

House Bill 9

By: Representatives Levitas of the 82nd, Lunsford of the 110th, Ramsey of the 72nd, Wilkinson of the 52nd, Jacobs of the 80th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 40-5-58 of the Official Code of Georgia Annotated, relating to
2 habitual violators and probationary licenses, so as to change certain provisions relating to
3 notification of habitual violator status; to provide for procedure; to provide for related
4 matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Code Section 40-5-58 of the Official Code of Georgia Annotated, relating to habitual
8 violators and probationary licenses, is amended by revising subsections (b), (c), and (e) as
9 follows:

10 ~~“(b)(1) When the records of the department disclose that any person has been arrested~~
11 ~~for and convicted of a violation of Chapter 6 of this title, or of a valid local ordinance~~
12 ~~adopted pursuant thereto, of an offense occurring on or after January 1, 1976, which~~
13 ~~record of arrest and conviction, when taken with and added to previous arrests and~~
14 ~~convictions of such person as contained in the files of the department, reveals that~~
15 ~~qualifies such person is to be classified as a habitual violator as defined in subsection (a)~~
16 ~~of this Code section, then the driver's license of such person shall be revoked by operation~~
17 ~~of law immediately upon his or her conviction for the offense that qualifies him or her to~~
18 ~~be classified as a habitual violator. In the event that at the time of being classified as a~~
19 ~~habitual violator, such person has been issued a driver's license, such license shall be~~
20 ~~surrendered immediately to the court or to the department.~~

21 (2) In the event that notice has not been provided to such person pursuant to paragraph
22 (5) of this subsection, the department shall forthwith notify such person that upon the date
23 of notification such person has been declared by the department to be classified as a
24 habitual violator; and that henceforth it shall be unlawful for such habitual violator to
25 operate a motor vehicle in this state unless otherwise provided in this Code section.
26 Notice pursuant to this paragraph shall be given by certified mail or statutory overnight

27 ~~delivery, with return receipt requested; first-class mail~~ or, in lieu thereof, ~~notice may be~~
28 ~~given~~ by personal service upon such person. In the event that at the time of ~~determination~~
29 ~~the person is deemed by operation of law to be a habitual violator, such person~~ had been
30 issued a driver's license, such license shall be revoked by ~~such notice and operation of~~
31 ~~law and after such notice is given pursuant to this paragraph and paragraph (3) of this~~
32 ~~subsection, such license~~ shall be surrendered to the department within ten days of ~~such~~
33 ~~person having received~~ notification of ~~such determination~~ if the notice is served by
34 ~~personal service or within 13 days of the date of mailing by the department if the notice~~
35 ~~is served by first-class mail. Notwithstanding the notice required pursuant to this~~
36 ~~paragraph, it shall be no defense to a violation of this Code section that a person has not~~
37 ~~received actual notice that his or her license has been revoked.~~

38 (3) For the purposes of this chapter, notice given by ~~certified mail or statutory overnight~~
39 ~~delivery with return receipt requested first-class mail~~ mailed to the person's last known
40 address shall be prima-facie evidence that such person received the required notice;
41 ~~provided, however, that when such person has complied with the provisions of Code~~
42 ~~Section 40-5-33 within 60 days preceding the mailing of the notice, the department shall~~
43 ~~reissue the notice to the corrected address.~~

44 (4) ~~The department shall not be required to file or prove notice of mailing made pursuant~~
45 ~~to this subsection but shall note in the driving history of such person the date on which~~
46 ~~the notice was mailed. Service of the notice shall be considered complete three days~~
47 ~~following the date of mailing, and the records of the department shall be presumed to be~~
48 ~~correct as to the date of mailing. A person challenging the date of the mailing of the~~
49 ~~notice shall be required to produce prima-facie evidence that the notice was not mailed;~~
50 ~~provided, however, that no new or additional burden or duty shall be imposed upon the~~
51 ~~department regarding such challenge, including, without limitation, a burden of~~
52 ~~production of records not otherwise provided by law.~~

53 (5) In addition to the ~~procedure~~ ~~procedures~~ set forth in this subsection, the sentencing
54 judge or prosecutor, in a conviction which conviction classifies the defendant as a
55 habitual violator, may, at the time of sentencing, declare such defendant to be a habitual
56 violator. The judge or prosecutor shall, when declaring a defendant to be a habitual
57 violator, then give personal notice to such defendant on forms provided by the department
58 that henceforth it shall be unlawful for such habitual violator to operate a motor vehicle
59 in this state unless otherwise provided in this Code section. The judge or prosecutor, as
60 ~~the case may be applicable~~, shall, within three days, forward to the department the order
61 declaring that the defendant is a habitual violator, the notice of service, ~~together~~ with the
62 defendant's driver's license or a sworn affidavit of the defendant declaring that the driver's
63 license has been lost, and the department's copy of the uniform citation or the official

64 notice of conviction attached thereto. In the event that the defendant is notified of his or
65 her habitual violator status in accordance with this paragraph, the department shall not
66 be required to provide notice pursuant to paragraph (2) of this subsection.

