

SENATE BILL No. 533

AN ACT concerning crimes and criminal procedure; providing for electronic citations, complaints and notices to appear; amending K.S.A. 2009 Supp. 40-3104 and repealing the existing section.

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

New Section 1. (a) As used in this section:

(1) “Electronic citation” means a charging citation, complaint or notice to appear which is prepared by a law enforcement officer in an electronic data device with intent that the data collected will be electronically filed with a court or prosecutor for prosecution of a crime as provided in subsection (a) of K.S.A. 8-2106, and amendments thereto. The data elements collected shall conform to the requirements of the division of motor vehicles as the form of a paper citation and must be approved as provided in subsection (a) of K.S.A. 8-2106, and amendments thereto.

(2) “Electronic citation system” means the device, database or computer software used to create, store, transmit or exchange the data included in an electronic citation.

(3) “Electronic signature” means an electronic signature having legal effect pursuant to the Kansas uniform electronic transaction act, K.S.A. 16-1601 et seq., and amendments thereto.

(b) For purposes of an electronic citation issued under this section, an electronic signature indicated by the law enforcement officer’s typed name, agency and agency number has the same effect and is as sufficient as a manual signature as required in K.S.A. 8-2106, 8-2108 or subsection (b) of 22-3201, and amendments thereto.

(c) A notice to appear, complaint or citation as provided in K.S.A. 8-2106, and amendments thereto, shall be deemed to be written if on a paper form or in a document printed from an electronic citation system.

(d) A person being charged by a law enforcement officer shall be deemed to have signed a citation or notice to appear as provided in K.S.A. 8-2106 and 8-2107, and amendments thereto, if the person physically signs the paper citation or notice to appear document or, in the case of an electronic citation or notice to appear, verbally acknowledges that the person promises to appear on or before the date set at or with the designated court. To secure a verbal promise to appear, the law enforcement officer shall ask, “Do you agree to appear before the _____ court on or before (date) ?” The officer shall accurately record the response of the person being charged as: Yes, no or no response.

(e) This section shall be part of and supplemental to the uniform act regulating traffic on highways.

New Sec. 2. (a) As used in this section:

(1) “Electronic citation” means a charging citation, complaint or notice to appear which is prepared by a law enforcement officer in an electronic data device with intent that the data collected will be electronically filed with a municipal court as provided in K.S.A. 12-4201 through 12-4207, and amendments thereto, for prosecution of a municipal ordinance violation. The data elements collected shall conform to the requirements of K.S.A. 12-4201 through 12-4207, and amendments thereto, or the requirements of the secretary of revenue or the secretary’s designee pursuant to K.S.A. 79-3393, and amendments thereto, as applicable.

(2) “Electronic citation system” means the device, database or computer software used to create, store, transmit or exchange the data included in an electronic citation.

(3) “Electronic signature” means an electronic signature having legal effect pursuant to the Kansas uniform electronic transaction act, K.S.A. 16-1601 et seq., and amendments thereto.

(b) For purposes of an electronic citation, including the notice to appear and complaint, issued under this section, an electronic signature indicated by the law enforcement officer’s typed name, agency and agency identification number has the same effect and is as sufficient as a manual signature as required in K.S.A. 12-4202, 12-4204, 12-4207, subsection (b) of 22-3201 or 79-3393, and amendments thereto.

(c) A notice to appear, complaint or citation as provided in K.S.A. 12-4201 through 12-4207 or 79-3393, and amendments thereto, shall be deemed to be written if on a paper form or in a document printed from an electronic citation system.

(d) For purposes of signing a notice to appear as provided in K.S.A. 8-2107 and 12-4204, and amendments thereto, a person being charged by a law enforcement officer shall be deemed to have signed the notice

to appear if the person physically signs the paper notice to appear or, in the case of an electronic citation, verbally acknowledges that the person promises to appear on or before the date set at or with the designated court. To secure a verbal promise to appear, the law enforcement officer shall ask, “Do you agree to appear at the _____ court on or before _____ *(date)* ?” The officer shall accurately record the response of the person being charged as: Yes, no or no response.

(e) This section shall be part of and supplemental to the Kansas code of procedure for municipal courts.

New Sec. 3. (a) As used in this section:

(1) “Electronic citation” means a charging citation, complaint or notice to appear which is prepared by a law enforcement officer in an electronic data device with intent that the data collected will be electronically filed with a court as provided in K.S.A. 19-4709 through 19-4715, and amendments thereto, for prosecution of a violation of a county code or resolution. The data elements collected shall conform to the requirements of K.S.A. 19-4709 through 19-4715, and amendments thereto, or the requirements of the secretary of revenue or the secretary’s designee pursuant to K.S.A. 79-3393, and amendments thereto, as applicable.

(2) “Electronic citation system” means the device, database or computer software used to create, store, transmit or exchange the data included in an electronic citation.

