

CHAPTER 31
HOUSE BILL No. 2215

AN ACT relating to commercial driver's licenses; creating the hazmat fee fund; amending K.S.A. 8-259 and K.S.A. 2004 Supp. 8-267, 8-2,142, and 8-2,151 and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 8-267 is hereby amended to read as follows: 8-267. All moneys received under this act shall be remitted by the secretary of revenue 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 and shall:

(a) Credit 37.5% of all moneys so received from class C driver's licenses and 20% of all moneys so received from class M driver's licenses and 20% of all moneys so received from class A or B driver's licenses and 20% of all moneys so received from all commercial driver licensee classes remaining after the \$2 credit provided in subsection (c) to a special fund, which is hereby created and shall be known as the state safety fund;

(b) credit 20% of all moneys so received from class M driver's licenses to a special fund which is hereby created and shall be known as the motorcycle safety fund;

(c) credit \$2 from each commercial driver's license fee to a special fund which is hereby created and shall be known as the truck driver training fund; ~~and~~

(d) credit all photo fees collected under K.S.A. 8-243, and amendments thereto, to the photo fee fund; *and*

(e) *credit all hazardous materials endorsement fees collected under K.S.A. 2004 Supp. 8-2,151, and amendments thereto, to the hazmat fee fund.*

Moneys in the state safety fund and in the motorcycle safety fund shall be distributed to provide funds for driver training courses in the schools in Kansas and for the administration of this act, as the legislature shall provide. In addition, moneys in the motorcycle safety fund shall be distributed to provide funds for courses in motorcycle safety in community colleges in Kansas. Moneys in the truck driver training fund shall be distributed to provide funds for courses in truck driver training in community colleges, area vocational schools and area vocational-technical schools in Kansas. Except as otherwise provided by K.S.A. 8-241, and amendments thereto, the state treasurer shall credit the balance of all moneys received under this act, including all moneys received from commercial driver's license endorsements to the state highway fund.

Sec. 2. K.S.A. 2004 Supp. 8-2,151 is hereby amended to read as follows: 8-2,151. (a) Beginning July 1, 2004, or upon final determination by the transportation security administration of the date for implementation of the requirements of 49 C.F.R. 1572, whichever is later, the division shall not issue, renew, upgrade or transfer a hazardous materials endorsement for a commercial driver's license to any person authorizing that person to operate a commercial motor vehicle transporting a hazardous material in commerce unless the individual complies with the requirements of 49 C.F.R. 1572.

(b) At least ~~180~~ 60 days before the expiration date of a commercial driver's license or hazardous materials endorsement, the division shall notify the holder of a hazardous materials endorsement that the person must pass a transportation security administration security screening process, 49 C.F.R. 1572, as part of any application for renewal of the hazardous materials endorsement. The notice must advise the person that, in order to expedite the security screening process, the person should file a renewal application as soon as possible, but not later than ~~90~~ 30 days before the date of expiration of the endorsement. Any person who does not successfully complete the security screening process, shall not be issued a hazardous materials endorsement.

(c) An individual must submit fingerprints, in a form and manner specified by the division, when such individual applies to obtain, renew or transfer a hazardous materials endorsement for a commercial driver's license. A fee not to exceed \$100 shall be charged to such individual for collecting the fingerprints and generating the individual's criminal history.

(d) *There is hereby created in the state treasury the hazmat fee fund. All moneys credited to the hazmat fee fund shall be used by the department of revenue only for the purpose of funding the collecting of fingerprints and the generating of the criminal history of individuals applying for the hazardous materials endorsement for a commercial driver's license. All expenditures from the hazmat fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of revenue.*

~~(d)~~ (e) The ~~divisions~~ division shall revoke a person's hazardous materials endorsement if the person does not meet the standards for security threat assessment under 49 C.F.R. 1572.

~~(e)~~ (f) For the purpose of this section "revoke" means the process by which the division cancels, suspends, withdraws, annuls or disqualifies a hazardous material endorsement.

~~(f)~~ (g) The provisions of this section shall be a part of and supplemental to the Kansas uniform commercial drivers' license act.

