

By: Smith of Tarrant, Callegari, Vo, Merritt,  
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H.B. No. 4061

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the consequences of an arrest for or conviction of  
3 certain intoxication offenses.

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

5 SECTION 1. This Act shall be known as the Todd Levin-Lilly  
6 Lalime Memorial Act.

7 SECTION 2. Article 17.441(c), Code of Criminal Procedure,  
8 is amended to read as follows:

9 (c) If the defendant is required to have the device  
10 installed, the magistrate shall require that the defendant have the  
11 device installed on the appropriate motor vehicle, at the  
12 defendant's expense, not later than the 10th [~~before the 30th~~] day  
13 after the date the defendant is released on bond.

14 SECTION 3. Section 5(d), Article 42.12, Code of Criminal  
15 Procedure, is amended to read as follows:

16 (d) In all other cases the judge may grant deferred  
17 adjudication unless:

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

19 (A) under Section 49.07 or 49.08 [~~Sections~~  
20 ~~49.04-49.08~~], Penal Code; [~~or~~]

21 (B) under Section 49.04, 49.045, 49.05, 49.06, or  
22 49.065, Penal Code, and, at the time of the offense, the defendant:

23 (i) held a commercial driver's license or a  
24 commercial driver learner's permit; or

1                    (ii) was driving a commercial vehicle;

2                    (C) for which punishment may be increased under  
3 Section 49.09, Penal Code; or

4                    (D) for which punishment may be increased under  
5 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it  
6 is shown that the defendant has been previously convicted of an  
7 offense for which punishment was increased under any one of those  
8 subsections;

9                    (2) the defendant:

10                    (A) is charged with an offense under Section  
11 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
12 victim, or a felony described by Section 13B(b) of this article; and

13                    (B) has previously been placed on community  
14 supervision for any offense under Paragraph (A) of this  
15 subdivision; or

16                    (3) the defendant is charged with an offense under:

17                    (A) Section 21.02, Penal Code; or

18                    (B) Section 22.021, Penal Code, that is  
19 punishable under Subsection (f) of that section or under Section  
20 12.42(c)(3), Penal Code.

21                    SECTION 4. Sections 13(i) and (n), Article 42.12, Code of  
22 Criminal Procedure, are amended to read as follows:

23                    (i) If a person convicted of an offense under Sections  
24 49.04-49.08, Penal Code, is placed on community supervision, the  
25 court shall [~~may~~] require as a condition of community supervision  
26 that the defendant have a device installed, on the motor vehicle  
27 owned by the defendant or on the vehicle most regularly driven by

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

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

1 This employment exemption does not apply, however, if the business  
2 entity that owns the vehicle is owned or controlled by the person  
3 whose driving privilege has been restricted. [~~A previous~~  
4 ~~conviction may not be used for purposes of restricting a person to~~  
5 ~~the operation of a motor vehicle equipped with an interlock~~  
6 ~~ignition device under this subsection if:~~

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

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

17           (n) Notwithstanding any other provision of this section or  
18 other law, the judge who places on community supervision a  
19 defendant who is younger than 21 years of age and convicted for an  
20 offense under Sections 49.04-49.08, Penal Code, shall~~+~~

21           ~~[(1)]~~ order that the defendant's driver's license be  
22 suspended for 90 days beginning on the date that the person is  
23 placed on community supervision [~~+~~ and

24           ~~[(2) require as a condition of community supervision~~  
25 ~~that the defendant not operate a motor vehicle unless the vehicle is~~  
26 ~~equipped with the device described by Subsection (i) of this~~  
27 ~~section].~~

1 SECTION 5. Section 13, Article 42.12, Code of Criminal  
2 Procedure, is amended by adding Subsection (o) to read as follows:

3 (o) A judge granting deferred adjudication to a defendant  
4 for an offense under Section 49.04, 49.045, 49.05, 49.06, or  
5 49.065, Penal Code, shall require the defendant to have an ignition  
6 interlock device installed under Subsection (i), regardless of  
7 whether the defendant would be required to have the device  
8 installed if the defendant was convicted.

9 SECTION 6. Subchapter A, Chapter 102, Code of Criminal  
10 Procedure, is amended by adding Article 102.0184 to read as  
11 follows:

12 Art. 102.0184. ADDITIONAL COSTS ATTENDANT TO INTOXICATION  
13 CONVICTIONS: MEMORIAL SIGNS. (a) In addition to other costs on  
14 conviction imposed by this chapter, a person convicted of an  
15 offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code,  
16 that involved the operating of a motor vehicle and resulted in the  
17 death of another person shall pay a memorial sign fee not to exceed  
18 \$300 as a court cost on conviction of the offense.

19 (b) In this article, a person is considered convicted if:

20 (1) a sentence is imposed on the person; or

21 (2) the person is placed on community supervision.

