

The House Committee on Motor Vehicles offered the following substitute to SB 13:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and
2 traffic, so as to create the new offense of refusal to submit to chemical testing; to provide for
3 punishment; to change certain provisions relating to the point system; to change certain
4 provisions relating to suspension of licenses of persons under 21 years of age for certain
5 offenses; to change certain provisions relating to chemical tests, implied consent notices,
6 rights of motorists, test results, refusal to submit, suspension or denial, hearing and review,
7 compensation of officers, and inspection and certification of breath-testing instruments; to
8 change certain provisions relating to chemical tests for alcohol or drugs in blood; to change
9 certain provisions relating to periods of suspension and conditions to return of license; to
10 change certain provisions relating to limited driving permits for certain offenders; to delete
11 an obsolete reference relating to issuance of temporary driving permits; to clarify certain
12 provisions relating to chemical tests, implied consent notices, rights of motorists, test results,
13 refusal to submit, suspension or denial, hearing and review, compensation of officers, and
14 inspection and certification of breath-testing instruments; to change certain provisions
15 relating to suspension of licenses by operation of law; to change certain provisions relating
16 to consumption of alcoholic beverages or possession of open containers of alcoholic
17 beverages in passenger areas of motor vehicles; to change certain provisions relating to
18 driving under the influence of alcohol, drugs, or other intoxicating substances, penalties,
19 publication of notice of conviction for persons convicted for second time, and endangering
20 a child; to change certain provisions relating to chemical tests for alcohol or drugs in blood;
21 to change certain provisions relating to motor vehicle drivers fleeing or attempting to elude
22 police officers; to provide for related matters; to repeal conflicting laws; and for other
23 purposes.

24 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 subparagraph (c)(1)(A) of Code Section 40-5-57, relating to the suspension or revocation of license of habitually negligent or dangerous drivers and the point system, and inserting in lieu thereof the following:

"(c)(1)(A) Except as provided in subparagraph (C) of this paragraph, the points to be assessed for each offense shall be as provided in the following schedule:

Aggressive driving	6 points
Reckless driving	4 points
Unlawful passing of a school bus	6 points
Improper passing on a hill or a curve	4 points
Exceeding the speed limit by more than 14 miles per hour but less than 19 miles per hour	2 points
Exceeding the speed limit by 19 miles per hour or more but less than 24 miles per hour	3 points
Exceeding the speed limit by 24 miles per hour or more but less than 34 miles per hour	4 points
Exceeding the speed limit by 34 miles per hour or more	6 points
Disobedience of any traffic-control device or traffic officer	3 points
Too fast for conditions	0 points
Possessing an open container of an alcoholic beverage while driving	2 points
<u>Refusal to submit to chemical testing in violation of Code Section 40-6-391.4, first offense</u>	<u>2 points</u>
<u>Refusal to submit to chemical testing in violation of Code Section 40-6-391.4, second or subsequent offense</u>	<u>4 points</u>
Failure to adequately secure a load, except fresh farm produce, resulting in loss of such load onto the roadway which results in an accident	2 points
Violation of child safety restraint requirements, first offense	1 point
Violation of child safety restraint requirements, second or subsequent offense	2 points
All other moving traffic violations which are not speed limit violations . .	3 points"

SECTION 2.

Said title is further amended by striking subsection (a) of Code Section 40-5-57.1, relating to suspension of licenses of persons under age 21 for certain offenses, and inserting in lieu thereof the following:

S. B. 13 (SUB)

1 "(a) Notwithstanding any other provision of this chapter, the driver's license of any person
2 under 21 years of age convicted of hit and run or leaving the scene of an accident in
3 violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle
4 in fleeing or attempting to elude an officer, reckless driving, refusal to submit to chemical
5 testing in violation of Code Section 40-6-391.4, any offense for which four or more points
6 are assessable under subsection (c) of Code Section 40-5-57, purchasing an alcoholic
7 beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23, or
8 violation of paragraph (3) or (5) of subsection (a) of Code Section 3-3-23, or violation of
9 Code Section 40-6-391 shall be suspended by the department as provided by this Code
10 section; and the driver's license of any person under 18 years of age who has accumulated
11 a violation point count of four or more points under Code Section 40-5-57 in any
12 consecutive 12 month period shall be suspended by the department as provided by this
13 Code section. A plea of nolo contendere shall be considered a conviction for purposes of
14 this subsection. Notice of suspension shall be given by certified mail or statutory overnight
15 delivery, return receipt requested; or, in lieu thereof, notice may be given by personal
16 service upon such person. Such license shall be surrendered within ten days of notification
17 of such suspension. Notice given by certified mail or statutory overnight delivery, return
18 receipt requested, mailed to the person's last known address shall be prima-facie evidence
19 that such person received the required notice."

