

8-2,145. Tests for alcohol or drugs; notices; certification by officer; hearing; disqualification of driver. (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and amendments thereto, in addition to any notices provided pursuant to K.S.A. 8-1001, and amendments thereto, the following notice shall be provided orally and in writing: Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

(b) It shall not be a defense that the person did not understand the notices required by this section.

(c) Upon completion of the notices set out in K.S.A. 8-1001, and amendments thereto, and the notices in subsection (a), the law enforcement officer shall proceed to request a test or tests. In addition to the completion of any certification required under K.S.A. 8-1002, and amendments thereto, a law enforcement officer's certification shall be prepared and signed by one or more officers to certify:

(1) There existed reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

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

(3) a law enforcement officer had presented the person with the notices required by this section; and

(4) the person refused to submit to and complete a test or the test result for alcohol content of blood or breath was .04 or greater.

(d) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the division authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B misdemeanor.

(e) Upon completing a certification under subsection (c), the officer shall serve upon the person notice of disqualification of the privilege to drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto, together with a copy of the certification. In cases where a .04 or greater test result is established by a subsequent analysis of a breath or blood sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test. If the determination of a test refusal or .04 or greater test result is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles.

(f) The notice shall contain the following information:

(1) The person's name, driver's license number and current address pursuant to K.S.A. 8-248, and amendments thereto;

(2) the reason and statutory grounds for the disqualification;

(3) the date notice is being served and the effective date of the disqualification, which shall be the 20th day after the date of service;

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

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

The notice of disqualification shall also inform the person that all correspondence will be mailed to the person at the address contained in the notice of disqualification unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(g) If the person mails a written request which is postmarked within 10 calendar days after service of the notice, if by personal service, or 13 calendar days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee may request that subpoenas be issued in accordance with the notice provided pursuant to subsection (d). Any request made by the licensee to subpoena witnesses must be made in writing at the time the hearing is requested and must include the name and current address of such witness and, except for the certifying law enforcement officer or officers, a statement of how the testimony of such witness is relevant. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with subsection (i) and extend the person's temporary driving privileges until the date set for the hearing by the division, unless otherwise disqualified, suspended, revoked or canceled.

(h) The law enforcement officer shall forward the certification required under subsection (c) to the director within five days of the date of certification. Upon receipt of the certification, the division shall review the certification to determine that it meets the requirements of subsection (c). Upon so determining, the director shall proceed to disqualify the driver from driving a commercial motor vehicle in accordance with the notice of disqualification previously served.

(i) All notices of disqualification under this section and all notices of a hearing held under this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(j) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(k) The rules regarding evidence and procedure at hearings held under K.S.A. 8-1020, and amendments thereto, shall be applicable to hearings held under this section. At the hearing on a disqualification of commercial driving privileges, the issues shall be limited to those set out in the certification.

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

History: L. 1991, ch. 36, § 2; L. 2001, ch. 200, § 11; July 1.