

1-1 By: Carona S.B. No. 328  
1-2 (In the Senate - Filed December 1, 2008; February 11, 2009,  
1-3 read first time and referred to Committee on Transportation and  
1-4 Homeland Security; March 9, 2009, reported favorably by the  
1-5 following vote: Yeas 8, Nays 0; March 9, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the civil and criminal consequences of operating a  
1-9 motor vehicle or a watercraft while intoxicated or under the  
1-10 influence of alcohol.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The heading to Section 106.041, Alcoholic  
1-13 Beverage Code, is amended to read as follows:

1-14 Sec. 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE  
1-15 INFLUENCE OF ALCOHOL BY MINOR.

1-16 SECTION 2. Subsections (a) and (g), Section 106.041,  
1-17 Alcoholic Beverage Code, are amended to read as follows:

1-18 (a) A minor commits an offense if the minor operates a motor  
1-19 vehicle in a public place, or a watercraft, while having any  
1-20 detectable amount of alcohol in the minor's system.

1-21 (g) An offense under this section is not a lesser included  
1-22 offense under Section 49.04, 49.045, or 49.06, Penal Code.

1-23 SECTION 3. Subsection (j), Section 106.041, Alcoholic  
1-24 Beverage Code, is amended by adding Subdivision (4) to read as  
1-25 follows:

1-26 (4) "Watercraft" has the meaning assigned by Section  
1-27 49.01, Penal Code.

1-28 SECTION 4. Subdivision (3), Section 524.001,  
1-29 Transportation Code, is amended to read as follows:

1-30 (3) "Alcohol-related or drug-related enforcement  
1-31 contact" means a driver's license suspension, disqualification, or  
1-32 prohibition order under the laws of this state or another state  
1-33 resulting from:

1-34 (A) a conviction of an offense prohibiting the  
1-35 operation of a motor vehicle or watercraft while:

1-36 (i) intoxicated;  
1-37 (ii) under the influence of alcohol; or  
1-38 (iii) under the influence of a controlled  
1-39 substance;

1-40 (B) a refusal to submit to the taking of a breath  
1-41 or blood specimen following an arrest for an offense prohibiting  
1-42 the operation of a motor vehicle or an offense prohibiting the  
1-43 operation of a watercraft, if the watercraft was powered with an  
1-44 engine having a manufacturer's rating of 50 horsepower or more,  
1-45 while:

1-46 (i) intoxicated;  
1-47 (ii) under the influence of alcohol; or  
1-48 (iii) under the influence of a controlled  
1-49 substance; or

1-50 (C) an analysis of a breath or blood specimen  
1-51 showing an alcohol concentration of a level specified by Section  
1-52 49.01, Penal Code, following an arrest for an offense prohibiting  
1-53 the operation of a motor vehicle or watercraft while intoxicated.

1-54 SECTION 5. Subsection (a), Section 524.011, Transportation  
1-55 Code, is amended to read as follows:

1-56 (a) An officer arresting a person shall comply with  
1-57 Subsection (b) if:

1-58 (1) the person is arrested for an offense under  
1-59 Section 49.04, 49.045, or 49.06, Penal Code, or an offense under  
1-60 Section 49.07 or 49.08 of that code involving the operation of a  
1-61 motor vehicle or watercraft, submits to the taking of a specimen of  
1-62 breath or blood and an analysis of the specimen shows the person had  
1-63 an alcohol concentration of a level specified by Section  
1-64 49.01(2)(B), Penal Code; or

2-1 (2) the person is a minor arrested for an offense under  
 2-2 Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045,  
 2-3 or 49.06, Penal Code, or an offense under Section 49.07 or 49.08,  
 2-4 Penal Code, involving the operation of a motor vehicle or  
 2-5 watercraft and:

2-6 (A) the minor is not requested to submit to the  
 2-7 taking of a specimen; or

2-8 (B) the minor submits to the taking of a specimen  
 2-9 and an analysis of the specimen shows that the minor had an alcohol  
 2-10 concentration of greater than .00 but less than the level specified  
 2-11 by Section 49.01(2)(B), Penal Code.

2-12 SECTION 6. Subsection (b), Section 524.012, Transportation  
 2-13 Code, is amended to read as follows:

2-14 (b) The department shall suspend the person's driver's  
 2-15 license if the department determines that:

2-16 (1) the person had an alcohol concentration of a level  
 2-17 specified by Section 49.01(2)(B), Penal Code, while operating a  
 2-18 motor vehicle in a public place or while operating a watercraft; or

2-19 (2) the person was ~~is~~ a minor on the date that the  
 2-20 breath or blood specimen was obtained and had any detectable amount  
 2-21 of alcohol in the minor's system while operating a motor vehicle in  
 2-22 a public place or while operating a watercraft.

2-23 SECTION 7. Subsection (b), Section 524.015, Transportation  
 2-24 Code, is amended to read as follows:

2-25 (b) A suspension may not be imposed under this chapter on a  
 2-26 person who is acquitted of a criminal charge under Section 49.04,  
 2-27 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041,  
 2-28 Alcoholic Beverage Code, arising from the occurrence that was the  
 2-29 basis for the suspension. If a suspension was imposed before the  
 2-30 acquittal, the department shall rescind the suspension and shall  
 2-31 remove any reference to the suspension from the person's  
 2-32 computerized driving record.

