



Nick Jordan, Secretary  
Lisa Kaspar, Director

Sam Brownback, Governor

## TESTIMONY

TO: Chairman King and Members of the Senate Judiciary Committee  
From: John Shultz, Deputy General Counsel, Kansas Department of Revenue  
Date: March 2, 2016  
Re: Testimony for HB 2289 (2015)

Good morning Chairman King and Members of the Committee.

Thank you for the opportunity to appear today and testify on behalf of the Kansas Department of Revenue, to express the Department's opposition to portions of House Bill 2289 (Bill). I am John Shultz, Deputy General Counsel for the Kansas Department of Revenue.

This purpose of Section 1 of this Bill is to require that a law enforcement Officer's Certification and Notice of Suspension, commonly known as a DC-27, contain a certification that the officer's initial encounter with the licensee occurred pursuant to a lawful encounter. The Department is opposed to this section of the Bill in its current form. The purpose of Section 2 is to require that the Department issue an order prior to the administrative hearing that allows a licensee or an attorney representing a licensee to obtain a copy of the police report. The Department supports the police report requirement in Section 2.

While the Department appreciates the work and recommendations of the Judicial Council and the House of Representatives, the Department still has concerns about the Bill in its current form.

This Bill is intended to overcome the Kansas Supreme Court decision in *Martin v. Kansas Dept. of Revenue*, 285 Kan. 625, (2008), in which the Court determined the Exclusionary Rule does not always apply in an action to suspend driving privileges as the result of an abuse of that privilege by a licensee. The Kansas Supreme Court noted the "remedial imperative of preventing alcohol and/or drug-impaired drivers from injury or killing themselves or others." (953) The Court stated that "[r]esponsive administrative license regulation is essential to that public good" and "should not be hamstrung by application of the [exclusionary] rule." However, the *Martin* court did not bar the use of the exclusionary rule entirely, citing *Turner I*, they state: "We noted that use of the rule might be warranted if, under a totality of circumstances, police misconduct was egregious." (951) The Court also held that reasonable suspicion for the stop or initial encounter with a licensee was not one of the issues the legislature intended to provide a defense to the administrative suspension of a person's drivers' license based on K.S.A. 8-1020(h)(1), (2) or (3).

Since *Martin*, there has been a positive impact on the number of licensees that request administrative hearings, there has been a positive impact on the length of time it takes to conduct administrative hearings and the length of time it takes to conduct trials in the district courts.

However, the most important impact the *Martin* decision appears to have had is in the reduction of State Traffic Fatalities associated with DUIs by over 10%. See the attached Table.

Of course there are other factors that may have impacted the reduction in traffic fatalities such as the DUI Task Force and the surrounding publicity that the legislature, prosecutors and law enforcement officers on the streets are getting tougher on DUI offenders. The legislature has also been more accommodating by enacting the ignition interlock statutes which allow people to maintain their employment by obtaining an ignition interlock after being suspended for only 45 days as a result of any test failure or 90 days for any test refusal. There have been numerous advertising campaigns that have had an impact as well. My point is, whatever it is we are all doing to reduce traffic fatalities in this state it is clearly having an impact, so why would we want to change the course of our actions now?

The current DC-27 already requires that the officer certify the reason for the initial contact or stop. Furthermore, the officer is required to certify that all of the statements made on the DC-27 are true and accurate. If the statements are not true and accurate the officer may be charged with with a class B nonperson misdemeanor.

This Bill would require that the Department change the DC-27 form to state that the test refusal or failure occurred pursuant to a lawful encounter. It appears that this is a distinction without a difference. If the officer is already certifying the factual basis for the encounter and he is doing so under penalty of prosecution what difference would a change to the form make?

Although the Department is still opposed to legislation that will have the effect of reversing the *Martin* decision, in the spirit of compromise, the Department reached out to the proponents of this Bill with proposed amendments that would achieve the goals of the proponents of the Bill without the necessity of changing the DC-27 form or resulting in significant cost increases to the Department. Unfortunately we could not reach an agreement. I have copies of the proposed amendments with me if the committee would like to review them.

