

1 **As Amended by House Committee**

2
3 **As Amended by Senate Committee**

4 *Session of 2002*

5
6 **SENATE BILL No. 392**

7
8 By Committee on Transportation

9
10 1-16

11
12 AN ACT relating to drivers' licenses; ~~concerning habitual violators;~~
13 amending K.S.A. 8-285, **8-1002, 8-1020 and 40-3104** and repealing
14 the existing ~~section~~ **sections**.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 8-285 is hereby amended to read as follows: 8-285.
18 Except as otherwise provided in this section, as used in this act, the words
19 and phrases defined in K.S.A. 8-234a, and amendments thereto, shall
20 have the meanings ascribed to them therein. The term "habitual violator"
21 means any resident or nonresident person who, within the immediately
22 preceding five years, has been convicted in this or any other state:

23 (a) Three or more times of:

24 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
25 ments thereto, or as prohibited by any ordinance of any city in this state
26 or any law of another state which is in substantial conformity with that
27 statute;

28 (2) violating K.S.A. 8-1567, and amendments thereto, or violating an
29 ordinance of any city in this state or any law of another state, which
30 ordinance or law declares to be unlawful the acts prohibited by that
31 statute;

32 (3) driving while the privilege to operate a motor vehicle on the public
33 highways of this state has been canceled, suspended or revoked, as pro-
34 hibited by K.S.A. 8-262 *or* 8-287, and amendments thereto, or while such
35 person's privilege to obtain a driver's license is suspended or revoked
36 pursuant to K.S.A. 8-252a, and amendments thereto, or, as prohibited by
37 any ordinance of any city in this state or any law of another state which
38 is in substantial conformity with those statutes;

39 (4) perjury resulting from a violation of K.S.A. 8-261a, and amend-
40 ments thereto, or resulting from the violation of a law of another state
41 which is in substantial conformity with that statute;

42 (5) violating the provisions of the fifth clause of K.S.A. 8-142, and
43 amendments thereto, relating to fraudulent applications, or violating the

1 provisions of a law of another state which is in substantial conformity with
2 that statute;

3 (6) any crime punishable as a felony, if a motor vehicle was used in
4 the perpetration of the crime;

5 (7) failing to stop at the scene of an accident and perform the duties
6 required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or
7 required by any ordinance of any city in this state or a law of another
8 state which is in substantial conformity with those statutes; or

9 (8) violating the provisions of K.S.A. 40-3104, and amendments
10 thereto, relating to motor vehicle liability insurance coverage or an or-
11 dinance of any city in this state, which is in substantial conformity with
12 such statute.

13 (b) Three or more times, either singly or in combination, of any of
14 the offenses enumerated in subsection (a).

15 For the purpose of subsection (a)(2), in addition to the definition of
16 “conviction” otherwise provided by law, conviction includes, but is not
17 limited to, a diversion agreement entered into in lieu of further criminal
18 proceedings, or a plea of *nolo contendere*, on a complaint, indictment,
19 information, citation or notice to appear alleging a violation of K.S.A. 8-
20 1567, and amendments thereto, or an ordinance of a city in this state or
21 law of another state, which ordinance or law prohibits the acts prohibited
22 by that statute.

23 **Sec. 2. K.S.A. 8-1002 is hereby amended to read as follows: 8-
24 1002. (a) Whenever a test is requested pursuant to this act and
25 results in either a test failure or test refusal, a law enforcement
26 officer’s certification shall be prepared. If the person had been
27 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
28 and amendments thereto, a separate certification pursuant to
29 K.S.A. 8-2,145 and amendments thereto shall be prepared in ad-
30 dition to any certification required by this section. The certifica-
31 tion required by this section shall be signed by one or more officers
32 to certify:**

33 (1) With regard to a test refusal, that: (A) There existed rea-
34 sonable grounds to believe the person was operating or attempting
35 to operate a vehicle while under the influence of alcohol or drugs,
36 or both, or to believe that the person had been driving a commer-
37 cial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
38 thereto, or is under 21 years of age while having alcohol or other
39 drugs in such person’s system; (B) the person had been placed
40 under arrest, was in custody or had been involved in a vehicle
41 accident or collision; (C) a law enforcement officer had presented
42 the person with the oral and written notice required by K.S.A. 8-
43 1001, and amendments thereto; and (D) the person refused to sub-

1 mit to and complete a test as requested by a law enforcement
2 officer.

