

Senate Bill 482

By: Senators Stokes of the 43rd, Thompson of the 33rd and Tanksley of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To revise and harmonize certain provisions of the Official Code of Georgia Annotated
2 relating generally to prevention, prohibition, prosecution, punishment, and remediation of
3 driving under the influence of alcohol, drugs, or other intoxicating substances; to amend Title
4 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to
5 change certain provisions relating to periods of suspension and conditions to return of
6 license; to change certain provisions relating to seizure and disposition of drivers' licenses
7 of persons charged with driving under the influence, issuance of temporary driving permits,
8 and disposition of cases; to change certain provisions relating to chemical tests, suspension
9 of license or denial of operating privilege, hearing and review, termination of suspension, and
10 return of fees; to change certain provisions relating to suspension of licenses by operation of
11 law; to change certain provisions relating to consumption of alcoholic beverages or
12 possession of open containers of alcoholic beverages in passenger areas of motor vehicles;
13 to change certain provisions relating to driving under the influence of alcohol, drugs, or other
14 intoxicating substances, penalties, publication of notice of conviction for persons convicted
15 for second time, and endangering a child; to change certain provisions relating to chemical
16 tests for alcohol or drugs in blood; to change certain provisions relating to motor vehicle
17 drivers fleeing or attempting to elude police officers; to repeal conflicting laws; and for other
18 purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 style="text-align:center">**SECTION 1.**

21 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
22 amended by striking the introductory paragraph and paragraph (1) of subsection (a) of Code
23 Section 40-5-63, relating to periods of suspension and conditions to return of license, and
24 inserting in lieu thereof the following:

25 "(a) The driver's license of any person convicted of an offense listed in Code Section
26 40-5-54 or of violating Code Section 40-6-391, ~~unless the driver's license has been~~

1 ~~previously suspended pursuant to Code Sections 40-5-67.1 and 40-5-67.2, shall by~~
2 ~~operation of law be suspended and such suspension shall be subject to the following terms~~
3 ~~and conditions; provided, however, that any person convicted of a drug-related offense~~
4 ~~pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of~~
5 ~~Code Section 40-5-75, except as otherwise provided by subsection (b) of Code Section~~
6 ~~40-5-67.2:~~

7 (1) Upon the first conviction of any such offense, with no arrest and conviction of and
8 no plea of nolo contendere accepted to such offense within the previous five years, as
9 measured from the dates of previous arrests for which convictions were obtained to the
10 date of the current arrest for which a conviction is obtained, the period of suspension shall
11 be for 12 months. At the end of 120 days, the person may apply to the department for
12 reinstatement of said driver's license; except that in the case of such conviction for an
13 offense under paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391, the
14 person shall not be eligible to apply for reinstatement of his or her driver's license until
15 the end of 180 days. Such license shall be reinstated if such person submits proof of
16 completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the
17 Department of Human Resources and pays a restoration fee of \$210.00 or \$200.00 when
18 such reinstatement is processed by mail, provided that, if such license was suspended as
19 a result of a conviction of an offense listed in Code Section 40-5-54, such license shall
20 be reinstated if such person submits proof of completion of either a defensive driving
21 program approved by the Department of Motor Vehicle Safety or a DUI Alcohol or Drug
22 Use Risk Reduction Program approved by the Department of Human Resources and pays
23 the prescribed restoration fee. A driver's license suspended as a result of a conviction of
24 a violation of Code Section 40-6-391 shall not become valid and shall remain suspended
25 until such person submits proof of completion of a DUI Alcohol or Drug Use Risk
26 Reduction Program approved by the Department of Human Resources and pays the
27 prescribed restoration fee. For purposes of this paragraph, an accepted plea of nolo
28 contendere to an offense listed in Code Section 40-5-54 by a person who is under 18
29 years of age at the time of arrest shall constitute a conviction. For the purposes of this
30 paragraph only, an accepted plea of nolo contendere by a person 21 years of age or older,
31 with no conviction of and no plea of nolo contendere accepted to a charge of violating
32 Code Section 40-6-391 within the previous five years, as measured from the dates of
33 previous arrests for which convictions were obtained or pleas of nolo contendere accepted
34 to the date of the current arrest for which a plea of nolo contendere is accepted, shall be
35 considered a conviction, and the court having jurisdiction shall forward, as provided in
36 Code Section 40-6-391.1, the record of such disposition of the case to the department and
37 the record of such disposition shall be kept on file for the purpose of considering and

1 counting such accepted plea of nolo contendere as a conviction under paragraphs (2) and
2 (3) of this subsection;"

3 **SECTION 2.**

4 Said title is further amended by striking subsection (b) and paragraph (2) of subsection (c)
5 of Code Section 40-5-67, relating to seizure and disposition of drivers' licenses of persons
6 charged with driving under the influence, issuance of temporary driving permits, and
7 disposition of cases, and inserting in their respective places the following:

8 "(b) At the time the law enforcement officer takes the driver's license, the officer shall
9 issue a temporary driving permit to the person as follows:

10 (1) If the driver refuses to submit to a test or tests to determine the presence of alcohol
11 or drugs as required in Code Section 40-5-55, the officer shall issue a 30 day temporary
12 driving permit; or

13 (2) If the driver's license is required to be suspended under Code Section 40-5-67.1, the
14 officer shall issue a 30 day temporary driving permit; ~~or~~

15 ~~(3) If the test or tests administered pursuant to Code Section 40-5-55 indicate an alcohol~~
16 ~~concentration in violation of Code Section 40-6-391 but less than the level for an~~
17 ~~administrative suspension of the license under subsection (c) of Code Section 40-5-67.1,~~
18 ~~the officer shall issue a 180 day temporary driving permit.~~

19 This temporary driving permit shall be valid for the stated period or until the person's
20 driving privilege is suspended or revoked under any provision of this title. The department,
21 at its sole discretion, may delay the expiration date of the temporary driving permit, but in
22 no event shall this delay extend beyond the date when such person's driving privilege is
23 suspended or revoked under any provision of this title. The department shall by rules and
24 regulations establish the conditions under which the expiration of the temporary permit
25 may be delayed."

26 "(2) If the person is not convicted of violating and does not enter a plea of nolo
27 contendere to a charge of violating Code Section 40-6-391, and the court is in possession
28 of the driver's license, the court shall return the driver's license to the person unless the
29 license is in suspension for any other offense or the license is in suspension under
30 subsection (d) of Code Section 40-5-67.1, in which case the court shall forward the
31 license to the department for disposition."

32 **SECTION 3.**

33 Said title is further amended by striking paragraphs (2) and (4) of subsection (g) of Code
34 Section 40-5-67.1, relating to chemical tests, suspension of license or denial of operating

1 privilege, hearing and review, termination of suspension, and return of fees, and inserting in
2 their respective places the following:

3 "(2) The scope of the hearing shall be limited to the following issues:

4 (A)(i) Whether the law enforcement officer had reasonable grounds to believe the
5 person was driving or in actual physical control of a moving motor vehicle while
6 under the influence of alcohol or a controlled substance and was lawfully placed
7 under arrest for violating Code Section 40-6-391; or

8 ~~(B)~~(ii) Whether the person was involved in a motor vehicle accident or collision
9 resulting in serious injury or fatality; and

10 ~~(C)~~(B) Whether at the time of the request for the test or tests the officer informed the
11 person of the person's implied consent rights and the consequence of submitting or
12 refusing to submit to such test; and

13 ~~(D)~~(C)(i) Whether the person refused the test; or

14 ~~(E)~~(ii)(I) Whether a test or tests were administered and the results indicated an
15 alcohol concentration of 0.08 grams or more or, for a person under the age of 21,
16 an alcohol concentration of 0.02 grams or more or, for a person operating or having
17 actual physical control of a commercial motor vehicle, an alcohol concentration of
18 0.04 grams or more; and

19 ~~(F)~~(II) Whether the test or tests were properly administered by an individual
20 possessing a valid permit issued by the Division of Forensic Sciences of the Georgia
21 Bureau of Investigation on an instrument approved by the Division of Forensic
22 Sciences or a test conducted by the Division of Forensic Sciences, including
23 whether the machine at the time of the test was operated with all its electronic and
24 operating components prescribed by its manufacturer properly attached and in good
25 working order, which shall be required. A copy of the operator's permit showing
26 that the operator has been trained on the particular type of instrument used and one
27 of the original copies of the test results or, where the test is performed by the
28 Division of Forensic Sciences, a copy of the crime lab report shall satisfy the
29 requirements of this ~~subparagraph~~ subdivision."

30 "(4)(A) In the event the person is acquitted of a violation of Code Section 40-6-391 or
31 such charge is initially disposed of other than by a conviction or plea of nolo
32 contendere, then the suspension shall be terminated and deleted from the driver's
33 license record; provided, however, that the provisions of this subparagraph shall not
34 apply to a suspension under subsection (d) of this Code section.

35 (B) An accepted plea of nolo contendere shall be entered on the driver's license record
36 and shall be considered and counted as a conviction for purposes of any future
37 violations of Code Section 40-6-391.

1 motor vehicles, by redesignating subsection (c) as subsection (d) and inserting a new
2 subsection (c) to read as follows:

3 "(c) In any prosecution for violation of this Code section:

4 (1) Retail labeling of the container which identifies the contents of such container as any
5 alcoholic beverage; or

6 (2) In the absence of such labeling or identification, testimony of the arresting officer
7 that, based on his or her experience and senses, the contents of the container possessed
8 the same odor, color, and general appearance or the same taste, color, and general
9 appearance as any alcoholic beverage,

10 shall be admissible and constitute prima facie evidence that the contents of such container
11 was an alcoholic beverage."