The Department's proposed amendments to this Bill are as follows.

The current version of this Bill creates a conflict within the Implied Consent Act. On one hand the Department is precluded from evaluating constitutional issues at the initial administrative hearing level (See Section 1(d)). On the other hand, the administrative hearing officer is required to evaluate the factual circumstances contained in the officer's certification. (See Section 2(g)) Clarification needs to be made in the Bill to indicate that an officer's certification to "lawful encounter" is not a factual circumstance to be evaluated under Section 2(g).

There are some simple fixes that can be made that should satisfy the proponents of this Bill without a drastic increase in costs to the Department. The portions of Section 1 (page 1, lines 26-31 and page 2, lines 6-12) requiring the officer to certify the test refusal or failure occurred pursuant to a lawful encounter should be entirely removed. This will resolve the need for a complete reprint and redistribution of the DC-27 statewide. In addition, because the KDHE has already programmed the DC-27 into the new Intoxilyzer 9000, if the form is changed they will have to reprogram the instruments which will delay the delivery of the instrument and add costs to KDHE. In addition, it will make the Bill clear that constitutional issues and the reason for the initial encounter will not be issues that will be decided by the administrative hearing officer because the issue is not an issue contained in the officer's certification. The language in Section

1 (page 3, lines 7-10) should be replaced with “constitutional issues cannot be decided at the administrative hearing but may be preserved and raised in a petition for review of the hearing as provided in subsection (p) of K.S.A. 8-1020.” This resolves a conflict with existing administrative law that this Bill creates. The Bill indicates that all constitutional issues are automatically preserved at the administrative hearing as opposed to current law that requires that a party exhaust their administrative remedies by actually litigating the issue at the administrative hearing before they can raise the issues in the district court appeal. The portion in Section 2 of the Bill (page 8, lines 40-42) should be replaced to read “the court shall also determine the lawfulness of the law enforcement encounter if raised by the petitioner.” The current version of the Bill requires the court to “determine constitutional issues including, but not limited to the lawfulness of the initial encounter.” Finally, the language in Section 2 (page 9 line 1) is redundant and should be removed. This will permit but not require the courts to consider whether the initial encounter was lawful and tailor a remedy to the facts and circumstances of each case.

The passage of this Bill in its current form is estimated to cost the Department over \$300, 000. The time required by administrative hearing officer’s to conduct hearings would increase by twenty-five (25) percent. In addition to the hearings taking longer to conduct there will be a significant increase in the number of hearings requested. The Department anticipates the number of hearings requested will increase by at least thirty (30) percent. An increase in the number of administrative hearings always results in additional appeals to the district court and the amount of time it takes to try the case, especially with additional issues involved.

The amendments the Department is proposing will significantly reduce the costs associated with the passage of the Bill and accomplish everything the proponents of the Bill are asking for.

Thank you for considering my testimony, I now stand for questions.

Sincerely,

John Shultz,  
Deputy General Counsel  
Kansas Department of Revenue

	2008	2009	2010	2011	2012	2013	2014
Kansas Traffic Fatalities	385	386	431	386	405	350	385
Kansas Traffic Fatalities (no BAC level or no BAC recorded)	225	208	239	253	284	230	263
Kansas Traffic Fatalities (BAC .1 - .7)	12	23	25	23	20	18	18
Kansas Traffic Fatalities (BAC .08 or greater)	145	154	168	108	98	102	103
Kansas Traffic Fatalities (BAC .15 or greater)	99	102	110	69	73	74	69
Percentage of Traffic Fatalities with .08 or greater alcohol involvement with one of the drivers.	38%	40%	39%	28%	24%	29%	27%

2016

PROPOSED  
Substitute for HOUSE BILL NO. 2289

16rs2811

By Committee on Judiciary

Proposed Amendments  
House Judiciary  
Substitute for HB 2289  
February 2, 2016  
Prepared by: John Shultz  
Kansas Department of Revenue

AN ACT concerning driving; related to driving under the influence of alcohol or drugs; test refusal or failure; suspension of license; administrative hearing; procedure; amending K.S.A. 2015 Supp. 8-1002 and 8-1020 and repealing the existing sections.

