

ADOPTED

1 Senators Stokes of the 43rd, Meyer von Bremen of the 12th and Adelman of the 42nd offered
2 the following amendment:

3 Amend the Senate Judiciary Committee substitute to SB 13 by inserting on line 8 of page 1
4 immediately following the word and symbol "blood;" the following:

5 "to 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
7 offenders; to delete an obsolete reference relating to issuance of temporary driving permits;
8 to clarify certain provisions relating to chemical tests, implied consent notices, rights of
9 motorists, test results, refusal to submit, suspension or denial, hearing and review,
10 compensation of officers, and inspection and certification of breath-testing instruments; to
11 change certain provisions relating to suspension of licenses by operation of law; to change
12 certain provisions relating to consumption of alcoholic beverages or possession of open
13 containers of alcoholic beverages in passenger areas of motor vehicles; to change certain
14 provisions relating to driving under the influence of alcohol, drugs, or other intoxicating
15 substances, penalties, publication of notice of conviction for persons convicted for second
16 time, and endangering a child; to change certain provisions relating to chemical tests for
17 alcohol or drugs in blood; to change certain provisions relating to motor vehicle drivers
18 fleeing or attempting to elude police officers;"

19 By redesignating Section 3 as Section 6, Sections 4 and 5 as Sections 12 and 13, and Section
20 6 as Section 16, respectively.

21 By inserting between lines 4 and 5 of page 3 new Sections 3, 4, and 5 to read as follows:

22 **"SECTION 3.**

23 Said title is further amended by striking the introductory paragraph and paragraph (1) of
24 subsection (a) of Code Section 40-5-63, relating to periods of suspension and conditions to
25 return of license, and inserting in lieu thereof the following:

26 '(a) The driver's license of any person convicted of an offense listed in Code Section
27 40-5-54 or of violating Code Section 40-6-391, ~~unless the driver's license has been~~
28 ~~previously suspended pursuant to Code Sections 40-5-67.1 and~~ except as otherwise
29 provided by Code Section 40-5-57.1 or subsection (b) of Code Section 40-5-67.2, shall by
30 operation of law be suspended and such suspension shall be subject to the following terms
31 and conditions; ~~provided, however, that any person convicted of a drug-related offense~~

1 ~~pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of~~
2 ~~Code Section 40-5-75:~~

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;'

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

4 '(f)(1) The law enforcement officer, acting on behalf of the department, shall personally
 5 serve the notice of intention to suspend or disqualify the license of the arrested person or
 6 other person refusing such test on such person at the time of the person's refusal to
 7 submit to a test or at the time at which such a test indicates that suspension or
 8 disqualification is required under this Code section. The law enforcement officer shall
 9 take possession of any driver's license or permit held by any person whose license is
 10 subject to suspension pursuant to subsection (c) or (d) of this Code section, if any, and
 11 shall issue a 30 day temporary permit. The officer shall forward the person's driver's
 12 license to the department along with the notice of intent to suspend or disqualify and the
 13 sworn report required by subsection (c) or (d) of this Code section within ten calendar
 14 days after the date of the arrest of such person. ~~This paragraph shall not apply to any~~
 15 ~~person issued a 180 day temporary permit pursuant to subsection (b) of Code Section~~
 16 ~~40-5-67.~~ The failure of the officer to transmit the sworn report required by this Code
 17 section within ten calendar days shall not prevent the department from accepting such
 18 report and utilizing it in the suspension of a driver's license as provided in this Code
 19 section.'

20 SECTION 8.

21 Said title is further amended by striking paragraphs (2) and (4) of subsection (g) of Code
 22 Section 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test
 23 results, refusal to submit, suspension or denial, hearing and review, compensation of officers,
 24 and inspection and certification of breath-testing instruments, and inserting in their respective
 25 places the following:

26 '(2) The scope of the hearing shall be limited to the following issues:

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

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

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

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

1 ~~(E)~~(ii)(I) Whether a test or tests were administered and the results indicated an
 2 alcohol concentration of 0.08 grams or more or, for a person under the age of 21,
 3 an alcohol concentration of 0.02 grams or more or, for a person operating or having
 4 actual physical control of a commercial motor vehicle, an alcohol concentration of
 5 0.04 grams or more; and

6 ~~(F)~~(II) Whether the test or tests were properly administered by an individual
 7 possessing a valid permit issued by the Division of Forensic Sciences of the Georgia
 8 Bureau of Investigation on an instrument approved by the Division of Forensic
 9 Sciences or a test conducted by the Division of Forensic Sciences, including
 10 whether the machine at the time of the test was operated with all its electronic and
 11 operating components prescribed by its manufacturer properly attached and in good
 12 working order, which shall be required. A copy of the operator's permit showing
 13 that the operator has been trained on the particular type of instrument used and one
 14 of the original copies of the test results or, where the test is performed by the
 15 Division of Forensic Sciences, a copy of the crime lab report shall satisfy the
 16 requirements of this ~~subparagraph~~ subdivision.'

17 '(4)(A) In the event the person is acquitted of a violation of Code Section 40-6-391 or
 18 such charge is initially disposed of other than by a conviction or plea of nolo
 19 contendere, then the suspension shall be terminated and deleted from the driver's
 20 license record.

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

24 (C) In the event of an acquittal or other disposition other than by a conviction or plea
 25 of nolo contendere, the driver's license restoration fee shall be promptly returned by the
 26 department to the licensee.'

