

SUBJECT: Placing a marking on driver's licenses of repeat drunken driving offenders

COMMITTEE: Transportation — committee substitute recommended

VOTE: 5 ayes — Krusee, Deshotel, Haggerty, Harless, Hill

1 nay — Macias

3 absent — Phillips, Harper-Brown, Murphy

WITNESSES: For — None

Against — David Gonzales, Texas Criminal Defense Lawyers Association

On — Sherrie Zgabay, Department of Public Safety

BACKGROUND: Penal Code, sec. 49.04 creates an offense for a person operating a motor vehicle in a public place while intoxicated. The punishment is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) with a minimum confinement period of three days, unless the person had an open container of alcohol in the person's immediate possession, in which case the minimum confinement escalates to six days. Sec. 49.045 increases the penalty to a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if a passenger in the vehicle was younger than 15.

Penal Code, sec. 49.09 provides punishment enhancement for the conviction of a person previously convicted of a drunken driving offense, a flying while intoxicated offense (sec. 49.05), a boating while intoxicated offense (sec. 49.06), or an operating or assembling an amusement ride while intoxicated offense (sec. 49.065). Under those situations, the penalty is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) with a minimum confinement period of 30 days, unless the person had been convicted at least two times previously under those sections, in which case a punishment is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). A person convicted of two drunken driving offenses within a five-year period is required to, for the first year after conviction, drive only a vehicle equipped with a

breathalyzer that prevents a car from starting if it detects alcohol on the breath of the operator.

DIGEST: CSHB 2862 would require a special marking be affixed to the driver's license of a person convicted of multiple drunken driving offenses.

If, before the fifth anniversary of the most recent drunken driving conviction, a driver applied for a new or duplicate license or a reinstatement of a driver's license and paid all applicable fees, the Department of Public Safety (DPS) would issue a driver's license that included a distinctive symbol or marking on its face that identified the driver as a repeat intoxicated driving offender. The agency would create rules governing driver's licenses bearing this marking. The driver could apply to the DPS for a license without that distinction after five years without a drunken driving conviction.

Notwithstanding license suspensions for driving offenses under Transportation Code 521.347, a person convicted of a second or subsequent offense under Penal Code, sec. 49.09 would have to surrender the person's driver's license if:

- the conviction required the license to be suspended; or
- the court placed the person under community supervision (Code of Criminal Procedure, sec. 13, art. 42.12) and either a jury recommended the license not be suspended or the offender's car was ordered to be equipped with an ignition triggered by a breathalyzer.

If a court required a person to surrender the person's license, it would send to DPS a record of the driver's conviction and a notification that the person must receive a driver's license with a special marking denoting repeat drunken driving offenses.

The bill would take effect January 1, 2008, and would apply only to a person convicted of an offense on or after that date.

SUPPORTERS SAY: CSHB 2862 would help law enforcement and alcohol servers more easily and quickly identify a person prone to drunken driving. People who repeatedly and recklessly drive while intoxicated can cause a significant danger to those around them, and this phenomenon still is a significant problem. Part of the reason people obey the law is to avoid the public

embarrassment of the punishment imposed on them, and the bill would provide a deterrence to the bad behavior of potential drunken drivers, benefiting everyone on the roads.

In 2006, about 42,000 people were convicted for driving under the influence of alcohol, and about 13,562 of those people were repeat offenders. Although the punishments under current law provide a deterrent to potential offenders, they are not enough, as evidenced by the number of people still repeatedly getting behind the wheel while above the legal blood-alcohol concentration limit of 0.08. CSHB 2862 would not create an additional punishment but instead would fall under the category of collateral consequences, which the U.S. Supreme Court has found to be constitutional.

This bill would aid law enforcement by more quickly alerting them to the drunken driving record of an individual. Although officers in a traffic stop have access to a person's driving record, not all people stopped already are in their vehicles. The bill would provide officers who stopped people on the street with a proactive tool to determine whether these people would be more prone to get behind the wheel while drunk.

The Dram Shop Act (Alcoholic Beverage Code, sec. 2.02) imposes liability on an establishment that serves liquor to drunken drivers after it was apparent the person was intoxicated and presented a danger to themselves and those around them and their intoxicated state was the immediate cause of damages suffered. This provision places a significant burden on barkeepers, who often are unable to keep track of every person in the establishment and their respective levels of intoxication. A marked license would help tip them off to be vigilant about enforcing serving limitations to a specific person. Although some barkeepers do not card certain people, especially those who might look older, they would not be prevented from doing so. To the extent that this bill led more establishments to be vigilant about checking the identification of more customers, the bill could create the additional benefit of identifying more underage drinkers.

**OPPONENTS  
SAY:**

CSHB 2862 would create a modern-day "scarlet letter" that could serve to stigmatize a drunken driver, exacerbating difficulties the person would have for rehabilitation and securing gainful employment. It would publicize information to those already able to obtain it. Those newly

informed of an offender's past would have no real ability to do anything with the information, nor should they.

Society allows a person who committed a crime to receive a fair punishment and move on, and this bill could undermine that idea. Although some criminals, most notably sex offenders, have been subject to extended punishments requiring offenders to identify their past records, there is little compelling reason to do this for a repeat drunken driver. The state has effective ways to deal with these offenders, including breathalyzers in the offender's vehicle that prevent the car from starting unless the driver is sober. A five-year marking of the offender's license would extend three years beyond other criminal penalties that could be imposed. Also, it is not clear where the state would draw the line, as it might be a logical continuation for public safety to note convictions of everyone from rapists to burglars to murderers.

Giving a police officer immediate knowledge of a person's history could compromise the officer's ability to determine probable cause and weaken the state's argument by allowing an offender's attorney to question whether an officer was asking questions based on the marked license or the evidence. Also, police officers are able to access a person's driving and criminal record when the person is detained.

Those with marked licenses could be subject to discrimination in other arenas, making it more difficult for them to move on and be productive. Potential employers who required applicants to furnish a license would be less likely to hire a person with a marked license. Employers who hire people to drive company-owned vehicles already have access to a person's driving record. Also, barkeepers already must stop serving those who are demonstrably intoxicated. Granting them access to a customer's background would not change that and could cause further discrimination against a repeat offender. Most barkeepers card only those who look underage and would not be tipped off if an older driver were a repeat offender. If the state wanted to stop alcohol from being sold to a repeated drunken driver, it should pass a law to do that.

OTHER  
OPPONENTS  
SAY:

This bill should clarify that it applies to repeat offenders and require a fixed ending date for a marked license. Also, the bill only would allow DPS to issue a new license without a marking after five years without another conviction, but it should require the agency to do so. If the punishment is supposed to last five years, a repeat offender should not be

stuck with a marked license for longer than that. Finally, it is unclear whether the bill would apply to a person convicted of a drunken driving offense before the effective date of the law and had a second conviction after that date. It would be unfair to punish someone retroactively under the statute.

NOTES:

The committee substitute removed from the original version any fees imposed on those required to receive a special license, changed applicability only to repeat offenders, and delayed the effective date from September 1, 2007, to January 1, 2008.

The original version would have had a positive impact of \$850,820 during fiscal 2008-09 because of the \$10 fee that would have been imposed, according to the Legislative Budget Board. The agency does not anticipate that CSHB 2862 would have any significant fiscal impact on the state, aside from the \$125,000 DPS would absorb within its current budget to implement programming changes required for its driver's license system.