

HOUSE BILL No. 2220

AN ACT amending the uniform commercial drivers' license act; amending K.S.A. 8-2,128, 8-2,132, 8-2,133, 8-2,135 and 8-2,142 and repealing the existing sections.

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

New Section 1. (a) Until September 30, 2005, the driving skills test required under 49 C.F.R. 383.123 may be waived for an applicant for a school bus endorsement, if such applicant is currently licensed, has experience driving a school bus, has a good driving record and meets the conditions contained in subsection (b).

(b) An applicant must certify and the division must verify that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(1) Held a valid commercial driver's license with a passenger vehicle endorsement to operate a school bus representative of the group the application will be driving;

(2) has not had such applicant's driver's license or commercial driver's license suspended, revoked or canceled or been disqualified from operating a commercial motor vehicle;

(3) has not been convicted of any of the disqualifying offenses in subsection (a) or (e) of K.S.A. 8-2,142, and amendments thereto;

(4) has not had more than one conviction of any of the serious traffic violations defined in K.S.A. 8-2,128, and amendments thereto, while operating any type motor vehicle;

(5) has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident;

(6) has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(7) has been regularly employed as a school bus driver, has operated a school bus representative of the group the applicant seeks to drive and provides evidence of such employment.

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

New Sec. 2. (a) A driver may not enter into a diversion agreement in lieu of further criminal proceedings that would prevent such driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

(b) 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. 8-2,128 is hereby amended to read as follows: 8-2,128. As used in this act:

(a) "Alcohol" means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol and isopropanol;

(b) "alcohol concentration" means:

(1) The number of grams of alcohol per 100 milliliters of blood; or

(2) the number of grams of alcohol per 210 liters of breath;

(c) "commercial driver's license" means a commercial license issued pursuant to K.S.A. 8-234b, and amendments thereto;

(d) "commercial driver license system" means the information system established pursuant to the commercial motor vehicle safety act of 1986 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers;

(e) "instruction permit" means a permit issued pursuant to K.S.A. 8-294, and amendments thereto;

(f) "commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property, if:

(1) The vehicle has a gross vehicle weight rating of 26,001 or more pounds or such lesser rating, as determined by rules and regulations adopted by the secretary, but shall not be more restrictive than the federal regulation;

(2) the vehicle is designed to transport 16 or more passengers, including the driver; or

(3) the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. 172, subpart F, effective January 1, 1991;

(g) “controlled substance” means any substance so classified under K.S.A. 65-4101, and amendments thereto;

(h) “conviction” means an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law and in a court of original jurisdiction or an administrative proceeding, an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated;

(i) “disqualification” means a prohibition against driving a commercial motor vehicle, including the suspension, revocation or cancellation of the privilege to drive a commercial motor vehicle;

(j) “drive” means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of ~~K.S.A. 8-2,144 and 8-2,145~~ and K.S.A. 8-2,137, 8-2,138 ~~and~~ 8-2,142, 8-2,144 ~~and~~ 8-2,145, and amendments thereto, “drive” includes operation or physical control of a motor vehicle anywhere in the state;

(k) “driver” means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver’s license;

(l) “driver’s license” means any driver’s license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

- (1) Any temporary license or instruction;
- (2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; or

(3) any nonresident’s operating privilege;

(m) “employer” means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle;

(n) “endorsement” means an authorization to an individual’s commercial driver’s license required to permit the individual to operate certain types of commercial motor vehicles;

(o) “felony” means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year;

(p) “gross vehicle weight rating” means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the “gross combination weight rating”) is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units;

(q) “hazardous materials” has the meaning as that found in section 103 of the hazardous materials transportation act, 49 U.S.C. 1801 *et seq*;

(r) “motor vehicle” means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheel chairs;

(s) “out-of-service order” means a temporary prohibition against driving a commercial motor vehicle, which is imposed when a driver has any measured or detected alcohol concentration while on duty, or operating, or in physical control of a commercial motor vehicle or a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle or a motor carrier operation, is out-of-service pursuant to 49 C.F.R. Part 386.72, 392.5, 395.13, 396.9 or such compatible laws, or the North American out-of-service criteria;

(t) “residence” means the place which is adopted by a person as the person’s place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be considered the person’s residence;

(u) “secretary” means the secretary of the Kansas department of revenue;

(v) “serious traffic violation” means:

- (1) Excessive speeding, is defined as 15 miles per hour or more over the posted speed limit;
- (2) reckless driving, as defined under K.S.A. 8-1566, and amendments thereto;
- (3) a violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;
- (4) changing lanes of traffic illegally or erratically, as defined under K.S.A. 8-1548, and amendments thereto;
- (5) following another vehicle too closely, as defined under K.S.A. 8-1523, and amendments thereto; ~~or~~
- (6) *a violation of subsection (a) of K.S.A. 8-2,132, and amendments thereto; or*
- ~~(6)~~ (7) any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, which the secretary determines by rule and regulation to be serious;
- (w) “state” means a state of the United States and the District of Columbia;
- (x) “state of domicile” means that state where a person has such person’s true, fixed and permanent home and principal residence and to which such person has the intention of returning whenever such person is absent;
- (y) “tank vehicle” means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks, as defined in 49 C.F.R. 171 in effect on January 1, 1991. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons;
- (z) “United States” means the 50 states and the District of Columbia;
- (aa) “division” means the division of vehicles of the Kansas department of revenue;
- (bb) “director” means the director of the division of vehicles of the Kansas department of revenue;
- (cc) “foreign country” means any jurisdiction other than the United States;
- (dd) “nonresident commercial driver’s license” means a license issued pursuant to K.S.A. 8-2,148, and amendments thereto;
- (ee) *“fatality” means the death of a person as a result of a motor vehicle accident;*
- (ff) *“noncommercial motor vehicle” means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle in subsection (f);*
- (gg) *“school bus” means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events. School bus does not include a bus used as a common carrier.*

Sec. 4. K.S.A. 8-2,132 is hereby amended to read as follows: 8-2,132.

