

HOUSE BILL No. 2962

By Committee on Federal and State Affairs

2-20

9 AN ACT concerning alcoholic liquor; relating to removal of partially con-
10 sumed containers of wine from certain licensed premises; amending
11 K.S.A. 8-1599 and repealing the existing section.
12

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

14 New Section 1. (a) In addition to the rights of a licensee pursuant to
15 provisions of K.S.A. 41-2637, 41-2641 or 41-2642, and amendments
16 thereto, a class A club license, class B club license or drinking establish-
17 ment license shall allow the licensee to allow legal patrons of the club or
18 drinking establishment to remove from the licensed premises one or more
19 opened containers of wine, subject to the following conditions:

20 (1) It must be legal for the licensee to sell the wine in its original
21 container;

22 (2) the wine must be in its original container;

23 (3) each container of wine must have been purchased by a patron
24 and the wine in each container must have been partially consumed on
25 the licensed premises;

26 (4) the licensee or the licensee's employee must provide the patron
27 with a dated receipt for the unfinished container or containers of wine;
28 and

29 (5) before the container of wine is removed from the licensed prem-
30 ises, the licensee or the licensee's employee must securely reseal each
31 container, place the container in a tamper-proof, transparent bag which
32 is sealed in a manner that makes it visibly apparent if the bag is subse-
33 quently tampered with or opened.

34 (b) This section shall be part of and supplemental to the club and
35 drinking establishment act.

36 Sec. 2. K.S.A. 8-1599 is hereby amended to read as follows: 8-1599.

37 (a) As used in this section, "alcoholic beverage" means any alcoholic liq-
38 uor, as defined by K.S.A. 41-102 and amendments thereto, or any cereal
39 malt beverage, as defined by K.S.A. 41-2701 and amendments thereto.

40 (b) No person shall transport in any vehicle upon a highway or street
41 any alcoholic beverage unless such beverage is:

42 (1) In the original unopened package or container, the seal of which
43 has not been broken and from which the original cap, cork or other means

1 of closure has not been removed;

2 (2) in the locked rear trunk or rear compartment, or any locked out-
3 side compartment which is not accessible to any person in the vehicle
4 while it is in motion; ~~or~~

5 (3) in the exclusive possession of a passenger in a vehicle which is a
6 recreational vehicle, as defined by K.S.A. 75-1212 and amendments
7 thereto, or a bus, as defined by K.S.A. 8-1406 and amendments thereto,
8 who is not in the driving compartment of such vehicle or who is in a
9 portion of such vehicle from which the driver is not directly accessible;
10 or

11 (4) *wine in a container in a sealed tamper-proof transparent bag: (A)*
12 *In which the container has been removed from the licensed premises of a*
13 *club or drinking establishment in accordance with section 1, and amend-*
14 *ments thereto; (B) which has not subsequently been tampered with or*
15 *opened; and (C) which is accompanied by the dated receipt for the un-*
16 *finished container, issued by the club or drinking establishment.*

17 (c) Violation of this section is a misdemeanor punishable by a fine of
18 not more than \$200 or by imprisonment for not more than six months,
19 or both.

20 (d) Except as provided in subsection (f) upon conviction or adjudi-
21 cation of a second or subsequent violation of this section, the judge, in
22 addition to any other penalty or disposition ordered pursuant to law, shall
23 suspend the person's driver's license or privilege to operate a motor ve-
24 hicle on the streets and highways of this state for one year.

25 (e) Upon suspension of a license pursuant to this section, the court
26 shall require the person to surrender the license to the court, which shall
27 transmit the license to the division of motor vehicles of the department
28 of revenue, to be retained until the period of suspension expires. At that
29 time, the licensee may apply to the division for return of the license. If
30 the license has expired, the person may apply for a new license, which
31 shall be issued promptly upon payment of the proper fee and satisfaction
32 of other conditions established by law for obtaining a license unless an-
33 other suspension or revocation of the person's privilege to operate a motor
34 vehicle is in effect.

