

House Bill 1137

By: Representatives Rice of the 51st and Powell of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated,
2 relating to restoration of licenses to persons completing defensive driving course or alcohol
3 or drug program, so as to require certified driver improvement programs for purposes of
4 completing certain probation requirements; to modify provisions relating to certified DUI
5 Alcohol or Drug Use Risk Reduction Programs; to amend Code Section 40-6-391 of the
6 Official Code of Georgia Annotated, relating to driving under the influence of alcohol, drugs,
7 or other intoxicating substances, penalties, publication of notice of conviction for persons
8 convicted for a second time, and endangering a child, so as to modify provisions relating to
9 a clinical evaluation; to amend Chapter 13 of Title 43 of the Official Code of Georgia
10 Annotated, relating to instructors in driver training and operators of driver training schools,
11 so as to modify provisions relating to definitions and exceptions to the operation of the
12 chapter; to provide for related matters; to provide an effective date; to repeal conflicting
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 4 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to
17 restoration of licenses to persons completing defensive driving course or alcohol or drug
18 program, is amended by revising Code Section 40-5-81, relating to optional driver
19 improvement programs, as follows:

20 "40-5-81.

21 (a) Any driver improvement program at which attendance is required by court order shall
22 conform to the requirements of this article. When a defensive driving course is required
23 by a court having jurisdiction over misdemeanor traffic law offenses or by any prosecuting
24 attorney thereof, such course shall be certified, licensed, and approved by the department
25 under the provisions of Code Sections 40-5-82 and 40-5-83. Participation in an uncertified

26 or unlicensed driving improvement program or course shall not be required by any judge
 27 or prosecutor as:

- 28 (1) A condition of a sentence of probation for a violation of any traffic related offense;
 29 or
 30 (2) A condition for nonprocessing or the dismissal of a prosecution for any traffic related
 31 offense.

32 Certificates of completion from unlicensed defensive driving courses shall not be
 33 recognized for any purposes under this article.

34 (b) Whenever any person is authorized or required to attend a driver improvement clinic
 35 or DUI Alcohol or Drug Use Risk Reduction Program as a condition of any sentence
 36 imposed under this title or any ordinance enacted pursuant to this title or as a condition of
 37 the retention or restoration of the person's driving privilege, such person, in complying with
 38 such condition, shall be authorized to attend any certified driver improvement clinic or
 39 certified DUI Alcohol or Drug Use Risk Reduction Program or to be clinically evaluated
 40 by a certified clinical evaluator under this article; and no judicial officer, probation officer,
 41 law enforcement officer, or other officer or employee of a court or person who owns,
 42 operates, or is employed by a private company which has contracted to provide private
 43 probation services for misdemeanor cases shall specify, directly or indirectly, a particular
 44 driver improvement clinic, ~~or~~ DUI Alcohol or Drug Use Risk Reduction Program, or
 45 clinical evaluator which the person may or shall attend. This Code section shall not
 46 prohibit any judicial officer, probation officer, law enforcement officer, or other officer or
 47 employee of a court or owner, operator, or employee of a private company which has
 48 contracted to provide probation services for misdemeanor offenders from furnishing any
 49 person, upon request, the names of certified driver improvement clinics, ~~or~~ DUI Alcohol
 50 or Drug Use Risk Reduction Programs, or clinical evaluators.

51 (c) It shall be unlawful for the owner, agent, servant, or employee of any driver
 52 improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program licensed by the
 53 department or any licensed clinical evaluator or any person holding himself or herself out
 54 as such a clinic, program, or evaluator to directly or indirectly solicit business by personal
 55 solicitation on public property, by phone, or by mail. A violation of this subsection shall
 56 be a misdemeanor. Advertising in any mass media, including, but not limited to,
 57 newspapers, radio, television, magazines, or telephone directories by a driver improvement
 58 clinic or DUI Alcohol or Drug Use Risk Reduction Program or clinical evaluator shall not
 59 be considered a violation of this subsection."

SECTION 2.

