

By: Smith of Tarrant, Pena, et al.

H.B. No. 51

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the punishment prescribed for and conditions of
3 community supervision imposed on certain persons who commit
4 intoxication offenses.

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

6 SECTION 1. Section 49.09(d), Penal Code, is amended to read
7 as follows:

8 (d) For the purposes of this section, a conviction for an
9 offense under Article 67011-1, Revised Statutes, as that law
10 existed before September 1, 1994, Article 67011-2, Revised
11 Statutes, as that law existed before January 1, 1984, Section
12 19.05(a)(2), as that law existed before September 1, 1994, or
13 Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 [~~that~~
14 ~~occurs on or after September 1, 1994,~~] is a final conviction,
15 whether the sentence for the conviction is imposed or probated.

16 SECTION 2. Section 13(i), Article 42.12, Code of Criminal
17 Procedure, is amended to read as follows:

18 (i) If a person convicted of an offense under Sections
19 49.04-49.08, Penal Code, is placed on community supervision, the
20 court may require as a condition of community supervision that the
21 defendant have a device installed, on the motor vehicle owned by the
22 defendant or on the vehicle most regularly driven by the defendant,
23 that uses a deep-lung breath analysis mechanism to make impractical
24 the operation of the motor vehicle if ethyl alcohol is detected in

1 the breath of the operator and that the defendant not operate any
2 motor vehicle that is not equipped with that device. If it is shown
3 on the trial of the offense that an analysis of a specimen of the
4 person's blood, breath, or urine showed an alcohol concentration
5 level of 0.15 or more at the time the analysis was performed, or if
6 the person is convicted of an offense under Sections 49.04-49.06,
7 Penal Code, and punished under Section 49.09(a) or (b), Penal Code,
8 or of a second or subsequent offense under Section 49.07 or 49.08,
9 Penal Code, and the person after conviction of either offense is
10 placed on community supervision, the court shall require as a
11 condition of community supervision that the defendant have the
12 device installed on the appropriate vehicle and that the defendant
13 not operate any motor vehicle unless the vehicle is equipped with
14 that device. Before placing on community supervision a person
15 convicted of an offense under Sections 49.04-49.08, Penal Code, the
16 court shall determine from criminal history record information
17 maintained by the Department of Public Safety whether the person
18 has one or more previous convictions under Sections 49.04-49.08,
19 Penal Code, or has one previous conviction under Sections
20 49.04-49.07, Penal Code, or one previous conviction under Section
21 49.08, Penal Code. If it is shown on the trial of the offense that
22 an analysis of a specimen of the person's blood, breath, or urine
23 showed an alcohol concentration level of 0.15 or more at the time
24 the analysis was performed, or if the court determines that the
25 person has one or more such previous convictions, the court shall
26 require as a condition of community supervision that the defendant
27 have that device installed on the motor vehicle owned by the

1 defendant or on the vehicle most regularly driven by the defendant
2 and that the defendant not operate any motor vehicle unless the
3 vehicle is equipped with the device described in this subsection.
4 The court shall require the defendant to obtain the device at the
5 defendant's own cost before the 30th day after the date of
6 conviction unless the court finds that to do so would not be in the
7 best interest of justice and enters its findings on record. The
8 court shall require the defendant to provide evidence to the court
9 within the 30-day period that the device has been installed on the
10 appropriate vehicle and order the device to remain installed on
11 that vehicle for a period not less than 50 percent of the
12 supervision period. If the court determines the offender is unable
13 to pay for the device, the court may impose a reasonable payment
14 schedule not to exceed twice the period of the court's order. The
15 Department of Public Safety shall approve devices for use under
16 this subsection. Section 521.247, Transportation Code, applies to
17 the approval of a device under this subsection and the consequences
18 of that approval. Notwithstanding the provisions of this section,
19 if a person is required to operate a motor vehicle in the course and
20 scope of the person's employment and if the vehicle is owned by the
21 employer, the person may operate that vehicle without installation
22 of an approved ignition interlock device if the employer has been
23 notified of that driving privilege restriction and if proof of that
24 notification is with the vehicle. This employment exemption does
25 not apply, however, if the business entity that owns the vehicle is
26 owned or controlled by the person whose driving privilege has been
27 restricted. A previous conviction may not be used for purposes of

1 restricting a person to the operation of a motor vehicle equipped
2 with an interlock ignition device under this subsection if:

3 (1) the previous conviction was a final conviction
4 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal
5 Code, and was for an offense committed more than 10 years before the
6 instant offense for which the person was convicted and placed on
7 community supervision; and

8 (2) the person has not been convicted of an offense
9 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08 of that
10 code, committed within 10 years before the date on which the instant
11 offense for which the person was convicted and placed on community
12 supervision.

13 SECTION 3. Sections 49.09(e) and (f), Penal Code, are
14 repealed.

15 SECTION 4. The changes in law made by this Act apply only to
16 the penalty or the terms of community supervision for an offense
17 under Chapter 49, Penal Code, that is committed on or after the
18 effective date of this Act. The penalty and the terms of community
19 supervision for an offense under Chapter 49, Penal Code, that was
20 committed before the effective date of this Act are covered by the
21 law in effect when the offense was committed, and the former law is
22 continued in effect for that purpose. For purposes of this section,
23 an offense was committed before the effective date of this Act if
24 any element of the offense was committed before that date.

25 SECTION 5. This Act takes effect September 1, 2005.