

By: Martinez Fischer

H.B. No. 99

Substitute the following for H.B. No. 99:

By: Gallego

C.S.H.B. No. 99

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain intoxication-related offenses; creating the offense of aggravated driving while intoxicated.

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

SECTION 1. Chapter 49, Penal Code, is amended by adding Section 49.046 to read as follows:

Sec. 49.046. AGGRAVATED DRIVING WHILE INTOXICATED. (a) A person commits an offense if:

(1) the person is intoxicated while operating a motor vehicle in a public place; and

(2) the person:

(A) has an alcohol concentration of 0.16 or more;

or

(B) has an alcohol concentration of 0.02 or more and is operating a commercial motor vehicle, as defined by Section 522.003, Transportation Code.

(b) Except as provided by Section 49.09, an offense under this section is a Class A misdemeanor, with a minimum term of confinement of 30 days. As provided by Article 42.033, Code of Criminal Procedure, the judge of the sentencing court may permit the person to serve the person's term of confinement intermittently.

SECTION 2. Section 49.09, Penal Code, is amended by

1 amending Subsections (b) and (h) and adding Subsection (b-4) to  
2 read as follows:

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

6 (1) one time of an offense under Section 49.08 or an  
7 offense under the laws of another state if the offense contains  
8 elements that are substantially similar to the elements of an  
9 offense under Section 49.08; [~~or~~]

10 (2) one time of an offense under Section 49.046 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 49.046; or

14 (3) two times of any other offense relating to the  
15 operating of a motor vehicle while intoxicated, operating an  
16 aircraft while intoxicated, operating a watercraft while  
17 intoxicated, or operating or assembling an amusement ride while  
18 intoxicated.

19 (b-4) An offense under Section 49.046 is a felony of the  
20 third degree if it is shown on the trial of the offense that the  
21 person has previously been convicted:

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

26 (2) one time of an offense relating to the operating of  
27 a motor vehicle while intoxicated, an offense of operating an

1 aircraft while intoxicated, an offense of operating a watercraft  
2 while intoxicated, or an offense of operating or assembling an  
3 amusement ride while intoxicated.

4 (h) This subsection applies only to a person convicted of an  
5 offense under Section 49.046 or a second or subsequent offense  
6 relating to the operating of a motor vehicle while intoxicated  
7 committed within five years of the date on which the most recent  
8 preceding offense was committed. The court shall enter an order  
9 that requires the defendant to have a device installed, on each  
10 motor vehicle owned or operated by the defendant, that uses a  
11 deep-lung breath analysis mechanism to make impractical the  
12 operation of the motor vehicle if ethyl alcohol is detected in the  
13 breath of the operator, and that requires that before the first  
14 anniversary of the ending date of the period of license suspension  
15 under Section 521.344, Transportation Code, the defendant not  
16 operate any motor vehicle that is not equipped with that device.  
17 The court shall require the defendant to obtain the device at the  
18 defendant's own cost on or before that ending date, require the  
19 defendant to provide evidence to the court on or before that ending  
20 date that the device has been installed on each appropriate  
21 vehicle, and order the device to remain installed on each vehicle  
22 until the first anniversary of that ending date. If the court  
23 determines the offender is unable to pay for the device, the court  
24 may impose a reasonable payment schedule not to extend beyond the  
25 first anniversary of the date of installation. The Department of  
26 Public Safety shall approve devices for use under this subsection.  
27 Section 521.247, Transportation Code, applies to the approval of a

1 device under this subsection and the consequences of that approval.  
2 Failure to comply with an order entered under this subsection is  
3 punishable by contempt. For the purpose of enforcing this  
4 subsection, the court that enters an order under this subsection  
5 retains jurisdiction over the defendant until the date on which the  
6 device is no longer required to remain installed. To the extent of  
7 a conflict between this subsection and Section 13(i), Article  
8 42.12, Code of Criminal Procedure, this subsection controls.

9 SECTION 3. Subchapter I, Chapter 545, Transportation Code,  
10 is amended by adding Section 545.429 to read as follows:

11 Sec. 545.429. CONVICTION FOR AGGRAVATED DRIVING WHILE  
12 INTOXICATED; IMPOUNDMENT OR IMMOBILIZATION OF VEHICLE. (a) A  
13 court that convicts a person for an offense under Section 49.046,  
14 Penal Code, shall order the sheriff of the county in which the court  
15 has jurisdiction to impound or immobilize the motor vehicle  
16 operated by the person at the time of the offense for a period of  
17 seven days beginning on the day after the date the court enters the  
18 conviction if the person:

19 (1) was an owner of the motor vehicle at the time of  
20 the offense;

21 (2) is an owner of the motor vehicle on the date the  
22 court enters the conviction; and

23 (3) is the primary operator of the motor vehicle on the  
24 date the court enters the conviction.

25 (b) A sheriff acting under a court order issued under  
26 Subsection (a) may require that the motor vehicle, prior to  
27 immobilization, be taken to:

1           (1) a garage or other place of safety; or

2           (2) a garage designated or maintained by the county.

3           (c) Notwithstanding Article 18.23, Code of Criminal  
4 Procedure, the person convicted of an offense under Section 49.046,  
5 Penal Code, is liable for all removal and storage fees incurred as a  
6 result of the impoundment or immobilization of the motor vehicle  
7 and is not entitled to take possession of the vehicle until those  
8 fees are paid.

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

17           SECTION 5. This Act takes effect September 1, 2011.