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

Section 1. K.S.A. 2015 Supp. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto, shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer; ~~and (E) the test refusal occurred pursuant to a lawful encounter by law enforcement. For purposes of this section, a lawful encounter is any encounter permissible under section 15 of the bill of rights of the constitution of the state of Kansas and the fourth~~

and

~~amendment to the constitution of the United States relating to unreasonable searches and seizures.~~

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath; ~~and (E) the test failure occurred pursuant to a lawful encounter by law enforcement. For purposes of this section, a lawful encounter is any encounter permissible under section 15 of the bill of rights of the constitution of the state of Kansas and the fourth amendment to the Constitution of the United States relating to unreasonable searches and seizures.~~

and

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no

additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30<sup>th</sup> day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall



also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30<sup>th</sup> day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within seven days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing as provided in subsection (p) of K.S.A. 8-1020

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(g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

(h) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the effective date of suspension set out in subsection (d).

Sec. 2. K.S.A. 2015 Supp. 8-1020 is hereby amended to read as follows: 8-1020. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 14 days after service of notice; or

(2) transmitting a written request by electronic facsimile which is received by the division within 14 days after service of notice.

(b) If the licensee makes a timely request for an administrative hearing and makes a timely payment of the required hearing fee, any temporary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30<sup>th</sup> day after the effective date of the decision made by the division.

(c) If the licensee fails to make a timely request for an administrative hearing together with the required hearing fee, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

(d) (1) Upon receipt of a timely request for a hearing together with the required hearing fee, the division shall forthwith set the matter for hearing before a representative of the director



and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.

(2) The division shall charge a fee of \$50 for a hearing, to be paid within the time period for making a timely request for a hearing, whether held by telephone or in person, to be applied by the division for administrative costs to conduct the hearing. The division shall remit all hearing fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund. The hearing fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such hearing. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than seven days prior to the date of hearing:

- (1) The officer's certification and notice of suspension;
- (2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;
- (3) in the case of a breath test failure, a copy of the affidavit showing certification of the

officer and the instrument; and

(4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

(f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any law enforcement report and video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the law enforcement report or video or audio tape is kept. The licensee may obtain a copy of any such law enforcement report or video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape or \$.25 per page of the law enforcement report.

(g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and

amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and

environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

(E) the person who operated the testing equipment was qualified;

(F) the testing procedures used were reliable;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and

(H) the person was operating or attempting to operate a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.



(l) Evidence at the hearing shall be limited to the following:

(1) The documents set out in subsection (e);

(2) the testimony of the licensee;

(3) the testimony of any certifying officer;

(4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;

(5) any affidavits submitted from other witnesses;

(6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and

(7) any video or audio tape record of the events upon which the administrative action is based.

(m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30<sup>th</sup> day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is



made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

(p) Such review shall be in accordance with this section and the Kansas judicial review act. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 14 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. The court shall also

~~determine the lawfulness of the law enforcement encounter pursuant to K.S.A. 8-1002(a)(1)(K) or (a)(2)(F), and amendments thereto. If the court finds that the grounds for action by the agency suspension or restriction of the license have been met, the court shall affirm the agency action.~~

if raised by the petitioner

action by the agency

(q) Upon review, the licensee shall have the burden to show that ~~the decision of the agency suspension or restriction of the license~~ should be set aside.

(r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

decision of the agency

(s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.

(t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

(u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall

be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

Sec. 3. K.S.A. 2015 Supp. 8-1002 and 8-1020 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.