86R5725 BEE-D

By:  Israel H.B. No. 1721

A BILL TO BE ENTITLED

AN ACT

relating to a violation regarding the purchase, possession, or consumption of alcoholic beverages by a minor or the misrepresentation of age by a minor; authorizing a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 106.02, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.02.  PURCHASE OF ALCOHOL BY A MINOR. (a) Except as provided by Subsection (b), a [~~A~~] minor may not purchase [~~commits an offense if the minor purchases~~] an alcoholic beverage.

(b)  A minor may purchase an alcoholic beverage [~~does not commit an offense~~] if the minor purchases the [~~an~~] alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

[~~(b)  An offense under this section is punishable as provided by Section 106.071.~~]

SECTION 2.  Section 106.025, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.025.  ATTEMPT TO PURCHASE ALCOHOL BY A MINOR. [~~(a)~~] A minor may not [~~commits an offense if~~], with specific intent to violate [~~commit an offense under~~] Section 106.02 [~~of this code~~], commit [~~the minor does~~] an act amounting to more than mere preparation that tends but fails to effect the violation [~~commission of the offense~~] intended.

[~~(b)  An offense under this section is punishable as provided by Section 106.071.~~]

SECTION 3.  Section 106.04, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.04.  CONSUMPTION OF ALCOHOL BY A MINOR. (a) Except as provided by Subsection (b), a [~~A~~] minor may not consume [~~commits an offense if he consumes~~] an alcoholic beverage.

(b)  A minor may consume an [~~It is an affirmative defense to prosecution under this section that the~~] alcoholic beverage [~~was consumed~~] in the visible presence of the minor's adult parent, guardian, or spouse.

(c)  [~~An offense under this section is punishable as provided by Section 106.071.~~

[~~(d)~~]  A minor who violates [~~commits an offense under~~] this section and who has been previously convicted two [~~twice~~] or more times of an offense [~~offenses~~] under Section 106.071 for a violation of this section is not eligible for deferred disposition. For the purposes of this subsection:

(1)  an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under Section 106.071 for a violation of this section; and

(2)  an order of deferred disposition for an offense alleged under Section 106.071 for a violation of this section is considered a conviction of an offense under Section 106.071 [~~this section~~].

(d)  A minor may not be assessed a civil penalty under Section 106.0701 for a violation of this section or prosecuted for an offense under Section 106.071 for a violation of this section if the [~~(e)  Subsection (a) does not apply to a~~] minor [~~who~~]:

(1)  requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2)  was the first person to make a request for medical assistance under Subdivision (1); and

(3)  if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A)  remained on the scene until the medical assistance arrived; and

(B)  cooperated with medical assistance and law enforcement personnel.

(e) [~~(f)~~]  Except as provided by Subsections (f) and [~~Subsection~~] (g), [~~Subsection (a) does not apply to~~] a minor may not be assessed a civil penalty under Section 106.0701 for a violation of this section or prosecuted for an offense under Section 106.071 for a violation of this section if the minor [~~who~~] reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

(1)  a health care provider treating the victim of the sexual assault;

(2)  an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

(3)  the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.

(f) [~~(g)~~]  A minor is exempted from the assessment of a civil penalty under Section 106.0701 as provided by Subsection (e) and is entitled to raise the defense provided by Subsection (e) [~~(f)~~] in the prosecution of an offense under Section 106.071 [~~this section~~] only if the minor is in violation of this section at the time of the commission of a sexual assault that is:

(1)  reported by the minor under Subsection (e) [~~(f)~~]; or

(2)  committed against the minor and reported by another person under Subsection (e) [~~(f)~~].

(g) [~~(h)~~]  A minor who commits a sexual assault that is reported under Subsection (e) [~~(f)~~] is not exempted from the assessment of a civil penalty under Section 106.0701 as provided by Subsection (e) or entitled to raise the defense provided by Subsection (e) [~~(f)~~] in the prosecution of the minor for an offense under Section 106.071 [~~this section~~].

SECTION 4.  Section 106.05, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.05.  POSSESSION OF ALCOHOL BY A MINOR. (a) Except as provided in Subsection (b) [~~of this section~~], a minor may not possess [~~commits an offense if he possesses~~] an alcoholic beverage.

(b)  A minor may possess an alcoholic beverage:

(1)  while in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;

(2)  if the minor is in the visible presence of the minor's [~~his~~] adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court;

(3)  if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code; or

(4)  if the beverage is lawfully provided to the minor under Section 106.16.

