

By: Smith of Tarrant

H.B. No. 1234

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a defendant's eligibility to be placed on deferred
3 adjudication for certain intoxication offenses and to the
4 consequences of that deferred adjudication.

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

6 SECTION 1. Section 5(d), Article 42.12, Code of Criminal
7 Procedure, is amended to read as follows:

8 (d) In all other cases the judge may grant deferred
9 adjudication unless:

10 (1) the defendant is charged with an offense:

11 (A) under Section [~~49.04, 49.05, 49.06,~~
12 49.07[~~7~~] or 49.08, Penal Code, or for which punishment may be
13 increased under Section 49.09 of that code; or

14 (B) for which punishment may be increased under
15 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
16 is shown that the defendant has been previously convicted of an
17 offense for which punishment was increased under any one of those
18 subsections; or

19 (2) the defendant:

20 (A) is charged with an offense under Section
21 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
22 victim, or a felony described by Section 13B(b) of this article;
23 and

24 (B) has previously been placed on community

1 supervision for any offense under Paragraph (A) of this
2 subdivision.

3 SECTION 2. Section 411.081(e), Government Code, is amended
4 to read as follows:

5 (e) A person is entitled to petition the court under
6 Subsection (d) only if during the applicable period described by
7 Subsection (d)(1), (2), or (3), as appropriate, the person is not
8 convicted of or placed on deferred adjudication community
9 supervision under Section 5, Article 42.12, Code of Criminal
10 Procedure, for any offense other than an offense under the
11 Transportation Code punishable by fine only. A person is not
12 entitled to petition the court under Subsection (d) if the person
13 has been previously convicted or placed on deferred adjudication
14 for:

15 (1) an offense requiring registration as a sex
16 offender under Chapter 62, Code of Criminal Procedure;

17 (2) an offense under Section 20.04, Penal Code,
18 regardless of whether the offense is a reportable conviction or
19 adjudication for purposes of Chapter 62, Code of Criminal
20 Procedure;

21 (3) an offense under Section 19.02, 19.03, 22.04,
22 22.041, 25.07, or 42.072, Penal Code; ~~or~~

23 (4) any other offense involving family violence, as
24 defined by Section 71.004, Family Code; or

25 (5) an offense under Chapter 49, Penal Code, other
26 than an offense that is punishable as a Class C misdemeanor.

27 SECTION 3. Sections 49.09(a), (b), (d), and (g), Penal

1 Code, are amended to read as follows:

2 (a) Except as provided by Subsection (b), an offense under
3 Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor,
4 with a minimum term of confinement of 30 days, if it is shown on the
5 trial of the offense that the person has been one time previously
6 ~~[been]~~ convicted of or placed on deferred adjudication for ~~[one~~
7 ~~time of]~~ an offense relating to the operating of a motor vehicle
8 while intoxicated, an offense of operating an aircraft while
9 intoxicated, an offense of operating a watercraft while
10 intoxicated, or an offense of operating or assembling an amusement
11 ride while intoxicated.

12 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or
13 49.065 is a felony of the third degree if it is shown on the trial of
14 the offense that the person has been ~~[previously been convicted]~~:

15 (1) one time previously convicted of or placed on
16 deferred adjudication for an offense under Section 49.08 or an
17 offense under the laws of another state if the offense contains
18 elements that are substantially similar to the elements of an
19 offense under Section 49.08; or

20 (2) two times previously convicted of or placed on
21 deferred adjudication for any other offense relating to the
22 operating of a motor vehicle while intoxicated, operating an
23 aircraft while intoxicated, operating a watercraft while
24 intoxicated, or operating or assembling an amusement ride while
25 intoxicated.

26 (d) For the purposes of this section, a conviction for an
27 offense listed in Subsection (c) ~~[under Section 49.04, 49.045,~~

1 ~~49.05, 49.06, 49.065, 49.07, or 49.08]~~ that occurs on or after
2 September 1, 1994, is a final conviction, whether the sentence for
3 the conviction is imposed or probated.

4 (g) A conviction or deferred adjudication may be used for
5 purposes of enhancement under this section or enhancement under
6 Subchapter D, Chapter 12, but not under both this section and
7 Subchapter D.

8 SECTION 4. The changes in law made by this Act apply only to
9 an offense committed on or after the effective date of this Act. An
10 offense committed before the effective date of this Act is governed
11 by the law in effect when the offense was committed, and the former
12 law is continued in effect for that purpose. For purposes of this
13 section, an offense was committed before the effective date of this
14 Act if any element of the offense was committed before that date.

15 SECTION 5. This Act takes effect September 1, 2007.