22 (c) A clerk of the court shall collect the costs and pay them  
23 to the comptroller for deposit to the credit of the memorial sign  
24 account established under Section 201.9095, Transportation Code.

25 SECTION 7. (a) Section 102.021, Government Code, is  
26 amended to conform to Chapter 1263 (H.B. 3060), Acts of the 80th  
27 Legislature, Regular Session, 2007, and is further amended to read

1 as follows:

2           Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL  
3 PROCEDURE. A person convicted of an offense shall pay the following  
4 under the Code of Criminal Procedure, in addition to all other  
5 costs:

6           (1) court cost on conviction of any offense, other  
7 than a conviction of an offense relating to a pedestrian or the  
8 parking of a motor vehicle (Art. 102.0045, Code of Criminal  
9 Procedure) . . . \$4;

10           (2) a fee for services of prosecutor (Art. 102.008,  
11 Code of Criminal Procedure) . . . \$25;

12           (3) fees for services of peace officer:

13           (A) issuing a written notice to appear in court  
14 for certain violations (Art. 102.011, Code of Criminal  
15 Procedure) . . . \$5;

16           (B) executing or processing an issued arrest  
17 warrant, ~~or~~ capias, or capias pro fine (Art. 102.011, Code of  
18 Criminal Procedure) . . . \$50;

19           (C) summoning a witness (Art. 102.011, Code of  
20 Criminal Procedure) . . . \$5;

21           (D) serving a writ not otherwise listed (Art.  
22 102.011, Code of Criminal Procedure) . . . \$35;

23           (E) taking and approving a bond and, if  
24 necessary, returning the bond to courthouse (Art. 102.011, Code of  
25 Criminal Procedure) . . . \$10;

26           (F) commitment or release (Art. 102.011, Code of  
27 Criminal Procedure) . . . \$5;

1 (G) summoning a jury (Art. 102.011, Code of  
2 Criminal Procedure) . . . \$5;

3 (H) attendance of a prisoner in habeas corpus  
4 case if prisoner has been remanded to custody or held to bail (Art.  
5 102.011, Code of Criminal Procedure) . . . \$8 each day;

6 (I) mileage for certain services performed (Art.  
7 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

8 (J) services of a sheriff or constable who serves  
9 process and attends examining trial in certain cases (Art. 102.011,  
10 Code of Criminal Procedure) . . . not to exceed \$5;

11 (4) services of a peace officer in conveying a witness  
12 outside the county (Art. 102.011, Code of Criminal  
13 Procedure) . . . \$10 per day or part of a day, plus actual  
14 necessary travel expenses;

15 (5) overtime of peace officer for time spent  
16 testifying in the trial or traveling to or from testifying in the  
17 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

18 (6) court costs on an offense relating to rules of the  
19 road, when offense occurs within a school crossing zone (Art.  
20 102.014, Code of Criminal Procedure) . . . \$25;

21 (7) court costs on an offense of passing a school bus  
22 (Art. 102.014, Code of Criminal Procedure) . . . \$25;

23 (8) court costs on an offense of truancy or  
24 contributing to truancy (Art. 102.014, Code of Criminal  
25 Procedure) . . . \$20;

26 (9) cost for visual recording of intoxication arrest  
27 before conviction (Art. 102.018, Code of Criminal

1 Procedure) . . . \$15;

2           (10) cost of certain evaluations (Art. 102.018, Code  
3 of Criminal Procedure) . . . actual cost;

4           (11) additional costs attendant to certain  
5 intoxication convictions under Chapter 49, Penal Code, for  
6 emergency medical services, trauma facilities, and trauma care  
7 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

8           (12) additional costs attendant to certain child  
9 sexual assault and related convictions, for child abuse prevention  
10 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

11           (13) cost for DNA testing for certain felonies (Art.  
12 102.020, Code of Criminal Procedure) . . . \$250;

13           (14) court cost on an offense of public lewdness or  
14 indecent exposure (Art. 102.020, Code of Criminal  
15 Procedure) . . . \$50;

16           (15) if required by the court, a restitution fee for  
17 costs incurred in collecting restitution installments and for the  
18 compensation to victims of crime fund (Art. 42.037, Code of  
19 Criminal Procedure) . . . \$12; ~~and~~

20           (16) if directed by the justice of the peace or  
21 municipal court judge hearing the case, court costs on conviction  
22 in a criminal action (Art. 45.041, Code of Criminal  
23 Procedure) . . . part or all of the costs as directed by the judge;

24           (17) costs attendant to convictions under Chapter 49,  
25 Penal Code, and under Chapter 481, Health and Safety Code, to help  
26 fund drug court programs established under Chapter 469, Health and  
27 Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50;

1 and

2 (18) costs attendant to convictions of certain  
3 offenses under Chapter 49, Penal Code, for the memorial sign  
4 program under Section 201.909, Transportation Code (Art. 102.0184,  
5 Code of Criminal Procedure) . . . not to exceed \$300.

