

Judiciary Committee JOINT FAVORABLE REPORT

Bill No.: HB-6539

AN ACT CONCERNING A STUDY OF THE USE OF KRATOM IN

Title: CONNECTICUT.

Vote Date: 4/6/2021

Vote Action: Joint Favorable Substitute

PH Date: 3/12/2021

File No.: 576

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SPONSORS OF BILL:

Rep. Travis Simms

REASONS FOR BILL:

The purpose of this bill is to permit certain holders of commercial driver's licenses to participate in a pretrial alcohol education program.

SUBSTITUTE LANGUAGE

Subsequent to the Judiciary Committee's joint favorable substitute vote on "An Act Concerning Commercial Driver's License Holders and Pretrial Alcohol Education Programs," the subject matter of HB-6539 has changed. This bill now exists as Substitute House Bill No. 6539, and has been assigned File No. 576, "An Act Concerning a Study of the Use of Kratom in Connecticut." To the extent that responses from public testimony are reflected within this Joint Favorable Report, these are recorded in relation to the original raised bill concerning driver's license holders and pretrial alcohol education programs.

RESPONSE FROM ADMINISTRATION/AGENCY:

Deborah Del Prete Sullivan, Office of Chief Public Defender: The Office of Chief Public Defender supports this bill. This bill clarifies the circumstances when a person is not eligible for application to the subject program, specifically if an individual is driving a personal motor vehicle to transport merchandise, freight, or persons in connection to a business enterprise. The alterations made under this bill are fair, as they afford eligibility to persons driving their personal car for personal reasons, thereby treating all operators driving for personal reasons the same.

Division of Criminal Justice: The Division of Criminal Justice opposes this bill. Although the Division generally supports any proposal to increase the use of pretrial diversionary programs.

Section 43-44 of Public Act 13-271, which made CDL holders ineligible for the pretrial alcohol education program, was passed because Connecticut was cited by the Federal Motor Carrier Safety Administration (FMCSA) for its failure to comply with 49 C.F.R. § 384.226. That regulation, in effect, prohibits a state from allowing a CDL holder to participate in a diversionary program that would prevent the CDL holder's conviction for any violation. At that time, the FMCSA warned the state that it would lose federal highway funds for non-compliance with the regulation, which would have amounted to approximately \$23 million.

The Division of Criminal Justice emphasizes that it is possible that the FMCSA could withhold an equivalent of approximately \$18 Million in funds after the first year of non-compliance, and over \$36 Million the year after. In addition, there is the potential that passage of this bill could lead to the de-certification of Connecticut's CDL program

Department of Transportation: The Department of Transportation stands in strong opposition of this bill. If this bill were to be passed, Connecticut could lose up to four (4) percent of its Federal Aid funding for the first fiscal year, and eight (8) percent of its Federal Aid funding for the second fiscal year. Allowing a Commercial Driver's License (CDL) Holder to use a diversion program resulting in dismissal of the criminal charges in certain circumstances is expected to result in Connecticut being found in substantial noncompliance with the CDL Federal Regulations by the Federal Motor Carrier Safety Administration (FMCSA).

If the CDL Holder is arrested for operating under the influence of liquor or drugs while using a passenger motor vehicle while not carrying merchandise, freight or persons in connection with any business enterprise, the CDL Holder would no longer be held to the more stringent level of responsibility required for CDL Holders by our federal partners.

Judicial Branch: 49 CFR § 384.226 prohibits allowing any commercial driver's license (CDL) or permit holder from participating in a diversionary program for any moving violation.

Previous to the proposal of this bill, the Federal Motor Carrier Safety Administration (FMCSA) cited Connecticut for failure to comply with 49 CFR 384.266. Consequently, Public Act 13-271 was passed to preclude CDL holders from participating in the pretrial alcohol education program. At that time, FMCSA warned that Connecticut would lose 5% of its federal highway funds in the first year that it did not have in effect legislation barring CDL holders from diversionary programs

Department of Motor Vehicles: The Department of Motor Vehicles opposes this bill. This bill adds language to two statutes governing the Pretrial Alcohol Education Program (AEP) for both adults and minors. These statutes currently prohibit any person who holds a commercial driver's license (CDL) or a commercial learner's permit (CLP) from participating in AEP, regardless of the type of vehicle they were operating when they have committed an offense. The current version of the AEP statutes conforms to the federal law that prohibits states from allowing CDL and CLP holders to use diversion programs for certain serious motor vehicle offenses, including operating under the influence, when committed in any type of vehicle. This bill will relax the prohibition, making it applicable to CDL and CLP holders while "transporting in a passenger motor vehicle, merchandise, freight or persons in connection

with any business enterprise” (CGS 14-1). This proposed language would make Connecticut noncompliant with federal law (49 CFR §384.226).

