

BILL ANALYSIS

Senate Research Center

S.B. 328
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Transportation & Homeland Security
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, individuals operating a watercraft who refuse to submit to a breath or blood alcohol test are subject to an administrative license revocation, which results in a driver's license suspension. However, if the person operating the watercraft submits to a breath or blood alcohol test which results in a blood alcohol content level of .08 or greater, current statute does not provide for an administrative license revocation. Furthermore, the offense of operating a watercraft under the influence of alcohol does not apply to minors. Current statute provides for stricter driver's license penalties for minors who commit the offense of driving under the influence, but it does not clearly state that stricter suspension penalties should still apply to the offender if they reach the age of 21 or over while awaiting trial. Consequently, many offenders are able to postpone trial until the age of 21, then receive the less harsh suspension penalty associated with the offense of driving while intoxicated.

S.B. 328 amends current law relating to operating a motor vehicle or a watercraft while intoxicated or under the influence of alcohol.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as the Nicole "Lilly" Lalime Act.

SECTION 2. Amends the heading to Section 106.041, Alcoholic Beverage Code, to read as follows:

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

SECTION 3. Amends Sections 106.041(a) and (g), Alcoholic Beverage Code, as follows:

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

(g) Provides that an offense under this section is not a lesser included offense under Section 49.045 (Driving While Intoxicated With Child Passenger) or 49.06 (Boating While Intoxicated), Penal Code.

SECTION 4. Amends Section 106.041(j), Alcoholic Beverage Code, by adding Subdivision (4) to define "watercraft."

SECTION 5. Amends Article 18.01, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (j), as follows:

(c) Prohibits a search warrant from being issued under Article 18.02(10) (relating to authorizing a search warrant for search and seizure of property or items constituting evidence of, or showing that a particular person may have committed, an offense) unless

the sworn affidavit required by Subsection (b) (relating to requiring that a search warrant not be issued unless certain facts are presented) sets forth sufficient facts to establish certain probable cause. Deletes existing text prohibiting a search warrant from being issued pursuant to Subdivision (10) of Article 18.02 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish certain probable cause. Authorizes only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, or a justice of the Supreme Court of Texas, including the chief justice, except as provided by Subsections (d) (relating to authorizing only certain property or items to be seized), (i) (relating to issuance of a search warrant by any magistrate under certain conditions), and (j), to issue warrants under Article 18.02(10). Deletes existing text authorizing only a judge of a municipal court of record or county court who is an attorney licensed by the State of Texas, statutory county court, district court, the Court of Criminal Appeals, or the Supreme Court, to issue warrants pursuant to Subdivision (10), Article 18.02 of this code.

(j) Authorizes any magistrate who is an attorney licensed by this state to issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who meets certain requirements.

SECTION 6. Amends Sections 13(h) and (n), Article 42.12, Code of Criminal Procedure, as follows:

(h) Increases from \$50 to \$100 the amount of a reinstatement fee paid to the Texas Department of Public Safety of the State of Texas (DPS) by a person whose license was suspended and who makes application to DPS for reinstatement of the person's license.

(n) Requires the judge who places on community supervision a defendant who was, rather than is, younger than 21 years of age at the time of the offense and was convicted for an offense under Sections 49.04 (Driving While Intoxicated), 49.045, 49.05 (Flying While Intoxicated), 49.06, 49.065 (Assembling or Operating an Amusement Ride While Intoxicated), 49.07 (Intoxication Assault), and 49.08 (Intoxication Manslaughter), Penal Code, to carry out certain actions.

SECTION 7. Amends Section 521.341, Transportation Code, as follows:

Sec. 521.341. REQUIREMENTS FOR AUTOMATIC LICENSE SUSPENSION. Provides that except as provided by Sections 521.344(d) (relating to prohibiting the revocation of the license of a person required to successfully complete a rehabilitative intoxication education program), (e) (relating to revoking the license of a person who does not successfully complete a rehabilitative education program), (f) (relating to suspending the license of a person who does not successfully complete a rehabilitative education program), (g) (relating to suspensions, revocations, or prohibition orders being effective until notice is received of successful completion of an education program), (h) (relating to the location of and issues to be determined at the hearing), and (i) (relating to the increase of the duration of a suspension order) a license is automatically suspended on final conviction of the license holder of an offense under Section 49.04, 49.045, or 49.08, Penal Code.

SECTION 8. Amends Sections 521.342(a) and (b), Transportation Code, as follows:

(a) Provides that, except as provided by Section 521.344, the license of a person who was under 21 years of age at the time of the offense, other than an offense classified as a misdemeanor punishable by fine only, is automatically suspended on conviction of an offense under Section 49.04, 49.045, or 49.07, Penal Code, committed as a result of the introduction of alcohol into the body.

