

House Bill 407 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 32nd, Hitchens of the 161st, Atwood of the 179th, Rice of the 95th, and Taylor of the 173rd

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 (a) and paragraph (2)
 46 of subsection (e) of Code Section 40-5-64, relating to limited driving permits for certain
 47 offenders, as follows:

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

59 "(2) An ignition interlock device limited driving permit shall be valid for a period of
 60 ~~eight months~~ one year. Upon successful completion of ~~eight months~~ one year of
 61 monitoring of such ignition interlock device, the restriction for maintaining and using

62 such ignition interlock device shall be removed, and the permit may be renewed for
 63 additional periods of ~~six~~ two months as provided in paragraph (1) of this subsection."

64 **SECTION 3.**

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

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

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

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

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

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

94 (b) The court may, in its discretion, decline to issue a certificate of eligibility for an
 95 ignition interlock device limited driving permit or probationary license for any reason or
 96 exempt a person from any or all ignition interlock device requirements upon a
 97 determination that such requirements would subject such person to undue financial

98 hardship. Notwithstanding any contrary provision of Code Section 40-13-32 or 40-13-33,
 99 a determination of financial hardship may be made at the time of conviction or any time
 100 thereafter. If a court grants an exemption from the ignition interlock device requirements,
 101 such person shall not be eligible for a limited driving permit or any other driving privilege
 102 for a period of one year."

103 **SECTION 4.**

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

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

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

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

119 (B) That such person has completed a clinical evaluation as defined in Code Section
 120 40-5-1 and enrolled in a substance abuse treatment program approved by the
 121 Department of Human Services or is enrolled in a drug court program;

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

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

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

132 (4) Any limited driving permit or probationary license issued to such person shall bear
 133 a restriction reflecting that the person may only operate a motor vehicle equipped with

134 a functional ignition interlock device. No person whose limited driving permit or
 135 probationary license contains such restriction shall operate a motor vehicle that is not
 136 equipped with a functional ignition interlock device.

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

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

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

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

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

171 **SECTION 5.**

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

174 **SECTION 6.**

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