67 (c)(1) Except as provided in paragraph ~~(2)~~ (3) of this subsection or in subsection (e) of
68 this Code section, and after notice has been issued pursuant to subsection (b) of this Code
69 section, it shall be unlawful for any person to operate any motor vehicle in this state after
70 such person ~~has received notice that his or her driver's license has been revoked as~~
71 ~~provided in subsection (b) of this Code section~~, qualifies to be classified as a habitual
72 violator if such person has not thereafter obtained a valid driver's license. Any person
73 ~~declared qualified~~ to be classified as a habitual violator and whose driver's license has
74 been revoked under this Code section and who is thereafter convicted of operating a
75 motor vehicle before the department has issued such person a driver's license or before
76 the expiration of five years from such revocation, whichever occurs first, shall be
77 punished by a fine of not less than \$750.00 or by imprisonment ~~in the penitentiary~~ for not
78 less than one nor more than five years, or both. Any person ~~declared qualified~~ to be
79 classified as a habitual violator who has been notified of such status in accordance with
80 subsection (b) of this Code section and whose driver's license has been revoked and who
81 is convicted of operating a motor vehicle after the expiration of five years from such
82 revocation but before the department has issued such person a driver's license shall be
83 guilty of a misdemeanor.

84 (2) Except as provided in paragraph (3) of this subsection or in subsection (e) of this
85 Code section, it shall be unlawful for any person to operate any motor vehicle in this state
86 after such person qualifies to be classified as a habitual violator if such person has not
87 thereafter obtained a valid driver's license. Any person qualified to be classified as a
88 habitual violator and whose driver's license has been revoked under this Code section and
89 who is thereafter convicted of operating a motor vehicle before the department has issued
90 such person a driver's license or before the expiration of five years from such revocation,
91 whichever occurs first, shall be guilty of a misdemeanor.

92 (3) Any person declared to be a habitual violator as a result of three or more convictions
93 of violations of Code Section 40-6-391 within a five-year period of time, as measured
94 from the dates of previous arrests for which convictions were obtained to the date of the
95 most recent arrest for which a conviction was obtained, and who is thereafter convicted
96 of operating a motor vehicle during such period of revocation, prior to the issuance of a
97 probationary license under subsection (e) of this Code section or before the expiration of
98 five years, shall be guilty of the felony of habitual impaired driving and shall be punished
99 by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less
100 than one nor more than five years, or both."

101 "(e)(1) Notwithstanding any contrary provisions of this Code section ~~or any other Code~~
 102 ~~section of this chapter~~, any person who has been declared a habitual violator and who has
 103 had his or her driver's license revoked under subsection (b) of this Code section for a
 104 period of five years and where two years have expired since the date on which such
 105 person's license was surrendered or ~~an~~ a lost license affidavit was accepted, as provided
 106 in subsection (e) of Code Section 40-5-61, ~~such person~~ may be issued a probationary
 107 driver's license for a period of time not to exceed three years upon compliance with the
 108 following conditions:

109 (A) Such person has not been convicted; of or pleaded nolo contendere to a charge; of
 110 violating any provision of this chapter, Chapter 6 of this title, or any local ordinance
 111 relating to the movement of vehicles for a period of two years immediately preceding
 112 the application for a probationary driver's license;

113 (B) Such person has not been convicted; of or pleaded nolo contendere to a charge; of
 114 a violation of any provision of this chapter which resulted in the death or injury of any
 115 individual;

116 (C) Such person has successfully completed, prior to the issuance of the probationary
 117 driver's license; ~~a~~:

118 (i) A defensive driving course at a driver improvement clinic approved by the
 119 department or a DUI Alcohol or Drug Use Risk Reduction Program as designated by
 120 the department; and

121 (ii) A clinical evaluation and, if recommended as a result of such evaluation, enrolled
 122 in a substance abuse program;

123 (D) Such person has not been convicted; of or pleaded nolo contendere to a charge; of
 124 violating any provision of Title 3, relating to alcoholic beverages, or of violating any
 125 provision of Chapter 13 of Title 16, relating to controlled substances;

126 (E) Such person shall submit a sworn affidavit that such person does not excessively
 127 use alcoholic beverages and does not illegally use controlled substances or marijuana.

