

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 24, 2021
Subject: Bill Brief for HB 2387

House Bill 2387, as amended by House Committee, revises the laws relating to operating an aircraft under the influence, including prescribing criminal and administrative penalties and providing for testing of blood, breath, urine or other bodily substances, and preliminary screening tests of breath or oral fluid. The bill repeals K.S.A. 3-1001 through 3-1005, the current statutes governing the crime of operating an aircraft under the influence that were enacted in 1981 and never amended, and replaces them with new sections of law related to the conduct.

New Section 1 creates the crime of operating an aircraft under the influence and provides for criminal penalties. This section would replace K.S.A. 3-1001, operation of aircraft under the influence of intoxicating liquor, K.S.A. 3-1002, operation of aircraft under the influence of certain drugs, and K.S.A. 3-1003, the penalty provision for violations of K.S.A. 3-1001 or 3-1002. New Section 1 closely resembles K.S.A. 8-2,144, driving a commercial motor vehicle under the influence, and K.S.A. 8-1567, driving under the influence, as proposed to be amended in HB 2377.

New Section 1(a) provides that the unlawful alcohol concentration in this crime is 0.04 or more, matching the commercial DUI provision. Subsection (b)(1) provides that a violation of the section is a class A nonperson misdemeanor punishable on a 1st conviction by not less than 48 consecutive hours' nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and on a 2nd or subsequent conviction by not less than 90 days nor more than one year's imprisonment. Subsection (b)(2), as amended by the House Committee on Judiciary, provides that any violation of this section is a severity level 6, nonperson felony if the offense occurred while the person convicted is prohibited from operating an aircraft by a court order pursuant to this section or because such person's pilot license is revoked or suspended by an order of the federal aviation administration for a prior alcohol or drug-related conviction. Subsection

(b)(3) preserves the current law provision requiring the court to order the person convicted not to operate an aircraft for a specified period.

New Section 2 provides for the implied consent of any person who operates or attempts to operate an aircraft within this state to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing shall include all quantitative and qualitative tests for alcohol and drugs and shall be administered at the direction of a law enforcement officer. One or more tests may be required of a person when, at the time of the request, a law enforcement officer has probable cause to believe the person has committed a violation of Section 1(a), operating an aircraft under the influence, while having alcohol or drugs in such person's system, and: (1) The person has been arrested or otherwise taken into custody for any violation of any state statute, county resolution or city ordinance; or (2) the person has been involved in an aircraft accident or crash resulting in property damage, personal injury or death. New Section 2 would replace K.S.A. 3-1004 and 3-1005 and closely resembles K.S.A. 8-1001, the implied consent statute for any person who operates or attempts to operate a vehicle within this state. The House Committee on Judiciary added subsections (p) and (q), which closely resemble the provisions of K.S.A. 8-1023 and 8-1024, respectively.

New Section 3 authorizes a law enforcement officer to request a person who is operating or attempting to operate an aircraft within this state to submit to a preliminary screening test of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate an aircraft while under the influence of alcohol or drugs. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by Section 2. New Section 3 closely resembles K.S.A. 8-1012, the preliminary screening test statute for any person who operates or attempts to operate a vehicle within this state.

New Section 4 provides definitions to be used in Sections 1 through 4. The language for the definitions is drawn from similar definitions in K.S.A. 8-1013 ("alcohol concentration," "law enforcement officer," "other competent evidence," and "test refusal") and K.S.A. 8-1567 ("drug" and "imprisonment").

The House Committee on Judiciary added Sections 5 through 8. Section 5 amends K.S.A. 22-3437 regarding admissibility of forensic evidence to add a reference to Section 2, matching a reference to K.S.A. 8-1001. Section 6 amends K.S.A. 60-427 regarding an exception to the physician-patient privilege provided in the rules of evidence to add a reference to Section 2, matching a reference to K.S.A. 8-1001. Section 7 amends K.S.A. 65-1,107 regarding approved

KANSAS OFFICE *of*
REVISOR *of* STATUTES
LEGISLATURE *of* THE STATE *of* KANSAS

preliminary screening devices for breath testing to add a reference to Section 3, matching a reference to K.S.A. 8-1001. Finally, Section 8 amends K.S.A. 75-712h regarding approved preliminary screening devices for oral fluid testing to add a reference to Section 3, matching a reference to K.S.A. 8-1001.