



# Senate

General Assembly

**File No. 906**

January Session, 2009

Substitute Senate Bill No. 152

*Senate, May 5, 2009*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT PROHIBITING OPEN ALCOHOLIC BEVERAGE CONTAINERS IN MOTOR VEHICLES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) For the purposes of  
2 this section:

3 (1) "Alcoholic beverage" has the same meaning as provided in  
4 section 30-1 of the general statutes;

5 (2) "Highway" has the same meaning as provided in section 14-1 of  
6 the general statutes, but shall not include any place under the control  
7 of the state or any political subdivision of the state open to public use  
8 for parking for professional or college sporting events, during the  
9 period beginning six hours prior to any such event and ending two  
10 hours after such event, inclusive;

11 (3) "Open alcoholic beverage container" means a bottle, can or other  
12 receptacle that (A) contains any amount of an alcoholic beverage, and

13 (B) (i) is open or has a broken seal, or (ii) the contents of which are  
14 partially removed;

15 (4) "Passenger" means any occupant of a motor vehicle other than  
16 the operator; and

17 (5) "Passenger area" means (A) the area designed to seat the  
18 operator of and any passenger in a motor vehicle while such vehicle is  
19 being operated on a highway, or (B) any area of a motor vehicle that is  
20 readily accessible to such operator or passenger; except that, in a motor  
21 vehicle not equipped with a trunk, "passenger area" does not include a  
22 locked glove compartment, the area behind the last upright seat closest  
23 to the rear of the motor vehicle or an area not normally occupied by  
24 the operator of or passengers in such motor vehicle.

25 (b) No person shall possess an open alcoholic beverage container  
26 within the passenger area of a motor vehicle while such motor vehicle  
27 is being operated on any highway or highway right-of-way in this  
28 state.

29 (c) The provisions of subsection (b) of this section shall not apply to:  
30 (1) Any passenger in a motor vehicle designed, maintained and  
31 primarily used for the transportation of persons for hire; (2) any  
32 passenger in the living quarters of a recreational vehicle, as defined in  
33 section 14-1 of the general statutes; (3) any passenger in a privately-  
34 owned motor vehicle operated by a person in the course of such  
35 person's usual employment transporting passengers at the direction of  
36 such person's employer; or (4) any passenger in a passenger motor  
37 vehicle, if one of such passengers is the owner or lessee of such vehicle  
38 and can establish, by means including, but not limited to, a receipt for  
39 payment made to the operator, that such operator has been hired by  
40 such owner or lessee to operate such vehicle.

41 (d) The operator of any motor vehicle in which any person violates  
42 the provisions of subsection (b) of this section shall commit an  
43 infraction and be fined ninety dollars for a first violation, shall be fined  
44 two hundred dollars for a second violation and shall be fined five

45 hundred dollars for any subsequent violation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Department of Transportation	TF - See Below	See Below	See Below
Judicial Dept.	GF - Revenue Gain	Greater than \$100,000	Greater than \$100,000

Note: TF=Transportation Fund; GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill prohibits open alcoholic beverage containers from being carried in the passenger area of motor vehicles. The language is intended to bring the state into compliance with federal open container laws, which will stop federal funds from being redirected from construction programs to highway safety programs.

The Department of Transportation currently uses the diverted funds for hazard elimination projects and for making grants to municipalities and other state agencies for enforcing DUI laws, purchasing related equipment, and sobriety checkpoints. As of October 1, 2008, a total of \$38.0 million was diverted due to non-compliance with federal requirements for "Open Container" laws. The first diversion of funds was \$2.3 million for Federal FY 01, \$2.5 million for FFY 02, \$5.6 million for FFY 03, \$5.8 million for FFY 04, \$5.9 million for FFY 05, \$5.0 million for FFY 06, and \$5.4 million for FFY 07 and for FFY 08.

The bill is anticipated to generate annual revenues greater than \$100,000 from the infraction and violations that the bill establishes that may be imposed on any person (with certain exceptions under the bill) who possesses an open alcoholic beverage container in the passenger area of a motor vehicle while the vehicle is on a Connecticut highway

or right of way. Since the bill does not include this new fee among fines, fees, and surcharges that must be deposited into the Special Transportation Fund, any revenues generated under the bill would be deposited into the General Fund.

