

HOUSE BILL No. 2781

By Committee on Judiciary

1-31

9 AN ACT concerning driver's licenses; relating to administrative hearings;
10 amending K.S.A. 8-1020 and repealing the existing section.

11

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

13 Section 1. K.S.A. 8-1020 is hereby amended to read as follows: 8-
14 1020. (a) Any licensee served with an officer's certification and notice of
15 suspension pursuant to K.S.A. 8-1002, and amendments thereto, may
16 request an administrative hearing. Such request may be made either by:

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

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

21 (3) transmitting a written request by electronic facsimile which is re-
22 ceived by the division within 10 calendar days after service of notice, if
23 such notice was given by personal service; or

24 (4) transmitting a written request by electronic facsimile which is re-
25 ceived by the division within 13 calendar days after service, if such notice
26 was given by mail.

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

31 (c) If the licensee fails to make a timely request for an administrative
32 hearing, the licensee's driving privileges shall be suspended or suspended
33 and then restricted in accordance with the notice of suspension served
34 pursuant to K.S.A. 8-1002, and amendments thereto.

35 (d) Upon receipt of a timely request for a hearing, the division shall
36 forthwith set the matter for hearing before a representative of the director
37 and provide notice of the extension of temporary driving privileges. *At*
38 *the discretion of the division, the hearing may be conducted by telephone*
39 *or video conference call.* Except for a hearing conducted by telephone or
40 video conference call, the hearing shall be conducted in the county where
41 the arrest occurred or a county adjacent thereto. ~~If the licensee requests,~~
42 ~~the hearing may be conducted by telephone or video conference call.~~

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

1 be limited to the following documents, which shall be provided to the
2 licensee or the licensee's attorney no later than five calendar days prior
3 to the date of hearing:

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

5 (2) in the case of a breath or blood test failure, copies of documents
6 indicating the result of any evidentiary breath or blood test administered
7 at the request of a law enforcement officer;

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

10 (4) in the case of a breath test failure, a copy of the Kansas depart-
11 ment of health and environment testing protocol checklist.

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

21 (g) Witnesses at the hearing shall be limited to the licensee, to any
22 law enforcement officer who signed the certification form and to one
23 other witness who was present at the time of the issuance of the certifi-
24 cation and called by the licensee. The presence of the certifying officer
25 or officers shall not be required, unless requested by the licensee at the
26 time of making the request for the hearing. The examination of a law
27 enforcement officer shall be restricted to the factual circumstances relied
28 upon in the officer's certification.

29 (h) (1) If the officer certifies that the person refused the test, the
30 scope of the hearing shall be limited to whether:

31 (A) A law enforcement officer had reasonable grounds to believe the
32 person was operating or attempting to operate a vehicle while under the
33 influence of alcohol or drugs, or both, or had been driving a commercial
34 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
35 while having alcohol or other drugs in such person's system;

36 (B) the person was in custody or arrested for an alcohol or drug re-
37 lated offense or was involved in a vehicle accident or collision resulting
38 in property damage, personal injury or death;

39 (C) a law enforcement officer had presented the person with the oral
40 and written notice required by K.S.A. 8-1001, and amendments thereto;
41 and

42 (D) the person refused to submit to and complete a test as requested
43 by a law enforcement officer.

