

- SUBJECT:** Ban on open containers of alcohol in vehicles; repeat DWI offense penalties
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Hinojosa, Green, Keel, Nixon, Smith, Talton, Wise
2 nays — Dunnam, Garcia
- WITNESSES:** For — Bill Lewis, Mothers Against Drunk Driving; Gary Taylor, National Highway Traffic Safety Administration; Joyce Hunt, MADD and son; Chris Johnson; H.W. “Sputnik” Strain; Leslie Wayne Mauldin
Against — Stuart Kinard
On — David Laney, Texas Transportation Commission
- BACKGROUND:** Penal Code sec. 49.03 makes it a Class C misdemeanor, punishable by a maximum fine of \$500, to consume an alcoholic beverage while operating a motor vehicle in a public place and be observed doing so by a peace officer.
- DIGEST:** CSHB 487 would make it a class C misdemeanor to consume an alcoholic beverage while operating a motor vehicle in a public place. The current requirement that the person committing the offense must be observed by a peace officer would be eliminated.
- CSHB 487 would make it a criminal offense to have an open container of alcohol in a car located on a public highway. It would be a Class C misdemeanor if an occupant of a motor vehicle located on a public highway or a right-of-way of a public highway, including rest areas, comfort stations, picnic areas, roadside parks, or scenic overlooks situated on a highway right-of-way, consumed an alcoholic beverage or possessed in the passenger area of the motor vehicle a bottle, can, or other receptacle that contained an alcoholic beverage and had been opened, had a broken seal, or had its contents partially removed.
- It would be an affirmative defense to prosecution if person consuming the alcohol, or the receptacle with the alcohol was in the possession of a passenger, in the living quarters of a house coach or house trailer or if the

person were a passenger in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation.

Vehicle registrations. The Department of Public Safety (DPS) would be required automatically to suspend all vehicle registrations of someone convicted of a second or subsequent offense relating to operating a motor vehicle while intoxicated if their driver's license automatically was suspended or revoked under Transportation Code provisions requiring suspension or revocation for certain offenses.

The vehicle registration suspension would begin on the date that the suspension or revocation of the person's driver's license took effect and would continue until the suspension period ended or the revoked license was reinstated.

Persons whose vehicle registration had been suspended could not renew the vehicle registration or register another vehicle in their name during the suspension period. In addition, they could not transfer the registration to another unless authorized by DPS or register in another name the vehicle to which the registration applied.

DPS would be required to give written notice of a vehicle registration suspension. Notice would have to be by personal delivery to the person or deposited in the U.S. mail to the person's last supplied address to the Texas Department of Transportation or DPS. Notice would be presumed to have been received on the 10th day after it was mailed.

It would be an offense to operate the vehicle on a highway or permit the vehicle to be operated on a highway during the suspension period. The offense would be a misdemeanor punishable by a fine of at least \$100 and no more than \$500 and a jail term of a minimum of 72 hours and a maximum of six months. It would be an affirmative defense to prosecution that the person had not received notice of a suspension.

Persons notified of a vehicle registration suspension would have to send DPS their registration receipts and license plates within 10 days of receiving notice from DPS. It would be an offense to fail to send the registration receipts and license plates to DPS as required. The offense would be a misdemeanor,

punishable by a fine of at least \$100 and no more than \$500 and a jail term of a minimum of 72 hours and a maximum of six months.

DPS would have to direct an agency employee to obtain and send to the department the registration receipts and license plates of a person who failed to send them in.

Suspended vehicle registrations could not be re-instated and new license plates could not be issued until the person paid DPS \$50.

Penalties for repeat offenses. If a person's driver's license had been suspended as the result of a second or subsequent conviction for driving, flying, or boating while intoxicated, a person could not get an occupational license until the first anniversary of the original license suspension.

CSHB 487 would increase from 180 days to one year the minimum time that driver's licenses would have to be suspended for persons who commit DWI or intoxication assault and previously had been convicted of operating a vehicle while intoxicated. The minimum license suspension for persons convicted of intoxication manslaughter would also be increased from 180 days to one year. The minimum license suspension required under some circumstances for repeat offenses of driving, boating, or flying while intoxicated also would be increased from 180 days to one year.

CSHB 487 would allow the licenses of repeat offenders to be suspended even if they were required to complete an educational program to rehabilitate persons who have operated motor vehicles while intoxicated. Repeat offenders also could have their licenses revoked even if placed on probation and required to not operate a vehicle unless it was equipped with a breath analyzer that prohibits operation of the vehicle if alcohol is detected. Juries no longer could recommend that driver's licenses not be suspended in repeat driving, boating, and flying while intoxicated cases.

In all cases involving second or subsequent DWI offenses or second or subsequent intoxication assault and intoxication manslaughter offenses that involved operation of a motor vehicle, judges would have to order an evaluation to determine the appropriateness and proper course of conduct for alcohol and drug rehabilitation of the defendant.

CSHB 487 would set a minimum term of 30 eight-hour days for judge-ordered community service for DWI offenders with one previous driving, flying, or boating while intoxicated offense. The minimum term for DWI offenders with two or more previous driving, flying or boating while intoxicated offenses would be 60 eight-hour days.

