

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 Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07,
10 or 49.08 that occurs on or after September 1, 1994, is a final
11 conviction, whether the sentence for the conviction is imposed or
12 probated.

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

15 (i) If a person convicted of an offense under Sections
16 49.04-49.08, Penal Code, is placed on community supervision, the
17 court may require as a condition of community supervision that the
18 defendant have a device installed, on the motor vehicle owned by the
19 defendant or on the vehicle most regularly driven by the defendant,
20 that uses a deep-lung breath analysis mechanism to make impractical
21 the operation of the motor vehicle if ethyl alcohol is detected in
22 the breath of the operator and that the defendant not operate any
23 motor vehicle that is not equipped with that device. If it is shown
24 on the trial of the offense that an analysis of a specimen of the

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

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

27 (1) the previous conviction was a final conviction

1 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal
2 Code, and was for an offense committed more than 10 years before the
3 instant offense for which the person was convicted and placed on
4 community supervision; and

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

10 SECTION 3. Sections 49.09(e) and (f), Penal Code, are
11 repealed.

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 51 was passed by the House on May 11, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 51 on May 27, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 51 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor