

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2008

SENATE BILL No. 615

By Senators Umbarger and Vratil

2-13

12 AN ACT amending the Kansas automobile injury reparations act; con-
13 cerning failure to maintain financial security; amending K.S.A. 2007
14 Supp. 8-1021 and 40-3104 and repealing the existing sections.
15

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

17 Section 1. K.S.A. 2007 Supp. 8-1021 is hereby amended to read as
18 follows: 8-1021. If the owner of a motor vehicle which has been im-
19 poundment pursuant to K.S.A. 8-1567 or 40-3104 or K.S.A. 2007 Supp. 8-
20 1022, and amendments thereto, refuses to pay any towing, impoundment,
21 storage or other fees relating to the impoundment or immobilization of
22 such vehicle or fails to take possession of such vehicle within 30 days
23 following the date of the expiration of the impoundment period, such
24 vehicle shall be deemed abandoned and the vehicle may be disposed of
25 by the person having possession of such vehicle. If the person having
26 possession of such vehicle is a public agency, disposition of such vehicle
27 shall be in compliance with the procedures for notice and public auction
28 provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amend-
29 ments thereto. If the person having possession of such vehicle is not a
30 public agency, disposition of such vehicle shall be in compliance with
31 K.S.A. 8-1103 through 8-1108, and amendments thereto.

32 Sec. 2. K.S.A. 2007 Supp. 40-3104 is hereby amended to read as
33 follows: 40-3104. (a) Every owner shall provide motor vehicle liability
34 insurance coverage in accordance with the provisions of this act for every
35 motor vehicle owned by such person, unless such motor vehicle: (1) Is
36 included under an approved self-insurance plan as provided in subsection
37 (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-
38 5015, and amendments thereto, in an approved driver training course by
39 a school district or an accredited nonpublic school under an agreement
40 with a motor vehicle dealer, and such motor vehicle liability insurance
41 coverage is provided by the school district or accredited nonpublic school;
42 (3) is included under a qualified plan of self-insurance approved by an
43 agency of the state in which such motor vehicle is registered and the form

1 prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto,
2 has been filed; or (4) is expressly exempted from the provisions of this
3 act.

4 (b) An owner of an uninsured motor vehicle shall not permit the
5 operation thereof upon a highway or upon property open to use by the
6 public, unless such motor vehicle is expressly exempted from the provi-
7 sions of this act.

8 (c) No person shall knowingly drive an uninsured motor vehicle upon
9 a highway or upon property open to use by the public, unless such motor
10 vehicle is expressly exempted from the provisions of this act.

11 (d) Any person operating a motor vehicle upon a highway or upon
12 property open to use by the public shall display, upon demand, evidence
13 of financial security to a law enforcement officer. The law enforcement
14 officer shall issue a citation to any person who fails to display evidence of
15 financial security upon such demand. The law enforcement officer shall
16 attach a copy of the insurance verification form prescribed by the secre-
17 tary of revenue to the copy of the citation forwarded to the court.

18 No citation shall be issued to any person for failure to provide proof of
19 financial security when evidence of financial security meeting the stan-
20 dards of subsection (e) is displayed upon demand of a law enforcement
21 officer. Whenever the authenticity of such evidence is questionable, the
22 law enforcement officer may initiate the preparation of the insurance
23 verification form prescribed by the secretary of revenue by recording
24 information from the evidence of financial security displayed. The officer
25 shall immediately forward the form to the department of revenue, and
26 the department shall proceed with verification in the manner prescribed
27 in the following paragraph. Upon return of a form indicating that insur-
28 ance was not in force on the date indicated on the form, the department
29 shall immediately forward a copy of the form to the law enforcement
30 officer initiating preparation of the form.