CSHB 487 would take effect September 1, 1999, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 487 would help save lives on Texas roadways, get tough with drunk drivers, and avoid a shift of federal highway dollars. In 1997, Texas led the states in the number of alcohol-related traffic fatalities with 1,748. In Texas, alcohol-related fatalities are about half of total fatalities, above the national average of 39 percent. CSHB 487 would allow Texas to join the 28 other states that ban open containers of alcohol in cars and would crack down on repeat offenders.

Drinking and driving do not mix. CSHB 487 would ensure that Texans do not do both by making it illegal to have an open container of alcohol in a car on a public highway and making it illegal to consume alcohol while driving in a public place. Current law requires that a law enforcement officer actually see a driver drinking before an offense has occurred. This is difficult to enforce and leaves the false impression that alcohol and driving are acceptable as long as law enforcement officers are unaware of it. CSHB 487 would send a clear, unambiguous message that drunk driving is wholly unacceptable.

CSHB 487 would not restrict persons from open containers of taking alcohol to a party or anywhere else. The alcohol would just have to be placed, according to the federal definitions, in an area that is not designed to seat the driver and passengers while the car is in operation and is not readily accessible to the driver or a passenger while in their seating positions, not including the glove compartment. This could mean a trunk or a rear area in a sport utility vehicle or van.

CSHB 487 would reduce traffic accidents and save lives because fewer people will be on the road while their driving is impaired. Drunk driving incidents should drop because most people follow the laws. Texans would soon become accustomed to a ban on open containers just as they have to the

mandatory seat belt law. A drinker who has to hide an open container is more aware of the consequences of being caught drunk behind the wheel. Open container laws help create the atmosphere of continual attention to the DWI laws.

If Texas does not have an open container law in place and enforced by October 1, 2000, federal funds would have to be diverted from construction to traffic safety. About \$20 million in federal highway dollars would be transferred annually in fiscal 2000 and 2001 to the highway safety or hazard elimination program. After that, the amount would increase to about \$41 million annually.

Transportation money is scarce, and Texas can not afford to lose money that could be spent on needed road projects. The state currently meets only about 40 percent of needed construction projects. Transferring this money to highway safety programs would result in over-funding of these programs that do things such as pay for increased law enforcement efforts on holidays and alcohol awareness publicity programs. As a result, construction programs that relieve congestion and help traffic mobility would be underfunded.

CSHB 487 would help address the problem of repeat intoxicated drivers with licensing sanctions, vehicle sanctions, and tougher penalties. About one-third of all drivers arrested or convicted of DWI or driving under the influence are repeat offenders. These measures are warranted because prior offenders — who have had already had a chance to change their actions — have a greater risk of involvement in a fatal crash. Tougher penalties will ensure these offenders are adequately punished.

Restricting vehicle registrations and increasing license suspensions would help prevent repeat offenders from driving. Often if someone continues to drive without a license, they drive infrequently or more carefully. Suspending vehicle registrations would help separate repeat offenders from their cars. CSHB 487 would authorize DPS to shift the registrations that have been revoked to another's name if, for instance, revoking the registration was an extreme hardship for a family.

Federal law also requires states to have certain provisions to handle repeat driving while intoxicated offenders. CSHB 487 would ensure that Texas would meet these requirements. If these provisions are not enacted the

penalties would be similar to those for not enacting open container provisions: About \$20 million in federal funds each year for fiscal 2000 and 2001 and about \$41 million per year after that would be transferred from construction to safety programs.

**OPPONENTS
SAY:**

Texas already has strict laws that prohibit persons from driving while intoxicated and to punish severely those who do. Those who do not break these laws — especially passengers — should not have their freedom restricted. Restricting all open containers would be an unwarranted intrusion of the government on individual behavior. It would go too far to allow law enforcement officers to ticket or arrest a passenger in a vehicle merely for drinking a beer when the focus should be on whether the driver is impaired.

Texas would not lose federal dollars if CSHB 487 is not enacted. The funds would simply be redirected to other highway safety and other safety-related programs.

Some of the penalties that would be imposed by CSHB 487 would too harsh. For example, the bill would require a mandatory suspension of an occupational driver's license for one year for some repeat offenders. This would prohibit a person from driving to work, taking children to the doctor, and even to a driving to meet with a probation officer. In addition, there is no time limit placed on when the offenses have to occur. Two incidents 30 years apart could result in an occupational license being delayed for one year. Judges should continue to have discretion to make decisions about occupational licenses.

Revoking vehicle registrations could hurt not only the person who drove drunk but also their family who may depend on the car for transportation to school, work, or the doctor. Suspending licenses for long periods of time rarely work as a deterrent to driving because persons often simply drive without a license.

**OTHER
OPPONENTS
SAY:**

CSHB 487 should clearly authorize alcohol to be carried in the cargo area of sport utility vehicles or vans since these vehicles do not have trunks.

NOTES:

The changes to the original bill made by the committee substitute, include: adding provision dealing with suspension of vehicle registration; barring

reinstatement of occupational licenses in some cases until the first anniversary of the suspension; and removing an affirmative defense to prosecution under the open container offense for religious personnel transporting alcohol to or from a religious function.

The companion bill, SB 128 by Nelson, has been referred to the Senate Criminal Justice Committee.