

## **BILL ANALYSIS**

C.S.S.B. 1904  
By: Barrientos  
Law Enforcement  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to the National Conference of State Legislatures, Texas ranks first in the nation in the number of large trucks involved in crashes, the number of fatal accidents involving large trucks, and the number of fatalities in these accidents. Current law holds that if a person who has a commercial driver's license (CDL) commits a serious traffic violation or certain types of alcohol- or drug-related offenses while driving a non-commercial vehicle, the violations do not affect the person's CDL and the offenses are not registered on the CDL driving record. C.S.S.B. 1904 allows certain traffic violations committed by a person who holds a CDL in a non-commercial vehicle to adversely affect the status of his or her CDL. The bill also requires motor carriers to provide positive drug test information to the Department of Public Safety (DPS) and permits DPS to release the information to any person eligible to receive the information under the Motor Vehicle Records Disclosure Act.

Current law allows the Department of Public Safety (DPS) to release four types of driver history records: a status check, a three-year record, a five-year record, and a certified abstract of a complete driving record. The status check and three-year record are available interactively from DPS to a license holder or an entity qualified under the Motor Vehicle Disclosure Act to receive personal information regarding commercial driver's license holders. The five-year record and certified abstract are available only by a manual paper request. The manual paper request is slower and less convenient than the interactive system, making the more complete records less readily available to motor carriers needing the information. C.S.S.B. 1904 authorizes an expansion of the interactive release of records to include the five-year and certified complete records.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends 472.022(f) of the Transportation Code by providing that Articles 45.051 (Suspension of Sentence and Deferral of Final Disposition) and 45.0511 (Deferred Disposition Procedures Applicable to Traffic Offenses) of the Code of Criminal Procedure do not apply to an offense under this section committed in a construction or maintenance work zone when workers are present.

SECTION 2. Adds Section 521.0475 to the Transportation Code to require DPS to provide a certified abstract of a complete driving record, for a fee of \$20, to the license holder or a person eligible to receive the information under certain sections of the Motor Vehicle Records Disclosure Act. If an abstract of a complete driving record does not exist for a license holder, DPS must provide a person making a request with a certified statement to that effect. The bill requires abstracts or statements described in this section to not be marked as certified if disseminated through the interactive system.

SECTION 3. Amends Section 521.052, Transportation Code, to provide an exception to the general prohibition on disclosure of personal information by DPS for information requested under Section 521.0475, relating to abstract records. The bill deletes the exception on disclosure for driving record

abstracts requested under Section 601.022.

SECTION 4. Amends Section 521.053, Transportation Code, to allow DPS to provide an abstract of a complete driving record about the holder of or applicant for a commercial driver's license to a person eligible under the Motor Vehicle Records Disclosure Act. The bill adds Section 521.053(c), which allows DPS to disseminate information under this section through the interactive system. Sets the fee for this service at \$20. The bill adds Section 521.053(d) to authorize DPS to provide information on positive results on a controlled substance test to a commercial driver's license holder, the license holder's current employer, or a person acting on behalf of the employer upon receipt of the license holder's written consent.

SECTION 5. Amends Section 521.055, Transportation Code, to provide that the interactive system may provide for the release of driving records described in:

- (1) Section 521.045--birthday, license status, and most current address;
- (2) Section 521.046--moving violations and accidents within the preceding 3-year period;
- (3) Section 521.047--all information in the two preceding sections, plus all other moving violations and accidents and the completion of any driver education or driver safety course; and
- (4) Section 521.0475--abstract of complete driving record.

SECTION 6. Amends Subdivision (25), Section 522.003, Transportation Code, by redefining "serious traffic violation". Under the new definition, a conviction arising from the driving of any motor vehicle, rather than only those violations committed while operating a commercial motor vehicle, for the offenses enumerated in this subdivision qualify as a serious traffic violation.

