

BILL ANALYSIS

Senate Research Center
76R2850 JD-D

S.B. 128
By: Nelson
Criminal Justice
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As Filed

DIGEST

Currently, federal law requires each state, under the Transportation Equity Act for the 21st Century (TEA-21), to have an open container law and a repeat offender law for driving while intoxicated (DWI). In order for the state to comply, TEA-21 must be in effect by certain deadlines, or certain funds will be transferred to the state's highway safety and other safety-related programs. Noncompliance with TEA-21 with respect to an open container law or with respect to repeat offenders for DWI by the specified dates may result in the state's loss of significant construction dollars. This bill would make provisions for both the Repeat DWI Offender Program and the Open Container Program as prescribed by federal law, establish that it is an offense for the driver or passenger of a motor vehicle to possess an open alcoholic beverage container while in a public place, and provides for an affirmative defense to prosecution for certain people consuming or possessing an open alcoholic beverage. This bill also provides certain punishments and consequences for repeat DWI offenders.

PURPOSE

As proposed, S.B. 128 establishes provisions regarding the civil and criminal consequences of possessing or consuming an alcoholic beverage in a motor vehicle while intoxicated.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 49.03, Penal Code, to establish that a person who commits an offense with an occupant of a motor vehicle that is located on a public highway, the right-of-way on a public highway, or other specified areas along a highway, if the occupant consumes or possesses an alcoholic beverage. Establishes an affirmative defense to prosecution that the person consuming alcoholic beverage is in the possession of certain persons. Deletes text regarding the need for observance by a peace officer. Makes a conforming change.

SECTION 2. Amends Section 521.251, Transportation Code, by redesignating Subsection (d) as (e) and adding a new Subsection (d) to prohibit an order granting a person an occupational license from taking effect before the first anniversary of the effective date of the suspension, if the person's driver's license has been suspended for a second or subsequent conviction under Section 49.04, 49.07, or 49.08, Penal Code. Makes a conforming change.

SECTION 3. Amends Sections 521.344(a), (b), and (d), Transportation Code, as follows:

Sec. 521.344. New heading: **SUSPENSION FOR OFFENSES INVOLVING INTOXICATION**. Establishes that if a person is convicted of an offense under Section 49.04 or 49.07, Penal Code, rather than an offense committed as a result of the introduction of alcohol into the body, the license suspension continues for not less than one year, rather than 180 days. Sets forth exceptions to suspension of a license for persons punished under Section 94.09, Penal Code. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 9(h), Article 42.12, Code of Criminal Procedure, to require a judge to direct a supervision officer to conduct an evaluation to determine the appropriateness of, and best course of action for rehabilitation for cases involving more than one offense under Section 49.04, 49.07, or 49.08, Penal Code, that involves the operation of a motor vehicle.

SECTION 5. Amends Sections 13(g) and (k), Article 42.12, Code of Criminal Procedure, to provide that Subsection (g) does not apply to a person punished under Section 49.09, Penal Code. Makes a conforming change.

SECTION 6. Amends Section 16, Article 42.12, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-1), to establish the amount of community service work a judge may order under Section 49.04(a) and (b). Makes a conforming change.

SECTION 7. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 8. Emergency clause.