

Senate Bill 75

By: Senators Stokes of the 43rd, Meyer von Bremen of the 12th, Levetan of the 40th, Adelman of the 42nd and Reed of the 35th

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 change certain provisions relating to motor vehicle
19 drivers fleeing or attempting to elude police officers; to repeal conflicting laws; and for other
20 purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

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

S. B. 75

1 "(a) The driver's license of any person convicted of an offense listed in Code Section
2 40-5-54 or of violating Code Section 40-6-391, ~~unless the driver's license has been~~
3 ~~previously suspended pursuant to Code Sections 40-5-67.1 and~~ except as otherwise
4 provided by Code Section 40-5-57.1 or subsection (b) of Code Section 40-5-67.2, shall by
5 operation of law be suspended and such suspension shall be subject to the following terms
6 and conditions; ~~provided, however, that any person convicted of a drug related offense~~
7 ~~pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of~~
8 ~~Code Section 40-5-75:~~

9 (1) Upon the first conviction of any such offense, with no arrest and conviction of and
10 no plea of nolo contendere accepted to such offense within the previous five years, as
11 measured from the dates of previous arrests for which convictions were obtained to the
12 date of the current arrest for which a conviction is obtained, the period of suspension shall
13 be for 12 months. Unless the driver's license has been previously suspended pursuant to
14 subsection (d) of Code Section 40-5-67.1, at At the end of 120 days, the person may
15 apply to the department for reinstatement of said driver's license; except that in the case
16 of such conviction for an offense under paragraph (2), (4), or (6) of subsection (a) of
17 Code Section 40-6-391, the person shall not be eligible to apply for reinstatement of his
18 or her driver's license until the end of 180 days. Such license shall be reinstated if such
19 person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction
20 Program approved by the Department of Human Resources and pays a restoration fee of
21 \$210.00 or \$200.00 when such reinstatement is processed by mail, provided that, if such
22 license was suspended as a result of a conviction of an offense listed in Code Section
23 40-5-54, such license shall be reinstated if such person submits proof of completion of
24 either a defensive driving program approved by the Department of Motor Vehicle Safety
25 or a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of
26 Human Resources and pays the prescribed restoration fee. A driver's license suspended
27 as a result of a conviction of a violation of Code Section 40-6-391 shall not become valid
28 and shall remain suspended until such person submits proof of completion of a DUI
29 Alcohol or Drug Use Risk Reduction Program approved by the Department of Human
30 Resources and pays the prescribed restoration fee. For purposes of this paragraph, an
31 accepted plea of nolo contendere to an offense listed in Code Section 40-5-54 by a person
32 who is under 18 years of age at the time of arrest shall constitute a conviction. For the
33 purposes of this paragraph only, an accepted plea of nolo contendere by a person 21 years
34 of age or older, with no conviction of and no plea of nolo contendere accepted to a charge
35 of violating Code Section 40-6-391 within the previous five years, as measured from the
36 dates of previous arrests for which convictions were obtained or pleas of nolo contendere
37 accepted to the date of the current arrest for which a plea of nolo contendere is accepted,

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

6 SECTION 2.

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

9 "(1.1) Any person whose driver's license has been suspended in accordance with
 10 paragraph (1) of subsection (a) of Code Section 40-5-63 for conviction of an offense
 11 under paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391 shall not be
 12 eligible for a limited driving permit under paragraph (1) of this subsection."

13 SECTION 3.

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

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

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

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

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

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

1 results, refusal to submit, suspension or denial, hearing and review, compensation of officers,
 2 and inspection and certification of breath-testing instruments, and inserting in their respective
 3 places the following:

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

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

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

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

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

15 ~~(E)~~(ii)(I) Whether a test or tests were administered and the results indicated an
 16 alcohol concentration of 0.08 grams or more or, for a person under the age of 21,
 17 an alcohol concentration of 0.02 grams or more or, for a person operating or having
 18 actual physical control of a commercial motor vehicle, an alcohol concentration of
 19 0.04 grams or more; and

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

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

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

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

8 SECTION 7.

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

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

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

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

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

10 (b) Reserved."

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 10.

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 11.

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 12.

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