3 (2) With regard to a test failure, that: (A) There existed reason-
4 able grounds to believe the person was operating a vehicle while
5 under the influence of alcohol or drugs, or both, or to believe that
6 the person had been driving a commercial motor vehicle, as de-
7 fined in K.S.A. 8-2,128, and amendments thereto, or is under 21
8 years of age while having alcohol or other drugs in such person's
9 system; (B) the person had been placed under arrest, was in cus-
10 tody or had been involved in a vehicle accident or collision; (C) a
11 law enforcement officer had presented the person with the oral
12 and written notice required by K.S.A. 8-1001, and amendments
13 thereto; and (D) the result of the test showed that the person had
14 an alcohol concentration of .08 or greater in such person's blood
15 or breath.

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

24 (b) For purposes of this section, certification shall be complete
25 upon signing, and no additional acts of oath, affirmation, acknow-
26 ledgment or proof of execution shall be required. The signed cer-
27 tification or a copy or photostatic reproduction thereof shall be
28 admissible in evidence in all proceedings brought pursuant to this
29 act, and receipt of any such certification, copy or reproduction
30 shall accord the department authority to proceed as set forth
31 herein. Any person who signs a certification submitted to the di-
32 vision knowing it contains a false statement is guilty of a class B
33 nonperson misdemeanor.

34 (c) When the officer directing administration of the testing de-
35 termines that a person has refused a test and the criteria of sub-
36 section (a)(1) have been met or determines that a person has failed
37 a test and the criteria of subsection (a)(2) have been met, the of-
38 ficer shall serve upon the person notice of suspension of driving
39 privileges pursuant to K.S.A. 8-1014, and amendments thereto. If
40 the determination is made while the person is still in custody, serv-
41 ice shall be made in person by the officer on behalf of the division
42 of vehicles. In cases where a test failure is established by a sub-
43 sequent analysis of a breath, blood or urine sample, the officer

1 **shall serve notice of such suspension in person or by another des-**
2 **ignated officer or by mailing the notice to the person at the address**
3 **provided at the time of the test.** *Within five days after the date of*
4 *service of a copy of the law enforcement officer's certification and notice*
5 *of suspension, the officer's certification and notice of suspension shall be*
6 *forwarded to the division.*

7 (d) **In addition to the information required by subsection (a),**
8 **the law enforcement officer's certification and notice of suspen-**
9 **sion shall contain the following information: (1) The person's**
10 **name, driver's license number and current address; (2) the reason**
11 **and statutory grounds for the suspension; (3) the date notice is**
12 **being served and a statement that the effective date of the sus-**
13 **pension shall be the 30th calendar day after the date of service;**
14 **(4) the right of the person to request an administrative hearing;**
15 **and (5) the procedure the person must follow to request an ad-**
16 **ministrative hearing. The law enforcement officer's certification**
17 **and notice of suspension shall also inform the person that all cor-**
18 **respondence will be mailed to the person at the address contained**
19 **in the law enforcement officer's certification and notice of suspen-**
20 **sion unless the person notifies the division in writing of a different**
21 **address or change of address. The address provided will be con-**
22 **sidered a change of address for purposes of K.S.A. 8-248, and**
23 **amendments thereto, if the address furnished is different from**
24 **that on file with the division.**

25 ~~(c) If a person refuses a test or if a person is still in custody when it~~
26 ~~is determined that the person has failed a test, the officer shall take any~~
27 ~~license in the possession of the person and, if the license is not expired,~~
28 ~~suspended, revoked or canceled, shall issue a temporary license effective~~
29 ~~until the 30th calendar day after the date of service set out in the law~~
30 ~~enforcement officer's certification and notice of suspension. If the test~~
31 ~~failure is established by a subsequent analysis of a breath or blood sample,~~
32 ~~the temporary license shall be served together with the copy of the law~~
33 ~~enforcement officer's certification and notice of suspension. A temporary~~
34 ~~license issued pursuant to this subsection shall bear the same restrictions~~
35 ~~and limitations as the license for which it was exchanged. Within five days~~
36 ~~after the date of service of a copy of the law enforcement officer's certi-~~
37 ~~fication and notice of suspension the officer's certification and notice of~~
38 ~~suspension, along with any licenses taken, shall be forwarded to the di-~~
39 ~~vision.~~

