

BILL ANALYSIS

S.B. 328
By: Carona
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, individuals operating a watercraft who refuse to submit to a breath or blood alcohol test are subject to an administrative license revocation, which results in a driver's license suspension. However, if the person operating the watercraft submits to a breath or blood alcohol test which results in a blood alcohol content level of .08 or greater, current statute does not provide for an administrative license revocation. Furthermore, the offense of operating a watercraft under the influence of alcohol does not apply to minors. Current statute provides for stricter driver's license penalties for minors who commit the offense of driving under the influence, but it does not clearly state that stricter suspension penalties should still apply to the offender if they reach the age of 21 or over while awaiting trial. Consequently, many offenders are able to postpone trial until the age of 21, then receive the less harsh suspension penalty associated with the offense of driving while intoxicated.

As proposed, S.B. 328 amends Chapter 524 (Administrative Suspension of Driver's License for Failure to Pass Test for Intoxication), Transportation Code, to include a driver's license suspension for individuals who fail a breath or blood alcohol test while operating a watercraft and by clearly defining the suspension period for an individual who was under the age of 21 at the time the offense of boating under the influence or driving under the influence of alcohol occurred. The bill amends Section 106.041 (Driving Under the Influence of Alcohol by Minor), Alcoholic Beverage Code, to create the offense of boating while a minor is under the influence of alcohol by a minor.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends the heading to Section 106.041, Alcoholic Beverage Code, as follows:

Sec. 106.041. New heading: DRIVING OR OPERATING A WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

SECTION 2. Amends Sections 106.041(a) and (g), Alcoholic Beverage Code, as follows:

(a) Provides that a minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.

(g) Provides that an offense under this section is not a lesser included offense under Section 49.045 (Driving While Intoxicated With Child Passenger) or 49.06 (Boating While Intoxicated), Penal Code.

SECTION 3. Amends Section 106.041(j), Alcoholic Beverage Code, by adding Subdivision (4) to define "watercraft."

SECTION 4. Amends Section 524.001(3), Transportation Code, to redefine "alcohol-related or drug-related enforcement contact."

SECTION 5. Amends Section 524.011(a), Transportation Code, as follows:

(a) Requires an officer arresting a person to comply with Subsection (b) if the person is arrested for an offense under Section 49.04 (Driving While Intoxicated), 49.05 or 49.06, Penal Code, or an offense under Section 49.07 (Intoxication Assault) or 49.08 (Intoxication Manslaughter) of that code involving the operation of a motor vehicle or watercraft, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B) (relating to having a blood alcohol concentration of .08 or more), Penal Code.

SECTION 6. Amends Section 524.012(b), Transportation Code, to require the Texas Department of Public Safety (DPS) to suspend the person's driver's license if DPS determines that the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place or while operating a watercraft; or the person was, rather than is, a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft.

SECTION 7. Amends Section 524.015(b), Transportation Code, to make a conforming change.

SECTION 8. Amends Section 524.022(b), Transportation Code, to make conforming changes.

SECTION 9. Amends Section 524.023, Transportation Code, to make conforming changes.

SECTION 10. Amends Sections 524.035(a) and (d), Transportation Code, to make conforming changes.

SECTION 11. Amends Section 524.042(a), Transportation Code, to make conforming changes.

SECTION 12. Makes application of Chapter 524, Transportation Code, of this Act prospective.

SECTION 13. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.