(3) “Electronic signature” means an electronic signature having legal effect pursuant to the Kansas uniform electronic transaction act, K.S.A. 16-1601 et seq., and amendments thereto.

(b) For purposes of an electronic citation, including the notice to appear and complaint, issued under this section, an electronic signature indicated by the law enforcement officer’s typed name, agency and agency identification number has the same effect and is as sufficient as a manual signature as required pursuant to K.S.A. 19-4710, 19-4712, 19-4715, subsection (b) of 22-3201 or 79-3393, and amendments thereto.

(c) A notice to appear, complaint or citation as provided in K.S.A. 19-4709 through 19-4715 or 79-3393, and amendments thereto, shall be deemed to be written if on a paper form or in a document printed from an electronic citation system.

(d) For purposes of signing a notice to appear as provided in K.S.A. 8-2107 and 19-4712, and amendments thereto, a person being charged by a law enforcement officer shall be deemed to have signed the notice to appear if the person physically signs the paper notice to appear or, in the case of an electronic citation, verbally acknowledges that the person promises to appear on or before the date set at or with the designated court. To secure a verbal promise to appear, the law enforcement officer shall ask, “Do you agree to appear at the _____ court on or before _____ *(date)* ?” The officer shall accurately record the response of the person being charged as: Yes, no or no response.

(e) This section shall be part of and supplemental to the code for enforcement of county codes and resolutions.

Sec. 4. K.S.A. 2009 Supp. 40-3104 is hereby amended to read as follows: 40-3104. (a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle: (1) Is included under an approved self-insurance plan as provided in subsection (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto, has been filed; or (4) is expressly exempted from the provisions of this act.

(b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(c) No person shall knowingly drive an uninsured motor vehicle upon

a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(d) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall ~~attach~~ *transmit* a copy of the insurance verification form prescribed by the secretary of revenue ~~to~~ *with* the copy of the citation ~~forwarded~~ *transmitted* to the court.

No citation shall be issued to any person for failure to provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the department shall proceed with verification in the manner prescribed in the following paragraph. Upon return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.

(e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with violating ~~subsections~~ *subsection* (b), (c) or (d) shall be convicted if such person produces in court, within 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Upon the production in court of evidence of financial security, the court shall record the information displayed thereon on the insurance verification form prescribed by the secretary of revenue, immediately forward such form to the department of revenue, and stay any further proceedings on the matter pending a request from the prosecuting attorney that the matter be set for trial. Upon receipt of such form the department shall mail the form to the named insurance company for verification that insurance was in force on the date indicated on the form. It shall be the duty of insurance companies to notify the department within 30 calendar days of the receipt of such forms of any insurance that was not in force on the date specified. Upon return of any form to the department indicating that insurance was not in force on such date, the department shall immediately forward a copy of such form to the office of the prosecuting attorney or the city clerk of the municipality in which such prosecution is pending when the prosecuting attorney is not ascertainable. Receipt of any completed form indicating that insurance was not in effect on the date specified shall be prima facie evidence of failure to provide proof of financial security and violation of this section. A request that the matter be set for trial shall be made immediately following the receipt by the prosecuting attorney of a copy of the form from the department of revenue indicating that insurance was not in force. Any charge of violating subsection (b), (c) or (d) shall be dismissed if no request for a trial setting has been made within 60 days of the date evidence of financial security was produced in court.

(f) Any person in whose name more than 25 motor vehicles are registered in Kansas may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. The certificate of self-insurance issued by the commissioner shall cover such owned vehicles and those vehicles, registered in Kansas, leased to such person if the lease agreement requires that motor vehicle liability insurance on the vehicles be provided by the lessee. Upon application of any such person, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any liability imposed by law

against such person arising out of the ownership, operation, maintenance or use of any motor vehicle described in this subsection. A self-insurer shall provide liability coverage subject to the provisions of subsection (e) of K.S.A. 40-3107, and amendments thereto, arising out of the ownership, operation, maintenance or use of a self-insured motor vehicle in those instances where the lessee or the rental driver, if not the lessee, does not have a motor vehicle liability insurance policy or insurance coverage pursuant to a motor vehicle liability insurance policy or certificate of insurance or such insurance policy for such leased or rented vehicle. Such liability coverage shall be provided to any person operating a self-insured motor vehicle with the expressed or implied consent of the self-insurer.

Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to provide liability coverage or personal injury protection benefits required by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any liability imposed by law arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, or to otherwise comply with the requirements of this subsection shall constitute reasonable grounds for the cancellation of a certificate of self-insurance. Reasonable grounds shall not exist unless such objectionable activity occurs with such frequency as to indicate a general business practice.

Self-insureds shall investigate claims in a reasonably prompt manner, handle such claims in a reasonable manner based on available information and effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.

As used in this subsection, "liability imposed by law" means the stated limits of liability as provided under subsection (e) of K.S.A. 40-3107, and amendments thereto.

