

House Bill 215

By: Representatives Battles of the 15th, Maddox of the 172nd, Rynders of the 152nd, Shaw of the 176th, and Hanner of the 148th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 5 of Title 40, relating to commercial drivers' licenses, so as
2 to prohibit persons convicted of a criminal offense against a victim who is a minor from
3 driving commercial motor vehicles designed to transport 16 or more persons; to provide for
4 related matters; to provide for an effective date; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 7 of Chapter 5 of Title 40, relating to commercial drivers' licenses, is amended by
9 adding a new Code section to read as follows:

10 "40-5-145.1.

11 (a) As used in this Code section, the term:

12 (1) 'Commercial driver's license' means a license for driving a commercial motor vehicle
13 that is designed to transport 16 or more passengers, including the driver.

14 (2) 'Commercial motor vehicle' means a motor vehicle that is designed to transport 16
15 or more passengers, including the driver, and that requires the driver to have a
16 commercial driver's license.

17 (3) 'Conviction' includes a final judgment of conviction entered upon a verdict or finding
18 of guilty of a crime, a plea of guilty, or a plea of nolo contendere. A defendant who is
19 discharged without adjudication of guilt and who is not considered to have a criminal
20 conviction pursuant to Article 3 of Chapter 8 of Title 42, relating to first offenders, shall
21 be subject to the requirements of this Code section for the period of time prior to the
22 defendant's discharge after completion of his or her sentence or upon the defendant being
23 adjudicated guilty. Unless otherwise required by federal law, a defendant who is
24 discharged without adjudication of guilt and who is not considered to have a criminal
25 conviction pursuant to Article 3 of Chapter 8 of Title 42, relating to first offenders, shall
26 not be subject to the requirements of this Code section upon the defendant's discharge.

27 (4)(A) 'Criminal offense against a victim who is a minor,' with respect to convictions
 28 occurring on or before June 30, 2001, means any criminal offense under Title 16 or any
 29 offense under federal law or the laws of another state or territory of the United States
 30 which consists of:

- 31 (i) Kidnapping of a minor, except by a parent;
- 32 (ii) False imprisonment of a minor, except by a parent;
- 33 (iii) Criminal sexual conduct toward a minor;
- 34 (iv) Solicitation of a minor to engage in sexual conduct;
- 35 (v) Use of a minor in a sexual performance;
- 36 (vi) Solicitation of a minor to practice prostitution; or
- 37 (vii) Any conviction resulting from an underlying sexual offense against a victim
 38 who is a minor.

39 (B) 'Criminal offense against a victim who is a minor,' with respect to convictions
 40 occurring after June 30, 2001, means any criminal offense under Title 16 or any offense
 41 under federal law or the laws of another state or territory of the United States which
 42 consists of:

- 43 (i) Kidnapping of a minor, except by a parent;
- 44 (ii) False imprisonment of a minor, except by a parent;
- 45 (iii) Criminal sexual conduct toward a minor;
- 46 (iv) Solicitation of a minor to engage in sexual conduct;
- 47 (v) Use of a minor in a sexual performance;
- 48 (vi) Solicitation of a minor to practice prostitution;
- 49 (vii) Use of a minor to engage in any sexually explicit conduct to produce any visual
 50 medium depicting such conduct;
- 51 (viii) Creating, publishing, selling, distributing, or possessing any material depicting
 52 a minor or a portion of a minor's body engaged in sexually explicit conduct;
- 53 (ix) Transmitting, making, selling, buying, or disseminating by means of a computer
 54 any descriptive or identifying information regarding a child for the purpose of
 55 offering or soliciting sexual conduct of or with a child or the visual depicting of such
 56 conduct;
- 57 (x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors
 58 engaged in sexually explicit conduct; or
- 59 (xi) Any conduct which, by its nature, is a sexual offense against a victim who is a
 60 minor.

61 (C) For purposes of this paragraph, a conviction for a misdemeanor shall not be
 62 considered a criminal offense against a victim who is a minor, and conduct which is

63 adjudicated in juvenile court shall not be considered a criminal offense against a victim
64 who is a minor.

65 (b)(1) Effective July 1, 2011, except as otherwise provided in this Code section, any
66 person convicted of a criminal offense against a victim who is a minor is prohibited from
67 driving a commercial motor vehicle.

68 (2) If a person who has been convicted of a criminal offense against a victim who is a
69 minor has a valid commercial driver's license that was issued before July 1, 2011, then
70 the person is not disqualified under this Code section until that license expires, provided
71 the person does not commit a subsequent criminal offense against a victim who is a
72 minor.

73 (c) The department shall revoke the commercial driver's license of any person convicted
74 of any criminal offense against a victim who is a minor on or after July 1, 2011.

75 (d)(1) Effective July 1, 2011, the department shall not issue or renew a commercial
76 driver's license to any person who has been convicted of any criminal offense against a
77 victim who is a minor.

78 (2) The department shall not issue a commercial driver's license to an applicant until the
79 department has searched both the state sexual offender registry and the National Sex
80 Offender Registry to determine if the person is currently registered due to a conviction
81 of a criminal offense against a victim who is a minor.

82 (3) If the department finds that the person is currently registered due to a conviction of
83 a criminal offense against a victim who is a minor either in this state or another state, the
84 department shall not issue a commercial driver's license to the person.

85 (4) If the department is unable to access either the state sexual offender registry or all
86 information of other states contained in the National Sex Offender Registry, but the
87 person is otherwise qualified to obtain a commercial driver's license, then the department
88 shall issue the commercial driver's license, but shall first require the person to sign an
89 affidavit stating that the person does not appear on either the state sexual offender registry
90 or the National Sex Offender Registry due to a conviction of a criminal offense against
91 a victim who is a minor. The department shall search the state sexual offender registry
92 and the National Sex Offender Registry for the person within a reasonable time after
93 access to the state sexual offender registry or the National Sex Offender Registry is
94 restored. If the person does appear in either registry due to a conviction of a criminal
95 offense against a victim who is a minor, the person is in violation of this Code section and
96 the department shall immediately cancel the commercial driver's license and shall
97 promptly notify the district attorney of the county where the person resides of the offense.

98 (d) Any person denied a commercial driver's license pursuant to this Code section shall
99 have a right to file an appeal to the department within 30 days thereafter for a hearing in

100 the matter. The department shall set the matter for a hearing within 30 days in order to take
101 testimony and examine the facts of the case and determine whether the petitioner is entitled
102 to a commercial driver's license.

103 (e)(1) Any person who makes a false affidavit, or who knowingly swears or affirms
104 falsely, to any matter or thing required by this Code section to be affirmed to or sworn
105 is guilty of a misdemeanor, punishable by imprisonment for not more than one year and
106 a fine not to exceed \$1,000.00, or both.

107 (2) Any person who drives a commercial motor vehicle and who does not have a valid
108 commercial driver's license because the person was convicted of a criminal offense
109 against a person who is a minor is guilty of a felony, punishable by imprisonment for not
110 more than two years and a fine not to exceed \$5,000.00, or both.

111 (e) The provisions of this Code section shall be in addition to the provisions of Code
112 Sections 40-5-144 and 40-5-145."

113 **SECTION 2.**

114 This Act shall become effective on July 1, 2011.

115 **SECTION 3.**

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