

By: Smith of Tarrant, Martinez Fischer,  
Harless, et al.

H.B. No. 189

A BILL TO BE ENTITLED

AN ACT

relating to the criminal and civil consequences for certain intoxication offenses and to certain fees associated with the enforcement and administration of certain of those consequences.

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

SECTION 1. This Act shall be known as the Nicole "Lilly" Lalime and Todd Levin Memorial Act.

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.442 to read as follows:

Art. 17.442. CONDITIONS REQUIRING ALCOHOL TESTING. (a) A magistrate may require a defendant as a condition of release on bond to obtain and use an alcohol monitoring device and to obtain and use the device at the defendant's own expense.

(b) If a magistrate requires a defendant to obtain and use an alcohol monitoring device under this article, the magistrate must specify the date by which the defendant must begin using the device.

(c) The magistrate may revoke the bond and order the defendant arrested if the magistrate finds, after notice and an opportunity for a hearing, that:

(1) the defendant failed to obtain and use an alcohol monitoring device, as required by the magistrate;

(2) the defendant tampered with or otherwise attempted to circumvent or disable the alcohol monitoring device;

1           (3) the alcohol monitoring device showed that the  
2 defendant violated a condition of bond;

3           (4) the defendant otherwise did not submit to alcohol  
4 testing; or

5           (5) the defendant failed to pay the costs of alcohol  
6 testing, including the costs of an alcohol monitoring device, if:

7                   (A) payment was ordered under Subsection (d) as a  
8 condition of bond; and

9                   (B) the magistrate determines that the defendant  
10 is not indigent and is financially able to make the payments as  
11 ordered.

12           (d) The costs of the alcohol monitoring device and  
13 associated services may be:

14                   (1) assessed as a cost of court;

15                   (2) ordered paid as a condition of bond by the  
16 defendant directly to the agency or service provider designated by  
17 the magistrate under Subsection (e) in the same manner as a  
18 defendant is required to pay fees under Article 17.441(d); or

19                   (3) waived or reduced.

20           (e) The magistrate may designate an agency or service  
21 provider to verify the installation of an alcohol monitoring device  
22 and to monitor the defendant's use of the device.

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

25           (d) In all other cases the judge may grant deferred  
26 adjudication unless:

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

1 (A) under Section 49.045, 49.07, or 49.08  
2 [~~Sections 49.04-49.08~~], Penal Code; [~~or~~]

3 (B) under Section 49.04, 49.05, 49.06, or 49.065,  
4 Penal Code, if:

5 (i) at the time of the offense, the  
6 defendant held a commercial driver's license or a commercial driver  
7 learner's permit; or

8 (ii) during the commission of the offense,  
9 the defendant caused injury to another person or damaged property  
10 that belongs to another person;

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

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

18 (2) the defendant:

19 (A) is charged with an offense under Section  
20 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
21 victim, or a felony described by Section 13B(b) of this article; and

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

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

26 (A) Section 21.02, Penal Code; or

27 (B) Section 22.021, Penal Code, that is

1 punishable under Subsection (f) of that section or under Section  
2 12.42(c)(3), Penal Code.

3 SECTION 4. Section 5, Article 42.12, Code of Criminal  
4 Procedure, is amended by adding Subsection (d-1) to read as  
5 follows:

6 (d-1) If a judge places on deferred adjudication a defendant  
7 convicted of an offense under Section 49.04, 49.05, 49.06, or  
8 49.065, Penal Code, the judge shall order as a condition of  
9 community supervision that the defendant serve not less than three  
10 days in jail.

11 SECTION 5. Section 13, Article 42.12, Code of Criminal  
12 Procedure, is amended by amending Subsection (i) and adding  
13 Subsection (o) to read as follows:

14 (i) If a person convicted of an offense under Sections  
15 49.04-49.08, Penal Code, is placed on community supervision, the  
16 court may require as a condition of community supervision that the  
17 defendant have a device installed, on the motor vehicle owned by the  
18 defendant or on the vehicle most regularly driven by the defendant,  
19 that uses a deep-lung breath analysis mechanism to make impractical  
20 the operation of the motor vehicle if ethyl alcohol is detected in  
21 the breath of the operator and that the defendant not operate any  
22 motor vehicle that is not equipped with that device. The deep-lung  
23 breath analysis mechanism described by this subsection must have  
24 technology to provide continuous monitoring of the operator of the  
25 motor vehicle to prevent fraudulent manipulation or circumvention  
26 of the device that would allow operation of the motor vehicle by a  
27 person who has recently consumed ethyl alcohol. If it is shown on

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

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

1 ignition device under this subsection if:

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

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

12 (o) A judge granting deferred adjudication to a defendant  
13 for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal  
14 Code, may require the defendant to have an ignition interlock  
15 device installed under Subsection (i), except that if an analysis  
16 of a specimen of the person's blood or breath taken following an  
17 arrest showed an alcohol concentration level of 0.15 or more at the  
18 time the analysis was performed, the judge shall require the  
19 defendant to have the device installed regardless of whether the  
20 defendant would be required to have the device installed if the  
21 defendant was convicted.

