

## CHAPTER 662

## S.B. No. 371

## AN ACT

relating to the operation of a motor vehicle by certain persons and the return of driver's licenses to those persons.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsection (i), Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(i) If a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) or (d) of that article, or of a first or second offense under [or] Section 19.05(a)(2), Penal Code, is placed on probation, the court may require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with a device 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. *If the person is convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (e) of that article, or of a third or subsequent offense under Section 19.05(a)(2), Penal Code, and the person after conviction of either offense is placed on probation, the court shall require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with that device. Before placing on probation a person convicted of an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the person has two or more previous convictions under that article or that section or has one previous conviction under that article and one previous conviction under that section. If the court determines that the person has two or*

*more such previous convictions, the court shall require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with the device described in this subsection.* The court shall require the defendant to obtain the device at his own cost unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted.

SECTION 2. Subsection (f), Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as amended by Chapters 473 and 1127, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(f) The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle or enter an order finding an essential need for operating a motor vehicle. In the event the judge enters the order finding an essential need, he shall also, as part of the order, determine the actual need of the petitioner in operating a motor vehicle. The order shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). If the person's license has been suspended following a conviction under ~~[Article 6701-1, Revised Statutes, or]~~ Section 19.05(a)(2), Penal Code, but only on conviction of a second or subsequent offense under ~~that [this article or]~~ section, the order shall ~~[may]~~ restrict the person to the operation of a motor vehicle equipped with a device 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 restricted operator. *If the person's license has been suspended following a conviction of an offense under Article 6701-1, Revised Statutes, for which the person has been punished under Subsection (e) of that article, the order shall restrict the person to the operation of a motor vehicle equipped with that device. If the person's license has been suspended following a conviction of an offense under Article 6701-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, before entering the order, the judge shall determine from criminal history record information maintained by the Department of Public Safety whether the person has two or more previous convictions under that article or that section or has one previous conviction under that article and one previous conviction under that section. If the judge determines that the person has two or more such previous convictions, as part of the order the judge shall require that the petitioner not operate a motor vehicle unless the vehicle is equipped with the device described in this subsection.* The defendant shall obtain the device at his own cost unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. The order shall be definite as to hours of the day, days of the week, specific

reasons for travel, and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than four (4) hours in any twenty-four (24) consecutive hours. On a proper showing of necessity, however, the court may waive the four-hour restriction and allow the petitioner to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any twenty-four (24) consecutive hours. An order entered by the court shall extend for the period of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department. The petitioner may use a copy of the court order as a restricted license for thirty (30) days after the date the order is entered. The Department of Public Safety shall promulgate rules and regulations for the approval of models and classes of devices used under this subsection and Section 25(a) of this Act. The Department by rule shall establish standards for the calibration and maintenance of devices, but the calibration and maintenance of each individual device is the responsibility of the manufacturer of that device. If the Department approves a device, the Department shall notify the manufacturer in writing of that fact. Written notice from the Department to a manufacturer approving a device is admissible in any civil or criminal proceeding in this state. The manufacturer shall reimburse the Department for any cost incurred by the Department in approving a device under this subsection. The Department may not be held liable in a civil or criminal proceeding arising out of the use of a device approved under this subsection.

SECTION 3. Section 23, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The Department may not reinstate a license suspended under Section 22(b)(16) of this Act until:

[~~(1)~~] the court that filed the report for which the license was suspended files an additional report on final disposition of the case[;—and

[~~(2) the person whose license has been suspended pays to the Department a fee of \$25 in addition to any other fees required by law].~~

(d) *The Department may not reinstate a license suspended or revoked under Section 22 of this Act unless the person whose license was suspended or revoked makes application to the Department for reinstatement of the person's license and pays to the Department a reinstatement fee of \$50. The Department shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund.*

SECTION 4. Section 26, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. SURRENDER AND RETURN OF LICENSE. *The* [~~(a) Except as limited by Subsection (b) of this section, the~~] Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

[~~(b) The Department may not return a license or reinstate a privilege to operate a motor vehicle suspended under Section 24(a-1) of this Act, unless the person whose license or privilege was suspended makes application to the Department for reinstatement of the person's license or privilege and, in addition to any other fee required by law, pays to the Department a reinstatement fee of Five Dollars (\$5.00).~~

[~~(c) Fees paid under this section shall be deposited in the state treasury to the credit of the Operator's and Chauffeur's License Fund and shall be appropriated only to the Department to administer the provisions of this Act.~~

SECTION 5. Subdivision (2), Subsection (a), Article 67011-1, Revised Statutes, is amended to read as follows:

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, *a substance or its vapors that contain a volatile chemical, an abusable glue, or an aerosol paint*, or a combination of two or more of those substances into the body; or

(B) having an alcohol concentration of 0.10 or more.

SECTION 6. Subsection (a), Article 67011-1, Revised Statutes, is amended by adding Subdivisions (8), (9), and (10) to read as follows:

(8) "Abusable glue" has the meaning assigned by Section 485.001, Health and Safety Code.

(9) "Aerosol paint" has the meaning assigned by Section 485.001, Health and Safety Code.

(10) "Volatile chemical" is a chemical or isomer listed in Section 484.002, Health and Safety Code.

SECTION 7. Section 2, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) *The Texas Department of Public Safety may not reinstate a license suspended under this section unless the person whose license was suspended makes application to the Texas Department of Public Safety for reinstatement of the person's license and pays to the Texas Department of Public Safety a reinstatement fee of \$50. The Texas Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund.*

SECTION 8. Subsection (h), Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(h) If a person convicted of an offense under Article 67011-1, Revised Statutes, is punished under Subsection (c) of that article and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the *Texas Department of* [~~State Department of Highways and Public~~] Transportation, and the *community justice assistance division of the Texas Department of Criminal Justice* [~~Texas Adult Probation Commission~~] designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the offender's school and work schedule, the offender's health, the distance that the offender must travel to attend an educational program, and the fact that the offender resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). *The department may not reinstate a license suspended under this subsection unless the person whose license was suspended makes application to the department for reinstatement of the person's license and pays to the department a reinstatement fee of \$50. The department shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund.* This subsection does not apply to

a defendant if a jury recommends probation for the defendant and also recommends that the defendant's driver's license not be suspended.

SECTION 9. (a) This Act takes effect September 1, 1993.

(b) The changes in law made by Sections 1 and 2 of this Act apply only to probation that is ordered or an occupational driver's license that is approved on or after that date. Probation ordered or a license approved before the effective date of this Act is covered by the law in effect when the probation was ordered or the license was approved, and the former law is continued in effect for those purposes.

(c) The changes in law made by Sections 3, 4, 7, and 8 of this Act apply only to a driver's license that is reinstated on or after that date.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 2, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 25, 1993, by a viva-voce vote; passed the House, with amendments, on May 19, 1993, by a non-record vote.

Approved June 15, 1993.

Effective Sept. 1, 1993.