40 ~~(c)~~ (e) **Upon receipt of the law enforcement officer's certifica-**
41 **tion, the division shall review the certification to determine that it**
42 **meets the requirements of subsection (a). Upon so determining,**
43 **the division shall proceed to suspend the person's driving privi-**

1 leges in accordance with the notice of suspension previously
2 served. If the requirements of subsection (a) are not met, the di-
3 vision shall dismiss the administrative proceeding and return any
4 license surrendered by the person.

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

8 ~~(h)~~ (g) The provisions of K.S.A. 60-206 and amendments
9 thereto regarding the computation of time shall not be applicable
10 in determining the effective date of suspension set out in subsec-
11 tion (d), “Calendar day” when used in this section shall mean that
12 every day shall be included in computations of time whether a
13 week day, Saturday, Sunday or holiday.

14 Sec. 3. K.S.A. 8-1020 is hereby amended to read as follows: 8-
15 1020. (a) Any licensee served with an officer’s certification and
16 notice of suspension pursuant to K.S.A. 8-1002, and amendments
17 thereto, may request an administrative hearing. Such request may
18 be made either by:

19 (1) Mailing a written request which is postmarked 10 calendar
20 days after service of notice, if such notice was given by personal
21 service;

22 (2) mailing a written request which is postmarked 13 calendar
23 days after service of notice, if such notice was given by mail;

24 (3) transmitting a written request by electronic facsimile which
25 is received by the division within 10 calendar days after service of
26 notice, if such notice was given by personal service; or

27 (4) transmitting a written request by electronic facsimile which
28 is received by the division within 13 calendar days after service, if
29 such notice was given by mail.

30 ~~(b)~~ If the licensee makes a timely request for an administrative hear-
31 ing, any temporary license issued pursuant to K.S.A. 8-1002, and amend-
32 ments thereto, shall remain in effect until the 30th calendar day after the
33 effective date of the decision made by the division.

34 ~~(c)~~ (b) If the licensee fails to make a timely request for an ad-
35 ministrative hearing, the licensee’s driving privileges shall be sus-
36 pended or suspended and then restricted in accordance with the
37 notice of suspension served pursuant to K.S.A. 8-1002, and amend-
38 ments thereto.

39 ~~(d)~~ (c) Upon receipt of a timely request for a hearing, the di-
40 vision shall forthwith set the matter for hearing before a repre-
41 sentative of the director and provide notice of the extension of tem-
42 porary driving privileges the person’s driving privileges shall remain in
43 effect, until an order of suspension is entered at such hearing, unless

1 *otherwise restricted, suspended, revoked or canceled. Except for a hear-*
2 *ing conducted by telephone or video conference call, the hearing*
3 *shall be conducted in the county where the arrest occurred or a*
4 *county adjacent thereto. If the licensee requests, the hearing may*
5 *be conducted by telephone or video conference call.*

6 ~~(e)~~ (d) Except as provided in subsection ~~(f)~~ (e), prehearing dis-
7 covery shall be limited to the following documents, which shall be
8 provided to the licensee or the licensee's attorney no later than
9 five calendar days prior to the date of hearing:

10 (1) The officer's certification and notice of suspension;

11 (2) in the case of a breath or blood test failure, copies of doc-
12 uments indicating the result of any evidentiary breath or blood
13 test administered at the request of a law enforcement officer;

14 (3) in the case of a breath test failure, a copy of the affidavit
15 showing certification of the officer and the instrument; and

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

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

28 ~~(g)~~ (f) Witnesses at the hearing shall be limited to the licensee,
29 to any law enforcement officer who signed the certification form
30 and to one other witness who was present at the time of the iss-
31 uance of the certification and called by the licensee. The presence
32 of the certifying officer or officers shall not be required, unless
33 requested by the licensee at the time of making the request for
34 the hearing. The examination of a law enforcement officer shall
35 be restricted to the factual circumstances relied upon in the offi-
36 cer's certification.

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

39 (A) A law enforcement officer had reasonable grounds to be-
40 lieve the person was operating or attempting to operate a vehicle
41 while under the influence of alcohol or drugs, or both, or had been
42 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
43 and amendments thereto, while having alcohol or other drugs in

1 such person's system;

2 (B) the person was in custody or arrested for an alcohol or drug
3 related offense or was involved in a vehicle accident or collision
4 resulting in property damage, personal injury or death;

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

8 (D) the person refused to submit to and complete a test as re-
9 quested by a law enforcement officer.

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

12 (A) A law enforcement officer had reasonable grounds to be-
13 lieve the person was operating a vehicle while under the influence
14 of alcohol or drugs, or both, or had been driving a commercial
15 motor vehicle, as defined in K.S.A. 8-2,128, and amendments
16 thereto, while having alcohol or other drugs in such person's
17 system;

18 (B) the person was in custody or arrested for an alcohol or drug
19 related offense or was involved in a vehicle accident or collision
20 resulting in property damage, personal injury or death;

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

24 (D) the testing equipment used was certified by the Kansas de-
25 partment of health and environment;

26 (E) the person who operated the testing equipment was certi-
27 fied by the Kansas department of health and environment;

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

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

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

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

37 (A) A law enforcement officer had reasonable grounds to be-
38 lieve the person was operating a vehicle while under the influence
39 of alcohol or drugs, or both, or had been driving a commercial
40 motor vehicle, as defined in K.S.A. 8-2,128, and amendments
41 thereto, while having alcohol or other drugs in such person's
42 system;

43 (B) the person was in custody or arrested for an alcohol or drug

1 related offense or was involved in a vehicle accident or collision
2 resulting in property damage, personal injury or death;

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

6 (D) the testing equipment used was reliable;

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

9 (F) the testing procedures used were reliable;

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

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

14 ~~(h)~~ (h) At a hearing pursuant to this section, or upon court re-
15 view of an order entered at such a hearing, an affidavit of the
16 custodian of records at the Kansas department of health and en-
17 vironment stating that the breath testing device was certified and
18 the operator of such device was certified on the date of the test
19 shall be admissible into evidence in the same manner and with the
20 same force and effect as if the certifying officer or employee of
21 the Kansas department of health and environment had testified in
22 person. A certified operator of a breath testing device shall be
23 competent to testify regarding the proper procedures to be used
24 in conducting the test.

25 ~~(i)~~ (i) At a hearing pursuant to this section, or upon court review
26 of an order entered at such a hearing, in which the report of blood
27 test results have been prepared by the Kansas bureau of investi-
28 gation or other forensic laboratory of a state or local law enforce-
29 ment agency are to be introduced as evidence, the report, or a
30 copy of the report, of the findings of the forensic examiner shall
31 be admissible into evidence in the same manner and with the same
32 force and effect as if the forensic examiner who performed such
33 examination, analysis, comparison or identification and prepared
34 the report thereon had testified in person.

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

40 ~~(k)~~ (k) Evidence at the hearing shall be limited to the following:

41 (1) The documents set out in subsection ~~(e)~~ (d);

42 (2) the testimony of the licensee;

43 (3) the testimony of any certifying officer;

1 (4) the testimony of any witness present at the time of the is-
2 suance of the certification and called by the licensee;

3 (5) any affidavits submitted from other witnesses;

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

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

9 ~~(m)~~ (l) After the hearing, the representative of the director
10 shall enter an order affirming the order of suspension or suspen-
11 sion and restriction of driving privileges or for good cause ap-
12 pearing therefor, dismiss the administrative action. If the repre-
13 sentative of the director enters an order affirming the order of
14 suspension or suspension and restriction of driving privileges, the
15 suspension or suspension and restriction shall begin on the 30th
16 day after the effective date of the order of suspension or suspen-
17 sion and restriction. If the person whose privileges are suspended
18 is a nonresident licensee, the license of the person shall be for-
19 warder to the appropriate licensing authority in the person's state
20 of residence if the result at the hearing is adverse to such person
21 or if no timely request for a hearing is received.

