

Old Laws, New Consequences for Having Open Containers

In 1996, South Carolina reorganized certain criminal offenses dealing with the transportation of liquor and moved them to an area dealing with “moonshiners” or “bootleggers.” The original laws – providing for the seizure and sale of vehicles used to transport illegal liquor – originated around Prohibition. They were enforcement tools used against organized crime and anyone else involved in the illegal liquor trade on a wide scale.

These laws are virtually identical to current federal and state laws that address drug trafficking. As we all know, cars, boats and airplanes used to distribute or traffic illegal drugs are routinely seized by the government. The ability to confiscate all types of assets (vehicles, houses, bank accounts, jewelry, home furnishings, etc.) is one of the most powerful tools law enforcement has to fight organized gangs and drug cartels.

Back to alcohol. For 15 years, no one noticed that S.C. Code §§ 61-6-4290 and -4300 – which address the illegal transportation of liquor – not only applied to organized crime, they applied to people like you and me. Specifically, the Code says: “(1) Anyone convicted of violating any provision of this article prohibiting the transportation of liquor must have their driver’s license suspended for a minimum of six months; and (2) Any vehicle or boat involved in the transportation of liquor unlawfully be seized and sold at public auction to the highest bidder.”

So what does this mean to you? You don’t have to be in the business of making or distributing moonshine to have your license suspended. You don’t have to be a member of organized crime to have your car taken and sold at auction. If you leave a party or gathering with a mixed drink in your hand, or get pulled over for a minor traffic violation with an open container of liquor in your car, you’ve probably put yourself in a potentially traumatic situation.

As the law reads now, anyone convicted of having an open container of liquor (cup, glass or open bottle) will automatically have their license suspended for six months and could have their car or boat seized. (Interestingly, the six-month license suspension and vehicle seizure doesn’t apply to beer and wine – even though it is illegal to have an open container of beer or wine in a moving vehicle.) And if you opt to go to court and just pay your ticket, you most likely won’t be told any of this by court personnel. One day, you’ll go to the mailbox and realize you need to start making plans to have someone drive you to work, church the grocery store ... and anywhere else you might want to go.

Since August, more than 500 people in South Carolina have been convicted of these offenses subjecting them to the mandatory license suspension and seizures. In the Spring of 2011 I attended a DUI conference in Columbia where one of the speakers was South Carolina Senator Brad Hutto, Democrat, Orangeburg County. Senator Hutto addressed the group and said that the criminal law subcommittee had recently been made aware of this problem. He said that he hoped that before the legislative session of 2011 ended that it would be remedied. Unfortunately,

no new legislation was put forward addressing and fixing the problem. Recently, I spoke with a staff attorney at SC-DMV. She informed me that because the legislature had not addressed the problem last summer, DMV felt they have no choice but to continue implementing these suspensions as called for in the law until the legislature remedied it.

Clearly, a conviction under these provisions can have severe and potentially devastating consequences. There is no temporary, provisional or “work permit” license available to anyone who has their license suspended under these circumstances. I am certainly not condoning or encouraging anyone to have an open container of alcohol in their car or boat. It is against the law. But, I think the general motoring public needs to be aware of the license suspension and potential seizure provisions mandatory upon a conviction.

Steve Sumner is a DUI Defense Attorney in Greenville, SC. He can be reached for comment at 864-235-3834. His firm’s website is www.upstatedui.com.