60
61 Said article is further amended by revising subsections (a) and (e) of Code Section 40-5-83,
62 relating to establishment and approval of driver improvement clinics, as follows:

63 "(a)(1) The commissioner shall establish criteria for the approval of driver improvement
64 clinics. To be approved, a clinic shall provide and operate a defensive driving course.
65 Clinics shall be composed of uniform education and training programs consisting of six
66 hours of instruction designed for the rehabilitation of problem drivers. The commissioner
67 shall establish standards and requirements concerning the contents of courses,
68 qualifications of instructors, attendance requirements for students, and examinations.
69 Approved clinics shall charge a fee of ~~\$75.00~~ \$95.00 for a defensive driving course,
70 except that such clinics may charge different fees of their own choosing if the person is
71 not enrolling in such course pursuant to court order or department requirement. No clinic
72 shall be approved unless such clinic agrees in writing to allow the examination and audit
73 of the books, records, and financial statements of such clinic. Clinics may be operated
74 by any individual, partnership, or corporation. Nothing in this paragraph shall be
75 construed to affect in any way driving programs established for purposes of insurance
76 premium reductions under the provisions of Code Section 33-9-42.

77 (1.1)(A) No driver improvement clinic shall be permitted to use, adopt, or conduct any
78 business under any name that is like or deceptively similar to any name used by any
79 other driver improvement clinic, Georgia company, or Georgia corporation registered
80 with the Secretary of State. This subparagraph shall not prohibit the franchising or
81 licensing of any part or all of the name of a driver improvement clinic by the owner or
82 the rights thereof to another licensed driver improvement clinic.

83 (B) This paragraph shall not prohibit the franchising or licensing of any part or all of
84 the name of a clinic by the owner of the rights therein to another licensed driver
85 improvement clinic.

86 (2) The commissioner may issue a special license to the instructor of any ~~commercial~~
87 licensed driver training school authorizing such instructor to teach a defensive driving
88 course, ~~advanced defensive driving course, or professional defensive driving course~~ of
89 a driver improvement clinic provided pursuant to this Code section if such instructor is
90 qualified to teach a teen-age driver education course which consists of a minimum of 30
91 hours of classroom and six hours of behind-the-wheel training and such instructor
92 certifies to the commissioner that he or she has provided at least ~~250~~ 500 hours of
93 behind-the-wheel training in a teen-age driver education course."

94 "(e)(1) The department is designated as the agency responsible for establishing criteria
95 for the approval of DUI Alcohol or Drug Use Risk Reduction Programs. An applicant
96 shall meet the certification criteria promulgated by the department through its standards

97 and shall provide the following services: ~~(1)~~ (A) the risk assessment component and ~~(2)~~
 98 (B) the intervention component. A licensed DUI Alcohol or Drug Use Risk Reduction
 99 Program shall require that the risk assessment component be conducted prior to the
 100 intervention component of the program. A clinical evaluation component, if any, shall
 101 be conducted only following the completion of the risk assessment and intervention
 102 components of such program. The department is designated as the agency responsible
 103 for establishing rules and regulations concerning the contents and duration of the
 104 components of DUI Alcohol or Drug Use Risk Reduction Programs, qualifications of
 105 instructors, attendance requirements for students, examinations, and program evaluations.
 106 Qualified instructors shall be certified for periods of four years each, which may be
 107 renewed. Only clinical evaluators licensed by the Department of Behavioral Health and
 108 Developmental Disabilities shall be qualified to conduct clinical evaluations.

109 (2) Approved DUI Alcohol or Drug Use Risk Reduction Programs shall charge a fee of
 110 ~~\$82.00~~ \$85.00 for the assessment component and ~~\$190.00~~ \$225.00 for the intervention
 111 component. An additional fee for required student program materials shall be established
 112 by the department in such an amount as is reasonable and necessary to cover the cost of
 113 such materials.

114 (3) No DUI Alcohol or Drug Use Risk Reduction Program shall be approved unless such
 115 clinic agrees in writing to submit reports as required in the rules and regulations of the
 116 department and to allow the examination and audit of the books, records, and financial
 117 statements of such DUI Alcohol or Drug Use Risk Reduction Program by the department
 118 or its authorized agent.

119 (4) DUI Alcohol or Drug Use Risk Reduction Programs may be operated by any public,
 120 private, or governmental entity; provided, however, that, except as otherwise provided
 121 in this subsection, in any political subdivision in which a DUI Alcohol or Drug Use Risk
 122 Reduction Program is operated by a private entity, whether for profit or nonprofit, neither
 123 the local county board of health nor any other governmental entity shall fund any new
 124 programs in that area. Programs currently in existence which are operated by local
 125 county boards of health or any other governmental entities shall be authorized to continue
 126 operation. New programs may be started in areas where no private DUI Alcohol or Drug
 127 Use Risk Reduction Programs have been made available to said community.