31 (e) Unless the insurance company subsequently submits an insurance
32 verification form indicating that insurance was not in force, no person
33 charged with violating subsections (b), (c) or (d) shall be convicted if such
34 person produces in court, within 10 days of the date of arrest or of issu-
35 ance of the citation, evidence of financial security for the motor vehicle
36 operated, which was valid at the time of arrest or of issuance of the ci-
37 tation. For the purpose of this subsection, evidence of financial security
38 shall be provided by a policy of motor vehicle liability insurance, an iden-
39 tification card or certificate of insurance issued to the policyholder by the
40 insurer which provides the name of the insurer, the policy number and
41 the effective and expiration dates of the policy, or a certificate of self-
42 insurance signed by the commissioner of insurance. Upon the production
43 in court of evidence of financial security, the court shall record the in-

1 formation displayed thereon on the insurance verification form prescribed
2 by the secretary of revenue, immediately forward such form to the de-
3 partment of revenue, and stay any further proceedings on the matter
4 pending a request from the prosecuting attorney *[or defense attorney]*
5 that the matter be set for trial. Upon receipt of such form the department
6 shall mail the form to the named insurance company for verification that
7 insurance was in force on the date indicated on the form. It shall be the
8 duty of insurance companies to notify the department within 30 calendar
9 days of the receipt of such forms of any insurance that was not in force
10 on the date specified. Upon return of any form to the department indi-
11 cating that insurance was not in force on such date, the department shall
12 immediately forward a copy of such form to the office of the prosecuting
13 attorney or the city clerk of the municipality in which such prosecution
14 is pending when the prosecuting attorney is not ascertainable *[and shall*
15 *deliver a certified copy to any defense attorney]*. Receipt of any com-
16 pleted form indicating that insurance was not in effect on the date spec-
17 ified shall be prima facie evidence of failure to provide proof of financial
18 security and violation of this section. A request that the matter be set for
19 trial shall be made immediately following the receipt by the prosecuting
20 attorney of a copy of the form from the department of revenue indicating
21 that insurance was not in force. Any charge of violating subsection (b),
22 (c) or (d) shall be dismissed if no request for a trial setting has been made
23 within 60 days of the date evidence of financial security was produced in
24 court.

25 (f) Any person in whose name more than 25 motor vehicles are reg-
26 istered in Kansas may qualify as a self-insurer by obtaining a certificate
27 of self-insurance from the commissioner of insurance. The certificate of
28 self-insurance issued by the commissioner shall cover such owned vehi-
29 cles and those vehicles, registered in Kansas, leased to such person if the
30 lease agreement requires that motor vehicle liability insurance on the
31 vehicles be provided by the lessee. Upon application of any such person,
32 the commissioner of insurance may issue a certificate of self-insurance,
33 if the commissioner is satisfied that such person is possessed and will
34 continue to be possessed of ability to pay any liability imposed by law
35 against such person arising out of the ownership, operation, maintenance
36 or use of any motor vehicle described in this subsection. A self-insurer
37 shall provide liability coverage subject to the provisions of subsection (e)
38 of K.S.A. 40-3107, and amendments thereto, arising out of the ownership,
39 operation, maintenance or use of a self-insured motor vehicle in those
40 instances where the lessee or the rental driver, if not the lessee, does not
41 have a motor vehicle liability insurance policy or insurance coverage pur-
42 suant to a motor vehicle liability insurance policy or certificate of insur-
43 ance or such insurance policy for such leased or rented vehicle. Such

1 liability coverage shall be provided to any person operating a self-insured
2 motor vehicle with the expressed or implied consent of the self-insurer.

3 Upon notice and a hearing in accordance with the provisions of the
4 Kansas administrative procedure act, the commissioner of insurance may
5 cancel a certificate of self-insurance upon reasonable grounds. Failure to
6 provide liability coverage or personal injury protection benefits required
7 by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any
8 liability imposed by law arising out of the ownership, operation, mainte-
9 nance or use of a motor vehicle registered in such self-insurer's name, or
10 to otherwise comply with the requirements of this subsection shall con-
11 stitute reasonable grounds for the cancellation of a certificate of self-
12 insurance. Reasonable grounds shall not exist unless such objectionable
13 activity occurs with such frequency as to indicate a general business
14 practice.

15 Self-insureds shall investigate claims in a reasonably prompt manner,
16 handle such claims in a reasonable manner based on available information
17 and effectuate prompt, fair and equitable settlement of claims in which
18 liability has become reasonably clear.

19 As used in this subsection, "liability imposed by law" means the stated
20 limits of liability as provided under subsection (e) of K.S.A. 40-3107, and
21 amendments thereto.

22 Nothing in this subsection shall preclude a self-insurer from pursuing
23 all rights of subrogation against another person or persons.

