

KANSAS DEPARTMENT OF REVENUE  
DIVISION OF VEHICLES, DRIVER CONTROL BUREAU

Name: [Redacted]

**HEARING ORDER**  
**BREATH TEST FAILURE**  
**TEST RESULTS .08 - .149**  
K.S.A. 8-1001 et.seq

Occurrence Date: 8.31.10

DL No. [Redacted]

Date of Hearing: 5.18.11

An administrative hearing was called by a representative of the Director, Division of Vehicles of the Kansas Department of Revenue at the request of the named respondent/licensee. Appearances were made by:

- No appearance
- Respondent
- Attorney:
- Other: Christopher J. Funch Court Report

**ADMINISTRATIVE ORDER**

*advise via text Do by 9/11*

- DISMISSED:** The hearing officer hereby dismisses the administrative action to suspend and restrict or to revoke respondent's driving privileges.
- AFFIRMED:** The hearing officer hereby affirms the administrative action to suspend and restrict or to revoke respondent's driving privileges based upon the following findings:

- Law enforcement officer(s) had reasonable grounds to believe that the respondent was operating a vehicle while under the influence of alcohol, drugs, or both; or to believe respondent was under the age of 21 years while having alcohol or other drugs in respondent's system; or to believe respondent was 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.
- Respondent was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury, or death.
- A law enforcement officer presented the respondent with the oral and written notice required by K.S.A. 8-1001 and amendments thereto.
- Respondent was operating a vehicle.
- The testing equipment used was certified by the Kansas Department of Health and Environment.
- The person who operated the testing equipment was certified by the Kansas Department of Health and Environment.
- The testing procedures used substantially complied with the procedures set out by the Kansas Department of Health and Environment
- The test results indicated that the respondent had an alcohol concentration of at least .080 but not more than .149

Comments:

DVD returned to atty on 08/31/11 09/1/11

Date decision rendered:

08/31/11

Signature of Hearing Officer:

[Signature]

Based upon this order, the Division of Vehicles will take the following action on the respondent's driving privileges on the 30<sup>th</sup> day after the date of this order, as required by K.S.A. 8 1014, and amendments thereto:

**If respondent was 21 years of age or older at the time of the test failure**, and had a test result of at least .080 but not more than .149 and this test failure as defined by K.S.A. 8-1013 (e) and amendments thereto was:

- a **first occurrence**, the respondent's driving privileges will be suspended for 30 days, then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days.
- a **second, third or fourth occurrence**, the respondent's driving privileges will be suspended for one year, and then restricted for one year to driving only a motor vehicle equipped with an ignition interlock device.
- a **fifth or subsequent occurrence**, the respondent's driving privileges will be permanently revoked.

**If respondent was less than 21 years of age at the time of the test failure**, and had a test result of at least .080 but not more than .149 and this test failure as defined by K.S.A. 8-1013 (e) and amendments thereto was:

- a **first occurrence**, the respondent's driving privileges will be suspended for one year.
- a **second, third or fourth occurrence** the respondent's driving privileges will be suspended for one year. and then restricted for one year to driving only a motor vehicle equipped with an ignition interlock device.
- a **fifth or subsequent occurrence**, the respondent's driving privileges will be permanently revoked.

A notice will be mailed to the most recent address for respondent in the Division's records setting out the action taken on respondent's driving privileges in accordance with K.S.A. 8-1014(b) and amendments thereto, **unless respondent files a timely petition for review with the district court and serves a copy of the petition upon the Secretary of Revenue.** Respondent is advised that, pursuant to K.S.A. 8-259, respondent has fourteen (14) days to file a petition for review with the district court from the effective date of this order, which is the date of service of this order, as set out below.

A copy of this order was personally served upon respondent or respondent's attorney. Date: \_\_\_\_\_ Hearing Officer Initials: \_\_\_\_\_

A copy of this order was mailed to respondent and to respondent's attorney. Date: \_\_\_\_\_ Hearing Officer Initials: \_\_\_\_\_

This matter was taken under advisement.  
A copy of this order was mailed to respondent and to respondent's attorney. Date: 09/01/11 Hearing Officer Initials: DZJ

*The decision was rendered on 8/31/11 but I missed the last mail pickup so the order was mailed 9/1/11*