22 ~~(n)~~ (m) The representative of the director may issue an order
23 at the close of the hearing or may take the matter under advise-
24 ment and issue a hearing order at a later date. If the order is made
25 at the close of the hearing, the licensee or the licensee's attorney
26 shall be served with a copy of the order by the representative of
27 the director. If the matter is taken under advisement or if the hear-
28 ing was by telephone or video conference call, the licensee and
29 any attorney who appeared at the administrative hearing upon be-
30 half of the licensee each shall be served with a copy of the hearing
31 order by mail. Any law enforcement officer who appeared at the
32 hearing also may be mailed a copy of the hearing order. The ef-
33 fective date of the hearing order shall be the date upon which the
34 hearing order is served, whether served in person or by mail.

35 ~~(o)~~ (n) The licensee may file a petition for review of the hearing
36 order pursuant to K.S.A. 8-259, and amendments thereto. Upon
37 filing a petition for review, the licensee shall serve the secretary
38 of revenue with a copy of the petition and summons. Upon receipt
39 of a copy of the petition for review by the secretary, the temporary
40 license issued pursuant to subsection ~~(b)~~ person's driving privileges under
41 subsection (c) shall be extended until the decision on the petition
42 for review is final.

43 ~~(p)~~ (o) Such review shall be in accordance with this section and

1 the act for judicial review and civil enforcement of agency actions.
2 To the extent that this section and any other provision of law con-
3 flicts, this section shall prevail. The petition for review shall be
4 filed within 10 days after the effective date of the order. Venue of
5 the action for review is the county where the person was arrested
6 or the accident occurred, or, if the hearing was not conducted by
7 telephone conference call, the county where the administrative
8 proceeding was held. The action for review shall be by trial de
9 novo to the court and the evidentiary restrictions of subsection ~~(j)~~
10 *(k)* shall not apply to the trial de novo. The court shall take testi-
11 mony, examine the facts of the case and determine whether the
12 petitioner is entitled to driving privileges or whether the peti-
13 tioner's driving privileges are subject to suspension or suspension
14 and restriction under the provisions of this act. If the court finds
15 that the grounds for action by the agency have been met, the court
16 shall affirm the agency action.

17 ~~(j)~~ *(p)* Upon review, the licensee shall have the burden to show
18 that the decision of the agency should be set aside.

19 ~~(k)~~ *(q)* Notwithstanding the requirement to issue a temporary li-
20 cense in K.S.A. 8-1002, and amendments thereto, and the requirements
21 to extend the temporary license *driving privileges* in this section, any
22 such temporary driving privileges are subject to restriction, suspen-
23 sion, revocation or cancellation as provided in K.S.A. 8-1014, and
24 amendments thereto, or for other cause.

25 ~~(l)~~ *(r)* Upon motion by a party, or on the court's own motion,
26 the court may enter an order restricting *or suspending* the driving
27 privileges allowed by the temporary license provided for in K.S.A. 8-
28 1002, and amendments thereto, and in this section. The temporary li-
29 cense also shall be subject to restriction, suspension, revocation or can-
30 cellation, as set out in K.S.A. 8-1014, and amendments thereto, or for
31 other cause.

32 ~~(m)~~ *(s)* The facts found by the hearing officer or by the district
33 court upon a petition for review shall be independent of the de-
34 termination of the same or similar facts in the adjudication of any
35 criminal charges arising out of the same occurrence. The disposi-
36 tion of those criminal charges shall not affect the suspension or
37 suspension and restriction to be imposed under this section.

38 ~~(n)~~ *(t)* All notices affirming or canceling a suspension under this
39 section; *and* all notices of a hearing held under this section and all
40 issuances of temporary driving privileges pursuant to this section shall
41 be sent by first-class mail and a United States post office certificate
42 of mailing shall be obtained therefor. All notices so mailed shall
43 be deemed received three days after mailing, except that this pro-

1 vision shall not apply to any licensee where such application would
2 result in a manifest injustice.

3 ~~(v)~~ (u) The provisions of K.S.A. 60-206, and amendments
4 thereto, regarding the computation of time shall not be applicable
5 in determining the time for requesting an administrative hearing
6 as set out in subsection (a) but shall apply to the time for filing a
7 petition for review pursuant to subsection ~~(o)~~ (n) and K.S.A. 8-259,
8 and amendments thereto. “Calendar day” shall mean that every
9 day shall be included in computations of time whether a weekday,
10 Saturday, Sunday or holiday.

