

HOUSE BILL No. 2198

By Committee on Judiciary

2-2

1 AN ACT concerning children and minors; relating to possession or
2 consumption of alcoholic beverages; immunity from liability for minor
3 seeking medical assistance; amending K.S.A. 2014 Supp. 41-727 and
4 repealing the existing section.
5

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

7 Section 1. K.S.A. 2014 Supp. 41-727 is hereby amended to read as
8 follows: 41-727. (a) Except with regard to serving of alcoholic liquor or
9 cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a,
10 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and
11 subject to any rules and regulations adopted pursuant to such statutes, no
12 person under 21 years of age shall possess, consume, obtain, purchase or
13 attempt to obtain or purchase alcoholic liquor or cereal malt beverage
14 except as authorized by law.

15 (b) Violation of this section by a person 18 or more years of age but
16 less than 21 years of age is a class C misdemeanor for which the minimum
17 fine is \$200.

18 (c) Any person less than 18 years of age who violates this section is a
19 juvenile offender under the revised Kansas juvenile justice code. Upon
20 adjudication thereof and as a condition of disposition, the court shall
21 require the offender to pay a fine of not less than \$200 nor more than \$500.
22 (d) In addition to any other penalty provided for a violation of this
23 section: (1) The court may order the offender to do either or both of the
24 following:

25 (A) Perform 40 hours of public service; or
26 (B) attend and satisfactorily complete a suitable educational or
27 training program dealing with the effects of alcohol or other chemical
28 substances when ingested by humans.

29 (2) Upon a first conviction of a violation of this section, the court
30 shall order the division of vehicles to suspend the driving privilege of such
31 offender for 30 days. Upon receipt of the court order, the division shall
32 notify the violator and suspend the driving privileges of the violator for 30
33 days whether or not that person has a driver's license.

34 (3) Upon a second conviction of a violation of this section, the court
35 shall order the division of vehicles to suspend the driving privilege of such
36 offender for 90 days. Upon receipt of the court order, the division shall

Proposed Amendment to HB 2198
"Diversion Agreement"
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nonperson

(b)(1)
(2) A violation of this section by a person 18 or more years of age but less than 21 years of age who has previously entered into a diversion agreement upon a second alleged violation of the acts prohibited by this section pursuant to subsection (f) is a class A nonperson misdemeanor. In addition, the court shall order the division of vehicles to suspend the driving privilege of such person for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.

1 notify the violator and suspend the driving privileges of the violator for 90
2 days whether or not that person has a driver's license.

3 (4) Upon a third or subsequent conviction of a violation of this
4 section, the court shall order the division of vehicles to suspend the driving
5 privilege of such offender for one year. Upon receipt of the court order, the
6 division shall notify the violator and suspend the driving privileges of the
7 violator for one year whether or not that person has a driver's license.

8 (e) This section shall not apply to the possession and consumption of
9 cereal malt beverage by a person under the legal age for consumption of
10 cereal malt beverage when such possession and consumption is permitted
11 and supervised, and such beverage is furnished, by the person's parent or
12 legal guardian. ~~Except as provided by subsection (f)(3),~~

13 ~~(f) (1) A person is immune from criminal prosecution for a violation~~
14 ~~of this section, and any city ordinance or county resolution prohibiting the~~
15 ~~acts prohibited by this section, if such person:~~

16 ~~(A) (i) Contacted law enforcement or emergency medical services~~
17 ~~and requested medical assistance needed due to alcohol consumption; and~~
18 ~~(ii) cooperated with emergency medical assistance personnel and law~~
19 ~~enforcement officers on the scene; or~~

20 ~~(B) (i) contacted law enforcement or emergency medical services, or~~
21 ~~acted in concert with another person who contacted law enforcement or~~
22 ~~emergency medical services, and requested medical assistance for an~~
23 ~~individual who reasonably appeared to be in need of medical assistance~~
24 ~~due to alcohol consumption;~~

25 ~~(ii) provided their full name and any other relevant information~~
26 ~~requested by law enforcement or emergency medical services;~~

27 ~~(iii) remained at the scene with the individual who reasonably~~
28 ~~appeared to be in need of medical assistance due to alcohol consumption~~
29 ~~until emergency medical assistance personnel and law enforcement~~
30 ~~officers arrived; and~~

31 ~~(iv) cooperated with emergency medical assistance personnel and~~
32 ~~law enforcement officers on the scene.~~

33 ~~(2) A court may order a person immune from criminal prosecution~~
34 ~~pursuant to this subsection to perform community service, not to exceed 40~~
35 ~~hours.~~

36 (3) A person shall not be allowed to initiate or maintain an action
37 against a law enforcement officer, or such officer's employer, based on the
38 officer's compliance or failure to comply with this subsection.

39 (f) (g) Any city ordinance or county resolution prohibiting the acts
40 prohibited by this section shall provide a minimum penalty which is not
41 less than the minimum penalty prescribed by this section.

42 ~~(h)~~ (h) A law enforcement officer may request a person under 21
43 years of age to submit to a preliminary screening test of the person's breath

Strike lines 33-35 and insert:

(2) Except as provided in subsection (f)(3), any person seeking immunity from criminal prosecution shall enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of the acts prohibited by this section. Such diversion agreement shall include a stipulation, agreed to by the defendant and the prosecuting attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant perform community service specified by the agreement, not to exceed 40 hours.

A diversion agreement shall provide that if the defendant fulfills the obligations of such diversion agreement, as determined by the prosecuting attorney, the prosecuting attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, a speedy trial and waiver of the rights to counsel and trial by jury.

(3) Any person seeking immunity from criminal prosecution under this section shall be eligible to enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of the acts prohibited by this section only upon a first or second alleged violation of the acts prohibited by this section.