

Substitute for HOUSE BILL No. 2289

By Committee on Judiciary

2-2

Proposed Amendments Sub HB 2289
Senator Haley
March 10, 2016
Prepared by: Jason Thompson
Office of Revisor of Statutes

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

, 8-1015

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

Section 1. K.S.A. 2015 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, or is under 21 years of age 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; ~~and (E) the test refusal occurred pursuant to a lawful encounter by law enforcement. For purposes of this section, a lawful encounter is any encounter permissible under section 15 of the bill of rights of the constitution of the state of Kansas and the fourth amendment to the constitution of the United States relating to unreasonable searches and seizures.~~

(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, or is under 21 years of age while having alcohol

Insert Attachment

And by renumbering sections accordingly

1 Sec. 2. K.S.A. 2015 Supp. 8-1020 is hereby amended to read as
2 follows: 8-1020. (a) Any licensee served with an officer's certification and
3 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
4 may request an administrative hearing. Such request may be made either
5 by:

6 (1) Mailing a written request which is postmarked 14 days after
7 service of notice; or

8 (2) transmitting a written request by electronic facsimile which is
9 received by the division within 14 days after service of notice.

10 (b) If the licensee makes a timely request for an administrative
11 hearing and makes a timely payment of the required hearing fee, any
12 temporary license issued pursuant to K.S.A. 8-1002, and amendments
13 thereto, shall remain in effect until the 30th day after the effective date of
14 the decision made by the division.

15 (c) If the licensee fails to make a timely request for an administrative
16 hearing together with the required hearing fee, the licensee's driving
17 privileges shall be suspended or suspended and then restricted in
18 accordance with the notice of suspension served pursuant to K.S.A. 8-
19 1002, and amendments thereto.

20 (d) (1) Upon receipt of a timely request for a hearing together with
21 the required hearing fee, the division shall forthwith set the matter for
22 hearing before a representative of the director and provide notice of the
23 extension of temporary driving privileges. The hearing shall be held by
24 telephone conference call unless the hearing request includes a request that
25 the hearing be held in person before a representative of the director. The
26 officer's certification and notice of suspension shall inform the licensee of
27 the availability of a hearing before a representative of the director. Except
28 for a hearing conducted by telephone conference call, the hearing shall be
29 conducted in the county where the arrest occurred or a county adjacent
30 thereto.

31 (2) The division shall charge a fee of \$50 for a hearing, to be paid
32 within the time period for making a timely request for a hearing, whether
33 held by telephone or in person, to be applied by the division for
34 administrative costs to conduct the hearing. The division shall remit all
35 hearing fees to the state treasurer in accordance with the provisions of
36 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
37 remittance, the state treasurer shall deposit the entire amount in the state
38 treasury to the credit of the division of vehicles operating fund. The
39 hearing fee established in this section shall be the only fee collected or
40 moneys in the nature of a fee collected for such hearing. Such fee shall
41 only be established by an act of the legislature and no other authority is
42 established by law or otherwise to collect a fee.

43 (e) Except as provided in subsection (f), prehearing discovery shall be

1 *including any constitutional issues raised by the petitioner, the court shall*
2 *affirm the agency action.*

3 (q) Upon review, the licensee shall have the burden to show that the
4 decision of the agency should be set aside.

5 (r) Notwithstanding the requirement to issue a temporary license in
6 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
7 the temporary license in this section, any such temporary driving
8 privileges are subject to restriction, suspension, revocation or cancellation
9 as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

10 (s) Upon motion by a party, or on the court's own motion, the court
11 may enter an order restricting the driving privileges allowed by the
12 temporary license provided for in K.S.A. 8-1002, and amendments thereto,
13 and in this section. The temporary license also shall be subject to
14 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-
15 1014, and amendments thereto, or for other cause.

16 (t) The facts found by the hearing officer or by the district court upon
17 a petition for review shall be independent of the determination of the same
18 or similar facts in the adjudication of any criminal charges arising out of
19 the same occurrence. The disposition of those criminal charges shall not
20 affect the suspension or suspension and restriction to be imposed under
21 this section.

22 (u) All notices affirming or canceling a suspension under this section,
23 all notices of a hearing held under this section and all issuances of
24 temporary driving privileges pursuant to this section shall be sent by first-
25 class mail and a United States post office certificate of mailing shall be
26 obtained therefor. All notices so mailed shall be deemed received three
27 days after mailing, except that this provision shall not apply to any
28 licensee where such application would result in a manifest injustice.

29 (v) The provisions of K.S.A. 60-206, and amendments thereto,
30 regarding the computation of time shall be applicable in determining the
31 time for requesting an administrative hearing as set out in subsection (a)
32 and to the time for filing a petition for review pursuant to subsection (o)
33 and K.S.A. 8-259, and amendments thereto.

34 Sec. 3. K.S.A. 2015 Supp. 8-1002 and 8-1020 are hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its
36 publication in the statute book.

, 8-1015

Sec. 2. K.S.A. 2015 Supp. 8-1015 is hereby amended to read as follows: 8-1015. (a) (1) Except as provided in subsection (a)(2), whenever a person's driving privileges have been suspended for one year as provided in K.S.A. 8-1014(a), and amendments thereto, after 90 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock device and only for the purposes of getting to and from: Work, school or an alcohol treatment program; and the ignition interlock provider for maintenance and downloading of data from the device.