Any person who is alleged to have committed a second or subsequent offense would need to appear in court under the bill since the bill's violations are not included in the statutory list of violations that can be paid through the mail. It is anticipated that the Judicial Department would not require additional resources to handle cases (involving second and subsequent offenses) under the bill.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 152*****AN ACT PROHIBITING OPEN ALCOHOLIC BEVERAGE CONTAINERS IN MOTOR VEHICLES.*****SUMMARY:**

This bill makes it illegal for anyone to possess an open alcoholic beverage container in the passenger area of a motor vehicle while the vehicle is being operated on a Connecticut highway or highway right-of-way (i.e., road shoulders) (see BACKGROUND).

A first offense is an infraction subject to a \$90 fine. A second or subsequent offense is a violation, not an infraction, and a court appearance is required. The fine is \$200 for a second offense and \$500 for a subsequent offense. Only the driver is subject to these penalties.

The bill does not apply in a:

1. motor vehicle designed, maintained, and primarily used for transporting people for hire (e.g., buses, taxicabs, and limousines);
2. the living quarters of a recreational vehicle (e.g., campers, camp trailers, and motor homes);
3. privately owned motor vehicle driven by a person in the course of his or her usual employment who is transporting the passengers at his or her employer's direction; or
4. passenger motor vehicle, if one of the passengers is its owner or lessee and can establish, by a receipt for payment made to the driver or other means, that the owner or lessee hired the driver.

In addition, the bill exempts from the prohibition any place that is

under the control of the state or a municipality and open to public use for parking for any professional or college sporting event, during the period beginning six hours before the event and ending two hours after the event.

EFFECTIVE DATE: October 1, 2009

### **OPEN ALCOHOLIC BEVERAGE CONTAINER**

The bill defines an “open alcoholic beverage container” as a bottle, can, or other receptacle that (1) contains any amount of an alcoholic beverage and (2) is open or has a broken seal, or the contents of which are partially removed.

### **PASSENGER AREA**

The bill defines a vehicle’s “passenger area” as (1) the area designed to seat the operator of, and any passenger in, a motor vehicle being operated on a highway or (2) any area readily accessible to the operator or passenger. But the bill specifies that in a motor vehicle not equipped with a trunk, “passenger area” does not include a locked glove compartment, the area behind the last upright seat, or an area the operator or passengers do not normally occupy.

### **BACKGROUND**

#### ***Legislative History***

The Senate referred the bill (File 388) to the Public Safety and Security Committee on April 9. The committee reported it favorably on April 14. The Senate referred it to the Judiciary Committee on April 22. On April 27, the committee favorably reported a substitute bill adding language specifying that the prohibition applies while a motor vehicle is “being operated” on a public highway. The original bill prohibited possession of an open alcohol container while a motor vehicle “is on” a public highway.

#### ***“Operating” a Motor Vehicle***

The law does not define what constitutes “operating” a motor vehicle. On several occasions, the Connecticut Supreme Court has

determined that “operating” a motor vehicle and “driving” a motor vehicle are not synonymous. These cases interpreted the meaning of operating a motor vehicle in the context of the drunk driving law which prohibits operating a motor vehicle while under the influence of alcohol or drugs.

In *State v. Swift*, the court ruled that a person operates a motor vehicle within the meaning of the drunk driving statute “when in the vehicle he intentionally does any act or makes use of any mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle (125 Conn. 399, 403 (1939)). Another series of decisions determined that sitting at the wheel of a nonmoving vehicle with the engine running constituted operation (*State v. Wiggs*, 60 Conn. App. 551, 554-55 (2000); *State v. Marquis*, 24 Conn. App. 467, 468-69 (1991); *State v. Ducatt*, 22 Conn. App. 88, 93, cert. denied, 217 Conn. 804 (1990)).

In *State v. Haight*, the Supreme Court determined that the definition of operation was satisfied when a defendant was seated in a vehicle that neither was in motion nor had its motor running. The court upheld the conviction when the defendant was found sleeping in the driver’s seat of a legally parked vehicle, with the key in the ignition and the headlights illuminated. The court concluded that “mere insertion of the key constituted operation” (279 Conn. 548, 555-56 (2006)).