Nothing in this subsection shall preclude a self-insurer from pursuing all rights of subrogation against another person or persons.

(g) (1) Any person violating any provision of this section shall be guilty of a class B misdemeanor and shall be subject to a fine of not less than \$300 nor more than \$1,000 or confinement in the county jail for a term of not more than six months, or both such fine and confinement.

(2) Any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a class A misdemeanor and shall be subject to a fine of not less than \$800 nor more than \$2,500.

(h) In addition to any other penalties provided by this act for failure to have or maintain financial security in effect, the director, upon receipt of a report required by K.S.A. 8-1607 or 8-1611, and amendments thereto, or a denial of such insurance by the insurance company listed on the form prescribed by the secretary of revenue pursuant to subsection (d) of this section, shall, upon notice and hearing as provided by K.S.A. 40-3118, and amendments thereto:

(1) Suspend:

(A) The license of each driver in any manner involved in the accident;

(B) the license of the owner of each motor vehicle involved in such accident, unless the vehicle was stolen at the time of the accident, proof of which must be established by the owner of the motor vehicle. Theft by a member of the vehicle owner's immediate family under the age of 18 years shall not constitute a stolen vehicle for the purposes of this section;

(C) if the driver is a nonresident, the privilege of operating a motor vehicle within this state; or

(D) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within this state of any motor vehicle owned by such owner; and

(2) revoke the registration of all vehicles owned by the owner of each motor vehicle involved in such accident.

(i) The suspension or revocation requirements in subsection (h) shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy as required by K.S.A. 40-3107, and amendments thereto, with respect to the vehicle involved in the accident;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy with respect to such driver's driving of vehicles not owned by such driver;

(3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103, and amendments thereto;

(4) to the driver or owner of any vehicle involved in the accident which was exempt from the provisions of this act pursuant to K.S.A. 40-3105, and amendments thereto;

(5) to the owner of a vehicle described in subsection (a)(2).

(j) (1) For the purposes of provisions (1) and (2) of subsection (i) of this section, the director may require verification by an owner's or driver's insurance company or agent thereof that there was in effect at the time of the accident an automobile liability policy as required in this act.

(2) Subject to the provisions of subsection (k), any suspension or revocation effected hereunder shall remain in effect until such person:

(A) Has filed satisfactory proof of financial security with the director as required by subsection (d) of K.S.A. 40-3118 and amendments thereto;

(B) has paid the reinstatement fee herein prescribed; and

(C) (i) has been released from liability;

(ii) is a party to an action to determine liability pursuant to which the court temporarily stays such suspension pending final disposition of such action;

(iii) has entered into an agreement for the payment of damages; or

(iv) has been finally adjudicated not to be liable in respect to such accident and evidence of any such fact has been filed with the director.

(3) The reinstatement fee shall be \$100 except that if the registration of a motor vehicle of any owner is revoked within one year following a prior revocation of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be \$300.

(k) (1) Whenever any person whose license has been suspended or revoked pursuant to this section is involved in an accident and has entered into an agreement with any driver, or such driver's insurer, who has been damaged or whose vehicle has been damaged to pay for such damage and such person defaults on payments under such agreement, the driver or the driver's insurer, as appropriate, shall notify the director within 60 days of the date of default.

(2) Upon receipt of the notice of default, the director shall immediately suspend such person's license and registration. If such person is a nonresident, the director shall immediately suspend such nonresident's privilege to operate a motor vehicle in this state.

(3) Except as provided in paragraph (4), such person's driver's license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until:

(A) The director receives notice payments under the agreement referred to in paragraph (1) have been resumed and that payments under such agreement are no longer in default;

(B) such person has filed satisfactory proof of financial responsibility with the director as required by subsection (d) of K.S.A. 40-3118 and amendments thereto; and

(C) the reinstatement fee required by subsection (j) has been paid.

(4) Upon due notice to the director that the conditions of paragraph (3) have been fulfilled, such person may obtain from the director an order restoring such person's driver's license, registration and nonresident's operating privilege to operate a motor vehicle in this state conditioned upon such person's continued compliance with the agreement referred to in paragraph (1).

(5) In the event such person fails to make any further payment under the agreement referred to in paragraph (1) when such payment is due, the director, upon receipt of notice of such default, shall immediately suspend the license, registration or nonresident's operating privilege of such person until all payments have been made under the agreement referred to in paragraph (1). No suspension of such person's license, registration or nonresident's privilege to operate a motor vehicle in this state shall be reinstated pursuant to paragraph (4).

(l) The provisions of this section shall not apply to motor carriers of

property or passengers regulated by the corporation commission of the state of Kansas.

(m) The provisions of subsection (d) shall not apply to vehicle dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being offered for sale by such dealers.

Sec. 5. K.S.A. 2009 Supp. 40-3104 is hereby repealed.

Sec. 6. 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.