

CHAPTER 473

H.B. No. 655

AN ACT

relating to requiring certain probationers and persons operating motor vehicles under license restrictions to install in motor vehicles devices that discourage driving while intoxicated; and creating the offense of tampering with such a device.

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

SECTION 1. Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), 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, as amended (Article 6701h, Vernon's Texas Civil Statutes). *If the person's license has been suspended following a conviction under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, but only on conviction of a second or subsequent offense under this article or section, the order 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. The defendant shall obtain the device at his own cost. 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 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 2. Section 25(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the driver's license of such person, the court in which the conviction is had shall require the surrender to it of all drivers' licenses then held by the person convicted and the clerk of the court shall forward the licenses together with a record of the conviction. The court may enter an order restricting the operation of a motor vehicle for essential need, provided the person has filed a verified petition with the court setting forth in detail an essential need for operating a motor vehicle and has given notice of the hearing and a copy of the verified petition to the person provided under Subsection (d), Section 23A, of this Act, and provided the person gives proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). "Essential need" as used in this section has the meaning assigned to it by Subsection (b) of Section 23A of this Act. *If the person's license has been suspended following a conviction under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, but only on conviction of a second or subsequent offense under this article or section, the order may restrict the person to the operation of a motor vehicle equipped with a device, approved in accordance with Section 23A(f) of this Act, 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. The defendant shall obtain the device at his own cost. 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 state restrictions 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 person convicted may not be allowed to operate a motor vehicle more than four (4) hours in any consecutive twenty-four (24) hours, providing, on proper showing of necessity, the court may waive the four-hour restriction and allow the person to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any consecutive twenty-four (24) hours. The order shall be effective for the period for which the convicted person's license has been suspended. A certified copy of the order shall be given to the person convicted and shall be forwarded to the Department together with the person's licenses and the record of his conviction. Upon receipt of the order, the Department shall issue a license referring on its face to the restrictions and expiration date set out in the order. The person convicted may use the

order of the court as a restricted license for a period of fourteen (14) days following the date of the order.

SECTION 3. Section 6d, Article 42.12, Code of Criminal Procedure, as added by Chapter 427, Acts of the 69th Legislature, Regular Session, 1985, is renumbered and amended to read as follows:

Sec. 6f. (a) [6d.] 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* [~~Alcoholism~~], the Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on *Alcohol and Drug Abuse* [~~Alcoholism~~] shall publish the jointly approved rules and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. 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 which 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 such 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 Subdivision (2), Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

*(b) If a person convicted of an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, is placed on probation, but only on conviction of a second or subsequent offense under this article or section, 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. The court shall require the defendant to obtain the device at his own cost. 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 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.*

SECTION 4. Chapter 38, Penal Code, is amended by adding Section 38.15 to read as follows:

*Sec. 38.15. TAMPERING WITH DEVICES DESIGNED TO PREVENT DRIVING WHILE INTOXICATED. (a) In this section, "device" means a device approved by the Department of Public Safety under Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), that makes impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator.*

*(b) A person commits an offense if the person intentionally or knowingly, for the purpose of allowing a person who is subject to a condition of probation under Section 6f(b), Article 42.12, Code of Criminal Procedure, or who is subject to driver's license restrictions under Section 23A(f) or 25(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), to operate a motor vehicle whether or not the person is intoxicated:*

*(1) tampers with a device; or*

*(2) introduces or allows to be introduced into the device any substance other than the deep-lung air of the probationer or restricted operator.*

*(c) An offense under this section is a Class B misdemeanor.*

SECTION 5. (a) The change in law made by Sections 1-3 of this Act applies only to a defendant who commits an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) A person who commits an offense before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. 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 by the House on April 9, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 655 on May 27, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 25, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.