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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Ashley E. Menou.

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DIGEST

SB 429 Original

2018 Regular Session

LaFleur

Present law allows any court with an alcohol division, the 24th JDC, and parish courts in Jefferson Parish to charge an additional cost of \$50 to any person convicted of certain offenses or of any municipal or parochial ordinance prohibiting the purchase or public possession of alcoholic beverages by persons under 21.

Proposed law provides that the person under 21 must also not possess La. Alcohol Consumption Certificate and otherwise retains present law.

Present law prohibits the purchase and public possession of alcoholic beverages for persons under 21.

Proposed law changes the prohibition to persons under 21 that do not possess a La. Alcohol Consumption Certificate and otherwise retains present law.

Present law defines "public possession" as the possession of any alcoholic beverage for any reason, including consumption, on any street, highway, or waterway or in any public place or any place open to the public, including a club which is de facto open to the public.

Proposed law retains present law.

Present law provides that "public possession" does not include the sale, handling, transport or service of alcoholic beverages by a person under 21 if the person owns the establishment or is lawfully employed by the establishment. Present law further provides that "public possession" does not include the possession or consumption of any alcoholic beverage when a person under 21 is accompanied by a parent, spouse, or legal guardian 21 years of age or older.

Proposed law provides that "public possession" does not include possession or consumption of alcoholic beverages by a person under 21 or a person with a La. Alcohol Consumption Certificate (certificate) if such person is accompanied by a parent, spouse, or guardian 21 or older or the sale, handling, transport, or service of alcoholic beverages by a person under 21 and without a La. Alcohol Consumption Certificate if the person owns the establishment or is employed by the establishment.

Present law prohibits the sale of alcohol to a person under 21 unless such person is the owner or employee of an establishment to which the sale is being made and is accepting the delivery pursuant to such ownership or employment.

Proposed law prohibits the sale of alcohol to persons under 21 and without a La. Alcohol Consumption Certificate unless such person is the owner or employee of an establishment to which

the sale is being made and is accepting the delivery pursuant to such ownership or employment.

Present law prohibits the purchase of alcoholic beverages for a person under 21 unless the purchase is made by a parent, spouse, or legal guardian 21 years of age or older.

Proposed law prohibits the purchase of alcoholic beverages for a person under 21 and without a La. Alcohol Consumption Certificate unless the purchase is made by a parent, spouse, or legal guardian 21 years of age or older.

Present law provides the penalty for the first offense of operating while intoxicated is a fine of not less than \$300 nor more than \$1,000 and imprisonment for not less than 10 days nor more than six months.

Proposed law provides that for persons possessing a certificate, the penalty for a first offense of operating while intoxicated is a fine of not less than \$600 nor more than \$1,000 and imprisonment for not less than 20 days nor more than one year. Further, provides that imposition or execution of sentence cannot be suspended for offenders that possessed a certificate at the time of the offense.

Present law provides the penalty for the second offense of operating while intoxicated is a fine of not less than \$750 nor more than \$1,000 and imprisonment for not less than 30 days nor more than six months.

Proposed law provides that for persons possessing a certificate, the penalty for the second offense of operating while intoxicated is a fine of not less than \$1,500 nor more than \$2,000 and imprisonment for not less than 60 days nor more than one year. Further, provides that imposition or execution of sentence cannot be suspended for offenders that possessed a certificate at the time of the offense.

Present law provides the penalty for the third offense of operating while intoxicated is a fine of \$2,000 and imprisonment, with or without hard labor, for not less than one year nor more than five years.

Proposed law provides that for persons possessing a certificate, the penalty for the third offense of operating while intoxicated is a fine of \$4,000 and imprisonment, with or without hard labor, for not less than two years nor more than ten years.

Present law provides the penalty for the fourth or subsequent offense of operating while intoxicated is a fine of \$5,000 and imprisonment, with or without hard labor, for not less than 10 years nor more than 30 years.

Proposed law provides that for persons possessing a certificate, the penalty for a fourth or subsequent offense of operating while intoxicated is a fine of \$10,000 and imprisonment, with or without hard labor, for not less than 20 years and not more than 60 years.

Present law prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means

of conveyance when the operator's blood alcohol concentration is 0.02 percent or higher and the operator is under 21.

Proposed law prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's blood alcohol concentration is 0.02 percent or higher and the operator is under 21 and does not possess a certificate.

Present law prohibits a person under 21 from attempting to purchase or obtain alcoholic beverages or enter a licensed premises with the identification of another person or with a fraudulent form of identification.

