

BILL ANALYSIS

Senate Research Center

C.S.S.B. 128
By: Nelson
Criminal Justice
5/13/1999
Committee Report (Substituted)

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. C.S.S.B. 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, C.S.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 Chapter 502, Transportation Code, by adding Subchapter I, as follows:

SUBCHAPTER 1. SUSPENSION OF REGISTRATION OF REPEAT DWI OFFENDERS

Sec. 502.451. **SUSPENSION OF REGISTRATION.** Defines "offense relating to the operating of a motor vehicle." Sets forth requirements by which the Department of Public Safety (DPS) shall automatically suspend all vehicle registrations of a person. Sets forth conditions of a suspension of a motor vehicle. Requires DPS to give written notice of a vehicle registration suspension.

Sec. 502.452. **PROHIBITION AGAINST RENEWAL OR OTHER REGISTRATION.** Sets forth certain prohibitions for a person whose vehicle registration is suspended. Provides that it is an affirmative defense to prosecution that the person had not received notice of a suspension order concerning the person's vehicle registration. Establishes conditions that presume a notice has been received. Provides that an offense under this section is a misdemeanor punishable by certain fines and confinement.

Sec. 502.453. **OPERATION OF MOTOR VEHICLE IN VIOLATION OF SUSPENSION; OFFENSE.** Sets forth provisions regarding the operation of a motor vehicle in violation of a suspension. Provides that an offense under this section is a misdemeanor punishable by a fine of

not less than \$100 or more than \$500 and confinement in county jail for a term of not less than 72 hours or more than six months.

Sec. 502.454. NOTICE OF SUSPENSION OF VEHICLE REGISTRATION. Sets forth provisions regarding the delivery and proof of receipt of the notice of suspension of a vehicle registration. Requires a certificate regarding proof of deliver of the notice.

Sec. 502.455. RETURN OF VEHICLE REGISTRATIONS AND LICENSE PLATES TO DEPARTMENT OF PUBLIC SAFETY. Requires a person notified of a vehicle registration suspension to send to DPS the person's vehicle registration receipts and the license plates for the person's vehicles. Requires the registration receipts and license plates to be sent not later than the 10th day after the date the person receives written notice from DPS.

Sec. 502.456. FAILURE TO RETURN VEHICLE REGISTRATIONS AND LICENSE PLATES; OFFENSE. Provides that a person commits an offense if the person fails or refuses to timely send to DPS the person's registration receipts and license plates as required. Establishes that an offense under this section is a misdemeanor punishable by certain fines and confinements. Requires DPS to direct an employee to obtain and send the vehicle registration receipts and license plates of a person who fails to return the person's registration receipts and license plates in accordance with Section 502.455. Authorizes the director of DPS or a person designated by the director to file a complaint against a person for an offense under Subsection (a).

Sec. 502.457. TRANSFER OF VEHICLE REGISTRATION PROHIBITED. Sets forth prohibitions for an owner whose vehicle registration has been suspended. Authorizes DPS to authorize the transfer of a vehicle registration if the director of DPS determines that the transfer is proposed in good faith and not to defeat the purposes of this subchapter. Provides that this section does not affect the rights of a conditional vendor or lessor of, or person with a security interest in, a motor vehicle owned by a person who is subject to this section if the vendor, lessor, or secured party is not the registered owner of the vehicle.

Sec. 502.458. REINSTATEMENT FEE. Prohibits a vehicle registration that has been suspended from being reinstated and a new registration receipt or license plates may not be issued to the person until the person pays to DPS a \$50 fee. Provides that the fee imposed by this section is in addition to other fees imposed by law. Provides that a person is required to pay only one fee, without regard to the number of vehicle registration and license plates to be reinstated for or issued to the person in connection with the payment.

SECTION 3. 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, committed within five years of the date on which the most recent preceding offense was committed. Makes a conforming change.

SECTION 4. 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 5. 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, committed within five years of the date on which the most recent preceding offense was committed, that involves the operation of a motor vehicle.

SECTION 6. 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 changes.

SECTION 7. 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 8. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 9. Emergency clause.