

The Senate Public Safety Committee offered 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 as  
4 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 paragraph  
12 (2) of subsection (a) of Code Section 40-5-63, relating to periods of suspension and conditions  
13 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 current  
16 arrest for which a conviction is obtained, the period of suspension shall be for three years.  
17 At the end of 120 days, the person may apply to the department for reinstatement of ~~said~~  
18 such driver's license; except that if such license was suspended as a result of a second  
19 conviction of a violation of Code Section 40-6-391 within five years, the person shall not  
20 be eligible to apply for license reinstatement until the end of 18 months. Such license  
21 shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug  
22 Use Risk Reduction Program and pays a restoration fee of \$210.00 or \$200.00 when such  
23 reinstatement is processed by mail unless such conviction was a recidivist conviction in  
24 which case the restoration fee shall be \$510.00 or \$500.00 when processed by mail,  
25 provided that, if such license was suspended as a result of a conviction of an offense listed  
26 in Code Section 40-5-54, such license shall be reinstated if such person submits proof of

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

#### 43 SECTION 2.

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

47 "(2) Any person whose driver's license has been suspended as a result of a second  
 48 conviction for violating Code Section 40-6-391 within five years, as measured from the  
 49 dates of previous arrests for which convictions were obtained to the date of the current  
 50 arrest for which a conviction is obtained, may apply for a an ignition interlock limited  
 51 driving permit after serving at least 120 days of the suspension required for such  
 52 conviction and providing either a certificate of eligibility from a drug court program in the  
 53 court in which he or she was convicted of the offense for which such suspension was  
 54 imposed or by submitting proof of enrollment in clinical treatment as provided in Code  
 55 Section 40-5-63.1. No person who has been granted an exemption from the ignition  
 56 interlock device requirements of Article 7 of Chapter 8 of Title 42 shall be eligible for a  
 57 limited driving permit or any other driving privilege for a period of one year."

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

63 **SECTION 3.**

64 Article 7 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to  
 65 ignition interlock devices as a condition of probation, is amended by revising subsections (a)  
 66 and (b) of Code Section 42-8-111, relating to court ordered installation of ignition interlock  
 67 devices, notice to the Department of Public Safety, and fees for driver's license indicating  
 68 device required, as follows:

69 "(a) Upon a second or subsequent conviction of a resident of this state for violating Code  
 70 Section 40-6-391 within five years, as measured from the dates of previous arrests for which  
 71 convictions were obtained to the date of the current arrest for which a conviction is  
 72 obtained, for which such person is granted probation, the court shall issue a certificate of  
 73 eligibility for an ignition interlock device limited driving permit or probationary license,  
 74 subject to the following conditions:

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

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

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

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

93 (b) The court may, in its discretion, decline to issue a certificate of eligibility for an ignition  
 94 interlock device limited driving permit or probationary license for any reason or exempt a  
 95 person from any or all ignition interlock device requirements upon a determination that such  
 96 requirements would subject such person to undue financial hardship. Notwithstanding any  
 97 contrary provision of Code Section 40-13-32 or 40-13-33, a determination of financial  
 98 hardship may be made at the time of conviction or any time thereafter. If a court grants an

99 exemption from the ignition interlock device requirements, such person shall not be eligible  
 100 for a limited driving permit or any other driving privilege for a period of one year."

101 **SECTION 4.**

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

106 "(b)(1) In any case where the court grants a certificate of eligibility for an ignition  
 107 interlock device limited driving permit or probationary license pursuant to Code Section  
 108 42-8-111 to a person whose driver's license is revoked as a habitual violator pursuant to  
 109 Code Section 40-5-58, the Department of Driver Services shall not issue a habitual  
 110 violator probationary license until after the expiration of two years from the date of the  
 111 conviction for which such certificate was granted.

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

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

117 (B) That such person has completed a clinical evaluation as defined in Code Section  
 118 40-5-1 and enrolled in a substance abuse treatment program approved by the Department  
 119 of Human Services or is enrolled in a drug court program;

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

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

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

130 (4) Any limited driving permit or probationary license issued to such person shall bear  
 131 a restriction reflecting that the person may only operate a motor vehicle equipped with a  
 132 functional ignition interlock device. No person whose limited driving permit or  
 133 probationary license contains such restriction shall operate a motor vehicle that is not  
 134 equipped with a functional ignition interlock device.

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

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

145 "(d)(1) If a person required to report to an ignition interlock provider as required by  
 146 subsection (c) of this Code section fails to report to the provider as required or receives  
 147 an unsatisfactory report from the provider at any time during the ~~six-month~~ one-year  
 148 period, the Department of Driver Services shall revoke such person's ignition interlock  
 149 device limited driving permit immediately upon notification from the provider of the  
 150 failure to report or failure to receive a satisfactory report. Except as provided in paragraph  
 151 (2) of this subsection, within 30 days after such revocation, the person may make a written  
 152 request for a hearing and remit to the department a payment of \$250.00 for the cost of the  
 153 hearing. Within 30 days after receiving a written request for a hearing and a payment of  
 154 \$250.00, the Department of Driver Services shall hold a hearing as provided in Chapter  
 155 13 of Title 50, the 'Georgia Administrative Procedure Act.' The hearing shall be recorded."

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

161 (A) Medical necessity, as evidenced by a written statement from a medical doctor;

162 (B) The person was incarcerated;

163 (C) The person was required to be on the job at his or her place of employment, with  
 164 proof that the person would be terminated if he or she was not at work; or

165 (D) The vehicle with the installed interlock device was rendered inoperable by reason  
 166 of collision, fire, or a major mechanical failure."

## 167 SECTION 5.

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

170

**SECTION 6.**

171

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