

## SENATE BILL No. 225

By Committee on Transportation

2-5

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AN ACT relating to driving under the influence of alcohol or drugs; concerning the surrender of drivers' licenses; amending K.S.A. 2000 Supp. 8-1002 and repealing the existing section.

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

Section 1. K.S.A. 2000 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, 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.

(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, 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

1 .08 or greater in such person's blood or breath.

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

10 (b) For purposes of this section, certification shall be complete upon  
11 signing, and no additional acts of oath, affirmation, acknowledgment or  
12 proof of execution shall be required. The signed certification or a copy  
13 or photostatic reproduction thereof shall be admissible in evidence in all  
14 proceedings brought pursuant to this act, and receipt of any such certi-  
15 fication, copy or reproduction shall accord the department authority to  
16 proceed as set forth herein. Any person who signs a certification submit-  
17 ted to the division knowing it contains a false statement is guilty of a class  
18 B nonperson misdemeanor.

19 (c) When the officer directing administration of the testing deter-  
20 mines that a person has refused a test and the criteria of subsection (a)(1)  
21 have been met or determines that a person has failed a test and the criteria  
22 of subsection (a)(2) have been met, the officer shall serve upon the person  
23 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and  
24 amendments thereto. If the determination is made while the person is  
25 still in custody, service shall be made in person by the officer on behalf  
26 of the division of vehicles. In cases where a test failure is established by  
27 a subsequent analysis of a breath, blood or urine sample, the officer shall  
28 serve notice of such suspension in person or by another designated officer  
29 or by mailing the notice to the person at the address provided at the time  
30 of the test. *Within five days after the date of service of a copy of the law*  
31 *enforcement officer's certification and notice of suspension, the officer's*  
32 *certification and notice of suspension shall be forwarded to the division.*

33 (d) In addition to the information required by subsection (a), the law  
34 enforcement officer's certification and notice of suspension shall contain  
35 the following information: (1) The person's name, driver's license number  
36 and current address; (2) the reason and statutory grounds for the suspen-  
37 sion; (3) the date notice is being served and a statement that the effective  
38 date of the suspension shall be the 30th calendar day after the date of  
39 service; (4) the right of the person to request an administrative hearing;  
40 and (5) the procedure the person must follow to request an administrative  
41 hearing. The law enforcement officer's certification and notice of suspen-  
42 sion shall also inform the person that all correspondence will be mailed  
43 to the person at the address contained in the law enforcement officer's

1 certification and notice of suspension unless the person notifies the di-  
2 vision in writing of a different address or change of address. The address  
3 provided will be considered a change of address for purposes of K.S.A.  
4 8-248, and amendments thereto, if the address furnished is different from  
5 that on file with the division.

6 ~~(e) If a person refuses a test or if a person is still in custody when it~~  
7 ~~is determined that the person has failed a test, the officer shall take any~~  
8 ~~license in the possession of the person and, if the license is not expired,~~  
9 ~~suspended, revoked or canceled, shall issue a temporary license effective~~  
10 ~~until the 30th calendar day after the date of service set out in the law~~  
11 ~~enforcement officer's certification and notice of suspension. If the test~~  
12 ~~failure is established by a subsequent analysis of a breath or blood sample,~~  
13 ~~the temporary license shall be served together with the copy of the law~~  
14 ~~enforcement officer's certification and notice of suspension. A temporary~~  
15 ~~license issued pursuant to this subsection shall bear the same restrictions~~  
16 ~~and limitations as the license for which it was exchanged. Within five days~~  
17 ~~after the date of service of a copy of the law enforcement officer's certi-~~  
18 ~~fication and notice of suspension the officer's certification and notice of~~  
19 ~~suspension, along with any licenses taken, shall be forwarded to the~~  
20 ~~division.~~

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

28 ~~(g) (f) If the person mails a written request which is postmarked~~  
29 ~~within 10 days after service of the notice, if by personal service, or 13~~  
30 ~~days after service, if by mail, the division shall schedule a hearing in the~~  
31 ~~county where the alleged violation occurred, or in a county adjacent~~  
32 ~~thereto. The licensee may request that subpoenas be issued in accordance~~  
33 ~~with the notice provided pursuant to subsection (d). Any request made~~  
34 ~~by the licensee to subpoena witnesses must be made in writing at the~~  
35 ~~time the hearing is requested and must include the name and current~~  
36 ~~address of such witnesses and, except for the law enforcement officer or~~  
37 ~~officers certifying refusal or failure, a statement of how the testimony of~~  
38 ~~such witness is relevant. Upon receiving a timely request for a hearing,~~  
39 ~~the division shall mail to the person notice of the time, date and place of~~  
40 ~~hearing in accordance with subsection (f) and extend the person's tem-~~  
41 ~~porary driving privileges until the date set for the hearing by the division~~  
42 ~~(k).~~

43 ~~(h) (g) (1) If the officer certifies that the person refused the test, the~~

1 scope of the hearing shall be limited to whether: (A) A law enforcement  
2 officer had reasonable grounds to believe the person was operating or  
3 attempting to operate a vehicle while under the influence of alcohol or  
4 drugs, or both, or to believe that the person had been driving a com-  
5 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments  
6 thereto, while having alcohol or other drugs in such person's system; (B)  
7 the person was in custody or arrested for an alcohol or drug related of-  
8 fense or was involved in a vehicle accident or collision resulting in prop-  
9 erty damage, personal injury or death; (C) a law enforcement officer had  
10 presented the person with the oral and written notice required by K.S.A.  
11 8-1001, and amendments thereto; and (D) the person refused to submit  
12 to and complete a test as requested by a law enforcement officer.

