

By: Hope, et al.

H.B. No. 76

A BILL TO BE ENTITLED

AN ACT

relating to the operation of a watercraft while intoxicated.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 49.01(4), Penal Code, is amended to read as follows:

(4) "Watercraft" means 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 the current of water.

SECTION 2. Section 521.341, Transportation Code, is amended to read as follows:

Sec. 521.341. REQUIREMENTS FOR AUTOMATIC LICENSE SUSPENSION. Except as provided by Sections 521.344(d)-(i), a license is automatically suspended on final conviction of the license holder of:

(1) an offense under Section 19.05, Penal Code, committed as a result of the holder's criminally negligent operation of a motor vehicle;

(2) an offense under Section 38.04, Penal Code;

(3) an offense under Section 49.04, 49.06, or 49.08, Penal Code;

(4) an offense under Section 49.07, Penal Code, if the person used a motor vehicle in the commission of the offense;

(5) an offense punishable as a felony under the motor

1 vehicle laws of this state;

2 (6) an offense under Section 550.021; or

3 (7) an offense under Section 521.451 or 521.453.

4 SECTION 3. Section 521.342(a), Transportation Code, is
5 amended to read as follows:

6 (a) Except as provided by Section 521.344, the license of a
7 person who was under 21 years of age at the time of the offense,
8 other than an offense classified as a misdemeanor punishable by
9 fine only, is automatically suspended on conviction of:

10 (1) an offense under Section 49.04, 49.06, or 49.07,
11 Penal Code, committed as a result of the introduction of alcohol
12 into the body;

13 (2) an offense under the Alcoholic Beverage Code,
14 other than an offense to which Section 106.071 of that code applies,
15 involving the manufacture, delivery, possession, transportation,
16 or use of an alcoholic beverage;

17 (3) a misdemeanor offense under Chapter 481, Health
18 and Safety Code, for which Subchapter P does not require the
19 automatic suspension of the license;

20 (4) an offense under Chapter 483, Health and Safety
21 Code, involving the manufacture, delivery, possession,
22 transportation, or use of a dangerous drug; or

23 (5) an offense under Chapter 485, Health and Safety
24 Code, involving the manufacture, delivery, possession,
25 transportation, or use of an abusable volatile chemical.

26 SECTION 4. Sections 521.344(a) and (c), Transportation
27 Code, are amended to read as follows:

1 (a) Except as provided by Sections 521.342(b) and 521.345,
2 and by Subsections (d)-(i), if a person is convicted of an offense
3 under Section 49.04, 49.06, or 49.07, Penal Code, the license
4 suspension:

5 (1) begins on a date set by the court that is not
6 earlier than the date of the conviction or later than the 30th day
7 after the date of the conviction, as determined by the court; and

8 (2) continues for a period set by the court according
9 to the following schedule:

10 (A) not less than 90 days or more than one year,
11 if the person is punished under Section 49.04, 49.06, or 49.07,
12 Penal Code, except that if the person's license is suspended for a
13 second or subsequent offense under Section 49.07 committed within
14 five years of the date on which the most recent preceding offense
15 was committed, the suspension continues for a period of one year;

16 (B) not less than 180 days or more than two years,
17 if the person is punished under Section 49.09(a) or (b), Penal
18 Code; or

19 (C) not less than one year or more than two years,
20 if the person is punished under Section 49.09(a) or (b), Penal Code,
21 and is subject to Section 49.09(h) of that code.

22 (c) The court shall credit toward the period of suspension a
23 suspension imposed on the person for refusal to give a specimen
24 under Chapter 724 if the refusal followed an arrest for the same
25 offense for which the court is suspending the person's license
26 under this chapter. The court may not extend the credit to a
27 person:

1 (1) who has been previously convicted of an offense
2 under Section 49.04, 49.06, 49.07, or 49.08, Penal Code; or

3 (2) whose period of suspension is governed by Section
4 521.342(b).

5 SECTION 5. Section 524.001(3), Transportation Code, is
6 amended to read as follows:

7 (3) "Alcohol-related or drug-related enforcement
8 contact" means a driver's license suspension, disqualification, or
9 prohibition order under the laws of this state or another state
10 resulting from:

11 (A) a conviction of an offense prohibiting the
12 operation of a motor vehicle or watercraft while:

- 13 (i) intoxicated;
14 (ii) under the influence of alcohol; or
15 (iii) under the influence of a controlled
16 substance;

17 (B) a refusal to submit to the taking of a breath
18 or blood specimen following an arrest for an offense prohibiting
19 the operation of a motor vehicle or watercraft while:

- 20 (i) intoxicated;
21 (ii) under the influence of alcohol; or
22 (iii) under the influence of a controlled
23 substance; or

24 (C) an analysis of a breath or blood specimen
25 showing an alcohol concentration of a level specified by Section
26 49.01, Penal Code, following an arrest for an offense prohibiting
27 the operation of a motor vehicle or watercraft while intoxicated.

