

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 (C) In the event of an acquittal or other disposition other than by a conviction or plea  
 2 of nolo contendere, the driver's license restoration fee shall be promptly returned by the  
 3 department to the licensee; provided, however, that the provisions of this subparagraph  
 4 shall not apply to a suspension under subsection (d) of this Code section."

#### 5 SECTION 4.

6 Said title is further amended by striking the introductory paragraph of subsection (a) and  
 7 subsection (b) of Code Section 40-5-75, relating to suspension of licenses by operation of  
 8 law, and inserting in their respective places the following:

9 "(a) The driver's license of any person convicted of possession, distribution, manufacture,  
 10 cultivation, sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture,  
 11 cultivate, sell, or transfer a controlled substance or marijuana, ~~or driving or being in actual~~  
 12 ~~physical control of any moving vehicle while under the influence of such a substance in~~  
 13 violation of subsection (b) of Code Section 16-13-2, subsection (a), (b), or (j) of Code  
 14 Section 16-13-30, ~~or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of~~  
 15 ~~Code Section 40-6-391,~~ <sup>2</sup> or the law of any other jurisdiction shall by operation of law be  
 16 suspended and such suspension shall be subject to the following terms and conditions:"

17 "(b) Whenever a person is convicted of possession, distribution, manufacture, cultivation,  
 18 sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate,  
 19 sell, or transfer a controlled substance or marijuana, ~~or driving or being in actual physical~~  
 20 ~~control of any moving vehicle while under the influence of such substance in violation of~~  
 21 subsection (b) of Code Section 16-13-2, subsection (a), (b), or (j) of Code Section  
 22 16-13-30, ~~or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code~~  
 23 ~~Section 40-6-391,~~ <sup>2</sup> or the law of any other jurisdiction, the court in which such conviction  
 24 is had shall require the surrender to it of any driver's license then held by the person so  
 25 convicted and the court shall thereupon forward such license and a copy of its order to the  
 26 department within ten days after the conviction. The periods of suspension provided for in  
 27 this Code section shall begin on the date of such person's conviction for the offense  
 28 resulting in such suspension; provided, however, that, effective July 1, 1994, if, at the time  
 29 of conviction of any offense listed in subsection (a) of this Code section, the person does  
 30 not have a driver's license or the person's driver's license has been previously suspended,  
 31 the periods of suspension specified by this Code section shall not commence until the  
 32 person applies for the issuance or reinstatement of a driver's license."

#### 33 SECTION 5.

34 Said title is further amended in Code Section 40-6-253, relating to consumption of alcoholic  
 35 beverages or possession of open containers of alcoholic beverages in passenger areas of

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.