

By: Smith of Tarrant, Martinez Fischer

H.B. No. 189

Substitute the following for H.B. No. 189:

By: Gallego

C.S.H.B. No. 189

A BILL TO BE ENTITLED

1

AN ACT

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

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

6 SECTION 1. Section 5(d), Article 42.12, Code of Criminal
7 Procedure, is amended to read as follows:

8 (d) In all other cases the judge may grant deferred
9 adjudication unless:

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

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

13 (B) under Section 49.04, 49.05, 49.06, or 49.065,
14 Penal Code, if:

15 (i) at the time of the offense, the
16 defendant held a commercial driver's license or a commercial driver
17 learner's permit; or

18 (ii) during the commission of the offense,
19 the defendant caused injury to another person or damaged property
20 that belongs to another person;

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

23 (D) for which punishment may be increased under
24 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it

1 is shown that the defendant has been previously convicted of an
2 offense for which punishment was increased under any one of those
3 subsections;

4 (2) the defendant:

5 (A) is charged with an offense under Section
6 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
7 victim, or a felony described by Section 13B(b) of this article; and

8 (B) has previously been placed on community
9 supervision for any offense under Paragraph (A) of this
10 subdivision; or

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

12 (A) Section 21.02, Penal Code; or

13 (B) Section 22.021, Penal Code, that is
14 punishable under Subsection (f) of that section or under Section
15 12.42(c)(3), Penal Code.

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

18 (o) A judge granting deferred adjudication to a defendant
19 for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal
20 Code, shall require the defendant to have an ignition interlock
21 device installed under Subsection (i), regardless of whether the
22 defendant would be required to have the device installed if the
23 defendant was convicted.

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

26 (e) A person is entitled to petition the court under
27 Subsection (d) only if during the period of the deferred

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

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

14 (2) an offense under Section 20.04, Penal Code,
15 regardless of whether the offense is a reportable conviction or
16 adjudication for purposes of Chapter 62, Code of Criminal
17 Procedure;

18 (3) an offense under Section 19.02, 19.03, 22.04,
19 22.041, 25.07, or 42.072, Penal Code; ~~or~~

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

22 (5) an offense under Section 49.04, 49.05, 49.06, or
23 49.065, Penal Code.

24 SECTION 4. Sections 49.09(b) and (g), Penal Code, are
25 amended to read as follows:

26 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or
27 49.065 is a felony of the third degree if it is shown on the trial of

1 the offense that the person has previously been convicted:

2 (1) one time of an offense under Section 49.08 or an
3 offense under the laws of another state if the offense contains
4 elements that are substantially similar to the elements of an
5 offense under Section 49.08; or

6 (2) two times of any other offense relating to the
7 operating of a motor vehicle while intoxicated, operating an
8 aircraft while intoxicated, operating a watercraft while
9 intoxicated, or operating or assembling an amusement ride while
10 intoxicated.

11 (g) A conviction may be used for purposes of enhancement
12 under this section or enhancement under Subchapter D, Chapter 12,
13 but not under both this section and Subchapter D. A deferred
14 adjudication for an offense under Section 49.04, 49.05, 49.06, or
15 49.065 is considered a conviction for purposes of enhancement of
16 penalties under this section or Subchapter D, Chapter 12.

17 SECTION 5. Section 521.247(c), Transportation Code, is
18 amended to read as follows:

19 (c) If the department approves a device, the department
20 shall notify the manufacturer of that approval in writing. Written
21 notice from the department to a manufacturer is admissible in a
22 civil or criminal proceeding in this state. The manufacturer shall
23 pay an amount not less than \$500, as determined by the department,
24 to cover the costs [~~reimburse the department for any cost~~] incurred
25 by the department in approving the device.

26 SECTION 6. Section 521.2475(b), Transportation Code, is
27 amended to read as follows:

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

7 SECTION 7. Section 521.2476(d), Transportation Code, is
8 amended to read as follows:

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

13 SECTION 8. Section 708.102, Transportation Code, is amended
14 by amending Subsection (b) and adding Subsection (e) to read as
15 follows:

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

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

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

24 (2) the person receives community supervision,
25 deferred adjudication, or deferred disposition; or

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

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

9 SECTION 10. This Act takes effect September 1, 2011.