128 It shall be a misdemeanor to falsely swear on such affidavit and, upon conviction, the
 129 probationary license shall be revoked: immediately by operation of law, and no ~~No~~
 130 probationary license shall be issued during the remainder of the revocation period; ~~and~~;
 131 provided, however, that no driver's license shall be issued for the remainder of the
 132 original revocation period or for a period of two years from the date of conviction under
 133 this subparagraph, whichever period is longer;

134 (F) Such person submits proof of financial responsibility as provided in Chapter 9 of
 135 this title; and

136 (G) Refusal to issue a probationary driver's license would cause extreme hardship to
 137 the applicant. For the purposes of this subsection, the term 'extreme hardship' means

138 that the applicant cannot reasonably obtain other transportation, and, therefore, the
139 applicant would be prohibited from:

140 (i) Going to his or her place of employment or performing the normal duties of his
141 or her occupation;

142 (ii) Receiving scheduled medical care or obtaining prescription drugs for which the
143 applicant has a valid prescription;

144 (iii) Attending a college or school at which he or she is regularly enrolled as a
145 student;

146 (iv) Attending regularly scheduled sessions or meetings of support organizations for
147 persons who have addiction or abuse problems related to alcohol or other drugs,
148 which organizations are recognized by the commissioner; or

149 (v) Attending, under court order, any driver education or improvement school or
150 alcohol or drug treatment program or course approved by the court which entered the
151 judgment of conviction resulting in revocation of his or her driver's license or by the
152 commissioner.

153 (2) Application for a probationary driver's license shall be made upon such forms as the
154 commissioner may prescribe. Such forms shall require such information as is necessary
155 for the department to determine the need for such license. All applications shall be
156 signed by the applicant before a person authorized to administer oaths.

157 (3) Upon compliance with the above conditions and the payment of a fee of \$210.00, or
158 \$200.00 when processed by mail, such person may be issued a probationary driver's
159 license by the department. Upon payment of a fee in an amount the same as that provided
160 by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be
161 issued a replacement for a lost or destroyed probationary driver's license issued to him
162 or her.

163 (4) A probationary driver's license shall be endorsed with such conditions as the
164 commissioner deems necessary to ensure that such license ~~will~~ shall be used by the
165 licensee only to avoid the conditions of extreme hardship. Such conditions may include
166 the following restrictions:

167 (A) Specific places between which the licensee may be allowed to operate a motor
168 vehicle;

169 (B) Routes to be followed by the licensee;

170 (C) Times of travel;

171 (D) The specific vehicles which the licensee may operate; and

172 (E) Such other restrictions as the department may require.

173 (5) A probationary driver's license issued pursuant to this Code section shall become
174 invalid upon the expiration of the period of the suspension or revocation of the driver's
175 license of such person.

176 (6)(A)(i) Any probationary licensee violating the provisions of paragraph (4) of this
177 subsection or operating a vehicle in violation of any conditions specified in this
178 subsection shall be guilty of a misdemeanor.

179 (ii) Except as provided in division (iii) of this subparagraph, any probationary
180 licensee violating any state law or local ordinance involving an offense listed in Code
181 Section 40-5-54 or Code Section 40-6-391 shall be guilty of a felony and shall be
182 punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary
183 for not less than one nor more than five years, or both.

184 (iii) Any probationary licensee violating any state law or local ordinance involving
185 a felony offense listed in Code Section 40-5-54 shall be guilty of a felony and shall
186 be punished as is provided for conviction of such felony.

187 (B) Any probationary licensee who is convicted of violating; or who pleads nolo
188 contendere to a charge of violating; any state law or local ordinance involving an
189 offense listed in Code Section 40-5-54 or Code Section 40-6-391 or any probationary
190 licensee who is convicted of violating; or who pleads nolo contendere to a charge of
191 violating; the conditions endorsed on his or her license; shall have his or her license
192 revoked by the department. Any court in which such conviction is had or in which ~~said~~
193 such nolo contendere plea is accepted shall require ~~the~~ such licensee to surrender ~~the~~
194 his or her license to the court. The court shall forward ~~the~~ such license to the
195 department within ten days after the conviction or acceptance of ~~the~~ such plea, with a
196 copy of the conviction. Any person whose probationary license is revoked for
197 committing an offense listed in Code Section 40-5-54 or Code Section 40-6-391 shall
198 not be eligible to apply for a regular driver's license until the expiration of the original
199 five-year revocation period during which the probationary license was originally issued
200 or for a period of two years following the conviction, whichever is greater.

201 (C) If the commissioner has reason to believe or makes a preliminary finding that the
202 requirements of the public safety or welfare outweigh the individual needs of a person
203 for a probationary license, the commissioner, in his or her discretion, after affording the
204 person notice and an opportunity to be heard, may refuse to issue the license under this
205 subsection.

206 (D) Any person whose probationary driver's license has been revoked shall not be
207 eligible to apply for a subsequent probationary license under this Code section for a
208 period of five years.

209 (7) Any person whose probationary license has been revoked or who has been refused
210 a probationary license by the department may make a request in writing for a hearing to
211 be provided by the department. Such hearing shall be provided by the department within
212 30 days after the receipt of such request and shall follow the procedures required by
213 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Appeal from such
214 hearing shall be in accordance with Chapter 13 of Title 50."

215 **SECTION 2.**

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