

BILL ANALYSIS

Senate Research Center

C.S.S.B. 35
By: West
Criminal Justice
2-4-97
Committee Report (Substituted)

DIGEST

Currently, Texas leads the nation in the number of alcohol-related traffic fatalities among the nation's youth. National Highway Traffic Safety Administration research has shown that younger, less experienced drivers have more than twice the number of fatal crashes in their first year of driving and have four times as many crashes per mile as do experienced adult drivers. When alcohol becomes a factor, these statistics increase. Although the age at which a person can legally purchase, possess, and consume alcohol is 21, Texas allows drivers under the age of 21 to drive a motor vehicle with a blood alcohol content (BAC) of up to .07.

Furthermore, the National Highway System Designation Act of 1995 as passed by Congress mandates that all states adopt a "zero tolerance" law by October 1, 1998, or lose federal highway funding. The federal law provides that a "zero tolerance" law must consider an individual under the age of 21 with a BAC level of .02 percent or higher to be driving under the influence of alcohol. Failure to comply with federal requirements by October 1, 1998, will result in a loss of approximately \$38.5 million to Texas, increasing to \$77 million if not passed by October 1, 1999.

S.B. 35 creates a separate offense for driving under the influence of alcohol by a minor, lowers the BAC level to .00 for drivers under 21, and increases the penalty for those under the age of 17 for the first and second offense of driving while intoxicated from a conduct indicating a need for supervision (CINS) offense to delinquent conduct. This legislation also stiffens the penalties for all alcohol-related offenses by a minor, including minor possession, attempt to acquire, and consumption of alcohol, to provide for suspension of a minor's driver's license, increased fines, participation in an alcohol awareness class, mandatory community service, and possible jail on a third offense, among other penalties.

PURPOSE

As proposed, C.S.S.B. 35 provides a new offense for driving under the influence of alcohol by a minor, and increases the penalties for juvenile driving while intoxicated and other actions of a minor concerning the attempt to acquire, possession, and consumption of alcohol.

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 106.02, Alcoholic Beverage Code, to make conforming changes.

SECTION 2. Amends Section 106.025, Alcoholic Beverage Code, to make conforming changes.

SECTION 3. Amends Section 106.03, Alcoholic Beverage Code, to provide that an offense under this section is a Class A misdemeanor. Deletes existing misdemeanor offense.

SECTION 4. Amends Section 106.04, Alcoholic Beverage Code, to provide that it is an affirmative defense to prosecution that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse. Provides that a repeat offender under this section is not eligible for deferred adjudication. Specifies that for the purposes of this subsection, an

adjudication under Title 3, Family Code, is considered a conviction under this section. Makes conforming changes.

SECTION 5. Amends Chapter 106, Alcoholic Beverage Code, by adding Section 106.041, as follows:

Sec. 106.041. DRIVING UNDER THE INFLUENCE OF ALCOHOL BY MINOR. Provides that a minor commits a Class C misdemeanor if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system, except if the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, in which case the offense is punishable by a fine of not less than \$500 or more than \$2,000 and/or confinement in jail for not more than 180 days. Establishes the terms under which the court is required to order a minor convicted of an offense to perform community service related to education about or prevention of alcohol misuse. Prohibits deferred adjudication for a minor who commits a third or subsequent offense under this section. Provides that an offense under this section is not a lesser included offense under Section 49.04, Penal Code. Establishes that for the purpose of determining whether a minor has been previously convicted of an offense, an adjudication under Title 3, Family Code, constitutes a conviction under this section. Provides that a peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor containing written notice of certain information. Defines "child," "motor vehicle," and "public place."

SECTION 6. Amends Section 106.05, Alcoholic Beverage Code, to authorize a minor to possess an alcoholic beverage if the minor is in the visible presence of the minor's adult parent, guardian or spouse, or other adult to whom the minor has been committed by a court. Makes conforming changes.

SECTION 7. Amends Section 106.06(c), Alcoholic Beverage Code, to provide that an offense under this section is a Class B misdemeanor. Deletes existing misdemeanor offense.