13 (2) If the officer certifies that the person failed the test, the scope of  
14 the hearing shall be limited to whether: (A) A law enforcement officer  
15 had reasonable grounds to believe the person was operating a vehicle  
16 while under the influence of alcohol or drugs, or both, or to believe that  
17 the person had been driving a commercial motor vehicle, as defined in  
18 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
19 drugs in such person's system; (B) the person was in custody or arrested  
20 for an alcohol or drug related offense or was involved in a vehicle accident  
21 or collision resulting in property damage, personal injury or death; (C) a  
22 law enforcement officer had presented the person with the oral and writ-  
23 ten notice required by K.S.A. 8-1001, and amendments thereto; (D) the  
24 testing equipment used was reliable; (E) the person who operated the  
25 testing equipment was qualified; (F) the testing procedures used were  
26 reliable; (G) the test result determined that the person had an alcohol  
27 concentration of .08 or greater in such person's blood or breath; and (H)  
28 the person was operating a vehicle.

29 ~~(h)~~ (h) At a hearing pursuant to this section, or upon court review of  
30 an order entered at such a hearing, an affidavit of the custodian of records  
31 at the Kansas department of health and environment stating that the  
32 breath testing device was certified and the operator of such device was  
33 certified on the date of the test shall be admissible into evidence in the  
34 same manner and with the same force and effect as if the certifying officer  
35 or employee of the Kansas department of health and environment had  
36 testified in person. Such affidavit shall be admitted to prove such reli-  
37 ability without further foundation requirement. A certified operator of a  
38 breath testing device shall be competent to testify regarding the proper  
39 procedures to be used in conducting the test.

40 ~~(i)~~ (i) At a hearing pursuant to this section, or upon court review of  
41 an order entered at such hearing, in which the report of blood test results  
42 have been prepared by the Kansas bureau of investigation or other fo-  
43 rensic laboratory of a state or local law enforcement agency are to be

1 introduced as evidence, the report, or a copy of the report, of the findings  
2 of the forensic examiner shall be admissible into evidence in the same  
3 manner and with the same force and effect as if the forensic examiner  
4 who performed such examination, analysis, comparison or identification  
5 and prepared the report thereon had testified in person.

6 ~~(j)~~ If no timely request for hearing is made, the suspension period  
7 imposed pursuant to this section shall begin ~~upon the expiration of the~~  
8 ~~temporary license granted under subsection (e) on the 30th calendar day~~  
9 ~~after the date of service.~~ If a timely request for hearing is made, the *matter*  
10 *shall be forthwith set for hearing shall be held within 30 days of the date*  
11 *the request for hearing is received by the division, except that failure to*  
12 *hold such hearing within 30 days shall not be cause for dismissal absent*  
13 *a showing of prejudice and the person's driving privileges shall remain in*  
14 *effect, until an order of suspension is entered at such hearing, unless*  
15 *otherwise restricted, suspended, revoked or canceled. No continuance of*  
16 *the hearing set by the division shall be allowed absent a showing of good*  
17 *cause.* At the hearing, the director or the representative of the director,  
18 shall either affirm the order of suspension or suspension and restriction  
19 or dismiss the administrative action. ~~If the division is unable to hold a~~  
20 ~~hearing within 30 days of the date upon which the request for hearing is~~  
21 ~~received, the division shall extend the person's temporary driving privi-~~  
22 ~~leges until the date set for the hearing by the division. No extension of~~  
23 ~~temporary driving privileges shall be issued for continuances requested~~  
24 ~~by or on behalf of the licensee. If the person whose privileges are sus-~~  
25 ~~sended is a nonresident licensee, the license of the person shall be for-~~  
26 ~~warded to the appropriate licensing authority in the person's state of~~  
27 ~~residence if the result at the hearing is adverse to such person or if no~~  
28 ~~timely request for a hearing is received.~~

29 ~~—(k)~~ All notices affirming or canceling a suspension ~~under this sec-~~  
30 ~~tion, and all notices of a hearing held under this section and all issuances~~  
31 ~~of temporary driving privileges pursuant to subsection (k)~~ shall be sent  
32 by first-class mail and a U.S. post office certificate of mailing shall be  
33 obtained therefor. All notices so mailed shall be deemed received three  
34 days after mailing.

35 ~~(m)~~ (l) The division shall prepare and distribute forms for use by law  
36 enforcement officers in giving the notice required by this section.

37 ~~(n)~~ (m) This section and the applicable provisions contained in sub-  
38 sections (d) and (e) of K.S.A. 8-255, and amendments thereto, constitute  
39 the administrative procedures to be used for all administrative hearings  
40 held under this act. To the extent that this section and any other provision  
41 of law conflicts, this section prevails.

42 ~~(o)~~ (n) The provisions of K.S.A. 60-206, and amendments thereto,  
43 regarding the computation of time shall not be applicable in determining

1 the effective date of suspension set out in subsection (d) or the time for  
2 requesting an administrative hearing set out in subsection ~~(g)~~ (f). “Cal-  
3 endar day” when used in this section shall mean that every day shall be  
4 included in computations of time whether a week day, Saturday, Sunday  
5 or holiday.

6 Sec. 2. K.S.A. 2000 Supp. 8-1002 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its  
8 publication in the statute book.

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