

HOUSE BILL No. 2735

By Committee on Federal and State Affairs

3-11

9 AN ACT concerning alcoholic beverages; amending K.S.A. 41-2621 and
10 K.S.A. 2009 Supp. 8-1599 and repealing the existing sections.

11

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

13 New Section 1. (a) A limousine service which is licensed to conduct
14 business within any city or county of this state may be issued a drinking
15 establishment license. Such limousines shall be considered the premises
16 to meet the premises requirements of the club and drinking establish-
17 ment act.

18 (b) The director of the alcohol beverage control shall promulgate
19 rules and regulations to implement provisions of this act in accordance
20 with provisions of K.S.A. 41-210, and amendments thereto.

21 Sec. 2. K.S.A. 2009 Supp. 8-1599 is hereby amended to read as fol-
22 lows: 8-1599. (a) As used in this section, "alcoholic beverage" means any
23 alcoholic liquor, as defined by K.S.A. 41-102 and amendments thereto,
24 or any cereal malt beverage, as defined by K.S.A. 41-2701 and amend-
25 ments thereto.

26 (b) *Except as provided in subsection (l)*, no person shall transport in
27 any vehicle upon a highway or street any alcoholic beverage unless such
28 beverage is:

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

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

35 (B) if a motor vehicle is not equipped with a trunk, behind the last
36 upright seat or in an area not normally occupied by the driver or a pas-
37 senger; or

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

43 (c) Violation of this section is a misdemeanor punishable by a fine of

1 not more than \$200 or by imprisonment for not more than six months,
2 or both.

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

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

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

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

30 Upon entering an order restricting a person's license hereunder, the
31 judge shall require such person to surrender such person's driver's license
32 to the judge who shall cause it to be transmitted to the division of vehicles,
33 together with a copy of the order. Upon receipt thereof, the division of
34 vehicles shall issue without charge a driver's license which shall indicate
35 on its face that conditions have been imposed on such person's privilege
36 of operating a motor vehicle and that a certified copy of the order im-
37 posing such conditions is required to be carried by the person for whom
38 the license was issued any time such person is operating a motor vehicle
39 on the highways of this state. If the person convicted is a nonresident,
40 the judge shall cause a copy of the order to be transmitted to the division
41 and the division shall forward a copy of it to the motor vehicle adminis-
42 trator, of such person's state of residence. Such judge shall furnish to any
43 person whose driver's license has had conditions imposed on it under this

1 section a copy of the order, which shall be recognized as a valid Kansas
2 driver's license until such time as the division shall issue the restricted
3 license provided for in this section.

4 Upon expiration of the period of time for which conditions are imposed
5 pursuant to this subsection, the licensee may apply to the division for the
6 return of the license previously surrendered by such licensee. In the event
7 such license has expired, such person may apply to the division for a new
8 license, which shall be issued immediately by the division upon payment
9 of the proper fee and satisfaction of the other conditions established by
10 law, unless such person's privilege to operate a motor vehicle on the
11 highways of this state has been suspended or revoked prior thereto. If
12 any person shall violate any of the conditions imposed under this subsec-
13 tion, such person's driver's license or privilege to operate a motor vehicle
14 on the highways of this state shall be revoked for a period of not less than
15 60 days nor more than one year by the judge of the court in which such
16 person is convicted of violating such conditions.

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

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

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

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

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

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

38 (k) This section shall not be construed as preventing any city from
39 enacting ordinances, or any county from adopting resolutions, declaring
40 acts prohibited by this section as unlawful or prohibited in such city or
41 county and prescribing penalties for violation thereof, but such ordinance
42 or resolution shall provide for suspension or restriction of driving privi-
43 leges as provided by this section and the convicting court shall be required

1 to report convictions for violations of such ordinance or resolution as
2 provided by subsection (i).

3 *(l) It shall not be a violation of this section for a limousine service*
4 *which is licensed as a drinking establishment under provisions of the club*
5 *and drinking establishment act to transport and serve alcoholic liquor to*
6 *passengers. The driver of such limousine shall not have access to the al-*
7 *coholic liquor.*

8 ~~(m)~~ (m) This section shall be part of and supplemental to the uniform
9 act regulating traffic on highways.

10 Sec. 3. K.S.A. 41-2621 is hereby amended to read as follows: 41-
11 2621. *Except as provided in section 1, and amendments thereto*, a club or
12 drinking establishment license shall allow the licensee to operate a club
13 or drinking establishment only at the premises specified in such license
14 in accordance with the provisions of this act and the rules and regulations
15 adopted by the secretary as provided by K.S.A. 41-210 and amendments
16 thereto.

17 Sec. 4. K.S.A. 41-2621 and K.S.A. 2009 Supp. 8-1599 are hereby
18 repealed.

19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the statute book.