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

28 (2) Any person convicted of violating any provision of this section
29 within three years of any such prior conviction shall be guilty of a class A
30 misdemeanor and shall be subject to a fine of not less than \$800 nor more
31 than \$2,500.

32 (h) In addition to any other penalties provided by this act for failure
33 to have or maintain financial security in effect, the director, upon receipt
34 of a report required by K.S.A. 8-1607 or 8-1611, and amendments
35 thereto, or a denial of such insurance by the insurance company listed on
36 the form prescribed by the secretary of revenue pursuant to subsection
37 (d) of this section, shall, upon notice and hearing as provided by K.S.A.
38 40-3118, and amendments thereto:

39 (1) Suspend:

40 (A) The license of each driver in any manner involved in the accident;

41 (B) the license of the owner of each motor vehicle involved in such
42 accident, unless the vehicle was stolen at the time of the accident, proof
43 of which must be established by the owner of the motor vehicle. Theft

- 1 by a member of the vehicle owner's immediate family under the age of
2 18 years shall not constitute a stolen vehicle for the purposes of this
3 section;
- 4 (C) if the driver is a nonresident, the privilege of operating a motor
5 vehicle within this state; or
- 6 (D) if such owner is a nonresident, the privilege of such owner to
7 operate or permit the operation within this state of any motor vehicle
8 owned by such owner; and
- 9 (2) revoke the registration of all vehicles owned by the owner of each
10 motor vehicle involved in such accident.
- 11 (i) The suspension or revocation requirements in subsection (h) shall
12 not apply:
- 13 (1) To the driver or owner if the owner had in effect at the time of
14 the accident an automobile liability policy as required by K.S.A. 40-3107,
15 and amendments thereto, with respect to the vehicle involved in the
16 accident;
- 17 (2) to the driver, if not the owner of the vehicle involved in the ac-
18 cident, if there was in effect at the time of the accident an automobile
19 liability policy with respect to such driver's driving of vehicles not owned
20 by such driver;
- 21 (3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103,
22 and amendments thereto;
- 23 (4) to the driver or owner of any vehicle involved in the accident
24 which was exempt from the provisions of this act pursuant to K.S.A. 40-
25 3105, and amendments thereto;
- 26 (5) to the owner of a vehicle described in subsection (a)(2).
- 27 (j) (1) For the purposes of provisions (1) and (2) of subsection (i) of
28 this section, the director may require verification by an owner's or driver's
29 insurance company or agent thereof that there was in effect at the time
30 of the accident an automobile liability policy as required in this act.
- 31 (2) Subject to the provisions of subsection (k), any suspension or rev-
32 ocation effected hereunder shall remain in effect until such person:
- 33 (A) Has filed satisfactory proof of financial security with the director
34 as required by subsection (d) of K.S.A. 40-3118, and amendments thereto;
- 35 (B) has paid the reinstatement fee herein prescribed; and
- 36 (C) (i) has been released from liability;
- 37 (ii) is a party to an action to determine liability pursuant to which the
38 court temporarily stays such suspension pending final disposition of such
39 action;
- 40 (iii) has entered into an agreement for the payment of damages; or
- 41 (iv) has been finally adjudicated not to be liable in respect to such
42 accident and evidence of any such fact has been filed with the director.
- 43 (3) The reinstatement fee shall be \$100 except that if the registration

1 of a motor vehicle of any owner is revoked within one year following a
2 prior revocation of the registration of a motor vehicle of such owner under
3 the provisions of this act such fee shall be \$300.

4 (k) (1) Whenever any person whose license has been suspended or
5 revoked pursuant to this section is involved in an accident and has entered
6 into an agreement with any driver, or such driver's insurer, who has been
7 damaged or whose vehicle has been damaged to pay for such damage and
8 such person defaults on payments under such agreement, the driver or
9 the driver's insurer, as appropriate, shall notify the director within 60 days
10 of the date of default.

11 (2) Upon receipt of the notice of default, the director shall immedi-
12 ately suspend such person's license and registration. If such person is a
13 nonresident, the director shall immediately suspend such nonresident's
14 privilege to operate a motor vehicle in this state.