Proposed law prohibits a person under 21 that does not possess a certificate from attempting to purchase or obtain alcoholic beverages or enter a licensed premises with the identification of another person or with a fraudulent form of identification.

Present law prohibits the holder of a retail dealer permit for beverages of high and low alcohol content from selling or serving alcoholic beverages to persons under the age of 21 unless such person presents valid identification establishing the person as 21 years of age or older.

Proposed law prohibits the holder of a retail dealer permit for beverages of high and low alcohol content from selling or serving alcoholic beverages to persons under the age of 21 that do not possess a certificate, unless such persons presents valid identification or a valid certificate.

Present law provides that, for every keg sold, a retail dealer must have the purchaser sign a declaration that the purchaser will not knowingly allow any person under 21 to consume the alcoholic beverage in the keg.

Proposed law provides that, for every keg sold, a retail dealer must have the purchaser sign a declaration that the purchaser will not knowingly allow any person under 21 or any person without a certificate to consume the alcoholic beverage in the keg.

Present law provides that wine may be shipped directly to a consumer in Louisiana if the consumer is 21 years of age or older, the package is received by a person 21 years of age or older, and other conditions are met.

Proposed law provides that wine may be shipped directly to a consumer 21 years of age or older or a consumer with a certificate.

Proposed law creates the "Louisiana Responsible Consumption Act" to foster and promote the responsible consumption of alcoholic beverages by those persons 19 and 20 years of age.

Proposed law defines "approved provider" as an individual, unincorporated association, partnership, or corporation approved by the program administrator to provide alcohol education courses.

Proposed law defines "certificate" as a La. Alcohol Consumption Certificate.

Proposed law defines "certificate holder" as a person 19 or 20 years old who obtains a certificate through the program.

Proposed law provides that the program administrator shall be the same committee as the La. Responsible Vendor Program.

Proposed law provides that the program administrator shall approve the program and the program shall include the following:

- (1) Enrollment and certification of persons 19 or 20 years old in the program.
- (2) Establishing a curriculum and method of testing for courses for persons 19 or 20 years old.
- (3) Review of the requirements for issuance and renewal of certificates. Further provides that certificates shall be valid for the purchase and consumption of alcoholic beverages in the state of Louisiana.

Proposed law provides that the education classes required for the program shall include education on the health risks of alcohol, absorption rates of alcohol, and laws and penalties relating to alcohol.

Proposed law provides that the commissioner shall promulgate rules necessary to implement the program.

Proposed law provides that to qualify, receive, and maintain a certificate a person must enroll in the program, complete all required education, and keep his certificate on his person at all times.

Proposed law allows the commissioner to impose a fine or revoke a certificate for noncompliance with the provisions of the program or a violation of an alcohol-related law.

Proposed law allows the commissioner to promulgate rules regarding fees for the program, including a certificate fee that cannot exceed \$100 per certificate.

Proposed law allows an approved provider to charge no more than \$100 for the required alcohol education courses.

Proposed law provides that on and after January 1, 2020, the program administrator shall provide the commissioner and legislature with annual reports regarding the program.

Present law provides that any person is deemed to have given consent to a chemical test to determine the alcoholic content of his blood if he is arrested for an offense arising out of acts committed while the person was operating a motor vehicle or watercraft and believed to be under the influence of alcoholic beverage or any abused or controlled dangerous substance.

Present law requires that prior to a chemical test, a law enforcement officer inform the person of certain rights and information.

Proposed law retains present law.

Present law requires a law enforcement officer, prior to a chemical test, to inform a person under 21 that his driving privileges can be suspended if he submits to the chemical test and the results show a blood alcohol level of 0.02 percent or above.

Proposed law requires a law enforcement officer to also inform a person possessing a certificate in the same manner as persons under 21 and otherwise retains present law.

Present law provides that for persons under 21, the chemical test shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been operating a motor vehicle under the influence of alcoholic beverages.

Proposed law provides that the chemical test for persons possessing a certificate shall be administered in the same manner as persons under 21 and otherwise retains present law.

Present law provides that, under certain circumstances, a person may refuse to submit to a chemical test to determine the alcoholic content of his blood. Present law further provides that evidence of a refusal shall be admissible in a criminal proceeding regarding acts committed while the person was operating a motor vehicle while under the influence of alcoholic beverages or a controlled dangerous substance.

Proposed law retains present law.

Present law provides that evidence of a refusal to submit to a chemical test by a person under 21 shall be admissible in a criminal proceeding regarding acts committed while the person was operating a motor vehicle while under the influence of alcoholic beverages. However, present law provides that such evidence shall not be admissible in a civil action except to suspend, revoke, or cancel driving privileges.

