

The House Committee on Special Judiciary offers the following substitute to HB 1162:

A BILL TO BE ENTITLED
AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to provide for licensing of ignition interlock device provider centers; to provide a short title; to provide for definitions; to provide for certain requirements for operators of provider centers; to provide for a misdemeanor offense; to provide for rules and standards to be set by the commissioner; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by inserting a new chapter to read as follows:

"CHAPTER 12A

43-12A-1.

This chapter shall be known and may be cited as the 'Ignition Interlock Device Providers Act.'

43-12A-2.

As used in this chapter, the term:

(1) 'Department' means the Department of Motor Vehicle Safety acting directly or through its duly authorized officers and agents.

(2) 'Ignition interlock device' means a constant monitoring device certified by the commissioner of motor vehicle safety which prevents a motor vehicle from being started at any time without first determining the equivalent blood alcohol concentration of the operator through the taking of a deep lung breath sample. The system shall be calibrated so that the motor vehicle may not be started if the blood alcohol concentration of the

operator, as measured by the device, exceeds 0.02 grams or if the sample is not a sample of human breath.

(3) 'Provider center' means a facility established for the purpose of providing and installing ignition interlock devices when their use is required by or as a result of an order of a court.

43-12A-3.

No person shall operate a provider center or engage in the practice of providing, installing, or monitoring ignition interlock devices unless a license therefor has been secured from the department.

43-12A-4.

(a) Every person who desires to operate a provider center shall meet the following requirements:

(1) Maintain an established place of business in the state which is open to the public;

(2) Maintain a general liability policy of insurance, including products and completed operations, with not less than \$50,000.00 of combined single limits, with an insurance carrier authorized by the Commissioner of Insurance to write policies in the state. Evidence of such insurance coverage, in the form of a certificate from the insurance carrier, shall be filed with the department; and such certificate shall stipulate that the insurance shall not be canceled except upon ten days' prior written notice to the department;

(3) Provide a continuous surety bond in the principal sum of \$10,000.00 for the protection of the contractual rights of individuals required to maintain an ignition interlock device in such form as will meet with the approval of the department and written by a company authorized to do business in this state; provided, however, that the aggregate liability of the surety for all breaches of the condition of the bond in no event shall exceed the principal sum of \$20,000.00 per location, and a single bond at such rate for all locations separately licensed and operated by the same person may be provided in satisfaction of this paragraph. The surety on any such bond may cancel such bond on giving 30 days' notice thereof in writing to the department and shall be relieved of liability for any breach of any condition of the bond which occurs after the effective date of cancellation;

(4) Have the equipment and knowledge necessary to provide, install, and monitor ignition interlock devices as prescribed by the department; and

(5) Pay to the department an application fee of \$250.00.

(b) The department shall conduct a records check for any applicant for certification as a provider center operator. Each applicant shall submit two sets of classifiable fingerprints to the department. The department shall transmit both sets of fingerprints to the Georgia Crime Information Center, which shall submit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain one set of fingerprints and promptly conduct a search of state records. After receiving a report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall determine whether the applicant may be licensed. The applicant shall be responsible for any fee or other charge allowed by law or rule or regulation promulgated by the department, the Georgia Crime Information Center, or the Federal Bureau of Investigation for the submission, processing, and review of such fingerprints.

(c) No applicant shall be licensed or certified who does not meet the requirements set forth in Code Section 43-12A-6.

43-12A-5.

(a) No provider center shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name of a Georgia corporation registered with the Secretary of State.

(b) This Code section shall not prohibit the franchising or licensing of any part or all of the name of a provider center by the owner of the rights therein to another licensed provider center.

43-12A-6.

Every person who desires to operate a provider center or to engage in the practice of providing, installing, or monitoring ignition interlock devices:

(1) Shall not have knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(2) Shall not have been convicted of a second or subsequent violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained;

(3) Shall not have been convicted of any felony or of any crime involving theft, fraud, violence, or moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph, the term 'felony'

1 shall mean any offense which, if committed in this state, would be deemed a felony,
2 without regard to its designation elsewhere; and the term 'conviction' shall mean a finding
3 or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction
4 has been sought; and

5 (4) Shall not have been arrested, charged, and sentenced for the commission of any
6 felony, or any crime involving theft, fraud, violence, or moral turpitude, where:

7 (A) First offender treatment without adjudication of guilt pursuant to the charge was
8 granted; or

9 (B) An adjudication of guilt or sentence was otherwise withheld or not entered on the
10 charge, except with respect to a plea of nolo contendere.