35 (f) As used in this section, "highway" and "street" have the meanings
36 provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

37 (g) In lieu of suspending the driver's license or privilege to operate a
38 motor vehicle on the highways of this state of any person convicted of
39 violating this section, as provided in subsection (d), the judge of the court
40 in which such person was convicted may enter an order which places
41 conditions on such person's privilege of operating a motor vehicle on the
42 highways of this state, a certified copy of which such person shall be
43 required to carry any time such person is operating a motor vehicle on

1 the highways of this state. Any such order shall prescribe the duration of
2 the conditions imposed, which in no event shall be for a period of more
3 than one year for a second violation.

4 Upon entering an order restricting a person's license hereunder, the
5 judge shall require such person to surrender such person's driver's license
6 to the judge who shall cause it to be transmitted to the division of vehicles,
7 together with a copy of the order. Upon receipt thereof, the division of
8 vehicles shall issue without charge a driver's license which shall indicate
9 on its face that conditions have been imposed on such person's privilege
10 of operating a motor vehicle and that a certified copy of the order im-
11 posing such conditions is required to be carried by the person for whom
12 the license was issued any time such person is operating a motor vehicle
13 on the highways of this state. If the person convicted is a nonresident,
14 the judge shall cause a copy of the order to be transmitted to the division
15 and the division shall forward a copy of it to the motor vehicle adminis-
16 trator, of such person's state of residence. Such judge shall furnish to any
17 person whose driver's license has had conditions imposed on it under this
18 section a copy of the order, which shall be recognized as a valid Kansas
19 driver's license until such time as the division shall issue the restricted
20 license provided for in this section.

21 Upon expiration of the period of time for which conditions are imposed
22 pursuant to this subsection, the licensee may apply to the division for the
23 return of the license previously surrendered by such licensee. In the event
24 such license has expired, such person may apply to the division for a new
25 license, which shall be issued immediately by the division upon payment
26 of the proper fee and satisfaction of the other conditions established by
27 law, unless such person's privilege to operate a motor vehicle on the
28 highways of this state has been suspended or revoked prior thereto. If
29 any person shall violate any of the conditions imposed under this subsec-
30 tion, such person's driver's license or privilege to operate a motor vehicle
31 on the highways of this state shall be revoked for a period of not less than
32 60 days nor more than one year by the judge of the court in which such
33 person is convicted of violating such conditions.

34 (h) It shall be an affirmative defense to any prosecution under this
35 section that an occupant of the vehicle other than the defendant was in
36 exclusive possession of the alcoholic liquor.

37 (i) The court shall report to the division every conviction of a violation
38 of this section or of a city ordinance or county resolution that prohibits
39 the acts prohibited by this section. Prior to sentencing under the provi-
40 sions of this section, the court shall request and shall receive from the
41 division a record of all prior convictions obtained against such person for
42 any violations of any of the motor vehicle laws of this state.

43 (j) For the purpose of determining whether a conviction is a first,

1 second or subsequent conviction in sentencing under this section:

2 (1) "Conviction" includes being convicted of a violation of an ordi-
3 nance of any city, or resolution of any county, which prohibits the acts
4 that this section prohibits;

5 (2) only convictions occurring in the immediately preceding five
6 years, including prior to the effective date of this act, shall be taken into
7 account, but the court may consider other prior convictions in determin-
8 ing the sentence to be imposed within the limits provided for a first,
9 second or subsequent offender, whichever is applicable; and

10 (3) it is irrelevant whether an offense occurred before or after con-
11 viction for a previous offense.

12 (k) This section shall not be construed as preventing any city from
13 enacting ordinances, or any county from adopting resolutions, declaring
14 acts prohibited by this section as unlawful or prohibited in such city or
15 county and prescribing penalties for violation thereof, but such ordinance
16 or resolution shall provide for suspension or restriction of driving privi-
17 leges as provided by this section and the convicting court shall be required
18 to report convictions for violations of such ordinance or resolution as
19 provided by subsection (i).

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

22 Sec. 3. K.S.A. 8-1599 is hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the statute book.