

The House Committee on Judiciary Non-civil offers the following substitute to HB 407:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 5 of Title 40 and Article 7 of Chapter 8 of Title 42 of the
2 Official Code of Georgia Annotated, relating to cancellation, suspension, and revocation of
3 drivers' licenses and ignition interlock devices as a condition of probation, respectively, so
4 as to modify and extend provisions related to the mandatory use of ignition interlock devices
5 following a second conviction for driving under the influence of alcohol or drugs; to provide
6 for related matters; to provide for an effective date and applicability; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 3 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to
11 cancellation, suspension, and revocation of drivers' licenses, is amended by revising
12 paragraph (2) of subsection (a) of Code Section 40-5-63, relating to periods of suspension
13 and conditions to return the driver's license, as follows:

14 "(2) Upon the second conviction of any such offense within five years, as measured from
15 the dates of previous arrests for which convictions were obtained to the date of the
16 current arrest for which a conviction is obtained, the period of suspension shall be for
17 three years. At the end of 120 days, the person may apply to the department for
18 reinstatement of ~~said~~ such driver's license; except that if such license was suspended as
19 a result of a second conviction of a violation of Code Section 40-6-391 within five years,
20 the person shall not be eligible to apply for license reinstatement until the end of 18
21 months. Such license shall be reinstated if such person submits proof of completion of
22 a DUI Alcohol or Drug Use Risk Reduction Program and pays a restoration fee of
23 \$210.00 or \$200.00 when such reinstatement is processed by mail unless such conviction
24 was a recidivist conviction in which case the restoration fee shall be \$510.00 or \$500.00
25 when processed by mail, provided that, if such license was suspended as a result of a
26 conviction of an offense listed in Code Section 40-5-54, such license shall be reinstated

27 if such person submits proof of completion of either a defensive driving program
 28 approved by the department or a DUI Alcohol or Drug Use Risk Reduction Program and
 29 pays the prescribed restoration fee. A driver's license suspended as a result of a
 30 conviction of a violation of Code Section 40-6-391 shall not become valid and shall
 31 remain suspended until such person submits proof of completion of a DUI Alcohol or
 32 Drug Use Risk Reduction Program, provides proof of installation and maintenance of an
 33 ignition interlock device for a period of ~~six months~~ one year coinciding with the issuance
 34 of an ignition interlock device limited driving permit as provided in Code Section
 35 40-5-64 unless waived due to financial hardship, and pays the prescribed restoration fee.
 36 For purposes of this paragraph, a plea of nolo contendere and all previous accepted pleas
 37 of nolo contendere to an offense listed in Code Section 40-5-54 within such five-year
 38 period of time shall constitute a conviction. For the purposes of this paragraph, a plea of
 39 nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted
 40 pleas of nolo contendere within five years, as measured from the dates of previous arrests
 41 for which convictions were obtained or pleas of nolo contendere were accepted to the
 42 date of the current arrest for which a plea of nolo contendere is accepted, shall be
 43 considered and counted as convictions; or"

44

SECTION 2.

45 Said article is further amended by revising paragraph (2) of subsection (e) of Code Section
 46 40-5-64, relating to limited driving permits for certain offenders, as follows:

47 "(2) An ignition interlock device limited driving permit shall be valid for a period of
 48 ~~eight months~~ one year. Upon successful completion of ~~eight months~~ one year of
 49 monitoring of such ignition interlock device, the restriction for maintaining and using
 50 such ignition interlock device shall be removed, and the permit may be renewed for
 51 additional periods of ~~six~~ two months as provided in paragraph (1) of this subsection."

52

SECTION 3.

53 Article 7 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to
 54 ignition interlock devices as a condition of probation, is amended by revising subsection (a)
 55 of Code Section 42-8-111, relating to court ordered installation of ignition interlock devices,
 56 notice to the Department of Public Safety, and fees for driver's license indicating device
 57 required, as follows:

58 "(a) Upon a second or subsequent conviction of a resident of this state for violating Code
 59 Section 40-6-391 within five years, as measured from the dates of previous arrests for
 60 which convictions were obtained to the date of the current arrest for which a conviction is
 61 obtained, for which such person is granted probation, the court shall issue a certificate of

62 eligibility for an ignition interlock device limited driving permit or probationary license,
63 subject to the following conditions:

64 (1) Such person shall have installed and shall maintain in each motor vehicle registered
65 in such person's name for a period of not less than ~~eight months~~ one year a functioning,
66 certified ignition interlock device;

67 (2) Such person shall have installed and shall maintain in any other motor vehicle to be
68 driven by such person for a period of not less than ~~eight months~~ one year a functioning,
69 certified ignition interlock device, and such person shall not drive any motor vehicle
70 whatsoever that is not so equipped during such period. Upon successful completion of
71 ~~eight months~~ one year of monitoring of such ignition interlock device, the restriction for
72 maintaining and using such ignition interlock device shall be removed, and the permit
73 may be renewed for additional periods of ~~six~~ two months as provided in paragraph (1) of
74 subsection (e) of Code Section 40-5-64; and

75 (3) Such person shall participate in a substance abuse treatment program as defined in
76 paragraph (16.2) of Code Section 40-5-1 or a drug court program in compliance with
77 Code Section 15-1-15 for a period of not less than 120 days.

