

CHAPTER 206
SENATE BILL No. 297

AN ACT concerning alcoholic liquor; relating to consumption of certain wine and beer in certain places; authorizing certain sales and shipping of wine; authorizing removal of partially consumed containers of alcoholic liquor from certain premises; amending K.S.A. 8-1599 and 41-104 and K.S.A. 2005 Supp. 41-308a, 41-719 and 41-2645 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-308a or 41-308b, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated, and amendments thereto, or established by a city.

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if: (A) ~~Such~~ *The alcoholic liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions;* (B) *the alcoholic liquor is wine or beer and is sold and consumed during the days of the Kansas state fair on premises leased by the state fair board to a person who holds a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto, authorizing the sale and serving of such wine or beer, or both. The state fair board, in its discretion, may authorize the consumption of such alcoholic liquor;* or (C) *the alcoholic liquor is consumed on nonfair days in conjunction with bona fide scheduled events involving not less than 75 invited guests and the state fair board, in its discretion, authorizes the consumption of the alcoholic liquor, subject to any conditions or restrictions as the board may require.*

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of any Kansas national guard regional training center, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g) or (h).

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(h) The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(i) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

Sec. 2. K.S.A. 2005 Supp. 41-2645 is hereby amended to read as follows: 41-2645. (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(b) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(c) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, which fee shall be paid by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises where the city, county or township zoning code allows use for which the permit is issued. No temporary permit shall be issued for premises which are not located in a

county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, to adopt the proposition amending section 10 of article 15 of the constitution of the state of Kansas at the general election in November, 1986; or (B) have approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and

(2) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

(e) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit, *except that the director may issue one temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale and serving by the drink of only wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose.* Not more than four temporary permits may be issued to any one applicant in a calendar year.

(f) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(g) A temporary permit shall not be transferable or assignable.

(h) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the drinking establishment act or K.S.A. 79-41a01 et seq., and amendments thereto.

Sec. 3. K.S.A. 41-104 is hereby amended to read as follows: 41-104. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, except that nothing contained in this act shall prevent:

(a) The possession and transportation of alcoholic liquor for the personal use of the possessor, the possessor's family and guests except that ~~the provisions of K.S.A. 41-1103 and amendments thereto relating to transportation and~~ the provisions of K.S.A. 41-407 and amendments thereto shall be applicable to all persons;

(b) the making of wine, cider or beer by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker and the maker's family;

(c) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of the medical or dental profession;

(d) any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(e) any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians; ~~or~~

(f) the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church; *or*

(g) *the sale of wine to a consumer in this state by a person which holds a valid license authorizing the manufacture of wine in this or another state and the shipment of such wine directly to such consumer, subject to the following: (1) The consumer must be at least 21 years of age; (2) the consumer must purchase the wine while physically present on the premises of the wine manufacturer; (3) the wine must be for the consumer's personal consumption and not for resale; and (4) the consumer shall comply with the provisions of K.S.A. 41-407, and amendments thereto, by payment of all applicable taxes within such time after purchase of the wine as prescribed by rules and regulations adopted by the secretary.*

New Sec. 4. (a) Notwithstanding any other provision of law to the contrary, a person holding a valid farm winery license in this state or a person which holds a valid license authorizing the manufacture of wine in another state and which manufactures wine in a quantity not exceeding

100,000 gallons per year may sell and ship wine to a consumer in this state if the person holds a valid shipping permit issued by the director. Such permit may be obtained by filing with the director an application on a form prescribed by rules and regulations of the secretary of revenue and paying a permit fee of \$50 for an original permit and \$10 for a renewal permit and, if applicable, a true copy of the applicant's current beverage license authorizing the manufacture of wine in another state.

(b) Sale and shipment of wine pursuant to a shipping permit shall be subject to the following restrictions:

(1) The consumer to whom the permit holder sells and ships wine shall be at least 21 years of age and the wine must be for such consumer's personal use and not for resale;

(2) the purchaser shall pay the purchase price and all shipping costs directly to the permit holder;

(3) the wine shall be shipped in the original unopened container to a licensed retailer designated by the purchaser;

(4) the permit holder shall report annually to the director of taxation the total wine sold and shipped pursuant to this section during the preceding calendar year;

(5) if the wine is shipped from outside the state, the permit holder shall remit annually to the director all gallonage taxes due pursuant to K.S.A. 41-501 et seq., and amendments thereto, on sales to consumers in this state pursuant to this section during the preceding calendar year, the amount of such taxes to be calculated as if the wine were manufactured in this state; and

(6) if the permit holder is an out-of-state shipper, the permit holder shall allow the director of taxation to perform an audit of the out-of-state shipper's records upon request.

