

By: Carona

S.B. No. 328

A BILL TO BE ENTITLED

AN ACT

relating to the civil and criminal consequences of operating a motor vehicle or a watercraft while intoxicated or under the influence of alcohol.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 106.041, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

SECTION 2. Subsections (a) and (g), Section 106.041, Alcoholic Beverage Code, are amended to read as follows:

(a) 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) An offense under this section is not a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code.

SECTION 3. Subsection (j), Section 106.041, Alcoholic Beverage Code, is amended by adding Subdivision (4) to read as follows:

(4) "Watercraft" has the meaning assigned by Section 49.01, Penal Code.

SECTION 4. Subdivision (3), Section 524.001, Transportation Code, is amended to read as follows:

(3) "Alcohol-related or drug-related enforcement

contact" means a driver's license suspension, disqualification, or prohibition order under the laws of this state or another state resulting from:

(A) a conviction of an offense prohibiting the operation of a motor vehicle or watercraft while:

- (i) intoxicated;
- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance;

(B) a refusal to submit to the taking of a breath or blood specimen following an arrest for an offense prohibiting the operation of a motor vehicle or an offense prohibiting the operation of a watercraft, if the watercraft was powered with an engine having a manufacturer's rating of 50 horsepower or more, while:

- (i) intoxicated;
- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance; or

(C) an analysis of a breath or blood specimen showing an alcohol concentration of a level specified by Section 49.01, Penal Code, following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated.

SECTION 5. Subsection (a), Section 524.011, Transportation Code, is amended to read as follows:

(a) An officer arresting a person shall comply with Subsection (b) if:

(1) the person is arrested for an offense under Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08 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), Penal Code; or

(2) the person is a minor arrested for an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle or watercraft and:

(A) the minor is not requested to submit to the taking of a specimen; or

(B) the minor submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of greater than .00 but less than the level specified by Section 49.01(2)(B), Penal Code.

SECTION 6. Subsection (b), Section 524.012, Transportation Code, is amended to read as follows:

(b) The department shall suspend the person's driver's license if the department determines that:

(1) 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

(2) the person was ~~is~~ a minor on the date that the breath or blood specimen was obtained and had any detectable amount

1 of alcohol in the minor's system while operating a motor vehicle in
2 a public place or while operating a watercraft.

3 SECTION 7. Subsection (b), Section 524.015, Transportation
4 Code, is amended to read as follows:

5 (b) A suspension may not be imposed under this chapter on a
6 person who is acquitted of a criminal charge under Section 49.04,
7 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041,
8 Alcoholic Beverage Code, arising from the occurrence that was the
9 basis for the suspension. If a suspension was imposed before the
10 acquittal, the department shall rescind the suspension and shall
11 remove any reference to the suspension from the person's
12 computerized driving record.

13 SECTION 8. Subsection (b), Section 524.022, Transportation
14 Code, is amended to read as follows:

15 (b) A period of suspension under this chapter for a minor
16 is:

17 (1) 60 days if the minor has not been previously
18 convicted of an offense under Section 106.041, Alcoholic Beverage
19 Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense
20 under Section 49.07 or 49.08, Penal Code, involving the operation
21 of a motor vehicle or a watercraft;

22 (2) 120 days if the minor has been previously
23 convicted once of an offense listed by Subdivision (1); or

24 (3) 180 days if the minor has been previously
25 convicted twice or more of an offense listed by Subdivision (1).

26 SECTION 9. Section 524.023, Transportation Code, is amended
27 to read as follows:

Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

(a) If a person is convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, and if any conduct on which that conviction is based is a ground for a driver's license suspension under this chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the suspensions shall be imposed.

(b) The court imposing a driver's license suspension under Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as required by Subsection (a) shall credit a period of suspension imposed under this chapter toward the period of suspension required under Section 106.041, Alcoholic Beverage Code, or Subchapter O, Chapter 521, or Subchapter H, Chapter 522, unless the person was convicted of an offense under Article 67011-1, Revised Statutes, as that law existed before September 1, 1994, Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994, Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, before the date of the conviction on which the suspension is based, in which event credit may not be given.

SECTION 10. Subsections (a) and (d), Section 524.035, Transportation Code, are amended to read as follows:

(a) The issues that must be proved at a hearing by a preponderance of the evidence are:

(1) whether:

(A) the person had an alcohol concentration of a

1 level specified by Section 49.01(2)(B), Penal Code, while operating
2 a motor vehicle in a public place or while operating a watercraft;
3 or

4 (B) the person was [~~is~~] a minor on the date that
5 the breath or blood specimen was obtained and had any detectable
6 amount of alcohol in the minor's system while operating a motor
7 vehicle in a public place or while operating a watercraft; and

8 (2) whether reasonable suspicion to stop or probable
9 cause to arrest the person existed.

10 (d) An administrative law judge may not find in the
11 affirmative on the issue in Subsection (a)(1) if:

12 (1) the person is an adult and the analysis of the
13 person's breath or blood determined that the person had an alcohol
14 concentration of a level below that specified by Section 49.01,
15 Penal Code, at the time the specimen was taken; or

16 (2) the person was [~~is~~] a minor on the date that the
17 breath or blood specimen was obtained and the administrative law
18 judge does not find that the minor had any detectable amount of
19 alcohol in the minor's system when the minor was arrested.

20 SECTION 11. Subsection (a), Section 524.042,
21 Transportation Code, is amended to read as follows:

22 (a) A suspension of a driver's license under this chapter is
23 stayed on the filing of an appeal petition only if:

24 (1) the person's driver's license has not been
25 suspended as a result of an alcohol-related or drug-related
26 enforcement contact during the five years preceding the date of the
27 person's arrest; and

(2) the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under:

(A) Article 67011-1, Revised Statutes, as that law existed before September 1, 1994;

(B) Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994;

(C) Section 49.04, 49.045, or 49.06, Penal Code;

(D) Section 49.07 or 49.08, Penal Code, if the offense involved the operation of a motor vehicle or a watercraft;

or

(E) Section 106.041, Alcoholic Beverage Code.

SECTION 12. The changes in law to Chapter 524, Transportation Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 13. This Act takes effect September 1, 2009.