78 For the purposes of this subsection, a plea of nolo contendere shall constitute a conviction;
79 and a conviction of any offense under the law of another state or territory substantially
80 conforming to any offense under Code Section 40-6-391 shall be deemed a conviction of
81 violating said Code section."

82 **SECTION 4.**

83 Said article is further amended by revising subsection (b) and paragraphs (1) and (3) of
84 subsection (d) of Code Section 42-8-112, relating to proof of compliance required for
85 reinstatement of certain drivers' licenses and for obtaining probationary license and reporting
86 requirement, as follows:

87 "(b)(1) In any case where the court grants a certificate of eligibility for an ignition
88 interlock device limited driving permit or probationary license pursuant to Code Section
89 42-8-111 to a person whose driver's license is revoked as a habitual violator pursuant to
90 Code Section 40-5-58, the Department of Driver Services shall not issue a habitual
91 violator probationary license until after the expiration of two years from the date of the
92 conviction for which such certificate was granted.

93 (2) The Department of Driver Services shall condition issuance of a habitual violator
94 probationary license for such person upon receipt of acceptable documentation of the
95 following:

96 (A) That the person to whom such probationary license is to be issued has completed
97 a DUI Alcohol or Drug Use Risk Reduction Program;

98 (B) That such person has completed a clinical evaluation as defined in Code Section
 99 40-5-1 and enrolled in a substance abuse treatment program approved by the
 100 Department of Human Services or is enrolled in a drug court program;

101 (C) That such person has installed an ignition interlock device in any vehicle that he
 102 or she will be operating; and

103 (D) A certificate of eligibility for an ignition interlock device limited driving permit
 104 or probationary license from the court that sentenced such person for the conviction that
 105 resulted in the suspension or revocation of his or her driver's license for which he or she
 106 is applying for a limited driving permit or probationary license.

107 (3) In any case where installation of an ignition interlock device is required, failure to
 108 show proof of such device shall be grounds for refusal of reinstatement of such license
 109 or issuance of such habitual violator's probationary license or the immediate suspension
 110 or revocation of such license.

111 (4) Any limited driving permit or probationary license issued to such person shall bear
 112 a restriction reflecting that the person may only operate a motor vehicle equipped with
 113 a functional ignition interlock device. No person whose limited driving permit or
 114 probationary license contains such restriction shall operate a motor vehicle that is not
 115 equipped with a functional ignition interlock device.

116 (5)(A) Any person who has been issued an ignition interlock device limited driving
 117 permit or a habitual violator probationary license bearing an ignition interlock device
 118 condition shall maintain such ignition interlock device in any motor vehicle he or she
 119 operates to the extent required by the certificate of eligibility for such permit or
 120 probationary license issued to such person by the court in which he or she was
 121 convicted for not less than ~~eight months~~ one year.

122 (B) Upon the expiration of such ~~eight-month~~ one-year ignition interlock device limited
 123 driving permit or habitual violator probationary license, the driver may, if otherwise
 124 qualified, apply for renewal of such permit or probationary license without such
 125 ignition interlock device restriction."

126 "(d)(1) If a person required to report to an ignition interlock provider as required by
 127 subsection (c) of this Code section fails to report to the provider as required or receives
 128 an unsatisfactory report from the provider at any time during the ~~six-month~~ one-year
 129 period, the Department of Driver Services shall revoke such person's ignition interlock
 130 device limited driving permit immediately upon notification from the provider of the
 131 failure to report or failure to receive a satisfactory report. Except as provided in
 132 paragraph (2) of this subsection, within 30 days after such revocation, the person may
 133 make a written request for a hearing and remit to the department a payment of \$250.00
 134 for the cost of the hearing. Within 30 days after receiving a written request for a hearing

135 and a payment of \$250.00, the Department of Driver Services shall hold a hearing as
136 provided in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The
137 hearing shall be recorded."

138 "(3) If the hearing officer determines that the person failed to report to the ignition
139 interlock provider for any of the reasons specified below in this paragraph, the
140 Department of Driver Services shall issue a new ignition interlock device limited driving
141 permit that shall be valid for a period of ~~six months~~ one year to such person. Such
142 reasons shall be for providential cause and shall include, but not be limited to, the
143 following:

- 144 (A) Medical necessity, as evidenced by a written statement from a medical doctor;
- 145 (B) The person was incarcerated;
- 146 (C) The person was required to be on the job at his or her place of employment, with
147 proof that the person would be terminated if he or she was not at work; or
- 148 (D) The vehicle with the installed interlock device was rendered inoperable by reason
149 of collision, fire, or a major mechanical failure."

150 **SECTION 5.**

151 This Act shall become effective on July 1, 2013, and shall apply to offenses committed on
152 or after such date.

153 **SECTION 6.**

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