(c)  A minor may not be assessed a civil penalty under Section 106.0701 for a violation of this section or prosecuted for an offense under Section 106.071 for a violation of this section if the [~~An offense under this section is punishable as provided by Section 106.071.~~

[~~(d)  Subsection (a) does not apply to a~~] minor [~~who~~]:

(1)  requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2)  was the first person to make a request for medical assistance under Subdivision (1); and

(3)  if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A)  remained on the scene until the medical assistance arrived; and

(B)  cooperated with medical assistance and law enforcement personnel.

(d) [~~(e)~~]  Except as provided by Subsections (e) and [~~Subsection~~] (f), [~~Subsection (a) does not apply to~~] a minor may not be assessed a civil penalty under Section 106.0701 for a violation of this section or prosecuted for an offense under Section 106.071 for a violation of this section if the minor [~~who~~] reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

(1)  a health care provider treating the victim of the sexual assault;

(2)  an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

(3)  the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.

(e) [~~(f)~~]  A minor is exempted from the assessment of a civil penalty under Section 106.0701 as provided by Subsection (d) and is entitled to raise the defense provided by Subsection (d) [~~(e)~~] in the prosecution of an offense under Section 106.071 [~~this section~~] only if the minor is in violation of this section at the time of the commission of a sexual assault that is:

(1)  reported by the minor under Subsection (d) [~~(e)~~]; or

(2)  committed against the minor and reported by another person under Subsection (d) [~~(e)~~].

(f) [~~(g)~~]  A minor who commits a sexual assault that is reported under Subsection (d) [~~(e)~~] is not exempted from the assessment of a civil penalty under Section 106.0701 as provided by Subsection (d) or entitled to raise the defense provided by Subsection (d) [~~(e)~~] in the prosecution of the minor for an offense under Section 106.071 [~~this section~~].

SECTION 5.  Section 106.07, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.07.  MISREPRESENTATION OF AGE BY A MINOR. [~~(a)~~] A minor may not [~~commits an offense if he~~] falsely state [~~states~~] that the minor [~~he~~] is 21 years of age or older or present [~~presents~~] any document that indicates the minor [~~he~~] is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

[~~(b)  An offense under this section is punishable as provided by Section 106.071.~~]

SECTION 6.  Chapter 106, Alcoholic Beverage Code, is amended by adding Sections 106.0701 and 106.0702 to read as follows:

Sec. 106.0701.  CIVIL PENALTY FOR ALCOHOL-RELATED VIOLATION BY MINOR. (a) A minor who violates Section 106.02, 106.025, 106.04, 106.05, or 106.07 is liable to the state for a civil penalty in an amount not to exceed $500.

(b)  A judge of a municipal court of a municipality in which or a justice of the peace of a county in which a violation described by Subsection (a) is alleged to have occurred may hear and determine the case.

(c)  The attorney general or the prosecuting attorney in the municipality or county in which the violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(d)  A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 106.0702.  COMMUNITY SERVICE IN SATISFACTION OF PENALTY. A person may discharge a civil penalty assessed under Section 106.0701 by performing community service for not less than 20 or more than 40 hours.

SECTION 7.  The heading to Section 106.071, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.071.  [~~PUNISHMENT FOR~~] ALCOHOL-RELATED OFFENSE BY MINOR; PUNISHMENT.

SECTION 8.  Sections 106.071(a), (b), and (c), Alcoholic Beverage Code, are amended to read as follows:

(a)  A minor commits [~~This section applies to~~] an offense if the minor:

(1)  has previously been assessed a civil penalty under Section 106.0701; and

(2)  subsequently violates Section 106.02, 106.025, 106.04, 106.05, or 106.07.

(b)  Except as provided by Subsection (c), an offense under Subsection (a) [~~to which this section applies~~] is a Class C misdemeanor.

(c)  If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under Subsection (a) [~~to which this section applies~~], the offense is punishable by:

(1)  a fine of not less than $250 or more than $2,000;

(2)  confinement in jail for a term not to exceed 180 days; or

(3)  both the fine and confinement.