- (a) On and after April 1, 1992, except when driving under a commercial class A, B or C or class A or B instruction permit or a valid class C license and accompanied by the holder of a commercial driver’s license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person has a valid commercial driver’s license and is in immediate possession thereof and applicable endorsements valid for the vehicle they are driving, except that no person charged with violating this subsection shall be convicted if such person produces in court or the office of the arresting officer a commercial driver’s license issued to such person and valid at the time of the arrest.
- (b) No person shall drive a commercial motor vehicle while their driving privilege is suspended, revoked or canceled; ~~or while subject to a disqualification or in violation of an out-of-service order.~~
- (c) *No person shall drive a commercial motor vehicle in violation of an out-of-service order.*
- ~~(c)~~ (d) Any commercial driver in violation of this section shall be guilty of a class B misdemeanor.

Sec. 5. K.S.A. 8-2,133 is hereby amended to read as follows: 8-2,133.

- (a) Except as provided in K.S.A. 8-2,146, and amendments thereto, or as provided in K.S.A. 8-2,148, and amendments thereto, no person may be

issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by 49 C.F.R. 383, subparts G and H, ~~effective January 1, 1991,~~ and has satisfied all other requirements of the commercial motor vehicle safety act in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the secretary, except that the secretary may accept the results of a person's knowledge test conducted in another state if such test complies with minimum federal standards;

(b) the secretary may authorize a person, including an agency of this or another state, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of local government, to administer the skills test specified by this section, if:

(1) The test is the same which would otherwise be administered by the state; and

(2) the third party has entered into an agreement with the state which complies with requirements of 49 C.F.R. 383.75, ~~effective January 1, 1991.~~

(c) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or canceled in any state; nor shall a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

Sec. 6. K.S.A. 8-2,135 is hereby amended to read as follows: 8-2,135.

(a) The commercial driver's license shall be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamper proof. It shall include, but not be limited to, the following information:

(1) The requirements set out in K.S.A. 8-243, and amendments thereto;

(2) the person's social security number or any number or identifier deemed appropriate by the state licensing authority;

(3) the class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restriction;

(4) the name of this state; and

(5) the dates between which the license is valid.

(b) Commercial drivers' licenses issued pursuant to K.S.A. 8-234b, and amendments thereto, may be issued with the following endorsements or restrictions; and the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles, except motorcycles and vehicles which require an endorsement, unless the proper endorsement appears on the license;

(1) "H"—authorizes the driver to drive a vehicle transporting hazardous materials;

(2) "L"—restricts the driver to vehicles not equipped with airbrakes;

(3) "T"—authorizes driving double and triple trailers;

(4) "P"—authorizes driving vehicles carrying passengers;

(5) "N"—authorizes driving tank vehicles;

(6) "X"—represents a combination of hazardous materials and tank vehicle endorsements;

(7) "S"—*authorizes driving school buses.*

(c) Before issuing a commercial driver's license, the division must obtain driving record information through the commercial driver license information system, the national driver register and from each state in which the person has been licensed.

(d) Within 10 days after issuing a commercial driver's license, the division shall notify the commercial driver license information system of that fact, providing all information required to ensure identification of the person.

(e) All original licenses issued after April 1, 1992, shall expire on the fourth anniversary of the date of birth of the licensee which is nearest the date of application. All renewals thereof shall expire on every fourth an-

niversary of the date of birth of the licensee. No driver's license shall expire in the same calendar year in which the original license or renewal license is issued, except that if the foregoing provisions of this section shall require the issuance of a renewal license or an original license for a period of less than six calendar months, the license issued to the applicant shall expire at midnight on every fourth anniversary of the date of birth of the applicant. At least 30 days prior to the expiration of a person's license, the division shall mail a notice of expiration or renewal application to such person at the address shown on the license.

(f) When applying for renewal of a commercial driver's license, the applicant must complete the test required in subsection (e) of K.S.A. 8-247, and amendments thereto, and the application form required by subsection (b) of K.S.A. 8-2,134, and amendments thereto, providing updated information and required certifications and if the applicant wishes to retain a hazardous materials endorsement, the applicant must take and pass the test for such endorsement.

Sec. 7. K.S.A. 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) The person's conviction of a violation of K.S.A. 8-2,144;~~
- ~~(2) leaving the scene of an accident involving a commercial motor vehicle driven by the person;~~
- ~~(3) the person's conviction of using a commercial motor vehicle in the commission of any felony as defined in this act; or~~
- ~~(4) the person's test refusal or test failure, as defined by subsection (i)~~

(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 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); 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.

~~(g)~~ (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.

~~(h)~~ (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 suspen-

sion, revocation, cancellation or disqualification of the commercial driver's license under the same identifier number.

(i) (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. 8. K.S.A. 8-2,128, 8-2,132, 8-2,133, 8-2,135 and 8-2,142 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.