

By: Ellis

S.B. No. 170

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

~~supervision that the defendant have the device installed on the appropriate vehicle and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device. Before placing on community supervision a person convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the person has one or more previous convictions under Sections 49.04-49.08, Penal Code, or has one previous conviction under Sections 49.04-49.07, Penal Code, or one previous conviction under Section 49.08, Penal Code. If it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, or if the court determines that the person has one or more such previous convictions, the court shall require as a condition of community supervision that the defendant have that device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with the device described in this subsection.]~~ The court shall require the defendant to obtain the device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate 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. The change in law made by this Act applies only  
13 to an offense committed on or after the effective date of this Act.  
14 An offense committed before the effective date of this Act is  
15 governed by the law in effect when the offense was committed, and  
16 the former law is continued in effect for that purpose. For  
17 purposes of this section, an offense was committed before the  
18 effective date of this Act if any element of the offense was  
19 committed before that date.

20           SECTION 4. This Act takes effect September 1, 2009.