128 (5) The Department of Corrections is authorized to operate DUI Alcohol or Drug Use
 129 Risk Reduction Programs in its facilities where offenders are not authorized to participate
 130 in such programs in the community, provided that such programs meet the certification
 131 criteria promulgated by the Department of Driver Services. All such programs operated
 132 by the Department of Corrections shall be exempt from all fee provisions established in
 133 this subsection, specifically including the rebate of any fee for the costs of administration.

134 (6) No DUI Alcohol or Drug Use Risk Reduction Program shall be approved unless such
 135 clinic agrees in writing to pay to the state, for the costs of administration, a fee of \$22.00
 136 for each offender assessed ~~or each offender attending for points reduction~~, provided that
 137 nothing in this Code section shall be construed so as to allow the department to retain any
 138 funds required by the Constitution to be paid into the state treasury; and provided, further,
 139 that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12
 140 of Title 45, the 'Budget Act,' except Code Section 45-12-92, prior to expending any such
 141 miscellaneous funds."

142 **SECTION 3.**

143 Code Section 40-6-391 of the Official Code of Georgia Annotated, relating to driving under
 144 the influence of alcohol, drugs, or other intoxicating substances, penalties, publication of
 145 notice of conviction for persons convicted for a second time, and endangering a child, is
 146 amended by revising subsection (c) as follows:

147 "(c) Every person convicted of violating this Code section shall, upon a first or second
 148 conviction thereof, be guilty of a misdemeanor, upon a third conviction thereof, be guilty
 149 of a high and aggravated misdemeanor, and upon a fourth or subsequent conviction thereof,
 150 be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and
 151 shall be punished as follows:

152 (1) ~~First~~ For the first conviction with no conviction of and no plea of nolo contendere
 153 accepted to a charge of violating this Code section within the previous ten years, as
 154 measured from the dates of previous arrests for which convictions were obtained or pleas
 155 of nolo contendere were accepted to the date of the current arrest for which a conviction
 156 is obtained or a plea of nolo contendere is accepted:

157 (A) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not,
 158 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
 159 or probation;

160 (B) A period of imprisonment of not fewer than ten days nor more than 12 months,
 161 which period of imprisonment may, at the sole discretion of the judge, be suspended,
 162 stayed, or probated, except that if the offender's alcohol concentration at the time of the
 163 offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24
 164 hours of any term of imprisonment imposed under this subparagraph;

165 (C) Not fewer than 40 hours of community service, except that for a conviction for
 166 violation of subsection (k) of this Code section where the person's alcohol concentration
 167 at the time of the offense was less than 0.08 grams, the period of community service
 168 shall be not fewer than 20 hours;

- 169 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,
 170 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of
 171 any such program shall provide written notice of the department's approval of the
 172 program to the person upon enrollment in the program;
- 173 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section
 174 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance
 175 abuse treatment program as defined in Code Section 40-5-1; provided, however, that
 176 in the court's discretion such evaluation may be waived; and
- 177 (F) If the person is sentenced to a period of imprisonment for fewer than 12 months,
 178 a period of probation of 12 months less any days during which the person is actually
 179 incarcerated;
- 180 (2) For the second conviction within a ten-year period of time, as measured from the
 181 dates of previous arrests for which convictions were obtained or pleas of nolo contendere
 182 were accepted to the date of the current arrest for which a conviction is obtained or a plea
 183 of nolo contendere is accepted:
- 184 (A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not,
 185 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
 186 or probation;
- 187 (B) A period of imprisonment of not fewer than 90 days and not more than 12 months.
 188 The judge shall probate at least a portion of such term of imprisonment, in accordance
 189 with subparagraph (F) of this paragraph, thereby subjecting the offender to the
 190 provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions
 191 as the judge may impose; provided, however, that the offender shall be required to
 192 serve not fewer than 72 hours of actual incarceration;
- 193 (C) Not fewer than 30 days of community service;
- 194 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,
 195 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of
 196 any such program shall provide written notice of the department's approval of the
 197 program to the person upon enrollment in the program;
- 198 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section
 199 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance
 200 abuse treatment program as defined in Code Section 40-5-1; and
- 201 (F) A period of probation of 12 months less any days during which the person is
 202 actually incarcerated;
- 203 (3) For the third conviction within a ten-year period of time, as measured from the dates
 204 of previous arrests for which convictions were obtained or pleas of nolo contendere were

205 accepted to the date of the current arrest for which a conviction is obtained or a plea of
206 nolo contendere is accepted:

207 (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall
208 not, except as provided in subsection (g) of this Code section, be subject to suspension,
209 stay, or probation;