11 Sec. 4. K.S.A. 40-3104 is hereby amended to read as follows:
12 40-3104. (a) Every owner shall provide motor vehicle liability in-
13 surance coverage in accordance with the provisions of this act for
14 every motor vehicle owned by such person, unless such motor ve-
15 hicle: (1) Is included under an approved self-insurance plan as pro-
16 vided in subsection (f); (2) is used as a driver training motor ve-
17 hicle, as defined in K.S.A. 72-5015, and amendments thereto, in an
18 approved driver training course by a school district or an accred-
19 ited nonpublic school under an agreement with a motor vehicle
20 dealer, and such motor vehicle liability insurance coverage is pro-
21 vided by the school district or accredited nonpublic school; (3) is
22 included under a qualified plan of self-insurance approved by an
23 agency of the state in which such motor vehicle is registered and
24 the form prescribed in subsection (b) of K.S.A. 40-3106, and
25 amendments thereto, has been filed; or (4) is expressly exempted
26 from the provisions of this act.

27 (b) An owner of an uninsured motor vehicle shall not permit
28 the operation thereof upon a highway or upon property open to
29 use by the public, unless such motor vehicle is expressly exempted
30 from the provisions of this act.

31 (c) No person shall knowingly drive an uninsured motor vehi-
32 cle upon a highway or upon property open to use by the public,
33 unless such motor vehicle is expressly exempted from the provi-
34 sions of this act.

35 (d) Any person operating a motor vehicle upon a highway or
36 upon property open to use by the public shall display, upon de-
37 mand, evidence of financial security to a law enforcement officer.
38 The law enforcement officer shall issue a citation to any person
39 who fails to display evidence of financial security upon such de-
40 mand. The law enforcement officer shall attach a copy of the in-
41 surance verification form prescribed by the secretary of revenue
42 to the copy of the citation forwarded to the court.

43 No citation shall be issued to any person for failure to provide

1 proof of financial security when evidence of financial security
2 meeting the standards of subsection (e) is displayed upon demand
3 of a law enforcement officer. Whenever the authenticity of such
4 evidence is questionable, the law enforcement officer may initiate
5 the preparation of the insurance verification form prescribed by
6 the secretary of revenue by recording information from the evi-
7 dence of financial security displayed. The officer shall immediately
8 forward the form to the department of revenue, and the depart-
9 ment shall proceed with verification in the manner prescribed in
10 the following paragraph. Upon return of a form indicating that
11 insurance was not in force on the date indicated on the form, the
12 department shall immediately forward a copy of the form to the
13 law enforcement officer initiating preparation of the form.

14 (e) Unless the insurance company subsequently submits an in-
15 surance verification form indicating that insurance was not in
16 force, no person charged with violating subsections (b), (c) or (d)
17 shall be convicted if such person produces in court, within 10 days
18 of the date of arrest or of issuance of the citation, evidence of
19 financial security for the motor vehicle operated, which was valid
20 at the time of arrest or of issuance of the citation. For the purpose
21 of this subsection, evidence of financial security shall be provided
22 by a policy of motor vehicle liability insurance, an identification
23 card or certificate of insurance issued to the policyholder by the
24 insurer which provides the name of the insurer, the policy number
25 and the effective and expiration dates of the policy, or a certificate
26 of self-insurance signed by the commissioner of insurance. Upon
27 the production in court of evidence of financial security, the court
28 shall record the information displayed thereon on the insurance
29 verification form prescribed by the secretary of revenue, imme-
30 diately forward such form to the department of revenue, and stay
31 any further proceedings on the matter pending a request from the
32 prosecuting attorney that the matter be set for trial. Upon receipt
33 of such form the department shall mail the form to the named
34 insurance company for verification that insurance was in force on
35 the date indicated on the form. It shall be the duty of insurance
36 companies to notify the department within 30 calendar days of the
37 receipt of such forms of any insurance that was not in force on the
38 date specified. Upon return of any form to the department indi-
39 cating that insurance was not in force on such date, the department
40 shall immediately forward a copy of such form to the office of the
41 prosecuting attorney or the city clerk of the municipality in which
42 such prosecution is pending when the prosecuting attorney is not
43 ascertainable. Receipt of any completed form indicating that in-

