

SENATE BILL No. 371

AN ACT amending the Kansas uniform commercial drivers' license act; providing for penalties; relating to certain notifications; amending K.S.A. 8-2,131, 8-2,138 and 8-2,141 and K.S.A. 2005 Supp. 8-2,128, 8-2,142 and 66-1,142b and repealing the existing sections.

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

New Section 1. (a) A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$1,100 nor more than \$2,750, in addition to any disqualification under K.S.A. 8-2,142, and amendments thereto.

(b) An employer who is convicted of violating subsection (b)(3) of K.S.A. 8-2,131, and amendments thereto, shall be subject to a civil penalty of not less than \$2,750 nor more than \$11,000.

(c) An employer who is convicted of a violation of subsection (b)(4) of K.S.A. 8-2,131, and amendments thereto, shall be subject to a civil penalty of not less than \$2,750 nor more than \$11,000.

(d) Civil penalties shall be enforced and collected by an attorney for the division of vehicles in the appropriate district court.

(e) Civil penalties shall be remitted in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state highway fund.

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

New Sec. 2. (a) It shall be unlawful and constitute a class B misdemeanor for any person to violate any of the provisions of the Kansas uniform commercial drivers' license act, unless a different penalty is prescribed by this act.

(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. 2005 Supp. 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;

(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~~ any of the following:

(1) *The suspension, revocation, or cancellation of a commercial driver's license by the state or jurisdiction of issuance;*

(2) *any withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control, other than parking, vehicle weight or vehicle defect violations;*

(3) *a determination by the federal motor carrier safety administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. 391;*

(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. 8-2,137, 8-2,138, 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.~~ means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73;

(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;

(6) a violation of subsection (a) of K.S.A. 8-2,132, and amendments thereto; or

(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. 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. 8-2,131 is hereby amended to read as follows: 8-2,131.

(a) An employer shall require the applicant to provide the information specified in subsection (c) of K.S.A. 8-2,130, and amendments thereto.

(b) No employer shall knowingly allow, *require*, permit or authorize a driver to drive a commercial motor vehicle ~~during any period~~:

(1) *During any period* in which the driver has a driver’s license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

(2) *during any period* in which the driver has more than one driver’s license, except during the ten-day period beginning on the date the employee is issued a driver’s license; ~~or~~

(3) *during any period* in which the employee, the motor vehicle such employee is driving or the motor carrier operation is subject to an out-of-service order; *or*

(4) *in violation of a federal, state or local law or regulation pertaining to railroad-highway grade crossings.*

Sec. 5. K.S.A. 8-2,138 is hereby amended to read as follows: 8-2,138.

(a) Within ~~10~~ 30 days after ~~receiving a report of~~ the conviction of any nonresident holder of a commercial driver’s license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in ~~a commercial motor~~ *any type of*

vehicle, the division shall notify the driver licensing authority in the licensing state of the conviction.

(b) *Within 30 days after the conviction of any nonresident who is not a holder of a commercial driver's license, but who is licensed to drive by another state, for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the division shall notify the driver licensing authority in the licensing state of the conviction.*

(c) *Within 30 days of receiving notification from the licensing authority of another state of a conviction under subsection (a) or (b), the division shall record such conviction on the driver's record.*

(d) *On and after September 30, 2008, the notification required in subsections (a) and (b) and the recordation of convictions under subsection (c) shall be made within 10 days of the conviction.*

Sec. 6. K.S.A. 8-2,141 is hereby amended to read as follows: 8-2,141. Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license issued by any state in accordance with the minimum federal standards for the issuance of commercial motor vehicle drivers' licenses *or by a foreign jurisdiction which tests drivers and issues commercial drivers' licenses in accordance with or under standards similar to the minimum federal standards, as determined by the federal motor carrier safety administration*, if the person is not suspended, revoked or canceled; and if the person is not disqualified from driving a commercial motor vehicle, or subject to an out-of-service order.

Sec. 7. K.S.A. 2005 Supp. 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) 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 is convicted of causing 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 (1); 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 of a violation of an ordinance of any city in this state or any law of another state, which ordinance or law declares to be unlawful the acts prohibited by that statute*; 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. *Any disqualification period under this paragraph shall be in addition to any other previous period of disqualification. The beginning date for any three-year period within a ten-year period, required by this subsection, shall be the issuance date of the citation which resulted in a conviction.*

(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~~ *the person has one prior conviction for violating an out-of-service order in a separate incident and such prior offense was committed within the 10 years immediately preceding the date of the present violation;* 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~~ *the person has two or more prior convictions for violating out-of-service orders in separate incidents and such prior offenses were committed within the 10 years immediately preceding the date of the present violation.*

(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~~ *the person has a prior conviction for violating an out-of-service order in a separate incident and such prior offense was committed within the 10 years immediately preceding the date of the present violation.*

(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.

(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. *The notification shall include both the disqualification and the violation that resulted in the disqualification, suspension, revocation or cancellation.*

(k) *Upon receiving notification from the licensing authority of another state, that it has disqualified a commercial driver's license holder licensed by this state, or has suspended, revoked or canceled such commercial driver's license holder's commercial driver's license, the division shall record such notification and the information such notification provides on the driver's record.*

~~(l)~~ (l) 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 suspension, revocation, cancellation or disqualification of the commercial driver's license under the same identifier number.

~~(m)~~ (m) 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. 2005 Supp. 66-1,142b is hereby amended to read as follows: 66-1,142b. (a) Any person violating any statute, commission orders or rules and regulations adopted by the state corporation commission pursuant to the motor carrier act and other laws relevant to motor carriers shall be subject to a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations, and not more than \$5,000 for intentional violations.

(b) In construing and enforcing a civil penalty in accordance with this section, any act, omission or failure of any officer, agent or other person acting for or employed by any motor carrier while acting within the scope of such person's employment, shall in every case be deemed the act, omission or failure of the motor carrier.

(c) Every day during which the person fails to comply with any order of the commission, or any applicable statute, rule or regulation, shall constitute a separate and distinct violation.

(d) Civil penalties shall be enforced and collected by an attorney for the corporation commission in the appropriate district court.

(e) A civil penalty shall not be enforced under this section for a violation of an out-of-service order, if a civil penalty was enforced against a driver under subsection (a) of section (1), and amendments thereto, or against an employer under subsection (b) of section 1, and amendments thereto.

~~(f)~~ (f) Civil penalties shall be remitted in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the motor carrier license fee fund.

~~(g)~~ (g) The commission is granted the power, by general order or otherwise, to prescribe reasonable rules and regulations for the assessment of administrative civil penalties and sanctions for violations of any statute, commission orders or rules and regulations adopted by the commission.

Sec. 9. K.S.A. 8-2,131, 8-2,138 and 8-2,141 and K.S.A. 2005 Supp. 8-2,128, 8-2,142 and 66-1,142b are hereby repealed.

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

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

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.