

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 17, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2432** by Smith, Todd (Relating to the punishment for certain intoxication offenses. ),  
**Committee Report 1st House, Substituted**

**While the overall fiscal impact to state administrative costs would not be significant, the enactment of the bill could result in a loss of federal highway funds to the state.**

The bill would amend the Code of Criminal Procedure, Government Code, and the Penal Code as they relate to a defendant's eligibility to be placed on deferred adjudication for certain intoxication offenses and to the consequences of that deferred adjudication. Under current statute, certain intoxication offenses (Sections 49.04 through 49.08, Penal Code) are ineligible for placement on deferred adjudication. Under the provisions of the bill, Intoxication Assault (Section 49.07, Penal Code) and Intoxication Manslaughter (Section 49.08, Penal Code) would remain ineligible for deferred adjudication. Driving While Intoxicated (Section 49.04, Penal Code), Driving while Intoxicated with a Child Passenger (Section 49.045, Penal Code), Flying while Intoxicated (Section 49.05, Penal Code), Boating while Intoxicated (Section 49.06, Penal Code), and Assembling or Operating an Amusement Ride while Intoxicated (Section 49.065, Penal Code) would be eligible for placement on deferred adjudication as long as the defendant at the time of the offense did not possess a commercial driver's license or a commercial driver learners' permit. The bill would also amend the Government Code to add Driving While Intoxicated, Driving while Intoxicated with a Child Passenger, Flying while Intoxicated, Boating while Intoxicated, and Assembling or Operating an Amusement Ride while Intoxicated with punishment greater than a Class C misdemeanor to the list of those offenses for which an order of non-disclosure cannot be sought. Under current statute, penalties for certain intoxication offenses can be enhanced if the defendant has been previously convicted of similar intoxication offenses. The bill would require an individual placed on deferred adjudication for Driving While Intoxicated, Driving while Intoxicated with a Child Passenger, Flying while Intoxicated, Boating while Intoxicated, and Assembling or Operating an Amusement Ride while Intoxicated have an ignition interlock device installed. The bill would add Driving while Intoxicated with a Child Passenger to the list of offenses punishable as a Class A misdemeanor under Section 49.09 (a), Penal Code unless the person had been previously convicted of certain intoxication offenses. Under current statute, Driving while Intoxicated with a Child Passenger is punishable as a state jail felony. The bill would add Driving while Intoxicated with a Child Passenger to the list of offenses punishable as a third degree felony under Section 49.09 (b), Penal Code if the person had been previously convicted of certain intoxication offenses. Under the provisions of the bill penalties for certain intoxication offenses would be enhanced if the defendant had previously been convicted or previously been placed on deferred adjudication for certain intoxication offenses.

The bill would take effect September 1, 2009 and apply only to an offense committed on or after the effective date of the Act.

Under current statute a subsequent intoxication conviction results in penalty enhancement to that of the next higher degree with multiple previous convictions providing for even greater enhancement. Since a placement on deferred adjudication will be allowed to be considered for the purpose of penalty enhancement, the impact from implementing the provisions of the bill would not result in increased demands upon the correctional resources of counties or of the State. According to the Department of Public Safety (DPS), implementing the provisions of the bill would place the State in substantial non-

compliance with the Federal Commercial Driver's License (CDL) Regulations contained in Title 49, Code of Federal Regulations (CFR), Part 384, which would result in the loss of federal highway funding. In addition to the loss in federal highway funds, DPS reports implementation of the bill would reduce the number of people assessed surcharges for driving while intoxicated offenses which would result in a loss of funds for the Trauma Center and General Revenue funds. Title 49, CFR, 384.401 provides a penalty of up to five percent for the first year of non-compliance and up to 10 percent for each subsequent year of non-compliance in federal highway funds. The total amount of the penalty would depend on the amount of federal highway funds apportioned to Texas. Based on federal highway apportionments to Texas for FY 2009, the total amount subject to penalty would be around \$1.44 billion; a 5 percent penalty would be \$72.2 million, while 10 percent penalty would be \$144.5 million.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety, 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, LM, TP