(c) If the holder of the permit is an out-of-state shipper, the permittee shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. 41-501 et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act. Acceptance of such service of process by the secretary of state shall be fully binding upon the permit holder.

(d) After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke a shipping permit upon a finding that the permit holder has failed to comply with any provision of this section or K.S.A. 41-501 et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes.

(e) Wine sold and shipped by a person holding a shipping permit shall be delivered to the licensed premises of the licensed retailer designated by the purchaser during hours the retailer is authorized by law to sell alcoholic liquor. The retailer shall collect taxes with regard to such wine pursuant to K.S.A. 79-4101 et seq., and amendments thereto, in accordance with rules and regulations of the secretary, as if the sale were made in this state. The retailer may charge the purchaser a handling fee of not more than \$5 for each delivery of wine received by the retailer on behalf of the purchaser. The retailer shall ensure that the purchaser of the wine is 21 or more years of age. The purchaser shall be required to pay any amount due for taxes and the handling fee before the retailer releases the wine to the purchaser. The purchaser shall remove the wine from the retailer's licensed premises within 30 days after the retailer receives the wine or such other period of time as agreed upon by the retailer and the purchaser. The secretary shall provide by rules and regulations for the method of disposition of such wine if the purchaser fails to remove it from the retailer's licensed premises within such time.

(f) Sale and shipment of wine in the manner provided by this section by a person who does not possess a valid shipping permit issued pursuant to this section is prohibited. Any person who knowingly makes, participates in, transports, imports or receives any wine in violation of this subsection is guilty of a class B misdemeanor.

(g) The secretary of revenue shall adopt rules and regulations to implement, administer and enforce the provisions of this section, including, but not limited to, rules and regulations regarding the transportation, acceptance, storage and delivery of wine pursuant to this section.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

Sec. 5. K.S.A. 2005 Supp. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

(1) The manufacture of domestic table wine and domestic fortified wine *in a quantity not exceeding 100,000 gallons per year* and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments and caterers;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; ~~and~~

(5) if the licensee is also licensed as a club or drinking establishment, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act;

(6) *the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped; and*

(7) *the sale and shipping of wine within this state pursuant to a permit issued pursuant to section 4, and amendments thereto.*

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed three winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

(1) The sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee; and

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments.

(c) Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.

~~(d) A farm winery having a capacity of 100,000 gallons per year or more which sells wine to any distributor shall be required to comply with all provisions of article 4 of chapter 41 of the Kansas Statutes Annotated and of K.S.A. 41-701 through 41-705 and 41-709, and amendments thereto, in the same manner and subject to the same penalties as a manufacturer.~~

~~(e)~~ (d) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine, domestic fortified wine and wine imported under subsection ~~(f)~~ (e) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection ~~(f)~~ (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

~~(f)~~ (e) The director may issue to the Kansas state fair or any bona fide group of grape growers or wine makers a permit to import into this state small quantities of wines. Such wine shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such

wine shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting programs for which the wine is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of wine pursuant to this subsection and the conduct of tasting programs for which such wine is imported.

~~(g)~~ (f) A farm winery license or winery outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

~~(h)~~ (g) No farm winery or winery outlet shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premise supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

~~(i)~~ (h) Whenever a farm winery or winery outlet licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and order forfeiture of all fees paid for the license, after a hearing before the director for that purpose in accordance with the provisions of the Kansas administrative procedure act.

~~(j)~~ (i) This section shall be part of and supplemental to the Kansas liquor control act.

New Sec. 6. (a) Notwithstanding any other provision of law to the contrary, a person holding a valid license authorizing the manufacture of wine in another state and which manufactures wine in a quantity of 100,000 gallons or more per year may sell wine to a consumer in this state in accordance with this section if the person holds a valid large winery shipping permit issued by the director. Such permit may be obtained by filing with the director an application on a form prescribed by rules and regulations of the secretary of revenue and paying a permit fee of \$50 for an original permit and \$10 for a renewal permit together with a true copy of the applicant's current beverage license authorizing the manufacture of wine in another state.