27 **SECTION 9.**

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

31 '(a) The driver's license of any person convicted of possession, distribution, manufacture,
 32 cultivation, sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture,
 33 cultivate, sell, or transfer a controlled substance or marijuana, ~~or driving or being in actual~~
 34 ~~physical control of any moving vehicle while under the influence of such a substance in~~
 35 violation of subsection (b) of Code Section 16-13-2, subsection (a), (b), or (j) of Code
 36 Section 16-13-30, or Code Section 16-13-33; ~~paragraph (2), (4), or (6) of subsection (a) of~~

1 ~~Code Section 40-6-391, 2~~ or the law of any other jurisdiction shall by operation of law be
 2 suspended and such suspension shall be subject to the following terms and conditions:'
 3 '(b) Whenever a person is convicted of possession, distribution, manufacture, cultivation,
 4 sale, transfer of, the attempt or conspiracy to possess, distribute, manufacture, cultivate,
 5 sell, or transfer a controlled substance or marijuana, ~~or driving or being in actual physical~~
 6 ~~control of any moving vehicle while under the influence of such substance~~ in violation of
 7 subsection (b) of Code Section 16-13-2, subsection (a), (b), or (j) of Code Section
 8 16-13-30, ~~or Code Section 16-13-33; paragraph (2), (4), or (6) of subsection (a) of Code~~
 9 ~~Section 40-6-391, 2~~ or the law of any other jurisdiction, the court in which such conviction
 10 is had shall require the surrender to it of any driver's license then held by the person so
 11 convicted and the court shall thereupon forward such license and a copy of its order to the
 12 department within ten days after the conviction. The periods of suspension provided for in
 13 this Code section shall begin on the date of such person's conviction for the offense
 14 resulting in such suspension; provided, however, that, effective July 1, 1994, if, at the time
 15 of conviction of any offense listed in subsection (a) of this Code section, the person does
 16 not have a driver's license or the person's driver's license has been previously suspended,
 17 the periods of suspension specified by this Code section shall not commence until the
 18 person applies for the issuance or reinstatement of a driver's license.'

19 **SECTION 10.**

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

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

- 25 (1) Retail labeling of the container which identifies the contents of such container as any
 26 alcoholic beverage; or
- 27 (2) Testimony of a law enforcement officer that, based on his or her experience and
 28 senses, the contents of the container possessed the same odor, color, and general
 29 appearance or the same taste, color, and general appearance as any alcoholic beverage,
 30 shall be admissible as evidence that the contents of such container was an alcoholic
 31 beverage.'

32 **SECTION 11.**

33 Said title is further amended in Code Section 40-6-391, relating to driving under the
 34 influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice

1 of conviction for persons convicted for second time, and endangering a child, by striking
 2 subsections (a), (b), and (e), and inserting in their respective places the following:

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

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

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

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

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

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

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

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

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

29 (b) Reserved.'

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

33 By inserting between lines 27 and 28 of page 6 new Sections 14 and 15 to read as follows:

"SECTION 14.

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 15.

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 subsections (a) and (b) and inserting in lieu thereof the following:

'(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle.

(b)(1) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a high and aggravated misdemeanor and:

(A) Upon conviction shall be fined not less than \$500.00 nor more than \$5,000.00, which fine shall not be subject to suspension, stay, or probation and imprisoned for not

1 less than ten days nor more than 12 months. Any period of such imprisonment in excess
2 of ten days may, in the sole discretion of the judge, be suspended, stayed, or probated;

3 (B) Upon the second conviction within a ten-year period of time, as measured from the
4 dates of previous arrests for which convictions were obtained to the date of the current
5 arrest for which a conviction is obtained, shall be fined not less than \$1,000.00 nor
6 more than \$5,000.00, which fine shall not be subject to suspension, stay, or probation
7 and imprisoned for not less than 30 days nor more than 12 months. Any period of such
8 imprisonment in excess of 30 days may, in the sole discretion of the judge, be
9 suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of
10 nolo contendere accepted within such ten-year period shall constitute convictions; and

11 (C) Upon the third or subsequent conviction within a ten-year period of time, as
12 measured from the dates of previous arrests for which convictions were obtained to the
13 date of the current arrest for which a conviction is obtained, shall be fined not less than
14 \$2,500.00 nor more than \$5,000.00, which fine shall not be subject to suspension, stay,
15 or probation and imprisoned for not less than 90 days nor more than 12 months. Any
16 period of such imprisonment in excess of 90 days may, in the sole discretion of the
17 judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous
18 pleas of nolo contendere accepted within such ten-year period shall constitute
19 convictions.

20 (2) For the purpose of imposing a sentence under this subsection, a plea of nolo
21 contendere shall constitute a conviction.

22 (3) If the payment of the fine required under paragraph (1) of this subsection will impose
23 an economic hardship on the defendant, the judge, at his or her sole discretion, may order
24 the defendant to pay such fine in installments and such order may be enforced through
25 a contempt proceeding or a revocation of any probation otherwise authorized by this
26 subsection.

27 (4) Notwithstanding the limits set forth in any municipal charter, any municipal court of
28 any municipality shall be authorized to impose the punishments provided for in this
29 subsection upon a conviction of violating this subsection or upon conviction of violating
30 any ordinance adopting the provisions of this subsection.

31 (5)(A)(i) Any person violating the provisions of subsection (a) of this Code section
32 who, while fleeing or attempting to elude a pursuing police vehicle or police officer
33 in an attempt to escape arrest for a felony offense other than a violation of this
34 chapter, operates his or her vehicle in excess of 30 miles an hour above the posted
35 speed limit, strikes or collides with another vehicle or a pedestrian, flees in traffic
36 conditions which place the general public at risk of receiving serious injuries, or

1 leaves the state shall be guilty of a felony punishable by a fine of \$5,000.00 and
2 imprisonment for not less than one year nor more than five years.

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

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