SECTION 9.  Section 106.115(a), Alcoholic Beverage Code, is amended to read as follows:

(a)  On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.071 [~~106.02, 106.025, 106.04, 106.041, 106.05, or 106.07~~], the court shall require the defendant to attend an alcohol awareness program approved by the Texas Department of Licensing and Regulation under this section, a drug education program approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code, or a drug and alcohol driving awareness program approved by the Texas Education Agency. On conviction of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend an alcohol awareness program, a drug education program, or a drug and alcohol driving awareness program described by this subsection. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend an alcohol awareness program, a drug education program, or a drug and alcohol driving awareness program described by this subsection. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Texas Department of Licensing and Regulation or Texas Commission of Licensing and Regulation, as appropriate:

(1)  is responsible for the administration of the certification of approved alcohol awareness programs;

(2)  may charge a nonrefundable application fee for:

(A)  initial certification of the approval; or

(B)  renewal of the certification;

(3)  shall adopt rules regarding alcohol awareness programs approved under this section; and

(4)  shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

SECTION 10.  Articles 45.049(g) and (h), Code of Criminal Procedure, are amended to read as follows:

(g)  This subsection applies only to a defendant who is charged with a traffic offense or an offense under Section 106.071, Alcoholic Beverage Code, involving a violation of Section 106.05, Alcoholic Beverage Code, and is a resident of this state. If under Article 45.051(b)(10), Code of Criminal Procedure, the judge requires the defendant to perform community service as a condition of the deferral, the defendant is entitled to elect whether to perform the required service in:

(1)  the county in which the court is located; or

(2)  the county in which the defendant resides, but only if the applicable entity agrees to:

(A)  supervise, either on-site or remotely, the defendant in the performance of the defendant's community service; and

(B)  report to the court on the defendant's community service.

(h)  This subsection applies only to a defendant charged with an offense under Section 106.071, Alcoholic Beverage Code, involving a violation of Section 106.05, Alcoholic Beverage Code, who, under Subsection (g), elects to perform the required community service in the county in which the defendant resides. The community service must comply with Sections 106.071(d) and (e), Alcoholic Beverage Code, except that if the educational programs or services described by Section 106.071(e) are not available in the county of the defendant's residence, the court may order community service that it considers appropriate for rehabilitative purposes.

SECTION 11.  Section 53.03(g), Family Code, is amended to read as follows:

(g)  Prosecution may not be deferred for a child alleged to have engaged in conduct that:

(1)  is an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(2)  is a third or subsequent offense under Section 106.071, Alcoholic Beverage Code, involving a violation of Section 106.04 or 106.041, Alcoholic Beverage Code.

SECTION 12.  Section 38.02(e), Penal Code, is amended to read as follows:

(e)  If conduct that constitutes an offense under this section also constitutes a violation of [~~an offense under~~] Section 106.07, Alcoholic Beverage Code, the actor may only be, as applicable:

(1)  assessed a civil penalty under Section 106.0701, Alcoholic Beverage Code; or

(2)  prosecuted [~~only~~] under Section 106.071, Alcoholic Beverage Code [~~106.07~~].

SECTION 13.  Section 49.02(e), Penal Code, is amended to read as follows:

(e)  An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense under [~~to which~~] Section 106.071, Alcoholic Beverage Code [~~, applies~~].

SECTION 14.  Section 521.342(a), Transportation Code, is amended to read as follows:

(a)  Except as provided by Section 521.344, the license of a person who was under 21 years of age at the time of the offense, other than an offense classified as a misdemeanor punishable by fine only, is automatically suspended on conviction of:

(1)  an offense under Section 49.04, 49.045, or 49.07, Penal Code, committed as a result of the introduction of alcohol into the body;

(2)  an offense under the Alcoholic Beverage Code, other than an offense under [~~to which~~] Section 106.071 of that code [~~applies~~], involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;

(3)  a misdemeanor offense under Chapter 481, Health and Safety Code, for which Subchapter P does not require the automatic suspension of the license;

(4)  an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug; or

(5)  an offense under Chapter 485, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of an abusable volatile chemical.

SECTION 15.  Section 521.451(c), Transportation Code, is amended to read as follows:

(c)  If conduct that constitutes an offense under Subsection (a) also constitutes a violation of [~~an offense under~~] Section 106.07, Alcoholic Beverage Code, the actor may only be, as applicable:

(1)  assessed a civil penalty under Section 106.0701, Alcoholic Beverage Code; or

(2)  prosecuted [~~only~~] under Section 106.071 [~~106.07~~], Alcoholic Beverage Code.

SECTION 16.  The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act. An offense committed or conduct that occurs before the effective date of this Act is governed by the law in effect on the date the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed or conduct occurred before the effective date of this Act if any element of the offense or conduct occurred before that date.

SECTION 17.  This Act takes effect September 1, 2019.