

By: Carona

S.B. No. 328

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the civil and criminal consequences of operating a  
3 motor vehicle or a watercraft while intoxicated or under the  
4 influence of alcohol.

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

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

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

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

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

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

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

19 (4) "Watercraft" has the meaning assigned by Section  
20 49.01, Penal Code.

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

23 (3) "Alcohol-related or drug-related enforcement  
24 contact" means a driver's license suspension, disqualification, or

1 prohibition order under the laws of this state or another state  
2 resulting from:

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

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

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

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

19 (C) an analysis of a breath or blood specimen  
20 showing an alcohol concentration of a level specified by Section  
21 49.01, Penal Code, following an arrest for an offense prohibiting  
22 the operation of a motor vehicle or watercraft while intoxicated.

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

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

27 (1) the person is arrested for an offense under

1 Section 49.04, 49.045, or 49.06, Penal Code, or an offense under  
2 Section 49.07 or 49.08 of that code involving the operation of a  
3 motor vehicle or watercraft, submits to the taking of a specimen of  
4 breath or blood and an analysis of the specimen shows the person had  
5 an alcohol concentration of a level specified by Section  
6 49.01(2)(B), Penal Code; or

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

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

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

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

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

22 (1) the person had an alcohol concentration of a level  
23 specified by Section 49.01(2)(B), Penal Code, while operating a  
24 motor vehicle in a public place or while operating a watercraft; or

25 (2) the person was [~~is~~] a minor on the date that the  
26 breath or blood specimen was obtained and had any detectable amount  
27 of alcohol in the minor's system while operating a motor vehicle in a

1 public place or while operating a watercraft.

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

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

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

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

16 (1) 60 days if the minor has not been previously  
17 convicted of an offense under Section 106.041, Alcoholic Beverage  
18 Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense  
19 under Section 49.07 or 49.08, Penal Code, involving the operation  
20 of a motor vehicle or a watercraft;

21 (2) 120 days if the minor has been previously  
22 convicted once of an offense listed by Subdivision (1); or

23 (3) 180 days if the minor has been previously  
24 convicted twice or more of an offense listed by Subdivision (1).

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

27 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

1 (a) If a person is convicted of an offense under Section 106.041,  
2 Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.07, or  
3 49.08, Penal Code, and if any conduct on which that conviction is  
4 based is a ground for a driver's license suspension under this  
5 chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O,  
6 Chapter 521, or Subchapter H, Chapter 522, each of the suspensions  
7 shall be imposed.

8 (b) The court imposing a driver's license suspension under  
9 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as  
10 required by Subsection (a) shall credit a period of suspension  
11 imposed under this chapter toward the period of suspension required  
12 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,  
13 Chapter 521, or Subchapter H, Chapter 522, unless the person was  
14 convicted of an offense under Article 67011-1, Revised Statutes, as  
15 that law existed before September 1, 1994, Section 19.05(a)(2),  
16 Penal Code, as that law existed before September 1, 1994, Section  
17 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section  
18 106.041, Alcoholic Beverage Code, before the date of the conviction  
19 on which the suspension is based, in which event credit may not be  
20 given.

21 SECTION 10. Sections 524.035(a) and (d), Transportation  
22 Code, are amended to read as follows:

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

25 (1) whether:

26 (A) the person had an alcohol concentration of a  
27 level specified by Section 49.01(2)(B), Penal Code, while operating

1 a motor vehicle in a public place or while operating a watercraft;  
2 or

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

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

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

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

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

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

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

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

27 (2) the person has not been convicted during the 10

1 years preceding the date of the person's arrest of an offense under:

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

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

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

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

10 (E) Section 106.041, Alcoholic Beverage Code.

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

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