

- SUBJECT:** Suspending driver's license for boating while intoxicated
- COMMITTEE:** State Cultural and Recreational Resources — favorable, without amendment
- VOTE:** 7 ayes — Hilderbran, Geren, Dukes, Bailey, Cook, Kuempel, Phillips
0 nays
- WITNESSES:** For — Jack King, Sportsmen Conservationists of Texas; Bill Lewis, Mothers Against Drunk Driving
Against — None
On — Dennis Johnston, Texas Parks and Wildlife Department
- BACKGROUND:** Penal Code, sec. 49.06 makes it an offense to operate a watercraft — a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by water current — while intoxicated. Such an offense is a Class B misdemeanor with a minimum term of confinement of 72 hours. Alcoholic Beverage Code, sec. 160.041 states that a minor commits an offense if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor's system. An offense under this statute is a Class C misdemeanor.
- An offender's driver's license automatically is suspended on final conviction for driving while intoxicated, intoxicated assault, or intoxicated manslaughter, among other offenses. An adult's first conviction results in suspension of the driver's license for not fewer than 90 days or more than a year. A second or subsequent conviction within five years of a prior conviction for driving while intoxicated results in suspension of the offender's license for one year.
- The arresting officer of an adult with a blood alcohol concentration of 0.08 or more who drives while intoxicated, or who commits an intoxicated assault or manslaughter involving the operation of a motor vehicle, must:
- notify the arrested person of the driver's license suspension;

- take possession of any driver's license issued by Texas and held by the person arrested;
- issue a temporary driving permit to the person; and
- send to the Department of Public Safety (DPS) a copy of the driver's license suspension notice, among other items.

An arresting officer must perform the same administrative suspension if the offender is a minor and is not asked to submit to the taking of a specimen to determine alcohol concentration, or if the minor submits to the taking of a specimen showing that the minor has an alcohol concentration of greater than 0.00 but less than 0.08.

Under Transportation Code, ch. 724, if a person is arrested for an offense involving the operation of a motor vehicle or watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above and refuses to provide an alcohol concentration specimen at the law enforcement officer's request, the person's driver's license automatically is suspended for at least 180 days, whether or not the person later is prosecuted for the arrest.

The administrative suspension period of a driver's license is 90 days if the person's driving record shows no alcohol-related or drug-related enforcement contact during 10 years preceding the person's arrest. The suspension is one year if the person's record shows one or more contacts during the 10 years preceding the person's arrest. The period of suspension for a minor is 60 days, graduated to 180 days if the minor previously has been convicted at least twice of certain offenses.

Transportation Code, subch. D gives the holder of a suspended license the right to a hearing to determine whether the person operated a motor vehicle while intoxicated with a blood alcohol concentration of 0.08 or greater. Sec. 524.042 stays the suspension of a driver's license on the filing of an appeal of this decision if the person has not been convicted during the 10 years before the date of the person's arrest for driving while intoxicated.

DIGEST:

HB 457 would insert references to Penal Code, sec. 49.06 — criminal penalties for boating while intoxicated (BWI) — in various sections of the Transportation Code to trigger:

- automatic suspension of an adult's driver's license on final conviction for BWI;
- automatic suspension of a driver's license for a person under 21 years of age for BWI;
- an arresting officer's administrative suspension of the driver's license of a boat operator who provided an alcohol concentration specimen showing an alcohol level of 0.08 or greater; and
- DPS' administrative suspension of the driver's license of a boat operator under the same standard as for alleged intoxicated drivers.

A person accused or convicted of BWI would be subject to driver's license suspension periods identical to those for people arrested or convicted for driving while intoxicated or other offenses. People accused of BWI would be entitled to the same hearing process to challenge administrative suspensions of their driver's licenses.

HB 457 would amend the definition of watercraft to repeal references to one or more water skis and an aquaplane.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 457 would save lives by deterring intoxicated boaters from operating watercraft on Texas lakes and waterways by extending the use of a proven tool for accomplishing this outcome — driver's license suspension.

In 2001, the 77th Legislature enacted HB 63 by Wolens and Menendez, requiring suspension of the driver's license of a BWI offender who refused to provide an alcohol concentration specimen. In 2000, before HB 63 took effect, 43 percent of fatalities on Texas lakes and waterways involved alcohol use. In 2001 and 2002, 31 percent and 17 percent of such fatalities, respectively, involved alcohol use. The numbers demonstrate that the very threat of driver's license suspension for BWI deters this conduct. However, Texas led the nation in boating fatalities in 2002 with 61 deaths, making the need for the HB 457 greater than ever. HB 457 properly would require the suspension of driver's licenses in many more cases.

The bill also would bring consistency to the law. Current law allows driver's license suspension only in the case of a person suspected of BWI and

operating a boat of 50 horsepower or more who refuses to provide a specimen for testing the person's alcohol level. This inconsistency should end so that all operators of boats are treated like all drivers and others for the purpose of driver's license suspension due to offenses involving alcohol use. Deterring BWI activity also deters intoxicated driving, because an intoxicated boater often leaves a lake or river by motor vehicle.

**OPPONENTS
SAY:**

Some BWI offenders who refuse to provide alcohol specimen samples use the administrative hearing process for license suspension to test the strength of the state's criminal case against them. Because HB 457 would suspend the driver's licenses of more BWI offenders, more offenders would use the hearing process for this purpose.

No relationship exists between unlicensed boating activity and holding a license to drive. People should not have driving privileges taken away because of conduct that does not involve driving.