In addition, passage of this bill has the potential to have a devastating impact upon federal highway funds and could lead to de-certification of Connecticut’s CDL program.

NATURE AND SOURCES OF SUPPORT:

Frank J. Riccio II, President Connecticut Criminal Defense Lawyers Association: Frank J. Riccio supports the passage of this bill. Under current Connecticut law, drivers who hold a commercial driver's license (CDL) are not eligible to have their charges for Operating Under the Influence expunged or erased from their driving and/or criminal history through usage of the Alcohol Education Program. Under this bill, CDL holders can now have a disproportionate impact on their ability to keep their job and support their family if they drink and drive. While Connecticut residents should not drink and drive, it does happen – and all Connecticut should be equally protected in the event it occurs.

These individuals have had to plead guilty to an offense to avoid jailtime, attorneys’ fees and also burdened the court with unnecessary trials when diversion would have satisfied all involved. This proposal permits CDL holders who are operating their own vehicle to be allowed to qualify for the AEP. This is a required and necessary expansion of the law that is welcome to the citizens of the State of Connecticut.

James O. Ruane, James J. Ruane, Teresa M. DiNardi, Daniel F. Lage, Brittany B. Paz, Dennis Manicini, and Robert Fontaine, Ruane Attorneys at Law: The undersigned attorneys at Ruane Attorneys at Law support this bill. The current statutory language, when passed into law, misapplied the Federal Motor Carrier Safety Act to erroneously disqualify those with commercial driver’s licenses to be disqualified from the Alcohol Education Program.

The Connecticut Pretrial Alcohol Education complies with the Federal Anti-Masking language and includes such participation directly on the driving history of the participant.

As it currently stands, Connecticut Citizens have been thrust in an untenable situation—by merely possessing a CDL, they became statutorily ineligible for a diversion program, even when operating their personal vehicle on personal time. The CDL disqualification did not limit itself to commercial vehicle driving under the influence. These individuals found themselves electing to plead guilty to an offense to avoid jailtime, attorneys’ fees and also burdened the court with unnecessary trials when diversion would have satisfied all stake holders.

Jeff Shaw, Senior Director, CT Community Nonprofit Alliance: The CT Community Nonprofit Alliance is in support of this bill. Allowing people with CDLs to be eligible for the program will enable community nonprofits running the programs to serve more people and start group education faster. In order to run group education, a minimum number of participants need to be registered with the program, which means any delays in capacity can result in a waiting period of 6-12 months to start the program. This results in an extension of charges, lengthier involvement with probation, and delayed reinstatement of licenses. These programs run on tight margins and covering costs is difficult. Thus, an increase in participants would help providers address new costs as well as for participants, who may be more comfortable continuing their program in virtual groups.

NATURE AND SOURCES OF OPPOSITION:

Joseph R. Sculley, President, Motor Transport Association of Connecticut, Inc.; The Motor Transport Association of Connecticut is in opposition to this bill. If enacted, this bill will violate federal regulations, of which will result in the loss of federal highway funds for the State of Connecticut.

Furthermore, the federal regulations cover additional considerations for a State found in “substantial noncompliance” under 49 CFR §384.405 - Decertification of State CDL Program. The Administrator will consider determining whether the CDL program of a State in substantial noncompliance should be decertified. This would mean that the State of Connecticut would be prohibited from issuing Commercial Driver’s Licenses (CDLs).

Most truck drivers recognize that they are held to a higher standard than other drivers, and that standard is something that comes with the job. That standard comes with the job because highway safety is an absolute priority to the trucking industry. Because the industry prioritizes safety, it cannot support a policy that would hide the drunk driving arrests of its drivers.

Reported by: Jessica Topper

Date: 5/1/2021