210 (B) A mandatory period of imprisonment of not fewer than 120 days and not more than
211 12 months. The judge shall probate at least a portion of such term of imprisonment, in
212 accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to
213 the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and
214 conditions as the judge may impose; provided, however, that the offender shall be
215 required to serve not fewer than 15 days of actual incarceration;

216 (C) Not fewer than 30 days of community service;

217 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,
218 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of
219 any such program shall provide written notice of the department's approval of the
220 program to the person upon enrollment in the program;

221 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section
222 40-5-1 and, if recommended as a part of such evaluation, completion of a substance
223 abuse treatment program as defined in Code Section 40-5-1; and

224 (F) A period of probation of 12 months less any days during which the person is
225 actually incarcerated;

226 (4) For the fourth or subsequent conviction within a ten-year period of time, as measured
227 from the dates of previous arrests for which convictions were obtained or pleas of nolo
228 contendere were accepted to the date of the current arrest for which a conviction is
229 obtained or a plea of nolo contendere is accepted:

230 (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall
231 not, except as provided in subsection (g) of this Code section, be subject to suspension,
232 stay, or probation;

233 (B) A period of imprisonment of not less than one year and not more than five years;
234 provided, however, that the judge may suspend, stay, or probate all but 90 days of any
235 term of imprisonment imposed under this paragraph. The judge shall probate at least
236 a portion of such term of imprisonment, in accordance with subparagraph (F) of this
237 paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8
238 of Title 42 and to such other terms and conditions as the judge may impose;

239 (C) Not fewer than 60 days of community service; provided, however, that if a
240 defendant is sentenced to serve three years of actual imprisonment, the judge may
241 suspend the community service;

242 (D) ~~Completion~~ Before or within 120 days of conviction or release from incarceration,
 243 completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of
 244 any such program shall provide written notice of the department's approval of the
 245 program to the person upon enrollment in the program;

246 (E) ~~A~~ Upon satisfactory completion of a clinical evaluation as defined in Code Section
 247 40-5-1 ~~and~~, if recommended as a part of such evaluation, completion of a substance
 248 abuse treatment program as defined in Code Section 40-5-1; and

249 (F) A period of probation of five years less any days during which the person is
 250 actually imprisoned;

251 provided, however, that if the ten-year period of time as measured in this paragraph
 252 commenced prior to July 1, 2008, then such fourth or subsequent conviction shall be a
 253 misdemeanor of a high and aggravated nature and punished as provided in paragraph (3)
 254 of this subsection;

255 (5) If a person has been convicted of violating subsection (k) of this Code section
 256 premised on a refusal to submit to required testing or where such person's alcohol
 257 concentration at the time of the offense was 0.08 grams or more, and such person is
 258 subsequently convicted of violating subsection (a) of this Code section, such person shall
 259 be punished by applying the applicable level or grade of conviction specified in this
 260 subsection such that the previous conviction of violating subsection (k) of this Code
 261 section shall be considered a previous conviction of violating subsection (a) of this Code
 262 section;

263 (6) For the purpose of imposing a sentence under this subsection, a plea of nolo
 264 contendere based on a violation of this Code section shall constitute a conviction; and

265 (7) For purposes of determining the number of prior convictions or pleas of nolo
 266 contendere pursuant to the felony provisions of paragraph (4) of this subsection, only
 267 those offenses for which a conviction is obtained or a plea of nolo contendere is accepted
 268 on or after July 1, 2008, shall be considered; provided, however, that nothing in this
 269 subsection shall be construed as limiting or modifying in any way administrative
 270 proceedings or sentence enhancement provisions under Georgia law, including, but not
 271 limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17."

272 **SECTION 4.**

273 Chapter 13 of Title 43 of the Official Code of Georgia Annotated, relating to instructors in
 274 driver training and operators of driver training schools, is amended by revising paragraph (4)
 275 of subsection (a) of Code Section 43-13-2, relating to definitions regarding instructors in
 276 driver training and operators of driver training schools, as follows:

277 "(4) 'Driver training school,' except as provided in subsection (b) of this Code section,
 278 means any person, partnership, limited liability company, or corporation giving driving
 279 instruction for hire to ten or more persons per calendar year for the purpose of assisting
 280 such persons to meet the requirements for licensed driving of Class C or Class M motor
 281 vehicles in this state, except for motorcycle operator safety training programs conducted
 282 by or on behalf of the Department of Driver Services pursuant to Chapter 15 of Title 40.
 283 The term shall also include any public school system offering a driver training course
 284 during the regular school day as part of a student curriculum at no cost to the student or
 285 any public school system offering a driver training course after the regular school day or
 286 on any day school is not in session and where any fee or tuition is charged for the
 287 participation of any student taking a driver training course or in-car, behind-the-wheel
 288 lessons. Only full-time students who are registered with and attending the sponsoring
 289 public school system offering an after school or after the regular school day driver
 290 education course or driver training program shall be eligible to enroll and participate in
 291 these programs."