22 SECTION 6. Subchapter B, Chapter 103, Government Code, is  
23 amended by adding Section 103.0217 to read as follows:

24 Sec. 103.0217. ADDITIONAL FEES IN CERTAIN CRIMINAL CASES:  
25 CODE OF CRIMINAL PROCEDURE. A defendant who is ordered by the court  
26 to obtain and use an alcohol monitoring device under Article  
27 17.442, Code of Criminal Procedure, shall pay a fee in the manner

1 and amount set by the magistrate under that article.

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

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

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

19 (2) an offense under Section 20.04, Penal Code,  
20 regardless of whether the offense is a reportable conviction or  
21 adjudication for purposes of Chapter 62, Code of Criminal  
22 Procedure;

23 (3) an offense under Section 19.02, 19.03, 22.04,  
24 22.041, 25.07, or 42.072, Penal Code; ~~[or]~~

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

27 (5) an offense under Section 49.04, 49.05, 49.06, or



1 49.065, Penal Code.

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

4 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or  
5 49.065 is a felony of the third degree if it is shown on the trial of  
6 the offense that the person has previously been convicted:

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

11 (2) two times of any other offense relating to the  
12 operating of a motor vehicle while intoxicated, operating an  
13 aircraft while intoxicated, operating a watercraft while  
14 intoxicated, or operating or assembling an amusement ride while  
15 intoxicated.

16 (g) A conviction may be used for purposes of enhancement  
17 under this section or enhancement under Subchapter D, Chapter 12,  
18 but not under both this section and Subchapter D. A deferred  
19 adjudication for an offense under Section 49.04, 49.05, 49.06, or  
20 49.065 is considered a conviction for purposes of enhancement of  
21 penalties under this section or Subchapter D, Chapter 12.

22 SECTION 9. Chapter 49, Penal Code, is amended by adding  
23 Section 49.091 to read as follows:

24 Sec. 49.091. MANDATORY MINIMUM SENTENCE FOLLOWING  
25 REVOCAATION OF DEFERRED ADJUDICATION. Notwithstanding the  
26 provisions of Sections 49.04, 49.05, 49.06, and 49.065, the minimum  
27 term of confinement for a defendant convicted of an offense under

1 one of those sections is 14 days if the defendant is initially  
2 placed on deferred adjudication community supervision for the  
3 offense and after a violation of the terms of supervision the judge  
4 enters an order of conviction on final disposition of the case.

5 SECTION 10. Subchapter F, Chapter 521, Transportation Code,  
6 is amended by adding Section 521.127 to read as follows:

7 Sec. 521.127. DRIVER'S LICENSE FOR PERSONS CONVICTED OF  
8 CERTAIN INTOXICATED DRIVING OFFENSES. (a) In this section, "offense  
9 relating to the operating of a motor vehicle while intoxicated" has  
10 the meaning assigned by Section 49.09, Penal Code.

11 (b) Notwithstanding Section 521.347, a court in which a  
12 person is convicted of an offense relating to the operating of a  
13 motor vehicle while intoxicated shall require the person to  
14 surrender to the court the person's driver's license. This section  
15 applies to a person who has been convicted of four or more offenses  
16 relating to the operation of a motor vehicle while intoxicated.

17 (c) A court that requires a person to surrender the person's  
18 driver's license under Subsection (b) shall send to the department:

19 (1) a record of the person's conviction; and

20 (2) an indication that the driver's license issued to  
21 the person is subject to the requirements of this section.

22 (d) A person who is required to surrender the person's  
23 driver's license to the court under Subsection (b) may apply to the  
24 department for the issuance of a new or duplicate license provided  
25 that any applicable suspension period has expired.

26 (e) On the payment of all required fees, the department  
27 shall issue to a person who applies for a new or duplicate license

1 under Subsection (d) a driver's license that includes a distinctive  
2 symbol or marking on the face of the license identifying the license  
3 holder as a person who has been convicted of an offense relating to  
4 the operating of a motor vehicle while intoxicated. The department  
5 by rule shall specify the symbol or marking required by this  
6 subsection.

