

By: Patrick

S.B. No. 842

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. This Act shall be known as the Todd Levin Memorial Act.

SECTION 2. Section 13(i), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(i) If a court places on community supervision a defendant convicted of an offense under Section 49.04 or 49.045, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, that involves the operation of a motor vehicle, the court shall 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 a court places on community supervision a defendant [~~person~~] convicted of an offense under Section 49.05, 49.06, or 49.065 [~~Sections 49.04-49.08~~], Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, that does not involve the operation of a motor vehicle [~~is placed on community supervision~~], the court may require as a condition of

1 community supervision that the defendant have the [a] device
2 installed[~~7~~] on the appropriate [~~motor~~] vehicle [~~owned by the~~
3 ~~defendant or on the vehicle most regularly driven by the defendant,~~
4 ~~that uses a deep-lung breath analysis mechanism to make impractical~~
5 ~~the operation of the motor vehicle if ethyl alcohol is detected in~~
6 ~~the breath of the operator]~~ and that the defendant not operate any
7 motor vehicle that is not equipped with that device. If it is shown
8 on the trial of an [~~the~~] offense under Section 49.05, 49.06, or
9 49.065, Penal Code, that an analysis of a specimen of the
10 defendant's [~~person's~~] blood, breath, or urine showed an alcohol
11 concentration level of 0.15 or more at the time the analysis was
12 performed, or if the defendant [~~person~~] is convicted of an offense
13 under one of those sections [~~Sections 49.04-49.06, Penal Code,~~] and
14 punished under Section 49.09(a) or (b), Penal Code, or is convicted
15 of a second or subsequent offense under Section 49.07 or 49.08,
16 Penal Code, that did not involve the operation of a motor vehicle,
17 and the defendant [~~person~~] after conviction of the [~~either~~] offense
18 is placed on community supervision, the court shall require as a
19 condition of community supervision that the defendant have the
20 device installed on the appropriate vehicle and that the defendant
21 not operate any motor vehicle that [~~unless the vehicle~~] is not
22 equipped with that device. Before placing on community
23 supervision a defendant [~~person~~] convicted of an offense under
24 Section 49.05, 49.06, or 49.065 [~~Sections 49.04-49.08~~], Penal Code,
25 or an offense under Section 49.07 or 49.08, Penal Code, that did not
26 involve the operation of a motor vehicle, the court shall determine
27 from criminal history record information maintained by the

1 Department of Public Safety whether the defendant [~~person~~] has one
2 or more previous convictions that result in restricting the
3 defendant to the operation of a motor vehicle equipped with a device
4 under this subsection. If the court requires the defendant to have
5 the device installed, the [~~under Sections 49.04-49.08, Penal Code,~~
6 ~~or has one previous conviction under Sections 49.04-49.07, Penal~~
7 ~~Code, or one previous conviction under Section 49.08, Penal~~
8 ~~Code. If it is shown on the trial of the offense that an analysis~~
9 ~~of a specimen of the person's blood, breath, or urine showed an~~
10 ~~alcohol concentration level of 0.15 or more at the time the analysis~~
11 ~~was performed, or if the court determines that the person has one or~~
12 ~~more such previous convictions, the court shall require as a~~
13 ~~condition of community supervision that the defendant have that~~
14 ~~device installed on the motor vehicle owned by the defendant or on~~
15 ~~the vehicle most regularly driven by the defendant and that the~~
16 ~~defendant not operate any motor vehicle unless the vehicle is~~
17 ~~equipped with the device described in this subsection. The] court
18 shall require the defendant to obtain the device at the defendant's
19 own cost before the 30th day after the date of conviction unless the
20 court finds that to do so would not be in the best interest of
21 justice and enters its findings on record. The court shall require
22 the defendant to provide evidence to the court within the 30-day
23 period that the device has been installed on the appropriate
24 vehicle and order the device to remain installed on that vehicle for
25 a period not less than 50 percent of the supervision period. If the
26 court determines the defendant [~~offender~~] is unable to pay for the
27 device, the court may impose a reasonable payment schedule not to~~

