

By: Smith of Tarrant

H.B. No. 4061

A BILL TO BE ENTITLED

AN ACT

1
2 relating to requiring the use of an ignition interlock device on
3 conviction of certain intoxication offenses.

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

5 SECTION 1. Sections 13(i) and (n), Article 42.12, Code of
6 Criminal Procedure, are amended to read as follows:

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

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

1 a period not less than 50 percent of the supervision period. If the
2 court determines the offender is unable to pay for the device, the
3 court may impose a reasonable payment schedule not to exceed twice
4 the period of the court's order. The Department of Public Safety
5 shall approve devices for use under this subsection. Section
6 521.247, Transportation Code, applies to the approval of a device
7 under this subsection and the consequences of that approval.
8 Notwithstanding the provisions of this section, if a person is
9 required to operate a motor vehicle in the course and scope of the
10 person's employment and if the vehicle is owned by the employer, the
11 person may operate that vehicle without installation of an approved
12 ignition interlock device if the employer has been notified of that
13 driving privilege restriction and if proof of that notification is
14 with the vehicle. This employment exemption does not apply,
15 however, if the business entity that owns the vehicle is owned or
16 controlled by the person whose driving privilege has been
17 restricted. ~~[A previous conviction may not be used for purposes of~~
18 ~~restricting a person to the operation of a motor vehicle equipped~~
19 ~~with an interlock ignition device under this subsection if:~~

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

25 ~~[(2) the person has not been convicted of an offense~~
26 ~~under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08 of that~~
27 ~~code, committed within 10 years before the date on which the instant~~

1 ~~offense for which the person was convicted and placed on community~~
2 ~~supervision.]~~

3 (n) Notwithstanding any other provision of this section or
4 other law, the judge who places on community supervision a
5 defendant who is younger than 21 years of age and convicted for an
6 offense under Sections 49.04-49.08, Penal Code, shall[+]

7 [~~(1)~~] order that the defendant's driver's license be
8 suspended for 90 days beginning on the date that the person is
9 placed on community supervision [~~;~~ and

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

14 SECTION 2. Section 521.246, Transportation Code, is amended
15 to read as follows:

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

22 [~~(b) As part of the order the judge may restrict the person~~
23 ~~to the operation of a motor vehicle equipped with an ignition~~
24 ~~interlock device if the judge determines that the person's license~~
25 ~~has been suspended following a conviction under Section 49.04,~~
26 ~~49.07, or 49.08, Penal Code. As] part of the order, the judge shall
27 restrict the person to the operation of a motor vehicle equipped~~

1 with an ignition interlock device [~~if the judge determines that:~~

2 ~~[(1) the person has two or more convictions under any~~
3 ~~combination of Section 49.04, 49.07, or 49.08, Penal Code, or~~

4 ~~[(2) the person's license has been suspended after a~~
5 ~~conviction under Section 49.04, Penal Code, for which the person~~
6 ~~has been punished under Section 49.09, Penal Code].~~

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

14 (c) [~~(d)~~] The court shall order the ignition interlock
15 device to remain installed for at least half of the period of
16 supervision.

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

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

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

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

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

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

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

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

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

12 SECTION 3. Sections 521.251(b), (c) and (d) Transportation
13 Code, are amended to read as follows:

14 (b) If the person's driver's license has been suspended as a
15 result of an alcohol-related or drug-related enforcement contact
16 during the five years preceding the date of the person's arrest, the
17 order may not take effect before the ~~91st~~ 45th day after the
18 effective date of the suspension.

19 (c) If the person's driver's license has been suspended as a
20 result of a conviction under Section 49.04, 49.07, or 49.08, Penal
21 Code, during the five years preceding the date of the person's
22 arrest, the order may not take effect before the ~~181st~~ 45th day
23 after the effective date of the suspension.

24 (d) Notwithstanding any other provision in this section, if
25 the person's driver's license has been suspended as a result of a
26 second or subsequent conviction under Section 49.04, 49.07, or
27 49.08, Penal Code, committed within five years of the date on which

1 the most recent preceding offense was committed, an order granting
2 the person an occupational license may not take effect before the
3 ~~first anniversary of the effective date of the suspension~~ 45th
4 day after the effective date of the suspension.

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

13 SECTION 5. This Act takes effect September 1, 2009.