

## **BILL ANALYSIS**

C.S.H.B. 189  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The success of innovative and aggressive enforcement tools has resulted in little incentive to plead guilty to driving while intoxicated (DWI) charges because whether an offender receives probation or jail time, a conviction for an offense remains on the offender's criminal record for life. As a result, more offenders opt for time-consuming, costly trials, contributing to backlogged court dockets throughout the state. In an attempt to resolve this issue, C.S.H.B. 189 provides for deferred adjudication, with certain exceptions, for a first-time DWI offense and certain other intoxication offenses but provides that such a deferred adjudication is considered a conviction for enhancement purposes for a subsequent conviction of an intoxication offense.

### **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**

C.S.H.B. 189 amends the Code of Criminal Procedure to authorize a judge, with certain exceptions, to grant deferred adjudication for a defendant charged with a first offense of driving while intoxicated, flying while intoxicated, boating while intoxicated, or assembling or operating an amusement ride while intoxicated unless at the time of the offense the defendant held a commercial driver's license or a commercial driver learner's permit, or during the commission of the offense the defendant caused injury to another person or damaged property that belongs to another person. The bill prohibits a judge from granting deferred adjudication to a defendant charged with an offense, the punishment of which may be increased due to a prior conviction of a certain intoxication offense or if the defendant caused serious bodily injury to or the death of a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty.

C.S.H.B. 189 requires a judge granting deferred adjudication to a defendant for an offense of driving while intoxicated, flying while intoxicated, boating while intoxicated, or assembling or operating an amusement ride while intoxicated that qualifies for deferred adjudication to require the defendant to have an ignition interlock device installed on the vehicle owned by the defendant or most regularly driven by the defendant, regardless of whether the defendant would be required to have the device installed if the defendant was convicted.

C.S.H.B. 189 amends the Government Code to establish that a person is not entitled to petition a court for an order of nondisclosure if the person was placed on deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for driving while intoxicated, flying while intoxicated, boating while intoxicated, or assembling or operating an amusement ride while intoxicated.

C.S.H.B. 189 amends the Penal Code to include driving while intoxicated with a child passenger among the intoxication offenses the punishment of which is enhanced to a felony of the third

degree due to a prior conviction or convictions of a certain intoxication offense. The bill establishes that a deferred adjudication for driving while intoxicated, flying while intoxicated, boating while intoxicated, or operating or assembling an amusement ride while intoxicated is considered a conviction for purposes of enhancement of penalties or exceptional sentences.

C.S.H.B. 189 amends the Transportation Code to require the manufacturer of an ignition interlock device approved by the Department of Public Safety (DPS) to pay an amount not less than \$500, as determined by DPS, to cover the costs incurred by DPS in approving the device, rather than to reimburse DPS for such cost. The bill requires each manufacturer of an approved device to annually pay to DPS a reasonable amount not less than \$500, as determined by DPS, to help defray costs incurred in complying with ignition interlock device evaluation and in administering provisions of law relating to occupational driver's licenses, and removes the requirement that DPS assess the cost of preparing the evaluation equally against each such manufacturer. The bill, in the requirement that a vendor of ignition interlock devices who conducts business in Texas reimburse DPS for costs of conducting each inspection of the vendor's facilities to ensure compliance with the minimum standards adopted by the department for such vendors, sets the amount of such reimbursement at a reasonable amount not less than \$450, as determined by the department.

C.S.H.B. 189 establishes that, for purposes of provisions of law assessing a surcharge on the license of a person convicted of an offense relating to the operating of a motor vehicle while intoxicated, a person is considered to have been convicted of an offense if a judgment, a sentence, or both a judgment and a sentence are imposed on the person; the person receives community supervision, deferred adjudication, or deferred disposition; or the court defers final disposition of the case or imposition of the judgment or sentence.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 189 contains a provision not included in the original authorizing a judge to grant deferred adjudication to a defendant charged with a first offense of driving while intoxicated, flying while intoxicated, boating while intoxicated, or assembling or operating an amusement ride while intoxicated, unless the defendant, during the commission of the offense, caused injury to another person or damaged property that belongs to another person.

C.S.H.B. 189 contains provisions not included in the original requiring manufacturers and vendors of ignition interlock devices to pay to the Department of Public Safety certain costs incurred by the department in approving and evaluating the devices, administering occupational licenses, and inspecting vendors' facilities. The substitute contains provisions not included in the original establishing conditions under which a person is considered to have been convicted of an offense for purposes of provisions of law assessing a surcharge on the driver's license of a person convicted of an offense relating to the operating of a motor vehicle while intoxicated.