

HOUSE BILL No. 2152

By Committee on Corrections and Juvenile Justice

2-4

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to operating a vessel under the influence of drugs or alcohol;
3 amending K.S.A. 32-1130 and repealing the existing section; also
4 repealing K.S.A. 32-1131.

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

7 New Section 1. (a) Operating a vessel under the influence of
8 alcohol or drugs is operating or attempting to operate any vessel while:

9 (1) The alcohol concentration in the person's blood or breath, at the
10 time or within two hours after the person operated or attempted to operate
11 the vessel is .08 or more;

12 (2) under the influence of alcohol to a degree that renders the person
13 incapable of safely operating a vessel;

14 (3) under the influence of any drug or combination of drugs to a
15 degree that renders the person incapable of safely operating a vessel;

16 (4) under the influence of a combination of alcohol and any drug or
17 drugs to a degree that renders the person incapable of safely operating a
18 vessel; or

19 (5) the alcohol concentration in the person's blood or breath, at the
20 time or within two hours after the person operated or attempted to operate
21 the vessel is .02 or more and the person is less than 21 years of age;

22 (b) No person shall operate or attempt to operate any vessel within
23 this state if the person is a habitual user of any narcotic, hypnotic,
24 somnifacient or stimulating drug.

25 (c) If a person is charged with a violation of this section involving
26 drugs, the fact that the person is or has been entitled to use the drug under
27 the laws of this state shall not constitute a defense against the charge.

28 (d) No person shall operate or attempt to operate any vessel within
29 this state for three months after the date of refusal of submitting to a test
30 if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and
31 amendments thereto.

32 (e) Operating a vessel under the influence of alcohol or drugs as
33 defined in:

34 (1) Subsection (a)(1) through (a)(4), or (a)(5) when such person
35 under 21 refuses to submit to a breath or blood alcohol test pursuant to
36 K.S.A. 32-1132, and amendments thereto, is a:

- 1 (A) Class B misdemeanor upon a first conviction; and
2 (B) class A misdemeanor upon a second or subsequent conviction,
3 including imprisonment for not less than 90 days;
4 (2) subsection (a)(5), when such person submits to a breath or blood
5 alcohol test pursuant to K.S.A. 32-1132, and amendments thereto, and
6 produces a test result of .02 or greater but less than .08 is:
7 (A) Punishable by suspension of such person's boating privileges for
8 30 days upon a first conviction; and
9 (B) punishable by suspension of such person's boating privileges for
10 90 days upon a second or subsequent conviction.
11 (f) In addition to any other penalties prescribed by law or rule and
12 regulation, any person convicted of a violation of this section shall be
13 required to satisfactorily complete a boater safety education course of
14 instruction approved by the secretary before such person subsequently
15 operates or attempts to operate any vessel.
16 (g) This section shall be a part of and supplemental to the Kansas
17 criminal code.
18 Sec. 2. K.S.A. 32-1130 is hereby amended to read as follows: 32-
19 1130. As used in K.S.A. ~~32-1131~~ 32-1132 through 32-1136 *and section 1,*
20 *and amendments thereto* :
21 (a) "Alcohol concentration" means the number of grams of alcohol
22 per 100 milliliters of blood or per 210 liters of breath.
23 (b) "Other competent evidence" includes: (1) Alcohol concentration
24 tests obtained from samples taken two hours or more after the operation
25 or attempted operation of a vessel; and (2) readings obtained from a
26 partial alcohol concentration test on a breath testing machine.
27 (c) "Samples" includes breath supplied directly for testing, which
28 breath is not preserved.
29 (d) "Vessel" and "operate" have the meanings provided by K.S.A.
30 32-1102, and amendments thereto.
31 Sec. 3. K.S.A. 32-1130 and 32-1131 are hereby repealed.
32 Sec. 4. This act shall take effect and be in force from and after its
33 publication in the statute book.
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