

## **BILL ANALYSIS**

Senate Research Center  
77R1684 JD-D

S.B. 89  
By: Nelson  
Criminal Justice  
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As Filed

### **DIGEST AND PURPOSE**

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 results in the state's loss of significant construction dollars (currently these dollars are transferred to traffic safety programs). This bill makes provisions for both the Repeat DWI Offender Program and the Open Container Program as prescribed by federal law, establishes 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. As proposed, S.B. 89 establishes provisions regarding the civil and criminal consequences of possessing or consuming an alcoholic beverage in a motor vehicle.

### **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. Amends Section 49.03, Penal Code, to provide that an occupant of a motor vehicle that is located on a public highway or on the right-of-way of a public highway, including specified rights-of-way, commits an offense if the person consumes an alcoholic beverage or possesses a receptacle in the passenger area containing an alcoholic beverage that has been opened, its seal broken, or has part of the contents removed. Provides that it is an affirmative defense to prosecution that the person consuming the alcoholic beverage or the receptacle containing the beverage is in the possession of a passenger in the living quarters of a house coach or house trailer or a passenger in a motor vehicle intended for the transportation of persons for compensation. Deletes language referring to the observation of such an offense by a peace officer.

SECTION 2. Amends Chapter 502, Transportation Code, by adding Subchapter I, as follows:

#### **SUBCHAPTER I. SUSPENSION OF REGISTRATION OF REPEAT DWI OFFENDERS**

Section 502.451. SUSPENSION OF REGISTRATION. (a) Defines "offense relating to the operating of a motor vehicle while intoxicated."

(b) Requires the Department of Public Safety (DPS) to automatically suspend all vehicle registrations of 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 previous offense, or a person whose driver's license is suspended or revoked under Chapter 521O.

(c) Provides that a suspension of a vehicle registration begins on the date that the suspension or revocation of the person's driver's license takes effect and continues until the date on which the period of suspension terminates or the revoked license is reinstated.

Section 502.452. PROHIBITION AGAINST RENEWAL OR OTHER REGISTRATION. Prohibits a person whose vehicle registration is suspended under Section 502.451 from renewing the suspended vehicle registration or registering another vehicle in the person's name before the expiration of the period of registration suspension.

Section 502.453. OPERATION OF A MOTOR VEHICLE IN VIOLATION OF SUSPENSION; OFFENSE. (a) Provides that a person commits an offense if the person, during a period that a suspension of the vehicle registration is in effect, operates the vehicle on a highway or knowingly permits the vehicle to be operated on a highway.

(b) Provides that it is an affirmative defense to prosecution under this section that the person had not received notice of a suspension order concerning the person's vehicle registration.

(c) Provides that an offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$500 and a confinement in county jail for a term of not less than 72 hours or more than six months.

Section 502.454. NOTICE OF SUSPENSION OF VEHICLE REGISTRATION. (a) Requires the DPS to give written notice of a vehicle registration suspension.

(b) Requires the notice to be delivered by personal delivery to the person or by deposit in the United States mail addressed to the person at the last address supplied to the Texas Department of Transportation (department) or DPS by the person.

(c) Provides that notice by mail is presumed to be received on the 10th day after it is mailed, and authorizes certain proof of the notice to be made by the certificate of a DPS employee.

(d) Requires a certificate of notice personally delivered by a departmental employee to specify the name of the person to whom the notice was given and the time, place, and manner of the delivery of the notice.

Section 502.455. RETURN OF VEHICLE REGISTRATIONS AND LICENSE PLATES TO DEPARTMENT OF PUBLIC SAFETY. (a) Requires a person notified of a vehicle registration suspension to send the person's vehicle registration receipts and license plates for the vehicles to the DPS.

(b) Requires the registration receipts and license plates to be sent no later than the 10th day after the person receives written notice from DPS.

Section 502.456. FAILURE TO RETURN VEHICLE REGISTRATION AND LICENSE PLATES; OFFENSE. (a) Sets forth that a person commits an offense if the person fails or refuses to send to DPS the vehicle registration receipts and license plates in a timely manner.

(b) Sets forth 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.

(c) Requires DPS to direct an employee of DPS to obtain and send to DPS the vehicle registration receipts and license plates of a person who fails to return them in accordance

with Section 502.455.

(d) 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).

Section 502.457. TRANSFER OF VEHICLE REGISTRATION PROHIBITED. (a) Prohibits an owner whose vehicle registration has been suspended under this subchapter from transferring the registration unless authorized under Subsection (b) or from registering the motor vehicle in another name to which the registration applies.

(b) Authorizes DPS to authorize transfer of vehicle registration if the director determines that the transfer is in good faith and is not to defeat the purposes of this subchapter.

(c) Provides that this section does not affect the rights of a conditional vendor or person with security interest in a motor vehicle owned by a person who is subject to this section if the vendor or secured party is not the registered owner of the vehicle.

Section 502.458. REINSTATEMENT FEE. (a) Prohibits the reinstatement of a vehicle registration and the issue of a new registration receipt or license plates to the person until the person pays DPS a fee of \$50.

(b) Provides that the fee imposed by this section is in addition to other fees imposed by law.

(c) Requires a person to only pay one fee under this section without regard to the number of registrations 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 existing Subsections (d) and (e) and adding a new Subsection (d), as follows:

(d) Prohibits an order granting a person an occupational license from taking affect before the first anniversary of the effective date of the suspension, if the person's driver's license has been suspended as a result of a second or subsequent conviction under Section 49.04 (Driving While Intoxicated), 49.07 (Intoxication Assault), or 49.08 (Intoxication Manslaughter), Penal Code, committed within five years of the date on which the most recent offense was committed.

SECTION 4. Amends Section 521.344, Transportation Code, as follows:

Section 521.344. New heading: SUSPENSION FOR OFFENSES INVOLVING INTOXICATION. (a) Deletes language referring to an offense committed as a result of the introduction of alcohol into the body, and redefines the period of a license suspension to be not less than one year rather than 180 days, or more than two years.

(b) Makes conforming changes.

(d) Makes an exception under Section 49.09 (Enhanced Offenses and Penalties), Penal Code, to the prohibition against revoking the license of a person during a period of probation if the person is required to complete an educational program designed to rehabilitate persons who have operated motor vehicles while intoxicated. Makes a conforming change.

SECTION 5. Amends Section 9 (h), Article 42.12, Code of Criminal Procedure, to refer to the conditions under which a judge is required to direct a supervision officer to conduct an evaluation to determine the appropriateness of and course of conduct for an alcohol or drug rehabilitation for a defendant. Includes

cases involving a second or subsequent offense committed within five years of the previous offense involving the operation of a motor vehicle.

SECTION 6. Amends Sections 13 (g) and (k), Article 42.12, Code of Criminal Procedure, to prohibit a person punished under Section 49.09, Penal Code, from being punished under Subsection 13 (g). Makes conforming changes.

SECTION 7. Amends Section 16, Article 42.12, Code of Criminal Procedure, by amending Subsection (b) and by adding Subsection (b-1), as follows:

(b) Makes conforming and nonsubstantive changes.

(b-1) Prohibits the amount of community service work ordered by the judge from being less than 30 eight-hour days for an offense under Section 49.04, Penal Code, that is punished under Section 49.09 (a) of that code, and from being less than 60 eight-hour days for an offense under Section 49.04, Penal Code, that is punished under Section 49.04 (b) of that code.

SECTION 8. Effective date: September 1, 2001.

Makes application of this Act prospective.