20 **SECTION 3.**

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

24 "(a) The driver's license of any person convicted of an offense listed in Code Section
25 40-5-54 or of violating Code Section 40-6-391, ~~unless the driver's license has been~~
26 ~~previously suspended pursuant to Code Sections 40-5-67.1 and~~ except as otherwise
27 provided by Code Section 40-5-57.1 or subsection (b) of Code Section 40-5-67.2, shall by
28 operation of law be suspended and such suspension shall be subject to the following terms
29 and conditions; ~~provided, however, that any person convicted of a drug related offense~~
30 ~~pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of~~
31 ~~Code Section 40-5-75:~~

32 (1) Upon the first conviction of any such offense, with no arrest and conviction of and
33 no plea of nolo contendere accepted to such offense within the previous five years, as
34 measured from the dates of previous arrests for which convictions were obtained to the
35 date of the current arrest for which a conviction is obtained, the period of suspension shall
36 be for 12 months. At the end of 120 days, the person may apply to the department for

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

29 **SECTION 4.**

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

32 "(1.1) Any person whose driver's license has been suspended in accordance with
33 paragraph (1) of subsection (a) of Code Section 40-5-63 for conviction of an offense
34 under paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391 shall not be
35 eligible for a limited driving permit under paragraph (1) of this subsection."

SECTION 5.

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 6.

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

"(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent notice from the following:

(1) Implied consent notice for suspects under age 21:

'Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year, and you may be charged with the separate offense of

1 refusal to submit to chemical testing. Your refusal to submit to the required testing may
2 be offered into evidence against you at trial. If you submit to testing and the results
3 indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's license
4 or privilege to drive on the highways of this state may be suspended for a minimum
5 period of one year. After first submitting to the required state tests, you are entitled to
6 additional chemical tests of your blood, breath, urine, or other bodily substances at your
7 own expense and from qualified personnel of your own choosing. Will you submit to
8 the state administered chemical tests of your (designate which tests) under the implied
9 consent law?'

10 (2) Implied consent notice for suspects age 21 or over:

11 'Georgia law requires you to submit to state administered chemical tests of your blood,
12 breath, urine, or other bodily substances for the purpose of determining if you are under
13 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's
14 license or privilege to drive on the highways of this state will be suspended for a
15 minimum period of one year, and you may be charged with the separate offense of
16 refusal to submit to chemical testing. Your refusal to submit to the required testing may
17 be offered into evidence against you at trial. If you submit to testing and the results
18 indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license
19 or privilege to drive on the highways of this state may be suspended for a minimum
20 period of one year. After first submitting to the required state tests, you are entitled to
21 additional chemical tests of your blood, breath, urine, or other bodily substances at your
22 own expense and from qualified personnel of your own choosing. Will you submit to
23 the state administered chemical tests of your (designate which tests) under the implied
24 consent law?'

25 (3) Implied consent notice for commercial motor vehicle driver suspects:

26 'Georgia law requires you to submit to state administered chemical tests of your blood,
27 breath, urine, or other bodily substances for the purpose of determining if you are under
28 the influence of alcohol or drugs. If you refuse this testing, you will be disqualified
29 from operating a commercial motor vehicle for a minimum period of one year, and you
30 may be charged with the separate offense of refusal to submit to chemical testing. Your
31 refusal to submit to the required testing may be offered into evidence against you at
32 trial. If you submit to testing and the results indicate the presence of any alcohol, you
33 will be issued an out-of-service order and will be prohibited from operating a motor
34 vehicle for 24 hours. If the results indicate an alcohol concentration of 0.04 grams or
35 more, you will be disqualified from operating a commercial motor vehicle for a
36 minimum period of one year. After first submitting to the required state tests, you are
37 entitled to additional chemical tests of your blood, breath, urine, or other bodily

1 substances at your own expense and from qualified personnel of your own choosing.

2 Will you submit to the state administered chemical tests of your (designate which tests)

3 under the implied consent law?'

4 If ~~any such~~ this notice is used by a law enforcement officer to advise a person of his or her
5 rights regarding the administration of chemical testing, ~~such the~~ person shall be deemed to
6 have been properly advised of his or her rights under this Code section and under Code
7 Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test, shall
8 be admitted into evidence against ~~such the~~ person. ~~Such~~ This notice shall be read in its
9 entirety but need not be read exactly so long as the substance of the notice remains
10 unchanged."

11 SECTION 7.

12 Said title is further amended by striking paragraph (1) of subsection (f) of Code Section
13 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test results,
14 refusal to submit, suspension or denial, hearing and review, compensation of officers, and
15 inspection and certification of breath-testing instruments, and inserting in lieu thereof the
16 following:

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

33 SECTION 8.

34 Said title is further amended by striking paragraphs (2) and (4) of subsection (g) of Code
35 Section 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test

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.

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.

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

SECTION 9.

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 10.

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, retail labeling of the container which identifies the contents of such container as any alcoholic beverage shall be admissible as evidence that the contents of such container was an alcoholic beverage."

SECTION 11.