15 (3) Except as provided in paragraph (4), such person's driver's li-
16 cense, registration and nonresident's operating privilege shall remain so
17 suspended and shall not be renewed, nor shall any such license or reg-
18 istration be thereafter issued in the name of such person, including any
19 such person not previously licensed, unless and until:

20 (A) The director receives notice payments under the agreement refer-
21 red to in paragraph (1) have been resumed and that payments under
22 such agreement are no longer in default;

23 (B) such person has filed satisfactory proof of financial responsibility
24 with the director as required by subsection (d) of K.S.A. 40-3118 and
25 amendments thereto; and

26 (C) the reinstatement fee required by subsection (j) has been paid.

27 (4) Upon due notice to the director that the conditions of paragraph
28 (3) have been fulfilled, such person may obtain from the director an order
29 restoring such person's driver's license, registration and nonresident's op-
30 erating privilege to operate a motor vehicle in this state conditioned upon
31 such person's continued compliance with the agreement referred to in
32 paragraph (1).

33 (5) In the event such person fails to make any further payment under
34 the agreement referred to in paragraph (1) when such payment is due,
35 the director, upon receipt of notice of such default, shall immediately
36 suspend the license, registration or nonresident's operating privilege of
37 such person until all payments have been made under the agreement
38 referred to in paragraph (1). No suspension of such person's license, reg-
39 istration or nonresident's privilege to operate a motor vehicle in this state
40 shall be reinstated pursuant to paragraph (4).

41 ***[(6) Notwithstanding any other provision under this section, if***
42 ***a person has entered into an agreement under this section, all crim-***
43 ***inal proceedings shall be stayed and shall be dismissed upon the***

- 1 **completion of such agreement. Any agreement under this paragraph**
2 **shall be completed in not more than 12 months. If such person fails**
3 **to complete such agreement criminal charges shall be reinstated.]**
- 4 (l) (1) Except as provided in paragraph (5), in addition to any other
5 penalty which may be imposed by this act for failure to have or maintain
6 financial security, the court may order that the convicted person's motor
7 vehicle be impounded or immobilized for a period not to exceed 30 days
8 and that the convicted person pay all towing, impoundment and storage
9 fees or other immobilization costs.
- 10 (2) Prior to ordering the impoundment or immobilization of a motor
11 vehicle owned by a person convicted of a violation of this section, the
12 court shall consider, but not be limited to, the following:
- 13 (A) Whether the impoundment or immobilization of the motor vehicle
14 would result in the loss of employment by the convicted person or a mem-
15 ber of such person's family; and
- 16 (B) whether the ability of the convicted person or a member of such
17 person's family to attend school or obtain medical care would be impaired.
- 18 (3) Any personal property in a vehicle impounded or immobilized
19 pursuant to this subsection may be retrieved prior to or during the period
20 of such impoundment or immobilization.
- 21 (4) As used in this subsection, the convicted person's motor vehicle
22 shall include any vehicle leased by such person. If the lease on the con-
23 victed person's motor vehicle subject to impoundment or immobilization
24 expires in less than 30 days from the date of the impoundment or im-
25 mobilization, the time of impoundment or immobilization of such vehicle
26 shall be the amount of time remaining on the lease.
- 27 (m) [(1)] The owner of a motor vehicle shall not recover the first
28 \$5,000 of property damage to such owner's motor vehicle, if the owner
29 has failed to have or to maintain financial security on such motor vehicle
30 and is involved in an accident with a motor vehicle which has in effect
31 financial security, even if such accident was the fault of the driver of the
32 motor vehicle having financial security in effect. **Nothing in this section**
33 **shall prevent any holder of a perfected security interest from re-**
34 **covering for any property damage to a motor vehicle.**
- 35 [(2) Any moneys not paid by insurance companies under this
36 subsection shall be paid to the attorney general, who shall credit
37 such moneys received to the crime victims compensation fund.]
- 38 (n) The provisions of this section shall not apply to motor carriers
39 of property or passengers regulated by the corporation commission of the
40 state of Kansas.
- 41 (o) The provisions of subsection (d) shall not apply to vehicle
42 dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehi-
43 cles being offered for sale by such dealers.

- 1 Sec. 3. K.S.A. 2007 Supp. 8-1021 and 40-3104 are hereby repealed.
- 2 Sec. 4. This act shall take effect and be in force from and after its
- 3 publication in the statute book.