

The House Committee on Motor Vehicles offered the following substitute to SB 482:

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 limited driving permits for certain offenders;
7 to change certain provisions relating to seizure and disposition of drivers' licenses of persons
8 charged with driving under the influence, issuance of temporary driving permits, and
9 disposition of cases; to change certain provisions relating to chemical tests, implied consent
10 notices, rights of motorists, test results, refusal to submit, suspension or denial, hearing and
11 review, compensation of officers, and inspection and certification of breath-testing
12 instruments; to change certain provisions relating to suspension of licenses by operation of
13 law; to change certain provisions relating to consumption of alcoholic beverages or
14 possession of open containers of alcoholic beverages in passenger areas of motor vehicles;
15 to change certain provisions relating to driving under the influence of alcohol, drugs, or other
16 intoxicating substances, penalties, publication of notice of conviction for persons convicted
17 for second time, and endangering a child; to change certain provisions relating to chemical
18 tests for alcohol or drugs in blood; to amend Code Section 42-8-112 of the Official Code of
19 Georgia Annotated, relating to proof of compliance required for reinstatement of certain
20 drivers' licenses and for obtaining probationary licenses and reporting requirements, so as
21 to change certain provisions relating to monitoring of ignition interlock devices; to repeal
22 conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

24 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
25 amended by striking the introductory paragraph and paragraph (1) of subsection (a) of Code
26

S. B. 482 (SUB)

1 Section 40-5-63, relating to periods of suspension and conditions to return of license, and
2 inserting in lieu thereof the following:

3 "(a) The driver's license of any person convicted of an offense listed in Code Section
4 40-5-54 or of violating Code Section 40-6-391, unless the driver's license has been
5 previously suspended pursuant to ~~Code Sections~~ subsection (d) of Code Section 40-5-67.1
6 and or except as otherwise provided by Code Section 40-5-57.1 or subsection (b) of Code
7 Section 40-5-67.2, shall by operation of law be suspended and such suspension shall be
8 subject to the following terms and conditions; ~~provided, however, that any person~~
9 ~~convicted of a drug related offense pursuant to Code Section 40-6-391 shall be governed~~
10 ~~by the suspension requirements of Code Section 40-5-75:~~

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

1 to the date of the current arrest for which a plea of nolo contendere is accepted, shall be
 2 considered a conviction, and the court having jurisdiction shall forward, as provided in
 3 Code Section 40-6-391.1, the record of such disposition of the case to the department and
 4 the record of such disposition shall be kept on file for the purpose of considering and
 5 counting such accepted plea of nolo contendere as a conviction under paragraphs (2) and
 6 (3) of this subsection;"

7 SECTION 2.

8 Said title is further amended in subsection (a) of Code Section 40-5-64, relating to limited
 9 driving permits for certain offenders, by inserting a new paragraph (1.1) to read as follows:

10 "(1.1) Any person whose driver's license has been suspended in accordance with
 11 paragraph (1) of subsection (a) of Code Section 40-5-63 for conviction of an offense
 12 under paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391 shall not be
 13 eligible for a limited driving permit under paragraph (1) of this subsection."

14 SECTION 2A.

15 Said title is further amended in paragraph (1) of subsection (g) of said Code Section 40-5-64
 16 by inserting a new subparagraph to read as follows:

17 "(C) Upon receipt of notice from a provider center for ignition interlock devices that
 18 an ignition interlock device which a permittee is required to use has been tampered with
 19 or the permittee has failed to report for monitoring of such device as required by law,
 20 the department shall revoke such permittee's limited driving permit and, by regular mail
 21 to his or her last known address, notify such person of such revocation. Such notice of
 22 revocation shall inform the person of the grounds for and effective date of the
 23 revocation and of the right to review. The notice of revocation shall be deemed received
 24 three days after mailing."

25 SECTION 3.

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

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

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

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

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

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

14 SECTION 4.

15 Said title is further amended by striking paragraph (1) of subsection (f) of Code Section
 16 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test results,
 17 refusal to submit, suspension or denial, hearing and review, compensation of officers, and
 18 inspection and certification of breath-testing instruments, and inserting in lieu thereof the
 19 following:

20 "(f)(1) The law enforcement officer, acting on behalf of the department, shall personally
 21 serve the notice of intention to suspend or disqualify the license of the arrested person or
 22 other person refusing such test on such person at the time of the person's refusal to
 23 submit to a test or at the time at which such a test indicates that suspension or
 24 disqualification is required under this Code section. The law enforcement officer shall
 25 take possession of any driver's license or permit held by any person whose license is
 26 subject to suspension pursuant to subsection (c) or (d) of this Code section, if any, and
 27 shall issue a 30 day temporary permit. The officer shall forward the person's driver's
 28 license to the department along with the notice of intent to suspend or disqualify and the
 29 sworn report required by subsection (c) or (d) of this Code section within ten calendar
 30 days after the date of the arrest of such person. ~~This paragraph shall not apply to any~~
 31 ~~person issued a 180 day temporary permit pursuant to subsection (b) of Code Section~~
 32 ~~40-5-67.~~ The failure of the officer to transmit the sworn report required by this Code
 33 section within ten calendar days shall not prevent the department from accepting such
 34 report and utilizing it in the suspension of a driver's license as provided in this Code
 35 section."

SECTION 5.

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 6.

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

1 (2) Testimony of a law enforcement officer that, based on his or her experience and
 2 senses, the contents of the container possessed the same odor, color, and general
 3 appearance or the same taste, color, and general appearance as any alcoholic beverage,
 4 shall be admissible and constitute prima facie evidence that the contents of such container
 5 was an alcoholic beverage."

6 SECTION 7.

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

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

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

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

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

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

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

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

28 ~~(b) The fact that any person charged with violating this Code section is or has been legally~~
 29 ~~entitled to use a drug shall not constitute a defense against any charge of violating this~~
 30 ~~Code section, provided, however, that such person shall not be in violation of this Code~~
 31 ~~section unless such person is rendered incapable of driving safely as a result of using a drug~~
 32 ~~other than alcohol which such person is legally entitled to use.~~

33 (6) There is any amount of any Schedule I controlled substance listed in Code Section
 34 16-13-25, marijuana, cocaine, or any metabolite or derivative of any of them present in
 35 the person's blood, urine, or both, without regard to whether or not any alcohol is present
 36 in the person's breath or blood.

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

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

8 SECTION 8.

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

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

28 SECTION 8A.

29 Code Section 42-8-112 of the Official Code of Georgia Annotated, relating to proof of
 30 compliance required for reinstatement of certain drivers' licenses and for obtaining
 31 probationary licenses and reporting requirements, is amended by striking subsection (c) and
 32 inserting in lieu thereof the following:

33 "(c) Each resident of this state who is required to have an ignition interlock device installed
 34 pursuant to this article shall report to the provider center every ~~30~~ 60 days for the purpose
 35 of monitoring the operation of each required ignition interlock device. If at any time it is

1 determined that a person has tampered with the device, the probation officer or the court
2 ordering use of such device ~~or~~, in the case of a driver who is ~~not~~ on probation; and the
3 Department of ~~Public Safety or its successor agency~~ Motor Vehicle Safety in any case shall
4 be given written notice within five days. If an ignition interlock device is found to be
5 malfunctioning, it shall be replaced or repaired, as ordered by the court or the Department
6 of ~~Public Safety or its successor agency~~ Motor Vehicle Safety, at the expense of the
7 provider."

8 **SECTION 9.**

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