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:

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

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

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

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

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

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

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

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

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

(b) Reserved."

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

SECTION 12.

Said title is further amended by adding a new Code section to follow Code Section 40-6-391.3, relating to the penalty for conviction for driving under the influence of alcohol or drugs while driving a school bus, to read as follows:

"40-6-391.4.

(a) Any person who refuses to submit to lawfully requested chemical testing to which the person is deemed by Code Section 40-5-55 to have given consent shall be guilty of the separate offense of refusal to submit to chemical testing and upon conviction thereof shall be punished as provided by subsection (c) of this Code section.

(b) The offense of refusal to submit to chemical testing shall be merged for purposes of sentencing with a violation of any provision of Code Section 40-6-391 that arose out of the same course of conduct.

(c) Every person convicted of violating this Code section shall be, upon a first or second conviction thereof, guilty of a misdemeanor and shall be, upon a third or subsequent conviction thereof, guilty of a misdemeanor of a high and aggravated nature and shall be punished as follows:

(1) For the first conviction a fine of not more than \$300.00 and a period of imprisonment of not more than three months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated;

(2) For the second conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$600.00 nor more than \$1,000.00, which fine shall not, except as provided in subsection (d) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not less than 90 days nor more than 12 months; provided, however, that the offender shall be required to serve not less than 72 hours of actual incarceration; and

(C) Not less than 30 days of community service; or

(3) For the third or subsequent conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo

contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (d) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not less than 120 days nor more than 12 months; provided, however, that the offender shall be required to serve not less than 15 days of actual incarceration; and

(C) Not less than 30 days of community service.

(4) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere or an adjudication of delinquency based on a violation of this Code section shall constitute a conviction.

(d) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay the fine in installments and this order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(e) The offense of refusal to submit to chemical testing shall not be designated by the Attorney General as an offense for which the Georgia Crime Information Center is authorized to collect and file identifying data under Code Section 35-3-33."

SECTION 13.

Said title is further amended in Code Section 40-6-392, relating to chemical tests for alcohol or drugs in blood, by striking paragraphs (3) and (4) of subsection (a) and subsection (d), and inserting in their respective places the following:

“(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to ~~him or his~~ the person or the person's attorney. The arresting officer at the time of arrest shall advise the person arrested of his or her rights to a chemical test or tests according to this Code section."

1 "(d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be
2 made of his or her blood, breath, urine, or other bodily substance at the time of his or her
3 arrest shall be admissible in evidence against him or her, and the trier of fact may in its
4 discretion infer from the refusal that the person was unlawfully under the influence of
5 alcohol, drugs, or other intoxicating substances or had an unlawful alcohol concentration
6 as prohibited by Code Section 40-6-391."

7 **SECTION 14.**

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

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

27 **SECTION 15.**

28 Said title is further amended in Code Section 40-6-395, relating to motor vehicle drivers
29 fleeing or attempting to elude police officers, by striking subsections (a) and (b) and inserting
30 in lieu thereof the following:

31 "(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his
32 or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle
33 or police officer when given a visual or an audible signal to bring the vehicle to a stop. The
34 signal given by the police officer may be by hand, voice, emergency light, or siren. The
35 officer giving such signal shall be in uniform prominently displaying his or her badge of

1 office, and his or her vehicle shall be appropriately marked showing it to be an official
2 police vehicle.

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

5 (A) Upon conviction shall be fined not less than \$500.00 nor more than \$5,000.00,
6 which fine shall not be subject to suspension, stay, or probation and imprisoned for not
7 less than ten days nor more than 12 months. Any period of such imprisonment in excess
8 of ten days may, in the sole discretion of the judge, be suspended, stayed, or probated;

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

17 (C) Upon the third or subsequent conviction within a ten-year period of time, as
18 measured from the dates of previous arrests for which convictions were obtained to the
19 date of the current arrest for which a conviction is obtained, shall be fined not less than
20 \$2,500.00 nor more than \$5,000.00, which fine shall not be subject to suspension, stay,
21 or probation and imprisoned for not less than 90 days nor more than 12 months. Any
22 period of such imprisonment in excess of 90 days may, in the sole discretion of the
23 judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous
24 pleas of nolo contendere accepted within such ten-year period shall constitute
25 convictions.

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

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

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

1 (5)(A)(i) Any person violating the provisions of subsection (a) of this Code section
2 who, while fleeing or attempting to elude a pursuing police vehicle or police officer
3 in an attempt to escape arrest for a felony offense other than a violation of this
4 chapter, operates his or her vehicle in excess of 30 miles an hour above the posted
5 speed limit, strikes or collides with another vehicle or a pedestrian, flees in traffic
6 conditions which place the general public at risk of receiving serious injuries, or
7 leaves the state shall be guilty of a felony punishable by a fine of \$5,000.00 and
8 imprisonment for not less than one year nor more than five years.

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

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

17 **SECTION 16.**

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