

As Amended by House Committee

Session of 2015

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

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.

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) (f) (1) A person and, if applicable, one or two other persons~~  
37 ~~acting in concert with such person are immune from criminal~~  
38 ~~prosecution for a violation of this section, and any city ordinance or~~  
39 ~~county resolution prohibiting the acts prohibited by this section, if~~  
40 ~~such person:~~

41 ~~(A) (i) Initiated contact with law enforcement or emergency~~  
42 ~~medical services and requested medical assistance for themselves~~  
43 ~~because such person reasonably believed such person was in need of~~

1 **medical assistance; and**

2 **(ii) cooperated with emergency medical services personnel and**  
3 **law enforcement officers at the scene;**

4 **(B) (i) initiated contact with law enforcement or emergency**  
5 **medical services, or was one of one or two other persons who acted in**  
6 **concert with such person, and requested medical assistance for**  
7 **another person who reasonably appeared to be in need of medical**  
8 **assistance;**

9 **(ii) provided such person's full name, the name of one or two**  
10 **other persons acting in concert with such person, if applicable, and**  
11 **any other relevant information requested by law enforcement or**  
12 **emergency medical services;**

13 **(iii) remained at the scene with the person who reasonably**  
14 **appeared to be in need of medical assistance until emergency medical**  
15 **services personnel and law enforcement officers arrived; and**

16 **(iv) cooperated with emergency medical services personnel and**  
17 **law enforcement officers at the scene; or**

18 **(C) (i) was the person who reasonably appeared to be in need of**  
19 **medical assistance as described in subsection (f)(1)(B), but did not**  
20 **initiate contact with law enforcement or emergency medical services;**  
21 **and**

22 **(ii) cooperated with emergency medical services personnel and**  
23 **law enforcement officers at the scene.**

24 **(2)** *A person shall not be allowed to initiate or maintain an action*  
25 *against a law enforcement officer, or such officer's employer, based on the*  
26 *officer's compliance or failure to comply with this subsection.*

27 ~~(f)~~ **(g)** Any city ordinance or county resolution prohibiting the acts  
28 prohibited by this section shall provide a minimum penalty which is not  
29 less than the minimum penalty prescribed by this section.

30 ~~(g)~~ **(h)** A law enforcement officer may request a person under 21  
31 years of age to submit to a preliminary screening test of the person's breath  
32 to determine if alcohol has been consumed by such person if the officer  
33 has reasonable grounds to believe that the person has alcohol in the  
34 person's body except that, if the officer has reasonable grounds to believe  
35 the person has been operating or attempting to operate a vehicle under the  
36 influence of alcohol, the provisions of K.S.A. 8-1012, and amendments  
37 thereto, shall apply. No waiting period shall apply to the use of a  
38 preliminary breath test under this subsection. If the person submits to the  
39 test, the results shall be used for the purpose of assisting law enforcement  
40 officers in determining whether an arrest should be made for violation of  
41 this section. A law enforcement officer may arrest a person based in whole  
42 or in part upon the results of a preliminary screening test. Such results or a  
43 refusal to submit to a preliminary breath test shall be admissible in court in

1 any criminal action, but are not per se proof that the person has violated  
2 this section. The person may present to the court evidence to establish the  
3 positive preliminary screening test was not the result of a violation of this  
4 section.

5 ~~(1)~~ (i) (1) Any person less than 18 years of age who violates only this  
6 section shall not be detained or placed in a jail, as defined in K.S.A. 2014  
7 Supp. 38-2302, and amendments thereto.

8 (2) Any person less than 18 years of age who is arrested only for a  
9 violation of this section shall not be detained or placed in a juvenile  
10 detention facility, as defined in K.S.A. 2014 Supp. 38-2302, and  
11 amendments thereto, for a period exceeding 24 hours, excluding  
12 Saturdays, Sundays and legal holidays.

13 (3) Any person less than 18 years of age at the time of the offense  
14 who is adjudicated only of a violation of this section shall not be detained  
15 in a jail, juvenile detention facility, juvenile correctional facility or  
16 sanctions house, as defined in K.S.A. 2014 Supp. 38-2302, and  
17 amendments thereto.

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

20 Sec. 2. K.S.A. 2014 Supp. 41-727 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its  
22 publication in the statute book.