

SENATE BILL No. 326

By Committee on Transportation

1-14

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to driving under the influence test failures; providing that the failure of
3 an alcohol or drug test can be certified when the law enforcement
4 officer administering such test had reasonable grounds to believe a
5 person was attempting to operate a vehicle; amending K.S.A. 8-1002
6 and repealing the existing section.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

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

18 (1) With regard to a test refusal, that:

19 (A) There existed reasonable grounds to believe the person was
20 operating or attempting to operate a vehicle while under the influence of
21 alcohol or drugs, or both, or to believe that the person had been driving a
22 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
23 thereto, or is under 21 years of age while having alcohol or other drugs in
24 such person's system;

25 (B) the person had been placed under arrest, was in custody or had
26 been involved in a vehicle accident or collision;

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

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

32 (2) With regard to a test failure, that:

33 (A) There existed reasonable grounds to believe the person was
34 operating *or attempting to operate* a vehicle while under the influence of
35 alcohol or drugs, or both, or to believe that the person had been driving a
36 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments

1 thereto, or is under 21 years of age while having alcohol or other drugs in
2 such person's system;

3 (B) the person had been placed under arrest, was in custody or had
4 been involved in a vehicle accident or collision;

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

8 (D) the result of the test showed that the person had an alcohol
9 concentration of .08 or greater in such person's blood or breath.

10 (3) With regard to failure of a breath test, in addition to those matters
11 required to be certified under subsection (a)(2), that:

12 (A) The testing equipment used was certified by the Kansas
13 department of health and environment;

14 (B) the testing procedures used were in accordance with the
15 requirements set out by the Kansas department of health and environment;
16 and

17 (C) the person who operated the testing equipment was certified by
18 the Kansas department of health and environment to operate such
19 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) (1) In addition to the information required by subsection (a), the
42 law enforcement officer's certification and notice of suspension shall
43 contain the following information:

1 (1)(A) The person's name, driver's license number and current
2 address;

3 (2)(B) the reason and statutory grounds for the suspension;

4 (3)(C) the date notice is being served and a statement that the
5 effective date of the suspension shall be the 30th day after the date of
6 service;

7 (4)(D) the right of the person to request an administrative hearing;
8 and

9 (5)(E) the procedure the person must follow to request an
10 administrative hearing.

11 (2) The law enforcement officer's certification and notice of
12 suspension shall also inform the person that:

13 (1)(A) Constitutional issues cannot be decided at the administrative
14 hearing, but may be preserved and raised in a petition for review of the
15 hearing as provided in K.S.A. 8-1020(o) and (p), and amendments thereto;
16 and

17 (2)(B) all correspondence will be mailed to the person at the address
18 contained in the law enforcement officer's certification and notice of
19 suspension unless the person notifies the division in writing of a different
20 address or change of address.

21 (3) The address provided *pursuant to paragraph (2)(B)* will be
22 considered a change of address for purposes of K.S.A. 8-248, and
23 amendments thereto, if the address furnished is different from that on file
24 with the division.

25 (e) If a person refuses a test or if a person is still in custody when it is
26 determined that the person has failed a test, the officer shall take any
27 license in the possession of the person and, if the license is not expired,
28 suspended, revoked or canceled, shall issue a temporary license effective
29 until the 30th day after the date of service set out in the law enforcement
30 officer's certification and notice of suspension. If the test failure is
31 established by a subsequent analysis of a breath or blood sample, the
32 temporary license shall be served together with the copy of the law
33 enforcement officer's certification and notice of suspension. A temporary
34 license issued pursuant to this subsection shall bear the same restrictions
35 and limitations as the license for which it was exchanged. Within seven
36 days after the date of service of a copy of the law enforcement officer's
37 certification and notice of suspension the officer's certification and notice
38 of suspension, along with any licenses taken, shall be forwarded to the
39 division.

40 (f) Upon receipt of the law enforcement officer's certification, the
41 division shall review the certification to determine that it meets the
42 requirements of subsection (a). Upon so determining, the division shall
43 proceed to suspend the person's driving privileges in accordance with the

1 notice of suspension previously served. If the requirements of subsection
2 (a) are not met, the division shall dismiss the administrative proceeding
3 and return any license surrendered by the person.

4 (g) The division shall prepare and distribute forms for use by law
5 enforcement officers in giving the notice required by this section.

6 (h) The provisions of K.S.A. 60-206, and amendments thereto,
7 regarding the computation of time shall be applicable in determining the
8 effective date of suspension set out in subsection (d).

9 Sec. 2. K.S.A. 8-1002 is hereby repealed.

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