SECTION 7. Amends Section 522.081, Transportation Code, as follows:

(a) Provides that this subsection applies to a violation committed while operating any motor vehicle, including a commercial motor vehicle, rather than only those violations committed while operating a commercial motor vehicle. Deletes the disqualification of a person who holds a commercial driver's license from driving a commercial motor vehicle for one year if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period.

(b) Provides that this subsection applies to a violation committed while operating any motor vehicle, including a commercial motor vehicle, except as provided by this subsection.

Disqualifies a person who holds a commercial driver's license from driving a commercial motor vehicle for one year:

- if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period,
- upon the first conviction of driving any motor vehicle under the influence of alcohol or a controlled substances,
- upon first conviction of leaving the scene of an accident involving any motor vehicle driven by the person,
- upon first conviction of using any motor vehicle in the commission of a felony other than possession, manufacture, distribution, or dispensation of a controlled substance or possession with intent to manufacture, distribute, or dispense a controlled substance,
- upon first conviction of causing the death of another person through the negligent or criminal operation of any motor vehicle,
- for refusing to submit to a test under Chapter 724 (Implied Consent) to determine the person's alcohol concentration or the presence of a controlled substance in the person's body while operating a motor vehicle in a public place, or
- if an analysis of the person's blood, breath, or urine under Chapter 724 determines that the person had an alcohol concentration of 0.04 or more, or a controlled substance was present in the person's body while operating a commercial motor vehicle in a public place, or that the person had an alcohol concentration of 0.08 or more while operating a motor vehicle, other than a commercial motor vehicle, in a public place.

(c) Disqualifies a person who holds a commercial driver's license from driving a commercial motor vehicle for three years if:

- the person is convicted of an offense for which the person would otherwise be disqualified for one year under Section 522.081(b)(2) and the vehicle being operated by the person was transporting a hazardous material required to be placarded,
- the person refuses to submit to a test under Chapter 724 to determine the person's blood alcohol concentration or the presence of a controlled substance in the person's body while operating a vehicle in a public place and the vehicle was transporting a hazardous material required to be placarded, or
- an analysis of the person's blood, breath, or urine under Chapter 724 determines that while transporting a hazardous material required to be placarded, the person had an alcohol concentration of 0.04 or more or a controlled substance was present in the person's body, if the person was operating a commercial motor vehicle, or if the test determines that the person had an alcohol concentration of 0.08 or more, if the person was operating any other motor vehicle.

(d) Disqualifies a person from driving a commercial vehicle for life for any combination of two or more of the following, arising from two or more separate incidents:

- a conviction under for an offense listed in Subsection (b)(2), describing those offenses resulting in a one-year disqualification;
- a refusal to submit to a test for alcohol or controlled substances under Chapter 724, as described by Subsection (b)(3); and
- an analysis under Subsection (b)(4), determining that the person had an alcohol concentration of 0.04 or more or the presence of a controlled substance in the person's body, or, if the person was driving a motor vehicle other than a commercial motor vehicle, an analysis showing an alcohol concentration of 0.08 or more.

(e) Prohibits a person from being issued a commercial driver's license if, in connection with the person's operation of a commercial motor vehicle, the person commits an offense or engages in conduct that would disqualify the holder of a commercial driver's license from operating a commercial motor vehicle, or is determined to have had an alcohol concentration of 0.04 or more or to have had a controlled substance present in the person's body. Provides that the period of prohibition under this subsection is equal to the appropriate period of disqualification required by Subsections (a) - (d).

SECTION 8. Amends Section 522.087, Transportation Code, to make conforming changes.

SECTION 9. Amends Section 643.052, Transportation Code, to add that a motor carrier's application for registration with DPS must include a certification that the carrier is in compliance with the drug testing requirements of 49 C.F.R. Part 382, and, if the carrier belongs to a consortium, the names of persons operating the consortium.

SECTION 10. Amends Section 643.056(a), Transportation Code, to require a motor carrier to supplement its application for registration before the carrier changes its consortium.