6 (b) Section 102.0215, Government Code, is repealed.

7 SECTION 8. Section 411.081(e), Government Code, is amended  
8 to read as follows:

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

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

24 (2) an offense under Section 20.04, Penal Code,  
25 regardless of whether the offense is a reportable conviction or  
26 adjudication for purposes of Chapter 62, Code of Criminal  
27 Procedure;

1           (3) an offense under Section 19.02, 19.03, 22.04,  
2 22.041, 25.07, or 42.072, Penal Code; [~~or~~]

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

5           (5) an offense under Section 49.04, 49.045, 49.05,  
6 49.06, or 49.065, Penal Code.

7           SECTION 9. Sections 49.09(a), (b), and (g), Penal Code, are  
8 amended to read as follows:

9           (a) Except as provided by Subsection (b), an offense under  
10 Section 49.04, 49.045, 49.05, 49.06, or 49.065 is a Class A  
11 misdemeanor, with a minimum term of confinement of 30 days, if it is  
12 shown on the trial of the offense that the person has previously  
13 been convicted one time of an offense relating to the operating of a  
14 motor vehicle while intoxicated, an offense of operating an  
15 aircraft while intoxicated, an offense of operating a watercraft  
16 while intoxicated, or an offense of operating or assembling an  
17 amusement ride while intoxicated.

18           (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or  
19 49.065 is a felony of the third degree if it is shown on the trial of  
20 the offense that the person has previously been convicted:

21           (1) one time of an offense under Section 49.08 or an  
22 offense under the laws of another state if the offense contains  
23 elements that are substantially similar to the elements of an  
24 offense under Section 49.08; or

25           (2) two times of any other offense relating to the  
26 operating of a motor vehicle while intoxicated, operating an  
27 aircraft while intoxicated, operating a watercraft while

1 intoxicated, or operating or assembling an amusement ride while  
2 intoxicated.

3 (g) A conviction may be used for purposes of enhancement  
4 under this section or enhancement under Subchapter D, Chapter 12,  
5 but not under both this section and Subchapter D. A deferred  
6 adjudication for an offense under Section 49.04, 49.045, 49.05,  
7 49.06, or 49.065 is considered a conviction for purposes of  
8 enhancement of penalties under this section or Subchapter D,  
9 Chapter 12.

10 SECTION 10. Subchapter K, Chapter 201, Transportation Code,  
11 is amended by adding Section 201.9095 to read as follows:

12 Sec. 201.9095. MEMORIAL SIGN ACCOUNT. The memorial sign  
13 account is created as a dedicated account in the general revenue  
14 fund of the state treasury. Money in the account may be  
15 appropriated only to the Texas Department of Transportation to pay  
16 costs incurred in posting memorial signs under Section 201.909.

17 SECTION 11. Section 521.246, Transportation Code, is  
18 amended to read as follows:

19 Sec. 521.246. IGNITION INTERLOCK DEVICE REQUIREMENT. (a)  
20 If the person's license has been suspended after a conviction under  
21 Sections 49.04-49.08 [~~Section 49.04, 49.07, or 49.08~~], Penal Code,  
22 as [~~the judge, before signing an order, shall determine from the~~  
23 ~~criminal history record information maintained by the department~~  
24 ~~whether the person has any previous conviction under those laws.~~

25 [~~(b) As part of the order the judge may restrict the person~~  
26 ~~to the operation of a motor vehicle equipped with an ignition~~  
27 ~~interlock device if the judge determines that the person's license~~

1 ~~has been suspended following a conviction under Section 49.04,~~  
2 ~~49.07, or 49.08, Penal Code. As]~~ part of the order, the judge shall  
3 restrict the person to the operation of a motor vehicle equipped  
4 with an ignition interlock device ~~[if the judge determines that:~~

5 ~~(1) the person has two or more convictions under any~~  
6 ~~combination of Section 49.04, 49.07, or 49.08, Penal Code; or~~

7 ~~(2) the person's license has been suspended after a~~  
8 ~~conviction under Section 49.04, Penal Code, for which the person~~  
9 ~~has been punished under Section 49.09, Penal Code].~~

10 (b) ~~[(c)]~~ The person shall obtain the ignition interlock  
11 device at the person's own expense unless the court finds that to do  
12 so is not in the best interest of justice and enters that finding in  
13 the record. If the court determines that the person is unable to  
14 pay for the device, the court may impose a reasonable payment  
15 schedule for a term not to exceed twice the period of the court's  
16 order.

