

- SUBJECT:** Driver's license suspension for boating while intoxicated.
- COMMITTEE:** Culture, Recreation, and Tourism — favorable, without amendment
- VOTE:** 4 ayes — Hilderbran, Kuempel, Gallego, Phillips
0 nays
3 absent — Dukes, Baxter, Dunnam
- WITNESSES:** For —Julie Renken, Elizabeth Murray-Kolb.
Against —None
On —Alfonso Campos, Texas Parks and Wildlife Department.
- BACKGROUND:** Under Penal Code, sec. 49.06, it is an offense to operate a watercraft while intoxicated. A watercraft is defined as 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. Operating a watercraft while intoxicated is a Class B misdemeanor with a minimum term of confinement of 72 hours.
- Currently, driving while intoxicated, intoxicated assault, or intoxicated manslaughter, among other offenses, results in automatic suspension of a driver's license on final conviction. In most cases, an adult's first conviction results in suspension of the driver's license for not fewer than 90 days or more than a year.
- An adult who drives with a blood alcohol concentration of 0.08 or more or who commits an intoxicated assault or manslaughter involving the operation of a motor vehicle is subject to administrative suspension of a driver's license. The arresting officer 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.

The same administrative suspension occurs 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 a watercraft powered with a 50-horsepower engine or above and refuses to provide an alcohol concentration specimen at the 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.

Under Transportation Code, subch. D, the holder of a suspended license has 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 76 would amend various sections of the Transportation Code to make boating while intoxicated (BWI) grounds for automatic suspension of a driver's license. The bill would 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 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 76 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, 2005.

**SUPPORTERS
SAY:**

HB 76 would help 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. The current penalties for BWI are not strong enough to deter this behavior.

In 2000, before the law took effect requiring suspension of a driver's license of a BWI offender who refused to provide a specimen, 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 threat of driver's license suspension for BWI deters this conduct.

The need for HB 76 is becoming more urgent. In 2003, 193 citations were issued for BWI, and in 2004, the number jumped to 278. Deterring BWI also deters intoxicated auto driving, because an intoxicated boater often leaves a lake or river by car.

The bill also would make the law more consistent. Current law allows driver's license suspension when a person suspected of BWI and operating a boat of 50 horsepower or more refuses to provide a specimen to test the person's alcohol level. However, if someone suspected of BWI gives a specimen and is then convicted for that BWI event, a driver's license suspension is not an option. This inconsistency should end so that all boat operators are treated like all drivers and others for the purpose of driver's license suspension for offenses involving alcohol use.

Some people who were cited for boating while intoxicated also have been stopped within a year or two of the citation for driving while intoxicated. This indicates that people with a propensity to drive a boat while drunk would also be likely to drive a car while drunk. If their licenses could be suspended before they did damage in their cars, more deaths from auto accidents could be prevented, and public safety would be enhanced.

OPPONENTS
SAY:

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

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 76 would suspend the driver's licenses of more BWI offenders, more offenders would use the hearing process for this purpose.

OTHER
OPPONENTS
SAY:

No proof shows that the administrative license revocation for refusal to provide a specimen has brought down DWI incidents. It was a mistake to extend it to BWI. This part of the BWI law should be reversed rather than brought further into conformity with DWI laws.

NOTES:

During the 2003 regular session, HB 457 by Hope, which was nearly identical to HB 76, passed the House and was referred to the Senate Criminal Justice Committee, which took no further action.