1 exceed twice the period of the court's order. The Department of
2 Public Safety shall approve devices for use under this
3 subsection. Section 521.247, Transportation Code, applies to the
4 approval of a device under this subsection and the consequences of
5 that approval. Notwithstanding the provisions of this subsection
6 [~~section~~], if a person is required to operate a motor vehicle in the
7 course and scope of the person's employment and if the vehicle is
8 owned by the employer, the person may operate that vehicle without
9 installation of an approved ignition interlock device if the
10 employer has been notified of that driving privilege restriction
11 and if proof of that notification is with the vehicle. This
12 employment exemption does not apply, however, if the business
13 entity that owns the vehicle is owned or controlled by the person
14 whose driving privilege has been restricted. A previous
15 conviction may not be used for purposes of restricting a defendant
16 [~~person~~] to the operation of a motor vehicle equipped with an
17 ignition interlock [~~ignition~~] device under this subsection if:

18 (1) the previous conviction was a final conviction
19 under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08,
20 Penal Code, and was for an offense committed more than 10 years
21 before the instant offense for which the defendant [~~person~~] was
22 convicted and placed on community supervision; and

23 (2) the defendant [~~person~~] has not been convicted of
24 an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065,
25 49.07, or 49.08 of that code, committed within 10 years before the
26 date on which the instant offense for which the defendant [~~person~~]
27 was convicted and placed on community supervision.

1 SECTION 3. Section 521.246, Transportation Code, is amended
2 to read as follows:

3 Sec. 521.246. IGNITION INTERLOCK DEVICE REQUIREMENT. (a)
4 If the person's license has been suspended after a conviction under
5 Section 49.04 or 49.045, Penal Code, or under Section 49.07 or 49.08
6 ~~[Section 49.04, 49.07, or 49.08]~~, Penal Code, if the person used a
7 motor vehicle in the commission of the offense, as [the judge,
8 ~~before signing an order, shall determine from the criminal history~~
9 ~~record information maintained by the department whether the person~~
10 ~~has any previous conviction under those laws.~~

11 ~~[(b) As part of the order the judge may restrict the person~~
12 ~~to the operation of a motor vehicle equipped with an ignition~~
13 ~~interlock device if the judge determines that the person's license~~
14 ~~has been suspended following a conviction under Section 49.04,~~
15 ~~49.07, or 49.08, Penal Code. As] part of the order, the judge shall~~
16 restrict the person to the operation of a motor vehicle equipped
17 with an ignition interlock device ~~[if the judge determines that:~~

18 ~~[(1) the person has two or more convictions under any~~
19 ~~combination of Section 49.04, 49.07, or 49.08, Penal Code, or~~

20 ~~[(2) the person's license has been suspended after a~~
21 ~~conviction under Section 49.04, Penal Code, for which the person~~
22 ~~has been punished under Section 49.09, Penal Code].~~

23 (b) ~~[(c)]~~ The person shall obtain the ignition interlock
24 device at the person's own expense unless the court finds that to do
25 so is not in the best interest of justice and enters that finding in
26 the record. If the court determines that the person is unable to
27 pay for the device, the court may impose a reasonable payment

1 schedule for a term not to exceed twice the period of the court's
2 order.

3 (c) [~~(d)~~] The court shall order the ignition interlock
4 device to remain installed for at least half of the period of
5 supervision.

6 (d) [~~(e)~~] A person to whom this section applies may operate
7 a motor vehicle without the installation of an approved ignition
8 interlock device if:

9 (1) the person is required to operate a motor vehicle
10 in the course and scope of the person's employment;

11 (2) the vehicle is owned by the person's employer;

12 (3) the employer is not owned or controlled by the
13 person whose driving privilege is restricted;

14 (4) the employer is notified of the driving privilege
15 restriction; and

16 (5) proof of that notification is with the vehicle.

17 ~~[(f) 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 section if:~~

20 ~~[(1) the previous conviction was a final conviction
21 under Section 49.04, 49.07, or 49.08, Penal Code, and was for an
22 offense committed more than 10 years before the instant offense for
23 which the person was convicted; and~~

24 ~~[(2) the person has not been convicted of an offense
25 under Section 49.04, 49.07, or 49.08 of that code committed within
26 10 years before the date on which the instant offense for which the
27 person was convicted.]~~

1 SECTION 4. 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 5. This Act takes effect September 1, 2011.