(b) Sale and shipment of wine pursuant to a large winery shipping permit shall be subject to the following:

(1) The consumer to whom the permit holder sells wine shall be at least 21 years of age and the wine must be for such consumer's personal use and not for resale;

(2) the wine shall be shipped in the original unopened container to a licensed distributor, who shall deliver the wine to the licensed premises of the retailer designated by the consumer;

(3) the consumer shall pay the purchase price and all shipping costs directly to the permit holder and shall designate the retailer to whose licensed premises the wine is to be delivered by the distributor;

(4) the permit holder shall report annually to the director of taxation the total wine sold and shipped into the state pursuant to this section during the preceding calendar year;

(5) the permit holder shall remit annually to the director all gallonage taxes due pursuant to K.S.A. 41-501 et seq., and amendments thereto, on sales to consumers in this state pursuant to this section during the preceding calendar year, the amount of such taxes to be calculated as if the wine were manufactured in this state; and

(6) the permit holder shall allow the director of taxation to perform an audit of the out-of-state shipper's records upon request.

(c) The holder of a large winery shipping permit shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. 41-501 et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act. Acceptance of such service of process by the secretary of state shall be fully binding upon the permit holder.

(d) After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke a large winery shipping permit upon a finding that the permit holder has failed to comply with any provision of this section or K.S.A. 41-501 et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes.

(e) Wine sold and shipped by a person holding a large winery shipping permit shall be delivered to a licensed distributor for delivery to the licensed premises of the licensed retailer designated by the consumer. The retailer shall collect taxes with regard to such wine pursuant to K.S.A. 79-4101 et seq., and amendments thereto, in accordance with rules and regulations of the secretary, as if the sale were made in this state. The retailer may charge the consumer a handling fee of not more than \$5 for each delivery of wine received by the retailer on behalf of the consumer. The retailer shall ensure that the consumer is 21 or more years of age. The consumer shall be required to pay any amount due for taxes and the retailer's handling fee before the retailer releases the wine to the consumer. The consumer shall remove the wine from the retailer's licensed premises within 30 days after the retailer receives the wine or such other period of time as agreed upon by the retailer and the consumer. The secretary shall provide by rules and regulations for the method of disposition of such wine if the consumer fails to remove it from the retailer's licensed premises within such time.

(f) No person shall sell and ship wine as provided in this section unless such person possesses a valid large winery shipping permit issued pursuant to this section. Any person who knowingly makes, participates in, transports, imports or receives any wine in violation of this subsection is guilty of a class B misdemeanor.

(g) The secretary of revenue shall adopt rules and regulations to implement, administer and enforce the provisions of this section, including, but not limited to, rules and regulations relating to transportation, acceptance, storage and delivery of wine shipped pursuant to this section.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

New Sec. 7. (a) In addition to the rights of a licensee pursuant to provisions of K.S.A. 41-2637, 41-2641 or 41-2642, and amendments thereto, a class A club license, class B club license or drinking establishment license shall allow the licensee to allow legal patrons of the club or drinking establishment to remove from the licensed premises one or more opened containers of alcoholic liquor, subject to the following conditions:

(1) It must be legal for the licensee to sell the alcoholic liquor in its original container;

(2) the alcoholic liquor must be in its original container;

(3) each container of alcoholic liquor must have been purchased by a patron and the alcoholic liquor in each container must have been partially consumed on the licensed premises;

(4) the licensee or the licensee's employee must provide the patron with a dated receipt for the unfinished container or containers of alcoholic liquor; and

(5) before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must securely reseal each container, place the container in a tamper-proof, transparent bag which is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

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

Sec. 8. K.S.A. 8-1599 is hereby amended to read as follows: 8-1599. (a) As used in this section, "alcoholic beverage" means any alcoholic liquor, as defined by K.S.A. 41-102 and amendments thereto, or any cereal malt beverage, as defined by K.S.A. 41-2701 and amendments thereto.

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

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

(2) (A) in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(B) if a motor vehicle is not equipped with a trunk, behind the last

upright seat or in an area not normally occupied by the driver or a passenger; or

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

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

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

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

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

(g) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person convicted of violating this section, as provided in subsection (d), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year for a second violation.

Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this section.

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

(h) It shall be an affirmative defense to any prosecution under this section that an occupant of the vehicle other than the defendant was in

exclusive possession of the alcoholic liquor.

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

(j) For the purpose of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits;

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

(3) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

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

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

Sec. 9. K.S.A. 8-1599 and 41-104 and K.S.A. 2005 Supp. 41-308a, 41-719 and 41-2645 are hereby repealed.

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

Approved May 23, 2006.