SECTION 11. Adds Section 643.064 to the Transportation Code, requiring a motor carrier required to register with DPS to report to the department a valid positive result on a controlled substances test performed as part of the carrier's drug testing program or consortium on an employee of the carrier who holds a commercial driver's license under Chapter 522. DPS is required to maintain the information reported under this section, and the information is confidential and only subject to release to those specified under Chapter 730 (Motor Vehicle Records Disclosure Act).

SECTION 12. Amends Article 45.051, Code of Criminal Procedure, as follows:

(a) Provides that an order of deferral under Subsection (a) terminates any liability under a bail bond or an appearance bond given for the charge.

(b) Provides that the judge, at the judge's discretion, may require the defendant to complete a driving safety course approved under the Texas Driver and Traffic Safety Education Act or another course as directed by the judge and present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article.

(c) Provides that the judge, on determining that the defendant has complied with the requirements imposed under this article, shall dismiss the complaint and clearly note in the docket that there is not a final conviction. Other than an offense under Section 545.413 (Safety Belts; Offense), Transportation Code, this subsection does not apply to an offense involving the operation of a motor vehicle. At the conclusion of the deferral period, if the defendant presents satisfactory evidence that the defendant has complied with the requirements imposed, the justice shall proceed with an adjudication of guilt but may not impose a fine assessed or a reduced fine. Deletes language stating that the justice may proceed with an adjudication of guilt and has the option of imposing the fine assessed or reducing the fine assessed.

(d) Nonsubstantive changes

(e) Nonsubstantive changes

(f) Provides that this article does not apply to an offense to which Section 542.404 (Fine for Offense in Construction or Maintenance Work Zone) or 729.004(b) (Fine for Offense in Construction or Maintenance Work Zone), Transportation Code, applies or to a traffic offense committed by a person who holds a commercial driver's license.

SECTION 13. Amends Article 45.0511, Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to an alleged offense that is within the jurisdiction of a justice court or a municipal court and is defined by Section 472.002, Transportation Code, Subtitle C, Title 7, Transportation Code, or Section 729.001(a)(3), Transportation Code

(b) Provides that the judge shall require the defendant to successfully complete a driving safety course approved by the Texas Education Agency (TEA) or a course under the motorcycle operator training and safety program approved by the designated state agency if:

- the defendant elects a driving safety course or motorcycle operator training course dismissal under this article;
- the defendant enters a plea under Article 45.021 in person or in writing of no contest or guilty on or before the answer date on the notice to appear;
- presents by counsel to the court a request to take a course; and
- the defendant has a valid Texas driver's license or permit.

Deletes language that requires the defendant to successfully complete a driving safety course or a course under the motorcycle operator training and safety program if:

- the court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for 180 days;
- the defendant's driving record shows the defendant has not completed an approved driving safety course or motorcycle operator training course within 12 months preceding the date of the offense; and
- the defendant files an affidavit with the court stating the person is not taking a course under this section and has not completed a course not on their driving record within 12 months preceding the

date of the offense.

(c) Requires the court to enter judgment on the defendant's plea of no contest or guilty at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved driving safety course or motorcycle operator training course and present to the court:

- a uniform certificate of completion of the driving safety course or a verification of completion of a motorcycle operator training course;
- the defendant's driving record showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within 12 months preceding the date of the offense.
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable, under this article on the date the request to take the course was made and had not completed such a course that is not shown on the defendant's driving record within 12 months preceding the date of the offense.

(d) Provides that notwithstanding Subsections (b)(2) and (3), before the final disposition of the case, the court is authorized to grant a request to take a driving safety course or motorcycle operator training course.

(e) Provides that a request to take a motorcycle operator training course made at or before the time and at the place at which a defendant is required to appear in court is an appearance in compliance with the defendant's promise to appear.