7 (f) A driver's license issued under this section must  
8 include the symbol or marking required by Subsection (e) for the  
9 following time periods:

10 (1) if the person to whom the license is issued has  
11 been convicted four times of an offense relating to the operating of  
12 a motor vehicle while intoxicated, until the fifth anniversary of  
13 the later of:

14 (A) the date of that conviction; or

15 (B) the expiration of the period of suspension of  
16 the person's license as a result of the conviction;

17 (2) if the person to whom the license is issued has  
18 been convicted five times of an offense relating to the operating of  
19 a motor vehicle while intoxicated, until the 10th anniversary of  
20 the later of:

21 (A) the date of the person's most recent  
22 conviction of an offense relating to the operating of a motor  
23 vehicle while intoxicated; or

24 (B) the expiration of the period of suspension of  
25 the person's license as a result of that conviction; or

26 (3) if the person to whom the license is issued has  
27 been convicted six or more times of an offense relating to the

1 operating of a motor vehicle while intoxicated, permanently.

2 (g) The symbol or marking required by Subsection (e) is in  
3 addition to any other information on the person's driver's license  
4 required by this chapter or the department.

5 (h) On or after the expiration of the time period specified  
6 by Subsection (f)(1) or (2), as applicable, a person issued a  
7 driver's license under Subsection (e) may apply to the department  
8 for a license that does not include the distinctive symbol or  
9 marking.

10 SECTION 11. Section 521.247(c), Transportation Code, is  
11 amended to read as follows:

12 (c) If the department approves a device, the department  
13 shall notify the manufacturer of that approval in writing. Written  
14 notice from the department to a manufacturer is admissible in a  
15 civil or criminal proceeding in this state. The manufacturer shall  
16 pay an amount not less than \$500, as determined by the department,  
17 to cover the costs [~~reimburse the department for any cost~~] incurred  
18 by the department in approving the device.

19 SECTION 12. Section 521.2475(b), Transportation Code, is  
20 amended to read as follows:

21 (b) Each [~~The department shall assess the cost of preparing~~  
22 ~~the evaluation equally against each~~] manufacturer of an approved  
23 device shall annually pay to the department a reasonable amount not  
24 less than \$500, as determined by the department, to help defray  
25 costs incurred in complying with Subsection (a) and in  
26 administering this subchapter.

27 SECTION 13. Section 521.2476(d), Transportation Code, is

1 amended to read as follows:

2 (d) A vendor shall reimburse the department in a reasonable  
3 amount not less than \$450, as determined by the department, to cover  
4 costs incurred in [~~for the reasonable cost of~~] conducting each  
5 inspection of the vendor's facilities under this section.

6 SECTION 14. Section 521.251, Transportation Code, is  
7 amended to read as follows:

8 Sec. 521.251. EFFECTIVE DATE OF OCCUPATIONAL LICENSE. (a)  
9 If a person's license is suspended under Chapter 524 or 724 and the  
10 person has not had a prior suspension arising from an  
11 alcohol-related or drug-related enforcement contact in the five  
12 years preceding the date of the person's arrest, an order under this  
13 subchapter granting the person an occupational license takes effect  
14 immediately. However, the court shall order the person to comply  
15 with the counseling and rehabilitation program required under  
16 Section 521.245.

17 (b) An order under this subchapter granting the person an  
18 occupational license may not take effect before the 45th day after  
19 the effective date of the person's driver's license suspension  
20 under Chapter 524 or 724 if [~~If~~] the person's [~~driver's~~] license has  
21 been suspended as a result of:

22 (1) an alcohol-related or drug-related enforcement  
23 contact during the five years preceding the date of the person's  
24 arrest; or

25 (2) [~~the order may not take effect before the 91st~~  
26 ~~day after the effective date of the suspension.~~

27 [~~(c) If the person's driver's license has been suspended as~~

1 ~~a result of a conviction under Section 49.04, 49.07, or 49.08, Penal~~  
2 ~~Code, during the five years preceding the date of the person's~~  
3 ~~arrest, the order may not take effect before the 181st day after the~~  
4 ~~effective date of the suspension.~~

5 ~~[(d) Notwithstanding any other provision in this section,~~  
6 ~~if the person's driver's license has been suspended as a result of]~~  
7 a second or subsequent conviction under Section 49.04, 49.045,  
8 49.07, or 49.08, Penal Code, committed within five years of the date  
9 on which the most recent preceding offense was committed~~[, an order~~  
10 ~~granting the person an occupational license may not take effect~~  
11 ~~before the first anniversary of the effective date of the~~  
12 ~~suspension].~~