292 SECTION 5.

293 Said chapter is further amended by repealing in its entirety Code Section 43-13-10, relating
 294 to exceptions to the operation of the chapter, and enacting a new Code Section 43-13-10 to
 295 read as follows:

296 "43-13-10.

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

298 (1) 'Capital costs' means all costs of providing equipment or other assets used in the
 299 provision of any driver education program or driver training course which are capitalized
 300 in accordance with generally accepted governmental accounting principles.

301 (2) 'Cross-subsidize' means the payment of any item of direct costs or indirect costs of
 302 providing any driver education program or driver training course from a source other than
 303 from the revenues derived from the tuition or fees charged for any driver education
 304 program or driver training course, or a source that is not accounted for in the full-cost
 305 accounting of providing these programs.

306 (3) 'Direct costs' means those expenses of a public school which are directly attributable
 307 to the provision of any driver education program or driver training course that would be
 308 eliminated if the provision of such program or course were discontinued.

309 (4) 'Full-cost accounting' means the accounting for all costs incurred by any public
 310 school in providing a program or course, including all direct costs and indirect costs,
 311 utilizing cost accounting standards promulgated by the federal Costs Accounting

312 Standards Board of the federal Office of Management and Budget so as to assure that all
 313 direct costs and indirect costs are included.

314 (5) 'Generally accepted governmental accounting principles' means the accounting
 315 standards promulgated from time to time by the Governmental Accounting Standards
 316 Board.

317 (6) 'Indirect costs' means any costs that are identified with two or more expenses or other
 318 public school provider functions and not directly identified with a single expense item.
 319 Indirect costs may include, but are not limited to, administration, accounting, personnel,
 320 purchasing, legal, insurance, advertising, postage, printing, graphic design, and other staff
 321 or departmental support. Indirect costs shall be allocated to two or more expense
 322 categories in proportion to the relative burden each respective expense places upon the
 323 cost category.

324 (7) 'Private provider' means any person, partnership, or corporation, other than a public
 325 provider, offering driver education program or driver training courses.

326 (8) 'Public provider' means any public school system or other political subdivision of the
 327 state which provides driver education programs or driver training courses, whether
 328 directly or indirectly, acting individually or jointly with any other public school system.

329 (b) Any public school conducting a driver training course or driver's education program,
 330 conducted after the regular school day or on any day school is not in session and where any
 331 fee or tuition is charged for the participation of any student taking a driver training course,
 332 shall:

333 (1) Prior to providing such programs, first solicit proposals from private providers within
 334 the public school jurisdiction;

335 (2) Prepare reasonable projections of at least a three-year cost-benefit analysis which
 336 identifies and discloses the total projected direct costs and indirect costs and revenues to
 337 be derived from providing the driver education program or driver training course. Such
 338 costs shall be determined in accordance with this chapter and generally accepted
 339 governmental accounting principles;

340 (3) Publish such three-year cost-benefit analysis in a newspaper of general circulation
 341 within the public school district of the public provider once a week for two weeks and
 342 provide each departmental licensed provider of any driver education programs or driver
 343 training courses within the county of the public school system, via United States Postal
 344 Service certified mail, a copy of such three-year cost-benefit analysis;

345 (4) Not cross-subsidize the costs, both direct costs and indirect costs, of any driver
 346 education program or driver training course with funds from any revenue source other
 347 than the tuition or fees paid by the individual participants in such programs or courses;

348 (5) When considering the utilization of a licensed driver education program or driver
349 training course private provider for any after-school or out of session school day offering
350 to its students, not employ terms less favorable or more burdensome than those imposed
351 by any school system program; and
352 (6) If providing an after-school or nonschool day driver education program or driver
353 training course, file with the Georgia Department of Education and Georgia General
354 Assembly, within six months of the completion of the closure of the public school's fiscal
355 year, an annual report of actual income and expenses, both direct costs and indirect costs,
356 according to generally accepted governmental accounting principles."

357 **SECTION 6.**

358 This Act shall become effective on July 1, 2012.

359 **SECTION 7.**

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