(f) In addition to court costs and fees authorized or imposed by a law of this state and applicable to the offense, the court is authorized to:

- require a defendant requesting a course under Subsection (b) to pay an administrative fee set by the court to cover the costs of administering this article at an amount of not more than \$10; or
- require a defendant requesting a course under Subsection (d) to pay a fee set by the court at an amount not to exceed the maximum amount of the fine for the offense committed by the defendant.

(g) Conforming change

(h) No changes

(i) Provides that if a defendant requesting a course under this article fails to comply with Subsection (c), the court is required to:

- notify the defendant in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and
- require the defendant to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court.

(j) Provides that if the defendant fails to appear at the time and place stated in the notice under Subsection (i), or appears at the time and place stated in the notice but does not show good cause for the defendant's failure to comply with Subsection (c), the court shall enter an adjudication of guilt and impose sentence.

(k) Provides that on a defendant's showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present a verification of course completion as evidence that the defendant successfully completed the motorcycle operator training course.

(l) Provides that when a defendant complies with Subsection (c), the court is required to proceed with an adjudication of guilt, but may not impose the fine assessed or a reduced fine, and report the completion of a motorcycle operator training course to the Department of Public Safety (DPS).

(m) Provides that if the defendant is charged with more than one offense, the defendant may complete a driving safety course in connection with only one of the charges.

(n) Provides that an insurer is prohibited from canceling or increasing the premium of a motor vehicle insurance policy in this state because the court proceeded with an adjudication of guilt under Subsection (l)(1) or because the insured completed a driving safety course or motorcycle operator training course.

(o) Requires the court to advise a defendant charged with a misdemeanor committed while operating a motor vehicle, under Section 472.022 (Miscellaneous Provisions) or Section 729.001(a)(3), Transportation Code, relating to operation of a motor vehicle by a minor in violation of traffic laws, of the defendant's right under this article to successfully complete a driving safety course or a motorcycle operator training course, as applicable. The right to complete a course does not apply to a defendant charged with an offense to which Section 542.404 or 729.004(b), Transportation Code (Fine for Offense in a Construction of Maintenance Work Zone), applies, instead of Section 522.003, Transportation Code. Deletes language that provides that the right to complete a course does not apply to a defendant charged with a violation of Section 545.401 and 545.421, Transportation Code.

(p) Provides that a notice to appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.002, Transportation Code, Subtitle C, Title 7, Transportation Code, or Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle, of the defendant's right to complete a driving safety course or a motorcycle operator training course, as applicable. The notice must read substantially as follows:

“You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course.”

(q) Provides that if the notice required by Subsection (p) is not provided to the defendant charged with the offense, the defendant may continue to exercise the defendant's right to take a driving safety course or a motorcycle operator training course until the notice required by Subsection (p) is provided to the defendant or there is a final disposition of the case.

(r) Provides that this article does not apply to an offense committed by a person who holds a commercial driver's license.

(s) Provides that an order of deferral under Subsection (c) terminates any liability under a bail bond or appearance bond given for the charge. Deletes language providing that nothing in this article shall prevent a court from assessing a special expense for deferred disposition in the same manner provided by Article 45.051 and establishes the fees the court can collect.

SECTION 14. Repeals Section 543.101 (Statement of Right Provided on Notice to Appear), 543.117 (Offense in Construction or Maintenance Work Zone), and 601.022 (Department to Provide Operating Record), Transportation Code.

SECTION 15. Provides that this Act takes effect September 1, 2003, except for SECTIONS 6-8 of this Act, which take effect June 1, 2005.

### **EFFECTIVE DATE**

This Act takes effect September 1, 2003.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute modifies the original by deleting the provision that Articles 45.051 and 45.0511, relating to deferred adjudication and deferred disposition for traffic offenses, do not apply to an offense involving the operation of a commercial motor vehicle or an offense involving the operation of any other motor vehicle committed by a person who held a CDL at the time of the offense or holds a CDL at the time the person enters a plea of guilty or nolo contendere or is found guilty of the offense.

The substitute adds SECTIONS 1-5 and SECTIONS 9-15 to the original bill.