

BILL ANALYSIS

Senate Research Center

H.B. 5
By: Dunnam (Nelson)
Criminal Justice
5/7/2001
Engrossed

DIGEST AND PURPOSE

Under current federal law, states are required to enact laws that meet federal requirements for both repeat driving-while-intoxicated (DWI) offenders and open container laws. If a state fails to enact or is not enforcing an open container law or a law relating to repeat DWI offenders, federal law requires that a percentage of federal highway funds apportioned to the state be diverted for use in traffic safety programs. Currently, the percentage of funds required to be transferred is 1.5 percent. Beginning October 1, 2002, the percentage doubles if Texas does not meet or exceed the requirements set by federal law. H.B. 5 establishes provisions for the purpose of bringing Texas into compliance with federal open container laws and federal laws for repeat DWI offenders.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative purpose.

SECTION 2. Amends Chapter 49, Penal Code, by adding Section 49.031, as follows:

Sec. 49.031. POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) Defines "open container," "passenger area of a motor vehicle," and "public highway."

(b) Provides that a person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Provides that possession by a person of one or more open containers in a single criminal episode is a single offense.

(c) Provides that it is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in certain areas.

(d) Provides that an offense under this section is a Class C misdemeanor.

(e) Requires a peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, to issue to the person a written citation and notice to appear that contains certain information. Requires the officer, under certain conditions, to release the person.

SECTION 3. Amends Section 49.09, Penal Code, by adding Subsection (g), as follows:

(g) Provides that this subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years

of the date on which the most recent preceding offense was committed. Requires the court to enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. Requires the court to require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date and that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. Authorizes the court, if the court determines the offender is unable to pay for the device, to impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. Requires the Department of Public Safety (department) to approve devices for use under this subsection. Provides that Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Provides that failure to comply with an order entered under this subsection is punishable by contempt. Provides that, for purposes of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. Provides that to the extent of a conflict between this subsection and Section 13(i), Article 42.12, Code of Criminal Procedure, this subsection controls.

SECTION 4. Amends Section 49.11, Penal Code, to provide that Subsection (a) does not apply to an offense under Section 49.031.

SECTION 5. Amends Section 521.251, Transportation Code, by redesignating existing Subsection (d) as Subsection (e) and adding a new Subsection (d), to prohibit an order granting the person an occupational license, notwithstanding any other provision in this section, if the person's driver's license has been suspended as a result of 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, from taking effect before the first anniversary of the effective date of the suspension.

SECTION 6. Amends the heading to Section 521.344, Transportation Code, to read as follows:

Sec. 521.344. SUSPENSION FOR OFFENSES INVOLVING INTOXICATION.

SECTION 7. Amends Sections 521.344(a), (b), and (d), Transportation Code, as follows:

(a) Provides that except as provided by Sections 521.342(b) and 521.345, and by Subsections (d) - (i), if a person is convicted of an offense under Section 49.04 or 49.07, Penal Code, the license suspension continues for a period set by the court according to a certain schedule. Deletes existing text regarding an offense as a result of the introduction of alcohol into the body.

(b) Provides that except as provided by Section 521.342(b), if a person is convicted of an offense under Section 49.08, Penal Code, the license suspension begins on a certain date determined by the court and continues for a certain period determined by the court, except that if the person's license is suspended for a second or subsequent offense under Section 49.08, Penal Code, committed within 10 years of the date on which the most recent preceding offense was committed, the suspension continues for a period set by the court of not less than one year or more than two years.

(d) Prohibits the department, except as provided by Subsection (e), from revoking, during a period of probation, the person's license if the person is required under Sections 13(h) or (j), Article 42.12, Code of Criminal Procedure, to successfully complete an educational program

designed to rehabilitate persons who have operated motor vehicles while intoxicated, unless the person was punished under Section 49.09(a) or (b), Penal Code, and was subject to Section 49.09 (g) of that code. Makes a conforming change.

SECTION 8. Amends Section 9(h), Article 42.12, Code of Criminal Procedure, to require the judge, on determination by the judge that alcohol or drug abuse may have attributed to the commission of the offense, or in any case involving a second or subsequent offense under Section 49.04, Penal Code, committed within five years of the date on which the most recent preceding offense was committed, or a second or subsequent offense under Section 49.07 or 49.08 of that code that involves the operation of a motor vehicle, committed within five years of the date on which the most recent preceding offense was committed, to direct a supervision officer approved by the community supervision and corrections department or the judge or a person, program, or other agency approved by the Texas Commission on Alcohol and Drug Abuse, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report that evaluation to the judge.

SECTION 9. Amends Sections 13(a), (g), and (k), Article 42.12, Code of Criminal Procedure, as follows:

(a) Requires a judge granting community supervision to a defendant convicted of an offense under Chapter 49, Code of Criminal Procedure, to require as a condition of community supervision that the defendant submit to certain conditions.

(g) Provides that this subsection does not apply to a person punished under Section 49.09(a) or (b), Penal Code, and subject to Section 49.09(g) of that code.

(k) Requires the judge, under certain conditions and notwithstanding certain provisions, to order the suspension of the driver's license, permit, or operating privilege of that person for a period determined by the judge according to a certain schedule.

SECTION 10. Repealer: Section 49.03 (Consumption or Possession of Alcoholic Beverage in Motor Vehicle), Penal Code.

SECTION 11. (a) Effective date: September 1, 2001, except as provided by Subsection (b) of this section.

(b) Makes application of Section 3 prospective.

(c) Makes application of Section 5 prospective.

(d) Makes application of Section 7 prospective.

(e) Makes application of Section 8 prospective.

(f) Makes application of Section 9 prospective.

(g) Sets forth provisions for the prospective application of certain sections of this Act.