

By: Smith of Tarrant

H.B. No. 2432

A BILL TO BE ENTITLED

1 AN ACT
2 relating to 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; and

23 (B) has previously been placed on community
24 supervision for any offense under Paragraph (A) of this

1 subdivision.

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

4 (i) If a person convicted of an offense under Sections
5 49.04-49.08, Penal Code, is placed on community supervision, the
6 court may require as a condition of community supervision that the
7 defendant have a device installed, on the motor vehicle owned by the
8 defendant or on the vehicle most regularly driven by the defendant,
9 that uses a deep-lung breath analysis mechanism to make impractical
10 the operation of the motor vehicle if ethyl alcohol is detected in
11 the breath of the operator and that the defendant not operate any
12 motor vehicle that is not equipped with that device. If it is shown
13 at the time of the trial of the offense that an analysis of a
14 specimen of the person's blood, breath, or urine showed an alcohol
15 concentration level of 0.15 or more at the time the analysis was
16 performed, or if the person is convicted of an offense under
17 Sections 49.04-49.06, Penal Code, and punished under Section
18 49.09(a) or (b), Penal Code, or of a second or subsequent offense
19 under Section 49.07 or 49.08, Penal Code, and the person after
20 conviction of either offense is placed on community supervision,
21 including deferred adjudication, the court shall require as a
22 condition of community supervision that the defendant have the
23 device installed on the appropriate vehicle and that the defendant
24 not operate any motor vehicle unless the vehicle is equipped with
25 that device. Before placing on community supervision a person
26 convicted of an offense under Sections 49.04-49.08, Penal Code, the
27 court shall determine from criminal history record information

1 maintained by the Department of Public Safety whether the person
2 has one or more previous convictions under Sections 49.04-49.08,
3 Penal Code, or has one previous conviction under Sections
4 49.04-49.07, Penal Code, or one previous conviction under Section
5 49.08, Penal Code. If it is shown on the trial of the offense that
6 an analysis of a specimen of the person's blood, breath, or urine
7 showed an alcohol concentration level of 0.15 or more at the time
8 the analysis was performed, or if the court determines that the
9 person has one or more such previous convictions, the court shall
10 require as a condition of community supervision that the defendant
11 have that device installed on the motor vehicle owned by the
12 defendant or on the vehicle most regularly driven by the defendant
13 and that the defendant not operate any motor vehicle unless the
14 vehicle is equipped with the device described in this subsection.
15 The court shall require the defendant to obtain the device at the
16 defendant's own cost before the 30th day after the date of
17 conviction unless the court finds that to do so would not be in the
18 best interest of justice and enters its findings on record. The
19 court shall require the defendant to provide evidence to the court
20 within the 30-day period that the device has been installed on the
21 appropriate vehicle and order the device to remain installed on
22 that vehicle for a period not less than 50 percent of the
23 supervision period. If the court determines the offender is unable
24 to pay for the device, the court may impose a reasonable payment
25 schedule not to exceed twice the period of the court's order. The
26 Department of Public Safety shall approve devices for use under
27 this subsection. Section 521.247, Transportation Code, applies to

1 the approval of a device under this subsection and the consequences
2 of that approval. Notwithstanding the provisions of this section,
3 if a person is required to operate a motor vehicle in the course and
4 scope of the person's employment and if the vehicle is owned by the
5 employer, the person may operate that vehicle without installation
6 of an approved ignition interlock device if the employer has been
7 notified of that driving privilege restriction and if proof of that
8 notification is with the vehicle. This employment exemption does
9 not apply, however, if the business entity that owns the vehicle is
10 owned or controlled by the person whose driving privilege has been
11 restricted. A previous conviction may not be used for purposes of
12 restricting a person to the operation of a motor vehicle equipped
13 with an interlock ignition device under this subsection if:

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

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

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

26 (e) A person is entitled to petition the court under
27 Subsection (d) only if during the applicable period described by

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

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

11 (2) an offense under Section 20.04, Penal Code,
12 regardless of whether the offense is a reportable conviction or
13 adjudication for purposes of Chapter 62, Code of Criminal
14 Procedure;

15 (3) an offense under Section 19.02, 19.03, 22.04,
16 22.041, 25.07, or 42.072, Penal Code; ~~or~~

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

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

21 SECTION 4. Sections 49.09(a), (b), (d), and (g), Penal
22 Code, are amended to read as follows:

23 (a) Except as provided by Subsection (b), an offense under
24 Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor,
25 with a minimum term of confinement of 30 days, if it is shown on the
26 trial of the offense that the person has been one time previously
27 ~~been~~ convicted of or placed on deferred adjudication for [~~one time~~

1 ~~of~~] an offense relating to the operating of a motor vehicle while
2 intoxicated, an offense of operating an aircraft while intoxicated,
3 an offense of operating a watercraft while intoxicated, or an
4 offense of operating or assembling an amusement ride while
5 intoxicated.

6 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or
7 49.065 is a felony of the third degree if it is shown on the trial of
8 the offense that the person has been [~~previously been convicted~~]:

9 (1) one time previously convicted of or placed on
10 deferred adjudication for an offense under Section 49.08 or an
11 offense under the laws of another state if the offense contains
12 elements that are substantially similar to the elements of an
13 offense under Section 49.08; or

14 (2) two times previously convicted of or placed on
15 deferred adjudication for any other offense relating to the
16 operating of a motor vehicle while intoxicated, operating an
17 aircraft while intoxicated, operating a watercraft while
18 intoxicated, or operating or assembling an amusement ride while
19 intoxicated.

20 (d) For the purposes of this section, a conviction for an
21 offense listed in Subsection (c) [~~under Section 49.04, 49.045,
22 ~~49.05, 49.06, 49.065, 49.07, or 49.08~~] that occurs on or after
23 September 1, 1994, is a final conviction, whether the sentence for
24 the conviction is imposed or probated.~~

25 (g) A conviction or deferred adjudication may be used for
26 purposes of enhancement under this section or enhancement under
27 Subchapter D, Chapter 12, but not under both this section and

1 Subchapter D.

2 SECTION 5. The changes in law made by this Act apply only to
3 an offense committed on or after the effective date of this Act. An
4 offense committed before the effective date of this Act is governed
5 by the law in effect when the offense was committed, and the former
6 law is continued in effect for that purpose. For purposes of this
7 section, an offense was committed before the effective date of this
8 Act if any element of the offense was committed before that date.

9 SECTION 6. This Act takes effect September 1, 2009.