11 The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating
12 to probation of first offenders, or other first offender treatment shall be conclusive
13 evidence of arrest and sentencing for such crime.

14 43-12A-7.

15 (a) The department shall issue a license certificate to each provider center operator when
16 such person has met the qualifications required under this chapter. Each provider center
17 shall be required to have a separate license for each location, but mobile units operating out
18 of a particular licensed location need not be separately licensed.

19 (b) All licenses issued to operators of provider centers pursuant to this chapter shall be
20 valid for four years from the date of issuance unless sooner canceled, suspended, or
21 revoked under Code Section 43-12A-8. All licenses shall be renewed through the
22 department as provided in subsection (d) of this Code section and shall be valid for four
23 years from the date of renewal.

24 (c) The license of each provider center operator may be renewed subject to the same
25 conditions as the original license and upon payment of a fee of \$100.00.

26 (d) All applications for renewal of a provider center operator's license shall be on a form
27 prescribed by the department and must be filed with the department not more than 60 days
28 nor fewer than ten days preceding the expiration date of the license to be renewed.

29 43-12A-8.

30 The department may cancel, suspend, revoke, or refuse to renew any provider center's
31 license upon good cause being shown and after ten days' notice to the license holder if:

32 (1) The department is satisfied that the licensee fails to meet the requirements to receive
33 or hold a license under this chapter;

(2) The licensee permits fraud or engages in fraudulent practices, with reference to either the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit;

(3) The licensee fails to comply with this chapter or any rule of the department made pursuant thereto;

(4) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to lead, or which would reasonably have the effect of leading, persons to believe that such licensee is in fact an employee or representative of the department;

(5) The licensee or any employee or agent of the licensee directly or indirectly solicits business by personal solicitation on public property or in any department, agency, or office of the state which involves the administration of any law relating to motor vehicles, whether by telephone, mail, or electronic communications. A violation of this paragraph shall be a misdemeanor. Advertising in any mass media, including, but not limited to, newspapers, radio, television, magazines, or telephone directories, by a provider center shall not be considered a violation of this paragraph; or

(6) The driver's license of the licensee has been canceled, suspended, or revoked.

43-12A-9.

(a) The commissioner of motor vehicle safety is authorized to prescribe, by rule, standards for the eligibility, conduct, and equipment required for a person to be licensed to operate a provider center and to adopt other reasonable rules and regulations to carry out this chapter. Notwithstanding the foregoing, violations that are minor in nature and committed by a person, firm, or corporation shall be punished only by a written reprimand unless the person, firm, or corporation fails to remedy the violation within 30 days, in which case an administrative fine, not to exceed \$250.00, may be issued.

(b) The commissioner of the department shall have the authority to assess, after a hearing, an administrative fine not to exceed \$1,000.00 per violation against any provider center, agent, or employee that fails to comply with any requirement imposed by or pursuant to this chapter.

(c) The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Any person, firm, or corporation who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this Code section shall be paid into the state treasury. The commissioner may file in the superior court:

1 (1) Wherein the person under order resides;

2 (2) If such person is a corporation, in the county wherein the corporation maintains its
3 principal place of business; or

4 (3) In the county wherein the violation occurred

5 a certified copy of a final order of the commissioner, whether unappealed from or affirmed
6 upon appeal, whereupon the court shall render judgment in accordance therewith and notify
7 the parties. Such judgment shall have the same effect, and proceedings in relation thereto
8 shall thereafter be the same as though the judgment had been rendered in an action duly
9 heard and determined by the court. The penalty prescribed in this Code section shall be
10 concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative
11 rights, remedies, forfeitures, or penalties provided, allowed, or available to the
12 commissioner with respect to any violation of this chapter or any order, rules, or
13 regulations promulgated pursuant to this chapter."

14 **SECTION 2.**

15 This Act shall become effective October 1, 2004.

16 **SECTION 3.**

17 All laws and parts of laws in conflict with this Act are repealed.