

Substitute for HOUSE BILL No. 2289

By Committee on Judiciary

2-2

Proposed Amendments
Senator Smith
Senate Judiciary
March 10, 2016
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Office of Revisor of Statutes

1 AN ACT concerning driving; relating to driving under the influence of
2 alcohol or drugs; test refusal or failure; suspension of license;
3 administrative hearing; procedure; amending K.S.A. 2015 Supp. 8-
4 1002 and 8-1020 and repealing the existing sections.
5

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

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

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

32 (2) With regard to a test failure, that: (A) There existed reasonable
33 grounds to believe the person was operating a vehicle while under the
34 influence of alcohol or drugs, or both, or to believe that the person had
35 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
36 and amendments thereto, or is under 21 years of age while having alcohol

and

strike

1 or other drugs in such person's system; (B) the person had been placed
2 under arrest, was in custody or had been involved in a vehicle accident or
3 collision; (C) a law enforcement officer had presented the person with the
4 oral and written notice required by K.S.A. 8-1001, and amendments
5 thereto; ~~and (D) the result of the test showed that the person had an alcohol~~
6 ~~concentration of .08 or greater in such person's blood or breath; and (E)~~
7 ~~the test failure occurred pursuant to a lawful encounter by law~~
8 ~~enforcement. For purposes of this section, a lawful encounter is any~~
9 ~~encounter permissible under section 15 of the bill of rights of the~~
10 ~~constitution of the state of Kansas and the fourth amendment to the~~
11 ~~constitution of the United States relating to unreasonable searches and~~
12 ~~seizures.~~

and

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

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

29 (c) When the officer directing administration of the testing
30 determines that a person has refused a test and the criteria of subsection (a)
31 (1) have been met or determines that a person has failed a test and the
32 criteria of subsection (a)(2) have been met, the officer shall serve upon the
33 person notice of suspension of driving privileges pursuant to K.S.A. 8-
34 1014, and amendments thereto. If the determination is made while the
35 person is still in custody, service shall be made in person by the officer on
36 behalf of the division of vehicles. In cases where a test failure is
37 established by a subsequent analysis of a breath, blood or urine sample, the
38 officer shall serve notice of such suspension in person or by another
39 designated officer or by mailing the notice to the person at the address
40 provided at the time of the test.

41 (d) In addition to the information required by subsection (a), the law
42 enforcement officer's certification and notice of suspension shall contain
43 the following information: (1) The person's name, driver's license number