17 (c) ~~[(d)]~~ The court shall require the ignition interlock  
18 device to be installed not later than the 10th day after the date  
19 the occupational license takes effect and shall order the ignition  
20 interlock device to remain installed for at least half of the period  
21 of supervision.

22 (d) ~~[(e)]~~ A person to whom this section applies may operate  
23 a motor vehicle without the installation of an approved ignition  
24 interlock device if:

25 (1) the person is required to operate a motor vehicle  
26 in the course and scope of the person's employment;

27 (2) the vehicle is owned by the person's employer;

1           (3) the employer is not owned or controlled by the  
2 person whose driving privilege is restricted;

3           (4) the employer is notified of the driving privilege  
4 restriction; and

5           (5) proof of that notification is with the vehicle.

6           ~~[(f) A previous conviction may not be used for purposes of  
7 restricting a person to the operation of a motor vehicle equipped  
8 with an interlock ignition device under this section if:~~

9           ~~[(1) the previous conviction was a final conviction  
10 under Section 49.04, 49.07, or 49.08, Penal Code, and was for an  
11 offense committed more than 10 years before the instant offense for  
12 which the person was convicted; and~~

13           ~~[(2) the person has not been convicted of an offense  
14 under Section 49.04, 49.07, or 49.08 of that code committed within  
15 10 years before the date on which the instant offense for which the  
16 person was convicted.]~~

17           SECTION 12. Section 521.2476(b), Transportation Code, is  
18 amended to read as follows:

19           (b) The minimum standards shall require each vendor to:

20           (1) be authorized by the department to do business in  
21 this state;

22           (2) install a device only if the device is approved  
23 under Section 521.247;

24           (3) obtain liability insurance providing coverage for  
25 damages arising out of the operation or use of devices in amounts  
26 and under the terms specified by the department;

27           (4) install the device and activate any

1 anticircumvention feature of the device not later than the 10th day  
2 [~~within a reasonable time~~] after the date the vendor receives  
3 notice that installation is ordered by a court;

4 (5) install and inspect the device in accordance with  
5 any applicable court order;

6 (6) repair or replace a device not later than 48 hours  
7 after receiving notice of a complaint regarding the operation of  
8 the device;

9 (7) remove a device not later than the 10th day after  
10 the date the owner or operator of the vehicle requests removal and  
11 provides a copy of a court order to the vendor showing that the  
12 owner or operator is no longer restricted to the use of a motor  
13 vehicle equipped with an ignition interlock device;

14 (8) submit a written report of any violation of a court  
15 order to that court and to the person's supervising officer, if any,  
16 not later than 48 hours after the vendor discovers the violation;

17 (9) [~~(8)~~] maintain a record of each action taken by  
18 the vendor with respect to each device installed by the vendor,  
19 including each action taken as a result of an attempt to circumvent  
20 the device, until at least the fifth anniversary after the date of  
21 installation;

22 (10) [~~(9)~~] make a copy of the record available for  
23 inspection by or send a copy of the record to any court, supervising  
24 officer, or the department on request; and

25 (11) [~~(10)~~] annually provide to the department a  
26 written report of each service and ignition interlock device  
27 feature made available by the vendor.

1           SECTION 13. Article 102.0184, Code of Criminal Procedure,  
2 as added by this Act, applies only to a cost on conviction for an  
3 offense committed on or after the effective date of this Act. An  
4 offense committed before the effective date of this Act is covered  
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 14. The Texas Department of Transportation by rule  
10 shall ensure that a memorial sign posted under Section 201.909,  
11 Transportation Code, is released at the end of the one-year posting  
12 period to the person who requested the posting under Subsection (d)  
13 of that section, regardless of whether the person was required to  
14 submit a fee to help defray the costs of posting.

15           SECTION 15. (a) Except as otherwise provided by this Act,  
16 the changes in law made by this Act apply only to an offense  
17 committed on or after the effective date of this Act. An offense  
18 committed before the effective date of this Act is governed by the  
19 law in effect when the offense was committed, and the former law is  
20 continued in effect for that purpose. For purposes of this section,  
21 an offense was committed before the effective date of this Act if  
22 any element of the offense was committed before that date.

23           (b) The changes in law made by this Act in amending Articles  
24 17.441 and 42.12, Code of Criminal Procedure, and Section 521.246,  
25 Transportation Code, relating to the time frame for installation  
26 and removal of an ignition interlock device, apply only to a court  
27 order entered on or after the effective date of this section. A

1 court order entered before the effective date of this section is  
2 governed by the law in effect when the court order was entered, and  
3 the former law is continued in effect for that purpose.

4 (c) The Department of Public Safety by rule shall establish  
5 the minimum standards required by Section 521.2476(b),  
6 Transportation Code, as amended by this Act, not later than  
7 December 1, 2009.

8 SECTION 16. This Act takes effect September 1, 2009.