(b) Requires DPS to suspend for one year the license of a person who is under 21 years of age and is convicted of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, regardless of whether the person meets certain requirements.

SECTION 9. Amends Sections 521.344(a), (c), and (i), Transportation Code, as follows:

(a) Provides that, except as provided by Sections 521.342(b) and 521.345 (Suspension on Order of Juvenile Court or on Order of Court Based on Alcoholic Beverage Violation by Minor), and by Subsections (d)-(i), if a person is convicted of an offense under Section 49.04, 49.045, or 49.07, Penal Code, the license suspension begins on a date set by the court that is not earlier than the date of the conviction or later than the 30th day after the date of the conviction, as determined by the court and continues for a period set by the court according to the following schedule not less than 90 days or more than one year, if the person is punished under Section 49.04, 49.045, or 49.07, Penal Code, except that if the person's license is suspended for a second or subsequent offense under Section 49.07 committed within five years of the date on which the most recent preceding offense was committed, the suspension continues for a period of one year not less than 180 days or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code or not less than one year or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code, and is subject to Section 49.09(h) of that code.

(c) Makes a conforming change.

(i) Makes a conforming change.

SECTION 10. Amends Section 524.001(3), Transportation Code, to redefine "alcohol-related or drug-related enforcement contact."

SECTION 11. Amends Section 524.011(a), Transportation Code, as follows:

(a) Requires an officer arresting a person to comply with Subsection (b) (relating to requiring a peace officer to perform certain actions) if the person is arrested for an offense under Section 49.04, 49.05 or 49.06, Penal Code, or an offense under Section 49.07 or 49.08 of that code involving the operation of a motor vehicle or watercraft, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B) (relating to having a blood alcohol concentration of .08 or more), Penal Code.

SECTION 12. Amends Section 524.012(b), Transportation Code, to require DPS to suspend the person's driver's license if DPS determines that the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place or while operating a watercraft; or the person was, rather than is, a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft.

SECTION 13. Amends Section 524.015(b), Transportation Code, to make a conforming change.

SECTION 14. Amends Section 524.022(b), Transportation Code, to make conforming changes.

SECTION 15. Amends Section 524.023, Transportation Code, to make conforming changes.

SECTION 16. Amends Sections 524.035(a) and (d), Transportation Code, to make conforming changes.

SECTION 17. Amends Section 524.042(a), Transportation Code, to make conforming changes.

SECTION 18. Amends Sections 724.012(b) and (d), Transportation Code, as follows:

(b) Requires a peace officer to require the taking of a specimen of the person's breath or blood under certain circumstances if the officer arrests the person for an offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily, including that the person was the operator

of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and at the time of the arrest, the officer reasonably believes that as a direct result of the accident an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment; the offense for which the officer arrests the person is an offense under Section 49.045, Penal Code; or at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person has been previously convicted of or placed on community supervision for an offense under Section 49.045, 49.07, or 49.08, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections; or on two or more occasions has been previously convicted of or placed on community supervision for an offense under Section 49.04, 49.05, 49.06, or 49.065 Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections. Makes conforming and nonsubstantive changes.

(d) Defines "bodily injury" and "serious bodily injury."

SECTION 19. Amends Section 724.017, Transportation Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Provides that if the blood specimen was taken according to recognized medical procedures, the person who takes the blood specimen under this chapter, the facility that employs the person who takes the blood specimen, or the hospital where the blood specimen is taken is immune from civil liability for damages arising from the taking of the blood specimen at the request or order of the peace officer or pursuant to a search warrant as provided by this chapter, and is not subject to discipline by any licensing or accrediting agency or body. Deletes existing text providing that the person who takes the blood specimen under this chapter or the hospital where the blood specimen is taken, is not liable for damages arising from the request or order of the peace officer to take the blood specimen as provided by this chapter if the blood specimen was taken according to recognized medical procedures. Provides that the taking of a specimen from a person who objects to the taking of the specimen or who is resisting the taking of the specimen does not in itself constitute negligence and is prohibited from being considered evidence of negligence.

(d) Provides that a person whose blood specimen is taken under this chapter in a hospital is not considered to be present in the hospital for medical screening or treatment unless the appropriate hospital personnel determine that medical screening or treatment is required for proper medical care of the person.

SECTION 20. (a) Provides that the change in law to Article 18.01, Code of Criminal Procedure, applies only to a search warrant issued on or after the effective date of this Act. Provides that a search warrant issued before the effective date of this Act is governed by the law in effect on the date the warrant was issued, and the former law is continued in effect for that purpose.

(b) Provides that the changes in law to Chapters 521 and 524 and Section 724.012, Transportation Code, and Section 13, Article 42.12, Code of Criminal Procedure, apply only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 21. Effective date: September 1, 2009.