SECTION 8. Amends Section 106.07, Alcoholic Beverage Code, to make conforming changes.

SECTION 9. Amends Chapter 106, Alcoholic Beverage Code, by adding Section 106.071, as follows:

Sec. 106.071. PUNISHMENT FOR ALCOHOL-RELATED OFFENSE BY MINOR. Provides that this section applies to an offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07. Establishes that such an offense is a Class C misdemeanor, except if it is shown that the defendant is a minor who is not a child and who has been previously convicted at least twice, in which case the offense is punishable by a fine of not less than \$250 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. Establishes the terms under which the court is required to order a minor convicted of an offense to which this section applies to perform community service and to order the Department of Public Safety (department) to suspend or deny the issuance of a minor's driver's license or permit. Requires community service to be related to education about or prevention of alcohol misuse. Provides that for the purpose of determining whether a minor has been previously convicted, an adjudication is considered a conviction under this section. Defines "child."

SECTION 10. Amends Section 106.115, Alcoholic Beverage Code, to include Sections 106.025, 106.041, and 106.07 among the list of sections under which the court is required, on conviction of a minor, to require a first offender to attend an alcohol awareness course. Authorizes the court, if the defendant is a repeat offender, to require the defendant to attend an alcohol awareness course. Deletes the provision requiring the court to mandate community service participation if an alcohol awareness course is not readily available. Authorizes the court, for good cause, to extend by 90 days the period during which a defendant must present evidence of satisfactory completion of an alcohol awareness course or community service. Makes conforming changes.

SECTION 11. Amends Chapter 106, Alcoholic Beverage Code, by adding Sections 106.116 and

106.117, as follows:

Sec. 106.116. **REPORTS OF COURT TO COMMISSION.** Requires the clerk of a court, including a justice court, municipal court, or juvenile court, to furnish on request to the Texas Alcoholic Beverage Commission (commission) a notice of a conviction of an offense under this chapter or an adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter unless the clerk is otherwise required to include the information in a report submitted under Section 101.09. Requires the report to be in the form prescribed by the commission.

Sec. 106.117. **REPORT OF COURT TO DEPARTMENT OF PUBLIC SAFETY.** Sets forth the terms by which each court, including a justice court, municipal court, or juvenile court, is required to furnish to the Department of Public Safety (DPS) a notice of adjudication under Title 3, Family Code, for conduct constituting an offense under this chapter; conviction of an offense under this chapter; and acquittal of an offense under Section 106.041. Establishes the conditions under which DPS is required to maintain records of information in the notices and provide the information to law enforcement agencies and courts as necessary. Establishes that a person who holds a driver's license having the same number that is contained in a record maintained under this section is presumed to be the person to whom the record relates, and provides an exception.

SECTION 12. Amends Section 51.02(15), Family Code, to make a conforming change.

SECTION 13. Amends Sections 51.03(a) and (b), Family Code, to provide that delinquent conduct is conduct that violates Sections 49.04-49.08, Penal Code; or Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor. Makes conforming changes.

SECTION 14. Amends Section 52.02, Family Code, by amending Subsection (a) and adding Subsection (c), to authorize a person who takes a child into custody and who has reasonable grounds to believe that the child has been operating a motor vehicle in a public place while having any detectable amount of alcohol in the child's system, to obtain a specimen of the child's breath or blood and perform intoxilyzer processing and videotaping of the child before releasing the child to a parent, guardian, custodian of the child, or other responsible adult. Makes a conforming change.

SECTION 15. Amends Section 53.03, Family Code, by amending Subsection (a) and adding Subsection (g), to prohibit deferred prosecution for a child alleged to have engaged in conduct that is an offense under Sections 49.04-49.08, Penal Code; or a third or subsequent offense under Section 106.04 or 106.041, Alcoholic Beverage Code. Makes conforming changes.