1 surance was not in effect on the date specified shall be prima facie
2 evidence of failure to provide proof of financial security and vio-
3 lation of this section. A request that the matter be set for trial shall
4 be made immediately following the receipt by the prosecuting at-
5 torney of a copy of the form from the department of revenue in-
6 dicating that insurance was not in force. Any charge of violating
7 subsection (b), (c) or (d) shall be dismissed if no request for a trial
8 setting has been made within 60 days of the date evidence of fi-
9 nancial security was produced in court.

10 (f) Any person in whose name more than 25 motor vehicles are
11 registered in Kansas may qualify as a self-insurer by obtaining a
12 certificate of self-insurance from the commissioner of insurance.
13 The certificate of self-insurance issued by the commissioner shall
14 cover such owned vehicles and those vehicles, registered in Kan-
15 sas, leased to such person if the lease agreement requires that
16 motor vehicle liability insurance on the vehicles be provided by
17 the lessee. Upon application of any such person, the commissioner
18 of insurance may issue a certificate of self-insurance, if the com-
19 missioner is satisfied that such person is possessed and will con-
20 tinue to be possessed of ability to pay any liability imposed by law
21 against such person arising out of the ownership, operation, main-
22 tenance or use of any motor vehicle described in this subsection.
23 A self-insurer shall provide liability coverage subject to the pro-
24 visions of subsection (e) of K.S.A. 40-3107, and amendments
25 thereto, arising out of the ownership, operation, maintenance or
26 use of a self-insured motor vehicle in those instances where the
27 lessee or the rental driver, if not the lessee, does not have a motor
28 vehicle liability insurance policy or insurance coverage pursuant
29 to a motor vehicle liability insurance policy or certificate of insur-
30 ance or such insurance policy for such leased or rented vehicle.
31 Such liability coverage shall be provided to any person operating
32 a self-insured motor vehicle with the expressed or implied consent
33 of the self-insurer.

34 Upon notice and a hearing in accordance with the provisions of
35 the Kansas administrative procedure act, the commissioner of in-
36 surance may cancel a certificate of self-insurance upon reasonable
37 grounds. Failure to provide liability coverage or personal injury
38 protection benefits required by K.S.A. 40-3107 and 40-3109, and
39 amendments thereto, or pay any liability imposed by law arising
40 out of the ownership, operation, maintenance or use of a motor
41 vehicle registered in such self-insurer's name, or to otherwise com-
42 ply with the requirements of this subsection shall constitute rea-
43 sonable grounds for the cancellation of a certificate of self-insur-

1 **ance. Reasonable grounds shall not exist unless such objectionable**
2 **activity occurs with such frequency as to indicate a general busi-**
3 **ness practice.**

4 **Self-insureds shall investigate claims in a reasonably prompt**
5 **manner, handle such claims in a reasonable manner based on**
6 **available information and effectuate prompt, fair and equitable**
7 **settlement of claims in which liability has become reasonably clear.**

8 **As used in this subsection, “liability imposed by law” means the**
9 **stated limits of liability as provided under subsection (e) of K.S.A.**
10 **40-3107, and amendments thereto.**

11 **Nothing in this subsection shall preclude a self-insurer from pur-**
12 **suing all rights of subrogation against another person or persons.**

13 **(g) (1) Any person violating any provision of this section shall**
14 **be guilty of a class B misdemeanor and shall be subject to a fine**
15 **of not less than \$300 nor more than \$1,000 or confinement in the**
16 **county jail for a term of not more than six months, or both such**
17 **fine and confinement.**

18 **(2) Any person convicted of violating any provision of this sec-**
19 **tion within three years of any such prior conviction shall be guilty**
20 **of a class A misdemeanor and shall be subject to a fine of not less**
21 **than \$800 nor more than \$2,500.**

22 **(h) In addition to any other penalties provided by this act for**
23 **failure to have or maintain financial security in effect, the director,**
24 **upon receipt of a report required by K.S.A. 8-1607 or 8-1611, and**
25 **amendments thereto, or a denial of such insurance by the insur-**
26 **ance company listed on the form prescribed by the secretary of**
27 **revenue pursuant to subsection (d) of this section, shall, upon no-**
28 **tice and hearing as provided by K.S.A. 40-3118, and amendments**
29 **thereto:**

