

The Senate Judiciary Committee offered the following substitute to SB 482:

A BILL TO BE ENTITLED  
AN ACT

To revise and harmonize certain provisions of the Official Code of Georgia Annotated relating generally to prevention, prohibition, prosecution, punishment, and remediation of driving under the influence of alcohol, drugs, or other intoxicating substances; to amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to change certain provisions relating to periods of suspension and conditions to return of license; to change certain provisions relating to seizure and disposition of drivers' licenses of persons charged with driving under the influence, issuance of temporary driving permits, and disposition of cases; to change certain provisions relating to suspension of licenses by operation of law; to change certain provisions relating to consumption of alcoholic beverages or possession of open containers of alcoholic beverages in passenger areas of motor vehicles; to change certain provisions relating to driving under the influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice of conviction for persons convicted for second time, and endangering a child; to change certain provisions relating to chemical tests for alcohol or drugs in blood; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"(a) The driver's license of any person convicted of an offense listed in Code Section 40-5-54 or of violating Code Section 40-6-391, ~~unless the driver's license has been previously suspended pursuant to Code Sections 40-5-67.1 and 40-5-67.2,~~ shall by operation of law be suspended and such suspension shall be subject to the following terms and conditions; ~~provided, however, that any person convicted of a drug-related offense pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of~~

1 ~~Code Section 40-5-75, except as otherwise provided by subsection (b) of Code Section~~  
2 ~~40-5-67.2:~~

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

**SECTION 2.**

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

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

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

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

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

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

**SECTION 3.**

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

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

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

## SECTION 4.

Said title is further amended in Code Section 40-6-253, relating to consumption of alcoholic beverages or possession of open containers of alcoholic beverages in passenger areas of motor vehicles, by redesignating subsection (c) as subsection (d) and inserting a new subsection (c) to read as follows:

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

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

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

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

## SECTION 5.

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

1       "(a) A person shall not drive or be in actual physical control of any moving vehicle while:  
2       (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;  
3       (2) Under the influence of any drug to the extent that it is less safe for the person to  
4       drive;  
5       (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent  
6       that it is less safe for the person to drive;  
7       (4) Under the combined influence of any two or more of the substances specified in  
8       paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person  
9       to drive;  
10       (5) The person's alcohol concentration is 0.08 grams or more at any time within three  
11       hours after such driving or being in actual physical control from alcohol consumed before  
12       such driving or being in actual physical control ended; or  
13       ~~(6) Subject to the provisions of subsection (b) of this Code section, there is any amount~~  
14       ~~of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in~~  
15       ~~the person's blood or urine, or both, including the metabolites and derivatives of each or~~  
16       ~~both without regard to whether or not any alcohol is present in the person's breath or~~  
17       ~~blood.~~  
18       ~~(b) The fact that any person charged with violating this Code section is or has been legally~~  
19       ~~entitled to use a drug shall not constitute a defense against any charge of violating this~~  
20       ~~Code section; provided, however, that such person shall not be in violation of this Code~~  
21       ~~section unless such person is rendered incapable of driving safely as a result of using a drug~~  
22       ~~other than alcohol which such person is legally entitled to use.~~  
23       (6) There is any amount of any Schedule I controlled substance listed in Code Section  
24       16-13-25, marijuana, cocaine, or any metabolite or derivative of any of them present in  
25       the person's blood, urine, or both, without regard to whether or not any alcohol is present  
26       in the person's breath or blood.  
27       (b) The fact that any person charged with violating this Code section is or has been legally  
28       entitled to use a drug or other substance, including without limitation authorization for  
29       marijuana use under Article 5 of Chapter 34 of Title 43, shall not constitute a defense  
30       against any charge of violating this Code section."  
31       "(e) The ~~foregoing~~ limitations on punishment imposed by subsection (c) of this Code  
32       section also shall apply when a defendant has been convicted of violating, by a single  
33       transaction, more than one of the ~~four~~ provisions of subsection (a) of this Code section."

**SECTION 6.**

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

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

**SECTION 7.**

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