SECTION 16. Amends Chapter 54, Family Code, by adding Section 54.046, as follows:

Sec. 54.046. **ALCOHOL-RELATED OFFENSE.** Sets forth the terms under which a court is required to order a child who is found to have violated certain alcohol-related offenses to perform community service and order a child's driver's license or permit to be suspended or a child be denied issuance of the same.

SECTION 17. Amends Chapter 59, Family Code, by adding Section 59.0031, as follows:

Sec. 59.0031. **SANCTION LEVEL ASSIGNMENT GUIDELINES FOR DRIVING WHILE INTOXICATED.** Sets forth the conditions under which the probation department or the juvenile court is authorized to assign a child, for conduct that is an offense under Sections 49.04-49.06, Penal Code, sanction level two for the first offense, sanction level three for the second offense, and sanction level four for the third offense.

SECTION 18. Amends Section 521.145, Transportation Code, as follows:

Sec. 521.145. **APPLICATION BY PERSON UNDER 18 YEARS OF AGE.** Requires the department to provide the applicant and cosignor with information relating to driving while intoxicated, driving by a minor with alcohol in the minor's system, and implied consent.

Requires the applicant and cosignor to acknowledge receipt of the information. Makes a conforming change.

SECTION 19. Amends Section 521.342(a), Transportation Code, to make a conforming change.

SECTION 20. Amends Section 524.001, Transportation Code, to define "adult," "arrest," "conviction," "criminal charge," "criminal prosecution," and "minor." Makes conforming changes.

SECTION 21. Amends Section 524.011, Transportation Code, to set forth the terms by which an officer is required to serve notice of a driver's license suspension and send a copy of the notice and a sworn arrest report to the department. Makes conforming changes.

SECTION 22. Amends Sections 524.012(b) and (c), Transportation Code, to require the department to suspend a person's driver's license if the department determines that the person is a minor and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place. Prohibits the department from suspending a person's driver's license in certain cases. Makes conforming changes.

SECTION 23. Amends Section 524.015(b), Transportation Code, to make a conforming change.

SECTION 24. Amends Section 524.022, Transportation Code, to establish the different driver's license suspension periods for adults and minors convicted of certain offenses.

SECTION 25. Amends Section 524.023, Transportation Code, to make conforming changes.

SECTION 26. Amends Sections 524.035(a) and (d), Transportation Code, to require a hearing by a preponderance of the evidence to prove whether the person is a minor and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place. Prohibits an administrative judge from finding in the affirmative on this issue if the person is a minor and the administrative law judge does not find that the minor had any detectable amount of alcohol in the minor's system when the minor was arrested. Makes conforming changes.

SECTION 27. Amends Section 524.042(a), Transportation Code, to make conforming changes.

SECTION 28. Amends Section 524.043(d), Transportation Code, to authorize an administrative law judge to change a finding or decision as to whether a minor had any detectable amount of alcohol in the minor's system because of additional evidence.

SECTION 29. Amends Section 601.340, Transportation Code, by amending Subsection (a) and adding Subsection (c), to provide that this section does not apply to a suspension of a driver's license for an offense under Chapter 106, Alcoholic Beverage Code, other than an offense that includes confinement as an authorized sanction. Makes a conforming change.

SECTION 30. Amends Section 724.001, Transportation Code, to define "arrest," "criminal charge," and "criminal proceeding." Makes conforming changes.

SECTION 31. Amends Section 724.011(a), Transportation Code, to make a conforming change.

SECTION 32. Amends Section 724.012(a), Transportation Code, to make a conforming change.

SECTION 33. Amends Section 724.015, Transportation Code, to require an officer, before requesting a person younger than 21 years of age to submit to the taking of a specimen, to inform the person orally and in writing about the consequences of submitting or refusing to submit to the taking of the specimen. Establishes the period for which the department is required to deny issuance of a license to a resident person without a license to operate a motor vehicle. Makes conforming changes.

SECTION 34. Amends Sections 724.035(b) and (c), Transportation Code, to make conforming changes.

SECTION 35. Amends Section 724.048(c), Transportation Code, to prohibit imposition of a suspension if a criminal charge arising from the same arrest as a suspension under this chapter results in an acquittal.