30 **(1) Suspend:**

31 **(A) The license of each driver in any manner involved in the**
32 **accident;**

33 **(B) the license of the owner of each motor vehicle involved in**
34 **such accident, unless the vehicle was stolen at the time of the ac-**
35 **cident, proof of which must be established by the owner of the**
36 **motor vehicle. Theft by a member of the vehicle owner’s imme-**
37 **diate family under the age of 18 years shall not constitute a stolen**
38 **vehicle for the purposes of this section;**

39 **(C) if the driver is a nonresident, the privilege of operating a**
40 **motor vehicle within this state; or**

41 **(D) if such owner is a nonresident, the privilege of such owner**
42 **to operate or permit the operation within this state of any motor**
43 **vehicle owned by such owner; and**

1 (2) revoke the registration of all vehicles owned by the owner
2 of each motor vehicle involved in such accident.

3 (i) The suspension or revocation requirements in subsection
4 (h) shall not apply:

5 (1) To the driver or owner if the owner had in effect at the time
6 of the accident an automobile liability policy as required by K.S.A.
7 40-3107, and amendments thereto, with respect to the vehicle in-
8 volved in the accident;

9 (2) to the driver, if not the owner of the vehicle involved in the
10 accident, if there was in effect at the time of the accident an au-
11 tomobile liability policy with respect to such driver's driving of
12 vehicles not owned by such driver;

13 (3) to any self-insurer as defined by subsection (u) of K.S.A. 40-
14 3103, and amendments thereto;

15 (4) to the driver or owner of any vehicle involved in the acci-
16 dent which was exempt from the provisions of this act pursuant to
17 K.S.A. 40-3105, and amendments thereto;

18 (5) to the owner of a vehicle described in subsection (a)(2).

19 (j) For the purposes of provisions (1) and (2) of subsection (i)
20 of this section, the director may require verification by an owner's
21 or driver's insurance company or agent thereof that there was in
22 effect at the time of the accident an automobile liability policy as
23 required in this act.

24 Any suspension or revocation effected hereunder shall remain
25 in effect until:

26 (1) Satisfactory proof of financial security has been filed with
27 the director as required by subsection (d) of K.S.A. 40-3118, and
28 amendments thereto; ~~and;~~

29 (2) *the reinstatement fee herein prescribed has been paid; and*

30 (3) **such person:**

31 (A) **Has been released from liability or is a party to an action**
32 **to determine liability pursuant to which the court temporarily stays**
33 **such suspension pending final disposition of such action;**

34 (B) **has entered into an agreement for the payment of damages;**
35 ~~or;~~

36 (C) **has been finally adjudicated not to be liable in respect to**
37 **such accident and evidence of any such fact has been filed with the**
38 **director and has paid the reinstatement fee herein prescribed; or**

39 (D) *the other party to the accident cannot be located as evidenced by*
40 *providing the original or copy of a returned certified, receipt requested*
41 *card that had been sent through the United States post office to the last*
42 *known address as shown on the accident report or otherwise provided*
43 *and such card has not been returned marked refused, to the division.*

1 ~~Such~~ *The* reinstatement fee shall be \$100 except that if the reg-
2 istration of a motor vehicle of any owner is revoked within one
3 year following a prior revocation of the registration of a motor
4 vehicle of such owner under the provisions of this act such fee shall
5 be \$300.

6 (k) The provisions of this section shall not apply to motor car-
7 riers of property or passengers regulated by the corporation com-
8 mission of the state of Kansas.

9 (l) The provisions of subsection (d) shall not apply to vehicle
10 dealers, as defined in K.S.A. 8-2401, and amendments thereto, for
11 vehicles being offered for sale by such dealers.

12 Sec. ~~2~~ 5. K.S.A. 8-285 ~~is~~, 8-1002, 8-1020 and 40-3104 hereby
13 repealed.

14 Sec. ~~3~~ 6. This act shall take effect and be in force from and after its
15 publication in the ~~statute book~~ *Kansas register*.

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