In its most recent decision in March 2009, the Supreme Court overturned the appellate court and concluded that a person who had started his vehicle’s engine with a remote starter and then had gotten behind the steering wheel was operating the vehicle in that he had undertaken the first act in a sequence of steps necessary to set in motion the motive power of a vehicle equipped with a remote starter. The court stated that although no evidence appeared to indicate that the ignition key had been inserted and turned, actions that would have been necessary in order to have put the vehicle into gear and moved, the act of starting the motor with the remote starter constituted the

first step in the sequence of steps involved in operating the vehicle (*State v. Cyr*, 291 Conn. 49 (2009)).

### ***Related Law Prohibiting Consumption of Alcohol While Driving***

It is a class C misdemeanor, punishable by a fine of up to \$300, imprisonment for up to three months, or both, for anyone to consume alcohol while driving a motor vehicle (1) on a public highway, (2) on any road of a specially chartered municipal association or highway district, (3) in a parking area for 10 or more cars, (4) on any school property, or (5) on any private road on which a municipal traffic authority has established a speed limit pursuant to state law (CGS § 53a-213).

### ***Related Law Permitting Patron to Take Home Open Wine Bottle***

State law permits a restaurant patron to remove one unsealed bottle of wine for off-premises consumption from a restaurant as long as the patron has purchased a full course meal and consumed a portion of the wine with the meal on the restaurant premises (CGS § 30-22).

### ***Federal Requirements Regarding Open Container Laws***

Under federal law (23 USC § 154), states must have an open container law meeting certain criteria or be subject to a diversion of a small percentage of federal highway construction grant funds to their highway safety grant programs. The states do not lose the funds; they are redirected from the construction programs to the safety grant program, including alcohol impaired driving enforcement. This annual penalty transfer currently applies to Connecticut. The Department of Transportation uses the transferred funds for hazard elimination projects and for making grants to municipalities and other state agencies for impaired driving enforcement, including sobriety checkpoints. This bill adopts many of the elements required for compliance with the federal mandate, but some of its provisions prevent it from being considered in compliance.

To comply with the federal mandate, and thus avoid the penalty transfer, a state's law must:

1. prohibit both possession of any open alcoholic beverage container and consumption of any alcoholic beverage;
2. apply to containers with any measurable amount of alcoholic beverage in them;
3. apply to all open alcoholic beverage containers and all alcoholic beverages, including beer, wine, and spirits that contain 0.5% or more of alcohol by volume;
4. apply to all vehicle occupants, except passengers of vehicles designed, maintained, or used primarily for transporting people for compensation (i.e., buses, taxicabs, and limousines) or the living quarters of motor homes;
5. apply to vehicles on a public highway and the highway right-of-way; and
6. require primary enforcement, rather than requiring probable cause that another violation had been committed before allowing enforcement of the open container law (i.e., secondary enforcement).

Federal regulations define a vehicle's passenger area as the area designed to seat the driver and passengers while the motor vehicle is in operation and any area readily accessible to the driver or a passenger while seated, including the glove compartment. An open container is defined as any bottle, can, or other receptacle that (1) contains any amount of alcoholic beverage and (2) is open or has a broken seal or the contents of which are partially removed. Alcoholic beverages include (1) beer, ale, and other similarly fermented beverages containing 0.5% or more alcohol by volume brewed or produced in whole or part from malt or any malt substitute; (2) wine of not less than 0.5% alcohol by volume; or (3) distilled spirits known as ethyl alcohol, ethanol, or spirits of wine in any form including any dilutions or mixtures (23 CFR § 1270).

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The federal regulations specify that a compliant open container law

may contain an exception allowing an open alcohol container to be in a locked glove compartment or placed behind the last upright seat or in an area not normally occupied by the driver or passengers if a vehicle does not have a trunk.

***Definition of “Highway”***

State law defines a highway as any state or other public highway, road, street, avenue, alley, driveway, parkway, or place under the control of the state or any political subdivision of the state, dedicated, appropriated, or opened to public travel or other use (CGS § 14-1).

***Definition of “Alcoholic Beverage”***

By law, an alcoholic beverage includes the four varieties of liquor defined in law (alcohol, beer, spirits, and wine) and every liquid or solid containing alcohol, spirits, wine, or beer and capable of being consumed by people for beverage purposes. It does not include any liquid or solid containing less than 0.5% of alcohol by volume (CGS § 30-1).

**COMMITTEE ACTION**

Transportation Committee

Joint Favorable

Yea 34 Nay 2 (03/09/2009)

Public Safety and Security Committee

Joint Favorable

Yea 12 Nay 10 (04/14/2009)

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 12 (04/27/2009)