardian or
30 conservator of the patient, or the personal representative of a deceased
31 patient.

32 (4) "Confidential communication between physician and patient"
33 means such information transmitted between physician and patient,
34 including information obtained by an examination of the patient, as is
35 transmitted in confidence and by a means which, so far as the patient
36 is aware, discloses the information to no third persons other than
37 those reasonably necessary for the transmission of the information or
38 the accomplishment of the purpose for which it is transmitted.

39 (b) Except as provided by subsections (c), (d), (e) and (f), a
40 person, whether or not a party, has a privilege in a civil action or in a
41 prosecution for a misdemeanor, other than a prosecution for a
42 violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or a
43 city ordinance or county resolution which prohibits the acts prohibited

1 by those statutes, to refuse to disclose, and to prevent a witness from
2 disclosing, a communication, if the person claims the privilege and the
3 judge finds that: (1) The communication was a confidential
4 communication between patient and physician; (2) the patient or the
5 physician reasonably believed the communication necessary or helpful
6 to enable the physician to make a diagnosis of the condition of the
7 patient or to prescribe or render treatment therefor; (3) the witness (i)
8 is the holder of the privilege, (ii) at the time of the communication was
9 the physician or a person to whom disclosure was made because
10 reasonably necessary for the transmission of the communication or for
11 the accomplishment of the purpose for which it was transmitted or
12 (iii) is any other person who obtained knowledge or possession of the
13 communication as the result of an intentional breach of the physician's
14 duty of nondisclosure by the physician or the physician's agent or
15 servant; and (4) the claimant is the holder of the privilege or a person
16 authorized to claim the privilege for the holder of the privilege.

17 (c) There is no privilege under this section as to any relevant
18 communication between the patient and the patient's physician: (1)
19 Upon an issue of the patient's condition in an action to commit the
20 patient or otherwise place the patient under the control of another or
21 others because of alleged incapacity or mental illness, in an action in
22 which the patient seeks to establish the patient's competence or in an
23 action to recover damages on account of conduct of the patient which
24 constitutes a criminal offense other than a misdemeanor; (2) upon an
25 issue as to the validity of a document as a will of the patient; or (3)
26 upon an issue between parties claiming by testate or intestate
27 succession from a deceased patient.

28 (d) There is no privilege under this section in an action in which
29 the condition of the patient is an element or factor of the claim or
30 defense of the patient or of any party claiming through or under the
31 patient or claiming as a beneficiary of the patient through a contract
32 to which the patient is or was a party.

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

40 (f) No person has a privilege under this section if the judge finds
41 that sufficient evidence, aside from the communication has been
42 introduced to warrant a finding that the services of the physician were
43 sought or obtained to enable or aid anyone to commit or to plan to

1 commit a crime or a tort, or to escape detection or apprehension after
2 the commission of a crime or a tort.

3 (g) A privilege under this section as to a communication is
4 terminated if the judge finds that any person while a holder of the
5 privilege has caused the physician or any agent or servant of the
6 physician to testify in any action to any matter of which the physician
7 or the physician's agent or servant gained knowledge through the
8 communication.

9 (h) Providing false information to a physician for the purpose of
10 obtaining a prescription-only drug shall not be a confidential
11 communication between physician and patient and no person shall
12 have a privilege in any prosecution for unlawfully obtaining or
13 distributing a prescription-only drug under K.S.A. 2020 Supp. 21-
14 5708, and amendments thereto.

15 Sec. 7. K.S.A. 65-1,107 is hereby amended to read as follows: 65-
16 1,107. The secretary of health and environment may adopt rules and
17 regulations establishing:

18 (a) The procedures, testing protocols and qualifications of
19 authorized personnel, instruments and methods used in laboratories
20 performing tests for the presence of controlled substances included in
21 schedule I or II of the uniform controlled substances act or
22 metabolites thereof;

23 (b) the procedures, testing protocols, qualifications of personnel
24 and standards of performance in the testing of human breath for law
25 enforcement purposes, including procedures for the periodic
26 inspection of apparatus, equipment and devices, other than
27 preliminary screening devices, approved by the secretary of health
28 and environment for the testing of human breath for law enforcement
29 purposes;

30 (c) the requirements for the training, certification and periodic
31 testing of persons who operate apparatus, equipment or devices, other
32 than preliminary screening devices, for the testing of human breath
33 for law enforcement purposes;

34 (d) criteria for preliminary screening devices for testing of breath
35 for law enforcement purposes, based on health and performance
36 considerations; and

37 (e) a list of preliminary screening devices which are approved for
38 testing of breath for law enforcement purposes and which law
39 enforcement agencies may purchase and train officers to use as aids in
40 determining:

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

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

2 Sec. 8. K.S.A. 75-712h is hereby amended to read as follows: 75-
3 712h. The director of the Kansas bureau of investigation is authorized
4 to adopt rules and regulations establishing:

5 (a) Criteria for preliminary screening devices for testing of oral
6 fluid for law enforcement purposes, based on health and performance
7 considerations; and

8 (b) a list of preliminary screening devices that are approved for
9 testing of oral fluid for law enforcement purposes and that law
10 enforcement agencies may purchase and train officers to use as aids in
11 determining probable cause to arrest and grounds for requiring
12 testing pursuant to K.S.A. 8-1001, and amendments thereto, *or section*
13 *3, and amendments thereto.*

14 Sec.-5. 9. K.S.A. 3-1001, 3-1002, 3-1003, 3-1004~~and~~, 3-1005, 65-
15 1,107 and 75-712h and K.S.A. 2020 Supp. 22-3437 and 60-427 are
16 hereby repealed.

17 Sec.-6. 10. This act shall take effect and be in force from and after its
18 publication in the statute book.