SUBJECT: Lowering blood alcohol content for definition of intoxicated

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hinojosa, Dunnam, Green, Keel, Nixon, Smith, Talton

0 nays

2 absent — Garcia, Wise

SENATE VOTE: On final passage, March 18 — voice vote

WITNESSES: *(On House companion bill, HB 210:)*
For — Richard Alpert, Tarrant County District Attorney's Office; Gary Taylor, National Highway Traffic Safety Administration; John W. Holtermann, Texas Silver-Haired Legislature; Bill Lewis and Craig M. Schumacher, Mothers Against Drunk Driving; Chris Johnson; Allen McDougall; Peggy C. Floyd

Against — Myra A. McDaniel, American Beverage Institute; Stuart Kinard

BACKGROUND: Blood alcohol content measures the weight of alcohol in a certain volume of blood. The measurement is based on grams per deciliter.

DIGEST: SB 114 would lower the blood alcohol concentration that defines intoxication in the Penal Code from 0.10 to 0.08 grams per deciliter.

This bill would take effect September 1, 1999, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY: Lowering the blood alcohol content level for a person to be considered intoxicated would making driving illegal for persons who had consumed enough alcohol to impair their driving performance. This would help prevent drunk driving by making people more cautious about driving after drinking alcohol and by raising the perceived risk of being arrested for driving while intoxicated (DWI). It also would make it easier to prosecute drunk drivers with a lower blood alcohol content. This would save lives and money and prevent injuries from alcohol-related accidents.

In 1997, Texas led all other states in the number of alcohol-related traffic fatalities with 1,748. Of these, 379 involved blood alcohol levels of under 0.10. California, with many more drivers than Texas, had only 1,314 alcohol-related traffic fatalities. Alcohol-related fatalities account for about half of all traffic fatalities in Texas, above the national average of 39 percent.

As blood alcohol content increases, drivers' abilities are impaired. Laboratory and track tests report that the vast majority of drivers show impairment of critical driving tasks at a blood alcohol content of 0.08. This can result in problems with attention, reaction time, speed control, braking, steering, lane tracking, judgment, and more, substantially increasing the risk of a crash.

Lowering the blood alcohol limit to 0.08 would make people more cautious about drinking too much before they drive, and this would help save lives. Statistics show that 0.08 reduces drunk driving among drivers at both low and high blood alcohol content. One study reported that states adopting 0.08 saw a 16 percent decline in the portion of fatal crashes involving drivers with levels of 0.08 or higher, as compared to neighboring states with a standard of 0.10. The same study showed an 18 percent drop in the portion of fatal cases involving drivers with levels of 0.15.

SB 114 would set Texas' allowable blood alcohol level at a reasonable point. Although blood alcohol content is influenced by many factors, on average, to reach 0.08, a typical 170-pound man would have to consume more than four drinks in one hour on an empty stomach. Drinking more than this would not be considered social drinking. SB 114 would not stop someone from having a beer with pizza after work or a glass of wine with dinner, nor would it criminalize social drinking. Texans would be free to drink as much as they wanted. SB 114 would relate only to *driving* while intoxicated.

Texas, like other states, has always had a benchmark to define intoxication rather than relying on the more general definition. Setting that benchmark at 0.08 would be a reasonable, prudent change from current law that would not interfere with Texans' ability to enjoy alcohol responsibly.

Texas should join the approximately 16 states that have 0.08 blood alcohol content laws. California and Maine saw significant reductions in alcohol-related fatalities after lowering legal blood alcohol levels to 0.08.

Enacting a 0.08 standard would allow Texas to qualify for National Highway Safety Administration grant money of up to $12.4 million, which the state could use for highway safety or construction projects. If Texas had a 0.08 law in 1998, it could have received $8.5 million in federal grant funds.

SB 114 would not put an increased burden on law enforcement officers or the courts. Police still would have to have reasonable suspicion before stopping a driver and probable cause to arrest. While arrests increased in California the year that state adopted 0.08, in the next five years, arrests were down when compared with the previous five years.

Prosecutors should be able to handle the approximately 4,328 additional cases or actions that the fiscal note estimates would result from this bill. On this criminal justice issue, as on others, the Legislature should be concerned with setting public policy and should let prosecutors deal with any increased workload. In fact, the stronger message sent against DWI would deter violations and ultimately reduce prosecutions.

There is no evidence that lowering the legal blood alcohol content level to 0.08 has ever been used to single out any group, including minorities, for harassment.

OPPONENTS SAY:

Lowering the legal blood alcohol level from 0.10 to 0.08 could result in unfair convictions of persons who may have been drinking alcohol but were not necessarily intoxicated. Current law sets the legal blood alcohol content at a level at which it is reasonably sure that the vast majority of persons would be intoxicated.

At the 0.08 blood alcohol content level proposed by this bill, many persons could retain normal use of their mental or physical faculties and not be intoxicated. However, SB 114 would deem them intoxicated *per se* without considering whether their abilities were impaired. This would come dangerously close to criminalizing drinking alcohol rather than criminalizing committing a specific act while intoxicated.

SB 114 is unnecessary because current law also defines “intoxicated” as not having the normal use of mental or physical faculties. Persons who met this definition at 0.08 blood alcohol content or any other level could be convicted of an intoxication offense without a change in the law.

SB 114 could overburden prosecutors with an increase in DWI cases, especially since defendants often choose to go to trial rather than plea bargain in these cases because of the stiff penalties. It is sometimes difficult for prosecutors to get convictions for DWI at the current level of 0.10, and SB 114 could make convictions even harder because many persons with a 0.08 alcohol level might not appear in videotapes to be impaired and might perform well on standard tests of physical abilities.

The broader sweep allowed by SB 114 could be used to target certain groups, such as minorities, for harassment or unfair treatment.

OTHER OPPONENTS SAY:

Lowering the legal blood alcohol content should be coupled with other changes, such as allowing deferred adjudications in these cases.

The Legislature should not lower the blood alcohol content while allowing some law enforcement authorities to continue to rely on the inexact science of breath testing for alcohol. All persons suspected of an intoxication offense should be given blood tests.