12 **SECTION 6.**

13 Said title is further amended in Code Section 40-6-391, relating to driving under the
14 influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice
15 of conviction for persons convicted for second time, and endangering a child, by striking
16 subsections (a), (b), and (e), and inserting in their respective places the following:

17 "(a) A person shall not drive or be in actual physical control of any moving vehicle while:

18 (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

19 (2) Under the influence of any drug to the extent that it is less safe for the person to
20 drive;

21 (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent
22 that it is less safe for the person to drive;

23 (4) Under the combined influence of any two or more of the substances specified in
24 paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person
25 to drive;

26 (5) The person's alcohol concentration is 0.08 grams or more at any time within three
27 hours after such driving or being in actual physical control from alcohol consumed before
28 such driving or being in actual physical control ended; or

29 ~~(6) Subject to the provisions of subsection (b) of this Code section, there is any amount~~
30 ~~of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in~~
31 ~~the person's blood or urine, or both, including the metabolites and derivatives of each or~~
32 ~~both without regard to whether or not any alcohol is present in the person's breath or~~
33 ~~blood.~~

34 ~~(b) The fact that any person charged with violating this Code section is or has been legally~~
35 ~~entitled to use a drug shall not constitute a defense against any charge of violating this~~
36 ~~Code section; provided, however, that such person shall not be in violation of this Code~~

1 ~~section unless such person is rendered incapable of driving safely as a result of using a drug~~
 2 ~~other than alcohol which such person is legally entitled to use.~~

3 (6) There is any amount of any Schedule I controlled substance listed in Code Section
 4 16-13-25, marijuana, cocaine, or any metabolite or derivative of any of them present in
 5 the person's blood, urine, or both, without regard to whether or not any alcohol is present
 6 in the person's breath or blood.

7 (b) The fact that any person charged with violating this Code section is or has been legally
 8 entitled to use a drug or other substance, including without limitation authorization for
 9 marijuana use under Article 5 of Chapter 34 of Title 43, shall not constitute a defense
 10 against any charge of violating this Code section."

11 "(e) The foregoing limitations on punishment imposed by subsection (c) of this Code
 12 section also shall apply when a defendant has been convicted of violating, by a single
 13 transaction, more than one of the ~~four~~ provisions of subsection (a) of this Code section."

14 SECTION 7.

15 Said title is further amended in Code Section 40-6-392, relating to chemical tests for alcohol
 16 or drugs in blood, by striking subparagraph (a)(1)(B) and inserting in lieu thereof the
 17 following:

18 "(B) In all cases where the arrest is made on or after January 1, 1995, and the state
 19 selects breath testing, two sequential breath samples shall be requested for the testing
 20 of alcohol concentration. For either or both of these sequential samples to be admissible
 21 in the state's or plaintiff's case-in-chief, the readings shall not differ from each other
 22 by an alcohol concentration of greater than 0.020 grams and the lower of the two results
 23 shall be determinative for accusation and indictment purposes and administrative
 24 license suspension purposes. No more than two sequential series of a total of two
 25 adequate breath samples each shall be requested by the state; provided, however, that
 26 after an initial test in which the instrument indicates an adequate breath sample was
 27 given for analysis, any subsequent refusal to give additional breath samples shall not
 28 be construed as a refusal for purposes of suspension of a driver's license under Code
 29 Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal or failure to give
 30 an adequate sample or samples on any subsequent breath, blood, urine, or other bodily
 31 substance test shall not affect the admissibility of the results of any prior samples. An
 32 adequate breath sample shall mean a breath sample sufficient to cause the breath-testing
 33 instrument to produce a printed alcohol concentration analysis."

SECTION 8.

Said title is further amended in Code Section 40-6-395, relating to motor vehicle drivers fleeing or attempting to elude police officers, by striking paragraph (5) of subsection (b) and inserting in lieu thereof the following:

"(5)(A)(i) Any person violating the provisions of subsection (a) of this Code section who, while fleeing or attempting to elude a pursuing police vehicle or police officer in an attempt to escape arrest for a felony offense other than a violation of this chapter, operates his or her vehicle in excess of 30 miles an hour above the posted speed limit, strikes or collides with another vehicle or a pedestrian, flees in traffic conditions which place the general public at risk of receiving serious injuries, or leaves the state shall be guilty of a felony punishable by a fine of \$5,000.00 and imprisonment for not less than one year nor more than five years.

(ii) Any person violating the provisions of subsection (a) of this Code section while driving a motor vehicle in violation of Code Section 40-6-391 shall be guilty of a felony punishable by a fine of \$5,000.00 and imprisonment for not less than one year nor more than five years.

(B) Following adjudication of guilt or imposition of sentence for a violation of subparagraph (A) of this paragraph, the sentence shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged with any other offense, or served concurrently with any other offense."

SECTION 9.

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