

By: Smith of Tarrant

H.B. No. 189

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the punishment for certain intoxication offenses.

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

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

6 (d) In all other cases the judge may grant deferred
7 adjudication unless:

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

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

11 (B) under Section 49.04, 49.05, 49.06, or 49.065,
12 Penal Code, and, at the time of the offense, the defendant held a
13 commercial driver's license or a commercial driver learner's
14 permit;

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

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

22 (2) the defendant:

23 (A) is charged with an offense under Section
24 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the

1 victim, or a felony described by Section 13B(b) of this article; and

2 (B) has previously been placed on community
3 supervision for any offense under Paragraph (A) of this
4 subdivision; or

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

6 (A) Section 21.02, Penal Code; or

7 (B) Section 22.021, Penal Code, that is
8 punishable under Subsection (f) of that section or under Section
9 12.42(c)(3), Penal Code.

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

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, shall require the defendant to have an ignition interlock
15 device installed under Subsection (i), regardless of whether the
16 defendant would be required to have the device installed if the
17 defendant was convicted.

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

20 (e) A person is entitled to petition the court under
21 Subsection (d) only if during the period of the deferred
22 adjudication community supervision for which the order of
23 nondisclosure is requested and during the applicable period
24 described by Subsection (d)(1), (2), or (3), as appropriate, the
25 person is not convicted of or placed on deferred adjudication
26 community supervision under Section 5, Article 42.12, Code of
27 Criminal Procedure, for any offense other than an offense under the

1 Transportation Code punishable by fine only. A person is not
2 entitled to petition the court under Subsection (d) if the person
3 was placed on the deferred adjudication community supervision for
4 or has been previously convicted or placed on any other deferred
5 adjudication for:

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

8 (2) an offense under Section 20.04, Penal Code,
9 regardless of whether the offense is a reportable conviction or
10 adjudication for purposes of Chapter 62, Code of Criminal
11 Procedure;

12 (3) an offense under Section 19.02, 19.03, 22.04,
13 22.041, 25.07, or 42.072, Penal Code; ~~or~~

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

16 (5) an offense under Section 49.04, 49.05, 49.06, or
17 49.065, Penal Code.

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

20 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or
21 49.065 is a felony of the third degree if it is shown on the trial of
22 the offense that the person has previously been convicted:

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

27 (2) two times of any other offense relating to the

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

5 (g) A conviction may be used for purposes of enhancement
6 under this section or enhancement under Subchapter D, Chapter 12,
7 but not under both this section and Subchapter D. A deferred
8 adjudication for an offense under Section 49.04, 49.05, 49.06, or
9 49.065 is considered a conviction for purposes of enhancement of
10 penalties under this section or Subchapter D, Chapter 12.

11 SECTION 5. The change in law made by this Act applies only
12 to an offense committed on or after the effective date of this Act.
13 An offense committed before the effective date of this Act is
14 governed by the law in effect when the offense was committed, and
15 the former law is continued in effect for that purpose. For
16 purposes of this section, an offense was committed before the
17 effective date of this Act if any element of the offense was
18 committed before that date.

19 SECTION 6. This Act takes effect September 1, 2011.