2-33 SECTION 8. Subsection (b), Section 524.022, Transportation  
 2-34 Code, is amended to read as follows:

2-35 (b) A period of suspension under this chapter for a minor  
 2-36 is:

2-37 (1) 60 days if the minor has not been previously  
 2-38 convicted of an offense under Section 106.041, Alcoholic Beverage  
 2-39 Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense  
 2-40 under Section 49.07 or 49.08, Penal Code, involving the operation  
 2-41 of a motor vehicle or a watercraft;

2-42 (2) 120 days if the minor has been previously  
 2-43 convicted once of an offense listed by Subdivision (1); or

2-44 (3) 180 days if the minor has been previously  
 2-45 convicted twice or more of an offense listed by Subdivision (1).

2-46 SECTION 9. Section 524.023, Transportation Code, is amended  
 2-47 to read as follows:

2-48 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

2-49 (a) If a person is convicted of an offense under Section 106.041,  
 2-50 Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.07, or  
 2-51 49.08, Penal Code, and if any conduct on which that conviction is  
 2-52 based is a ground for a driver's license suspension under this  
 2-53 chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O,  
 2-54 Chapter 521, or Subchapter H, Chapter 522, each of the suspensions  
 2-55 shall be imposed.

2-56 (b) The court imposing a driver's license suspension under  
 2-57 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as  
 2-58 required by Subsection (a) shall credit a period of suspension  
 2-59 imposed under this chapter toward the period of suspension required  
 2-60 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,  
 2-61 Chapter 521, or Subchapter H, Chapter 522, unless the person was  
 2-62 convicted of an offense under Article 67011-1, Revised Statutes, as  
 2-63 that law existed before September 1, 1994, Section 19.05(a)(2),  
 2-64 Penal Code, as that law existed before September 1, 1994, Section  
 2-65 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section  
 2-66 106.041, Alcoholic Beverage Code, before the date of the conviction  
 2-67 on which the suspension is based, in which event credit may not be  
 2-68 given.

2-69 SECTION 10. Subsections (a) and (d), Section 524.035,

3-1 Transportation Code, are amended to read as follows:

3-2 (a) The issues that must be proved at a hearing by a  
3-3 preponderance of the evidence are:

3-4 (1) whether:

3-5 (A) the person had an alcohol concentration of a  
3-6 level specified by Section 49.01(2)(B), Penal Code, while operating  
3-7 a motor vehicle in a public place or while operating a watercraft;  
3-8 or

3-9 (B) the person was [is] a minor on the date that  
3-10 the breath or blood specimen was obtained and had any detectable  
3-11 amount of alcohol in the minor's system while operating a motor  
3-12 vehicle in a public place or while operating a watercraft; and

3-13 (2) whether reasonable suspicion to stop or probable  
3-14 cause to arrest the person existed.

3-15 (d) An administrative law judge may not find in the  
3-16 affirmative on the issue in Subsection (a)(1) if:

3-17 (1) the person is an adult and the analysis of the  
3-18 person's breath or blood determined that the person had an alcohol  
3-19 concentration of a level below that specified by Section 49.01,  
3-20 Penal Code, at the time the specimen was taken; or

3-21 (2) the person was [is] a minor on the date that the  
3-22 breath or blood specimen was obtained and the administrative law  
3-23 judge does not find that the minor had any detectable amount of  
3-24 alcohol in the minor's system when the minor was arrested.

3-25 SECTION 11. Subsection (a), Section 524.042,  
3-26 Transportation Code, is amended to read as follows:

3-27 (a) A suspension of a driver's license under this chapter is  
3-28 stayed on the filing of an appeal petition only if:

3-29 (1) the person's driver's license has not been  
3-30 suspended as a result of an alcohol-related or drug-related  
3-31 enforcement contact during the five years preceding the date of the  
3-32 person's arrest; and

3-33 (2) the person has not been convicted during the 10  
3-34 years preceding the date of the person's arrest of an offense under:

3-35 (A) Article 67011-1, Revised Statutes, as that  
3-36 law existed before September 1, 1994;

3-37 (B) Section 19.05(a)(2), Penal Code, as that law  
3-38 existed before September 1, 1994;

3-39 (C) Section 49.04, 49.045, or 49.06, Penal Code;

3-40 (D) Section 49.07 or 49.08, Penal Code, if the  
3-41 offense involved the operation of a motor vehicle or a watercraft;  
3-42 or

3-43 (E) Section 106.041, Alcoholic Beverage Code.

3-44 SECTION 12. The changes in law to Chapter 524,  
3-45 Transportation Code, apply only to an offense committed on or after  
3-46 the effective date of this Act. An offense committed before the  
3-47 effective date of this Act is covered by the law in effect when the  
3-48 offense was committed, and the former law is continued in effect for  
3-49 that purpose. For purposes of this section, an offense was  
3-50 committed before the effective date of this Act if any element of  
3-51 the offense was committed before that date.

3-52 SECTION 13. This Act takes effect September 1, 2009.

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