

House Bill 1162 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 23rd, Parham of the 94th, and Reece of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to provide for licensing of ignition interlock device provider centers; to
3 provide a short title; to provide for definitions; to provide for certain requirements for
4 operators of provider centers; to provide for a misdemeanor offense; to provide for rules and
5 standards to be set by the commissioner; to amend Title 44 of the Official Code of Georgia
6 Annotated, relating to property, so as to provide for qualifications for towing and storage
7 firms to serve on a rotation list providing wrecker services for this state or any political
8 subdivision thereof; to provide that the commissioner of the Department of Motor Vehicle
9 Safety may establish rules and regulations for eligibility to serve on rotation lists; to provide
10 for inspections and fees; to provide that the governing authority of a county may license
11 towing and storage firms in the county; to provide for related matters; to provide effective
12 dates; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

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

17 "CHAPTER 12A

18 43-12A-1.

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

21 43-12A-2.

22 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

1 giving 30 days' notice thereof in writing to the department and shall be relieved of
2 liability for any breach of any condition of the bond which occurs after the effective date
3 of cancellation;

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

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

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

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

20 43-12A-5.

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

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

27 (c) A judicial officer, probation officer, law enforcement officer, or other officer or
28 employee of a court or any person employed by a private company which has contracted
29 to provide private probation services for misdemeanor cases, or any employee of the
30 Department of Motor Vehicle Safety or the Department of Human Resources, and any
31 immediate family member thereof shall be prohibited from owning, operating, being
32 employed by or acting as an agent or servant for, or having a financial interest in any
33 provider center.

1 43-12A-6.

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

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

9 (2) Shall not have been convicted of a second or subsequent violation of Code Section
10 40-6-391 within five years, as measured from the dates of previous arrests for which
11 convictions were obtained to the date of the current arrest for which a conviction is
12 obtained;

13 (3) Shall not have been convicted of any felony or of any crime involving theft, fraud,
14 violence, or moral turpitude in the courts of this state or any other state, territory, or
15 country or in the courts of the United States. As used in this paragraph, the term 'felony'
16 shall mean any offense which, if committed in this state, would be deemed a felony,
17 without regard to its designation elsewhere; and the term 'conviction' shall mean a finding
18 or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction
19 has been sought; and

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

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

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

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

29 43-12A-7.

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

34 (b) All licenses issued to operators of provider centers pursuant to this chapter shall be
35 valid for four years from the date of issuance unless sooner canceled, suspended, or
36 revoked under Code Section 43-12A-8. All licenses shall be renewed through the

1 department as provided in subsection (d) of this Code section and shall be valid for four
2 years from the date of renewal.

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

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

8 43-12A-8.

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

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

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

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

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

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

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

30 43-12A-9.

31 (a) The commissioner of motor vehicle safety is authorized to prescribe, by rule, standards
32 for the eligibility, conduct, and equipment required for a person to be licensed to operate
33 a provider center and to adopt other reasonable rules and regulations to carry out this
34 chapter. Notwithstanding the foregoing, violations that are minor in nature and committed
35 by a person, firm, or corporation shall be punished only by a written reprimand unless the

1 person, firm, or corporation fails to remedy the violation within 30 days, in which case an
2 administrative fine, not to exceed \$250.00, may be issued.

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

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

14 (1) Wherein the person under order resides;

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

17 (3) In the county wherein the violation occurred

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

27 **SECTION 2.**

28 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
29 Section 44-1-13, relating to removal of improperly parked cars or trespassing personal
30 property, by striking subsections (a) and (d) and inserting in lieu thereof new subsections (a),
31 (d), (d.1), and (d.2) to read as follows:

32 "(a) Any person or his or her authorized agent entitled to the possession of any parcel or
33 space of private real property, hereinafter referred to as 'private property,' shall have the
34 right to remove or cause to be removed from the property any vehicle or trespassing
35 personal property thereon which is not authorized to be at the place where it is found and
36 to store or cause to be stored such vehicle or trespassing personal property, provided that

