

**SUBJECT:** Revisions to purchasing or furnishing alcohol to minor offense

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Gallego, Hartnett, Burkett, Carter, Christian, Rodriguez, Zedler  
0 nays  
2 absent — Aliseda, Y. Davis

**WITNESSES:** For — Julia Starkey (*Registered, but did not testify*: Zachary Domingue; Michelle Keith; Quentin Keith; Doug Lowe, Anderson County District Attorney; Duncan Montgomery; Laine Montgomery; Brian Petrilla, Northwest Rural EMS Tomball TX; Ross Brandon; Dudley Wait, City of Schertz EMS; Tracy Warren)  
Against — None  
On — Carolyn Beck, Texas Alcoholic Beverage Commission

**BACKGROUND:** A minor commits an offense by consuming an alcoholic beverage under the Alcoholic Beverage Code sec. 106.04. It is an affirmative defense to prosecution if the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse. A minor also commits an offense by possessing an alcoholic beverage under Alcoholic Beverage Code, sec. 106.05, except in employment under certain circumstances, with an adult parent, guardian, or spouse, or with a peace officer engaged in enforcing the Alcoholic Beverage Code.

These offenses are punishable as class C misdemeanors, but are increased if the minor previously has been convicted two or more times of this offense. A minor also is required to perform community service hours and the judge must order the suspension of the minor's driver 's license or permit for 30 days for first-time offenders, for 60 days for second-time offenders, and for 180 days for third-time or more offenders.

A person commits an offense by purchasing or furnishing alcohol for or to a minor with criminal negligence unless the person is the minor's adult parent, guardian, or spouse visibly present when the minor possesses or

consumes the alcoholic beverage under Alcoholic Beverage Code, sec. 106.06. An offense under this section is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

DIGEST:

CSHB 3474 would amend Alcoholic Beverage Code, secs. 106.04 and 106.05 by creating an exception to the offenses for serving or furnishing alcohol to a minor if the minor was the first person to request emergency medical assistance in response to the possible alcohol overdose of the minor or another person and remained until the medical assistance arrived and cooperated with medical assistance and law enforcement.

CSHB 3474 would provide that a judge who placed a defendant on community supervision under Alcohol and Beverage Code, sec. 106.06 for purchasing or furnishing a minor with alcohol at a gathering where participants were involved in the abuse of alcohol, including binge drinking or forcing or coercing individuals to consume alcohol, would also have to require:

- the defendant to perform community service for at least 20 hours and no more than 40 hours;
- the defendant to attend a state approved alcohol awareness program; and
- the Department of Public Safety to suspend the driver's license or permit of the defendant, or if the defendant did not have a driver's license or permit, to deny the issuance of a driver's license or permit to the defendant for 180 days.

Community service ordered by the judge would be in addition to any community service ordered according to the judge's general authority to impose community supervision under Code of Criminal Procedure sec. 42.12. The community service ordered would have to include education about prevention of misuse of alcohol, if programs or services providing that education were available in the community in which the court was located. If programs or services providing that education were not available, the court could order community service that the court considered appropriate for rehabilitative purposes.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 3474 would provide limited immunity to prosecution of a minor who possessed or consumed alcohol if the minor was the first person who requested emergency medical assistance for himself or another person who was suffering from alcohol poisoning. This bill stems from the tragic death of Carson Starkey, who died in 2008 of alcohol poisoning at a fraternity function. His fraternity brothers had Carson in the car, but did not take him to the hospital for fear they would be in trouble with the law. CSHB 3474 could help prevent other tragic alcohol poisoning deaths.

CSHB 3474 also would also try to prevent these binge drinking parties and would teach participants of their dangers. Someone who commits the offense of purchasing or furnishing alcohol to a minor at a social gathering where binge drinking was taking place would get required rehabilitative community service, plus a 180-day suspension of a driver's license or permit. Our laws need to do more to teach kids that drinking is deadly serious, not just fun and games, and CSHB 3474 would be a step in the right direction.

**OPPONENTS  
SAY:**

CSHB 3474 should take out the "exception" to the offense language and state that the offenses of a minor possessing or consuming alcohol would "not apply" if the minor was the first person to request EMS help for a person with alcohol poisoning. Saying it "does not apply" still would require the state to disprove it at trial, but only when there was some evidence raising the issue.

**NOTES:**

The companion bill, SB 1331 by Watson, passed the Senate 31-0 on April 20 and was reported favorably, as amended, by the House Criminal Jurisprudence Committee on May 7 and recommended for the Local and Consent Calendar.