

SUBJECT: Penalties for operating a watercraft while under the influence of alcohol

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Fletcher, Hodge, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

2 absent — Christian, Kent

SENATE VOTE: On final passage, March 19 — 31–0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* Laura Andersen, San Antonio Police Department; Bill Lewis, Mothers Against Drunk Driving)

Against — (*Registered, but did not testify:* Sheila Dean; Heather King-Fazio)

BACKGROUND: Alcoholic Beverage Code, sec. 106.041 creates a class C misdemeanor (fine not to exceed \$500) for a minor who operates a motor vehicle in a public place while having any detectable amount of alcohol in his or her system.

Transportation Code, ch. 524 requires a peace officer and the Texas Department of Public Safety to take action to suspend the driver’s license of a person who is arrested for offenses related to operating a motor vehicle while intoxicated or if the person is a minor found to have a detectable amount of alcohol in his or her system.

A driver’s license is suspended 90 days for an adult who had no alcohol-related law enforcement contacts during the preceding 10 years and is suspended for one year if the adult’s record shows one or more contacts during this period. A minor convicted of driving with a detectable amount of alcohol is subject to a 60-day license suspension for a first offense.

DIGEST: SB 328 would add operating a watercraft, defined as a propelled device

used for transporting or carrying a person on water, to statutes suspending a driver's license for operating a motor vehicle while intoxicated or as a minor with a detectable level of alcohol.

The bill would require a driver's license suspension if, on the date a breath or blood specimen was obtained, a person was a minor and was found to have had a detectable amount of alcohol in his or her system.

A license suspension for operating a watercraft while intoxicated or refusing to submit a breath or blood specimen if the watercraft operated was powered with an engine with a rating of 50 horsepower or more would be considered an alcohol- or drug-related enforcement contact.

The bill also would add the infraction of driving while intoxicated with a child passenger to current restrictions for driving under the influence.

The bill would take effect September 1, 2009, and apply to an offense committed on or after that date.

**SUPPORTERS
SAY:**

SB 328 would correct asymmetries in current statutes that provide different penalties for operating a watercraft, such as a motorboat, and operating a motor vehicle under the influence of alcohol. For example, current law does not allow for a driver's license suspension for intoxicated individuals operating a motorboat. In addition, the offense of operating a motorboat with a detectable level of alcohol does not apply specifically to minors, as it does with motor vehicles. There is no reason different penalties should apply to operating a motor vehicle and a watercraft while under the influence, since both require judgment not possessed by an intoxicated individual.

The bill also would correct current omissions in law that do not recognize offenses related to operating a motorboat while intoxicated in determining the duration of a license suspension for similar, future infractions. The bill would clarify that a minor who committed an offense of operating a motor boat while intoxicated would be charged for the day an offense was committed, and not the date of the trial.

**OPPONENTS
SAY:**

SB 328 would expand current law enforcement practices that involve the invasion of privacy, such as the extraction and retention of blood samples of potential violators. The bill also would continue the ineffective approach of enhancing penalties for alcohol-related offenses. Increased

penalties for driving or boating under the influence and other crimes do not act as effective deterrents. Enhancing penalties for these infractions often results in greater demands on the state's criminal justice system, with little corresponding decline in crime. There are other, more effective community-based approaches to combating public safety hazards than increasing criminal penalties.