- 1 (2) If the officer certifies that the person failed a breath test, the
2 scope of the hearing shall be limited to whether:
- 3 (A) A law enforcement officer had reasonable grounds to believe the
4 person was operating a vehicle while under the influence of alcohol or
5 drugs, or both, or had been driving a commercial motor vehicle, as de-
6 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
7 or other drugs in such person's system;
- 8 (B) the person was in custody or arrested for an alcohol or drug re-
9 lated offense or was involved in a vehicle accident or collision resulting
10 in property damage, personal injury or death;
- 11 (C) a law enforcement officer had presented the person with the oral
12 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 13 (D) the testing equipment used was certified by the Kansas depart-
14 ment of health and environment;
- 15 (E) the person who operated the testing equipment was certified by
16 the Kansas department of health and environment;
- 17 (F) the testing procedures used substantially complied with the pro-
18 cedures set out by the Kansas department of health and environment;
- 19 (G) the test result determined that the person had an alcohol con-
20 centration of .08 or greater in such person's breath; and
- 21 (H) the person was operating or attempting to operate a vehicle.
- 22 (3) If the officer certifies that the person failed a blood test, the scope
23 of the hearing shall be limited to whether:
- 24 (A) A law enforcement officer had reasonable grounds to believe the
25 person was operating a vehicle while under the influence of alcohol or
26 drugs, or both, or had been driving a commercial motor vehicle, as de-
27 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
28 or other drugs in such person's system;
- 29 (B) the person was in custody or arrested for an alcohol or drug re-
30 lated offense or was involved in a vehicle accident or collision resulting
31 in property damage, personal injury or death;
- 32 (C) a law enforcement officer had presented the person with the oral
33 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 34 (D) the testing equipment used was reliable;
- 35 (E) the person who operated the testing equipment was qualified;
- 36 (F) the testing procedures used were reliable;
- 37 (G) the test result determined that the person had an alcohol con-
38 centration of .08 or greater in such person's blood; and
- 39 (H) the person was operating or attempting to operate a vehicle.
- 40 (i) At a hearing pursuant to this section, or upon court review of an
41 order entered at such a hearing, an affidavit of the custodian of records
42 at the Kansas department of health and environment stating that the
43 breath testing device was certified and the operator of such device was

1 certified on the date of the test shall be admissible into evidence in the
2 same manner and with the same force and effect as if the certifying officer
3 or employee of the Kansas department of health and environment had
4 testified in person. A certified operator of a breath testing device shall be
5 competent to testify regarding the proper procedures to be used in con-
6 ducting the test.

7 (j) At a hearing pursuant to this section, or upon court review of an
8 order entered at such a hearing, in which the report of blood test results
9 have been prepared by the Kansas bureau of investigation or other fo-
10 rensic laboratory of a state or local law enforcement agency are to be
11 introduced as evidence, the report, or a copy of the report, of the findings
12 of the forensic examiner shall be admissible into evidence in the same
13 manner and with the same force and effect as if the forensic examiner
14 who performed such examination, analysis, comparison or identification
15 and prepared the report thereon had testified in person.

16 (k) At the hearing, the licensee has the burden of proof by a prepon-
17 derance of the evidence to show that the facts set out in the officer's
18 certification are false or insufficient and that the order suspending or
19 suspending and restricting the licensee's driving privileges should be
20 dismissed.

21 (l) Evidence at the hearing shall be limited to the following:

- 22 (1) The documents set out in subsection (e);
- 23 (2) the testimony of the licensee;
- 24 (3) the testimony of any certifying officer;
- 25 (4) the testimony of any witness present at the time of the issuance
26 of the certification and called by the licensee;
- 27 (5) any affidavits submitted from other witnesses;
- 28 (6) any documents submitted by the licensee to show the existence
29 of a medical condition, as described in K.S.A. 8-1001, and amendments
30 thereto; and
- 31 (7) any video or audio tape record of the events upon which the ad-
32 ministrative action is based.

33 (m) After the hearing, the representative of the director shall enter
34 an order affirming the order of suspension or suspension and restriction
35 of driving privileges or for good cause appearing therefor, dismiss the
36 administrative action. If the representative of the director enters an order
37 affirming the order of suspension or suspension and restriction of driving
38 privileges, the suspension or suspension and restriction shall begin on the
39 30th day after the effective date of the order of suspension or suspension
40 and restriction. If the person whose privileges are suspended is a non-
41 resident licensee, the license of the person shall be forwarded to the
42 appropriate licensing authority in the person's state of residence if the
43 result at the hearing is adverse to such person or if no timely request for

1 a hearing is received.