(2) Whenever a person's driving privileges have been suspended for one year as provided in K.S.A. 8-1014(a)(1), and amendments thereto, after 90 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock device and only: Under the circumstances provided by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for the purpose of getting to and from the ignition interlock provider for maintenance and downloading of data from the device.

(3) Except as provided in subsection (a)(4), whenever a person's driving privileges have been suspended for one year as provided in K.S.A. 8-1014(b), and amendments thereto, after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock device and only for the purposes of getting to and from: Work, school or an alcohol treatment program; and the ignition interlock provider for maintenance and downloading of data from the device.

(4) Whenever a person's driving privileges have been suspended for one year as provided in K.S.A. 8-1014(b)(2)(A), and amendments thereto, after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock device and only: Under the circumstances provided by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for the purpose of getting to and from the ignition interlock provider for maintenance and downloading of data from the device.

(5) The division shall assess an application fee of \$100 for a person to apply to modify the suspension to restricted ignition interlock status.

(6) The division shall approve the request for such restricted license unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court. If the request is approved, upon receipt of proof of the installation of such device, the division shall issue a copy of the order imposing such restrictions on the person's driving privileges and such order shall be carried by the person at any time the person is operating a motor vehicle on the highways of this state. Except as provided in K.S.A. 8-1017, and amendments thereto, if such person is convicted of a violation of the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of suspension or restriction as provided in K.S.A. 8-1014(a) or (b), and amendments thereto.

(b) (1) Except as provided in subsection (b)(2), when a person has completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the person's driving privileges for 180 days to driving only a motor vehicle equipped with an ignition interlock device.

(2) When a person has completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device if the records maintained by the division indicate that such person has previously: (A) Been convicted of a violation of K.S.A. 8-1599, and amendments thereto; (B) been convicted of a violation of K.S.A. 41-727, and amendments thereto; (C) been convicted of any violations listed in K.S.A. 8-285(a), and amendments thereto; (D) been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period; or (E) had such person's driving privileges revoked, suspended, canceled or withdrawn.

(c) Except as provided in subsection (b), when a person has completed the suspension pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, the division shall restrict the person's driving privileges pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock device. Upon restricting a person's driving privileges pursuant to this subsection, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.

(d) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the division and maintained at the person's expense. Except as provided further, proof of the installation of such ignition interlock device, for the entire period required by the applicable law, shall be provided to the division before the person's driving privileges are fully reinstated. Proof of the installation of such ignition interlock device shall not be required when a person's driving privileges are restricted pursuant to subsection (b)(1).

(e) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year suspension period as provided in subsection (a)(1) or (a)(3).

(f) Upon expiration of the period of time for which restrictions are imposed pursuant to this section, the licensee may apply to the division for the return of any license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been suspended or revoked prior to expiration.

(g) Any person who has had the person's driving privileges suspended, restricted or revoked pursuant to K.S.A. 8-1014(a), (b) or (c), prior to the amendments by section 16 of chapter 172 of the 2012 Session Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of Kansas, may apply to the division to have the suspension, restriction or revocation penalties modified in conformity with the provisions of K.S.A. 8-1014(a), (b) or (c), and amendments thereto. The division shall assess an application fee of \$100 for a person to apply to modify the suspension, restriction or revocation penalties previously issued. The division shall modify the suspension, restriction or revocation penalties, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.

(h) The division shall remit all application fees collected pursuant to subsections (a) and (g) 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 credit such moneys to the division of vehicles operating fund until an aggregate amount of \$100,000 is credited to the division of vehicles operating fund each fiscal year. On and after an aggregate amount of \$100,000 is credited to such fund each fiscal year, the entire amount of such remittance shall be credited to the community corrections supervision fund created by K.S.A. 2015 Supp. 75-52,113, and amendments thereto. The application fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such application. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

For reference only - JT

8-1014. Suspension and restriction of driving privileges for test refusal, test failure or alcohol or drug-related conviction; increased penalties for blood or breath alcohol concentration of .15 or greater; ignition interlock device. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

- (1) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;
 - (2) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;
 - (3) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device;
 - (4) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for five years to driving only a motor vehicle equipped with an ignition interlock device; and
 - (5) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.
- (b) (1) Except as provided by subsections (b)(2) and (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:
- (A) On the person's first occurrence, suspend the person's driving privileges for 30 days and at the end of the suspension, restrict the person's driving privileges as provided by subsection (b) of K.S.A. 8-1015, and amendments thereto;
 - (B) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;
 - (C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;
 - (D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device; and
 - (E) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.
- (2) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state and the person's blood or breath alcohol concentration is .15 or greater, the division shall:
- (A) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;
 - (B) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;
 - (C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;
 - (D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and
 - (E) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.
- (3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device for 10 years under this section, such person may petition any district court for relief from such restriction after five years of such restriction have been served. The court shall consider, but not be limited to, whether: (A) Such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court; and (B) such person proves installation, maintenance and use of an ignition interlock device approved by