

By: Israel

H.B. No. 1721

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a violation regarding the purchase, possession, or  
3 consumption of alcoholic beverages by a minor or the  
4 misrepresentation of age by a minor; authorizing a civil penalty;  
5 creating a criminal offense.

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

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

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

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

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

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

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

1 ~~[commission of the offense]~~ intended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) A minor may possess an alcoholic beverage:

26 (1) while in the course and scope of the minor's  
27 employment if the minor is an employee of a licensee or permittee

1 and the employment is not prohibited by this code;

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

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

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

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

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

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

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

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

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

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

27 (d) ~~[(e)]~~ Except as provided by Subsections (e) and

1 ~~[Subsection] (f), [Subsection (a) does not apply to]~~ a minor may not  
2 be assessed a civil penalty under Section 106.0701 for a violation  
3 of this section or prosecuted for an offense under Section 106.071  
4 for a violation of this section if the minor ~~[who]~~ reports the  
5 sexual assault of the minor or another person, or is the victim of a  
6 sexual assault reported by another person, to:

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

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

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

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

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

22 or

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

25 (f) ~~[(g)]~~ A minor who commits a sexual assault that is  
26 reported under Subsection (d) ~~[(e)]~~ is not exempted from the  
27 assessment of a civil penalty under Section 106.0701 as provided by

1 Subsection (d) or entitled to raise the defense provided by  
2 Subsection (d) [~~(e)~~] in the prosecution of the minor for an offense  
3 under Section 106.071 [~~this section~~].

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

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

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

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

15 Sec. 106.0701. CIVIL PENALTY FOR ALCOHOL-RELATED VIOLATION  
16 BY MINOR. (a) A minor who violates Section 106.02, 106.025,  
17 106.04, 106.05, or 106.07 is liable to the state for a civil penalty  
18 in an amount not to exceed \$500.

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

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

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

1 fund.

2 Sec. 106.0702. COMMUNITY SERVICE IN SATISFACTION OF  
3 PENALTY. A person may discharge a civil penalty assessed under  
4 Section 106.0701 by performing community service for not less than  
5 20 or more than 40 hours.

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

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

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

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

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

16 (2) subsequently violates Section 106.02, 106.025,  
17 106.04, 106.05, or 106.07.

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

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

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

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



1           (3) both the fine and confinement.

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

4           (a) On the placement of a minor on deferred disposition for  
5 an offense under Section 49.02, Penal Code, or under Section  
6 106.071 [~~106.02, 106.025, 106.04, 106.041, 106.05, or 106.07~~], the  
7 court shall require the defendant to attend an alcohol awareness  
8 program approved by the Texas Department of Licensing and  
9 Regulation under this section, a drug education program approved by  
10 the Department of State Health Services in accordance with Section  
11 521.374, Transportation Code, or a drug and alcohol driving  
12 awareness program approved by the Texas Education Agency. On  
13 conviction of a minor of an offense under one or more of those  
14 sections, the court, in addition to assessing a fine as provided by  
15 those sections, shall require a defendant who has not been  
16 previously convicted of an offense under one of those sections to  
17 attend an alcohol awareness program, a drug education program, or a  
18 drug and alcohol driving awareness program described by this  
19 subsection. If the defendant has been previously convicted once or  
20 more of an offense under one or more of those sections, the court  
21 may require the defendant to attend an alcohol awareness program, a  
22 drug education program, or a drug and alcohol driving awareness  
23 program described by this subsection. If the defendant is younger  
24 than 18 years of age, the court may require the parent or guardian  
25 of the defendant to attend the program with the defendant. The  
26 Texas Department of Licensing and Regulation or Texas Commission of  
27 Licensing and Regulation, as appropriate:

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

3 (2) may charge a nonrefundable application fee for:

4 (A) initial certification of the approval; or

5 (B) renewal of the certification;

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

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

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

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

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

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

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

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

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

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

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

15                   (1) is an offense under Section 49.04, 49.05, 49.06,  
16 49.07, or 49.08, Penal Code; or

17                   (2) is a third or subsequent offense under Section  
18 106.071, Alcoholic Beverage Code, involving a violation of Section  
19 106.04 or 106.041, Alcoholic Beverage Code.

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

22           (e) If conduct that constitutes an offense under this  
23 section also constitutes a violation of [~~an offense under~~] Section  
24 106.07, Alcoholic Beverage Code, the actor may only be, as  
25 applicable:

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

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

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

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

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

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

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

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

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

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

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

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

6           (c) If conduct that constitutes an offense under Subsection  
7 (a) also constitutes a violation of [~~an offense under~~] Section  
8 106.07, Alcoholic Beverage Code, the actor may only be, as  
9 applicable:

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

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

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

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