

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 89
By: Nelson
Criminal Justice
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Committee Report (Substituted)

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 the state will lose certain federal highway funds. Noncompliance with TEA-21, with respect to an open container law or with respect to repeat offenders for DWI, by the specified dates, will result in the state's loss of significant construction dollars which currently are transferred to traffic safety programs. C.S.S.B. 89 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 exception to this offense if the alcoholic beverage is being consumed or exists in a certain type of vehicle. This bill also provides certain punishments and consequences for repeat DWI offenders and 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. Provides that the purpose of this Act is to avoid the imposition of sanctions against this state and the loss of federal highway construction funds under Section 1405(a), Transportation Equity Act for the 21st Century (23 U.S.C. Section 154), as amended, which requires states to enact and enforce a law that prohibits the possession of an open alcoholic beverage container in the passenger area of a motor vehicle that is located on a public highway or the right-of-way adjacent to a public highway, and Section 1406(a), Transportation Equity Act for the 21st Century Restoration Act (23 U.S.C. Section 164), as amended, which requires states to enact and enforce minimum penalties against repeat intoxicated drivers.

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

Sec. 49.031. POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE.
Defines "open container," "passenger area of a motor vehicle," and "public highway." Provides that a person commits a Class C misdemeanor 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 certain exceptions to this section. Provides that the enforcement of this section is suspended on the 30th day after the date the attorney general files a certificate with the secretary of state for publication in the Texas Register, certifying the finding by the attorney general that the enforcement of 23 U.S.C. Section 154, to the extent that section imposes sanctions against a state involving the transfer of federal highway construction funds for failure to enact and enforce a law that prohibits the possession of an open alcoholic beverage container and the consumption of any alcoholic

beverage in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, is suspended or enjoined. Provides that the period of suspension continues until the 30th day after the date the attorney general files a subsequent certificate with the secretary of state certifying the finding by the attorney general that enforcement of 23 U.S.C. Section 154 is no longer suspended or enjoined.

Provides that this section expires on the 30th day after the date the attorney general files a certificate with the secretary of state for publication in the Texas Register, certifying the finding by the attorney general that: 23 U.S.C. Section 154, to the extent that section imposes sanctions against a state involving the transfer of federal highway construction funds for failure to enact and enforce a law that prohibits the possession of an open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, is repealed or has expired; a United States court of appeals or the United States Supreme Court has entered a final order holding that 23 U.S.C. Section 154, or a federal regulation implementing that section, is unconstitutional or otherwise invalid, in whole or in part; or a subsequently enacted act of congress has the effect of abrogating the sanctions required by 23 U.S.C. Section 154.

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 a motor vehicle if ethyl alcohol is detected in the breath of the operator, and requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344 (Suspension for Offenses Related to Use of Alcohol), Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. Provides that the court is 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 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. Provides that, if the court determines the offender is unable to pay for the device, the court is authorized to impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. Requires the Department of Public Safety to approve devices for use under this subsection. Provides that Section 521.247 (Approval of Ignition Interlock Devices by Department), 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 the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date that 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 (Community Supervision), Code of Criminal Procedure, this subsection controls.

SECTION 4. 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 5. Amends the heading to Section 521.344, Transportation Code, to read as follows:

Section 521.344. SUSPENSION FOR OFFENSES INVOLVING INTOXICATION.

SECTION 6. Amends Sections 521.344(a), (b), and (d), Transportation Code, as follows:

(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 7. 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 8. Amends Sections 13(a), (g) and (k), Article 42.12, Code of Criminal Procedure, to require a judge granting community supervision to a defendant convicted of an offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, to require as a condition of community supervision that the defendant submit to not less than five, rather than three, days of confinement in county jail if the defendant was punished under Section 49.09(a). Prohibits a person punished under Section 49.09 (Enhanced Offenses and Penalties), Penal Code, from being punished under Subsection 13 (g). Makes conforming changes.

SECTION 9. Effective date: September 1, 2001, except as provided by Subsection (b) of this section.

(b) Provides that if before September 1, 2001, the attorney general files with the secretary of state a certificate certifying the finding by the attorney general of a fact described by Section 49.031(e) or (f), Penal Code, as added by this Act, Section 2 of this Act does not take effect until the 30th day after the date the attorney general files a subsequent certificate with the secretary of state certifying the finding by the attorney general that none of the facts described by Section 49.031(e) and (f) exist.

(c)-(h) Make application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Deletes proposed SECTION 1 and adds text regarding the purpose of this Act.

SECTION 2. Deletes proposed SECTION 2 and adds text regarding the possession of alcoholic beverages in motor vehicles.

SECTION 3. Adds a new SECTION 3 regarding multiple convictions of operating a motor vehicle while intoxicated.

SECTION 4. Renumbers proposed SECTION 3 as SECTION 4.

SECTION 5. Renumbers a portion of proposed SECTION 4 as SECTION 5.

SECTION 6. Renumbers a portion of proposed SECTION 4 as SECTION 6.

SECTION 7. Deletes proposed SECTION 7 and renumbers proposed SECTION 5 as SECTION 7.

SECTION 8. Renumbers proposed SECTION 6 as SECTION 8 and adds Subsection (a).

SECTION 9. Renumber proposed SECTION 8 as SECTION 9 and adds text regarding a provision to the effective date.