

SENATE BILL 291

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, Part 4, relative to driving under the influence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-416, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section:

(1) "Alcoholic beverage" means alcoholic beverages or wine as defined in § 57-4-102, or beer as defined in § 57-5-101;

(2) "Driving" means operating or being in physical control of a motor vehicle;

(3) "Open alcoholic beverage container" means any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and that is open, has a broken seal, or the contents of which are partially removed; and

(4) "Passenger area" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passengers while in their seating positions, including, but not limited to, an unlocked glove compartment. Passenger area does not include the area behind the last upright seat of a vehicle which has no trunk or an area not normally occupied by the driver or passengers.

(b)

(1)

(A) It is an offense for the driver of a motor vehicle to consume an alcoholic beverage or for the driver to knowingly possess an open alcoholic beverage container while driving a vehicle on a public highway or on the right-of-way of a public highway. The offense of possession of an open alcoholic beverage container under this section shall not apply to a driver of a motor vehicle who does not have knowledge of and cannot, while driving the motor vehicle, access an open alcoholic beverage container in the passenger area of the vehicle.

(B) If a law enforcement officer observes an open alcoholic beverage container in a motor vehicle that is not in the immediate possession of any passenger, prior to issuing a citation in lieu of arrest in accordance with subsection (d) for a violation of this section to a driver who requests a test as defined in § 55-10-405 to determine the alcoholic content of the blood, the driver shall be given such a test. The law enforcement officer shall inform the driver of the driver's right to request such a test. If the results of the test indicate an alcohol concentration in such driver's blood or breath of point zero one (.01) or lower, the driver is not in violation of this section and no citation shall issue.

(2) It is an offense for the driver of a motor vehicle used primarily for the transportation of persons for compensation to consume an alcoholic beverage or for the driver to knowingly possess an open alcoholic beverage container while driving or in control of such vehicle on a public highway or on the right-of-way of a public highway.

(3) It is not an offense nor a violation of this section to have an open alcoholic beverage container or open alcoholic beverage containers in a locked

or sealed case or container placed in an area that is not readily accessible behind the front seat of a pickup truck which has no trunk or separate enclosed area other than the cab of the pickup truck.

(c)

(1) Except as otherwise provided in subdivision (2), it is an offense for a person who is a passenger in a motor vehicle to consume an alcoholic beverage or to knowingly possess an open alcoholic beverage container within the passenger area of a motor vehicle while the motor vehicle is on a public highway or on the right-of-way of a public highway.

(2) Subdivision (1) does not apply to a motor vehicle being used primarily for the transportation of persons for compensation or to passengers in the living quarters of a motor home, truck camper, house trailer, or other similar recreational vehicle primarily designed as temporary living quarters for recreational camping or travel, nor does it apply to a vehicle operated by a chauffeur in such chauffeur's for-hire capacity.

(d)

(1)

(A) It is a Class C misdemeanor, punishable by a fine only of fifty dollars (\$50.00) if a driver of a motor vehicle is charged with consuming alcoholic beverages in a motor vehicle or is charged with consuming alcoholic beverages and possession of an open alcoholic beverage container in a motor vehicle in violation of subsection (b)(1) or (2), but not charged with any other alcohol related offense. For such violation the driver shall be issued a citation in lieu of arrest and may, in lieu of

appearance in court, submit the applicable fifty dollar (\$50.00) fine to the clerk of the court that has jurisdiction of the offense.

(B) Notwithstanding the provisions of subdivision (A), it is a Class C misdemeanor punishable by fine only of fifty dollars (\$50.00) and such violation shall be classified as a nonmoving traffic violation, if a driver of a motor vehicle is only charged with possession of an open alcoholic beverage container in a motor vehicle but not with consumption of an alcoholic beverage in violation of this section. Such driver shall be issued a citation in lieu of arrest and may, in lieu of appearance in court, submit the applicable fifty dollar (\$50.00) fine to the clerk of the court that has jurisdiction of the offense. A person paying in this manner shall be excused from paying court costs and state or local litigation taxes. In addition, the provisions of subdivision (d)(3) shall apply to such a driver.

(2) A violation of subsection (c)(1) by a passenger in a motor vehicle is a Class C misdemeanor punishable by fine only of fifty dollars (\$50.00) and such violation shall be classified as a nonmoving traffic violation. A person charged with a violation of subsection (c), but not charged with any other alcohol related offense, shall be issued a citation in lieu of arrest and may, in lieu of appearance in court, submit the applicable fifty dollar (\$50.00) fine to the clerk of the court that has jurisdiction of the offense. In addition, the provisions of subdivision (d)(3) shall apply to such person.

(3) The court shall defer further proceedings for a person issued a citation in lieu of arrest pursuant to subsection (d)(1)(B) or (d)(2) without entering a judgment of guilty against the defendant charged with such a violation for a period of six (6) months from the court date. If the person violates any condition

of the diversion including another violation of subsection (c)(1), subsection (b) or any other alcohol related offense within such six-month period, the court may enter an adjudication of guilt and proceed as otherwise provided. If, during such six-month period, the person is not convicted of another violation of subsection (c)(1), subsection (b) or any other alcohol related offense, then upon expiration of the period, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this subdivision is without court adjudication of guilt. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose. Upon the court's discharge and dismissal under this subdivision, all public records of such person's violation of this section shall be expunged as provided in title 40, chapter 32, part 1.

(4) If a person is convicted of a violation of subsection (c)(1), subsection (b) or any other alcohol related offense while on diversion in accordance with subdivision (3), then the punishment for committing an offense under subsection (c)(1) or subsection (b) while on diversion shall be as provided in subsection (d)(1)(A).

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.