1 there shall have been conspicuously posted on the private real property notice that any
2 vehicle or trespassing personal property which is not authorized to be at the place where
3 it is found may be removed at the expense of the owner of the vehicle or trespassing
4 personal property. Such notice shall also include information as to the location where the
5 vehicle or personal property can be recovered, the cost of said recovery, and information
6 as to the form of payment; provided, however, that the owner of private residential property
7 containing not more than four residential units shall not be required to comply with the
8 posting requirements of this subsection. Only towing and storage firms issued permits or
9 licenses by the ~~local~~ municipal or county governing authority of the jurisdiction in which
10 they operate or by the Department of Motor Vehicle Safety, and having a secure
11 impoundment facility, shall be permitted to remove trespassing ~~property~~ vehicles and
12 trespassing personal property at the request of the owner or authorized agent of the private
13 property. The licensing authority of a county governing authority shall be limited to
14 towing and storage firms located in the county."

15 "(d) The municipal or county governing authority of ~~each municipality~~ having towing and
16 storage firms operating within its territorial boundaries may issue a license or permit to
17 engage in private trespass towing pursuant to this Code section to any firm meeting the
18 qualifications imposed by said governing authority. The licensing authority of a county
19 governing authority shall be limited to towing and storage firms located in the county. The
20 fee for the license or permit shall be set by such governing authority. The maximum
21 reasonable costs of removal, relocation, and storage pursuant to the provisions of this Code
22 section shall be compensatory, as such term is used in the public utility rate-making
23 procedures, and shall be established annually by the governing authority of each
24 municipality or county having towing and storage firms operating within its territorial
25 boundaries; provided, however, that no storage fees shall be charged for the first 24 hour
26 period which begins at the time the vehicle is removed from the property, and no such fees
27 shall be allowed for the removal and storage of vehicles removed by towing and storage
28 firms found to be in violation of this Code section.

29 (d.1) Towing and storage firms operating in multiple jurisdictions shall be subject to
30 regulation by the Department of Motor Vehicle Safety. Any towing and storage firm that
31 is issued a permit by the Department of Motor Vehicle Safety shall not be required to
32 obtain any additional trespass towing licenses or permits from the municipality, county, or
33 consolidated government.

34 (d.2) The Department of Motor Vehicle Safety may establish rules and regulations
35 regarding the disposition of lawfully towed vehicles, vehicle contents, and other personal
36 property held with the vehicle."

SECTION 3.

Said title is further amended by inserting a new Code Section 44-1-13.1 to read as follows:
"44-1-13.1.

(a) Any towing and storage firm which serves on a rotation list providing wrecker services for this state or any political subdivision thereof shall, upon funding, be certified by the department. The commissioner may establish by rule and regulation the criteria for a towing and storage firm to obtain a permit of eligibility for the rotation list. A towing and storage firm must maintain the minimum amount of liability insurance prescribed by the department to be eligible to serve on a rotation list providing wrecker services for this state or any political subdivision thereof.

(b) A towing and storage firm that applies for inclusion on a rotation list providing wrecker services for this state or any political subdivision thereof shall comply with the relevant safety laws, regulations, and policies of the department. To ensure compliance, prior to approval to serve on a rotation list, each towing and storage firm within the state and each vehicle utilized by such towing and storage firm must successfully pass an annual inspection by a department law enforcement officer who is certified to perform such inspection. The department shall require safety and mechanical inspections at least on an annual basis for each vehicle utilized by such towing and storage firm. The commissioner shall provide, by rule and regulation, for the scope of such inspections, the qualifications of persons who may conduct facility inspections, and the manner by which the results of such inspections shall be reported to the department. Such inspections shall be performed annually and shall satisfy the requirements for this state or any political subdivision thereof regarding inspection and certification of vehicles utilized as towing vehicles by such towing and storage firms.

(c) The commissioner may establish such fees as deemed appropriate for the certification and inspection of the facilities and vehicles as provided in subsection (b) of this Code section."

SECTION 4.

Sections 1, 2, 4, and 5 of this Act shall become effective on October 1, 2004. Section 3 of this Act shall become effective on January 1, 2005.

SECTION 5.

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