13 (c) ~~(e)~~ For the purposes of this section,  
14 "alcohol-related or drug-related enforcement contact" means a  
15 driver's license suspension, disqualification, or prohibition  
16 order under the laws of this state or another state resulting from:

17 (1) a conviction of an offense prohibiting the  
18 operation of a motor vehicle while:

19 (A) intoxicated;

20 (B) under the influence of alcohol; or

21 (C) under the influence of a controlled  
22 substance;

23 (2) a refusal to submit to the taking of a breath or  
24 blood specimen following an arrest for an offense prohibiting the  
25 operation of a motor vehicle while:

26 (A) intoxicated;

27 (B) under the influence of alcohol; or

1                   (C) under the influence of a controlled  
2 substance; or

3                   (3) an analysis of a breath or blood specimen showing  
4 an alcohol concentration of a level specified by Section 49.01,  
5 Penal Code, following an arrest for an offense prohibiting the  
6 operation of a motor vehicle while intoxicated [~~has the meaning~~  
7 ~~assigned by Section 524.001~~].

8                   (d) For purposes of this section, a person has been  
9 convicted if the person was adjudged guilty of the offense or  
10 entered a plea of guilty or nolo contendere in return for a grant of  
11 deferred adjudication, regardless of whether the sentence for the  
12 offense was ever imposed or whether the sentence was probated and  
13 person was subsequently discharged from community supervision.

14                   SECTION 15. Subchapter I, Chapter 545, Transportation Code,  
15 is amended by adding Section 545.429 to read as follows:

16                   Sec. 545.429. CONVICTION FOR DRIVING WHILE INTOXICATED;  
17 IMPOUNDMENT OR IMMOBILIZATION OF VEHICLE. (a) A court that convicts  
18 a person for a third or subsequent offense under Section 49.04,  
19 Penal Code, may order the sheriff of the county in which the court  
20 has jurisdiction to impound or immobilize the motor vehicle  
21 operated by the person at the time of the offense for a period not to  
22 exceed seven days beginning on the day after the date the court  
23 enters the conviction if the person:

24                   (1) was an owner of the motor vehicle at the time of  
25 the offense;

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

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

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

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

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

8           (c) Subsection (b) shall not apply if the owner of the  
9 vehicle:

10                (1) designates, with permission of the sheriff, the  
11 location where such vehicle shall be garaged or stored; and

12                (2) agrees to hold the sheriff and the county free of  
13 any and all liability for any damage to the vehicle while such  
14 vehicle is immobilized.

15           (d) Notwithstanding Article 18.23, Code of Criminal  
16 Procedure, the person convicted of a third or subsequent offense  
17 under Section 49.04, Penal Code, is liable for all removal and  
18 storage fees incurred as a result of the impoundment or  
19 immobilization of the motor vehicle and is not entitled to take  
20 possession of the vehicle until those fees are paid.

21           SECTION 16. Section 708.102, Transportation Code, is  
22 amended by amending Subsection (b) and adding Subsection (e) to  
23 read as follows:

24           (b) Each year the department shall assess a surcharge on the  
25 license of each person who during the preceding 36-month period has  
26 been [~~finally~~] convicted of an offense relating to the operating of  
27 a motor vehicle while intoxicated.



1       (e) In this section, a person is considered to have been  
2 convicted of an offense if:

3           (1) a judgment, a sentence, or both a judgment and a  
4 sentence are imposed on the person;

5           (2) the person receives community supervision,  
6 deferred adjudication, or deferred disposition; or

7           (3) the court defers final disposition of the case or  
8 imposition of the judgment and sentence.

9       SECTION 17. Sections 521.127 and 545.429, Transportation  
10 Code, as added by this Act, apply only to a person who is convicted  
11 of an offense on or after the effective date of this Act. A person  
12 who was convicted of an offense before the effective date of this  
13 Act is governed by the law in effect when the person was convicted,  
14 and the former law is continued in effect for that purpose.

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

23       (b) In a criminal action pending on or commenced on or after  
24 the effective date of this Act, for an offense committed before the  
25 effective date of this Act, the court may proceed in accordance with  
26 Section 5(d), Article 42.12, Code of Criminal Procedure, as amended  
27 by this Act, if the defendant so elects by written motion filed with

1 the trial court before the sentencing hearing begins.

2 SECTION 19. This Act takes effect September 1, 2011.