Sec. 3. K.S.A. 8-259 is hereby amended to read as follows: 8-259. (a) Except in the case of mandatory revocation under K.S.A. 8-254 or 8-286, and amendments thereto, mandatory suspension for an alcohol or drug-related conviction under subsection (b) of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under subsection ~~(a)(1), (2) or (3)~~ (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(2)(A), (a)(3)(A) or (a)(3)(B) of K.S.A. 8-2,142, and amendments thereto, the cancellation, suspension, revocation, disqualification or denial of a person's driving privileges by the division is subject to review. Such review shall be in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 et seq., and amendments thereto, or of an order of disqualification under subsection ~~(a)(4)~~ (a)(1)(D) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held or the county where the person was arrested. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial *de novo* to the court. 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, cancellation or revocation under the provisions of this act. *Unless the petitioner's driving privileges have been extended pursuant to subsection (o) of K.S.A. 8-1020, and amendments thereto, the court on review shall consider the petitioner's traffic violations record and liability insurance coverage before granting* ~~may grant~~ a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto, *after considering the petitioner's traffic violations record and liability insurance coverage.* If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon 20 days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section, within 10 days after the final disposition of such appeal, shall forward a notification of the final disposition to the division.

Sec. 4. K.S.A. 2004 Supp. 8-2,142 is hereby amended to read as follows: 8-2,142. (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year upon a first occurrence of any one of the following:

(1) While operating a commercial motor vehicle:

(A) The person is convicted of violating K.S.A. 8-2,144, and amendments thereto;

(B) the person is convicted of violating subsection (b) of K.S.A. 8-2,132, and amendments thereto;

(C) the person ~~has caused~~ *is convicted of causing* a fatality through the negligent operation of a commercial motor vehicle; or

(D) the person's test refusal or test failure, as defined in subsection ~~(k)~~ (l); or

(2) while operating a noncommercial motor vehicle:

(A) The person is convicted of a violation of K.S.A. 8-1567, and amendments thereto; or

(B) the person's test refusal or test failure, as defined in K.S.A. 8-1013, and amendments thereto; or

(3) while operating any motor vehicle:

(A) The person is convicted of leaving the scene of an accident; or

(B) the person is convicted of a felony, other than a felony described in subsection (e), while using a motor vehicle to commit such felony.

(b) If any offenses, test refusal or test failure specified in subsection (a) occurred in a commercial motor vehicle while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(c) A person shall be disqualified for life upon the second or a subsequent occurrence of any offense, test refusal or test failure specified in subsection (a), or any combination thereof, arising from two or more separate incidents.

(d) The secretary of revenue may adopt rules and regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) may be reduced to a period of not less than 10 years.

(e) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle or noncommercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(f) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(g) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a noncommercial motor vehicle arising from separate incidents occurring within a three-year period, if such convictions result in the revocation, cancellation or suspension of the person's driving privileges.

(h) (1) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order shall be disqualified from driving a commercial motor vehicle for a period of not less than:

(A) Ninety days nor more than one year, if the driver is convicted of a first violation of an out-of-service order;

(B) one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; or

(C) three years nor more than five years if, during any 10-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

(2) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order while transporting a hazardous material required to be placarded under 49 U.S.C. 5101 *et seq.* or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, shall be disqualified from driving a commercial motor vehicle for a period of not less than:

(A) One hundred and eighty days nor more than two years if the driver is convicted of a first violation of an out-of-service order; or

(B) three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders in separate incidents.

(i) (1) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing shall be disqualified from driving a commercial motor vehicle for the period of time specified in paragraph (2):

(A) For persons who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(B) for persons who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(C) for persons who are always required to stop, failing to stop before driving onto the crossing;

(D) for all persons failing to have sufficient space to drive completely through the crossing without stopping;

(E) for all persons failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(F) for all persons failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) A driver shall be disqualified from driving a commercial motor vehicle for not less than:

(A) Sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation;

(B) one hundred and twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents; or

(C) one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(j) After suspending, revoking or canceling a commercial driver's license, the division shall update its records to reflect that action within 10 days. After suspending, revoking or canceling a nonresident commercial driver's privileges, the division shall notify the licensing authority of the state which issued the commercial driver's license or nonresident commercial driver's license within 10 days.

(k) Upon suspension, revocation, cancellation or disqualification of a commercial driver's license under this act, the license shall be immediately surrendered to the division if still in the licensee's possession. If otherwise eligible, and upon payment of the required fees, the licensee may be issued a noncommercial driver's license for the period of suspension, revocation, cancellation or disqualification of the commercial driver's license under the same identifier number.

(l) As used in this section, "test refusal" means a person's refusal to submit to and complete a test requested pursuant to K.S.A. 8-2,145, and amendments thereto; "test failure" means a person's submission to and completion of a test which determines that the person's alcohol concentration is .04 or greater, pursuant to K.S.A. 8-2,145, and amendments thereto.

Sec. 5. K.S.A. 8-259 and K.S.A. 2004 Supp. 8-267, 8-2,142 and 8-2,151 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 28, 2005.

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