Proposed law provides that the evidence of a refusal to submit to a chemical test for a person possessing a certificate shall be treated the same by a court as a person under 21 and otherwise retains present law.

Present law provides that if a person under 21 is arrested for operating a vehicle while intoxicated and either refuses to submit to a chemical test or submits and the test results show a blood alcohol level of 0.02 percent or higher, the law enforcement officer shall seize the person's driver's license and issue a temporary receipt of license.

Proposed law provides that a person that possesses a certificate is arrested for operating a vehicle while intoxicated shall have the same consequences as a person under 21 if he either refuses to submit to a chemical test or submits and the tests show a blood alcohol level of .02 or higher and otherwise retains present law.

Present law provides that if the results of a chemical test are not received 30 days after the arrest of

a person 21 or older or if the results show a blood alcohol level of less than 0.08 percent by weight, then no administrative hearing shall be held and the person's license shall be returned without payment of a reinstatement fee.

Proposed law provides that the same procedures apply if the results of a chemical test for a person possessing a certificate are not received 30 days after the arrest as a person under 21 and otherwise retains present law.

Present law provides that if the results of a chemical test are not received 30 days after the arrest of a person under 21 or if the results show a blood alcohol level of less than 0.02 percent by weight, then no administrative hearing shall be held and the person's license shall be returned without payment of a reinstatement fee.

Proposed law provides that the same procedures apply if the results of a chemical test for a person possessing a certificate are not received 30 days after the arrest as a person under 21 and otherwise retains present law.

Present law provides that if a person under 21 fails to make a written request for an administrative hearing within 30 days from the date of his arrest and the results of a chemical test show a blood alcohol level of 0.02 percent or higher by weight, his driving privileges will be suspended for 180 days.

Proposed law provides that the same consequences apply to a person possessing a certificate that fails to make a request for a hearing as a person under 21 and otherwise retains present law.

Present law affords an opportunity for a hearing to a person upon the revocation or suspension of a license and the scope of such hearings is limited to certain issues, including whether a person voluntarily submitted to a chemical test and whether the test resulted in a blood alcohol reading of 0.02 percent or higher if he was under 21 at the time of the test.

Proposed law affords the same opportunity for a hearing to a person possessing a certificate as that of a person under 21 and otherwise retains present law.

Present law provides that if a person under 21 submits to a chemical test and the results show a blood alcohol level of 0.02 percent or higher, he is not eligible for a restricted license for the first 30 days of the suspension of his driving privileges.

Proposed law provides that the same consequences apply to a person possessing a certificate as that of a person under 21 and otherwise retains present law.

Present law provides that results from a chemical test of a person under 21 that show a blood alcohol level of at least 0.02 but less than 0.08 percent shall not be included on his official driving record.

Proposed law provides that the results from a chemical test of a person possessing a certificate that show a blood alcohol level of at least 0.02 but less than 0.08 percent shall not be included on his

official driving record and otherwise retains present law.

Present law provides that the operating record of a person shall not include any record of any civil sanction imposed as a result of an arrest if the person was under 21, submitted to a chemical test, the test resulted in a blood alcohol reading of less than 0.02 percent by weight, and the person was found not guilty.

Proposed law provides that the operating record of a person shall not include any record of any civil sanction imposed as a result of an arrest if the person possessed a certificate, submitted to a chemical test, the test resulted in a blood alcohol reading of less than 0.02 percent by weight, and the person was found not guilty.

Proposed law provides that the provisions of proposed law shall become void and without effect if any funds are withheld from the state pursuant to the federal law regarding the national minimum drinking age.

Effective August 1, 2018.

(Amends R.S. 13:1000.11(A)(3), 1894.2(A)(3), and 2562.27(A)(3), R.S. 14:93.10(2)(b), 93.11(A), 93.12(A), 98.1(A)(1), 98.2(A)(1), 98.3(A)(1), 98.4(A)(1), 98.6(A), and 333(A), R.S. 26:90(A)(1)(b), 286(A)(1)(b), 306(C)(7), and 359(B)(1)(a) and (f), R.S. 32:661(A)(3) and (C)(1)(c), 661.1(C)(1)(c), 662(A)(1)(d), 666(A)(2)(c), 667(A)(intro para), (A)(3), and (B)(1)(b), 668(A)(4) and (B)(1)(b), 670, and 853(A)(1)(c)(i); adds R.S. 14:93.10(2)(c), R.S. 26:90(A)(1)(a)(vii), 286(A)(1)(a)(vii), and R.S. 26:940-947)