

BILL ANALYSIS

Senate Research Center

H.B. 487
By: Hill (Nelson)
Criminal Justice
5/14/1999
Engrossed

DIGEST

Currently, federal law requires enforcement of laws that meet the requirements for the Repeat Offender Program and the Open Container Program. Under each program, if the state provisions are not in place and enforced by October 1, 2001, Texas could lose its ability to spend construction dollars on congestion relief and other highway construction projects. H.B. 487 would bring Texas into compliance with federal law by establishing that a repeat offender of a certain alcohol related offense is required to attend a drug or alcohol rehabilitation program.

PURPOSE

As proposed, H.B. 487 sets forth provisions regulating the civil and criminal consequences of possessing or consuming an alcoholic beverage in a motor vehicle or operating a motor vehicle while intoxicated.

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 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 certain areas, commits an offense if certain conditions exist. Provides that it is an affirmative defense to prosecution under Subsection (b) that the vehicle was not owned or being leased by the defendant and the defendant did not know that the open container of an alcoholic beverage was in the vehicle or that the person consuming the alcoholic beverage is, or that the receptacle containing the alcoholic 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 designed, maintained, or used primarily for the transportation of persons for compensation. Provides that an offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$50, including all court costs. Makes a conforming change.

SECTION 2. Amends Section 49.07, Penal Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Defines “miscarriage,” “serious bodily injury,” and “stillbirth.”

(c) Provides that an offense under this section is a felony of the third degree, except as provided by Subsection (d).

(d) Provides that an offense under this section is a felony of the second degree, if it shown on the trial of an offense under this section that the conduct charged caused a pregnant woman to suffer a miscarriage or stillbirth.

SECTION 3. Amends Section 49.09, Penal Code, by adding Subsection (g), to provide that the offense is a Class A misdemeanor, if it is shown on the trial of an offense under Sections 49.04, 49.05, or 49.06 that an analysis of a specimen of the person’s blood, breath, urine, or other bodily substance showed an alcohol concentration of 0.15 or more.

SECTION 4. Amends the section heading and Section 521.344(a), (b), and (d), Transportation Code, as follows:

Sec. 521.344. New heading: SUSPENSION FOR OFFENSES INVOLVING INTOXICATION.

(a) Provides that the license suspension continues for a period set by the court according to the following schedule no less than one year, rather than 100 days, or more than two years except as provided by Sections 521.342(b) and 521.345, and Subsections (d)-(i), if a person is convicted of an offense under Section 49.04 or 49.07, Penal Code.

(b) Provides that the license suspension begins on a date set by the court and continues for a period set by the court of no less than one year, except as provided by Section 521.342(b). Deletes text regarding committed as a result of the introduction of alcohol into the body.

(d) Prohibits the Texas Department of Public Safety (DPS) from revoking the license of a person required 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, Penal Code. Makes a conforming change.

SECTION 5. Amends Section 9(h), Article 42.12, Code of Criminal Procedure, to require the judge to direct a supervision officer approved by the community supervision and corrections department or the judge, person, program, or other agency to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, on determination by the judge that alcohol or drug abuse may have contributed to the commission of the offense, or in any case involving a second or subsequent offense under Section 49.04, Penal Code, or a second or subsequent offense under Sections 49.07 or 49.08 of that code that involves the operation of a motor vehicle.

SECTION 6. Amends Sections 13(a), (b), and (i), Article 42.12, Code of Criminal Procedure, to require a judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, to require as a condition of community supervision that the defendant submit to certain requirements. Requires a judge granting community supervision to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, to require the defendant submit to an evaluation by a supervision officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and supervise a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, rather than a period of confinement of no less than 120 days. Requires the court to require as a condition of community supervision that the defendant have the device installed on the vehicle and not to operate any vehicle unless equipped with the device, if the person is punished under Section 49.09(g), Penal Code. Provides that Section 521.247, Transportation Code, applies to the approval of a device under this subsection. Deletes text regarding rehabilitation of the defendant and the provisions of Section 23A(f), Article 6687B, V.T.C.S. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Sections 13(g) and (k), Article 42.12, Code of Criminal Procedure, to provide that this subsection does not apply to a person punished under Section 49.09, Penal Code. Makes a conforming change.

SECTION 8. Amends Section 16, Article 42.12, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Sets forth the amount of community service work ordered by the judge, except as provided by Subsection (b-1).

(b-1) Sets forth the amount of community service work ordered by the judge.

SECTION 9. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 99, as follows:

CHAPTER 99. INTOXICATION ASSAULT RESULTING IN
MISCARRIAGE OR STILLBIRTH

Sec. 99.001. DEFINITION. Defines "miscarriage" and "stillbirth."

Sec. 99.002. CAUSE OF ACTION. Provides that a person is liable for damages under this chapter if, as a result of violating Section 49.07, Penal Code, a pregnant woman suffers a bodily injury that results in a miscarriage or stillbirth.

Sec. 99.003. PERSONS WHO MAY BRING ACTION. Sets forth certain persons who may bring action. Prohibits the father of the fetus from bringing an action under this chapter if the pregnancy was the result of an act of the father which constitutes a crime under Sections 22.011 or 22.021, Penal Code.

Sec. 99.004. DAMAGES. Sets forth certain damages a court may award. Provides that damages under this chapter are in addition to other damages that may be awarded under law for the injury to the pregnant woman.

SECTION 10. Amends Chapter 411D, Government Code, by adding Section 411.048, as follows:

Sec. 411.048. REPORT RELATED TO CERTAIN INTOXICATION OFFENSES. Requires DPS to compile and maintain statistical information on the prosecution of offenses under Chapter 49, Penal Code, relating to the operation of a motor vehicle while intoxicated, the number of persons released with no charges following arrest, the number of persons convicted, and the number of persons with respect to whom the charges are dismissed. Requires DPS to submit a report of the statistical information covering the two preceding years to the legislature before March 31 of each even-numbered year. Requires each law enforcement agency that enforces Chapter 49, Penal Code, and each appropriate prosecuting attorney's office and court in the state to report in the manner and on a form prescribed by DPS the information necessary for DPS to compile the information required by Subsection (a).

SECTION 11. Effective date: September 1, 1999.

Makes application of this Act prospective for Sections 1 and 2.

SECTION 12. Makes application of this Act prospective for Sections 3 and 6.

SECTION 13. Emergency clause.