1 SECTION 6. Section 524.011(a), Transportation Code, is
2 amended to read as follows:

3 (a) An officer arresting a person shall comply with
4 Subsection (b) if:

5 (1) the person is arrested for an offense under
6 Section 49.04 or 49.06, Penal Code, or an offense under Section
7 49.07 or 49.08 of that code involving the operation of a motor
8 vehicle or watercraft, submits to the taking of a specimen of breath
9 or blood and an analysis of the specimen shows the person had an
10 alcohol concentration of a level specified by Section 49.01(2)(B),
11 Penal Code; or

12 (2) the person is a minor arrested for an offense under
13 Section 106.041, Alcoholic Beverage Code, or Section 49.04 or
14 49.06, Penal Code, or an offense under Section 49.07 or 49.08, Penal
15 Code, involving the operation of a motor vehicle or watercraft and:

16 (A) the minor is not requested to submit to the
17 taking of a specimen; or

18 (B) the minor submits to the taking of a specimen
19 and an analysis of the specimen shows that the minor had an alcohol
20 concentration of greater than .00 but less than the level specified
21 by Section 49.01(2)(B), Penal Code.

22 SECTION 7. Section 524.012(b), Transportation Code, is
23 amended to read as follows:

24 (b) The department shall suspend the person's driver's
25 license if the department determines that:

26 (1) the person had an alcohol concentration of a level
27 specified by Section 49.01(2)(B), Penal Code, while operating a

1 motor vehicle in a public place or while operating a watercraft; or

2 (2) the person is a minor and had any detectable amount
3 of alcohol in the minor's system while operating a motor vehicle in
4 a public place or while operating a watercraft.

5 SECTION 8. Section 524.015(b), Transportation Code, is
6 amended to read as follows:

7 (b) A suspension may not be imposed under this chapter on a
8 person who is acquitted of a criminal charge under Section 49.04,
9 49.06, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic
10 Beverage Code, arising from the occurrence that was the basis for
11 the suspension. If a suspension was imposed before the acquittal,
12 the department shall rescind the suspension and shall remove any
13 reference to the suspension from the person's computerized driving
14 record.

15 SECTION 9. Section 524.022(b), Transportation Code, is
16 amended to read as follows:

17 (b) A period of suspension under this chapter for a minor
18 is:

19 (1) 60 days if the minor has not been previously
20 convicted of an offense under Section 106.041, Alcoholic Beverage
21 Code, or Section 49.04 or 49.06, Penal Code, or an offense under
22 Section 49.07 or 49.08, Penal Code, involving the operation of a
23 motor vehicle or watercraft;

24 (2) 120 days if the minor has been previously
25 convicted once of an offense listed by Subdivision (1); or

26 (3) 180 days if the minor has been previously
27 convicted twice or more of an offense listed by Subdivision (1).

1 SECTION 10. Section 524.023, Transportation Code, is
2 amended to read as follows:

3 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER
4 LAWS. (a) If a person is convicted of an offense under Section
5 106.041, Alcoholic Beverage Code, or Section 49.04, 49.06, 49.07,
6 or 49.08, Penal Code, and if any conduct on which that conviction is
7 based is a ground for a driver's license suspension under this
8 chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O,
9 Chapter 521, or Subchapter H, Chapter 522, each of the suspensions
10 shall be imposed.

11 (b) The court imposing a driver's license suspension under
12 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as
13 required by Subsection (a) shall credit a period of suspension
14 imposed under this chapter toward the period of suspension required
15 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,
16 Chapter 521, or Subchapter H, Chapter 522, unless the person was
17 convicted of an offense under Article 67011-1, Revised Statutes, as
18 that law existed before September 1, 1994, Section 19.05(a)(2),
19 Penal Code, as that law existed before September 1, 1994, Section
20 49.04, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041,
21 Alcoholic Beverage Code, before the date of the conviction on which
22 the suspension is based, in which event credit may not be given.

23 SECTION 11. Section 524.035(a), Transportation Code, is
24 amended to read as follows:

25 (a) The issues that must be proved at a hearing by a
26 preponderance of the evidence are:

27 (1) whether:

1 (A) the person had an alcohol concentration of a
2 level specified by Section 49.01(2)(B), Penal Code, while operating
3 a motor vehicle in a public place or while operating a watercraft;
4 or

5 (B) the person is a minor and had any detectable
6 amount of alcohol in the minor's system while operating a motor
7 vehicle in a public place or while operating a watercraft; and

8 (2) whether reasonable suspicion to stop or probable
9 cause to arrest the person existed.