2 (n) The representative of the director may issue an order at the close
3 of the hearing or may take the matter under advisement and issue a
4 hearing order at a later date. If the order is made at the close of the
5 hearing, the licensee or the licensee's attorney shall be served with a copy
6 of the order by the representative of the director. If the matter is taken
7 under advisement or if the hearing was by telephone or video conference
8 call, the licensee and any attorney who appeared at the administrative
9 hearing upon behalf of the licensee each shall be served with a copy of
10 the hearing order by mail. Any law enforcement officer who appeared at
11 the hearing also may be mailed a copy of the hearing order. The effective
12 date of the hearing order shall be the date upon which the hearing order
13 is served, whether served in person or by mail.

14 (o) The licensee may file a petition for review of the hearing order
15 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition
16 for review, the licensee shall serve the secretary of revenue with a copy
17 of the petition and summons. Upon receipt of a copy of the petition for
18 review by the secretary, the temporary license issued pursuant to subsection
19 (b) shall be extended until the decision on the petition for review is
20 final.

21 (p) Such review shall be in accordance with this section and the act
22 for judicial review and civil enforcement of agency actions. To the extent
23 that this section and any other provision of law conflicts, this section shall
24 prevail. The petition for review shall be filed within 10 days after the
25 effective date of the order. Venue of the action for review is the county
26 where the person was arrested or the accident occurred, or, if the hearing
27 was not conducted by telephone conference call, the county where the
28 administrative proceeding was held. The action for review shall be by trial
29 de novo to the court and the evidentiary restrictions of subsection (l) shall
30 not apply to the trial de novo. The court shall take testimony, examine
31 the facts of the case and determine whether the petitioner is entitled to
32 driving privileges or whether the petitioner's driving privileges are subject
33 to suspension or suspension and restriction under the provisions of this
34 act. If the court finds that the grounds for action by the agency have been
35 met, the court shall affirm the agency action.

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

38 (r) Notwithstanding the requirement to issue a temporary license in
39 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
40 the temporary license in this section, any such temporary driving privi-
41 leges are subject to restriction, suspension, revocation or cancellation as
42 provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

43 (s) Upon motion by a party, or on the court's own motion, the court

1 may enter an order restricting the driving privileges allowed by the tem-
2 porary license provided for in K.S.A. 8-1002, and amendments thereto,
3 and in this section. The temporary license also shall be subject to restric-
4 tion, suspension, revocation or cancellation, as set out in K.S.A. 8-1014,
5 and amendments thereto, or for other cause.

6 (t) The facts found by the hearing officer or by the district court upon
7 a petition for review shall be independent of the determination of the
8 same or similar facts in the adjudication of any criminal charges arising
9 out of the same occurrence. The disposition of those criminal charges
10 shall not affect the suspension or suspension and restriction to be imposed
11 under this section.

12 (u) All notices affirming or canceling a suspension under this section,
13 all notices of a hearing held under this section and all issuances of tem-
14 porary driving privileges pursuant to this section shall be sent by first-
15 class mail and a United States post office certificate of mailing shall be
16 obtained therefor. All notices so mailed shall be deemed received three
17 days after mailing, except that this provision shall not apply to any licensee
18 where such application would result in a manifest injustice.

19 (v) The provisions of K.S.A. 60-206, and amendments thereto, re-
20 garding the computation of time shall not be applicable in determining
21 the time for requesting an administrative hearing as set out in subsection
22 (a) but shall apply to the time for filing a petition for review pursuant to
23 subsection (o) and K.S.A. 8-259, and amendments thereto. "Calendar
24 day" shall mean that every day shall be included in computations of time
25 whether a weekday, Saturday, Sunday or holiday.

26 Sec. 2. K.S.A. 8-1020 is hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after its
28 publication in the statute book.