SECTION 36. Amends Section 724.064, Transportation Code, to make a conforming change.

SECTION 37. Amends Article 4.11(a), Code of Criminal Procedure, to require justices of the peace to have original jurisdiction in criminal cases arising under Chapter 106, Alcoholic Beverage Code, that do not include confinement as an authorized sanction.

SECTION 38. Amends Article 4.14(b), Code of Criminal Procedure, to make conforming changes.

SECTION 39. Amends Section 29.003(b), Government Code, to make conforming changes.

SECTION 40. Repealer: Section 521.298, Transportation Code (Suspension of License of Individual Under 21 Years of Age).

SECTION 41. Makes application of this Act prospective.

SECTION 42. Effective date: September 1, 1997.

SECTION 43. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 5, Section 106.041, Alcoholic Beverage Code, to require community service to be related to education about or prevention of misuse of alcohol. Deletes the provision requiring a proceeding involving a child previously convicted twice or more of offenses under this section to be commenced in the county in which the child resides. Provides that a peace officer charging a minor with committing an offense is not required to take the minor into custody, but may issue a citation.

Amends SECTION 6, Section 106.05, Alcoholic Beverage Code, to authorize a minor to possess an alcoholic beverage if the minor is in the visible presence of the minor's adult parent, guardian or spouse, or other adult to whom the minor has been committed by a court.

Amends SECTION 9, Section 106.071, Alcoholic Beverage Code, to remove the exception regarding community service for a minor who has not been previously convicted and who resides in an area in which access to an alcohol awareness course is not readily available.

Amends SECTION 11, by changing the heading in Section 106.116, Alcoholic Beverage Code, to "REPORTS OF COURT TO COMMISSION." Adds Section 106.117, Alcoholic Beverage Code, to require each court (justice, municipal, or juvenile) to furnish DPS with a notice of adjudication, conviction, or acquittal of certain offenses under this Act. Requires DPS to maintain records of information in the notices and to provide the information to law enforcement agencies and courts. Provides that a person holding a driver's license having the same number contained in DPS records is presumed to be the same person to whom the record relates.

Amends SECTION 13, Section 51.03(a), Family Code, to include conduct that violates Sections 49.05 and 49.06, Penal Code, as delinquent conduct.

Removes former SECTION 14, Section 51.06, Family Code, to delete the requirement that certain proceedings involving delinquent conduct commence in the county in which the child resides.

Amends SECTION 15, Section 53.03, Family Code, to prohibit deferred prosecution for a child alleged to have engaged in conduct that is an offense under Sections 49.05 and 49.06, Penal Code.

Amends SECTION 17, Chapter 59, Family Code, to assign certain sanction levels to conduct that is an offense under Sections 49.05 and 49.06, Penal Code, and delete Sections 49.07 and 49.08 of

that code from the list of relevant sections.

Amends SECTION 18, Section 521.145, Transportation Code, to change the heading to "APPLICATION BY PERSON UNDER 18 YEARS OF AGE."

Adds SECTION 19, Section 521.342(a), Transportation Code, to make a conforming change.

Adds SECTION 23, Section 524.015(b), Transportation Code, to make a conforming change.

Adds SECTION 29, Section 601.340, Transportation Code, by adding Subsection (c), to provide that this section does not apply to a suspension of a driver's license for certain offenses under Chapter 106, Alcoholic Beverage Code.

Amends SECTION 33, Section 724.015, Transportation Code, to delete the requirement that an officer, on request, provide additional information regarding submission to the taking of a specimen. Deletes the provision regarding the admissibility of certain evidence in court.

Adds SECTION 37, Article 4.11(a), Code of Criminal Procedure, to require justices of the peace to have original jurisdiction in criminal cases arising under Chapter 106, Alcoholic Beverage Code, that do not include confinement as an authorized sanction.

Adds SECTION 38, Article 4.14(b), Code of Criminal Procedure, to make conforming changes.

Adds SECTION 39, Section 29.003(b), Government Code, to make conforming changes.