10 SECTION 12. Section 524.042(a), Transportation Code, is
11 amended to read as follows:

12 (a) A suspension of a driver's license under this chapter is
13 stayed on the filing of an appeal petition only if:

14 (1) the person's driver's license has not been
15 suspended as a result of an alcohol-related or drug-related
16 enforcement contact during the five years preceding the date of the
17 person's arrest; and

18 (2) the person has not been convicted during the 10
19 years preceding the date of the person's arrest of an offense under:

20 (A) Article 67011-1, Revised Statutes, as that
21 law existed before September 1, 1994;

22 (B) Section 19.05(a)(2), Penal Code, as that law
23 existed before September 1, 1994;

24 (C) Section 49.04 or 49.06, Penal Code;

25 (D) Section 49.07 or 49.08, Penal Code, if the
26 offense involved the operation of a motor vehicle or watercraft; or

27 (E) Section 106.041, Alcoholic Beverage Code.

1 SECTION 13. Section 724.002, Transportation Code, is
2 amended to read as follows:

3 Sec. 724.002. APPLICABILITY. The provisions of this
4 chapter that apply to suspension of a license for refusal to submit
5 to the taking of a specimen (Sections 724.013, 724.015, and 724.048
6 and Subchapters C and D) apply only to a person arrested for an
7 offense involving the operation of a motor vehicle or watercraft
8 powered with an engine [~~having a manufacturer's rating of 50~~
9 ~~horsepower or above~~].

10 SECTION 14. Section 724.032(b), Transportation Code, is
11 amended to read as follows:

12 (b) The director must approve the form of the refusal
13 report. The report must:

14 (1) show the grounds for the officer's belief that the
15 person had been operating a motor vehicle or watercraft powered
16 with an engine [~~having a manufacturer's rating of 50 horsepower or~~
17 ~~above~~] while intoxicated; and

18 (2) contain a copy of:

19 (A) the refusal statement requested under
20 Section 724.031; or

21 (B) a statement signed by the officer that the
22 person refused to:

23 (i) submit to the taking of the requested
24 specimen; and

25 (ii) sign the requested statement under
26 Section 724.031.

27 SECTION 15. Section 724.042, Transportation Code, is

1 amended to read as follows:

2 Sec. 724.042. ISSUES AT HEARING. The issues at a hearing
3 under this subchapter are whether:

4 (1) reasonable suspicion or probable cause existed to
5 stop or arrest the person;

6 (2) probable cause existed to believe that the person
7 was:

8 (A) operating a motor vehicle in a public place
9 while intoxicated; or

10 (B) operating a watercraft powered with an engine
11 [~~having a manufacturer's rating of 50 horsepower or above~~] while
12 intoxicated;

13 (3) the person was placed under arrest by the officer
14 and was requested to submit to the taking of a specimen; and

15 (4) the person refused to submit to the taking of a
16 specimen on request of the officer.

17 SECTION 16. (a) The changes in law made by this Act to
18 Section 49.01, Penal Code, apply only to an offense committed on or
19 after September 1, 2005. An offense committed before September 1,
20 2005, is governed by the law in effect on the date that the offense
21 was committed, and the former law is continued in effect for that
22 purpose.

23 (b) The changes in law made by this Act to Chapter 521,
24 Transportation Code, apply only to a person finally convicted of an
25 offense under Section 49.06, 49.07, or 49.08, Penal Code, on or
26 after September 1, 2005. A person finally convicted of an offense
27 under Section 49.06, 49.07, or 49.08, Penal Code, before September

1 1, 2005, is covered by Chapter 521, Transportation Code, as that law
2 existed on the date the conviction became final, and the former law
3 is continued in effect for that purpose.

4 (c) The changes in law made by this Act to Chapter 524,
5 Transportation Code, apply only to a person arrested for an offense
6 under Section 106.041, Alcoholic Beverage Code, or for an offense
7 under Section 49.06, 49.07, or 49.08, Penal Code, on or after
8 September 1, 2005. A person arrested for an offense under Section
9 106.041, Alcoholic Beverage Code, or under Section 49.06, 49.07, or
10 49.08, Penal Code, before September 1, 2005, is covered by Chapter
11 524, Transportation Code, as that law existed on the date of the
12 person's arrest, and the former law is continued in effect for that
13 purpose.

14 (d) Sections 724.002, 724.032, and 724.042, Transportation
15 Code, as amended by this Act, apply only to a person arrested for an
16 offense involving the operation of a motor vehicle or watercraft on
17 or after September 1, 2005. A person arrested for an offense
18 involving the operation of a motor vehicle or watercraft before
19 September 1, 2005, is covered by the law in effect on the date of the
20 person's arrest, and the former law is continued in effect for that
21 purpose.

22 SECTION 17. This Act takes effect September 1, 2005.